

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10842-2011

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

ROBERT ALAN CUTTY

Respondent

---

Before:

Mr K. W. Duncan (in the chair)

Mr R. Nicholas

Mr S. Hill

Date of Hearing: 5th November 2012

---

**Appearances**

Andrew John Bullock, solicitor of Solicitors Regulation Authority, The Cube, 199 Wharfside Road, Birmingham, B1 1RN for the Applicant.

The Respondent was not present or represented.

---

**JUDGMENT**

---

## **Allegations**

1. The allegations proceeded with at the hearing, which were contained in a Rule 7 Statement dated 3 October 2012 were that, by virtue of his conviction for criminal offences, details of which are set out at paragraph 2 below, he:
  - 1.1 Failed to uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011;
  - 1.2 Did not act with integrity in breach of Principle 2 of the SRA Principles 2011; and
  - 1.3 Did not behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.
2. On 6 June 2012 the Respondent was upon his own admission convicted upon indictment of four counts of obtaining a money transfer by deception and five counts of fraud by abuse of position and on 23 July 2012 was sentenced to a term of two years imprisonment.

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

3. The Tribunal noted that the Respondent was not present or represented and that he was a serving prisoner.
4. Mr Bullock referred the Tribunal to a letter to the SRA, which had been copied to the Tribunal, from the Respondent dated 19 October 2012. This was the response to a letter from the Applicant dated 12 October 2012 which had been written following an Application hearing in this matter which had taken place on 8 October 2012. The Respondent's letter confirmed, amongst other matters, that he was aware of the hearing date, would not be arranging to attend and would not have representation. The Tribunal was invited to proceed with the hearing in the Respondent's absence.
5. The Tribunal noted the circumstances and in particular the Respondent's letter of 19 October 2012, which had been before the Tribunal which had dealt with a further Case Management Hearing on 23 October 2012. The Tribunal was satisfied that the Respondent had been properly served with the proceedings and notice of the hearing and was aware of the hearing date but did not intend to appear or be represented. It was also clear from the letter that he was fully aware of the allegations against him. In all of the circumstances, it was just and appropriate to proceed with the hearing in the Respondent's absence.

## **Preliminary Matter (2) – Withdrawal of the Rule 5 Statement**

6. The Tribunal noted the Memoranda relating to preliminary hearings which had taken place on 8 and 23 October 2012. These dealt with the granting of necessary permissions relating to the lodging and service of the Rule 7 Statement.
7. Mr Bullock told the Tribunal that the Application and Rule 5 Statement in this matter were dated 23 September 2011. That Statement had contained seven allegations including of breaches of Rule 1 of the Solicitors Code of Conduct 2007 and the

Solicitors Accounts Rules 1998, six of which were also allegations of dishonesty. The Rule 7 Statement contained allegations of breaches of Principles 1,2 and 6 of the SRA Principles 2011 arising from the Respondent's conviction. The Tribunal was told that the convictions were based on circumstances which were also relied on in the Rule 5 Statement in that the Respondent had been convicted of various misappropriations from client account. It was known that at least one conviction was in relation to the matter of CB Deceased, which matter had been set out at paragraphs 15-20 of the Rule 5 Statement. In these circumstances, it was proposed that it would be appropriate to proceed solely on the basis of the convictions. The Applicant applied for permission to withdraw the Rule 5 Statement and proceed on the Rule 7 Statement only.

8. The Tribunal noted all of the circumstances, in particular that this issue had been canvassed at the preliminary hearings on 8 and 23 October 2012. Given the overlap between the convictions and the allegations in the Rule 5 Statement it was not necessary for the Tribunal to hear the case set out in the Rule 5 Statement, although that case had been properly brought. To hear the allegations in the Rule 5 Statement, which were quite detailed, would increase the length of the hearing and increase the costs of the case where it was not necessary or proportionate to consider the Rule 5 allegations. Accordingly, the Tribunal gave permission to withdraw the Rule 5 Statement and allegations and to proceed on the basis of the Rule 7 Statement only.

### **Documents**

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

Applicant:

- Application dated 23 September 2011
- Rule 5 Statement with exhibit "AJB 1" dated 23 September 2011
- Rule 7 Statement with exhibit "AJB 2" dated 3 October 2012
- Applicant's costs schedule dated 26 October 2012

Respondent:

- Letter to SRA dated 19 October 2012

### **Factual Background**

10. The Respondent was born in 1948 and was admitted to the Roll of Solicitors in 1974. His name remained on the Roll as at the date of hearing.
11. On 6 June 2012 the Respondent was upon his own admission convicted upon indictment of four counts of obtaining a money transfer by deception and five counts of fraud by abuse of position.
12. The Tribunal was informed that the ingredients of the offence of obtaining a money transfer by deception, pursuant to the Theft Act 1968, s 15a, are:

- 12.1 the making of a credit to one account with a bank and the creation of a debit to another bank account where the credit was caused by the debit;
- 12.2 both the credit and debit were the result of deception; and
- 12.3 the deception was dishonest.
- 13. The Tribunal was informed that the ingredients of the offence of fraud by abuse of position are:
  - 13.1 the (Respondent) is in a position in which they are expected to safeguard or not to act against the financial interests of another;
  - 13.2 the (Respondent) dishonestly abuses that position;
  - 13.3 the (Respondent) thereby intends to make a gain for himself or cause a loss to another.
- 14. On 23 July 2012 the Respondent had been sentenced to a term of imprisonment of two years. The Certificate of Conviction was dated 14 August 2012. There had been no appeal against conviction.

#### **Witnesses**

- 15. None

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

- 16. **Allegation 1: By virtue of his conviction for criminal offences, he:**
  - Allegation 1.1: Failed to uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011;**
  - Allegation 1.2: Did not act with integrity in breach of Principle 2 of the SRA Principles 2011; and**
  - Allegation 1.3: Did not behave in a way that maintains the trust the public places in him and in the provision of legal services in breach of Principle 6 of the SRA Principles 2011.**
- 16.1 The Tribunal was satisfied beyond reasonable doubt that all of the allegations had been proved. Indeed, the Respondent had admitted the allegations. The Respondent had been convicted, on his own admission, of serious matters of deception and dishonesty. It was clear to the Tribunal that he had thereby failed to uphold the rule of law and the proper administration of justice, had failed to act with integrity and had not behaved in a way which would maintain the trust the public would place in him and the provision of legal services.

#### **Previous Disciplinary Matters**

- 17. There were no previous disciplinary findings against the Respondent.

## Mitigation

18. No mitigation was offered. The Tribunal noted that in his letter of 19 October the Respondent had indicated an intention to lodge a statement before the hearing, but he had not done so. The Tribunal noted that the Respondent had facilitated the proper disposal of this case by consenting to the case proceeding on 5 November on the basis of the Rule 7 Statement, which had been filed and served (with the Tribunal's permission) outside the usual time allowed. The Tribunal noted that in his letter of 19 October the Respondent had stated that he did not intend to oppose the Rule 7 Statement and consented to a striking off order. He further stated that he had not practised as a solicitor since November 2009 and never intended to practise again.

## Sanction

19. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
20. The Tribunal noted that the purposes of sanction at the Tribunal include the protection of the public and the maintenance of the reputation of the solicitors' profession, in accordance with the principles set out by the Master of the Rolls in Bolton v Law Society [1994] 1 WLR 512. These purposes, reinforced by the decision in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin), meant that, save in exceptional circumstances, where a solicitor had been dishonest it was almost inevitable that the solicitor would be struck off the Roll.
21. The Tribunal did not consider there to be any exceptional circumstances in this case. In this instance, it was clear from the trial judge's sentencing remarks that the Respondent's offences had been committed over a period of about seven years and involved multiple frauds and the misuse of something like £300,000, with a personal benefit to the Respondent of about £140,000. The offences related directly to breaching his duties as a solicitor, when he was in a position of trust, and his behaviour had caused loss and had damaged the reputation of his firm and would damage that of the profession.
22. The Tribunal 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.
23. Taking into account all of the circumstances, the seriousness of the offences of dishonesty and the Respondent's acceptance that a striking off order would be appropriate, the proportionate and reasonable sanction was that the Respondent should be struck off the Roll of Solicitors.

## Costs

24. The Applicant sought payment of costs totalling £24,595.38 in accordance with the schedule of costs submitted. This total included the costs in relation to preliminary hearings on 7 March and 5 July 2012 but not the costs of the hearings on 8 and 23 October 2012, which had been necessitated by the late filing of the Rule 7 Statement. Although the Rule 5 Statement had been withdrawn, the costs of preparation in

relation to that had been claimed as the proceedings had been properly brought and the Rule 5 Statement had been certified as showing a prima facie case to answer. The allegations set out in the Rule 5 Statement related to the same circumstances as the convictions and the criminal proceedings had crystallised the allegations in the Rule 5 Statement.

25. The Tribunal noted that it had not been provided with any information about the Respondent's means, as it would expect in the light of the decision in SRA v Davis & McGlinchey [2011] EWHC 232 (Admin) if the Respondent sought to rely on his financial circumstances to reduce or eliminate a liability to pay the Applicant's costs, where it was clear that the allegations were admitted. Accordingly, there was no reason presented to the Tribunal why the costs should be disallowed or reduced on account of the Respondent's circumstances.
26. The Tribunal considered the costs schedule. Taking into account all of the relevant circumstances, the Tribunal carried out a summary assessment and determined that the appropriate and reasonable costs order was that the Respondent should pay the Applicant's costs of £23,000.

#### **Statement of Full Order**

27. The Tribunal Ordered that the Respondent, Robert Alan Cutty, 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 £23,000.00.

Dated this 16<sup>th</sup> day of November 2012  
On behalf of the Tribunal

K. W. Duncan  
Chairman