

The Respondent's Appeal against the Tribunal's decision lodged with the High Court (Administrative Court) was withdrawn.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10985-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MICHELLE DARLING BOYE

Respondent

Before:

Mrs K. Todner (in the chair)

Mr S. Tinkler

Mr M. R. Hallam

Date of Hearing: 6th November 2012

Appearances

Mr Edward Levey, Counsel, Fountain Court Chambers, Fountain Court, London EC4Y 9DH, instructed direct for the Applicant.

Mr Ashitey Ollenu, Counsel, Redemption Chambers, 121 The Vale, London NW11 8TL, instructed direct for the Respondent.

JUDGMENT

Allegations

1. The allegations made against Michelle Darling Boye, the Respondent, on behalf of the Solicitors Regulation Authority (the “SRA”), were that:
 - 1.1 She had breached Rules 1.02 and 1.06 of the Solicitors’ Code of Conduct 2007 by falsifying and/or fabricating case reports submitted for assessment for accreditation under the Magistrates’ Court Qualification Scheme.

For the avoidance of doubt, it was alleged that in respect of the matters at paragraph 1.1 above, the Respondent acted dishonestly, although it was not necessary to prove dishonesty to prove the allegations themselves.

Documents

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

Applicant:

- Application dated 4 May 2012;
- Rule 5 Statement dated 4 May 2012 and exhibit “JJA1”;
- Schedule of Costs dated 2 November 2012.

Respondent:

- Statement of Respondent dated 22 October 2012 and attached documentation;
- Bundle of statements and testimonials.

Factual Background

3. The Respondent was born on 27 November 1960 and admitted as a solicitor on 2 February 2009. Her name remained on the Roll of Solicitors. At the material time, the Respondent was a solicitor in the practice of Shores Anchor Solicitors, 41d Kilburn High Road, London NW6 5SB (“the firm”).
4. The Criminal Litigation Accreditation Scheme (“CLAS”) was an accreditation scheme available to solicitors who wished to become duty solicitors. To become a member of CLAS, a solicitor had to attain both of the following:
 - Police Station Qualification (“PSQ”) or Police Station Representative Accreditation Scheme (“PSRAS”); and
 - Magistrates’ Court Qualification (“MCQ”).
5. To obtain the MCQ, solicitors had to complete two assessments carried out by an assessment organisation approved by The Law Society. The first was a portfolio assessment and the second was an interview and advocacy assessment.

6. The Respondent was seeking accreditation under the MCQ scheme and was being assessed by Cardiff University Professional Development Unit (“the Unit”). A portfolio needed to contain five detailed “summary reports” and twenty “short note reports”. Guidance on the portfolio was issued by the Unit and made reference to further guidance issued by The Law Society. The Law Society guidance stated:

“All case reports included in the portfolio must cover cases in which you have personally represented a client in a magistrates’ court in respect of an allegation of one or more criminal offences or quasi criminal offences...”
7. The Law Society guidance also confirmed that when submitting a portfolio, candidates would be required to certify that:

“...the reports are real cases of which you had personal conduct, are separate cases involving separate clients in respect of which you personally advised your client, and represented them in a magistrates’ court (or youth court) on at least one occasion, in which (other than in the case of a re-submission or in circumstances where an interval is permitted), the court appearance took place within the 12 months up to the date of submission of the portfolio...”
8. In or around September 2010, the Respondent submitted a portfolio of work for assessment by the Unit. There was no evidence to say that the Respondent sent a signed copy of the certification document to the Unit.
9. In October 2010, the Respondent was provided with feedback from the Unit, and informed that the summary reports 2, 3 and 4 had failed and needed to be replaced.
10. On 22 December 2010, the Respondent provided the Unit with the three amended cases.
11. On 25 February 2011, the Unit wrote to the Respondent to express concern about the three cases that had been re-submitted on 22 December 2010 as it appeared that the cases which had been re-submitted contained:

“...documents which had been falsified to attempt to disguise the fact that they were not new cases”.
12. On 2 March 2011, the Respondent accepted the concerns that had been raised by the Unit.
13. The Unit subsequently referred the matter to the SRA who wrote to the Respondent on 30 June 2011.
14. On the same date, the SRA also wrote to the firm, who were the Respondent’s employer at the time. Ms Q at the firm replied to the SRA on 18 July 2011.
15. On 29 July 2011, the Respondent replied to the SRA. She accepted falsifying Unique File Number (“UFN”) reference numbers and court dates in relation to the three re-submitted cases.

16. As a result of other comments made in her letter of 29 July 2011, the SRA wrote to the Respondent again on 12 August 2011 and requested further clarification in relation to the entire contents of the original portfolio which had been submitted for assessment.
17. On 12 September 2011, the Respondent replied and accepted that she had not attended court on any of the dates detailed in the portfolio. She enclosed with her letter evidence to support the information detailed in the portfolio and some character references.
18. From the comments made by the Respondent in her letter of 12 September 2011, it was apparent that:
 - there were no personal attendances for the clients on the dates stated;
 - there were numerous occasions when the Respondent had not represented the client described at all;
 - there were several instances detailed where the Respondent had observed other solicitors acting at court;
 - facts in relation to the type of application made had been fabricated;
 - details of the offences dealt with and representations made to the Crown Prosecutor at court had been fabricated;
 - certain facts outlined in both the detailed summary and short note case reports, purporting to relate to the case of one client, in fact related to a different case and client.
19. On 13 December 2011, an SRA Adjudicator decided to refer the conduct of the Respondent to the Solicitors Disciplinary Tribunal.

Witnesses

20. The Respondent gave evidence and was cross-examined by Mr Levey. She confirmed that the content of her statement was true and denied that she had been dishonest when she had submitted her portfolio to the Unit. She explained that it was her understanding that the portfolio could contain details of all of her experience at the Magistrates' Court and she had not submitted her portfolio in an attempt to deceive anyone. She told the Tribunal that she would have included cases where someone else at the firm had taken over a file on which she had given initial advice, or where she had attended court with Counsel.
21. The Respondent confirmed that the three new summary reports that she had submitted to the Unit had contained new UFN numbers but she had used the details from the original cases which had passed the assessment and copied these onto the new summary reports. She said that she did not know why she had re-submitted the portfolio in this way and it was something that should not have happened. She had subsequently contacted the head of the Unit and had asked for her application to be cancelled so that she could start the assessment process again. She told the Tribunal that it had taken her some time to re-submit the portfolio as, shortly after the death of

her mother, her brother had died unexpectedly and she had been left feeling depressed.

22. In cross-examination by Mr Levey, the Respondent acknowledged that she had wanted to become a duty solicitor. She had understood that it would be necessary for her to obtain the relevant qualifications and that without such qualifications, she would not have been able to become accredited. She acknowledged that becoming a duty solicitor would have enabled her to advance her career and advise clients in court and at the police station. She said that she had understood from The Law Society guidance notes that she needed to submit a portfolio containing details of cases that she had worked on. She was unsure whether she had seen the full version of the guidance notes when she had completed her portfolio but she had known that she had to submit details of five different cases together with twenty short note reports and that the cases that she provided had to be ones where she had personal conduct of each matter. In addition, she acknowledged that she had been required to give accurate, honest and complete information to the Unit. She told the Tribunal that she could describe a case as her own where her clients had subsequently been represented by a colleague or by Counsel, as her understanding of the assessment process was that she could include any of her experience at the Magistrates' Court.
23. The Respondent was asked to consider examples of two of the short note reports which had been included in her portfolio and she acknowledged that she had not attended court with the clients on the dates stated. She maintained that she did have personal conduct of the cases which she had included in her portfolio but said that she now accepted that there had been inaccuracies in each of the short note reports that she had submitted. She said that, at the time, she had thought that it would be sufficient to set out her understanding of the procedure in the Magistrates' Court as well as providing details of her court experience. She denied that she had submitted inaccurate and misleading reports in the hope that she could "get away with it". She told the Tribunal that all of the cases that had been included in the portfolio had been dealt with by the firm and were matters in which she had conduct in one way or the other. The Respondent accepted that she had expressed remorse and shame in her statement but denied that this was because she had not given honest and accurate information to the Unit. She told the Tribunal that she had felt ashamed of the fact that she had not submitted a complete piece of work and she considered that her portfolio had "let her down".
24. In continuing cross-examination, the Respondent acknowledged that she had been required to provide details of three new cases when she had re-submitted her portfolio to the Unit. She accepted that she had taken the details from the three original case reports that she had submitted and had changed the case number, the UFN reference number and the date of the court appearance, and then re-submitted those cases as part of her second portfolio. She accepted that she had taken out an original reference to having made a bail application in one of the later cases that she had submitted. She told the Tribunal that the new UFN reference numbers were intended for some new cases that she was going to be working on and which she had planned to submit to the Unit and she accepted that she had "copied and pasted" details from the original cases onto the new case summary reports. She said that she should never have re-submitted the portfolio in this way and she did not know what had happened. She explained that an error had occurred and this had been a grave mistake on her part. She said that she

had intended to type out details for three new cases and then add these to the two cases which had originally been passed and then re-submit all five cases to the Unit. The Respondent denied that she had been trying to deliberately mislead the Unit. She told the Tribunal that she had felt ashamed of the fact that she had been careless and stupid in re-submitting her portfolio in the way that she had as she had always been very careful in her work. She denied the assertion that the real reason for her to feel ashamed was because she had been trying to “pass off” the three new cases as genuine when she had known that they were not.

25. In re-examination by Mr Ollenu, the Respondent confirmed that she had understood that she could submit details of her experience in the Magistrates’ Court as part of her portfolio. She said that this would have included situations where she had observed colleagues at court or where she had attended court with colleagues who had assisted her. She said that she understood that it was being asserted that she had changed the UFN reference numbers and re-submitted cases in the hope that this would go unnoticed but she denied that this had been her intention. She explained that the new UFN numbers had been meant for other cases.
26. In answer to questions from the Tribunal, the Respondent accepted that in one of the examples that she had included in her portfolio and which related to a court appearance on 20 January 2010, she had explicitly stated that she had conducted the case on that day when, in fact, she had observed her colleague dealing with the matter. She said that she could not remember the specific details of the work that had been carried out but said that she had not thought that it mattered whether she had been at court on her own or had been in attendance with another colleague as she believed that this was all part of her experience of the Magistrates’ Court. She told the Tribunal that she had not been trying to deceive anyone.
27. The Respondent acknowledged that she had not conducted a plea in mitigation at a court appearance on 14 April 2010 even though the report included in her portfolio had stated that she had undertaken the advocacy work. She said that she had attended court with a colleague on that occasion and had become confused about the work that had been carried out. She accepted that there were significant similarities between two case summaries relating to court appearances on 25 November 2009 and 12 November 2010. She explained that the later report summary was supposed to refer to a new case altogether, but she acknowledged that the facts of the two cases were the same, and that the summary of 12 November 2010 contained additional information regarding the case and her involvement in it. She said that she should have changed the details of the second case to go with the new UFN number and the fact that she had failed to do so had been a mistake on her part and had not been done with any intention to deceive.

Findings of Fact and Law

28. The Tribunal determined the allegations to its usual standard of proof, that is beyond reasonable doubt.
29. **Allegation 1.1: She had breached Rules 1.02 and 1.06 of the Solicitors’ Code of Conduct 2007 by falsifying and/or fabricating case reports submitted for assessment for accreditation under the Magistrates’ Court Qualification Scheme.**

- 29.1 Mr Levey said that the allegation itself had been admitted by the Respondent and the real issue to be determined by the Tribunal was whether the Respondent had acted dishonestly when she had submitted her portfolio. He stated that it was the Applicant's case that the Respondent had been dishonest when she had sent her portfolio to the Unit as she had known that it contained inaccurate and incomplete information. He acknowledged that the Tribunal would need to establish that the Respondent had been dishonest beyond reasonable doubt and he accepted that any finding of dishonesty would have to be made on the basis of the "combined" test as set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. He said that the Respondent's conduct had been dishonest by the standards of reasonable and honest people and the Respondent herself had realised that she was being dishonest by those same standards.
- 29.2 Mr Ollennu told the Tribunal that the parties were in agreement as to the issue in this case. He acknowledged that the Tribunal would need to find that the Respondent had acted dishonestly and that such finding should be based on the "combined" test. He stated that, in particular, the Tribunal would need to decide whether the Respondent had known or believed that she was being dishonest.
- 29.3 The Tribunal found allegation 1.1 to be substantiated and the Respondent had admitted the allegation. The Tribunal had been invited to find that the Respondent had been dishonest. Having considered the facts and documents before it and having heard the Respondent give evidence, the Tribunal found that the Respondent's explanations lacked consistency and were evasive. In her own letter to the SRA of 12 September 2011, the Respondent had admitted that she had not attended court on any of the dates set out in the 20 short note reports contained in her portfolio. In addition, she had arranged to "cut and paste" the details from the summary reports that had previously been submitted into three new case reports to which she had allocated new reference numbers in an attempt to give the impression that these were new cases. The Tribunal had applied the criminal standard of proof and the "combined" test set out in Twinsectra in order to decide whether the Respondent had acted dishonestly. The Tribunal found, without hesitation, that the Respondent had acted dishonestly on both the objective and subjective tests. There had been a systematic attempt to mislead an assessment body and, as such, the Tribunal was satisfied beyond reasonable doubt that the Respondent had been dishonest.

Previous Disciplinary Matters

30. None.

Mitigation

31. Mr Ollennu acknowledged that unless he could demonstrate that some exceptional circumstances applied in this case then, inevitably, the Respondent would be struck off the Roll of Solicitors. He told the Tribunal that the Respondent had been experiencing personal difficulties when she had submitted her portfolio to the Unit as her brother had died suddenly and he referred the Tribunal to the "glowing" references and testimonials that had been filed on her behalf. He said that the Respondent's conduct had been totally out of character and he reminded the Tribunal that she had an unblemished regulatory record. He questioned whether it was

necessary for the Respondent to be struck off the Roll in order to protect the public and the good name of the profession. He acknowledged that it was wrong for any solicitor to act dishonestly but pointed out that the Respondent's conduct had not been during the course of her practice as a solicitor and had not been in connection with any client or court proceedings. He said that it was apparent from the testimonials that had been filed on her behalf that the Respondent had always acted with integrity towards her clients and colleagues and he asked whether it was really necessary for her to lose her livelihood as well as the membership of a profession that she had aspired to acquire.

32. The Tribunal was told that the Respondent was unlikely to do anything of this nature again. Mr Ollennu said that the Respondent's misconduct had been limited to one single act although he accepted that she had been wrong and he acknowledged that this was clearly a serious matter. He maintained that it would not be unduly lenient for the Tribunal to conclude that a period of suspension would be a fair penalty that would meet the gravity of the Respondent's transgression. Mr Ollennu pointed out that the Respondent had expressed remorse for what she had done. He said that she had accepted her wrongdoing although she denied that she had been dishonest. He said that she had been frank in her dealings with the SRA and had not attempted to hide matters. In summary, he suggested that a period of suspension should be considered as an appropriate penalty in this case.

Sanction

33. The Tribunal had found the allegation to be substantiated against the Respondent and she had also been found to have been dishonest and systematically attempted to mislead her regulatory body. The Tribunal considered its own Guidance Note on Sanctions and concluded that there were no exceptional circumstances which would merit a penalty other than a strike off. Having found that the Respondent had acted dishonestly, the appropriate penalty in this case was that the Respondent should be struck off the Roll of Solicitors and the Tribunal so ordered.

Costs

34. The Applicant's claim for costs was £6,146 and Mr Levey invited the Tribunal to assess costs in the amount claimed. He confirmed that a Schedule of Costs had been served on the Respondent and he told the Tribunal that the Respondent had been invited to provide evidence of her means. He stated that the Respondent had failed to produce any satisfactory evidence as to her financial circumstances and he suggested that the Tribunal should proceed on the basis that the Respondent had the ability to meet any order for costs.
35. The Tribunal retired in order to give Mr Ollennu the opportunity to take instructions in relation to the Respondent's means. Mr Ollennu confirmed that the Respondent was married with children. He said that currently, the Respondent was not working and he stated that she had not been able to obtain any useful employment since the date of her resignation from the firm over a year ago. He explained that from time to time she had undertaken some work as an immigration consultant but she had not practised as a solicitor and she had not worked now for several months. Mr Ollennu told the Tribunal that the Respondent had been the main breadwinner but she now

relied on her husband to support the family. He confirmed that she had no savings and he suggested that it would be difficult for the Respondent to find work in the future. Mr Ollennu accepted that the Applicant's costs appeared reasonable and he told the Tribunal that the Respondent would be willing to enter into an agreement with the SRA in order to pay costs by way of instalments.

36. The Tribunal considered that insufficient detail had been provided in relation to Counsel's fees and decided to make a summary assessment of the Applicant's costs fixed in the sum of £5,500. It was appropriate that the Respondent should be ordered to pay those costs and, as there had been no application for payment of any costs to be deferred, the Tribunal ordered that the Respondent should pay the Applicant's costs fixed in the sum of £5,500.

Statement of Full Order

37. The Tribunal Ordered that the Respondent, Michelle Darling Boye, 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 fixed in the sum of £5,500.00.

Dated this 6th day of December 2012
On behalf of the Tribunal

Mrs K. Todner
Chairman