

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11056-2012

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MICHAEL EDWARD FRENCH

Respondent

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Before:

Mr J. N. Barnecutt (in the chair)

Mrs E. Stanley

Mr S. Hill

Date of Hearing: 6th March 2013

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## Appearances

David Barton, Solicitor Advocate of 13-17 Lower Stone Street, Maidstone, Kent, ME15 6JX for the Applicant.

The Respondent appeared in person.

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## JUDGMENT

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## **Allegations**

1. The Allegations against the Respondent were:
  - 1.1 In breach of Rule 23 of the Solicitors Accounts Rules 1998 the Respondent operated and withdrew money from client account when he was not permitted to do so following his suspension from practice as a solicitor.
  - 1.2 In breach of Rules 1.02 and/or 1.06 of the Solicitors Code of Conduct 2007 the Respondent failed to act with integrity and/or acted in a way that diminished the trust the public placed in him or the profession in each or all of the following respects:
    - 1.2.1 The Respondent did not inform clients that he had been suspended from practice as a solicitor but simply that he was no longer practising as a solicitor.
    - 1.2.2 The Respondent sent four letters to third parties after he was suspended using headed notepaper describing him as a solicitor.
    - 1.2.3 The Respondent failed to respond to or otherwise deal with emails and telephone calls from the Legal Ombudsman sent or made on 14 April 2011, 21 April 2011 and 4 May 2011 in the course of an investigation into complaints made by a former client Mrs B.
    - 1.2.4 The Respondent failed to respond or otherwise deal with a Notice issued by the Legal Ombudsman dated 18 July 2011 under Section 147 of the Legal Services Act 2007.
    - 1.2.5 The Respondent failed to respond to or otherwise deal with a communication from the Authority dated 6 September 2011.
  - 1.3 From 6 October 2011 the Respondent continued to fail to respond to or to otherwise communicate or cooperate with the Legal Ombudsman in the course of the said investigation and on 18 January 2012 was sentenced to a term of imprisonment of four months suspended for one year by a Judge of the High Court pursuant to Section 147/149 of the Legal Services Act 2007 and had thereby breached all, alternatively any of Principles 2, 4, 5 and/or 6 of the SRA Principles 2011.

The Respondent admitted all the allegations.

## **Documents**

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

Applicant:

- Application dated 11 September 2012 together with attached Rule 5 Statement and all exhibits
- Letter dated 25 February 2013 from David Barton to the Tribunal

Respondent:

- Response to Allegations dated 27 February 2013
- Financial Circumstances document

### **Factual Background**

3. The Respondent, born in 1947, was admitted as a solicitor in 1974. On 21 February 2011 the Respondent appeared before the Solicitors Disciplinary Tribunal when he was suspended indefinitely. Two accountants reports for the periods ending 31 March 2009 and 31 March 2010 were then outstanding and continued to remain so.
4. On 9 March 2011 an Investigation Officer of the Solicitors Regulation Authority investigated the books of account and other documents of the Respondent's firm at 50-52 High Street, Chatham, Kent M14 4DS and prepared a report dated 25 July 2011. The report identified breaches of the Solicitors Accounts Rules 1998 and on 13 October 2011 the Authority resolved to intervene into the Respondent's said firm.
5. On 18 January 2012 the Respondent appeared before Mr Justice Williams following an application by the Legal Ombudsman under section 147 of the Legal Services Act 2007. He was sentenced to a term of imprisonment of four months suspended for twelve months.

#### Allegation 1.1

6. During the period 22 February to 2 June 2011 the Respondent operated a client account in breach of Rule 23 of the Solicitors Accounts Rules 1998 because he did not hold a current practising certificate. The Investigation Officer identified two client accounts and on 9 March 2011 he asked the Respondent if he had operated the accounts after his suspension by the Tribunal on 21 February 2011. The Respondent confirmed that he had.
7. A review of the client bank statements for one of the client accounts revealed that on 14 March 2011 the sum of £581,825.69 was withdrawn. This was client money and the Respondent explained it had been transferred to an account with another bank, HSBC, opened by him to conduct his work as a Probate Practitioner.
8. A review of the client bank statements for the other client account revealed that on the same date the sum of £18,995.53, which was also client money, was withdrawn and deposited in the same HSBC bank account.
9. During the period 22 February to 2 June 2011 there were 23 payments from the two client accounts totalling £880,583.29 and during the same period there were credits to the client account totalling £197,273.62.

#### Allegations 1.2.1 and 1.2.2

10. On 9 March 2011 the Respondent informed the Investigation Officer that he was going to continue to operate as a Probate Practitioner using the title Michael French and Co and he provided the Investigation Officer with his new letterhead and an

example of an introductory letter he had sent to prospective clients. The Investigation Officer asked the Respondent if he had informed his clients that he had been suspended by the Tribunal. He replied that he had not done so, instead simply telling clients that he was no longer practising as a solicitor.

11. On 5 July 2011 the Investigation Officer saw that the Respondent's sign remained outside his premises indicating that a firm of solicitors was operating from there. The Investigation Officer asked the Respondent about 4 letters dated 10 March, 28 April, 3 May and 17 May 2011 demonstrating the Respondent had been writing using his letterhead to describe himself as a solicitor. The Respondent admitted the letters should not have been sent out.
12. The Solicitors Regulation Authority wrote to the Respondent on 10 August and 24 August 2011 seeking his explanation for the issues raised in the report dated 25 July 2011. Apart from a letter from the Respondent dated 31 August 2011 asking for extra time in which to reply, he did not respond. The Solicitors Regulation Authority also wrote to the Respondent on 6 September 2011 requesting a response within fourteen days. The Respondent did not reply.

Allegations 1.2.3, 1.2.4, 1.2.5 and 1.3

13. On 9 December 2010 Mrs B wrote to the Legal Ombudsman to complain about the Respondent and/or his firm. On advice from the Legal Ombudsman Mrs B complained in writing to the Respondent on 31 December 2010 but nothing came of it. On 7 March 2011 Mrs B complained again to the Legal Ombudsman who accepted the complaint for investigation.
14. On 14 April 2011 an investigator employed by the Legal Ombudsman to investigate the complaint sent an e-mail to the Respondent and requested a response by 21 April 2011. No response was received. On 21 April 2011 the investigator telephoned the Respondent's firm but made no progress. The investigator sent an e-mail to the Respondent at a different address but there was still no response. On 4 May 2011 during a telephone call the investigator agreed an extension to 6 May 2011 but by 11 May 2011 had heard nothing.
15. On 18 July 2011 the Legal Ombudsman issued a Notice under Section 147 of the Legal Services Act 2007 addressed to the Respondent personally requiring him to provide information specified by 4pm on 29 July 2011. The notice informed the Respondent that failure to comply would render him in contempt of court. The Respondent did not respond.
16. On 12 October 2011 a further letter and e-mail were sent by the Legal Ombudsman to the Respondent giving him until 19 October 2011 to respond. On 8 November 2011 the Legal Ombudsman issued the said proceedings under Section 147 of the Legal Services Act. The documents and information required in order to deal with Mrs B's complaint were obtained by the intervention agents.
17. On 18 January 2012 the Respondent was sentenced to a term of four months imprisonment suspended for one year by a Judge of the High Court.

## Findings of Fact and Law

18. The Tribunal had carefully considered all the documents provided and the submissions of both parties. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.
19. **Allegation 1.1: In breach of Rule 23 of the Solicitors Accounts Rules 1998 the Respondent operated and withdrew money from client account when he was not permitted to do so following his suspension from practice as a solicitor.**

**Allegation 1.2: In breach of Rules 1.02 and/or 1.06 of the Solicitors Code of Conduct 2007 the Respondent failed to act with integrity and/or acted in a way that diminished the trust the public placed in him or the profession in each or all of the following respects:**

- 1.2.1: The Respondent did not inform clients that he had been suspended from practice as a solicitor but simply that he was no longer practising as a solicitor.**
- 1.2.2: The Respondent sent four letters to third parties after he was suspended using headed notepaper describing him as a solicitor.**
- 1.2.3: The Respondent failed to respond to or otherwise deal with emails and telephone calls from the Legal Ombudsman sent or made on 14 April 2011, 21 April 2011 and 4 May 2011 in the course of an investigation into complaints made by a former client Mrs B.**
- 1.2.4: The Respondent failed to respond or otherwise deal with a Notice issued by the Legal Ombudsman dated 18 July 2011 under Section 147 of the Legal Services Act 2007.**
- 1.2.5: The Respondent failed to respond to or otherwise deal with a communication from the Authority dated 6 September 2011.**

**Allegation 1.3: From 6 October 2011 the Respondent continued to fail to respond to or to otherwise communicate or cooperate with the Legal Ombudsman in the course of the said investigation and on 18 January 2012 was sentenced to a term of imprisonment of four months suspended for one year by a Judge of the High Court pursuant to Section 147/149 of the Legal Services Act 2007 and had thereby breached all, alternatively any of Principles 2, 4, 5 and/or 6 of the SRA Principles 2011.**

- 19.1 The Respondent had admitted all the allegations. Accordingly the Tribunal found all the allegations proved.

## Previous Disciplinary Matters

20. The Respondent had appeared before the Tribunal previously on 22 April 2010 and on 21 February 2011.

## **Mitigation**

21. The Respondent reminded the Tribunal that he had been a practising solicitor for almost 40 years and provided the Tribunal with details of his career history. In 2007/2008 his life had become difficult financially and regrettably complaints had been made as he had been unable to deal with cases properly due to his heavy workload. The Respondent had approached other firms to try to merge or be taken over but it did not happen. Over the last 4 years the Respondent had been stressed and unable to cope. He had suffered personal difficulties. He had to make employees redundant and make redundancy payments. He had been unable to pay his debts and costs.
22. In March 2012 the Respondent was declared bankrupt. Prior to this in October 2011 the SRA intervened into what was left of the Respondent's practice. The Respondent was extremely sorry and ashamed. This was a sad day for him and for the profession that he loved, respected and had honoured for so many years. The Respondent accepted he had appeared twice before the Tribunal previously, fined on the first occasion and indefinitely suspended on the second occasion. He realised the Tribunal's hands were somewhat tied on how it could now deal with him however, he asked the Tribunal to continue with the suspension. The Respondent reminded the Tribunal that there had been no dishonesty and that he had already received a penalty from the High Court. The Respondent accepted his behaviour had fallen below the correct standard as he had told clients that he was no longer practising, but not that he had been suspended.
23. The Respondent referred the Tribunal to his financial circumstances. He had not received an income since October 2011. He had found work in the legal profession to be very difficult. Once he informed potential employers of the disciplinary proceedings they were not interested in employing him. He had made 236 job applications, had had 10 interviews which had gone well but his age, credit rating and disciplinary history did not make him an attractive candidate. Whilst the Respondent was working at the moment, he could not see any change unless he was able to find another job more suited to his skills. Getting a job at this time of his life was hard but he would keep trying. The Respondent wanted to support his family and put money back into his bankruptcy proceeds which were currently insufficient to pay all his creditors. The Respondent had surrendered a property to his trustees in bankruptcy but that property had still not been sold despite there being equity in it.

## **Sanction**

24. The Tribunal had considered carefully the Respondent's submissions and documents. 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.
25. The Tribunal had considerable sympathy for the Respondent and his personal difficulties, and acknowledged that he had served the profession very well for many years without any problems. However, the Respondent had appeared before the

Tribunal twice before and on the most recent occasion had been indefinitely suspended, which was a serious sanction.

26. The Respondent now appeared again before the Tribunal having transferred a large amount of money from his client account to his probate practitioner's account when he should not have done so. He had continued to have control of client money which clearly his suspension should have prevented him from having. On the first occasion when the Respondent had appeared before the Tribunal in April 2010, he had failed to comply with Adjudicators' decisions, and failed to deal with the SRA and the Legal Complaints Service. Since then he had carried on in much the same vein with the Legal Ombudsman, having failed to respond to their correspondence. This was not acceptable behaviour for a solicitor. On the second occasion, when the Respondent had appeared before the Tribunal in February 2011, he had admitted a number of breaches of the Solicitors Accounts Rules 1998 and had failed to provide his professional indemnity insurers with his full regulatory history. This had led to his indefinite suspension.
27. The Respondent's conduct in relation to the current admitted allegations was serious and it was clear that he was a risk to the public. He had not operated within the framework required by solicitors and had kept control of client funds when he clearly had no authority to do so. The Tribunal was mindful of the case of *Bolton v The Law Society* [1994] CA and the comments of Sir Thomas Bingham MR who had stated:

“The reputation of the profession is more important than the fortunes of any individual member.”

The Respondent's conduct had caused serious damage to the reputation of the profession. He had already been indefinitely suspended and accordingly the Tribunal determined that the appropriate sanction was for the Respondent to be struck off the Roll of Solicitors.

### **Costs**

28. The Applicant requested an Order for his costs in the total sum of £16,592.23. He confirmed the Respondent had agreed costs in this amount. Given the Respondent's financial circumstances the Applicant confirmed he would not object to an order that those costs should not be enforced without leave of the Tribunal.
29. The Respondent provided the Tribunal with details of his financial circumstances. He reminded the Tribunal he had been made bankrupt in March 2012 and confirmed he had no assets. He requested the Tribunal to make an order that costs should not be enforced without leave of the Tribunal.
30. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs, which the parties had agreed in any event, was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £16,592.23.
31. In relation to enforcement of those costs, the Tribunal noted the Respondent had provided a brief statement indicating he was receiving benefits. The Tribunal had

particular regard for the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs. The Respondent's livelihood had been removed as a result of the Tribunal's Order and he was unlikely to obtain alternative employment in the near future particularly given his age. He was clearly unable to pay any costs at the moment and the Tribunal therefore made an Order that the Order for costs was not to be enforced without leave of the Tribunal.

### **Statement of Full Order**

32. The Tribunal Ordered that the Respondent Michael Edward French, 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 £16,592.23 such costs not to be enforced without leave of the Tribunal.

DATED this 26<sup>th</sup> day of April 2013  
on behalf of the Tribunal

J. N. Barnecutt  
Chairman