The Tribunal has been notified by the Applicant that the Appeal lodged with the High Court (Administrative Court) by the Respondent has been withdrawn.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11060-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

BASHARAT ALI DITTA Respondent

Before:

Mr K. W. Duncan (in the chair)
Mr A. Ghosh
Mr M. R. Hallam

Date of Hearing: 20 January 2015

Appearances

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

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent were:

1.1 The Respondent acted contrary to all, alternatively any, of Principles 1, 2 and/or 6 of the SRA Principles 2011, by virtue of his conviction at South Sefton District Magistrates Court on 26 October 2011.

1.2 Contrary to all, alternatively any, of Principles 1, 2 and/or 6 of the SRA Principles 2011, the Respondent was tried and convicted upon indictment on 1 November 2013 at Liverpool Crown Court of "doing series of acts tending and intended to pervert the course of public justice".

Documents

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

Applicant:

- Application dated 17 September 2012 together with attached Rule 5 Statement and all exhibits
- Supplementary Rule 7 Statement dated 14 November 2013 together with all exhibits
- Sentencing Remarks of The Honourable Mr Justice Holroyde dated 1 November 2013
- Email dated 22 January 2014 from the SRA to the Tribunal and to Farleys Solicitors LLP
- Chronology dated 20 January 2015
- Schedule of Costs dated 6 January 2015

Respondent:

- Letters from Farleys Solicitors LLP to the Tribunal dated 4 December 2012, 21 January 2014 and 20 June 2014 together with attachments
- Emailed letter dated 19 January 2015 timed at 2.37pm sent from Chambers Solicitors to the Tribunal together with attached undated letter sent from Chambers Solicitors to the Applicant
- Second email from Chambers Solicitors to the Tribunal dated 19 January 2015 timed at 15.01
- Email from Chambers Solicitors to the Tribunal dated 20 January 2015 timed at 09.13

The Respondent's Application for an Adjournment

3. On 19 January 2015 the Tribunal received a letter by email at 2:37pm from Chambers Solicitors who had been instructed to act on behalf of the Respondent on 13 January 2015. In their letter of 19 January 2015, Chambers Solicitors applied to adjourn the substantive hearing due to take place on 20 January 2015, pending a final listing of the Respondent's Appeal before the Court of Appeal. Chambers Solicitors requested the Respondent's case be listed for a Case Management Hearing after 56 days when listing arrangements at the Court of Appeal would be clearer.

4. The letter also stated the Respondent had previously been represented by Messrs Farleys Solicitors LLP. However, they had withdrawn from the criminal Appeal proceedings and therefore felt it appropriate to withdraw from the disciplinary proceedings on 7 January 2015.

5. Messrs Chambers Solicitors stated that whilst the Respondent's Appeal had been dismissed by a single Judge on 21 November 2014, the Respondent immediately renewed his Appeal on 27 November 2014, seeking to raise a number of additional matters. A conference was due to take place with Leading Counsel in relation to Appeal matters and it therefore remained a live issue. Messrs Chambers Solicitors reminded the Tribunal that the substantive hearing in this case had previously been adjourned pending the outcome of the Appeal proceedings and this position was no different now.

6. Messrs Chambers Solicitors stated the Respondent had always maintained his innocence in relation to the conviction for perverting the course of justice and believed he had been subject to a miscarriage of justice. They submitted there would be no prejudice or risk to the public if the substantive hearing were further adjourned. Although the Respondent had been released from prison on 19 December 2014, he was subject to electronic curfew from 7pm-7am and he was subject to a condition which did not entitle him to accept/participate in any employment without the express consent of the Probation Service. The Respondent did not hold a practising certificate and could not currently practise or work in any solicitor's office.

7. Messrs Chambers Solicitors stated in their letter of 19 January 2015:

> "If the substantive proceedings proceed it is accepted that Mr Ditta would be struck off. In our view this would be unfair in the circumstances outlined……. if his Appeal succeeds, we would submit that it would have a substantial impact on these proceedings and Mr Ditta would be in a much stronger position to put forward mitigation…."

8. In a second email, also dated 19 January 2015 sent to the Tribunal at 15.01, Messrs Chambers Solicitors stated that the person dealing with the Respondent's case was unable to attend before the Tribunal at the hearing on 20 January 2015 due to a medical appointment. A request was made for the matter to be adjourned so that an oral application for an adjournment could be made if required by the Tribunal.

9. The Chairman of the Tribunal considered the Respondent's application for an adjournment on 19 January 2015 and made the following decision:

> "Your client's application for an adjournment is made very late, and this hearing was listed as long ago as the 9th July 2014. It is not practical to adjourn the hearing so that you can make an application to adjourn in person at a later date. I can only draw your attention to the Tribunal's practice note on adjournments (attached). If your client is not present or represented the Tribunal will consider what you have said in your letter together with whatever representations the SRA may submit, and will then decide how it will proceed."

10. In a further email from Chambers Solicitors to the Tribunal dated 20 January 2015 sent at 09.13, the Tribunal was reminded that although the substantive hearing had been listed since 9 July 2014, Messrs Farleys Solicitors LLP withdrew from the proceedings on 7 January 2015 and this left the Respondent with less than two weeks to instruct alternative solicitors and obtain his file. Furthermore, the decision of the single Judge was only made in late November 2014 and it had always been the Respondent's intention to request an adjournment pending that decision. Messrs Chambers Solicitors submitted the Respondent could not be criticised or prejudiced as a result of the sequence of events as he had acted swiftly in the limited time available.

11. At the outset of the hearing on 20 January 2015, the Tribunal reconsidered the Respondent's application for an adjournment.

12. Mr Bullock, on behalf of the Applicant, opposed the Respondent's application and reminded the Tribunal that this was a simple conviction case. The Tribunal was referred to a Chronology setting out the history and background to the matter. The Respondent had only appealed the convictions relating to acting with the intention to pervert the course of justice. His conviction for possession of cocaine still stood and was not subject to any appeal.

13. Although the Applicant had been prepared to wait for the outcome of the Respondent's Appeal, the Permission to Appeal application had now been heard by a single Judge and refused. That was a significant step in the appeal process as it showed there was no real merit in the Appeal. Mr Bullock indicated that an Appeal would be dealt with by a full Panel, rather than a single Judge, and therefore he submitted the Respondent's solicitors must have been referring to the refusal of an application for Permission to Appeal in their correspondence.

14. Mr Bullock reminded the Tribunal that these were serious convictions, two in particular related directly to the protection of the public and the reputation of the profession. He submitted the case should be dealt with as soon as possible. Mr Bullock submitted that if the Respondent's appeal were to be heard by a full Panel, and his conviction overturned, then he could still apply under the Solicitors (Disciplinary Proceedings) Rules 2007 to set aside the Tribunal's order.

15. Mr Bullock also reminded the Tribunal that although the Respondent had appointed a new legal team, the Tribunal's Practice Note on Adjournments did state that a lack of readiness was not generally a ground for granting an adjournment. The Applicant's case relied on the Memorandum and Certificate of Convictions. Those were undisturbed at the moment. The Tribunal was not required to consider the circumstances behind those convictions.

16. The Tribunal asked Mr Bullock whether the Applicant would give an Undertaking that in the event the Respondent's two convictions for intending to pervert the course of justice were to be quashed, the SRA would consent to, and support, an application by the Respondent to set aside the Tribunal's order and order a new trial of these proceedings, providing such application was made by the Respondent within three months of the date of the convictions being quashed.

17. Mr Bullock having taken instructions from the Applicant, confirmed that the SRA did give the Tribunal the Undertaking requested.

The Tribunal's Decision

18. The Respondent had applied for an adjournment of the substantive hearing on 20 January 2015 by his solicitor's letter dated 19 January 2015 at 2.37pm. The Applicant opposed that application. The Tribunal was of the view that it was very poor, if not disgraceful, that an application for an adjournment had been filed so late. This indicated a marked degree of disrespect for the Tribunal, particularly as the application could have been made as long ago as 22 November 2014, and certainly should have been made by no later than 14 January 2015. However, the Tribunal disregarded this aspect in reaching its decision on the Respondent's application for an adjournment, although commented that the Tribunal may subsequently refer back to this on the issue of costs.

19. The Respondent relied on three points in his application for an adjournment which were as follows:

    (a) His recent change of solicitor

    (b) He was impecunious.

    (c) The suggestion that his position would be prejudiced if the hearing before the Tribunal proceeded today.

20. In relation to the recent change of solicitor and the Respondent being impecunious, it was quite clear in the Tribunal's Practice Note that these were not generally acceptable as grounds for an adjournment. On the facts of the present case, the Tribunal found that these were not acceptable grounds for an adjournment.

21. On the issue of prejudice to the Respondent, the Tribunal did not consider any Order made by the Tribunal today would in any way prejudice the outcome of the criminal Appeal. These were serious allegations and it was in the public interest for the matter to be concluded as soon as possible, particularly in light of the fact that it appeared the Respondent's application for an Appeal had now been refused.

22. However, one point concerning the Tribunal was that the Tribunal did not wish to create a situation similar to that which arose in the case of The Law Society v Kaberry [2013] EWCA Civ 1124. That unfortunate situation could be avoided if the SRA gave the Tribunal an Undertaking that in the event of the Respondent's two convictions on 1 November 2013 at Liverpool Crown Court for "doing series of acts tending and intended to pervert the course of public justice" are quashed, the

Solicitors Regulation Authority will consent to and support an application by the Respondent to set aside the Tribunal's Order, and to order a new trial of these proceedings, provided that the Respondent made such application within three months of the date of the convictions being quashed. The Tribunal stated that if the SRA was willing to give such an Undertaking, the Tribunal would proceed with the substantive hearing. However, if the SRA would not be willing to give such an Undertaking, the Tribunal would adjourn the substantive hearing.

23. Mr Bullock, on behalf of the Applicant, confirmed the SRA gave the Undertaking requested. Accordingly the Tribunal refused the Respondent's application for an adjournment.

Factual Background

24. The Respondent, born on 29 June 1969, was admitted as a solicitor on 1 May 1997. He practised as an Associate with the firm Forbes Solicitors, Blackburn, from 1 December 2011 to 22 July 2012.

25. On 14 October 2011, the Respondent attended South Sefton Magistrates Court and pleaded guilty to possession of cocaine on 4 February 2011, 6 September 2011 and between 3 February 2011 and 7 September 2011 in contravention of Section 5(2) of, and Schedule 4 to, the Misuse of Drugs Act 1971.

26. On 26 October 2011 the Court made a Community Order and imposed a sentence of a three months curfew. The Respondent was ordered to pay costs of £150 within 28 days.

27. On 1 November 2013, the Respondent was tried and convicted upon indictment at Liverpool Crown Court of two counts of "doing a series of acts tending and intended to pervert the course of public justice". He was sentenced to 3 years imprisonment concurrent.

Witnesses

28. No witnesses gave evidence.

Findings of Fact and Law

29. 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.

30. Allegation 1.1: The Respondent acted contrary to all, alternatively any, of Principles 1, 2 and/or 6 of the SRA Principles 2011, by virtue of his conviction at South Sefton District Magistrates Court on 26 October 2011.

30.1 The Tribunal had been provided with a Memorandum of an Entry entered in the Register of the South Sefton District Magistrates Court dated 26 October 2011. This

confirmed the Respondent had been convicted of possession of cocaine on 4 February 2011, 6 September 2011 and between 3 February 2011 and 7 September 2011.

30.2 The Tribunal was satisfied that by virtue of his conviction, the Respondent had failed to uphold the rule of law and the proper administration of justice, he had failed to act with integrity and he had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Accordingly, the Tribunal found Allegation 1.1 proved.

31. Allegation 1.2: Contrary to all, alternatively any, of Principles 1, 2 and/or 6 of the SRA Principles 2011, the Respondent was tried and convicted upon indictment on 1 November 2013 at Liverpool Crown Court of "doing series of acts tending and intended to pervert the course of public justice".

31.1 The Tribunal had been provided with a Certificate of Conviction from the Liverpool Crown Court dated 8 November 2013 which confirmed that on 1 November 2013 the Respondent had been tried and convicted upon indictment of two counts of "Doing series of acts tending and intended to pervert the course of public justice". He had been sentenced to 3 years imprisonment on each count to run concurrently.

31.2 The Tribunal was satisfied that by virtue of his two convictions, the Respondent had failed to uphold the rule of law and the proper administration of justice, he had failed to act with integrity and he had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Accordingly, the Tribunal found Allegation 1.2 proved.

Previous Disciplinary Matters

32. None.

Mitigation

33. There was no mitigation before the Tribunal save the contents of the letters received from the Respondent's previous solicitors, Farleys Solicitors LLP and his current solicitors, Chambers Solicitors, together with the information contained in the Provisional Advice and Grounds of Appeal Against Conviction and Sentence document from Farleys Solicitors LLP dated 18 November 2013.

34. These made reference to the Respondent's position as the Head of the Police Station Department at his firm, and of him being a Magistrates' Court solicitor. There was also reference to the Respondent's intention to appeal the convictions relating to the two counts of doing acts tending and intended to pervert the course of public justice. There was some reference to the Respondent having served a prison sentence which he had found harsh and difficult, and also to the suffering he and his family had endured due to the substantial period of imprisonment imposed upon him.

Sanction

35. The Tribunal had considered carefully all the documents before it. 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.

36. The Tribunal considered the aggravating and mitigating factors in this case. There were a number of aggravating factors. The Respondent's misconduct had been deliberate, and related to offences of possessing cocaine on a number of occasions. There had been two instances of doing acts tending and intending to pervert the course of justice. This was misconduct that the Respondent knew or ought reasonably to have known was in material breach of his obligations to protect the public and the reputation of the legal profession. The only mitigating factor the Tribunal identified was that the Respondent had a previous good record.

37. The Tribunal particularly took into account the sentencing remarks of The Honourable Mr Justice Holroyde who had made reference to the gravity of the underlying offences in relation to the attempt to pervert the course of justice. Mr Justice Holroyde stated:

> "… the two counts essentially focused on a period of two or three days in April 2011 and two or three days in August 2011…… although there was persistence in the sense that those two periods were separated by some months and the fact that you had done it once did not cause you to refrain from doing it a second time, nonetheless it was no part of the case against you to say that you had been constantly seeking to pervert the course of justice between those two dates.
>
> …. So it is a point in your favour that in the end no impediment to the actual course of justice was created, but one is bound to say that was no thanks to you because you were intending to pervert the course of justice and you did what you could to achieve that end.
>
> ……the court must take account of the fact that you were, as I have said, a solicitor misusing and abusing your position. The court must regard that, and does regard that, as a very serious aggravating feature of your case. The role of the criminal solicitor is a demanding one. Those who carry out such work understandably wish to maintain good relationships with their clients, many of whom can be demanding and at times unreasonable……. solicitors must take very great care always to act in a way which upholds the rule of law and the proper administration of justice. They must take great care to avoid being used by their criminal clients in an improper way…..
>
> The courts and the public rely on solicitors to discharge their difficult role with integrity and in a manner which does uphold the rule of law…… when a solicitor deliberately departs from those standards and acts with intent to pervert the course of justice which his profession requires him to uphold, then the consequences must be severe.
>
> You were, of course, a man of good character acting properly and professionally for many years……. But then you began to use cocaine. I recognise that it was your use of that drug and your decision to ask one of

> your own clients, a convicted drug dealer, to supply you with it which has led you to this unhappy position…….. I accept from the evidence which I have heard during the trial that at the time when you first turned to that controlled drug, your personal circumstances were difficult, stressful, and sad, and I do not criticise you for finding yourself in those circumstances. But with your experience of criminal cases, Mr Ditta, you of all people knew where the use of illegal drugs could lead you, and you chose nonetheless to use them.
>
> You chose to obtain at least some of your supply from a criminal client and thereby, as the prosecution have alleged throughout these proceedings and as I have no hesitation in finding, you left yourself hopelessly compromised in your personal and your professional life."

38. The Tribunal considered the convictions for tending and intending to pervert the course of public justice to be the most serious misconduct at the highest level. It was difficult to imagine misconduct more serious than a solicitor using his position to pass information between arrested/detained co-conspirators to as yet un-arrested third parties. This was a gross abuse of the Respondent's trusted and privileged position. The Respondent's conduct was a serious and unacceptable departure from the standards expected of solicitors and was incompatible with him remaining a member of the profession. The Tribunal was satisfied that the appropriate sanction in this case, to ensure the protection of the public and the protection of the reputation of the profession, was that the Respondent be struck off the Roll of Solicitors.

39. In view of the rather unusual circumstances of this case, having received an Undertaking from the SRA, and to avoid any misunderstanding by the Respondent when served with the Tribunal's Order, the Tribunal recited the terms of the Undertaking given by the SRA as part of its Order. In light of the Undertaking given by the SRA, the Tribunal decided not to consider, in isolation, Sanction in relation to the conviction for possession of cocaine in the South Sefton District Magistrates Court. The Tribunal made it clear that the Sanction it imposed was based on the convictions in Liverpool Crown Court only.

Costs

40. Mr Bullock, on behalf of the Applicant, requested an Order for his costs in the total sum of £5,862. He provided the Tribunal with a breakdown of those costs. Mr Bullock accepted the costs were unusually high for cases involving convictions and stated that this was due to the repeated number of adjournments requested by the Respondent.

41. The Tribunal had considered carefully the matter of costs and was of the view that the costs claimed were rather high. There was a claim for attendance before the Tribunal for seven hours whereas the hearing had taken considerably less time than that. Accordingly, the Tribunal took this into account and reduced the costs to £5,200. The Respondent was Ordered to pay the Applicant's costs in this amount.

42. In relation to enforcement of those costs, the Tribunal had particular regard for the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

> "If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

43. The Tribunal noted the Respondent had not provided any information concerning his means. A letter had been sent by the Tribunal to the Respondent's previous solicitors, Messrs Farleys Solicitors LLP, by recorded delivery on 9 July 2014 serving Notice of today's hearing and requesting information, with evidence, of the Respondent's means in accordance with the Tribunal's Practice Direction. The Respondent had failed to comply with this. The Tribunal could not therefore take a view of his financial circumstances.

44. The Tribunal was also mindful of 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 the Applicant's costs. Although the Respondent's livelihood had been removed as a result of the Tribunal's Order, the Respondent was 46 years of age and as confirmed by his current solicitors in their correspondence, he could work with the permission of the Probation Service.

Statement of Full Order

45. Upon the Solicitors Regulation Authority undertaking that, in the event that the Respondent's two convictions on 1st November 2013 at Liverpool Crown Court for doing series of acts tending and intended to pervert the course of public justice are quashed, the Solicitors Regulation Authority will consent to and support an application by the Respondent to set aside this Order and to order a new trial of these proceedings, provided that the Respondent makes such application within three months of the proceedings being quashed.

    The Tribunal Ordered that the Respondent, BASHARAT ALI DITTA, 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 £5,200.00.

Dated this 9th day of March 2015
On behalf of the Tribunal

K.W. Duncan
Chairman