

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11079-2012

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

NICOLA CAMPBELL

Respondent

---

Before:

Mr S. Tinkler (in the chair)

Mrs J. Martineau

Mr S. Howe

Date of Hearing: 21st March 2013

---

**Appearances**

Robin Horton, Solicitor employed by the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

---

**JUDGMENT**

---

## **Allegation**

1. The allegation against the Respondent Nicola Campbell was that contrary to all, alternatively any of Principles 1, 2 and/or 6 of the SRA Principles 2011 she was, on 16 April 2012, upon her own admission, convicted of three counts of fraud by abuse of position and, on 11 May 2012 was sentenced to 12 months of imprisonment, suspended for 12 months and ordered to carry out unpaid work in the community for 200 hours before 11 May 2013.

## **Documents**

2. The Tribunal reviewed all the documents including:

### Applicant:

- Rule 5 Statement dated 23 October 2012 with exhibit
- Letter from Mr Horton to the Respondent dated 14 March 2013
- Statement of costs dated 14 March 2012 (sic)

### Respondent:

- Email dated 20 March 2013 timed at 09.54 from the Respondent to Mr Horton

## **Preliminary issue**

3. Mr Horton confirmed to the Tribunal that the Respondent was not present but she had written to him to explain why and he had forwarded her email dated 20 March 2013 to the Tribunal. In it the Respondent had explained her personal circumstances and why given those circumstances and her financial situation, she could not attend the hearing for which she apologised. The Tribunal considered the contents of the Respondent's email and was satisfied that notice of the hearing was served on the Respondent in accordance with The Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules") and decided to exercise its discretion under Rule 16(2) to hear and determine the application notwithstanding that the Respondent had failed to attend in person and was not represented at the hearing.

## **Factual background**

4. The Respondent was born in 1965 and was admitted as a solicitor in 1990. Her name remained on the Roll of Solicitors.
5. At times relevant to the facts on which the conviction was based, the Respondent practised as a partner in Windeatts ("the firm") in Devon from which firm she was suspended and subsequently dismissed.
6. Only 16 April 2012, at Plymouth Crown Court, the Respondent was upon her own admission convicted of three counts of fraud by abuse of position. A copy of the Certificate of Conviction was before the Tribunal.

7. On 11 May 2012, the Respondent was sentenced to 12 months imprisonment suspended for a period of 12 months and was ordered to complete 200 hours of Community Service.
8. In his sentencing remarks the Judge set out that the firm was instructed to hold monies on account and to pay mortgage payments against a property that clients, who were in the process of divorce, were selling. There were requests from the mortgage company, a bank, for various sums of money to be paid to release the property and allow it to be sold. Three cheques were written to the bank but rather than having the clients' mortgage account details, the Respondent had added her husband's account number to the cheque. The cheques were paid directly into her husband's account rather than into the clients' mortgage account. The Respondent had said that her husband had known nothing about it.
9. In his sentencing remarks, His Honour Judge Gilbert also stated:

“I suspect you know more than anyone in court the harm that your serious dishonesty has done and the degree of breach of trust is such that there has to be a prison sentence because at a time of financial pressure you did grave harm both to your firm and to the individuals whom your firm was serving and I have no doubt you know that.

I take the view that there are truly exceptional circumstances despite a serious breach of trust why that undoubted prison sentence need not be served immediately and those factors include the fact that you have had the strain and responsibility of caring for a seriously mental (sic) ill husband for some time, there was the additional strain of your mother's illness at the direct time you were being dishonest as she was dying, your own ill health and depression, your previous good character illustrated by a number of perceptive and excellent references which I have read, your plea of guilty, your expression of remorse which I accept and the fact that the sentence does not actually end when you leave court because you have to face up to, ultimately the possibility of having to pay this back and we are talking about over £16,500...”
10. On 18 April 2012, an Investigation Officer (“IO”) of the Applicant prepared a Forensic Investigation Report dated 18 April 2012 concerning the Respondent's former employer, the firm which alleged breaches of the Solicitors Accounts Rules by the Respondent on the same or substantially the same grounds as those upon which she was charged with the offence of fraud by abuse of position before the Plymouth Crown Court. The allegations set out in that report had been investigated in correspondence with the Respondent but the allegations set out in the Rule 5 Statement had not been separately investigated. The Applicant did not rely upon the Report in support of the allegations.
11. On 21 February 2012, the IO wrote to the Respondent requesting a meeting to discuss the allegations and obtain her comments. A further letter was written on 6 March 2012 to which the Respondent responded by email on 12 March. Further correspondence followed during which the Respondent provided written responses to the Applicant.

## Witnesses

12. There were no witnesses.

## Findings of Fact and Law

13. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

14. **Allegation 1. The allegation against the Respondent Nicola Campbell was that contrary to all, alternatively any of Principles 1, 2 and/or 6 of the SRA principles 2011 she was, on 16 April 2012, upon her own admission, convicted of three counts of fraud by abuse of position and, on 11 May 2012 was sentenced to 12 months of imprisonment, suspended for 12 months and ordered to carry out unpaid work in the community for 200 hours before 11 May 2013.**

- 14.1 For the Applicant, Mr Horton referred the Tribunal to the background as set out in the sentencing remarks and the fact that the Respondent had added details of her husband's bank account to three cheques. Mr Horton also drew the attention of the Tribunal to the mitigating factors which had been set out by the Judge, leading to his imposing a suspended sentence. Mr Horton submitted that by her conduct leading to a criminal conviction, the Respondent was clearly in breach of principles 1, 2 and 6 of the SRA Principles 2011. Principles 1, 2 and 6 state as follows:

“You must:

1. Uphold the rule of law and the proper administration of justice;
2. Act with integrity;
6. Behave in a way that maintains the trust the public places in you and the provision of legal services.”

- 14.2 The Respondent in her email dated 20 March 2013 stated:

“... I am not contesting any of the allegations and I fully expect to be struck off due to my actions. I am so grateful that, due to the background to the case, I was not sent to prison and I cannot expect any more leniency, given my actions. I hope that you will convey this to the Tribunal.”

- 14.3 The Tribunal considered the evidence, the submissions for the Applicant and the submissions of the Respondent in which she said that she did not contest the allegation. By virtue of Rule 15(2) a conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances. The Tribunal was satisfied that it could rely upon the conviction. The

Tribunal was also satisfied that the conviction involving as it did theft, dishonesty and fraud constituted a breach of Principle 1 relating to a solicitor's duty to uphold the rule of law and the proper administration of justice; Principle 2 the duty to act with integrity and Principle 6 the duty to behave in a way that maintains the trust the public places in him or her and the provision of legal services. The Tribunal therefore found allegation 1 proved in all its aspects.

### **Previous disciplinary matters**

15. None

### **Mitigation**

16. In her email of 20 March 2013 the Respondent gave details of her current situation and difficult personal history. In his sentencing remarks, the Judge had referred to her "truly exceptional circumstances".
17. The Tribunal had regard to its own Guidance Notes on Sanction, the submissions for the Applicant, the mitigation submitted by the Respondent and the trial Judge's comments on mitigation. In assessing the seriousness of the Respondent's conduct, the Tribunal had regard to the fact that she was fully culpable for it, and her actions were planned as she had altered cheques on three different occasions. In doing so she was clearly in breach of a position of trust. She had caused harm to clients and to the firm of which she was a partner which had made full restitution to the clients affected. Her criminal conviction had also impacted adversely upon the reputation of the profession with the public. There were several aggravating factors; dishonesty had been alleged and proved and the misconduct had involved the commission of a criminal offence. The misconduct had been deliberate and repeated and the Respondent knew that the conduct was in material breach of her obligations to protect the public and the reputation of the profession. There were several mitigating factors; the Respondent had not previously been before the Tribunal and had made open and frank admissions. She had cooperated with the Applicant and pleaded guilty at her trial. She showed insight into her actions. A finding that an allegation of dishonesty has been proved almost invariably leads to striking off, save in exceptional circumstances. While the Respondent's circumstances had been very difficult, the Tribunal did not consider that they constituted exceptional circumstances for the purposes of determining sanction and the Respondent recognised this in her communication to the Tribunal. Having regard to the level of seriousness of the Respondent's misconduct, for the protection of the public and the reputation of the profession, the Tribunal considered that she must be struck off the Roll of Solicitors.

### **Costs**

18. For the Applicant Mr Horton applied for costs in the amount of £1,624.14. The schedule had been served on the Respondent by letter emailed on 14 March 2013 in which Mr Horton had advised her that if she wished her financial circumstances to be taken into account in relation to costs in accordance with the guidance given case of The Solicitors Regulation Authority v Davis and McGlinchey [2011] EWHC 232 (Admin), she should provide appropriate details of her financial position. In her email of 20 March 2013, the Respondent had said that she was currently living on Job

Seekers Allowance and had posted evidence to Mr Horton. She had no other income or savings at present. She had also provided information about her current living arrangements. Although the Applicant had not been provided with any sworn statement about the Respondent's financial circumstances or yet received the evidence said to have been sent, it had no evidence that the Respondent was not in receipt of benefit. Although the Applicant sought an order for costs, it confirmed it would not take any action against the Respondent if she genuinely could not afford to pay and understood that the Tribunal might determine that an order made should not be enforced without its leave. The Tribunal considered the costs claimed to be reasonable but in view of the information provided by the Respondent about her financial circumstances, it ordered that costs should not be enforceable without leave of the Tribunal.

### **Statement of full order**

19. The Tribunal Ordered that the Respondent, Nicola Campbell, 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 £1,624.14, such costs not to be enforced without leave of the Tribunal.

Dated this 16<sup>th</sup> day of April 2013  
On behalf of the Tribunal

S. Tinkler  
Chairman