

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11190-2013

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

KATHERINE ANNE EDWARDS

Respondent

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Before:

Mr A. G. Gibson (in the chair)

Mr L. N. Gilford

Mrs L. Barnett

Date of Hearing: 26 February 2014

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**Appearances**

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

Ms Emma Brooks, solicitor, of Richard Nelson LLP, 88 Kingsway, London, WC2B 6AA for the Respondent, who was present.

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**JUDGMENT**

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## Allegations

1. The allegations against the Respondent, Katherine Anne Edwards, made in a Rule 5 Statement dated 22 October 2013 were that she:
  - 1.1 Signed two lasting powers of attorney in the name of a solicitor without their authority so to do and thereby breached the following provisions of the Solicitors Code of Conduct 2007:
    - 1.1.1 Rule 1.02;
    - 1.1.2 Rule 1.04; and
    - 1.1.3 Rule 1.06.
  - 1.2 Failed to disclose the fact that she had done so to the SRA in her application for admission as a solicitor and for a practising certificate dated 19 July 2010 and thereby further breached the following provisions of that Code:
    - 1.2.1 Rule 1.02;
    - 1.2.2 Rule 1.06;
    - 1.2.3 Rule 20.01; and
    - 1.2.4 Rule 20.04.
2. Both allegations were made on the basis that the Respondent acted dishonestly, but it would be open for the Tribunal to find the allegations proved without finding dishonesty.

## Documents

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

Applicant:-

- Application dated 22 October 2013
- Rule 5 Statement, with exhibit “AJB1”, dated 22 October 2013
- Copy authorities – In re a solicitor [CO 2860/96] (“Ofusuhene”); Burrowes v Law Society [2002] EWHC 2900 Admin (“Burrowes”); SRA v Sharma [2010] EWHC 2022 Admin (“Sharma”)
- Schedule of costs

Respondent:-

- Bundle of 39 testimonials
- Bundle of client satisfaction surveys
- Copy Tribunal decision in matter 11169/2013 (“Ali”)

## Factual Background

4. The Respondent was born in 1984 and was admitted as a solicitor in 2010. Her name remained on the Roll of Solicitors at the date of hearing.
5. At the relevant times, the Respondent was a trainee solicitor at Wace Morgan Solicitors of 2 Belmont, Shrewsbury SY1 1TD (“the Firm”). The Respondent was at the date of the hearing employed as a solicitor by the Firm.
6. The Respondent made a report of serious misconduct to the Applicant by letter dated 20 July 2012. Further information concerning the misconduct was provided by the Firm under cover of a letter of 24 August 2012.
7. The Respondent informed the Applicant in her report that on or about 25 February 2010, whilst working in the private client department of the Firm, she gave a certificate upon a form granting a lasting power of attorney (“LPA”), the donor of which was a Mr NSW, in the name of PJS, the senior partner of the Firm without either his knowledge or his authority so to do.
8. The relevant parts of the declaration and certificate under a heading “How you formed your opinion” read:

“Before signing this certificate you must establish that the donor understands what it is, the authority they are giving their attorneys, and is not being pressurised into making it.

If someone challenges this lasting power of attorney, you may need to explain how you formed your opinion.”

Under the heading “Statement of personal knowledge or relevant professional skills” the form had been completed to read,

“I am a practising Solicitor and have knowledge in the relevant field of elderly issues and Powers of Attorney.”

The form then contained what purported to be the signature of PJS, together with his details and those of the Firm and was dated 15 February 2010.

9. The Respondent further informed the Applicant that, on the same date, she signed a certificate in the same form and terms, the donor of which was Ms DLW, in the name of PJS and without his knowledge or authority.
10. The LPAs signed by NSW and DLW gave their attorney powers to make decisions concerning their money and property. The requirement for the certificates was a requirement intended to protect donors against possible exploitation. The Office of the Public Guardian would not register a LPA without certification.
11. On 19 July 2010 the Respondent applied to the Applicant for admission as a solicitor and for a practising certificate by completing and signing the relevant form, AD1. At section 5 of that form a number of questions were asked concerning character and

suitability for admission, including questions concerning convictions and disciplinary matters and included the question:

“Are there any other factors which may call into question your character and suitability to become a solicitor?”

The Respondent had ticked the box marked “no” in response to that question.

12. On 12 October 2012 the Applicant wrote to the Respondent seeking her explanation for her actions in signing the certificates in the name of another solicitor without authority. In a response dated 19 October 2012 the Respondent stated that she had signed the documents “in a moment of madness.”
13. On 26 November 2012 the Applicant decided to refer the Respondent’s conduct to the Tribunal.
14. On 12 July 2013 the Applicant wrote to the Respondent notifying her that a case was to be brought to the Tribunal and inviting her to comment on the allegation that she had not made proper disclosure on her form AD1. On 13 August 2013 the Respondent wrote stating that she had not mentioned the matters set out at paragraph 11 when she reported herself to the Applicant on 20 July 2012 because, “... the event had happened some time previously and was not in my consciousness at the time when the application form was completed.”

### **Witnesses**

15. No oral evidence was given, the facts and allegations having been admitted by the Respondent.

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

16. 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.
17. The Tribunal noted that both of the allegations arose from conduct which had occurred whilst the Respondent was a trainee solicitor and was not on the Roll. The Tribunal’s jurisdiction to deal with the allegations had not been challenged. In any event, the Tribunal noted that the Ofusuhene case confirmed that the Tribunal could consider conduct prior to admission. In that case it was stated,

“... it seems to me that if, in the past, one who is now a solicitor has behaved in a way which is incompatible with such standards, it is, and should be, open to the Tribunal to say so and to control the circumstances in which, if at all, he or she should continue to practise in the future. It is entirely consonant with this purpose that the Tribunal should exercise jurisdiction over one who is a solicitor by reference to past behaviour, whatever his or her status at the time of that behaviour. The Tribunal’s jurisdiction over a person accused rests solely and entirely on the present status of an accused as a solicitor. Whether

in a particular case past conduct is compatible with the accused continuing in practice will depend, plainly, on the nature of the conduct as proved before and assessed by the Tribunal.”

The Tribunal was satisfied that it could and should deal with the allegations.

18. **Allegation 1.1 - Signed two lasting powers of attorney in the name of a solicitor without their authority so to do and thereby breached the following provisions of the Solicitors Code of Conduct 2007:**

**1.1.1 Rule 1.02;**

**1.1.2 Rule 1.04; and**

**1.1.3 Rule 1.06.**

18.1 This allegation was admitted by the Respondent in all its respects.

18.2 The Applicant relied on the factual matters set out at paragraphs 8 to 10 above. In addition, the Applicant submitted that the certificates on the LPAs were important documents, intended to protect donors and to ensure that the LPAs could be registered if and when required. The Applicant further submitted that the Respondent, as a trainee solicitor, did not have the necessary experience to certify the LPAs herself. The Tribunal noted that the LPAs had not, in fact, been used. The matters in this case had come to light when the clients had instructed the Firm to prepare new LPAs in 2012.

18.3 The Tribunal was satisfied that signing documents in the name of a solicitor, without that solicitor’s knowledge and authority, as if that solicitor had signed the document was an action which lacked integrity. Further, as the certification was not correct and could prevent or at least delay the registration of the LPA (if and when that were necessary) the Respondent’s actions had not been in the best interests of her clients. In addition, falsely signing important documents was conduct which would diminish the trust the public would place in the Respondent and/or the profession. The Tribunal was satisfied that the allegation had been proved to the highest standard, on the facts and on the admission.

19. **Allegation 1.2 - Failed to disclose the fact that she had done so to the SRA in her application for admission as a solicitor and for a practising certificate dated 19 July 2010 and thereby further breached the following provisions of that Code**

**1.2.1 Rule 1.02;**

**1.2.2 Rule 1.06;**

**1.2.3 Rule 20.01; and**

**1.2.4 Rule 20.04.**

19.1 The Respondent admitted this allegation in all its respects.

19.2 The factual basis for the allegation is set out at paragraph 11 above. The Applicant’s position was that the Respondent should have disclosed her misconduct in falsely signing the LPAs when she applied for admission to the Roll approximately five months after she signed those documents in the name of PJS. The Tribunal noted the

Respondent's explanation, in her letter to the Applicant dated 3 August 2013, that the event had happened some time previously and was not in her consciousness when she completed the application form.

- 19.3 Failing to disclose information which would be material to the Applicant's determination of whether or not a trainee solicitor was suitable for admission to the Roll lacked integrity and would be conduct which diminished the trust the public would place in the profession and/or the Respondent. Further, the Respondent had not been open with the profession's regulator when applying for admission. The Tribunal was satisfied that the allegation had been proved to the highest standard, on the facts and on the admission.
20. **Allegation 2 - Both allegations were made on the basis that the Respondent acted dishonestly, but it would be open for the Tribunal to find the allegations proved without finding dishonesty.**
- 20.1 The Respondent admitted that her conduct had been dishonest with regard to both of the allegations.
- 20.2 The Tribunal considered the facts and applied the combined test for dishonesty set out in Twinsectra v Yardley and others [2002] UKHL 12.
- 20.3 The Applicant submitted that signing the certificates on the LPAs (which were important documents) in the name of a solicitor, without that solicitor's authority, would self-evidently be considered dishonest by the standards of reasonable and honest people. It was submitted that the Respondent knew that her conduct was dishonest by the standards of reasonable and honest people, at the relevant time because the circumstances made it inconceivable that she did not realise it was dishonest. In particular, the Applicant submitted that the wording of the certificate and accompanying commentary made it clear that certification was a significant act for which the certifier could be held responsible in the future; it was clear that the certifier might need to explain how they formed the opinion the donor understood the LPA. Further, the Respondent's usual signature and that on the LPAs demonstrated an attempt to disguise her usual writing and so disguise that she was the signatory of both of the LPAs. The signatures were not qualified, for example by indicating they were signed per pro PJS, or in any other way. The Respondent did not inform PJS that she had signed the documents in his name; the matter came to light in July 2012 when another employee of the Firm examined the documents. With regard to the application for admission, the Applicant submitted that it was untruthful and dishonest to withhold from the SRA relevant information. Reasonable and honest people would expect a candidate for admission to be frank with their regulator and to err on the side of caution by making disclosures in the case of doubt about whether a matter should be disclosed. It was submitted that it was inconceivable that the Respondent did not realise when she made the application that failure to make full disclosure in those circumstances would be regarded as dishonest. The events in issue had taken place about five months before the application was made.
- 20.4 The Tribunal noted that the Respondent had admitted the allegations of dishonesty. It was satisfied on the facts of the case that in a) signing the LPAs as she had and b) failing to make full disclosure to the SRA when applying for admission, the

Respondent's conduct had been dishonest by the standards of reasonable and honest people. Further, the Respondent was aware that the LPAs were important documents and of the terms of the certification. She had not qualified her signature and had not signed in her usual hand, nor had she told anyone what she had done, including at the time of application for admission. The Tribunal was satisfied for these reasons that the Respondent knew at the relevant time that her actions had been dishonest. Although the Respondent had initially told the Applicant that she had acted in a "moment of madness" she had now accepted that she had been dishonest. The Tribunal was satisfied that the allegations of dishonesty had been proved to the required standard.

### **Previous Disciplinary Matters**

21. There were no previous disciplinary matters before the Tribunal in which allegations were found to have been substantiated against the Respondent.

### **Mitigation**

22. Ms Brooks made submissions in mitigation for the Respondent.
23. The Respondent had made admissions to the allegations from the beginning, before taking legal advice, and maintained that position. In reporting herself to the Applicant, the Respondent had made clear what she had done. The Respondent offered her sincere apologies to the Tribunal for her misconduct. She was genuinely remorseful.
24. At the time of the relevant matters the Respondent was a 26 year old trainee solicitor and was now only 29. She was working in the private client department of the Firm, under the supervision of a locum solicitor in February 2010. The Respondent had been instructed to prepare mirror LPAs; her drafts had been checked by her supervisor but neither of them realised at first that the certification was required. When the Respondent had realised this, she had made the decision to sign in the name of a partner in the Firm, PJS, in what she had described as a moment of madness. It was submitted that the Respondent had been eager to please and to do the job as she should. The Respondent could have asked a partner to sign the documents, if that partner had interviewed the client. To correct her omission the Respondent would have had to admit her mistake and call the client back to the office. She had no explanation for her action, save that she was inexperienced.
25. The LPAs had then been placed in storage. In 2012 the clients had married and instructed the Firm to prepare new documents for signature. When a colleague retrieved the file it was noted that the certification was "odd" and the Respondent was asked about it. The Respondent had immediately admitted what she had done and had reported herself to the head of the department. Her employers had taken the matter seriously and after a disciplinary process had given the Respondent a final warning. In the course of that process the Firm had carried out a thorough review of her files and had found no other misconduct or inappropriate handling of matters. The Firm had accepted the Respondent's explanation and had allowed her to continue with the Firm, albeit subject to the final warning so that there was no doubt about how serious

the matter was. The Respondent had reported herself to the Applicant and the Firm had complied with its reporting obligations.

26. The Respondent's only explanation for the way she had completed the AD1 was that she had put the matter to the back of her mind and did not consider the LPAs when she applied for admission. The Respondent accepted that she should never have behaved as she had.
27. The Firm had remained supportive of the Respondent, despite the known events and these proceedings. Two of the Firm's partners had attended the Tribunal to support the Respondent. The 39 testimonials for the Respondent included a substantial number from professional colleagues, including the partners in the Firm. Although provided by people who knew the Respondent – and in many cases worked with her – the testimonials could be regarded as objective as there was no personal gain for any of those giving the references in speaking of her as they did. A significant number of experienced professionals supported the Respondent in continuing to work in the Firm. Although disappointed in her, all continued to have complete faith in her; they believed the incidents had been a “one-off” and they had seen her remorse.
28. Although the Respondent had been under investigation by the Applicant since 2012 she had been able to continue with her career. The references showed that the Respondent was conscientious, reliable, committed and competent; she had a bright career ahead of her. A bundle of client satisfaction surveys produced to the Tribunal demonstrated the regard in which the Respondent was held by clients. It was submitted that nearly 90% of clients who had returned the questionnaires were very satisfied with the service the Respondent had provided, and many contained very positive comments.
29. Those references from family and friends would give some insight into the Respondent outside of the work environment. Those references expressed shock at what had happened and that it was out of character for the Respondent. The references spoke of her charitable work – for example, during a “gap year” before university – and her devastation about what had happened.
30. Ms Brooks submitted that this case was an exceptional one, such that a striking off order should not be made. Whilst the Respondent had made a serious mistake, four years ago, she had made an exceptional start to her career and was held in very high regard by those who knew her. It was submitted that a fair minded and informed observer, knowing that the events had occurred while the Respondent was a trainee, would give her a second chance and allow her to continue to prove herself as a competent solicitor.
31. In the Sharma case (paragraph 13) it was decided that:

“There would be a small residual category where striking off will be a disproportionate sentence in all the circumstances”

and that,



“In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as Burrowes, or over a lengthy period of time, such as Bultitude; whether it was of benefit to the solicitor (Burrowes), and whether it had an adverse effect on others.”

32. Ms Brooks submitted that this case fell into the category of exceptional cases. The dishonesty was momentary and isolated, done on the spur of the moment and of no benefit to the Respondent herself. There had been no adverse effect on others.
33. Ms Brooks submitted that as alternatives to striking off the Tribunal could consider a financial penalty, in which regard the Tribunal could note the Respondent’s salary and that she had some savings. Consideration could also be given to a suspended suspension order. Ms Brooks referred to the Ali case (decided in December 2013), in which the Tribunal had imposed a suspended suspension order (with conditions) where a solicitor had been convicted of an offence of conspiracy to defraud after a jury trial. It was submitted that the facts in that case were more serious than in this matter. In that case, it appeared that weight had been given to the fact that Mr Ali had been able to continue in practice with the consent of the Applicant. The Applicant was aware that this Respondent had admitted dishonesty but had allowed her to continue in practice, with no conditions. If a suspended suspension order were made, the Tribunal could also consider imposing conditions such as a requirement for additional supervision and/or that the Respondent should not be a principal in a firm for a period of time. The Firm wanted to continue to employ the Respondent and would comply with any conditions required.
34. Mr Bullock was permitted to comment on matters of law raised in the submissions in mitigation. The Ali case was a decision of another division of the Tribunal and was not binding. Whilst that case involved a conviction, there had been no specific allegation of dishonesty in the proceedings before the Tribunal; rather, it had been alleged that Mr Ali was in breach of Principles 2 and 6 by virtue of his conviction. The Tribunal in that matter had considered that Mr Ali’s involvement in the criminal matters had been at the lowest level and that there was extensive personal mitigation. It was difficult to say that this was a less serious case than that of Mr Ali; the Tribunal had to have regard to reputational issues.
35. Mr Bullock accepted that the Tribunal had a wide discretion on sanction. With regard to the point made by Ms Brooks about this being an isolated incident, Mr Bullock submitted that there had been two incidents several months apart.
36. Ms Brooks accepted that the Tribunal was not bound by the decision in Ali but it was raised as it was an example of a case in which the Tribunal had considered a suspended suspension order to be appropriate. Further, it was submitted that the Ali case had been in reality a dishonesty case, however pleaded. It was submitted that the reputation of the profession would be more damaged by a conviction case than by the facts of this matter.

## Sanction

37. The Tribunal reviewed the facts of the case and considered carefully all of the points made in mitigation. The Tribunal had considered with great care the many wonderful references produced for the Respondent. It was notable that these included a testimonial from JPS, the partner whose signature she had forged. The Respondent was clearly held in high regard by her employers and by clients. The testimonials were glowing and highly supportive and were given by experienced professionals and by friends and family. It was rare for the Tribunal to see such positive character references for a Respondent. In this instance, the testimonials confirmed that the Respondent was conscientious, committed and competent. The client satisfaction surveys supported the picture of the Respondent as a good solicitor; the comments on the Respondent were first class and her conduct of client matters appeared to be beyond reproach.
38. The Tribunal noted that the Respondent had had no personal gain from what she had done in the first instance, save perhaps that she had been spared the embarrassment of admitting that she had made a mistake when the LPAs were first signed in not arranging for appropriate certification. The Respondent had been young and inexperienced in February 2010 and had been working under the supervision of a locum, who had also failed to spot the need for certification. The Respondent had not suggested that at the time she was working under any particular pressure. In relation to the second instance, whilst she had explained that she had put this to the back of her mind after February 2010, she now admitted dishonesty on this second occasion. She had forged a signature (twice) and should have admitted this when applying to become a solicitor.
39. The Tribunal considered that it was bound by the authority of Sharma. The Ali case could not be regarded as a precedent, as each case was determined on its own facts; the decision of one division of the Tribunal was not binding on any other division. The Tribunal considered carefully whether there were any exceptional circumstances and the factors which the High Court had indicated should be considered in determining that issue.
40. The dishonesty in this case, which had been admitted, included forging a signature on two important documents, then failing to admit this when applying to become a solicitor. These were serious matters. Whilst the dishonesty had not been extensive, there were two clear instances several months apart so one could not say that it had been an isolated incident. There had been no particular benefit to the Respondent in the first instance, save perhaps that she had avoided having to admit that she had failed to have the LPAs certified. In the second instance her application had been permitted and she had been admitted as a solicitor. Whilst there had been no actual harm to the clients, there was clear scope for harm if there had been an attempt to register the LPAs as that application may have been rejected – and by that time it would not be possible to rectify the error. In the light of these factors, the Tribunal did not consider that there were exceptional circumstances which would justify deviation from the normal order where dishonesty had been found.
41. The Tribunal noted that some of the public might wonder whether it was correct to remove from the profession someone who was clearly so good at her job. However

the Tribunal had to consider the reputation of the profession as a whole and the authorities which made it clear that striking off was to be regarded as the usual order where there was any dishonesty. As set out in the case of Bolton v Law Society [1994] 2 All ER 486 the public should be able to trust a solicitor to the ends of the earth; the highest standards of integrity, probity and honesty should be expected. An order striking off the Respondent was appropriate in the light of the authorities and on the facts of this case.

42. Nevertheless, the Tribunal had considerable sympathy for the Respondent. It noted that she had been supported so far by the Firm and the Tribunal hoped that that support would continue.

### **Costs**

43. Mr Bullock made an application for costs against the Respondent and submitted a schedule of costs in the total sum of £2,197.07.
44. Ms Brooks indicated to the Tribunal that there had been no previous opportunity to discuss the amount of costs claimed, but it might be possible to discuss and agree costs between the parties.
45. The Tribunal was subsequently notified that the parties had agreed costs in the sum of £2,000, all inclusive. The Tribunal noted the schedule of costs and considered that the costs agreed between the parties were reasonable and proportionate. There was no application by the Respondent for her means to be taken into account, either in relation to the amount of costs or the terms of any order. The Tribunal was satisfied that it was appropriate to order the Respondent to pay the Applicant's costs of the proceedings in the sum of £2,000.

### **Statement of Full Order**

46. The Tribunal Ordered that the Respondent, KATHERINE ANNE EDWARDS, 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 agreed sum of £2,000.00.

DATED this 10<sup>th</sup> day of April 2014  
On behalf of the Tribunal

A. G. Gibson  
Chairman