

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11207-2013

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

JOANNE ELIZABETH COUGHLAN

Respondent

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Before:

Mr R. Nicholas (in the chair)

Mr A. Ghosh

Mrs S. Gordon

Date of Hearing: 5 March 2014

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**Appearances**

Mr Andrew Bullock, Senior Legal Advisor, employed by the Solicitors Regulation Authority at The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

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**JUDGMENT**

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## **Allegations**

1. The allegations against the Respondent, Joanne Elizabeth Coughlan, were that:-
  - 1.1 She created back-dated correspondence and sent it to an opposing party and the Court in litigation in order to mislead them into believing that she complied with a direction of the Court when this was not the case and thereby breached the following of the SRA Principles 2011:
    - a) Principle 1: you must uphold the rule of law and the proper administration of justice;
    - b) Principal 2: you must act with integrity: and
    - c) Principal 6: you must behave in a way that maintains the trust the public places in you and in the provision of legal services.
  - 1.2 She misrepresented the date upon which that letter had been sent to her employer in further breach of the following SRA Principles:
    - a) Principal 2; and
    - b) Principal 6

It was further alleged that the Respondent acted dishonestly. However dishonesty was not a necessary ingredient of the allegations against the Respondent.

## **Documents**

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

### **Applicant:**

- Application dated 27 November 2013;
- Rule 5 Statement dated 27 November 2013, together with Exhibit JED which included the witness statement of Mr Jeremy Brooke dated 27 November 2013;
- Civil Evidence Act Notice to the Respondent dated 30 January 2014;
- Certificate of Readiness dated 30 January 2014;
- Schedule of Costs of the Applicant dated 24 February 2014.

### **Respondent:**

- Response to the Rule 5 Statement, undated and received by the Tribunal on 7 January 2014;
- Statement of Means of the Respondent dated 12 February 2014, together with supporting documents;

- Certificate of Readiness dated 12 February 2014;
- Letter dated 25 February 2014, indicating that the Respondent would not be attending the substantive hearing.

### **Preliminary Matter**

3. Mr Bullock told the Tribunal that it was clear that the Respondent had received the Rule 5 Statement; she had filed a Response to it on 7 January 2014 and in that Response she had admitted the allegations. In addition, her letter of 25 February 2014 indicated that she was content that the matter should proceed today in her absence. In those circumstances it was Mr Bullock's submission that there was no impediment to the Tribunal hearing the case in the absence of the Respondent. Whilst both the Response and the letter dated 25 February 2014 were handwritten, Mr Bullock was confident that these were indeed from the Respondent.

### **The Tribunal's Decision on the Preliminary Matter**

4. The Tribunal had taken careful consideration of the relevant documents and Mr Bullock's submissions. The Tribunal was satisfied that the Respondent was aware of the hearing today and had taken the decision to absent herself. The Tribunal had applied the principles in R v Hayward, Jones and Purvis [2001] EWCA Crim 168 and would hear the matter today in the absence of the Respondent.

### **Factual Background**

5. The Respondent was born on October 1972 and admitted as a solicitor on 15 August 2000. Her name remained on the Roll of Solicitors. She held a current practising certificate.
6. At all material times up to 28 February 2013 the Respondent was employed as a solicitor by the firm of Simpson Sissons and Brooke Solicitors ("SS&B") of 43 Townhead Street Sheffield S1 2EB.
7. In or around May 2011, SS&B was instructed by a Mr "AB" to represent him in a personal injury claim against his employer, which was represented by another firm, "HD". The matter was allocated to the Respondent to act on AB's behalf. Proceedings were issued in the Northampton County Court on 17 July 2012. However, medical evidence was not served with the proceedings, contrary to the Civil Procedure Rules Part 16 (specifically the Practice direction at 16(4.3)).
8. In light of the failure to serve the medical evidence, HD made an application to the Court on 14 December 2012 seeking an Order that unless the medical evidence was provided by Mr AB within twenty-one days of the date of service of the Order, he would be debarred from relying upon medical evidence in his claim. The Order was granted on 3 January 2013 and therefore the Respondent, on behalf of Mr AB, had until 28 January 2013 to file and serve the medical evidence. She did not do so.
9. The failure was notified to her by HD on 28 January 2013 and on 29 January 2013 the Respondent prepared two letters, both dated 26 January 2013, purporting to serve a

copy of the medical evidence, the first being to HD and the second to the Court. She then sent a copy to HD under cover of an email dated 4 February 2013.

10. HD again wrote to the Respondent, by letter dated 5 February 2013, confirming that they had never received a hard copy of the Respondent's letter dated 26 January 2013. They stated:

“We note that your letter dated 26 January 2013 has been dictated on a Saturday, in accordance with your letter the Order was received on 7 January 2013 and therefore the Claimant had until 28 January 2013 to comply with paragraph 1 of the Order...”

11. The Respondent replied by email on 7 February 2013 stating:

“The medical report was sent by 1st class post to yourselves and the Court on 26 January 2013 and so is deemed served on 28 January 2013, the next working day. I do not wish to enter into any further correspondence regarding this, the Court Order has been complied with”.

12. HD responded to that email by letter dated the 19 February 2013. In that letter they stated:

“On your best account, if we are to accept you had service of the Court's Order on 7 January 2013 then you had until 28 January 2013 to serve. We note that you allege that on Saturday, 26 January 2013 you placed your medical evidence in the first class post. We note we have still not received the letter”.

HD went on to state that in any event, if the letter was placed in the post on Saturday, 26 January 2013, deemed service would be 29 January 2013 and therefore the medical evidence was not served in time and the Claimant was debarred from relying on it.

13. The HD letter dated 19 February 2013 was opened and reviewed by Mr Brooke, a partner in SS&B's personal injury department, in accordance with SS&B's supervision procedures. On review of the letter, given the potential dispute arising, Mr Brooke obtained the paper file for the matter and considered that alongside the information held on the firm's computerised case management system (Proclaim). Mr Brooke was unable to find a letter dated 26 January 2013. On further review of Proclaim, Mr Brooke found there were no letters created on 26 January 2013. There were however two letters created on 29 January 2013, one to the Court and one to HD.
14. On review of the letter addressed to HD it was noted that although it was created on 29 January 2013, the letter was dated 26 January 2013. Proclaim stores documents with the date created in the system and if a letter is created outside the system and added in at a later date, a specific message is recorded on the document history. In this case the letters were created within the Proclaim system on 29 January 2013.
15. Given the discrepancy, the Respondent was asked to review the file and explain how it was that letters dated 26 January 2013 appeared on the Proclaim system as being

created on 29 January 2013. In a letter from SS&B to the SRA dated 27 February 2012 the firm stated that the Respondent commented:

“that she could not explain the situation but that she was certain that she had in fact created the documents on Friday, 25 January 2013 as she had been unable to obtain [Mr AB’s] authority to release the medical evidence until late in that day”.

16. The Respondent explained that she had post-dated the letters to 26 January 2013 as that would be the date when the letters were to be posted. She stated she had taken the letters home and posted them herself on Saturday, 26 January 2013 as she had missed the office post.

17. Upon receipt of that explanation, Mr Brooke reviewed the Proclaim system with the Respondent present to demonstrate that the word document had been created on 29 January 2013 and asked the Respondent to “think carefully about her assertion that the documents had been created on 25 January, post-dated to 26 January and physically posted on 26 January”. The Respondent was unable to explain. Following that discussion, the Respondent was asked, by email dated 21 February 2013, to prepare a statement for the file setting out the history of the case, the actions taken and the dates, and to verify that statement with a full statement of truth.

18. On 21 February 2013 the Respondent emailed Mr Brooke saying:

“I am really sorry I made a big mistake on this one, I did not get the clients authority to disclose the medical report in time to comply with the order so did serve it late and backdated the letter. I felt really under pressure yesterday as we were in the office in front of everyone and cannot explain why I did not tell you the truth”.

19. On Friday 22 February 2013, a Disciplinary Investigation Meeting took place with the Respondent, Mr Brooke and SS&B’s HR manager. The note of the meeting recorded that the Respondent could not explain why she behaved as she did and had “felt that she needed to own up” to Mr Brooke and that she “now realises that she should have just made a late submission” of the medical evidence. On Monday 25 February 2013 the disciplinary proceedings were reconvened and the Respondent was summarily dismissed from her employment with SS&B, although she had already tendered her resignation on 30 January 2013.

20. SS&B notified the Respondent’s conduct to the SRA by letter dated 27 February 2013. On 28 June 2013 a Supervisor from the Supervision Department of the SRA sought the comments of the Respondent on the allegations against her to which the Respondent responded by undated letter received by the SRA on 15 July 2013 stating:

“I admit the allegations set out in the letter. I wish to state that I deeply regret my actions which were foolish and wrong”.

#### **Witnesses**

21. None

## Findings of Fact and Law

22. The Tribunal had due regard to the Respondent's right 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. The Applicant was required to prove the allegations beyond reasonable doubt.
23. **Allegation 1.1 - She created back-dated correspondence and sent it to an opposing party and the Court in litigation in order to mislead them into believing that she complied with a direction of the Court when this was not the case and thereby breached the following of the SRA Principles 2011:**
- a) **Principle 1: you must uphold the rule of law and the proper administration of justice;**
  - b) **Principal 2: you must act with integrity: and**
  - c) **Principal 6: you must behave in a way that maintains the trust the public places in you and in the provision of legal services.**

**Allegation 1.2 - She misrepresented the date upon which that letter had been sent to her employer in further breach of the following SRA Principles:**

- a) **Principal 2; and**
- b) **Principal 6**

- 23.1 The Respondent admitted both of the allegations.
- 23.2 Mr Bullock took the Tribunal to the relevant evidence in Exhibit JED and told the Tribunal that Mr Jeremy Brooke had made a witness statement concerning the events in question and that was at pages 21 to 26 of JED.
- 23.3 The Tribunal had considered thoroughly all of the documentation in the case and in particular the witness statement of Mr Brooke. The Tribunal found both of the allegations to have been proved beyond reasonable doubt on the facts and documents before it.
24. **It was further alleged that the Respondent acted dishonestly. However dishonesty was not a necessary ingredient of the allegations against the Respondent.**
- 24.1 Mr Bullock referred the Tribunal to the paragraphs concerning dishonesty in the Rule 5 Statement. The test for dishonesty was the dual one set out in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. In the Rule 5 Statement it was said that:

“ the Respondent’s actions both in:

- a. creating letters which were backdated so as to show that a party to litigation had complied with the directions of the Court when this was not the case and then send it to an opposing party to litigation; and
- b. giving an untruthful account of what had transpired to Mr Brooke following her review of the file.

would be regarded as dishonest by the standards of reasonable and honest people.

Furthermore, the Respondent realised that by those standards her conduct was dishonest because:

- a. she did not take the opportunity to explain herself to HD in her response to their letter of 5 February (in which they noted that they had not received her letter dated 26 January and queried why it had been dictated on a Saturday) but instead said that she was not prepared to enter into further correspondence on the point;
- b. she did not admit that she had backdated the letter...when she was asked to review the file but instead maintained that it was created on 25 January 2013 and gave a false explanation for its date. In the light of the contents of her subsequent email of 21 February 2013 she must have known that that explanation was untrue when it was given; and
- c. she admitted that she had been untruthful in her email of 21 February 2013 and subsequently expressed remorse for her actions in the Disciplinary Investigation Meeting on 22 February 2013”.

#### 24.2 The Rule 5 Statement continued:

“In any event, the circumstances of the case are such that an irresistible inference arises that the Respondent must have appreciated that her actions would be viewed as dishonest by reasonable and honest people. It is inconceivable that a 38 year old solicitor with in excess of 10 years post qualification experience practising in the field of litigation would not have:

- a. understood that it was dishonest to mislead an opponent in litigation as to the status of a claim; and
- b. consequently, also understood that an allegation of misconduct of this nature was a very serious allegation and that any enquiries made by an employer in relation to such an allegation therefore needed to be answered truthfully”.

#### 24.3 Mr Bullock went on to say that the consequences, should the Tribunal make a finding of dishonesty against the Respondent, were set out in the case of SRA v Sharma [2010] EWHC 2022 (Admin), where Coulson J stated that where a solicitor had been

found to have been dishonest, unless exceptional circumstances could be shown, then the normal consequence should be for that solicitor to be struck off the Roll of solicitors. Mr Bullock concluded by asking the Tribunal to consider the case of Bolton v The Law Society [1994] 1 WLR 512 in considering sanction.

- 24.4 The Tribunal noted that none of the Respondent's admissions referred patently to dishonesty, although her Response to the Rule 5 Statement did say that "All allegations are admitted" and she admitted all the facts of the matter.
- 24.5 In the notes of the Disciplinary Investigation Meeting on 22 February 2013 at p33 of JED it could be seen that the Respondent had admitted to having lied about what had occurred.
- 24.6 It was clear to the Tribunal that the Respondent's actions within the context of the factual background would be regarded as dishonest by the standards of reasonable and honest people. Furthermore, in not explaining what had occurred to either the other party to the litigation or to her employer and finally admitting that she had been untruthful, she must have known that by those same standards her conduct was dishonest. The Tribunal accordingly found that the Respondent had been dishonest by the standards set down in the twin limbs of the Twinsectra test and therefore found the allegation of dishonesty to have been proved beyond reasonable doubt on the facts and documents before it.

### **Previous Disciplinary Matters**

25. None.

### **Sanction**

26. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
27. The Tribunal had listened very carefully to Mr Bullock's submissions, and it had also paid close attention to all of the documentation that had been put before it, including the admissions and explanations of the Respondent.
28. No formal mitigation had been placed before the Tribunal. However it had noted that there was some mitigation to be found within the documentation. At page 11 of JED, which was the record of the Disciplinary Investigation Meeting, it could be seen that Mr Brooke had said that he felt that the Respondent's actions were out of character and that she was normally a truthful person who had made a bad decision on this occasion. Similarly, within Mr Brooke's witness statement there were positive assertions made about the Respondent including that:

"A full review of Joanna's other files was undertaken and there were no other issues that would affect our client's interests. Whilst it was necessary to undertake the review in light of what had happened I was not surprised by its outcome.

Joanna was a hard-working and valued member of the team. Both I and others that know her are staggered by what has happened.... Having had the



opportunity to review all of her files it is apparent that this was a one off situation.”

29. However, the Tribunal had found two very serious allegations to have been proved against the Respondent and that she had been dishonest; indeed, it was at the highest end of the scale of the seriousness when a Respondent had sought to mislead a Court. The Tribunal was mindful of the fact that the normal sanction in a case of dishonesty was to strike the solicitor concerned off the roll. The Tribunal examined carefully the criteria in Sharma in order to ascertain whether there were any exceptional circumstances in this case which might justify not striking the Respondent off the Roll but could find none. This was a very serious case of dishonesty where an immediate confession had not been forthcoming and moreover it appeared that the Respondent had performed her actions in order to protect her own position.
30. The Tribunal was mindful of the observation of the President of the Supreme Court in respect of the dicta of Lord Bingham in *Bolton v the Law Society [1994] 1 W.L.R 512* that a solicitor must be capable of being trusted to the ends of the earth – “the touchstone of the future for any regulator, just as it must continue to be for any lawyer is that provided by Sir Thomas Bingham: that a lawyer must be capable of being trusted to the ends of the earth. That is the beginning and the end of professionalism” [Lord Neuberger of Abbotsbury on 22/2/10 in a lecture at the Inner Temple]. That was the touchstone against which the Tribunal measured the conduct of the Respondent in determining that she be struck off the Roll.
31. The Tribunal observed that it was sad that a previously unblemished career should have ended in this manner.

### **Costs**

32. Mr Bullock asked for the Applicant’s costs of £3,577.20, as detailed in the Costs Schedule dated 24 February 2014 which had been provided to the Respondent. There was a statement of means from the Respondent before the Tribunal and the figures therein were accepted by the SRA. It was clear that the Respondent was not bankrupt and had a residual disposable income of some £200-£300 per month. In Mr Bullock’s submission the Respondent could cover the Applicant’s costs. The Respondent owned a property and Mr Bullock asked that the Tribunal Order that a charge be placed on the property if the debt was not paid within twelve months.
33. The Tribunal observed that the hearing had been considerably shorter than anticipated in the Costs Schedule and it was also of the view that the final preparation for the hearing was somewhat longer than seemed reasonable. Having reviewed the financial information provided by the Respondent, the Tribunal decided that she should be able to meet the costs over a period of time. Whilst the Tribunal had ordered that the Respondent be Struck Off the Roll it did not appear that her current ability to work in another area would be affected. In all of these circumstances the costs would be reduced to £2,500 to be paid immediately.
34. Mr Bullock’s application for an Order which included the possibility of a charge on the Respondent’s property was rejected. If the Applicant wished to impose any such

charge following a failure to pay the amount of costs owing then the Applicant was capable of making the relevant application to the Court.

**Statement of Full Order**

35. The Tribunal Ordered that the Respondent, Joanne Elizabeth Coughlan, 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 £2,500.

DATED this 27<sup>th</sup> day of March 2014

On behalf of the Tribunal

R. Nicholas  
Chairman