

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11235-2014

## BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

CLAIRE LOUISE O'BRIEN

Respondent

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Before:

Miss N. Lucking (in the chair)

Mrs E. Stanley

Mr S. Hill

Date of Hearing: 30 July 2014

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## Appearances

Mr Jonathan Leigh, Legal Adviser of the SRA, The Cube, 199 Wharfside Street, Birmingham B1 1RN for 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, Claire Louise O'Brien, were that she has:-
  - 1.1 failed to act with integrity contrary to Principle 2 of the SRA Code of Conduct 2011; and
  - 1.2 failed to behave in a way that maintains the trust the public placed in her and in the provision of legal services contrary to Principle 6 of the SRA Code of conduct 2011.

## **Documents**

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

Applicant:

- Application dated 10 April 2014;
- Rule 5 Statement dated 10 April 2014 together with Exhibit JRL1;
- Schedule of Costs of the Applicant dated 21 July 2014.

Respondent:

- Respondent's Answer to the Rule 5 Statement dated 11 May 2014;
- Respondent's Statement of Means dated 20 June 2014, together with supporting documentation;
- Further proof of the Respondent's means attached to an e-mail dated 2 July 2014;
- Letter from the Respondent to the Tribunal dated 24 July 2014 indicating that the Respondent would not be attending the hearing.

## **Preliminary Matter**

3. Mr Leigh asked the Tribunal to proceed in the absence of the Respondent. The Tribunal had before it a letter from the Respondent dated 20 July 2014 which confirmed that the proceedings had been properly served upon her and that she had notice of the hearing date. In that letter she had said that she did not wish to attend the proceedings and intended no disrespect to the Tribunal. She said that she believed it would be fair and proper to proceed with the hearing in her absence.
4. In Mr Leigh's submission, in all the circumstances, it was proper for the Tribunal to decide to proceed in the Respondent's absence.

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

5. The Tribunal had considered the contents of the letter dated 20 July 2014 from the Respondent and it was satisfied that she was aware of the hearing and had voluntarily absented herself from it. The Tribunal had applied the principles in R v Hayward,

Jones and Purvis [2001] EWCA Crim 168 and determined under Rule 16 of the Solicitors (Disciplinary Proceedings) Rules 2007 that in all the circumstances, it would exercise its power to hear and determine the application notwithstanding that the Respondent had failed to attend in person or was not represented at the hearing.

### **Factual Background**

6. The Respondent was born on 6 March 1981 and was admitted as a solicitor on 2 October 2006. Her name remains on the Roll.
7. At all material times the Respondent practised as a salaried partner at MWP Solicitors at their office at Suite 2G Southgate House, Town Square, Basildon, Essex, SS14 1BN.
8. On 10 October 2013, the Respondent pleaded guilty to fraud by abuse of position in the South Essex Magistrates' Court; she was convicted and committed to the Crown Court for sentence. The Respondent was sentenced on 18 November 2013 to a term of six months' imprisonment and the payment of a victim surcharge.
9. The remarks made by the Judge in considering sentence included the following:

“It is a tragedy to see you in the dock of a Crown Court but the legal system depends on the integrity of its officers of the court. You abused that integrity by stealing from a client and you sought to cover it up by making false entries in the court record. When solicitors do that they inevitably receive a custodial sentence. A custodial sentence in your case is shorter than it otherwise would have been because of the circumstances in which you committed the theft and because of the fact that I am sentencing you to stealing £600 on two occasions.”
10. On 11 December 2013, the SRA wrote to the Respondent seeking her response to allegations that, by virtue of her conviction, she had failed to act with integrity and behaved in a way likely to diminish the trust the public places in her and in the provision of legal services.
11. The Respondent replied in a letter dated 13 January 2014. She described in detail the circumstances that she stated had led to her committing the offence. She also accepted that her actions had “put into question” her integrity and that “in the context of [her] misdemeanour this is the case”. She also stated that she took full responsibility for the inappropriateness of her actions and accepted that the consequences of her actions “may undermine [her] professionalism as a whole and to those who seek to serve society”.
12. On 30 January 2014 an Authorised Officer of the SRA considered the relevant material and decided to refer the conduct of the Respondent to the Tribunal.

### **Witnesses**

13. None.

## **Findings of Fact and Law**

14. 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.

15. **Allegation 1.1 - She has failed to act with integrity contrary to Principle 2 of the SRA Code of Conduct 2011**

**Allegation 1.2 - She has failed to behave in a way that maintains the trust the public placed in her and in the provision of legal services contrary to Principle 6 of the SRA Code of conduct 2011**

15.1 The Respondent admitted both of the allegations in her Answer to the Rule 5 Statement.

15.2 Mr Leigh took the Tribunal through the relevant facts and to the Certificate of Conviction at page 1 of JRL1. He told the Tribunal that the Applicant relied upon the conviction to prove the allegations. This was a serious matter where a solicitor in a position of authority had committed a significant breach of trust in relation to a client. The conviction was one for dishonesty which had taken place on two occasions.

15.3 The Tribunal found both of the allegations against the Respondent to have been substantiated beyond a reasonable doubt on the facts and documents before it, in particular the Certificate of Conviction; indeed both of the allegations had been admitted by the Respondent, as had the underlying facts.

## **Previous Disciplinary Matters**

16. None.

## **Mitigation**

17. The Respondent's mitigation was contained within her detailed letter to the SRA dated 13 January 2014 which was at pages 8 to 15 of JRL1. In that letter she explained the background to her actions and the stress she had been experiencing at the time.

18. The Respondent concluded her letter by saying that "there is not a day goes by that I do not feel remorse and shame for my actions... I would like to reiterate how deeply sorry I am for my actions and for the ensuing consequences and can categorically state that nothing like this will ever be done by me again. I have certainly learnt my lesson the hard way".

## **Sanction**

19. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.

20. Whilst there was detailed mitigation before the Tribunal, Mr Leigh asked the Tribunal to be mindful of what had been said in the case of Bolton v The Law Society [1994] 1 WLR 512 concerning sanction and to look at the aggravating features in this case.
21. The Tribunal had considered carefully all of the Respondent's mitigation. It found that the Respondent had been weak; it was a solicitor's duty to protect her clients and ultimately this solicitor had been unable to protect herself. Her actions had shown a complete lack of judgement.
22. It was the duty of the Tribunal to protect the public and to protect the reputation of the profession. The inevitable outcome where allegations such as these had been proved in such a context was that that solicitor should be struck off the Roll.

### **Costs**

23. The Tribunal had before it the Applicant's schedule of costs in the sum of £2,012. However Mr Leigh told the Tribunal that some of the amounts shown on the schedule could be apportioned between this case and the other case before it today. In that event the total amount claimed in respect of costs would be in the region of £1,600.
24. The Tribunal noted that the Respondent had agreed the costs in the schedule and had asked that the Tribunal allow her time to pay the sum either by way of instalments or by non-enforcement as she did not have a lump sum available to meet the full costs at present.
25. There was before the Tribunal a full statement of the Respondent's means and the Tribunal was of the view that the Respondent could pay the entirety of the costs given time; it was in no doubt that the Applicant would deal with such payment directly with the Respondent. The Tribunal therefore ordered the Respondent to pay costs in the sum of £1,600.

### **Statement of Full Order**

26. The Tribunal Ordered that the Respondent, Claire Louise O'Brien, 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 £1,600.00.

Dated this 15<sup>th</sup> day of August 2014  
On behalf of the Tribunal

N. Lucking  
Chairman