# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11275-2014

**BETWEEN:**

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| SOLICITORS REGULATION AUTHORITY | Applicant |
| and | |
| NAZAKAT ALI | Respondent |

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Before:

Miss J. Devonish (in the chair)
Mr S. Tinkler
Mr R. Slack

Date of Hearing: 23 January 2015

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**Appearances**

Mark Gibson, Solicitor employed by 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

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# JUDGMENT

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**Allegations**

1. The allegations made by the Solicitors Regulation Authority against the Respondent were that by virtue of his conviction in the Crown Court at Inner London on 28 March 2014 of the following offences: two counts of assisting unlawful immigration into an EU member state and one count of encouraging/assisting in the commission of one or more indictable offences (other than murder) believing it/they will be committed; and by being sentenced to six years imprisonment on 22 April 2014 in the Crown Court at Inner London:

1.1 He has failed to uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Principles 2011;

1.2 He has failed to act with integrity contrary to Principle 2 of the SRA Principles 2011 and;

1.3 He has failed to behave in a way that maintains the trust the public places in him and in the provision of legal services contrary to Principle 6 of the SRA Principles 2011.

**Documents**

2. The Tribunal reviewed the documents including:

Applicant

- Rule 5 Statement dated 22 August 2014 with exhibit MNG1
- Standard Directions for first instance proceedings dated 29 October 2014
- Correspondence relating to the Respondent's application to adjourn the substantive hearing
- E-mail from Mr Gibson of the Applicant to the Tribunal office dated 6 January 2015
- Applicant's statement of costs as at date of final hearing

Respondent

- None

**Preliminary Issues**

3. For the Applicant, Mr Gibson submitted that there were two preliminary issues for the Tribunal to consider, the non-attendance of the Respondent and his pending appeal. In respect of the former, Mr Gibson relied on Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") which provided:

> "If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

The Respondent had originally been confined in HMP Thameside and the application had been sent there. However he had been moved to another prison and the application had been re-served to that prison on 29 October 2014. Mr Gibson referred to a letter dated 7 November 2014 to the Tribunal in which the Respondent referred to 'the pack' sent to him on 29 October 2014. The pack contained the Rule 5 Statement and Standard Directions which included the hearing date and the Respondent referred to his having acknowledged the documentation to the Applicant and continued:

> "I would kindly request that this matter be adjourned until such time as my appeal against conviction on all counts (for which leave has been granted by the Court of Appeal) is heard."

The Respondent was clearly aware of the hearing because he had asked for an adjournment. Mr Gibson indicated the Applicant's opposition to an adjournment in an e-mail of 26 November 2014. He submitted that it had been brought the Applicant's attention that the criminal appeal was due to be heard on 11 December 2014. The Royal Courts of Justice had confirmed that hearing date. Given that the outcome of the appeal should be known on the day or shortly thereafter, the Applicant considered that the Respondent's request for an adjournment was premature. In the event that the appeal was successful, the Applicant would obviously reconsider its position in relation to the Tribunal proceedings. In the event that the appeal was unsuccessful then the Applicant considered that there was no reason to adjourn the hearing on 23 January 2015. Should the Respondent decide, in the event of an unsuccessful appeal, to appeal against the outcome, the decision would not be known for some time. The Applicant's submission, if this were to be the case, was that it was not in the public interest to adjourn the substantive hearing as the Respondent had been convicted of a serious offence for which he had received a custodial sentence. The Applicant's submissions also mentioned that if the Respondent was ultimately successful in a further appeal against conviction he could make an application to the Tribunal to revoke its findings and make such order as to costs as should appear just in the circumstances under Rule 21(5) of the SDPR. The Chairman determined to the application for adjournment as follows:

> "The Rule 5 application has been brought by the Applicant on the basis of the Respondent's conviction and sentence at the Crown Court. The Chairman is unable to grant the application for an adjournment of the hearing on 23 January 2015 to the Respondent on the basis that he wishes to await the outcome of his appeal against conviction, as the appeal is due to be heard on 11 December 2014 and that is before the date listed before the Tribunal in January."

A letter containing that decision was sent to the Respondent in prison on 26 November 2014. Mr Gibson was asked on 12 December 2014 to update Tribunal as to the outcome of the appeal. On 16 December 2014, Mr Gibson informed the Tribunal office that he had written to the Respondent that day asking him to advise both the Tribunal and the Applicant of the outcome of the appeal and to provide a copy of the court order. On 6 January 2015, Mr Gibson had e-mailed the Tribunal office to report that he had received no response from the Respondent and had therefore contacted the Royal Courts of Justice to try and establish the outcome of the appeal and was advised that the appeal was to be re-listed but Mr Gibson was not

provided with any further details. He had received no further correspondence from the Respondent about when the appeal was to be heard. Mr Gibson asked the Tribunal to exercise its power to proceed in the absence of the Respondent relying on the Certificate of Conviction and the provisions of Rule 21(5) of the SDPR which provided that:

> "Where the Tribunal has made a finding based solely upon the certificate of conviction for a criminal offence which is subsequently quashed the Tribunal may, on the application of the Law Society or the respondent to the application in respect of which the finding arose, revoke its finding and make such order as to costs as shall appear to be just in the circumstances."

Mr Gibson had contacted the particular prison to which the Tribunal had sent the letter notifying refusal of the adjournment application and had been advised by a Custody Officer on 17 December 2014 that the Respondent was still confined there.

4. The Tribunal considered the circumstances including that the Chairman in considering the adjournment application had made a decision based on the fact that the appeal was expected to be determined before this hearing. That had not happened but the Respondent had not renewed his application for an adjournment. The Tribunal was satisfied that the Respondent had been properly served with the application by the Applicant and noted that he had confirmed safe receipt in his letter to the Tribunal of 7 November 2014. He had also been notified of the hearing date and that the adjournment application had been refused. The Tribunal was alert to the need to exercise extreme caution when exercising its power to proceed in the absence of the Respondent (as set out in the case of R v Hayward, Jones and Purvis [2001] QB 862, CA). Having regard to all the evidence before it, the Tribunal was satisfied that the Respondent had voluntarily absented himself from the hearing. He had been engaged with the proceedings until recently and if he pursued his appeal and it was successful it would be open to him to apply to the Tribunal for any finding made at this hearing to be revoked. The Tribunal considered that it would be in the interests of justice for the hearing to proceed even though the Respondent had failed to attend the hearing and was not represented.

**Factual Background**

5. The Respondent was born in 1976 and was admitted in 2001. His name remained on the Roll of Solicitors.

6. In the Crown Court at Inner London on 28 March 2014, the Respondent was convicted of two counts of assisting unlawful immigration into an EU member state and one count of encouraging/assisting in the commission of one or more indictable offences (other than murder) believing it/they would be committed.

7. In the same Crown Court on 22 April 2014, the Respondent was sentenced to six years imprisonment.

8. On 25 April 2014, an Adjudication Panel of the Applicant decided to dispense with the procedure to give the Respondent the opportunity to provide a further explanation of his conduct and to refer his conduct to the Tribunal.

**Witnesses**

9. None.

**Findings of Fact and Law**

10. 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

11. **Allegation 1 - The allegations made by the Solicitors Regulation Authority against the Respondent were that by virtue of his conviction in the Crown Court at Inner London on 28 March 2014 of the following offences: two counts of assisting unlawful immigration into an EU member state and one count of encouraging/assisting in the commission of one or more indictable offences (other than murder) believing it/they will be committed; and by being sentenced to six years imprisonment on 22 April 2014 in the Crown Court at Inner London:**

    **1.1 He has failed to uphold the rule of law and the proper administration of justice contrary to Principle 1 of the SRA Principles 2011;**

    **1.2 He has failed to act with integrity contrary to Principle 2 of the SRA Principles 2011 and;**

    **1.3 He has failed to behave in a way that maintains the trust the public places in him and in the provision of legal services contrary to Principle 6 of the SRA Principles 2011.**

11.1 For the Applicant, Mr Gibson submitted that the Applicant relied on the Certificate or Conviction and referred the Tribunal to Rule 15(2) of the SDPR which provided:

> "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."

A certified copy of the Certificate of Conviction dated 23 May 2014 was before the Tribunal. He submitted that there were no exceptional circumstances such as would prevent the Tribunal from relying on the Certificate. Mr Gibson also referred Tribunal to the sentencing remarks of His Honour Judge Bishop on 22 April 2014 which included:

> "...You have been found guilty of three serious offences committed against the legal background that permits a non-EEA spouse to remain in the UK if they marry a non-UK EEA spouse that remains in the UK exercising their Treaty rights."

Mr Gibson submitted that these were serious offences and referred to further remarks of the Judge:

> "An aggravating feature of this case is that you are a solicitor. As an officer of the court you have a duty to maintain the rule of law and uphold the integrity of the legal system. By your actions you were doing precisely the opposite. You were demonstrating a deep cynicism for the principles which you plainly considered to be expendable for the sake of your client getting the result that he wanted, a result in which you also had a financial interest."

and

> "Additionally, you were practising in an area in which as you accepted people were desperate. You knew that they would do anything to maximise their chances of staying in the United Kingdom. You took advantage of their predicament knowing that they would respect your advice and they would pay for it. By your actions you were undermining the integrity of the system of immigration control and indeed you were trading on your reputation as someone who could get round immigration control."

and

> "As a consequence of this case, you will lose your practice. You will no doubt be prevented from returning to practice as a solicitor, although you say you have no intention of wanting to return to this practice in any event."

Mr Gibson also pointed out to the Tribunal that the Respondent's criminal trial and conviction had attracted media attention. An example of an online newspaper article was before the Tribunal. However certain of what was reported regarding events was strenuously denied by the Respondent. Mr Gibson referred the Tribunal to the case of Bolton v The Law Society [1994] 1 WLR 512:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness…
>
> Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal...

and regarding sanction, although as Mr Gibson accepted this was a matter for the Tribunal:

> "The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth..."

11.2 The Tribunal considered the submissions for the Applicant and the evidence including the Certificate of Conviction upon which it determined it could rely under Rule 15(2) of the SDPR and found all aspects of allegation 1 proved to the required standard.

**Previous Disciplinary Matters**

12. None

**Mitigation**

13. The Respondent was not present and disputed the allegations by way of appealing the criminal conviction. He had offered no mitigation.

**Sanction**

14. The Tribunal had regard to its Guidance Notes on Sanction. The Respondent had been convicted on three counts which the Judge described as “serious offences”. The Respondent was fully culpable for his misconduct and the Judge stated that he was motivated by financial interest. Almost all the aggravating factors in the Guidance Notes on Sanction were present including that the Respondent inflicted harm on the administration of justice by circumventing the immigration law and his conviction damaged his reputation and that of the profession, attracting adverse publicity even if he strenuously challenged the accuracy of some of it. The seriousness of his misconduct was aggravated by the criminal conviction for conduct which was deliberate and repeated over a period of time. The Respondent took advantage of desperate people. His conduct was at the most serious end of the spectrum and in order to maintain the reputation of the profession and protect the public, there being no exceptional circumstances the Tribunal determined that the only appropriate sanction was to strike the Respondent off the Roll of Solicitors.

**Costs**

15. Mr Gibson applied for costs for the Applicant in the amount of £1,653.25. The Respondent had been given the opportunity by way of the Standard Directions to provide evidence of his means if he wished to have his means taken into consideration and had not done so. The Tribunal assessed costs in the amount sought.

**Statement of Full Order**

16. The Tribunal Ordered that the Respondent, Nazakat Ali, 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 £1,653.25.

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

J. Devonish
Chairman