

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11339-2015

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

STEWART CHRISTIAN COSTELLO

Respondent

---

Before:

Mr D. Glass (in the chair)

Mr R. Hegarty

Mr M. R. Hallam

Date of Hearing: 16 September 2015

---

**Appearances**

Mr Inderjit Johal, Counsel 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

---

**JUDGMENT**

---

## **Allegations**

1. The allegations against the Respondent Stewart Christian Costello made by the Solicitors Regulation Authority were that:
  - 1.1 By virtue of his conviction in the Crown Court at Taunton on 9 April 2014 upon his own admission of two counts of fraud by abuse of position, he
    - 1.1.1 failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 the SRA Principles 2011;
    - 1.1.2 failed to act with integrity and therefore breached Principle 2 of the SRA Principles 2011; and
    - 1.1.3 failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services and therefore breached Principle 6 of the SRA Principles 2011.

## **Documents**

2. The Tribunal reviewed all the documents including:

### Applicant

- Rule 5 Statement dated 2 February 2015 with exhibit ECP 1
- Letter from the Applicant to the Respondent dated 24 August 2015 with enclosed:
  - Notice to Admit
  - Witness statement of PD dated 1 April 2015
- Applicant's statement of costs dated 10 September 2015

### Respondent

- E-mail from the Respondent to the Tribunal office dated 16 September 2015 timed at 08.31

## **Preliminary Issues**

3. The Tribunal noted that the Respondent was not present but he had sent an e-mail to the Tribunal office at 08.31 on the morning of the hearing from which it was clear that he did not intend to attend the hearing. For the Applicant, Mr Johal invited the Tribunal to proceed in the absence of the Respondent and referred to Rule 16(2) of The Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") which stated:

"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."

Mr Johal submitted that notice of the hearing was given to the Respondent in the Tribunal's Standard Directions for first instance proceedings dated 18 March 2015.

The document had been served personally by process server PD on 31 March 2015 and Mr Johal referred the Tribunal to his witness statement dated 1 April 2014 which recorded that the Respondent had admitted his identity and accepted service of the papers which were listed in the process server's witness statement. Mr Johal submitted that the requirements for the Tribunal to proceed in the absence of the Respondent set out in Rule 16(2) were clearly satisfied. The Tribunal had to take into account the criteria for so doing as set out in the case of R v Hayward, Jones and Purvis [2001] QB 862, CA. The Respondent had in Mr Johal's submission voluntarily absented himself from the hearing. He had not engaged with the proceedings at all; he had not filed an Answer or submitted anything in connection with the allegation or the facts of the case. He had not been in contact with the Applicant or the Tribunal. In those circumstances Mr Johal queried the genuineness of an assertion made by the Respondent in his e-mail of 16 September 2015 in respect of the history of the proceedings. As to the possibility that an adjournment might result in his attendance at a future hearing, Mr Johal submitted that it was unlikely that the Respondent would attend and in his e-mail received on the day of the hearing he had not made an application for an adjournment. Had he been in contact with the Applicant during the previous week or at any time before the day of the hearing indicating that he was struggling to attend the Applicant would have offered to pay his fare. Mr Johal submitted that the Tribunal could adjourn the hearing in order for an offer in those terms to be made to the Respondent if it believed that he genuinely wanted to attend, failing which he submitted the Tribunal could proceed in the Respondent's absence. The Tribunal was aware of the need to exercise its discretion to proceed in the absence of the Respondent with great care. The Respondent had been served with the papers as long ago as 31 March 2015. The documents served included not only the Rule 5 Statement and exhibits but significant other documents including the Standard Directions, the Solicitors Assistance Scheme Leaflet, the SDPR and the Tribunal's Guidance Note on Sanctions. Thus he had been given a great deal of information at the time of personal service. Nothing had been heard from the Respondent since then about his position in the matter. It had been open to him to attend or at least inform the Tribunal or the Applicant of difficulties if he had allowed sufficient time. In his e-mail the Respondent stated amongst other things that he was not permitted by the directions put in place in the case to provide any medical evidence or medical treatment records because his treatment had only finished in late July 2015. The Tribunal noted that the Standard Directions contained liberty to apply. The Tribunal did not consider that adjourning the hearing would be likely to secure the Respondent's attendance because of his history of lack of engagement until the morning of the hearing and decided to proceed in his absence.

### **Factual Background**

4. The Respondent was born in 1982 and admitted to the Roll of Solicitors in 2006.
5. The Respondent remained upon the Roll of Solicitors but did not have a current practising certificate.
6. In the Crown Court at Taunton on 9 April 2014, the Respondent was convicted upon his own admission of two counts of fraud by abuse of position.

7. On 2 May 2014, the Respondent was sentenced by Mr Recorder Galloway to 14 months imprisonment on each count to run concurrently.
8. On 25 July 2014, a duly authorised officer of the Applicant in exercise of the powers duly delegated to them considered the conduct of the Respondent and decided to refer him to the Tribunal.

### **Witnesses**

9. None.

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

10. **Allegation 1 - By virtue of his conviction in the Crown Court at Taunton on 9 April 2014 upon his own admission of two counts of fraud by abuse of position, he**
  - 1.1.1 failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 the SRA Principles 2011;**
  - 1.1.2 failed to act with integrity and therefore breached Principle 2 of the SRA Principles 2011; and**
  - 1.1.3 failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services and therefore breached Principle 6 of the SRA Principles 2011.**
- 10.1 For the Applicant, Mr Johal submitted that the Respondent had not practised since 2013 when he was an assistant solicitor at Harris Fowler Solicitors (“the firm”). The Respondent had not filed an Answer by 1 May 2015 as required by the Standard Directions or at all and indeed had given no indication of his position in respect of the factual allegations. The Applicant had sent him a letter asking him to admit facts and had received no answer. Mr Johal therefore invited the Tribunal to proceed on the basis that the Respondent did not take issue with any of the documents. He referred the Tribunal to the Certificate of Conviction exhibited to the Rule 5 Statement which showed that the Respondent had been convicted on 9 April 2014 and sentenced on 2 May 2014. Mr Johal relied on Rule 15(2) of the SDPR which stated:

“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.”

In the Rule 5 Statement it was set out that the state of mind for the offence of Fraud by Abuse of Position was dishonesty. Mr Johal submitted that the facts of the matter were quite straightforward. The Respondent was addicted to gambling and to satisfy his addiction on two occasions he had arranged the transfer of client monies from client account to his personal account in the total sum of £14,000. The monies

constituted compensation payments obtained for clients in personal injury matters. Ultimately the money had been repaid to those clients by the firm and not by the Respondent. Mr Johal referred the Tribunal to the sentencing remarks of Mr Recorder Galloway, salient points from which had been recited in the Rule 5 Statement. Mr Johal acknowledged that the Judge had some sympathy for the Respondent in the light of his addiction but viewed his breach of trust as very serious indeed and meriting a custodial sentence. The sentencing remarks included:

“...This offence is all about the breach of trust. It is difficult to think of a higher trust than between a solicitor and their client. Your clients expected you to fight for them, to make sure that they received the legitimate compensation for things that had happened to them. They trusted you to fight for them and to make sure they got the compensation they deserved and, I no doubt conclude, needed. You, however, breached that trust and you put their money into your account. I have to conclude that this was a very high breach of trust, not only to your clients but also to your firm, who undoubtedly will have been damaged in their reputation as a result of what you did...”

Mr Johal invited the Tribunal to find the allegations proved. The Respondent had been convicted of an offence of dishonesty in respect of client monies and thereby he had breached Principles 1, 2 and 3 as set out in the allegations.

- 10.2 The Tribunal had regard to submissions for the Applicant and the evidence. The Tribunal found that there were no exceptional circumstances to prevent it from relying upon the Certificate of Conviction. The Tribunal found all aspects of allegation 1 proved to the required standard.

### **Previous Disciplinary Matters**

11. None.

### **Mitigation**

12. The Respondent was not present to offer mitigation. In his e-mail dated 16 September 2015 he stated:

“My offence was caused by a compulsive disorder, for which I have been referred for medical treatment by my GP surgery. I completed such treatment between December 2014 and July 2015. There is now no suggestion that I am a continuing risk from this single episode of mental illness following my period of treatment.

I can confirm for you that all parties involved with my recent care, treatment and recovery now state to me that I am highly unlikely to be any future risk, given that my offence took place due to my recovery from my compulsive disorder and the unique circumstances at the time...”

The Respondent went on to refer to matters relating to his employment at the material time. He also stated that he would struggle to pay any costs or fines imposed due to his financial circumstances on anything other than an arrangement of a minimal payment (£10 or so) a fortnight taken from his Jobseeker's Allowance.

### Sanction

13. The Tribunal had regard to its Guidance Note on Sanctions, the mitigation offered by the Respondent in his e-mail of 16 September 2015 and the Judge's sentencing remarks. As set out in the Guidance Note on Sanctions the most serious misconduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty had been proved would almost invariably lead to striking off, save in exceptional circumstances. The Respondent's misconduct was of the utmost seriousness in that he had been convicted of an offence of dishonesty in the course of his business as a solicitor. He had very deliberately taken £14,000 of client money for his personal benefit in terms of paying his gambling debts which from March to September 2013 involved total bets of over half a million pounds and losses of some £20,000. The Judge had rightly said that it was difficult to think of a higher trust than that between a solicitor and client and the Respondent had breached that trust; what the Respondent had done went to core of a solicitor's obligations to protect client money. In terms of mitigating factors, the Judge had stated that the Respondent was treated as a man of previous good character and that the Judge accepted that he would never be in trouble again with the courts, had lost friends and family and had ruined his professional life. The Judge also referred to his efforts to address his addiction. The Tribunal noted that the Respondent had told the truth to the police when interviewed and pleaded guilty at the earliest opportunity. The sentencing remarks referred to his feeling remorse but his e-mail of 16 September 2015 to the Tribunal expressed no insight into what he had done either in terms of damage to the clients and the firm or of the considerable damage to the reputation of the profession. The Tribunal had found no genuine insight on the part of the Respondent such as would constitute a mitigating factor. The Respondent had been aware of these proceedings since March 2015 and had made no attempt to engage with the Applicant. He had ample opportunity to provide any medical or other relevant evidence to the Tribunal about whether he constituted a danger to the public but he had failed to do so. Even if he had, the seriousness of the misconduct was such that it was hard to see how his gambling addiction could be a sufficient exceptional circumstance in the terms of the case of Sharma v SRA [2012] EWHC 3176 (Admin) to justify a lesser sanction than strike off. It was said in the case of Bolton v The Law Society [1994] 1 WLR 512 that often a solicitor would say convincingly that he had learned his lesson and would not offend again and that this was a relevant issue to be considered but it did not touch "the essential issue which is the need to maintain among members of the public a well founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness". In the circumstances strike off was a proportionate and appropriate sanction.

### Costs

14. For the Applicant, Mr Johal applied for costs in the amount of £3,586.61 although this would have to be reduced for a shorter than anticipated hearing time. The Tribunal considered that preparation time in this case was somewhat high. Mr Johal agreed on

the basis that the case was to have been prosecuted by a new advocate who could not then attend and that his own preparation would have been rather less. Mr Johal also mentioned that the Applicant had omitted to include in the schedule a disbursement of £420 for the process server and he asked for the Tribunal to allow that although he acknowledged that the Tribunal might not be prepared to do so because notice had not been given to the Respondent. Although the Respondent had provided no evidence of his financial position save that in his e-mail to the Tribunal of 16 September 2015, he stated that he was in receipt of Jobseeker's Allowance which the Applicant did not challenge. Mr Johal pointed out that in the Standard Directions, the Respondent was warned that if he wished to have his means taken into consideration by the Tribunal in relation to possible sanctions and/or costs he should provide a Statement Means and supporting evidence by 18 August 2015 and he had failed to do so. The Tribunal was not prepared to allow the Applicant's claim for the disbursement omitted from the costs schedule, notice of which had not been given to the Respondent. The Tribunal summarily assessed costs in the sum of £2,500 making a reduction for preparation time and for the hearing. As to the ability of the Respondent to pay, the Tribunal noted the implication of the Respondent's receipt of benefit that he was not in employment and that the order for strike off meant that he would not be able to take up employment as a solicitor again but he had not taken the opportunity to provide any information about his capital assets. The Tribunal was not therefore prepared to interfere with the immediate enforceability of an order for costs. It relied on the practical approach of the Applicant in such circumstances to take a reasonable view about arrangements for payment and asked that Mr Johal make its views known to the Applicant. The Tribunal made an order costs in favour of the Applicant in the sum of £2,500.

### **Statement of Full Order**

15. The Tribunal Ordered that the Respondent, Stuart Christian Costello, 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 £2,500.00.

Dated this 15<sup>th</sup> day of October 2015  
On behalf of the Tribunal

D. Glass  
Chairman