

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11348-2015

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

KATHERINE JULIET GADSBY

Respondent

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Before:

Mr R. Hegarty (in the chair)

Mr D. Glass

Mr S. Marquez

Date of Hearing: 21 May 2015

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**Appearances**

Mr Alistair Willcox, Legal Adviser of the SRA, The Cube, 199 Wharfside Street, Birmingham B1 1RN for Applicant.

The Respondent appeared and was represented by Mr Chris Pickwick, solicitor of Pickwick Solicitors, 54 Monkams Drive, Woodford Green, Essex, IG8 0LD.

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**JUDGMENT**

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## **Allegations**

1. The allegations against the Respondent, Katherine Juliet Gadsby, were that she breached Principles 1, 2 and 6 of the SRA Principles 2011 in that she has been convicted of the following criminal offences:-
  - 1.1 One count of aiding and abetting fraud by abuse of position, contrary to section 2 of the Fraud Act 2006;
  - 1.2 One count of using a false instrument with intent it to be accepted as genuine, contrary to section 3 of the Forgery and Counterfeiting Act 1981;
  - 1.3 One count of concealing a document, contrary to section 342 of the Proceeds of Crime Act 2002.

## **Documents**

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

Applicant:

- Application dated 11 February 2015;
- Rule 5 Statement dated 11 February 2015 together with Exhibit AHJW1;
- Schedule of Costs of the Applicant dated 14 May 2015.

Respondent:

- Answer to the Applicant's Rule 5(2) Statement;
- Copy of Judgement in R v Katherine Gadsby [2015] EWCA Crim 81;
- Medical reports upon the Respondent dated 16 December 2013, 13 March 2014 and 1 July 2014;
- Financial statement of means of the Respondent, together with Respondent's Personal Financial Statement.
- Character Witness Testimonials

## **Factual Background**

3. The Respondent was born on 3 May 1960 and was admitted to the Roll of Solicitors on 1 May 1987. She did not hold a current Practising Certificate.
4. At all material times, the Respondent carried on practice as a solicitor at Foskett Marr Gadsby & Head Solicitors LLP ("the firm") of 181 High Street, Epping, Essex, CM16 4BQ.
5. The SRA received a letter, dated the 18 September 2013, from Mr Duncan Gadsby, the COLP of the firm. In that letter Mr Gadsby gave details as to the background of the case:

- In September 2011, the firm was instructed by a Sarah Foster in connection with her purchase of a council house from Epping Forest District Council under the Right to Buy Scheme;
  - The Respondent was the solicitor with conduct of the matter and the transaction completed on the 21 May 2012, with Sarah Foster receiving the benefit of a significant discount in the price based on the number of years she had been a council tenant;
  - Chelmsford City Council subsequently obtained a Court Order, pursuant to s.345(4)(a) of the Proceeds of Crime Act 2002, requiring production of the conveyancing file in respect of Sarah Foster's matter;
  - The Respondent reported receipt of the Production Order to a partner at the firm and was instructed to deliver the file to the Council;
  - It subsequently became apparent that the Council were investigating a fraud by Sarah Foster, and had reason to believe that she had claimed the benefit of the Right to Buy discount even though she had moved to live and work in New Zealand, and therefore failed the necessary residency qualification;
  - On the 2 September 2013, the Council served a formal request on the Respondent to attend an interview under caution on the grounds that they had reason to believe that she had committed a criminal offence;
  - The Respondent was also interviewed by the firm;
  - The Respondent admitted that she had forged Sarah Foster's signature on the counterpart lease during the course of the transaction;
  - It emerged that there had not been full compliance on the Respondent's part with the Production Order because the copy of the file supplied to the Council did not contain a number of e-mails that had not been printed off during the course of the transaction.
6. Subsequently, on the 8 July 2014, at the Chelmsford Crown Court, the Respondent pleaded guilty upon indictment to each of the offences specified in the allegations. The charges preferred against the Respondent arose out of the matters described in Mr Gadsby's letter.
7. At a Sentencing Hearing before Recorder Chandler at Chelmsford Crown Court on 9 October 2014, the Respondent received a custodial sentence of 12 months' imprisonment for the offence set out at allegation 2.1, 12 months' imprisonment for the offence set out at allegation 2.2 (to run concurrently) and 9 months' imprisonment for the offence set out at allegation 2.3 (to run concurrently). She was also ordered to pay a surcharge of £100.00. The Respondent appealed her sentence and on 16 January 2015 her sentence was varied by the Court of Appeal to 8 months imprisonment, suspended for 12 months, and she was therefore released from custody with immediate effect.

8. On 18 November 2014, the supervisor at the SRA with conduct of the matter wrote to the Respondent requesting an explanation for a number of breaches of the SRA Code of Conduct 2011 which he had identified.
9. The Respondent replied by letter dated the 28 November 2014. In her letter, she indicated that her situation had arisen “from a substantial and continued error of judgment” on her part where she “assisted a client in a situation where there was never any prospect or intention that...(she)...should gain any financial or other benefit from the transaction”. She stated that there was “no question” of her returning to work in the legal profession. She also made reference to a medical condition in respect of which various reports had been prepared.
10. On the 5 January 2015, an Authorised Officer of the SRA made the decision to refer the Respondent’s conduct to the Tribunal.

### **Witnesses**

11. None.

### **Submissions made on behalf of the Applicant**

12. Mr Willcox took the Tribunal through the relevant facts and to the Certificate of Conviction. He noted that under Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007:

“... 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.”

13. Mr Willcox asked the Tribunal to pay particular attention to the sentencing remarks of Mr Recorder Chandler at Chelmsford Crown Court on 9 October 2014, specifically:

“This is a particularly awful case for so many reasons but it is always particularly sad when one lawyer has to sentence another, particularly for offences involving things like forgery and dishonesty.”

“I quite accept that at least to start with Kate Gadsby did not appreciate that her client did not qualify for this particular scheme but she did in due course, but then she along with Ms Foster, persisted in running the transaction through to completion and indeed cooperating in trying to ensure that the local authority did not get to discover the true position and her clients ineligibility before completion took place. As well as doing that, she made the situation even worse for herself by having discovered that the conveyancing document which need to be signed as a deed had been witnessed by her client’s father which was not going to be acceptable--rather than sending it back and getting it done properly, which may have meant running up against time limits, she decided to strike out the signature, forge her client’s signature and then sign herself as a witness which was perfectly legitimate assuming that it was her

client that she had seen sign it (sic), but signing it as a witness on the basis that she had seen her client sign it when in fact she had signed herself.”

“...it is just too ridiculous for words and what is particularly important is that this was a solicitor and these actions completely undermine the integrity of the legal system and in particular here, the conveyancing system.”

“...Ms Gadsby initially wasn’t willing to disclose documents from the conveyancing file when the investigation was underway...”

“... Once it was perfectly plain to everybody that this was a fraud, that both of the defendants in this case persisted with running the transaction on to completion when both of them obviously shouldn’t have done and would have--- well, they may well not be in this position at all if, having fully understood it, the transaction was brought to an end but they both persisted and the evidence indicates that they were endeavoring to take steps to see to it that the local authority did not get to know that she was not eligible, that’s Ms Foster wasn’t eligible”.

“... It is absolutely imperative that we are able to rely upon members of the legal profession to uphold the integrity of our legal system and in this case particularly the conveyancing system. This sort of conduct is just--- well, it breaks it down completely and that has to be recognised, that this is somebody who throughout their career as a lawyer should be aware of the need to always act with the utmost honesty and integrity and if they find that they are getting into difficulties about it, to do something or say something about it and in this case the obvious thing to do was to say, “I can’t go on, I can’t continue to act in this transaction,” but then having decided not to do that and to cooperate in covering up the ineligibility and to have gone on and forged the signature of the client and witnessed it as if she had seen her client sign it, that is just too ridiculous for words and it is too serious for words as well.”

14. Mr Willcox also referred to the Judgment of Mr Justice Globe in the Court of Appeal, in particular:

“there were no aggravating factors in Sarah Foster’s case, whereas there was one aggravating factor in the appellant’s case, namely, her attempt to conceal evidence by failing to produce the full conveyancing file. However she did not destroy anything and the papers were ultimately produced to the investigation team. In accordance with her accepted basis of plea, it was an act of panic and stupidity.”

15. In Mr Willcox’s submission this was a very serious case where a solicitor had entered guilty pleas and been convicted of three criminal offences involving dishonesty. He asked the Tribunal to have due regard to the case of SRA v Sharma [2010] EWHC 2022 (Admin); 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.

## **Findings of Fact and Law**

16. 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.
17. The Applicant was required to prove the allegations beyond reasonable doubt.
18. **The allegations against the Respondent, Katherine Juliet Gadsby, were that she has breached principles 1, 2 and 6 of the SRA Principles 2011 in that she has been convicted of the following criminal offences:-**

**Allegation 1.1 - One count of aiding and abetting fraud by abuse of position, contrary to section 2 of the Fraud Act 2006;**

**Allegation 1.2 - One count of using a false instrument with intent it to be accepted as genuine, contrary to section 3 of the Forgery and Counterfeiting Act 1981;**

**Allegation 1.3 - One count of concealing a document, contrary to section 342 of the Proceeds of Crime Act 2002.**

- 18.1 The Respondent admitted each of the allegations.
- 18.2 The Tribunal found each of the allegations to have been proved beyond reasonable doubt on the facts and documents before it.

## **Previous Disciplinary Matters**

19. None.

## **Mitigation**

20. Mr Pickwick said that he was representing the Respondent on a pro bono basis and that he was a criminal lawyer who had represented her in the criminal proceedings.
21. Mr Pickwick told the Tribunal that the prosecution in the criminal trial had accepted that the Respondent had believed that Ms Foster was eligible at the outset but that during the process she had realised that Ms Foster was not eligible as she was resident in New Zealand and not intending to return. The Respondent accepted that continuing to act was wholly wrong as was preparing and signing the lease. The lease had been sent to New Zealand to be signed and witnessed and had been returned 2 to 3 days before completion but her client's signature had been witnessed by her client's father. The Respondent had thought that this error was her fault as she had not told her client that this was not acceptable. It was at that stage that she had a copied Ms Foster's signature. However completion had not gone ahead at that time for other reasons.

22. When the Council had requested the file the Respondent had panicked. There was no paper file as such but the Respondent had printed off the relevant documents but had omitted certain e-mails which identified her knowledge that Ms Foster was in New Zealand.
23. Mr Pickwick took the Tribunal through the medical reports upon the Respondent in some detail and said that it was clear that the Respondent would not have committed these offences had she not been suffering from a serious medical condition, which had not been diagnosed until after the relevant time. The sentencing Judge had insinuated that she had not done anything to address it but he had not appreciated that she was not diagnosed at the time.
24. Mr Pickwick urged the Tribunal to rely upon the Court of Appeal judgment rather than that given in the Crown Court. Mr Pickwick said that the Judge in the Crown Court had been wholly wrong in his sentencing of the Respondent. The Respondent had been sentenced on 9 October 2014 and draft grounds of appeal had been submitted within days. There had however been a delay in the matter reaching the Court of Appeal which had apparently been due to an illegal victim surcharge. The Respondent had been deemed not be suitable for bail in December 2014 and it was not until the matter was heard in the Court of Appeal in January 2015, and the sentence had been quashed, that she had been released from custody.
25. The Respondent had received no financial benefit as a result of her actions. It was difficult to understand why the Respondent had acted in such a manner but Mr Pickwick urged the Tribunal to take account of her state of mind at the relevant time. She had a previously unblemished record.
26. Mr Pickwick said that the Respondent fully expected to be struck off and had already written to the SRA to ask for her name to be removed from the Roll. She had attended the Tribunal to show her concern and to bring some finality to the matter.

### **Sanction**

27. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
28. The Tribunal worked carefully through the appropriate sections of the Guidance Note. It determined that the Respondent's actions had been spontaneous and a breach of trust; her motivation appeared to have been misplaced loyalty to her client and to extricate herself from a difficult and embarrassing situation.
29. The Respondent's actions had had a substantial impact upon the reputation of the profession and the public and she must have been able to foresee that such harm would ensue at the time of her actions. There had been a great departure from the standards of integrity, probity and trustworthiness expected of a solicitor.
30. The Respondent's actions were clearly dishonest and involved the commission of the criminal offence and she must have known that her conduct was in material breach of her obligations to protect the public and the reputation of the profession.

31. The misconduct had arisen because of the deception of a third party but the Respondent could and should have stopped it; she was an experienced solicitor. However, the misconduct had been of brief duration in a previously unblemished career and the Respondent had entered a guilty plea at an early stage both at the Crown Court and before the Tribunal.
32. There was no medical evidence before the Tribunal to suggest that the Respondent had not known what she was doing at the relevant time. The Tribunal had applied the principles in SRA v Sharma but could find no exceptional circumstances; indeed her misconduct was at the highest level and the only suitable sanction to protect the public and maintain the reputation of the profession was that of strike off; the public would expect nothing less.

### **Costs**

33. Mr Willcox made application for costs in the sum of £2,853.50.
34. Mr Pickwick said that the Respondent did not accept that the hearing had been necessary as she had herself applied to have her name taken off the Roll and had no current Practising Certificate. It had always been clear that the Respondent did not contest the SRA's application.
35. Mr Pickwick expressed his surprise at the inclusion of some of the items upon the Applicant's costs schedule, including the overnight stay of the SRA's representative for the hearing in London when the SRA was based in Birmingham, some 1 ½ hours by train from London.
36. Mr Willcox said that the practice of the SRA was not to allow voluntary removal of the names from the Roll when disciplinary proceedings were in prospect. In his submission the costs incurred were fair and proportionate.
37. The Tribunal summarily assessed costs in the sum of £2,500. In the Tribunal's determination the drafting and preparation times allowed for on the costs schedule were too high and the hearing had been shorter than anticipated. The Tribunal accepted that the SRA's policy concerning voluntary removal was correct and one that was adopted by most regulators.
38. The Tribunal had carefully examined the Respondent's Personal Financial Statement and had concluded that her assets were sufficient to meet the assessed costs. It would therefore make an immediate order for costs.

### **Statement of Full Order**

39. The Tribunal Ordered that the Respondent, Katherine Juliet Gadsby, 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 £2,500.00.

Dated this 1<sup>st</sup> day of July 2015  
On behalf of the Tribunal

D. Glass  
Solicitor Member

On behalf of R Hegarty, Chairman