

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11420-2015

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

NICHOLAS MARRAY

Respondent

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Before:

Mr J. A. Astle (in the chair)

Mr E. Nally

Mrs L Barnett

Date of Hearing: 11 February 2016

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## **Appearances**

Emma Priest, solicitor of 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 Allegation against the Respondent was:
  - 1.1 By virtue of his conviction for the offence of perverting the course of public justice the Respondent:
    - (a) failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the SRA Principles 2011;
    - (b) failed to act with integrity and therefore breached Principle 2 of the SRA Principles 2011; and
    - (c) failed to behave in a way which maintains the trust the public places 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 submitted by the Applicant and the Respondent which included:

### **Applicant:**

- Application dated 10 August 2015 together with attached Rule 5 Statement and all exhibits
- Applicant's Statement of Costs dated 3 February 2016
- Letter dated 21 January 2016 from the Applicant to the Respondent
- Witness Statement of Edward Coughlan, Process Server, dated 26 October 2015
- Land Registry copies of two Register entries relating to properties in which the Respondent had an interest
- Estimated property valuations for two properties from an internet website

## **Preliminary Issue**

### Service of Proceedings

3. The Respondent was not present at the hearing. Ms Priest, on behalf of the Applicant, submitted the Respondent had been properly served with notice of today's hearing by personal service on 24 October 2015. She referred the Tribunal to the witness statement of the process server, Edward Coughlan. Ms Priest also stated she had written to the Respondent on 4 February 2016 to send him the Applicant's Statement of Costs and on that date she had reminded him of the date of the hearing once again.

4. The Tribunal considered carefully all the documents before it and particularly the witness statement from Edward Coughlan. The Tribunal was satisfied the Respondent had been properly served with notice of this hearing.

#### Proceeding in Absence

5. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Respondent was clearly aware of today's hearing having been served personally with notice of it. He had not engaged with the proceedings at all. The Tribunal was satisfied the Respondent had voluntarily chosen to absent himself from the hearing and that even if the matter was to be adjourned it was unlikely he would attend on a future date.
6. This was a case involving a conviction relating to perverting the course of public justice which was a serious matter. Taking into account the circumstances of this case, the Tribunal was satisfied that it was appropriate, fair and in the public interest for the hearing to proceed in the Respondent's absence, and that matters should be concluded without any further delay.

#### **Factual Background**

7. The Respondent, born on 19 May 1963, was admitted to the Roll of Solicitors on 1 September 1992. He did not hold a current practising certificate.
8. On 18 July 2013, at the Birmingham Crown Court, the Respondent was convicted upon indictment of perverting the course of public justice and was sentenced to 2 years imprisonment. On 16 December 2014, the Respondent's appeal against his conviction was rejected by the Court of Appeal.

#### **Witnesses**

9. No witnesses gave evidence.

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

10. The Tribunal had carefully considered all the documents provided, and the submissions of the Applicant. The Tribunal confirmed the allegation had to be proved beyond reasonable doubt and that the Tribunal would apply the criminal standard and burden of proof when considering the allegation.
11. **Allegation 1.1: By virtue of his conviction for the offence of perverting the course of public justice the Respondent:**
  - (a) failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the SRA Principles 2011;
  - (b) failed to act with integrity and therefore breached Principle 2 of the SRA Principles 2011; and

**(c) failed to behave in a way which maintains the trust the public places in him and in the provision of legal services and therefore breached Principle 6 of the SRA Principles 2011.**

- 11.1 The Tribunal had before it a Certificate of Conviction from the Birmingham Crown Court dated 9 August 2013 which confirmed that on 18 July 2013, the Respondent had been convicted on indictment, of perverting the course of public justice. The Certificate also confirmed the Respondent had been sentenced to 2 years imprisonment on the same date.
- 11.2 The remarks of the Sentencing Judge, His Honour Judge Inman QC, provided some information about the background to the conviction. One of the Respondent's clients, S, had been released early from a prison sentence on home detention curfew. He had been serving a sentence for money laundering, which itself was part of a large police operation against those involved in Merseyside in Class A drugs. On 26 January 2012 the police in Liverpool had made a large number of contemporaneous arrests and although the Respondent's client, S, was not arrested, he went to see the Respondent to find out whether the Respondent knew what was happening. The Respondent had explained to another client that he had made enquiries and found out that the police believed S was still in prison but were intending to obtain a Production Order for him in order to arrest him. The Respondent, in effect, advised S that he was going to be arrested, but as the police mistakenly thought he was in prison on 26 January 2012, they had not arrested him. The Sentencing Judge stated the Respondent had given S at least some advice or suggestion that getting out of the country via Stranraer or Dublin may be sensible.
- 11.3 The Tribunal was satisfied that the Respondent had been convicted of a very serious criminal offence which went to the root of the administration of justice and the rule of law. It was inconceivable that the Respondent could not have known, as an officer of the Court, and as a solicitor of many years' experience that he had a duty not to do what he had done. In light of the Respondent's conviction, he had clearly failed to uphold the rule of law and the proper administration of justice. By being convicted of this offence, the Respondent had failed to act with integrity, particularly as he had not accepted that he had perverted the course of public justice. The Tribunal was satisfied the Respondent's conduct had not maintained the trust the public placed in him or in the legal profession. The Tribunal found the allegation proved.

**Previous Disciplinary Matters**

12. None.

**Mitigation**

13. There was no mitigation from the Respondent as he had not engaged with the proceedings.

**Sanction**

14. The Tribunal had considered carefully the documents before it. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also 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.

15. The Tribunal considered the aggravating and mitigating factors in this case. The misconduct involved an extremely serious criminal offence. It had been deliberate conduct and could have resulted in a police suspect escaping arrest. It was clear from the remarks of the Sentencing Judge that S very nearly succeeded in leaving the jurisdiction as he was on a plane which was actually taxiing to take off at Heathrow airport when the police were able to stop it, bring it back and arrest S, who in due course pleaded guilty to his involvement in the drugs conspiracy and received a substantial prison term. The Respondent's conduct had resulted in a significant and substantial operation to trace S to the airport and stop the plane. The Respondent ought to have known that his behaviour was in material breach of his obligations to protect the public and the reputation of the profession, particularly as he was an officer of the Court whose primary duty was to uphold the law. These were all aggravating factors.
16. The Respondent did have a previously long unblemished record and this was one isolated incident. These were mitigating factors. However, there was no evidence of remorse or insight from the Respondent who had failed to engage with the proceedings.
17. The Tribunal took into account the remarks of the Sentencing Judge who had stated:
- “... it is abundantly clear to me that by last year you had completely lost your moral compass and instead of seeking to uphold the course of justice you were doing what you could to assist to pervert it.
- ..... There is no higher degree of trust than [sic] can be placed upon anybody than as being an officer of the court and the system of justice places that highest degree of trust in you as a solicitor.
- The sentence that I pass must reflect the potential effect of an officer of the court moving from being a guardian of justice to one of its enemies.”
18. The Tribunal took into account the case of Bolton v The Law Society [1994] 1 WLR 512 and the comments of Sir Thomas Bingham MR who had stated:

“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... If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends on trust. A striking off order will not necessarily follow in such a case but it may well.”

19. When considering each of the possible sanctions that could be imposed the Tribunal concluded that the seriousness of the misconduct, namely a conviction which of its very nature undermined the role of a solicitor as an officer of the Court, was such that nothing short of an Order striking the Respondent off the Roll would be sufficient to protect the public and the reputation of the legal profession. Accordingly, the Tribunal Ordered the Respondent be struck off the Roll of Solicitors.

### Costs

20. Ms Priest, on behalf of the Applicant requested an Order for her costs. She provided the Tribunal with a Schedule of Costs claiming the sum of £3,752.70. Ms Priest submitted a few adjustments would need to be made to the figure as the hotel accommodation had been £165 rather than the £170 claimed, and her train fare had been £199.50 rather than the £180 claimed. The hearing time had been less than that claimed on the schedule so a deduction would need to be made for that.
21. Ms Priest submitted the Respondent had not provided any information about his financial means and whilst it was believed he was living at his parents' address at the moment, the Applicant believed he was the owner of a property and the joint owner of another property. The Tribunal was referred to copies of entries on the Land Register for further details of these properties. Ms Priest also provided the Tribunal with estimated valuations for similar properties in the same area which were taken from an internet website. She confirmed however that these valuations had not been served on the Respondent.
22. The Tribunal had considered carefully the matter of costs and was of the view that the costs claimed were a little high. The Tribunal reduced the amount claimed for preparation for the hearing by one hour, and also reduced the time claimed for advocacy at the hearing by half an hour. Having made adjustments for the hotel and travel expenses as requested, the Tribunal assessed the Applicant's overall costs at £3,350 and ordered the Respondent to pay this amount.
23. In relation to enforcement of those costs, the Tribunal noted the Respondent had interests in two properties, one of which was jointly owned. The Tribunal had regard for the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:
- “If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive.”
24. In this case the Respondent had not provided any documentary evidence of his income, expenditure, capital or assets and therefore it was difficult for the Tribunal to take a view of his financial circumstances. The Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay those costs in light of the Tribunal's Order depriving him of his livelihood. However, in this case, the Respondent clearly had interests in

properties and there was, therefore, no reason to restrict enforcement of the costs Order.

### Statement of Full Order

25. The Tribunal Ordered that the Respondent, NICHOLAS MARRAY, 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 £3,350.00.

Dated this 31<sup>st</sup> day of March 2015  
On behalf of the Tribunal



J. A. Astle  
Chairman

Judgment filed  
with the Law Society  
on 31 MAR 2016

