SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11430-2015

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

OSMAN SADIQ Respondent

Before:

Mr J. A. Astle (in the chair)
Mr E. Nally
Mrs L. Barnett

Date of Hearing: 11 February 2016

Appearances

Andrew Bullock, barrister 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.

JUDGMENT

Allegations

1. The Allegation against the Respondent was:

1.1 The Respondent breached Principles 1, 2 and 6 of the SRA Principles 2011 in that he had been convicted of criminal offences, namely twelve counts of using a false instrument with intent it be accepted as genuine, contrary to section 3 of the Forgery and Counterfeiting Act 1981.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 14 September 2015 together with attached Rule 5 Statement and all exhibits
- Applicant's Statement of Costs dated 3 February 2016
- Letter dated 23 December 2015 from the Applicant to the Respondent
- Letter dated 19 January 2016 from the Applicant to the Respondent
- Email dated 21 January 2016 from the Applicant to the Respondent

Respondent:

- Letter dated 18 January 2016 from the Respondent to the Tribunal
- Letter dated 18 January 2016 from the Respondent to the Applicant
- Letter dated 27 January 2016 from the Respondent to the Applicant
- Respondent's Response to the Applicant's Submission as to Costs dated 8 February 2016

Preliminary Issue
Service of Proceedings and Application to Abridge Time

3. On 3 February 2016, the Tribunal received an email from Ms Lavender, on behalf of the Applicant, making an application to abridge time under Rule 21(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("the Rules"). Ms Lavender attached copies of correspondence that had taken place between her and the Respondent. It appeared the Respondent had not received the requisite 42 days' notice of the date of the final hearing under Rule 12(1) of the Rules due to his relocation to a different prison.

4. Proceedings and notice of the substantive hearing had been served on the Respondent on 19 September 2015 at HMP Onley which was the correct address as confirmed by the Prisoner Location Service and HMP Onley. There was proof of delivery of these. However, on 18 January 2016, the Respondent wrote to the Applicant to confirm he had not received any of the documents as he had been moved to HMP Hollesley Bay in October 2015. He also stated he had appointed legal representatives and documents had not been served on them either. The Respondent had requested he be provided with a copy of the Rule 5 Statement and any other documents to be relied upon.

5. Ms Lavender stated she subsequently received confirmation from HMP Hollesley Bay that the Respondent had initially been held at HMP Onley, but had been transferred temporarily to HMP Pentonville from 10 September 2015 to 5 October 2015 following a Court Production Order. On his release, the Respondent was then transferred to HMP Hollesley Bay where he was now held. Ms Lavender sent a further letter dated 19 January 2016 to the Respondent at HMP Hollesley Bay again serving the proceedings, other documents and details of the hearing on him.

6. Ms Lavender stated she had spoken to the Duty Governor at HMP Hollesley Bay and he had confirmed the original Tribunal proceeding papers sent dated 18 September 2015 were on the Respondent's file together with other correspondence the Applicant had sent to him relating to the disciplinary proceedings. It was therefore possible that these had not been passed onto the Respondent by staff at HMP Onley.

7. The Respondent had sent a letter to the Applicant dated 27 January 2016 acknowledging receipt of her letter of 19 January 2016. He stated in that letter that he would not be attending the Tribunal hearing on 11 February 2016 and nor would he be sending any legal representatives.

8. The Tribunal having considered all the documents carefully had made an Order on 8 February 2016 granting the application to abridge time as requested. This was on the basis that proceedings had been served on the Respondent at his last known address on 19 September 2015, although it was accepted he did not become aware of the content of the Rule 5 Statement and the date of the substantive hearing until receiving the Applicant's letter of 19 January 2016. The Tribunal took into account the Respondent's letter of 27 January 2016 confirming he did not intend to attend the Tribunal hearing. That letter contained information which the Respondent requested the Tribunal take into account in his absence. The Tribunal also noted that in his letter to the Applicant dated 18 January 2016, the Respondent had stated he wanted matters to be resolved as quickly and as efficiently as possible.

9. On 11 February 2016, Mr Bullock submitted that although the Respondent was not present, or represented, proceedings had been served upon him and he had made it clear he had no intention of attending the hearing.

10. The Tribunal once again considered carefully all the documents before it and particularly the Respondent's letter of 27 January 2016. Having granted the application to abridge time under Rule 21(2) of the Rules, and taking into account the Respondent's submissions, the Tribunal was satisfied the Respondent had been properly served with notice of this hearing.

Proceeding in Absence

11. 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 with notice of it. He had confirmed in his letter of 27 January 2016 that he did not intend to attend the hearing or arrange for legal representatives to do so on his behalf. The Tribunal accepted he was somewhat constrained due to being in prison but he had not requested an adjournment, nor had he made arrangements for the prison to produce him at the hearing. The Respondent had made a number of submissions in his letter of 27 January 2016 which the Tribunal would take into account and he had also indicated in earlier correspondence to the Applicant that he wanted to resolve matters as quickly and as efficiently as possible. The Tribunal was therefore satisfied the Respondent had voluntarily chosen to absent himself from the hearing and that he would be unlikely to attend on a future date even if the matter was to be adjourned.

12. This was a case involving a conviction relating to twelve counts of using a false instrument with intent it be accepted as genuine 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

13. The Respondent, born on 24 May 1984, was admitted to the Roll of Solicitors on 2 July 2012. He did not hold a current practising certificate.

14. At all material times he carried on practice as a solicitor at Blakewells Solicitors Limited in Stratford, London.

15. On 15 December 2014, at the Snaresbrook Crown Court, the Respondent was convicted upon his own confession and on indictment of twelve counts of using a false instrument with intent it be accepted as genuine, contrary to section 3 of the Forgery and Counterfeiting Act 1981.

16. On 12 January 2015, the Respondent was sentenced to 6 years imprisonment in respect of each of the twelve offences with the prison terms to run concurrently. On 21 January 2015, the Sentencing Judge reconsidered the guidelines on sentencing and reduced the sentence to 4 years for each offence.

17. The Certificate of Conviction confirmed the Respondent had pleaded guilty and thereby admitted to 12 counts of using a false instrument with intent it be accepted as genuine during a period commencing on or about 1 May 2013 to on or about 7 August 2013. He had pleaded not guilty to 4 other identical charges and these were ordered to remain on file and not be proceeded with without leave of the Court.

18. The Sentencing Remarks made on 12 January 2015 provided some background to the circumstances of the offences. The twelve offences which the Respondent admitted and was convicted of arose out of "Zambrano applications" (also known as carer's

visas) to the Home Office. The purpose of such an application is to enable a direct relative or a legal guardian to acquire a derivative right of residence in the UK as the primary carer of a British citizen.

Witnesses

19. No witnesses gave evidence.

Findings of Fact and Law

20. 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, the burden resting upon the Applicant, and that the Tribunal would be using the criminal standard of proof when considering the allegation.

21. **Allegation 1.1: The Respondent breached Principles 1, 2 and 6 of the SRA Principles 2011 in that he had been convicted of criminal offences, namely twelve counts of using a false instrument with intent it be accepted as genuine, contrary to section 3 of the Forgery and Counterfeiting Act 1981.**

21.1 The Tribunal had before it a Certificate of Conviction from the Snaresbrook Crown Court dated 16 April 2015 which confirmed that on 15 December 2014, the Respondent had, on his own confession, been convicted on indictment of offences of using a false instrument with intent it be accepted as genuine. The Certificate also confirmed the Respondent had been sentenced to 4 years imprisonment for each offence to run concurrently.

21.2 The remarks of the Sentencing Judge provided some information about the background to the convictions. These stated:

> "What you did was take money from people in order to put forward on their behalf Zambrano applications. It looks as if they were pretty hopeless applications because the people you took money from were not carers for close relatives, as is required under the Zambrano arrangements, but what you got by those means were the details, passport photographs and letters from various vulnerable people, or those close to them, which outlined why those applicants should be given leave to remain in this country under the Zambrano regime.
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> Having got that material, you then had another series of clients who you attempted to help to get leave to remain in this country under the Zambrano regime by completely bogusly pretending that they were carers for those same vulnerable people, by putting in the vulnerable person's passport details and no doubt a photocopy of their passport, and also by yourself forging letters from those people in support of the applications. It is those forgeries which form the basis of the 12 counts, to which you have pleaded guilty, of using a false instrument.
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> They are forgeries in the sense that they are letters that you composed yourself, knowing they were false, which purport to come from, as I say, those

> vulnerable people, saying they need to be cared for and so on, when they were not authorised or written by those people at all. You, a solicitor, quite knowingly put forward those false letters in order to help evade the immigration controls. "

21.3 In his letter dated 27 January 2016 to the Applicant the Respondent stated:

> "Unfortunately I made a huge error of judgement which has affected me emotionally and psychologically……"

The Tribunal also noted that a letter from the Respondent's legal representatives to the Applicant dated 10 June 2015 confirmed he accepted he had breached the SRA Principles.

21.4 Principle 1 of the SRA Principles 2011 ("the Principles") stated:

> "You must uphold the rule of law and the proper administration of justice".

Principle 2 of the Principles stated:

> "You must act with integrity."

Principle 6 of the Principles stated:

> "You must behave in a way that maintains the trust the public places in you and in the provision of legal services".

21.5 The Tribunal was satisfied that the Respondent had been convicted of very serious criminal offences which went to the root of the trust placed in a solicitor by his clients. In light of the Respondent's convictions, he had clearly failed to uphold the rule of law and the proper administration of justice. The Respondent had failed to act with integrity as he had been convicted of offences which resulted from his gross abuse of the trust placed in him by vulnerable clients. 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

22. None.

Mitigation

23. In his letter of 27 January 2016 to the Applicant, the Respondent stated he was devastated at his actions and extremely sorry for what he had done. He stated he had worked extremely hard to become a solicitor and was proud of his profession and career. He stated he had made a huge error of judgement which had affected him emotionally and psychologically. He stated his professional life had been devastated and that he had no alternative career options. The Respondent requested the Tribunal give him "an opportunity to seek redemption" for his actions, and not take away his career which he was "greatly passionate about". The Respondent stated he would be

prepared to undertake any necessary course or action required to enable him to continue practising as a solicitor on his release from prison in August 2016. He also requested that the representations made by his legal representatives be taken into account and the Tribunal accept his remorse for his actions.

24. The Tribunal also had sight of a letter from the Respondent's legal representatives to the Applicant dated 10 June 2015. In this letter, it was stated the Respondent was utterly devastated and deeply affected by his convictions. He had genuine remorse for his actions and indeed had not defended the criminal case or attempted to justify his actions. He had made a conscious decision to accept full responsibility for his actions and pleaded guilty. The letter stated this demonstrated his genuine shame and extreme regret for the manner in which he had conducted himself. The letter stated that since making the regrettable mistake, the Respondent understood its severity and consequences, and had now realised the error of his ways which would never be repeated. He apologised for not informing the SRA of his convictions but as he had only been admitted in 2012 he had limited experience of practising as a solicitor.

25. In the letter dated 10 June 2015, the Respondent's legal representatives stated he had no previous criminal convictions and had always been a law-abiding citizen prior to these incidents. It had been his lifelong ambition to qualify as a solicitor and he had let himself down with his actions as well as letting down members of the public and the good name of his profession. He could not express in words the amount of guilt and shame he was suffering. The Respondent had been emotionally and psychologically affected by his convictions both in his professional and personal life. The Respondent pleaded for an opportunity to seek redemption and to retain his status as a solicitor.

Sanction

26. The Tribunal had considered carefully all the documents before it, and particularly the letters from the Respondent and his legal representatives. 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.

27. The Tribunal considered the aggravating and mitigating factors in this case. The misconduct involved 12 extremely serious criminal offences. The Respondent's conduct had been deliberate and calculated. He had deceptively and repeatedly used the personal details of vulnerable clients over a period of three months to try and obtain leave to remain in this country for a different set of clients. He had forged a number of letters in support of those applications and, knowing those letters to be false, he had submitted them to the Immigration Authorities. He had taken advantage of a number of vulnerable people grossly breaching the trust they had placed in him. 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 a solicitor whose primary duty was to uphold the law. These were all aggravating factors.

28. The Respondent had an unblemished record but had only been admitted in 2012. He was relatively inexperienced at the time of the offences. He had shown remorse, contrition and regret, and appeared to have insight into the seriousness of his actions. He had made admissions in both the criminal and disciplinary proceedings. These were all mitigating factors.

29. The Tribunal took into account the remarks of the Sentencing Judge who had stated:

> "… this is a very serious set of offences, because there are 12 of them, they were carried out by you to make money, the period they lasted was three months, they were clearly premeditated and, most of all, they were carried out by you in gross breach of trust of your position as a solicitor. They also involved, as it has been put, hijacking the identity of vulnerable people, whose details you used in breach of trust.
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> You did it, as I have said, in order to undermine immigration control, and you did it in a way that prejudiced the interests of all the clients you had attracted, save, perhaps, for those who knew perfectly well what they were getting into, and we do not know who knew exactly what. The one person who knew he was doing something wrong was you.
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> So that is the seriousness of the offence. So far as mitigation is concerned, you are 30 years old, not young in absolute terms but perhaps young in the world of professional fraud. You were very newly qualified and you may have been given a false impression about how a solicitor should behave while you were being trained at Ali Sinclair. It is also said that while working at Blakewells, you were effectively on your own and you had no supervision and no colleagues to call on for help. That point is really very largely undermined by the point I have already mentioned about the BBC Panorama programme and what emerged while you were a trainee at Ali Sinclair.
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> ….nobody actually managed to get through the immigration control system as a consequence of what you did; in other words, none of it succeeded. It seems that you stopped doing what you had been doing because the Home Office started to ask questions, but it is true that the actual effect was not great in those terms."

30. The Tribunal took into account the case of Bolton v The Law Society [1994] I 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."

31. When considering each of the possible sanctions that could be imposed the Tribunal concluded that the seriousness of the misconduct, namely 12 convictions of using a false instrument with intent it be accepted as genuine undermined the trust placed in a solicitor and went to the heart of the trust and confidence the public place in the profession. Whilst the Respondent had shown remorse and regret, and had pleaded to be allowed to remain a member of the profession, due to the gravity of his offences 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

32. Ms Bullock, on behalf of the Applicant requested an Order for his costs. He referred the Tribunal to the Applicant's Schedule of Costs claiming the sum of £3,207.90. Mr Bullock accepted some reduction would need to be made to the costs claimed. The hearing had taken less time than estimated and he also confirmed his preparation time had been less than claimed. However, he had been waiting for much longer than estimated due to other cases in the list that day.

33. Mr Bullock noted the Respondent had raised a number of objections in relation to the costs claimed. Mr Bullock submitted that whilst there was an objection to the time spent by the Applicant in tracing the Respondent, this only related to one hour where Ms Lavender had been communicating with the prison service in order to ensure service of proceedings could be affected.

34. Concerning the objections raised about writing to the Respondent's legal representatives, Mr Bullock submitted that whilst these solicitors had been acting for the Respondent during the initial investigation, there was no indication they were also instructed in the disciplinary proceedings. The limited correspondence which had been provided came from the Respondent himself and his solicitors had not been in contact. Mr Bullock stated that the SRA would normally correspond with the Respondent personally to ensure he was aware of the proceedings, particularly where there was any uncertainty about who was representing him. In this case, there was no indication that his solicitors would continue to act for him beyond the initial investigation.

35. The Respondent in his "Response to the Applicant's Submissions as to Costs" disputed the costs stating that additional costs had been incurred in confirming his correct location, and that he had been charged for the costs of the Applicant's internal communications and communicating with other parties. The Respondent stated that the Applicant was on notice that he had appointed legal representatives and all future correspondence was to be directed to them but the Applicant had failed to do so. If the Applicant had contacted his legal representatives, then time would not have been spent on tracing his location. The Respondent also stated that the time claimed for the substantive hearing should be reduced as it would not be lengthy given that the Respondent would not be attending and there would be no witnesses.

36. The Tribunal had considered carefully the matter of costs and was of the view that the costs claimed were a little high. The Tribunal did not allow any time for the Applicant's internal emails and was of the view that these should not be paid by the

Respondent. The Tribunal also reduced the time spent on preparation for the hearing by two hours, as the hearing had taken less time than was claimed. The Tribunal did allow an extra hour for waiting time as the case had been heard later than expected.

37. In relation to the Respondent's objections, there had clearly been an issue about the Respondent's location as he had not received the documents sent to him so the Applicant had been required to spend time ascertaining the correct position. His solicitors had not corresponded with the Tribunal at all and appeared to have only limited communications with the SRA prior to the issue of disciplinary proceedings. The Tribunal accepted it was necessary for the Applicant to correspond with the Respondent direct where there was any uncertainty on the position.

38. Having made the adjustments, the Tribunal assessed the Applicant's overall costs at £2,900 and Ordered the Respondent to pay this amount.

39. In relation to enforcement of those costs, 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."

40. 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 was young and should be able to obtain alternative employment on his release from custody. In the absence of financial information from the Respondent, there was therefore no other reason to restrict enforcement of the costs Order.

Statement of Full Order

41. The Tribunal Ordered that the Respondent, OSMAN SADIQ, 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 £2,900.00.

DATED this 5th day of April 2016
On behalf of the Tribunal

J. A. Astle
Chairman