SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11517-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ELENA QUINLIVAN Respondent

Before:

Mrs J. Martineau (in the chair)
Mr P. Lewis
Mr M. R. Hallam

Date of Hearing: 8 November 2016

Appearances

Mr Shaun Moran, 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

JUDGMENT

Allegations

1. The allegations against the Respondent, Elena Quinlivan, made by the Applicant were that by virtue of her conviction for the offence particularised below, she:

1.1(a) failed to uphold the rule of law and the proper administration of justice contrary to Rule 1.01 of the Solicitors Code of Conduct 2007

1.1(b) failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct 2007

1.1(c) behaved in a way that is likely to diminish the trust the public places in her or the legal profession contrary to Rule 1.06 of the Solicitors Code of Conduct 2007.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 23 May 2016 with exhibit ZC1
- Sentencing remarks of His Honour Judge N. Lorraine-Smith on 17 September 2012
- Letter from Imran Khan & Partners Solicitors to the Applicant dated 28 April 2016
- Extract from letter from Imran Khan & Partners Solicitors to the Applicant dated 7 July 2016
- Applicant's statement of costs dated 31 October 2016

Respondent

- None

Preliminary Issue

3. The Respondent was not present at the hearing. For the Applicant, Mr Moran asked the Tribunal to proceed in the absence of the Respondent by virtue of 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."

4. Mr Moran had provided a copy of a letter from Imran Khan & Partners Solicitors ("IKP") to the Applicant dated 28 April 2016 in response to a letter from the Applicant to the Respondent dated 20 April 2016. IKP's letter included:

> [The Respondent] has sought advice from us and instructs us to represent her interests. In that regard we should be grateful if you would ensure that all future communication is sent to us."

5. Mr Moran understood that the Tribunal had served notice of the proceedings on the Respondent care of IKP by letter dated 31 May 2016 (sent by recorded delivery). In a further letter to the Applicant dated 7 July 2016, IKP stated:

> "Having taken instructions from [the Respondent] she does not dispute that she pleaded guilty as set out and was sentenced to 2 years' imprisonment and was subject to a Confiscation Order under the Proceeds of Crime Act 2002."

6. The Tribunal had regard to Mr Moran's submissions and also noted that the Applicant had informed the Tribunal Office on 14 July 2016 that IKP had confirmed that it did not intend to file an Answer on behalf of the Respondent as directed by the Tribunal's Standard Directions issued on 31 May 2016. The Tribunal had in mind that it needed to exercise its discretion to proceed in the absence of the Respondent with great care in accordance with the criteria set out in the case of R v Hayward, Jones and Purvis [2001] QB 862 CA. It was satisfied that the Respondent had been properly served with the proceedings including a copy of the Tribunal's Standard Directions which at Direction 1 gave details of the date, time and location of the substantive hearing. The Tribunal determined that it would hear the application in the absence of the Respondent and without her being represented.

Factual Background

7. The Respondent was born in 1977 and was admitted as a Solicitor in 2008. The Respondent last held a practising certificate in 2009/2010. The Respondent did not hold a current practising certificate but remained on the Roll of Solicitors at the date of the Rule 5 Statement.

8. On 9 June 2011, at Southwark Crown Court, the Respondent was convicted upon her own confession on indictment of seven counts of conspiracy to obtain a money transfer by deception contrary to section 1(1) of the Criminal Law Act 1977.

9. On 17 September 2012, the Respondent was sentenced to two years' imprisonment. A confiscation order was made under the Proceeds of Crime Act 2002 in the amount of £108,405.46 or in default the Respondent was to serve two years imprisonment consecutive to any term of custody which she was liable to serve for the substantive offence(s).

Witnesses

10. None.

Findings of Fact and Law

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

12. **Allegation 1. By virtue of her conviction:**

1.1(a) [The Respondent] failed to uphold the rule of law and the proper administration of justice contrary to Rule 1.01 of the Solicitors Code of Conduct 2007

1.1(b) failed to act with integrity contrary to Rule 1.02 of the Solicitors Code of Conduct 2007

1.1(c) behaved in a way that is likely to diminish the trust the public places in her or the legal profession contrary to Rule 1.06 of the Solicitors Code of Conduct 2007.

12.1 For the Applicant, Mr Moran referred to the Rule 5 Statement where it was asserted that the guilty mind of the offences of which the Respondent had been convicted was dishonesty which must be proved to the standards set out in R v Ghosh [1982] QB 1053. He submitted that the Respondent had been convicted of seven counts on her own confession on indictment. Mr Moran confirmed after a short adjournment that the offence was covered at the time by section 15(A)(1) of the Theft Act 1968. Mr Moran drew the attention of the Tribunal to the sentencing remarks of His Honour Judge Lorraine-Smith made on 17 September 2012 at Southwark Crown Court which he submitted put the offences in greater context:

> "Over a period of two-and-a-half years you obtained mortgages to the tune of over £1.3 million….
>
> The housing market was promising and your head was turned by the fraudulent success of [a co-conspirator]…
>
> You are a very intelligent and capable woman a trained and qualified lawyer who has worked in the house market and cannot be described as very naive. These frauds involved not just falsified payslips and work records but a forged passport and two forged driving licence (sic); items which merit prison sentences on their own."

Mr Moran submitted that the Judge talked in the context of frauds. He therefore submitted that in accordance with Rule 15(2) the offence of which the Respondent was convicted was conclusive proof of dishonesty and he asked the Tribunal to take account of that in imposing sanction. Mr Moran relied on the certificate of conviction dated 19 February 2016. Rule 15(2) of the SDPR provided that:

> "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."

12.2 Mr Moran submitted that by virtue of what he submitted was a conviction for dishonesty the Respondent was in breach of Rules 1, 2 and 6 of the Solicitors Code of Conduct. The counts on the indictment were identical in their wording and the Applicant did not intend to go behind the certificate of conviction save that the Applicant relied on Rule 15(2) so that the certificate was conclusive proof of the facts upon which the Crown Court passed sentence.

12.3 The Tribunal considered the evidence and the submissions for the Applicant. It noted that the 7 July 2016 letter from the Respondent's solicitors had stated that the matters which gave rise to the prosecution occurred between 2003 and 2005 before the Respondent was admitted as a solicitor on 15 May 2008. There was case law including In Re a Solicitor (Ofosuhene) CA 21 February 1997 which set out that the Tribunal had jurisdiction to deal with misconduct which had occurred before the Respondent was admitted as a solicitor. Dishonesty was not expressly pleaded in the allegation and the Tribunal was therefore not prepared to deal with the matter on the basis of an allegation of dishonesty. However the Tribunal was satisfied to the required standard on the evidence of the certificate of conviction dated 19 February 2016 that the Respondent had been convicted of a serious criminal offence and as alleged in allegation 1.1 had thereby failed to uphold the rule of law and the proper administration of justice, thus breaching Rule 1.01; that she had failed to act with integrity in breach of Rule 1.02 and that she had behaved in a way likely to diminish the trust of the public, thus breaching Rule 1.06. The Tribunal found allegation 1 proved to the required standard on the evidence.

Previous Disciplinary Matters

13. None.

Mitigation

14. The Respondent had not appeared and had not offered any mitigation.

Sanction

15. The Tribunal had regard to its Guidance Note on Sanctions. It considered that the Respondent's conduct had been very serious and the certificate of conviction demonstrated her culpability for that misconduct. She had control of or responsibility for the circumstances giving rise to the misconduct. The Respondent's actions had a very serious impact upon the reputation of the profession. The Respondent had conspired to obtain a money transfer by deception. The Tribunal noted that according to the sentencing remarks the Respondent had been motivated by personal profit as the mortgages in question:

> "… were for the house that you wanted to live in with your husband but mortgages were thereafter for houses which you intended to let out for profit or for others to let out at a profit…"

16. The fact that the misconduct involved the commission of a criminal offence was an aggravating factor as was the fact that the misconduct had been repeated and continued over a period of time. It was such that the Respondent ought reasonably to have known that she was in material breach of her obligations to protect the public and the reputation of the legal profession. The Respondent had not offered any mitigation but the Tribunal also noted that the sentencing remarks included a reference to "very real mitigation" to which the Judge had regard but it was not sufficient to prevent him imposing an immediate custodial sentence. Aside from that the Tribunal had no information about whether the loss of been made good or what insight if any Respondent had gained into her misconduct. She had however pleaded guilty in the criminal proceedings. The Respondent had been the subject of a criminal conviction involving a very large amount of money. The certificate of conviction showed that she had been convicted on seven counts. Her misconduct was far too serious for no order or a reprimand to be imposed or even for a fine. The Tribunal considered that the seriousness of her conduct was such that a restriction order would not be appropriate and the Respondent should be removed from practice. A suspension would not suffice to protect the public or the reputation of the profession. The misconduct represented a very significant departure from the complete integrity, probity and trustworthiness expected of a solicitor as set out in the case of Bolton v Law Society [1994] 1 WLR 512. The Tribunal determined that the Respondent fell squarely within the Guidance Note regarding strike off as this was a case where the Tribunal had determined that the seriousness of the misconduct was at the highest level such that a lesser sanction was inappropriate and the protection of the public and of the reputation of the legal profession required it.

Costs

17. Mr Moran applied for costs in the amount of £4,381.10. The Tribunal queried the time spent on documents having regard to the brevity of the Rule 5 Statement and that it was very straightforward. Mr Moran indicated that his colleague who prepared the Rule 5 Statement had left the Applicant's employment over a month before and the pre-reading reading had taken a considerable time because he had needed to be sure that the file was in order. However, Mr Moran indicated that the time claimed for the hearing should be reduced by at least half and that his travel time had already been apportioned in the schedule of costs because he was attending the Tribunal for other matters. The Tribunal considered that there had been some duplication in the work in preparation for the matter and that the amount of time claimed to prepare the Rule 5 Statement was excessive. It also noted that a very considerable amount of time had been claimed for the costs of the Applicant's Supervision Department, the reason for which was not obvious. The Tribunal summarily assessed costs in the sum of £2,500. The Respondent had been aware in the Standard Directions that it was open to her to ask for her means to be taken into account in the Tribunal's decision-making and that if she failed to do so the Tribunal would be entitled to determine the sanction and/or costs without regard to her means. She had not communicated with the Tribunal and the Tribunal therefore considered it appropriate to make an immediately enforceable order for costs.

Statement of Full Order

18. The Tribunal Ordered that the Respondent Elena Quinlivan, 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 23rd day of November 2016
On behalf of the Tribunal

J. Martineau
Chairman