SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11519-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

VICTORIA EMMA CRAIG Respondent

Before:

Mr A. N. Spooner (in the chair)
Mr W. Ellerton
Mr M. C. Baughan

Date of Hearing: 8 November 2016

Appearances

Mr Andrew Bullock, barrister, 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 made by the Solicitors Regulation Authority ("SRA") were that:

1.1 She failed to answer a question put to her by her employer on 28 May 2015 concerning her ability to practice as a solicitor with proper frankness and candour and thereby breached Principles 2 and/or 6 of the SRA Principles 2011 ("the Principles").

1.2 Following the suspension of her practising certificate on 10 April 2015, she nevertheless continued to practice as a solicitor up until 24 July 2015 contrary to Rules 9.1 and 9.2 of the SRA Practice Framework Rules 2011 ("the PFR 2011") and thereby breached Principles 2 and/or 6 of the Principles.

1.3 She failed to keep proper accounting records, in respect of a recognised body of which she was the sole director, to accurately show the position with regard to money held for each client and trust in breach of Rule 1.2(f) of the SRA Accounts Rules 2011 ("the SAR").

1.4 She failed to keep properly written up accounting records at all times, in respect of a recognised body of which she was the sole director, and to retain copies of the same for at least 6 years in accordance with Rule 29 of the SAR.

1.5 She retained a mixed payment of £5,855 received from Allianz in office account from 17 September 2014 until 29 April 2015 (at the earliest) in breach of Rules 14.3 and 18.2 of the SAR.

1.6 She failed to produce documents, information and/or explanations as requested by the Applicant on 10 September 2015 and 16 September 2015 and thereby breached Rule 31 of the SAR.

1.7 Between 13 October 2014 and 21 November 2014 she failed to respond to communications and correspondence from the SRA in relation to the closure of the firm of Craig & Co Law Ltd and thereby: –

1.7.1 Breached Principle 7 of the Principles; and
1.7.2 Failed to attain Outcome O(10.6) prescribed by the SRA Code of Conduct 2011 ("the SCC").

1.8 She failed to comply with a notice pursuant to Section 44B of the Solicitors Act 1974 as amended served upon her on 21 November 2014 and thereby: –

1.8.1 Breached Principle 7 of the Principles;
1.8.2 Failed to attain Outcome O(10.6) prescribed by the SCC;
1.8.3 Further failed to attain Outcome O(10.8) prescribed by the SCC; and
1.8.4 Further failed to attain Outcome O(10.9) prescribed by the SCC.

2. Dishonesty was alleged in respect of allegation 1.1, however dishonesty was not an essential ingredient to sustain the allegation.

Documents

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

- Notice of Application dated 6 June 2016
- Rule 5 Statement and Exhibit "AJB1" dated 27 May 2016
- Applicant's Schedule of Costs dated 20 October 2016
- Statement of Caron Taylor, Process Server, dated 26 August 2016

Preliminary Matter

4. The Respondent did not attend the hearing and was not represented. The SRA had written to the Respondent at her last known address with notification of the hearing date. Those letters had not been returned. The Tribunal had written to the Respondent on 6 June 2016 notifying her of the hearing date. That letter was sent by recorded delivery on 6 June 2016 and was signed for on 7 June 2016.

5. Mr Bullock applied for the case to proceed in the Respondent's absence, pursuant to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"), which provided that:

> "If the Tribunal is satisfied that notice of the hearing was served on the Respondent in accordance with these Rules, the Tribunal shall have the power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

6. Mr Bullock submitted that the Respondent would suffer no prejudice if the application were to be heard in her absence, as the Tribunal had the power to order a rehearing under the provisions contained in Rule 19 of the SDPR.

7. Mr Bullock referred the Tribunal to the witness statement of Caron Taylor dated 26 August 2016. Ms Taylor, a process server, confirmed that on 25 August 2016, she personally served the Respondent with documents including:

- Form of Application
- Applicant's statement and exhibit
- Memorandum of a Case Management Hearing

Ms Taylor further stated that the Respondent had "readily admitted her identity and accepted the documents."

8. Mr Bullock submitted that it was clear that the Respondent had been properly served with the proceedings and had notice of the hearing.

9. The Tribunal saw its letter of 6 June 2016 and noted that it had been signed for on 7 June 2016. Further, the Tribunal noted the content of the statement of Caron Taylor and determined that the Respondent had been properly served with the proceedings and notice of the hearing. The Respondent had not made any contact with the Applicant or the Tribunal concerning this matter. The Tribunal had regard to the

principles in the cases of R v Jones [2002] UKHL 5 and Rehman v The Bar Standards Board [2016] EWHC 2023 (Admin).

10. The Tribunal was satisfied that the Respondent was fully aware of the hearing date and had chosen not to attend the hearing, such that she had plainly waived her right to appear. The Tribunal was satisfied that in this instance the Respondent had chosen voluntarily to absent herself from the hearing, and was unlikely to attend if the matter were to be adjourned. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible, particularly given that the allegations against the Respondent included an allegation of dishonesty. It would be unjust and contrary to the interests of the public to adjourn the matter. In light of these circumstances, it was just to proceed with the case, notwithstanding the Respondent's absence.

Factual Background

11. The Respondent was born in December 1977, and admitted to the Roll of Solicitors in November 2011. Her name remained upon that Roll. Between 27 September 2012 and 10 April 2015, the Respondent was the sole director of Craig & Co Law Ltd ("the Firm"). The Firm was intervened into on 10 April 2015. During the intervention, issues arose in relation to the books of account of the Firm such that an inspection by the Applicant of the books of account commenced on 2 September 2015.

Allegations 1.1 and 1.2

12. Rule 9.1 of the PFR 2011 provided that:

> "9.1 If you are practising as a solicitor … you must:
>
> (a) have in force a practising certificate issued by the SRA; or
> (b) be exempt under section 88 of the Solicitors Act 1974 from holding a practising certificate.

13. Rule 9.2 of the PFR 2011 provided that:

> "9.2 You will be practising as a solicitor if you are involved in legal practice and:
>
> (a) your involvement in the firm or the work depends on your being a solicitor;
> (b) you are held out explicitly or implicitly as a practising solicitor;
>
> (c) you are employed explicitly or implicitly as a solicitor; or
>
> (d) you are deemed by section 1A of the Solicitors Act 1974 to be acting as a solicitor."

14. On 9 April 2015, an email together with a number of attachments was sent to the Respondent by the Applicant. She was informed, amongst other things, that her practising certificate was suspended with immediate effect pursuant to powers

conferred on the Applicant under Section 15 (1A) of the Solicitors Act 1974. The Respondent was also put on notice of the intervention into her Firm.

15. Mr Neil Boland of Stephensons Solicitors ("SS") was appointed by the SRA as the Intervention Agent into the Firm. Mr Boland, when he attended at the practice address, was unable to gain access to the premises. He attended the home address that he had for the Respondent. The door at that address was answered by a gentleman who identified himself as the Respondent's father, who explained that the Respondent was at work. Mr Boland was able to ascertain that the Respondent was working for Optimum Law Solicitors ("OLS").

16. On 27 May 2015, Mr Boland called Mr Rigby, a director at OLS, and left a message asking Mr Rigby to call him. The message referred to the intervention into the Respondent's Firm. Mr Rigby believed that the Respondent's Firm was closed in or before December 2014.

17. As a result of the telephone message, Mr Rigby emailed the Respondent on 28 May 2015 stating "I've had a message from a partner at Stephensons regarding the intervention in your firm. Is there anything I should know about before I speak to him? Are you subject to any sanctions or restrictions on your practising certificate?"

18. The Respondent replied in an email of the same date, in which she stated: "Not as far as I am aware … I have had no cases open in my own firm from September/October last year." On 29 May 2015, Mr Boland spoke to Mr Rigby who confirmed that the Respondent was employed as a solicitor at OLS.

Allegations 1.3 and 1.4

19. Rule 1.2(f) of the SAR provided that a solicitor must "keep proper accounting records to show accurately the position with regard to the money held for each client and trust". Rule 29 of the SAR contains provisions with which a solicitor must comply in relation to their accounting records.

20. Both the intervention agents and the Forensic Investigation Officer were unable to obtain full accounting records. SS were not given access to the accounting records on the date of intervention; the Respondent informed Mr Boland that her accounting records were with a friend. The Respondent attended SS's offices on 27 April 2015 and provided them with a cheque book and paying in book for the Firm's office account. SS obtained bank statements for the period 1 April 2014 – 29 April 2015 directly from the Respondent's bank.

21. A number of requests were made to the Respondent by both SS and the Forensic Investigation Officer, for the provision of accounting information, however no further information was received from her.

Allegation 1.5

22. Rule 14.3 of the SAR provided that client money must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds. Rule 18 of the SAR deals with the

receipt of mixed payments and provides that mixed payments (client and office money paid at the same time) must either be split between client and office account as appropriate, or placed into a client account without delay.

Ms BD

23. The Firm were instructed by Ms BD. An unsigned Conditional Fee Agreement ("CFA") was found on the file. The CFA referred to the Firm charging a success fee of a maximum of 25% which was payable by the client from any general damages and damages for pecuniary loss.

24. On 17 September 2014, the Firm received £5,885 from Allianz (the third party insurer) in this matter, which consisted of £4,500 damages, £455 Rehabilitation fees and £900 for a medical report. £1,125 of the damages was properly payable to the Firm pursuant to the CFA. On 30 September 2014, the Firm wrote to Ms BD, enclosing a cheque in the sum of £3,375 in settlement of her claim. A cheque was also sent out in relation to the Rehabilitation fee. There was no evidence of any payment in relation to the £900 for the medical report. A review of the bank statements showed that the cheques sent out in this matter had not cleared through the bank. The Forensic Investigation Officer determined that as at 29 April 2015, there existed a minimum cash shortage of £4,730 in relation to this matter.

Allegation 1.6

25. Rule 31 of the SAR provided that a solicitor must, at the time and place fixed by the SRA, produce to any person appointed by the SRA any records, papers, client and trust matter files, financial accounts and other documents, and any other information necessary to enable preparation of a report on compliance with the Rules.

26. On 27 August 2015, the SRA wrote to the Respondent, setting out the date time and location of an investigation, as well as details as to which records should be made immediately available. The letter was sent to the Respondent's home address by recorded delivery.

27. On 2 September 2015, the letter was returned to the SRA. On 10 September 2015, a further copy of that letter was sent, via recorded delivery, to the Respondent's parents' address, this being the address that she had provided to SS as a contact address. The letter was signed for by "Craig" on 11 September 2015. No response was received to that letter, or the subsequent email sent to the Respondent's personal email address on 16 September 2015.

Allegation 1.7

28. Principle 7 stipulated that: "You must comply with your legal and regulatory obligations and deal with your regulators … in an open, timely and co-operative manner". O(10.6) of the SCC provided that a solicitor must "… co-operate fully with the SRA … at all times".

29. On 13 October 2014, the Applicant received a call from JS, a client of the Firm. JS explained that despite making phone calls, emailing the Firm, and sending a letter by

recorded delivery, he had had no contact with the Firm since 21 May 2014. On the same day the Legal Ombudsman also contact the Applicant to enquire whether the Firm had closed.

30. On 13 October 2014 the Applicant called the Respondent. On the first occasion a message was left asking the Respondent to call the SRA. On the second occasion the Applicant was unable to leave a message as the voicemail facility was full. Further, on the same day, the Applicant called the Respondent's mobile phone, again leaving a message asking that she call as a matter of urgency,

31. On 14 October 2014, the Applicant emailed the Respondent; that email was sent to a Hotmail address. The email again requested urgent contact by the Respondent. On 15 October 2014, a letter was sent to the Firm's office by recorded delivery stating that the SRA had been trying to contact the Respondent as a report had been received that the Firm may be closed. The letter reminded the Respondent of her "responsibility to deal with your regulator in an open, timely and co-operative manner as set out in the SRA Principles 2011 Principle 7, together with the mandatory Outcomes as set [out in] Chapter 10 of the SRA Code of Conduct 2011."

32. No response was received to any of those communications. The Respondent was again written to on 23 October 2014. That letter informed her that the SRA was starting a formal investigation into, amongst other things, her failure to respond. The letter required her to respond to allegations that in failing to respond to the SRA she had breached Principle 7 and Outcomes O(10.1) and O(10.3) of the SCC. The Respondent did not respond to that letter.

33. On 18 November 2014, the Applicant sent various documents (including the letters of 13 and 23 October 2014) to her home address via recorded delivery. That letter was signed for by an individual with the name 'Craig' at 10.25am on 21 November 2014.

Allegation 1.8

34. Outcome O(10.8) required that solicitors comply promptly with any written notice from the SRA. Outcome O(10.9) set out the steps which a solicitor must take pursuant to such a notice.

35. On 5 November 2014, the Applicant gave notice to the Respondent pursuant to Section 44B of the Solicitors Act 1974, requiring her to provide the information and documents specified therein within seven days of the delivery of that notice. That notice was left at the Firm's address, emailed to the Respondent's Hotmail account on 5 November 2014, and was also amongst the documents sent to her home address by recorded delivery on 18 November 2014. The Respondent failed to comply with that notice.

Witnesses

36. None.

Findings of Fact and Law

37. 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.

38. **Allegation 1.1 - She failed to answer a question put to her by her employer on 28 May 2015 concerning her ability to practice as a solicitor with proper frankness and candour and thereby breached Principles 2 and/or 6 of the Principles.**

Allegation 1.2 - Following the suspension of her practising certificate on 10 April 2015, she nevertheless continued to practice as a solicitor up until 24 July 2015 contrary to Rules 9.1 and 9.2 of the PFR 2011 and thereby breached Principles 2 and/or 6 of the Principles.

38.1 Mr Bullock submitted that the Respondent owed a duty of good faith and fidelity to her employer and as such she was obliged to answer Mr Rigby's question in a frank and candid manner; her response was neither frank nor candid because it was apt to create the impression that she was able to practice as a solicitor, without restriction, when she knew that she could not. Mr Bullock submitted that the Respondent knew that she was unable to practice as, having received the email/letter of 9 April 2015, the Respondent, on 13 April 2015, forwarded an email to the Applicant requesting the re-instatement of her practising certificate. The Applicant responded to that email on 29 April 2015 advising her of the practical steps she would need to take to enable her to practice as a solicitor. The Applicant had no further communication with the Respondent subsequent to that email that could have led her to believe that the position with respect to her right to practice had been altered.

38.2 Notwithstanding the suspension of her practising certificate on 10 April 2015, the Respondent continued to practice as a solicitor in breach of the Rules 9.1 and 9.2 of the PFR 2011.

38.3 The Tribunal determined that it was clear, on the evidence, that the Respondent was aware that she did not have a practising certificate. On 9 April 2014 the Respondent was notified that as a result of the intervention, her practising certificate had automatically been suspended. Further, the Respondent was aware of that suspension as on 13 April 2015 she emailed the SRA stating that she wished to apply for her practising certificate to be re-instated. That email, the Tribunal determined, was incontrovertible evidence that the Respondent was aware that she was not entitled to practice as a solicitor. At that time the Respondent was employed by OLS as an assistant solicitor, and remained in practice until her summary dismissal on 24 July 2015. Accordingly, the Tribunal found, beyond reasonable doubt that the Respondent had practiced as solicitor in breach of Rules 9.1 and 9.2 of the PFR 2011.

38.4 The Tribunal determined that the Respondent had failed to answer her employer's question in a frank and candid manner as pleaded and alleged. It was clear that Mr Rigby was enquiring as to the Respondent's right to practice. The Respondent was aware that she did not have a practising certificate at that time, but failed to disclose

that to Mr Rigby. The Tribunal noted that in her disciplinary hearing at OLS the Respondent had explained that she had made a mistake by not telling the Firm that she did not hold a practising certificate and it became too difficult to do so after some time had elapsed.

38.5 The Tribunal determined that no solicitor of integrity would have conducted themselves in this manner. All solicitors, no matter how inexperienced, know that in order to practice, a solicitor must first be in possession of a practising certificate; possession of a practising certificate was fundamental to the ability to practice. The Respondent not only practiced without a certificate entitling her to do so, but when asked about conditions or restrictions, gave a vague answer which was bound to lead her employer to believe that she was in possession of a certificate and entitled to practice. It was clear that the Respondent, in behaving in the way that she did, had lacked integrity. The Tribunal determined that it was also clear that her conduct was such that she had failed to maintain the trust the public placed in her as a solicitor and in the provision of legal services. Members of the public would expect someone, who is qualified, and had previously run their own practice, to abide by the fundamental requirements that enables a solicitor to hold themselves out as such. The Respondent's behaviour was woefully short of the standards that members of the public would expect. Accordingly, the Tribunal found allegations 1.1 and 1.2 proved beyond reasonable doubt on the evidence, facts and submissions.

Dishonesty in relation to Allegation 1.1

38.6 Mr Bullock submitted that the Respondent's actions were dishonest according the combined test laid down in Twinsectra v Yardley and others [2002] UKHL 12, which required that the person had acted dishonestly by the ordinary standards of reasonable and honest people (the objective test), and realised by those standards she was acting dishonestly (the subjective test).

38.7 By failing to disclose to Mr Rigby that her practising certificate was suspended and she was therefore not entitled to practice as a solicitor, the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people; it would be regarded as dishonest by such people for the Respondent to answer the question asked of her in such a way as to give the impression that she had the right to practice when she knew she did not.

38.8 Further, Mr Bullock submitted, that the Respondent was aware that her actions were dishonest as:

- The question asked of her concerned matters which were fundamental to her ability to perform her duties as an employed solicitor. She must have known that Mr Rigby ascribed importance to her answer.

- The question was clearly asked so as to establish what, if any, restrictions existed on her right to practice. She therefore acted with deliberation in giving an answer that was neither frank nor candid and eluded the point being raised.

- She must have understood that she could not continue to be employed as a solicitor if Mr Rigby appreciated that she was not entitled to practice. This

provided her with an obvious motive for answering the question in the way that she did. No honest solicitor would think it right to conceal their inability to practice from their employer in order to preserve their employment.

- She continued to be employed for 2 months after the email from Mr Rigby; she had plenty of time and opportunity to appraise him of the true position.

38.9 The Tribunal determined that reasonable and honest people operating ordinary standards would find it dishonest for a solicitor to give the impression that they were entitled to practice when they knew they were not, and accordingly the objective test was satisfied.

38.10 The Tribunal determined that the Respondent knew, when she received the email from Mr Rigby that he was enquiring as to her ability to practice. Whilst she may have answered the question correctly in the strict sense that she did not have any conditions or restrictions on her practising certificate, she failed to say that she did not in fact have a practising certificate at all. Mr Rigby's questions were clear; he asked if there was anything that he needed to know – the Respondent knew that he would need to know that she was not entitled to practice. The Tribunal determined that the Respondent failed to answer the question with full frankness and candour in order to keep her employment; she knew that if Mr Rigby was aware that she was not in fact entitled to practice at all, her job would be in serious jeopardy. Further, her failure to inform Mr Rigby of the true position was not an error or oversight on her part; her email to the Applicant of 13 April 2015 (over 5 weeks prior to the questions from Mr Rigby) was evidence that she knew the true position in relation to her ability to practice. The Tribunal found that the Respondent knew that her answer to Mr Rigby's email was misleading having regard to the substance of the questions being asked. Accordingly the Tribunal found that the subjective test was satisfied and found dishonesty proved beyond reasonable doubt.

39. **Allegation 1.3 - She failed to keep proper accounting records, in respect of a recognised body of which she was the sole director, to accurately show the position with regard to money held for each client and trust in breach of Rule 1.2(f) of the SAR.**

Allegation 1.4 - She failed to keep properly written up accounting records at all times, in respect of a recognised body of which she was the sole director, and to retain copies of the same for at least 6 years in accordance with Rule 29 SAR.

39.1 Mr Bullock submitted that due to the unavailability of complete accounting records, it had not been possible to ascertain whether payments to clients were made in accordance with the SAR, or if they were retained in the Firm's office account for a period of time. This, it was submitted, constituted a breach of Rule 1.2(f) of the SAR in terms of the retention of accounting records to show accurately the position with regard to money held for each client and trust. Further, she failed to keep proper accounting records for at least 6 years, contrary to Rule 29 of the SAR.

39.2 The Tribunal found that the documentary evidence demonstrated that the Respondent had breached the SAR as pleaded and alleged. The Respondent had failed to produce any accounting records other than a paying in book and a cheque book for the Firm's

office account. SS had obtained statements for the period 1 April 2014 to 29 April 2015 directly from the bank. Whilst it was accepted that the Respondent would not have six years of accounting records, the Tribunal did expect, in accordance with the SAR, the Respondent to have kept accounting records from 27 September 2012, the date upon which she became the sole director of the Firm. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent was in breach of Rule 29 of the SAR as pleaded and alleged. Due to the unavailability of accounting records, the Forensic Investigation Officer was unable to ascertain whether payments to clients had been made in accordance with the SAR. The Tribunal determined that had the Respondent kept proper accounting records, as she was required to do, the position in relation to client money would have been clear. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent was in breach of Rule 1.2(f) of the SAR as pleaded and alleged. Thus the Tribunal found allegations 1.3 and 1.4 proved beyond reasonable doubt.

40. **Allegation 1.5 - She retained a mixed payment of £5,855 received from Allianz in office account from 17 September 2014 until 29 April 2015 (at the earliest) in breach of Rules 14.3 and 18.2 of the SAR.**

40.1 Mr Bullock submitted that as the payment received by the Firm included client damages, professional disbursements and monies properly due to the Firm, the payment was a mixed payment pursuant to Rule 18.1 of the SAR, and thus should have been dealt with in accordance with Rule 18.2. The Respondent failed to deal with the money received in accordance with Rule 18.2 as the balance of client damages and professional disbursements were retained in the Firm's office account. The Forensic Investigation Officer was unable to find any evidence that the balance of client damages or the professional disbursements had been paid out as at 29 April 2015.

40.2 The Tribunal determined that the monies received were mixed monies in accordance with the provisions of Rule 18.1 of the SAR, and as such the Respondent was required to deal with those monies pursuant to Rule 18.2. As the money retained in office account was for the payment of her client's damages and professional disbursements, it was client money. The Respondent, had she been acting in compliance with the SAR, ought to have placed that money into a client account. She failed to do this, and retained client money in the Firm's office account when she no longer had any proper reason to do so, in breach of Rule 14.3. Accordingly, the Tribunal found that the Respondent had breached the SAR as pleaded and alleged, and found allegation 1.5 proved beyond reasonable doubt.

41. **Allegation 1.6 - She failed to produce documents, information and/or explanations as requested by the Applicant on 10 September 2015 and 16 September 2015 and thereby breached Rule 31 of the SAR.**

41.1 Mr Bullock submitted that in failing to comply with the requests for information made by the Forensic Investigation Officer, the Respondent had breached Rule 31 of the SAR.

41.2 The Tribunal noted that the letter sent to the Respondent by recorded delivery on 10 September 2014, and was signed for by 'Craig' on 11 September 2014. The letter was not thereafter returned to the Applicant. That letter contained a Section 44B Notice which required the Respondent to deliver up to the SRA records for inspection, and further the date, time and location of the investigation. The Respondent did not respond to the letter, nor did she provide the documentation requested or attend for the investigation. Accordingly the Tribunal determined that the Respondent had breached Rule 31 of the SAR as pleaded and alleged and found allegation 1.6 proved beyond reasonable doubt.

42. **Allegation 1.7 - Between 13 October 2014 and 21 November 2014 she failed to respond to communications and correspondence from the SRA in relation to the closure of the Firm and thereby: –**

1.7.1 Breached Principle 7 of the Principles; and
1.7.2 Failed to attain Outcome O(10.6) prescribed by the SCC.

Allegation 1.8 - She failed to comply with a notice pursuant to Section 44B of the Solicitors Act 1974 as amended served upon her on 21 November 2014 and thereby: –

1.8.1 Breached Principle 7 of the Principles;
1.8.2 Failed to attain Outcome O(10.6) prescribed by the SCC;
1.8.3 Further failed to attain Outcome O(10.8) prescribed by the SCC; and
1.8.4 Further failed to attain Outcome O(10.9) prescribed by the SCC.

42.1 Mr Bullock submitted that a solicitor who was co-operating fully with the Applicant, and complying with her regulatory obligations, would have appreciated the seriousness of the commencement of an SRA investigation, and would have responded to the letters dated 15 and 23 October 2014 immediately upon receipt. Furthermore, such a solicitor would have contacted the SRA in response to the voicemail messages left on her mobile phone and office phone on 13 October 2014, and the email of 14 October 2014. Further, she had failed to respond to the Section 44B Notice sent to her email address on 5 November 2014, and then sent via recorded delivery on 18 November 2014.

42.2 The Tribunal found that the Respondent had entirely failed to engage with the SRA. She had not responded to any letters, emails or voicemail messages in regards to the status of the Firm (allegation 1.7). Further, she had failed to respond to the Section 44B Notice dated 5 November 2014 (allegation 1.8). The Tribunal determined that it was simply unacceptable for the Respondent to ignore those communications in the way that she did, and had no hesitation in finding that the Respondent had failed to comply with her legal and regulatory obligations and deal with her regulator in an open, timely and co-operative fashion in breach of Principle 7, and had failed to achieve O(10.6), O(10.8) and O(10.9) as pleaded and alleged. Accordingly, the Tribunal found allegations 1.7 and 1.8 proved beyond reasonable doubt.

Previous Disciplinary Matters

43. None.

Mitigation

44. None.

Sanction

45. The Tribunal had regard to the Guidance Note on Sanctions (4th Edition-December 2015). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

46. The Tribunal firstly considered the seriousness of the Respondent's proven conduct. The Tribunal found her to be completely culpable for the breaches; the misconduct having arisen as a direct result of her actions. In relation to allegation 1.1, the Respondent was motivated by her desire to retain her employment in clear contrast to her duties and obligations as both a solicitor and an employee, and to that extent she was motivated by personal financial gain. She had no regard for the difficult position in which she had placed her employer, who in reliance on her response, had continued to employ her as a solicitor when she knew that she was not entitled to practice. Whilst her immediate response to the questions asked by Mr Rigby may have been spontaneous, the Respondent was aware of the position in relation to her practising certificate in April 2015, and notwithstanding the clear import of her answer to his question, continued to practice until she was summarily dismissed in July 2015. The Respondent had a duty of honesty to her employer with which she failed to comply. The Respondent whilst not very experienced was certainly aware of her position and her inability to practice. By her actions, as was found, she had caused harm to the reputation of the profession; an allegation of dishonesty had been found proved against her. The Tribunal considered the comments of Coulson J in Solicitors Authority v Sharma [2010] EWHC 2022 Admin:

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

47. Not only had she acted dishonestly, but she had placed her own interests above those of her employer, and any clients she might have had. Whilst the Tribunal accepted that the Respondent's dishonesty related to the manner in which she answered the questions put to her by her employer, her answer had been disingenuous and a sophistry.

48. Her conduct was aggravated by her proven dishonesty, which was deliberate, calculated and had continued over a period of time. The Tribunal determined that the Respondent knew that her conduct was in material breach of her obligation to protect the public and the reputation of the profession. The Tribunal noted that the Respondent had a previously unblemished career.

49. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers, such as no order, a reprimand, restrictions or a fine. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

50. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

51. Mr Bullock made an application for costs. He submitted that a number of items that had been included in the Schedule of Costs should properly be deducted. As the hearing was much shorter than had been anticipated, the time spent at the hearing should be reduced accordingly. Further, as he had attended on another matter that day, accommodation and travel expenses should be reduced and apportioned. In response to a question from the Tribunal in relation to duplication of work, Mr Bullock accepted that as he was not the caseworker, it was possible that he had taken longer to prepare the matter for the hearing than the caseworker would have done. In relation to the costs of the investigation (which the Tribunal stated seemed rather high) Mr Bullock explained that there had been three separate investigations which culminated in three separate referrals. In terms of the individual items of information review and report preparation, Mr Bullock informed the Tribunal that an information review involved reading and reviewing the underlying documents and report preparation was the actual writing of the Forensic Investigation Report.

52. The Tribunal reduced the costs claimed for the investigation, as it seemed that, given the nature of the case and the report prepared, the amount claimed was too high. The Tribunal also made the reductions suggested by Mr Bullock (which totalled approximately £2,340). The Tribunal determined that a reasonable and proportionate amount for the costs in this matter, taking all of the reductions into account was £9,500. The Tribunal had not received a statement of means from the Respondent, and determined that the costs Order should be immediately payable.

Statement of Full Order

53. The Tribunal ORDERED that the Respondent, VICTORIA EMMA CRAIG, 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 £9,500.00.

Dated this 12th day of December 2016
On behalf of the Tribunal

A. N. Spooner
Chairman