

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11524-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

FLORA MAGADALINE MENDES

Respondent

Before:

Mr R. Hegarty (in the chair)

Mr P. Lewis

Mrs N. Chavda

Date of Hearing: 6 September 2016

Appearances

Andrew Bullock, counsel of the Solicitors Regulation Authority, 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, Flora Magdaline Mendes, made in a Rule 5 Statement dated 10 June 2016 was that:
 - 1.1 By virtue of her conviction on four counts of providing immigration advice or immigration services in contravention of Section 84 of the Immigration and Asylum Act 1999 (“IAA”), contrary to Section 91(1) of the IAA she:
 - 1.1.1 failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the SRA Principles 2011 (“the Principles”);
 - 1.1.2 failed to act with integrity and therefore breached Principle 2 of the Principles; and
 - 1.1.3 failed to behave in a way which maintains the trust the public places in her and in the provision of legal services and therefore breached Principle 6 of the Principles.

Documents

2. The Tribunal reviewed all of the documents submitted by the parties, including:

Applicant

- Application dated 20 June 2016.
- Rule 5 Statement, with exhibit “AJB 1”, dated 10 June 2016.
- Memorandum of an Entry in the Register of Bedfordshire Magistrates’ Court LJA 1080.
- Transcript of the Judgment of the Crown Court dated 4 March 2016.
- Schedules of costs dated 20 June 2016 and 30 August 2016.
- Bundle of correspondence between the Applicant and Respondent and/or the Tribunal dated 18 July 2016 to 4 August 2016.
- Email dated 2 September 2016 from the Applicant in respect of the Respondent’s adjournment application.

Respondent

- Application for an adjournment dated 1 September 2016 with attached letter from HM Courts & Tribunal Service (“HMCTS”) dated 14 June 2016.
- Letter from HMCTS dated 28 June 2016.
- Paragraphs 7 to 19 of a document from Rosalind Earis, 6KBW College Hill dated 25 November 2014.
- Document headed ‘Bedfordshire Magistrate’s Courts Code 1080’.
- Witness Statement of Malcolm Lees dated 15 January 2015.
- Email dated 5 September 2016 renewing application for an adjournment.

Other Documents

- Decision of the Chair of the Division, dated 2 September 2016, refusing the Respondent's application for an adjournment.
- Judgment in case 11252/2014 dated 11 July 2016 (handed to the Division after it announced its Findings).

Preliminary Matters

Preliminary Matter One- The Respondent's Application for an Adjournment.

3. On 1 September 2016 the Respondent had applied for an adjournment and that application had been refused. On 5 September 2016 the Respondent emailed the Tribunal renewing her application for an adjournment on the basis that she was 'mentally disturbed so much so that I do not want to face the panel or anyone at the SDT as a culprit or criminal' and on the basis of the judicial review application she had made in respect of the Crown Court's decision.
4. In support of the second ground the Respondent produced a letter from HMCTS dated 28 June 2016, a witness statement from Malcolm Lees, Paragraphs 7 to 19 of a document from Rosalind Earis dated 25 November 2014 and a document headed 'Bedfordshire Magistrate's Courts Code 1080'. The letter of 28 June 2016 raised enquiries in respect of service of the documents.
5. The Respondent's email of 5 September 2016 stated "I will leave it to the Tribunal to decide what is appropriate regarding the case. If the Tribunal think I should be struck off because of the criminal convictions then I can do nothing at the moment and I will have nothing to discuss on tomorrows (sic) hearing either."
6. The Applicant opposed the application for an adjournment. Mr Bullock submitted that this was a case where the Respondent had been convicted on four counts and it was in the public interest for the case to proceed. The basis for the judicial review was unknown and it was not possible to assess whether there were any procedural points of any merit. Mr Bullock had raised the lack of documentation in his response to the first application for an adjournment and the Respondent had had the opportunity to cure the defect but had not done so. The documentation she had provided did not set out the basis for the judicial review. Should her conviction be overturned there was provision under Rule 21(5) of the Solicitors (Disciplinary Proceedings) Rules 2007 for a re-hearing in any event.
7. In regard to the suggestion that the Respondent was 'mentally disturbed' the Applicant submitted that there was no medical evidence let alone the type of medical report required by the Tribunal's Policy and Practice Note on Adjournments. Mr Bullock invited the Tribunal to dismiss the application.
8. The Tribunal did not have before it the claim form in respect of the judicial review application. The basis of the judicial review claim was unclear. Nor did the Tribunal have any medical evidence. The Tribunal considered its Policy and Practice Note on Adjournments and the fact that should the Respondent's Judicial Review of the

Crown Court be successful and her conviction ultimately be overturned there was provision in the Tribunal's Rules for there to be a re-hearing. The Tribunal refused the Respondent's application for an adjournment.

Preliminary Matter Two- Proceeding in the Absence of the Respondent

9. The Applicant invited the Tribunal to proceed in the Respondent's absence. The Applicant submitted that the Respondent was aware of the hearing and that the Tribunal should proceed in the Respondent's absence. The Applicant submitted that the Respondent had voluntarily absented herself from the hearing.
10. The Tribunal considered Hayward, Jones and Purvis [2001] EWCA Crim 168. It should only proceed in the absence of the Respondent if it was fair to do so. The Tribunal was satisfied that the Respondent was aware of the hearing and had voluntarily absented herself. The Respondent had referred to the hearing date in her correspondence. The Tribunal found that it was in the interests of justice that the matter should proceed in the absence of the Respondent.

Factual Background

11. The Respondent was born in 1978 and was admitted to the Roll of Solicitors on 1 June 2009. Her last known address was in Luton. At the date of the Rule 5 Statement the Respondent remained upon the Roll of Solicitors but was suspended from practice until 23 May 2018.
12. The Respondent was suspended from practice by the SRA as from 23 January 2013 following intervention by the SRA into an unregistered practice, Mendes Solicitors. The suspension was in part lifted between 16 May 2013 and 20 September 2013 subject to restrictions on the Respondent's ability to practice.
13. In the Magistrates Court at Luton on 13 April 2015 the Respondent was convicted of four counts of providing immigration advice or immigration services in contravention of Section 84 of the IAA, contrary to Section 91(1) of the IAA. Section 84 of the IAA states that no person shall provide immigration advice or immigration services unless she/he is a qualified person.
14. On the 30 April 2015 at the Magistrates Court in Luton the Respondent was sentenced to six months imprisonment on each count, to run concurrently, suspended for two years; and a curfew order between the hours of 22.00 and 07.00 daily until 29 August 2015. She was also ordered to pay compensation costs, prosecution costs and a victim surcharge totalling £5,226.00.
15. The Respondent's appeal against conviction was heard at the Crown Court at Luton on 4 and 5 March 2016. The Appeal was dismissed on all counts and the sentences as described above remained, with the financial aspects of the case to be considered further. On 1 September 2016 the Respondent applied to adjourn this hearing pending the outcome of her application for Judicial Review of the Crown Court decision. The Respondent's application for an adjournment was refused on 2 September 2016.

Witnesses

16. None.

Findings of Fact and Law

17. 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.
18. **Allegation 1 - By virtue of her conviction on four counts of providing immigration advice or immigration services in contravention of Section 84 of the Immigration and Asylum Act 1999 ("IAA"), contrary to Section 91(1) of the IAA the Respondent:**
- 1.1.1 failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the Principles;**
 - 1.1.2 failed to act with integrity and therefore breached Principle 2 of the Principles; and**
 - 1.1.3 failed to behave in a way which maintains the trust the public places in her and in the provision of legal services and therefore breached Principle 6 of the Principles.**

The Applicant's Case

- 18.1 Mr Bullock, on behalf of the Applicant, outlined the factual background that had resulted in the Respondent's conviction on four counts. At the time of her conviction on 30 April 2015, the Respondent had been practising for approximately six years. She was currently suspended until 23 May 2018. The Crown's case had been that the Respondent was not a qualified person to provide the advice she had provided. The sentence imposed had been towards the top end of the Magistrates' sentencing powers but the Crown Court had considered the sentence appropriate.
- 18.2 Mr Bullock drew the Tribunal's attention to the transcript of the appeal against conviction, which had been dismissed. The background to the offending was set out in that Judgment, in particular at page 1 paragraph d to page 2 paragraph a. Mr Bullock highlighted page 4 paragraph b to page 6 paragraph g to the Tribunal. This related to the four charges subject to the appeal. The appeal against conviction was dealt with at pages 8 to 10 of the transcript and Mr Bullock highlighted the aggravating features that the Crown Court had identified.
- 18.3 The Applicant's case was that the Respondent's victims were vulnerable, she had acted for financial gain and had breached her clients' trust. By her actions the Respondent had breached Principles 1, 2 and 6.

The Respondent's Case

- 18.4 The Respondent had not submitted an Answer. The Tribunal was aware that the Respondent disputed her convictions and wished to remain on the Roll of Solicitors.

In her view she had already been prosecuted for the offence so she queried why the SRA had to prosecute her again for the same offence.

18.5 The Tribunal proceeded on the basis that the Respondent denied the allegations.

The Tribunal's Decision

18.6 In reaching its findings the Tribunal did not consider the content of the Transcript of the Appeal to the Crown Court or the Applicant's submissions on this document. The Tribunal is an expert Tribunal and put this information from its mind except for noting that there had been an unsuccessful appeal against conviction by the Respondent.

18.7 The first question that the Tribunal asked itself was whether or not there had been a conviction. On the evidence before it the Tribunal was sure that the Respondent had been convicted on the four specified counts. The unsuccessful appeal had not disturbed the conviction.

18.8 The second question for the Tribunal was whether or not the Respondent's conviction meant that she had failed to uphold the rule of law and the proper administration of justice and therefore breached Principle 1 of the Principles. The very fact that the Respondent had been convicted of criminal offences meant that she had failed to uphold the rule of law and administration of justice in breach of Principle 1.

18.9 The Tribunal then considered whether the Respondent had failed to act with integrity and had breached Principle 2. Although the Tribunal had not been referred to a definition of integrity from its own knowledge it considered Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin) in which Sharp LJ endorsed the approach adopted in SRA v Chan and Ali [2015] EWHC 2659 where Davis LJ, with whom Ousely J agreed, said at para 48:

“As to want of integrity, there have been a number of decisions commenting on the import this word as used in various regulations. In my view, it serves no purpose to expatiate on its meaning. Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case.”

18.10 The Tribunal could identify a lack of integrity when it saw it. For a solicitor to have criminal convictions in these circumstances resulting from offending which spanned a period of time was clearly a failure by that solicitor to act with integrity.

18.11 Finally the Tribunal had to decide whether the Respondent had failed to behave in a way which maintained the trust the public placed in her and in the provision of legal services in breach of Principle 6. The Respondent's conviction spoke for itself. Although the Respondent had been suspended at the time of the offending she was still on the Roll of Solicitors. Her actions had brought the profession into disrepute and she had most definitely failed to behave in a way which maintained the trust the public placed in her and in the provision of legal services.

- 18.12 The Tribunal found, beyond reasonable doubt, that allegations 1.1; 1.1.1; 1.1.2 and 1.1.3 were proved.

Previous Disciplinary Matters

19. There was one previous matter (11252/2014) in which findings had been made against the Respondent. On 24 May 2016, the Tribunal found that the Respondent had failed to effect a policy of insurance which indemnified her and/or the firm; had breached a number of the provisions of the Solicitors Accounts Rules 1998 and SRA Accounts Rules 2011; and had practised as a solicitor from offices in England and Wales otherwise than in a manner permitted by Rule 12.01 Solicitors Code of Conduct 2007 (up to 5 October 2011) and Rule 1.1 Practice Framework Rules 2011 (after that date). The Tribunal had ordered that the Respondent be suspended from practice as a solicitor for the period of two years, commencing on 24 May 2016, and that she pay costs of £16,300.00.
20. Mr Bullock drew the Tribunal's attention to the fact that the Respondent's conviction post-dated the Rule 5 statement in the previous matter but that those proceedings had been protracted and the Tribunal had not handed down its findings and sanction until 24 May 2016. Although the SRA could have included the conviction in a Rule 7 statement in the previous proceedings it did not do so as the Respondent had sought a number of adjournments and the SRA did not want to add fuel to that particular fire. It was a matter for the Tribunal as to whether or not it approached sanction on the basis that the Respondent was of previous good character. The suspension that the conviction related to was the Respondent's suspension by the SRA following intervention into her practice and not the suspension imposed by the Tribunal.
21. The crux of the issue was that the Respondent should not receive a more severe sanction than she otherwise would have had a single Tribunal adjudicated upon all the matters which were before the two separate Tribunals, given the overlap in terms of time between those matters before this Tribunal and the other Tribunal.
22. The Tribunal considered the previous Judgment, which provided some background context. The Tribunal noted the overlap in terms of the timeframe but that the matters in the two cases were to an extent distinct. One centred on breaches of the Respondent's professional requirements and one arose out of her conviction.
23. In determining sanction the Tribunal put the knowledge of the previous matter from its mind. Had this been the Respondent's first appearance before the Tribunal the sanction imposed would have been the same due to the seriousness of the matters found proved.

Mitigation

24. The Respondent had not submitted any mitigation.

Sanction

25. The Tribunal referred to its Guidance Note on Sanctions (4th Edition) when considering sanction.

26. The Tribunal found that the Respondent's culpability was high. The Tribunal considered the most likely reason for the misconduct was financial gain. The Respondent had been paid for her services. The evidence that the Respondent had provided, in the document from Rosalind Earis, contained information in respect of some of the fees the Respondent had charged and a number of payments that had been made. The misconduct was planned. The Respondent had accepted the work and it was work that she was not eligible to undertake. She had acted in breach of a position of trust and had direct control of and responsibility for the circumstances giving rise to the misconduct. The Respondent's level of experience was such that she must have known what she was doing was wrong.
27. The Respondent's conduct had had a huge impact on the individuals who had instructed her. They were potentially vulnerable and had sought legal advice in respect of matters which had significant consequences for them. The misconduct came to light after a complaint by one of the victims. The harm caused, whether or not it was intended, was significant and reasonably foreseeable. There was significant harm to the legal profession's reputation. No solicitor should act in this way and the impact on the public and the reputation of the profession was substantial.
28. The relevant aggravating factors that the Tribunal took into account were the fact that the misconduct involved the commission of four criminal offences and was deliberate, calculated and repeated. The offences the Respondent was convicted of spanned the period from 26 January 2013 to 16 September 2014. The clients in question had sought advice about immigration matters and were potentially vulnerable as whether or not they could remain in the country was at stake. The Respondent must have known or ought reasonably to have known that the conduct complained of was in material breach of her obligations to protect the public and the reputation of the legal profession. Parliament had decided who could provide immigration advice and despite the fact that the Respondent could not lawfully provide these services she had done so.
29. In determining sanction the previous appearance before the Tribunal was not considered. The misconduct was not a single episode or one of very brief duration and accordingly the Tribunal did not need to consider whether or not it would treat the Respondent as having a previously unblemished career. The Respondent had shown no insight and there were no mitigating circumstances.
30. Given the seriousness of the Respondent's misconduct the Tribunal did not consider that No Order, a Reprimand or Fine were sufficient. The Tribunal considered whether or not a suspension was sufficient sanction. However the Tribunal considered that both public confidence in the legal profession and the need to protect both the public and the reputation of the profession from future harm required the Respondent to be struck off the Roll of Solicitors. No lesser sanction was appropriate given the high level of misconduct and the Respondent's lack of insight.

Costs

31. The Applicant applied for its costs supported by a costs schedule dated 30 August 2016 in the sum of £1,368.00. The Tribunal reduced the time claimed for the hearing from the estimated two and a half hours to one and a half hours. The Tribunal

ordered that the Respondent do pay the Applicant's costs in the sum of £1,238.00. The Tribunal considered whether or not there should be provision that the costs should not be enforced without leave of the Tribunal. Given the relatively small sum involved and the fact that the Tribunal had no information as to the Respondent's means the Tribunal did not regard such an order as appropriate.

Statement of Full Order

32. The Tribunal Ordered that the Respondent, Flora Magdaline Mendes, 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 £1,238.00.

Dated this 9th day of September
On behalf of the Tribunal

R. Hegarty
Chairman