

**The Applicant, the Solicitors Regulation Authority, appealed to the High Court (Administrative Court) against the Tribunal's decision dated 2 August 2017 in respect of sanction. The appeal was heard by The President of the Queen's Bench Division (Sir Brian Leveson) and Mr Justice Garnham on 6 February 2018 and Judgment handed down on 21 February 2018. The appeal was allowed. The Tribunal's order imposing a term of indefinite suspension on the Respondent has been set aside and substituted with an order striking the Respondent's name from the Roll of Solicitors.**  
**Solicitors Regulation Authority v Farrimond [2018] EWHC 321 (Admin.)**

## **SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11624-2017

### **BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

IAIN FARRIMOND

Respondent

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Before:

Mrs J. Martineau (in the chair)

Mr H. Sharkett

Mrs S. Gordon

Date of Hearing: 2 August 2017

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### **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 attend and was not represented.

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## **JUDGMENT**

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## **Allegations**

1. The Allegation against the Respondent was:
  - 1.1 By virtue of his conviction of Attempted Murder on 30 September 2016 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 SRA Principles 2011;
    - 1.1.2 failed to act with integrity and therefore breached Principle 2 of the SRA Principles 2011; and
    - 1.1.3 failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services and therefore breached Principle 6 of the SRA Principles 2011.

The Respondent admitted the allegation.

## **Documents**

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

Applicant:

- Application dated 6 March 2017 together with attached Rule 5 Statement and all exhibits
- Letter from the Applicant to the Respondent dated 22 June 2017
- Applicant's Statement of Costs dated 24 July 2017

Respondent:

- Answer to the Applicant's Rule 5 Statement dated 4 June 2017
- Respondent's Statement of Means dated 4 June 2017
- Letters from the Respondent to the Tribunal dated 4 June 2017 and 27 July 2017

## **Service of Proceedings**

3. The Respondent was not present at the hearing. He was currently in prison. Notice of the substantive hearing had been sent to the Respondent on 14 March 2017 and again on 6 May 2017. These letters had been delivered to the Respondent on 15 March 2017 and 13 May 2017 respectively. The Respondent had made reference to the date of the hearing in his letter to the Tribunal dated 4 June 2017. The Tribunal, having carefully considered all the documents before it, was satisfied the Respondent had been properly served with notice of this hearing.

### **Proceeding in Absence**

4. Mr Bullock submitted that the Tribunal should proceed with this hearing in the Respondent's absence as the Respondent had indicated he would not be attending in his letters to the Tribunal dated 4 June 2017 and 27 July 2017 as well as in his duly completed Certificate of Readiness. Mr Bullock submitted the Respondent had provided a detailed Answer containing his reply to the allegations which could be taken into account by the Tribunal. He submitted there would be no benefit in adjourning the hearing.
5. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Respondent had written to the Tribunal in a letter dated 4 June 2017 in which he stated that, by reason of his incarceration, he was not in a position to attend the substantive hearing. He requested the Tribunal deal with matters in his absence on the basis of his written representations.
6. In a further letter to the Tribunal dated 27 July 2017, the Respondent stated that he was aware he could ask the Prison Governor to arrange for him to be produced at the hearing, or alternatively for a video link to be put in place. He stated that as he had nothing further to add, beyond the information set out in his letter, Answer and Statement of Means all dated 4 June 2017 he was content for the Tribunal to deal with matters on those written representations.
7. The Respondent had also completed a Certificate of Readiness dated 1 July 2017 in which he requested the Tribunal to deal with his case in his absence based on his written representations.
8. The Tribunal, having considered these documents, was satisfied that the Respondent had been offered the opportunity to attend by video link and had chosen not to do so. He had voluntarily absented himself having indicated he would like the Tribunal to deal with his case in his absence. The case involved a conviction which was a very serious matter. The Respondent had provided detailed written representations which would be taken into account. In light of the documents received from the Respondent, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence.

### **Factual Background**

9. The Respondent, born in 1962, was admitted to the Roll of Solicitors on 15 October 1987. He did not hold a current practising certificate.
10. On 30 September 2016, the Respondent was convicted of Attempted Murder at the Crown Court at Nottingham where he pleaded guilty to the attempted murder of his wife. On the same day the Respondent was sentenced to 6 years imprisonment and ordered to pay a victim surcharge of £170.
11. The SRA wrote to the Respondent on 11 October 2016 raising the allegations with him. On 24 October 2016 the Respondent wrote to the SRA and requested medical reports dated 17 July 2016 and 8 August 2016 be taken into account.

12. The Respondent wrote to the SRA on 3 November 2016 and stated:

“I accept that, by virtue of the fact of my having been convicted for the offence of attempted murder, it may be considered that I have breached Principles 1, 2 and 6 of the SRA Principles 2011 (“the Principles”).

In my respectful submission however, the particular circumstances of the case can properly be regarded as significant mitigating factors such as would justify the Authority not taking the allegation forward. Alternatively I respectfully submit the circumstances should be relevant to the form in which any allegations might be taken forward.”

### Witnesses

13. No witnesses gave evidence.

### Findings of Fact and Law

14. The Tribunal had carefully considered all the documents provided, and the submissions of the Applicant. The Tribunal confirmed the allegation had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering the allegation.
15. **Allegation 1.1: By virtue of his conviction of Attempted Murder on 30 September 2016 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 SRA Principles 2011;**
- 1.1.2 failed to act with integrity and therefore breached Principle 2 of the SRA Principles 2011; and**
- 1.1.3 failed to behave in a way which maintained the trust the public placed in him and in the provision of legal services and therefore breached Principle 6 of the SRA Principles 2011.**
- 15.1 The Respondent had admitted the allegation.
- 15.2 Mr Bullock, on behalf of the Applicant, submitted that, when considering the test for integrity, the Tribunal should use the objective test set out in Newell-Austin v SRA [2017] EWHC 411 (Admin) and not the subjective test referred to in Malins v SRA [2017] EWHC 835 (Admin). The test in the case of Newell-Austin had recently been confirmed in the case of Williams v SRA [2017] EWHC 1478 (Admin) and this was accepted as the correct test by the Applicant.
- 15.3 Mr Bullock reminded the Tribunal that the case had attracted considerable media interest and he referred the Tribunal to a number of such publications. He also reminded the Tribunal that the Respondent relied on a number of medical reports which the Tribunal should take into account.

15.4 In the Respondent's Answer to the Rule 5 Statement, the Respondent had stated:

"I...admit the allegations set out in paragraph 1 of the Applicant's Rule 5 Statement.....

It is with the greatest regret that I have to accept that my conviction for the extremely serious offence in this case constitutes a serious failure on my part to uphold the rule of law, to act with integrity and to behave in a way that maintains the public's trust in me."

15.5 The Respondent's Answer was cogent and he clearly understood the Principles contained in the Allegation. The Tribunal had no medical evidence before it to suggest that the Respondent was not fit to deal with these proceedings.

15.6 The Tribunal also had before it a Certificate of Conviction from the Crown Court at Worcester dated 5 October 2016 which confirmed that on 30 September 2016, the Respondent had been convicted of Attempted Murder. He had been sentenced to 6 years imprisonment and ordered to pay a victim surcharge of £170.

15.7 The background to the case was that in the middle of the night, on 26 May 2016, the Respondent had got out of bed, leaving his wife asleep. He had gone to the kitchen, picked up a knife, returned to his bedroom and stabbed his wife to her head. He had intended to kill her, then kill another family member and then commit suicide. He had previously written a suicide note for the attention of a relative. Although the Respondent had used the knife to deliver repeated blows to his wife's head and face, she was able to wrestle the knife from him. He then continued the attack using a wooden ornament. He then went to the garden and tried to impale himself on a knife after calling the emergency services.

15.8 The Tribunal was satisfied that in light of the Respondent's conviction, he had failed to uphold the rule of law and the proper administration of justice. Although he had called the emergency services immediately, explained what he had done and cooperated fully after the incident, his conduct during the assault failed to uphold the rule of law and the administration of justice. The Tribunal was satisfied that attacking another person with a knife showed a lack of moral soundness or a steady adherence to an ethical code. The Respondent had thereby failed to act with integrity.

15.9 The Tribunal's attention had been drawn to copies of a number of newspaper articles publicising the Respondent's conviction. The Tribunal was satisfied his conduct had not maintained the trust the public placed in him or in the provision of legal services. The Tribunal found the allegation proved both on the Respondent's admission and on the documents provided.

### **Previous Disciplinary Matters**

16. None.

## Mitigation

17. The Respondent had set out his mitigation in his Answer dated 4 June 2017. He referred the Tribunal to three medical reports dated 17 July 2016, 8 August 2017 and 23 August 2017 which had been provided by Consultant Psychiatrists. He also referred to the Victim Personal Statement of his wife, professional character references provided and the remarks of the Sentencing Judge at his trial on 30 September 2016.
18. The Respondent submitted that this tragic incident would not have taken place had it not been for his medical condition at the material time. He submitted the Sentencing Judge had fully explored the possibility of making a hospital order in his case before accepting the inevitability of a prison sentence. Having accepted that inevitability, the Sentencing Judge had departed from the sentencing guidelines as to the length of the sentence in light of the very substantial mitigation he had identified. The Respondent requested the Tribunal to have regard to this approach and ensure there would be no element of “double punishment”.
19. The Respondent accepted his actions at the time amounted to an extremely serious offence but reminded the Tribunal that they had not taken place during the course of his employment as a solicitor. He had co-operated fully with the resulting criminal process, making the fullest and frankest admissions to the police and entering a plea of guilty at the earliest opportunity once the medical reports were available. The Respondent confirmed he would not be practising as a solicitor in any capacity in the immediate and medium-term, and certainly not for the next three years. He submitted the appropriate sanction in this case was to make a Restriction Order preventing him indefinitely from working as a solicitor other than in employment approved by the Solicitors Regulation Authority.

## Sanction

20. The Tribunal had considered carefully the Respondent’s documents. 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.
21. The Tribunal considered carefully the issue of culpability. The Respondent’s motivation had been affected by his medical condition. The conduct did not take place during the course of his practice and whilst the Respondent had planned his actions, having earlier written a suicide note, this was in the context of ill health which affected his decision-making. The Tribunal had considered carefully the medical reports which had been taken into account by the Sentencing Judge and reflected in the Sentencing Judge’s remarks. The medical reports stated:

“At the material time of the alleged index offence Mr Farrimond was suffering with a [medical condition]. This in his case ..... was characterised by ..... severely impaired judgement, suicidal ideation and planning and catastrophic thinking, where small difficulties are magnified multi-fold leading to small difficulties being perceived as life-threatening and catastrophic. His impulse

control would also have been severely impaired as part of his [medical condition].....

But for his [medical condition] Mr Farrimond would not have committed the alleged index offence.....”

22. The Sentencing Judge had stated:

“You committed this offence in the grip of a severe [medical condition] ..... which in the words of Dr [J], an experienced psychiatrist, had a catastrophic effect on your thinking.....

The doctors agree, and it’s, frankly, obvious to everyone, that you committed the offences because of that [medical condition]. It doesn’t make sense, but your thought process appears to be that you couldn’t cope with work, you would never return to this work, so rather than look for other work or find a dignified way out of it, you thought that you would kill yourself, and then seem to have thought that because you could not, therefore, provide for your wife and [relative], and they would suffer, therefore you would kill them and then yourself. Obviously not only is that terrible, it makes no sense, but that was how you were thinking, because of your [medical] illness.....

You have no innate criminality in you - put it another way, but for the effect of your illness you do not have a violent bone in your body.....

.....your severe [medical condition] is very substantial mitigation. Also important mitigation is your good character, and also in this case the fact that your wife, and other family and friends, stand by you, they love you, they care for you, and, in a very real sense, the time that you spend in prison is punishment also on the very victim of this offence .....

23. Having considered the medical reports and the remarks of the Sentencing Judge, the Tribunal concluded that the Respondent’s culpability was low due to his medical condition. He had been receiving medical treatment at the time but notwithstanding this, he did not have control over his actions. It was quite clear that the Respondent’s illness had affected his conduct.

24. In relation to the issue of harm, the harm caused by the Respondent’s conduct to the reputation of the legal profession was high. The Tribunal had been provided with a large number of articles from various newspapers who had publicised the incident. In those articles the Respondent was referred to as a “top solicitor” and “senior crown prosecutor”. This reflected on the profession particularly due to the Respondent’s experience and seniority.

25. The Tribunal considered the aggravating and mitigating factors in this case. The Respondent had a criminal conviction. This was an aggravating feature.

26. Although there had been some element of preplanning, his actions were not deliberate or calculated due to his ill health. The Respondent did not conceal what he had done as he called the emergency services immediately after the incident. This was a single

episode in an otherwise long unblemished career of almost 30 years. The Respondent had shown genuine insight and remorse, he had made open and frank admissions at an early stage and had cooperated fully with the regulatory process. The Tribunal also took into account the glowing references and the victim impact statement from the criminal proceedings which indicated the victim was very supportive of the Respondent. These were all mitigating factors.

27. In addition, the Tribunal took into account the particular personal mitigation of the Respondent. This was the medical reports that confirmed that he had been affected by a medical condition at the material time. This had impacted enormously on his ability to conduct himself to the standards required of a reasonable solicitor.
28. The Tribunal was mindful of the case of Bolton v The Law Society [1994] I WLR 512 and the comments of Sir Thomas Bingham MR who had stated:
 

“It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic..... All these matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness..... The reputation of the profession is more important than the fortunes of an individual member. Membership of a profession brings many benefits, but that is part of the price.”
29. The Tribunal considered carefully all the sanctions available to it. The misconduct in this case was serious and had led to a criminal conviction with a custodial sentence which led the Tribunal to conclude that it was not appropriate to make No Order or impose a Reprimand. Neither did the Tribunal consider a Fine or a Restriction Order would be a sufficient sanction to reflect the seriousness of the misconduct and the damage caused to the reputation of the profession. It was not considered appropriate to impose conditions on a solicitor who was serving a custodial sentence and that to do so would undermine public confidence in the profession.
30. The Tribunal then considered whether to impose a Suspension. The most recent medical report dated 23 August 2016 made reference to the Respondent’s ill health at that time. The Tribunal had no information about the Respondent’s current health, whether he was now able to cope with the stresses of legal work and his ability to practise. The Tribunal had considerable sympathy for the Respondent’s situation, as had the Sentencing Judge, who had sentenced the Respondent leniently and well below the relevant category range due to his ill health at the material time. The Tribunal concluded that a member of the public, with full knowledge of the facts and background to this case, would also have sympathy for the Respondent and understand the medical issues involved.
31. The Tribunal was of the view that there was a realistic prospect that the Respondent could recover from his ill health, respond to retraining and return to practice eventually. The Tribunal concluded it would not be proportionate, in light of the medical evidence provided, the excellent references and the fact that this was a single



incident that occurred due to the Respondent's ill health to permanently remove his ability to practice thereby also depriving the public of a good solicitor. The Respondent's medical condition at the time of the incident was a unique factor in this case and made it wholly exceptional.

32. Having given the matter very careful consideration, the Tribunal was satisfied that the appropriate and proportionate sanction in this case was an Indefinite Suspension. This would protect the public and the reputation of the legal profession, and it would also allow the Respondent an opportunity, once he had completed his custodial sentence, to try and rehabilitate, should his health improve and permit him to do so. Whilst the Tribunal did not wish to bind the decision of a future division of the Tribunal, it may assist the Respondent in the future, if he wished to apply for the indefinite suspension to be lifted, to provide evidence of the following:
- An up-to-date medical report, after the Respondent was released from custody, indicating whether he was fit to resume legal practice and able to cope with the stresses and pressures of such work.
  - Evidence of any retraining and how the Respondent had kept his skills and legal knowledge updated.
  - Evidence of any rehabilitation.
  - Information about his future work intentions and evidence of any potential future employment.
33. Accordingly, the Tribunal Ordered the Respondent be Suspended Indefinitely.

### **Costs**

34. Mr Bullock, on behalf of the Applicant, requested an Order for his costs in the sum of £4,102.53 and provided the Tribunal with a breakdown of those costs. Mr Bullock accepted some reduction needed to be made to the costs figure as the amount of time spent in both preparation for and attendance at the hearing had been less than the amount estimated in the Schedule.
35. The Respondent had provided a Statement of Means dated 4 June 2017 and stated any financial penalty would inflict further hardship on his family. He stated the Crown Prosecution Service had not made any application for costs in the criminal proceedings and he requested the Tribunal to consider taking a similar approach.
36. Mr Bullock submitted this was an inappropriate course of action as regulatory proceedings were quite different to criminal proceedings. He submitted it would be wrong for the costs of these proceedings to fall on the profession in circumstances where the Respondent had admitted breaches of various Principles. Mr Bullock submitted the Respondent did have an interest in a property which appeared to be the family home. Given the size of the liability, Mr Bullock did not consider that a costs order would actually cause hardship to the Respondent's family. In reality, the debt would be charged against the property and it was likely it could be serviced in some

manner. Mr Bullock did not envisage the Authority would seek to sell the house to recover this modest debt.

37. The Tribunal had considered carefully the matter of costs. The Tribunal accepted Mr Bullock's submission that regulatory proceedings were quite different from criminal proceedings and it would not be fair for the costs incurred in this case to fall on the profession. It was quite right that the Respondent should be liable for those costs as his conduct had led to them.
38. The Tribunal made some reductions to the Applicant's costs to reflect the actual time spent in preparing for the substantive hearing and attending the hearing. The preparation time was reduced from 7 hours to 2 hours 54 minutes as this was the time Mr Bullock had indicated he had taken. The time for the hearing was reduced from 4 hours to 2 hours. Having made these reductions, the Tribunal assessed the Applicant's costs in the sum of £3,309.53 and Ordered the Respondent to pay this amount.
39. In relation to the enforcement of those costs, it was clear from the Respondent's Statement of Means that he had an interest in a property in which there was equity. In light of this, the Tribunal did not consider there should be any restriction on the enforcement of costs. It was possible that the Respondent, on his release from prison, may be able to find some form of employment and would be able to pay the costs in due course. The Tribunal was further reassured by Mr Bullock's submissions that the Respondent's family would not suffer hardship as, although the Authority may seek to place a Charge on the Respondent's interest in the property, it would not seek to sell the family home in the foreseeable future.

### **Statement of Full Order**

40. The Tribunal Ordered that the Respondent, IAIN FARRIMOND, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on 2 August 2017 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,309.53.

Dated this 7<sup>th</sup> day of September 2017

On behalf of the Tribunal

J. Martineau  
Chair