

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11634-2017

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

IAN JAMES ANDERSON

Respondent

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Before:

Mr D. Green (in the chair)

Mrs A. Kellett

Mr P. Hurley

Date of Hearing: 6 September 2017

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**Appearances**

Jonathan Leigh, solicitor, of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent appeared and was represented by William Parkinson, Counsel, of West Lancashire Law, Suite 9, West Lancashire Investment Centre, Maple View, White Moss Business Park, Skelmersdale, West Lancashire, WN8 9TG.

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**JUDGMENT**

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## **Allegations**

1. The allegation against the Respondent was that:
  - 1.1 On 28 April 2016, the Respondent was convicted of dishonestly failing to promptly notify the Department for Work and Pensions (“the DWP”) in the prescribed manner of a change in circumstances which he knew would affect his entitlement to Employment Support Allowance (“ESA”), contrary to section 111A(1A) of the Social Security Administration Act 1992 and thereby failed to:
    - 1.1.1 uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011 (“the 2011 Principles”); and/or
    - 1.1.2 act with integrity in breach of Principle 2 of the 2011 Principles; and/or
    - 1.1.3 behave in a way that maintained the trust the public placed in him and the provision of legal services in breach of Principle 6 of the 2011 Principles.

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 11 April 2017 together with attached Rule 5 Statement and all exhibits
- Witness statement of JB, Deputy Justices Clerk at Preston Magistrates Court, dated 7 July 2017
- Applicant’s Statement of Costs dated 25 August 2017
- Extracts from Companies House

### **Respondent:**

- The Respondent’s witness statement dated 3 July 2017
- The Respondent’s Personal Financial Statement dated 5 September 2017

## **Preliminary Matters**

3. On 1 September 2017, the Respondent had made an application to the Tribunal for the hearing, which was due to commence at 10am on 6 September 2017, to be listed in the afternoon on the basis that the cost of train fares from Liverpool to London was high and the cost of accommodation and train fares would be prohibitive. On

4 September 2017 the Applicant consented to the Respondent's request for the hearing to commence in the afternoon.

4. On 4 September 2017 at 14.01pm, the Chairman of the Tribunal refused the Respondent's application for the hearing to start in the afternoon on the basis that the Respondent had had time to book a train ticket in advance when the cost would have been much cheaper. The Chairman stated the Tribunal did not want to risk the matter going part heard or cause inconvenience to the Tribunal for no good reason.
5. Also 4 September 2017 at 12.45pm, the Respondent submitted a further application for an adjournment of the hearing on 6 September 2017 on the basis that he had suffered a bereavement on 2 September 2017, brief details of which were provided. The Respondent stated he would forward a copy of the death certificate once it became available. On 4 September 2017, at 14.13pm, the Applicant consented to the Respondent's application for an adjournment.
6. At 16.50pm on 4 September 2017 the Chairman stated the Respondent's application to adjourn the hearing should be made at the start of the hearing supported by evidence.
7. The Respondent emailed the Tribunal office again on 4 September 2017 at 17.13pm asking for his application to be re-considered given that it was not opposed and he was under severe financial constraints. He submitted it would be unjust and unnecessary for him to have to incur the cost of travelling to a hearing for it to be adjourned. He also repeated a death certificate was not available and stated there was no other evidence he could put before the Tribunal.
8. On 5 September 2017 at 9.35am the Chairman repeated that any application for an adjournment of the hearing should be made in person and supported by evidence, in the form of a witness statement, stating why the Respondent was unable to proceed and explaining the underlying facts on which he sought to rely.
9. At the start of the hearing on 6 September 2017, Mr Leigh, on behalf of the Applicant, informed the Tribunal that he had received a telephone call from the Respondent's representative, Mr Parkinson, at 17:15pm the previous day, on 5 September 2017, informing Mr Leigh that they would be attending the hearing in the afternoon. Mr Leigh stated he had informed Mr Parkinson that the Respondent's application for the hearing to start in the afternoon had been refused and the hearing was starting at 10am. Mr Leigh stated Mr Parkinson informed him that he needed to speak to the Respondent about this but that they had already booked their train tickets and would be attending in the afternoon.
10. Mr Leigh also informed the Tribunal that he had subsequently received an email from Mr Parkinson at 21.30 advising him that, due to the Respondent's difficult circumstances and continuing grief, he had not received the Tribunal's email informing him that his application for the hearing to start in the afternoon had been refused. Mr Parkinson confirmed the Respondent would contact the Tribunal office in the morning and that they would both be at the Tribunal shortly after noon.

11. The Tribunal had not received any further contact from the Respondent at the start of the hearing and requested Mr Leigh to try and contact either the Respondent or Mr Parkinson to find out what was happening.
12. The Respondent and his representative arrived at 12.30pm and the hearing commenced at 12.53pm. Mr Parkinson apologised profusely on behalf of the Respondent for the late start and confirmed the Respondent had not received the Tribunal's email informing him that his application to start the hearing in the afternoon had been refused. He had therefore assumed the hearing would commence at 14:00. The misunderstanding had occurred as a result of the Respondent's family circumstances.
13. Mr Parkinson also confirmed that on the basis that the application for an adjournment needed to be made in person, the Respondent had decided not to renew his application for an adjournment, as he wanted to get on with the hearing.

### **Factual Background**

14. The Respondent, born in 1966, was admitted to the Roll on 2 January 2003.
15. On 28 April 2016, after the Respondent elected a summary Magistrates' Court trial, he was found guilty of dishonestly failing to promptly notify the DWP in the prescribed manner of a change in circumstances which he knew would affect his entitlement to Employment Support Allowance, contrary to section 111A(1A) and (3) of the Social Security Administration Act 1992.
16. The offence took place between 26 July 2011 and 19 May 2013 and the overpayment of employment support allowance was in the sum of £7,436.00. The Respondent was subsequently sentenced on 16 May 2016 to a community order of 12 months' supervision and for 150 hours of unsupervised unpaid work to be completed by 15 May 2017. He was also ordered to pay a £60 surcharge and costs of £900.
17. The Solicitors Regulation Authority ("SRA") wrote to the Respondent on 14 September 2016 seeking his response to the allegation. On 26 September 2016 the Respondent replied, enclosing medical documents and stated as follows:
  - He had personal and financial problems;
  - He was awarded ESA due to his medical condition;
  - He had been suffering from ill health and considered that his judgement may have been impaired as a result;
  - He had misunderstood his obligation to the DWP and had he realised he was required to report his actions, he would have done so immediately;
  - At no stage did he consider that any of the activities he undertook constituted work;
  - He did not believe there had been media reports of his conviction;

- He had nearly completed the 150 hours of community work and was paying back the funds in instalments;
- The matters complained of did not relate to his practise.

### Witnesses

18. No witnesses gave evidence.

### Findings of Fact and Law

19. The Tribunal had carefully considered all the documents provided and the submissions of both parties. 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

20. **Allegation 1.1 - On 28 April 2016, the Respondent was convicted of dishonestly failing to promptly notify the Department for Work and Pensions ("the DWP") in the prescribed manner of a change in circumstances which he knew would affect his entitlement to Employment Support Allowance ("ESA"), contrary to section 111A(1A) of the Social Security Administration Act 1992 and thereby failed to:**

**1.1.1 uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011 ("the 2011 Principles"); and/or**

**1.1.2 act with integrity in breach of Principle 2 of the 2011 Principles; and/or**

**1.1.3 behave in a way that maintained the trust the public placed in him and the provision of legal services in breach of Principle 6 of the 2011 Principles.**

20.1 The Respondent admitted the allegation. The Tribunal had before it a Memorandum of Conviction from the Lancashire Magistrates Court dated 16 May 2016 which confirmed that on 28 April 2016, the Respondent was found guilty of:

"Between 26 July 2011 and 19 May 2013 at Liverpool in the county of Merseyside, dishonestly failed to promptly notify the Department for Work and Pensions in the prescribed manner of a change of circumstances which you knew would affect your entitlement to Employment and Support Allowance, namely that you had undertaken work contrary to section 111A(1A) and (3) of the Social Security Administration Act 1992."

The Memorandum also confirmed the Respondent had been sentenced to a community order requiring him to attend supervision for 12 months and carry out unpaid work for 150 hours for the next 12 months to be completed by 15 May 2017, pay a surcharge to fund victim services of £60 and pay £900 costs to the Crown Prosecution Service.

20.2 The Respondent had not appealed the conviction or the sentence. The Tribunal had also been provided with a witness statement from JB, the Deputy Justices Clerk at Preston Magistrates Court which attached a copy of the Justices' Reasons Form in relation to the trial findings and sentencing assessment form. This Form confirmed that the Respondent had deprived the public purse of £7,436.09. The Form also stated it was not disputed that:

- Road traffic accident ("RTA") referrals were made which resulted in payments being made to the Respondent between 26 July 2011 to 31 October 2011
- The Respondent had signed a tenancy agreement for a public house in or around April 2012, he had undertaken a "Licensed Premises Supervision" course on 27-28 July 2012 and his tenancy ended in the first week of August 2012
- He had not made contact with the DWP during the periods 26 July 2011 to 19 May 2013

20.3 The Tribunal having considered all the evidence provided was satisfied that the Respondent had breached Principles 1, 2 and 6 of the SRA Principles 2011 by virtue of his conviction. The Tribunal found the allegation proved both on the Respondent's admission and also on the documents provided.

### **Previous Disciplinary Matters**

21. The Respondent had appeared before the Tribunal previously on 12 December 2011.

### **Mitigation**

22. Mr Parkinson, on behalf of the Respondent, submitted these offences were 5-6 years ago. Since the Respondent's suspension had been lifted, he had worked as a solicitor under supervision with no issues during the last three years. The Respondent had initially been subject to an order under section 41 of the Solicitors Act 1974 until December 2014 when the supervision had been lifted. He was then granted a practising certificate again. In relation to the Respondent's previous appearance before the Tribunal, Mr Parkinson stated that there had been no finding of dishonesty and that had been a different type of case altogether.

23. In relation to the conviction at the Magistrates Court, the first matter related to referral fees from people who had called the Respondent for advice, knowing he had been a solicitor for many years. The Respondent had passed those clients' details on and had been remunerated at the end of the case. He had not been actively seeking work. Mr Parkinson reminded the Tribunal that the written reasons provided by the magistrates made reference to the Respondent's health and concluded that his behaviour had been reckless rather than intentional. Mr Parkinson submitted passing details of clients to a third party was not work, although the Magistrates Court had concluded it was.

24. Mr Parkinson referred the Tribunal to the copies of the Respondent's medical records and submitted the Tribunal should consider whether the Respondent's medical condition amounted to exceptional reasons for his conduct. He provided the Tribunal

with details of the Respondent's medical history which indicated the Respondent had been referred for treatment in August 2011, when his medical condition deteriorated. Mr Parkinson submitted the Tribunal could take this into account when considering sanction. He submitted the Respondent's claim for Employment Support Allowance was not a dishonest claim throughout and nor was it fraudulent as the Respondent's health had affected him during the material period, quite significantly at times. The Respondent had always been ill and that was a factor that should be taken into account.

25. By December 2012 the Respondent required further treatment as his medical condition had got worse. Mr Parkinson submitted this period corresponded with the dates he had received the referral fees. Mr Parkinson also submitted that that offence had taken place in 2011, and the length of time which had passed since then should be taken into account when considering sanction.
26. Mr Parkinson further submitted that it was clear from the medical records that the Respondent had been very ill during the time of the two offences. Indeed, to demonstrate the Respondent's reckless/stupid behaviour, Mr Parkinson stated the Respondent had allowed his name to be placed on a licence for a public house but received no income, he had then undertaken a course for Licensees at the end of July 2012 but the public house was closed at the end of August 2012. The Respondent could not recall why he had done this but Mr Parkinson submitted that, taken with the medical records and the fact that there was absolutely no evidence the Respondent had earned any money from this even though he was the landlord, this was an indication of his state of mind. Mr Parkinson submitted that the public would not be shocked to find a person in the Respondent's position should be a solicitor.
27. Mr Parkinson referred the Tribunal to the case of SRA v Imran [2015] EWHC 2572 (Admin) which he submitted was an illustration of how a member of the public would regard the Respondent's position appearing before the Tribunal. In that case it was held that at the heart of any assessment of exceptional circumstances, and the factor which was bound to carry the most significant weight in that assessment, was an understanding of the degree of culpability and the extent of the dishonesty that had occurred. That not only affected the relevant sanction, but also had a very important bearing on the assessment of the impact on the reputation of the profession, which was the bedrock of the Tribunal's jurisdiction.
28. Mr Parkinson submitted that the keystone of this case was a consideration of what the public would make of the Respondent's behaviour if they knew about his health. He had not been looking for work, people had called him asking if he was still undertaking personal injury work, he had received no income from the public house and there had been no prospect of income as that particular trade was very difficult. It made no sense that the Respondent had undertaken a course for licensees when there was no prospect of him working as a licensee.

### **Sanction**

29. The Tribunal had considered carefully the Respondent's submissions and statement. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

30. The Tribunal made it clear that it would not and could not go behind the conviction from the Magistrates Court. Under Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007, the findings of fact upon which a conviction was based shall be admissible as conclusive proof of those facts, save in exceptional circumstances. Whilst the Tribunal had heard a number of submissions made by Mr Parkinson about the circumstances of the offences, where these contradicted the written Justices' Reasons, the written Reasons prevailed.
31. The Tribunal considered the Respondent had gained personally from his conduct. He was an experienced solicitor and his conduct had caused harm to the public purse, taxpayers and the reputation of the profession. The Respondent's conduct was planned, he had direct control over the circumstances that led to his conviction and therefore the Tribunal concluded his level of culpability was high.
32. In considering the harm caused by the conduct, the Tribunal found that the Respondent had caused harm to the public purse and the reputation of the profession. He had gained the sum of £7,436.09 to which he was not entitled and this exhibited a departure from the complete integrity, probity and trustworthiness expected of a solicitor. The Respondent should have been able to reasonably foresee the extent of the harm that would be caused by his conduct.
33. The Tribunal considered the aggravating and mitigating factors in this case. The Respondent's misconduct had occurred in relation to two separate instances and had been repeated on each occasion. His failure to report the change in his circumstances had taken place over a long period of time. It had resulted in a criminal conviction which included an element of dishonesty. The Respondent ought to have known his conduct would be in breach of his material obligations to protect the public and the reputation of the legal profession. These were all aggravating factors.
34. The other aggravating factor was that the Respondent had previously appeared before another division of the Tribunal on 12 December 2011 when he had been suspended for a period of three years and a recommendation was made that if he was to return to practice, he should only work in employment approved by the SRA. On that occasion that division of the Tribunal had found 9 allegations proved against the Respondent over a wide number of areas which included various breaches of the Solicitors Accounts Rules 1998, various breaches of the Solicitors Code of Conduct 2007 which included a failure to comply with the Solicitors Introductions and Referral Code 1990, failing to deal with the Legal Complaints Service and the Solicitors Regulation Authority in an open, prompt and co-operative manner, breaching undertakings, failing to act in the best interests of his client, failing to obey a court order and failing to comply with an Order under section 44B of the Solicitors Act 1974. The Tribunal dealing with that case had concluded the Respondent had been "out of his depth" and this had persuaded that division that he should not be struck off.
35. The Tribunal was particularly concerned by the fact that the Respondent's misconduct leading to his conviction had taken place between 26 July 2011 to 19 May 2013 some of which was during the period of his suspension. This was a further aggravating factor in this case.



36. The Tribunal then considered the mitigating factors. The Respondent had been repaying the debt to the DWP. However, he had not shown any real insight or remorse into his conduct. This was exhibited by some of the contents of his witness statement dated 3 July 2017 and his submissions which sought to go behind some of the facts found proved by the magistrates. Although the Respondent had made admissions, these were made on the day of the Tribunal hearing and were therefore not made at an early stage.
37. The Tribunal was also mindful of the Respondent's medical issues. However, the magistrates had taken the Respondent's health into account as they had stated the following:
- “We did consider the health issues surrounding him at the time, but we find that he would have had the capacity to make the correct decision to notify the DWP of the changes in his circumstances likely to affect his benefit entitlement.”
38. The magistrates had stated in their written reasons that they found the Respondent was not credible and had been unconvincing in respect of his assertion that he did not act dishonestly, believing that the RTA referrals were not classed as “work”, yet for which he subsequently received gain. The magistrates stated they believed this activity did constitute work and they made this assessment of the evidence against the Respondent's knowledge that he was a highly trained solicitor and expert in the field of RTA referrals and personal injury claims. The magistrates also found that the period of the Respondent's involvement with the public house, for which he was the “tenant at will” and “licensee”, could not be accounted for solely as simple therapeutic activity. They determined the Respondent had carried out a range of activities in the public house which amounted to “work”.
39. The Tribunal considered carefully each of the possible sanctions that could be imposed. The Respondent had been convicted of an offence which involved dishonesty. This was such a serious offence that the Tribunal concluded it would not be appropriate to order a Reprimand or a Fine. Nor was it appropriate to impose a Restriction Order as the conduct had not occurred during the Respondent's practice and in any event it was difficult to formulate conditions that would address dishonest behaviour.
40. The Tribunal then considered whether a suspension was the appropriate sanction. However the Tribunal was mindful of the case of SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:
- “Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll.”
41. Although Mr Parkinson had submitted the Respondent's health amounted to exceptional circumstances, this was a matter the magistrates had taken into account when making their determination. Furthermore, although copies of the Respondent's medical records had been provided, there was no evidence of an opinion from an independent medical expert to support Mr Parkinson's assertions. The Tribunal was satisfied that there were no exceptional circumstances in this case.

42. This was the Respondent's second appearance before the Tribunal. His conviction, which involved dishonesty, had caused damage to the reputation of the legal profession. The Respondent had acted with a lack of integrity, he had failed to uphold the rule of law and the proper administration of justice and he had behaved in a way that did not maintain the trust the public placed in him or in the provision of legal services. In all the circumstances, the appropriate sanction was to strike the Respondent off the Roll of Solicitors. This was necessary in order to protect the reputation of the legal profession. Accordingly, the Tribunal Ordered the Respondent be struck off the Roll of Solicitors.

### Costs

43. Mr Leigh requested an Order for the Applicant's costs in the total sum of £4,708. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. Mr Leigh accepted that the amount of costs claimed was slightly higher than usual in conviction cases but he reminded the Tribunal that there had been three Case Management Hearings and various redactions to documents at the Respondent's request. Mr Leigh stated that the costs claimed did not cover all of the costs actually incurred and he reminded the Tribunal that he had arrived at 9.30am that morning for the start of the hearing which should have been at 10am. The Respondent did not arrive until 12:30pm which meant the hearing started three hours late. Mr Leigh had not made any claim for these additional costs.
44. Mr Leigh also submitted that whilst the Respondent had provided a personal financial statement, he had failed to make reference to a company of which he was a director. Mr Leigh requested there should be no restriction on the enforcement of costs and confirmed that the SRA's costs recovery department would approach the matter in an appropriate way and would accept payments by instalments. He also informed the Tribunal that he had written to the Respondent on 4 August 2017 and again to the Respondent's previous representative on 25 August 2017 enclosing the Statement of Means for the Respondent to complete.
45. Mr Leigh advised the Tribunal that he was not aware whether the order for costs made by the previous division of the Tribunal on 12 December 2011 in the sum of £40,000 had been enforced.
46. Mr Parkinson confirmed the previous costs order of £40,000 had not been enforced. He submitted the Respondent accepted, in principle, that costs would be awarded and confirmed he did not dispute the amount claimed which appeared to be reasonable. However, Mr Parkinson referred the Tribunal to the Respondent's personal financial statement dated 5 September 2017 and submitted the Respondent did not have the ability to pay any costs. He stated the Respondent had been sent the form the previous day and had filled it in. Mr Parkinson stated the Respondent had not been asked to provide any supporting documentary evidence and reminded the Tribunal that the Respondent had been suffering from difficult personal circumstances recently which may have caused matters to "slip".
47. On questioning from the Tribunal, Mr Parkinson stated the Respondent was currently working part-time for 2-3 days a week as a consultant. He provided the Tribunal with details of the Respondent's income which appeared to be modest. In relation to the

company referred to by the Applicant, Mr Parkinson stated this was a dormant company from which the Respondent received no income and from which he had resigned as a director. He was still a shareholder of the company as he had put a nominal amount into the company when it was first started. The company had been set up as a courier parcel delivery company but had not made any income. Mr Parkinson also provided the Tribunal with details of the Respondent's personal living arrangements. The Respondent stated he had sold his previous property a couple of years ago and he was currently living, rent free, in a property owned by a relative on the basis that he would renovate that property. He confirmed that property was due to be sold shortly.

48. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent pay the Applicant's costs in the sum of £4,708.00.

49. In relation to enforcement of those costs, the Tribunal noted that whilst the Respondent had provided a personal financial statement, he had provided no documentary evidence in support of this. Standard Directions had been sent to the Respondent by the Tribunal dated 13 April 2017 and these made it clear that the Respondent's Statement of Means should be supported by documentary evidence. The Respondent had failed to provide this and it was difficult for the Tribunal to take a view of his financial circumstances, particularly as he had failed to declare a company in which he was a shareholder and he had made reference to selling assets in the last couple of years.

50. The Tribunal had regard for the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

"If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

51. The Tribunal was also mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in light of the fact that the Tribunal's Order would deprive the Respondent of his livelihood. However, the Respondent was relatively young and it was possible he could gain some form of alternative employment. The Tribunal noted the Authority would accept payment by way of instalments and concluded there should be no restriction on the enforcement of the costs order.

#### **Statement of Full Order**

52. The Tribunal Ordered that the Respondent, IAN JAMES ANDERSON, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,708.00.

Dated this 3<sup>rd</sup> day of October 2017  
On behalf of the Tribunal



D. Green  
Chairman

Judgment filed  
with the Law Society  
on 03 OCT 2017

Dated this 3<sup>rd</sup> day of October 2017  
On behalf of the Tribunal