SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11687-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANGELA CAROLINE HUDSON Respondent

Before:

Mr S. Tinkler (in the chair)
Mrs A. Kellett
Mrs S. Gordon

Date of Hearing: 16 January 2018

Appearances

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

The Respondent appeared and was represented by Mark Ruffell, Counsel of 3 Pump Court, Temple, London, EC4Y 7AJ.

JUDGMENT

Allegations

1. The allegation against the Respondent was that:

1.1 The Respondent was convicted on 7 March 2017 of an offence contrary to sections 44 and 58 of the Serious Crime Act 2007 in that between 28 January 2016 and 12 April 2016 she repeatedly contacted a client by mobile phone whilst he was in prison. In doing so, she breached any or all of Principles 1, 2 and 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 18 July 2017 together with attached Rule 5 Statement and all exhibits
- Applicant's Reply to the Respondent's Answer dated 29 September 2017 together with attached exhibits
- Applicant's Bundle of Authorities
- Applicant's Statements of Costs dated 17 July 2017 and 9 January 2018
- Email from the Applicant to the Respondent dated 8 January 2018

Respondent:

- Respondent's Answer to the Applicant's Rule 5 Statement together with attached exhibits
- Respondent's Bundle of Character References
- Respondent's Statement of Means dated 7 December 2017
- Emails from the Respondent to the Applicant and the Tribunal dated 5 January 2018, 8 January 2018 and 12 January 2018

The Respondent's Application for Recusal of the Tribunal Panel

3. At the start of the hearing, Mr Ruffell, on behalf of the Respondent, asked the Tribunal Panel to consider whether it should recuse itself. Contained within the documents before the Tribunal was a Form MG5 containing an extract from the police report. This was attached to the reply to the Respondent's Answers and dated 29 September 2017. The parties had provided the Tribunal with a redacted version of

the Form MG5 that morning but an un-redacted version had already been sent to the Tribunal with the papers. On 8 January 2018, the Tribunal had been sent a copy of an email from the Respondent to the Applicant stating she objected to the Form MG5 being put before the Tribunal as it had not been before the Magistrates Court and had not formed part of the evidence upon which the facts of the conviction were based.

4. Mr Ruffell stated that the Form MG5 was a police summary which had not been placed before the magistrates during the criminal proceedings. Within that document, Mr Ruffell stated there was material that was inflammatory and potentially prejudicial to the Respondent. Mr Ruffell did not repeat the precise extract but said that he was concerned about one word in particular and stated that if the Tribunal Panel considered it was able to give the Respondent a fair hearing, then he did not wish to prejudice the hearing any further by repeating the exact words contained in the summary.

5. Mr Ruffell referred to the case of Porter v Magill [2001] UKHL 67 in which it was stated:

> "The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

6. Mr Ruffell submitted that if the Tribunal was able to exclude from its mind details of the conversations included in the Form MG5 and the words used, then it could proceed to deal with this case. However, if the Tribunal concluded those words were so emotive that they could not be ignored, then it must recuse itself. Mr Ruffell submitted the Respondent simply asked the Tribunal to apply the test in Porter v Magill and decide the appropriate way to proceed. Mr Ruffell submitted it was a matter of degree and the Tribunal must consider whether the contents of the Form MG5 were so damaging that they could not be ignored. Mr Ruffell stated the Respondent would like the hearing to be concluded that day if possible and would prefer that it was not adjourned. He confirmed the allegation was not contested and there would be significant mitigation before the Tribunal. He submitted the real question for the Tribunal to consider was whether the material read by the Panel would impact on the Tribunal's ability to accept that mitigation.

7. Mr Ruffell also referred the Tribunal to the case of Dr Kofi Adu v the General Medical Council [2014] EWHC 1946 (Admin) which contained details of circumstances where a Judge had recused himself but this was where that Judge had been a member of the same Chambers as the legal assessor on the case.

8. Ms Trench, on behalf of the Applicant, opposed the Respondent's application and submitted it was not necessary for the Tribunal to recuse itself. She reminded the Tribunal that the Rule 5 Statement was filed on 18 July 2017 and the Respondent's Answer was dated 18 September 2017. In response to that Answer the Applicant had filed a Reply dated 29 September 2017 which attached exhibits containing the Form MG5. No objections had been raised by the Respondent at that time.

9. Subsequently, Ms Trench submitted the Applicant served a Civil Evidence Act Notice on 14 December 2017. A Counter notice was served late by the Respondent on 8 January 2018 and only then had objection been raised. Ms Trench submitted the Respondent had had three months to consider her position and had raised her objection very late. In any event, this was a conviction case and the purpose of the Form MG5 was to supplement the Certificate of Conviction to give some context to the seriousness of the conviction. The Respondent had now indicated the allegation was admitted and Ms Trench submitted the Tribunal did need to consider the sentence imposed and the sustained nature of the conduct. She submitted the Form MG5 would assist the Tribunal in determining the level of culpability and the seriousness of the conduct.

10. In light of the Respondent's admission, Ms Trench stated the redactions to the Form MG5 had been agreed with the Respondent's representative but if such admission had not been forthcoming, those redactions would not have been agreed. Ms Trench submitted the Tribunal was now only considering mitigation and in such circumstances, she submitted the Tribunal should proceed with the hearing.

The Tribunal's Decision on the Respondent's Application for Recusal

11. The Tribunal had become aware on 8 January 2018 that there was an objection to the Applicant relying on the un-redacted Form MG5. Before receiving that email two members of the division had "skim read" the document, but on receiving the email had not considered it again. One member of the division had not considered the un-redacted Form MG5 at all. The two members who had briefly looked at the document could not recall any material that they felt would be considered prejudicial and were unable to identify from their recollections the particular words Mr Ruffell was referring to.

12. The Tribunal considered carefully the test set out in the case of Porter v Magill and was satisfied that as it could not recall the material referred to by Mr Ruffell, a fair-minded and informed observer, having considered the facts, would not conclude there was a real possibility that the Tribunal was biased. The Tribunal also took into account the fact that it was both in the public interest and in the Respondent's interest to deal with this case expeditiously. Accordingly, the Tribunal did not recuse itself.

Factual Background

13. The Respondent, born in 1983, was admitted to the Roll of Solicitors on 15 April 2010. At the material time the Respondent practised on her own account at A Hudson Law, 40 Queen Street, Geddington, Kettering, Northamptonshire, NN14 1AZ. The firm ceased on 11 January 2017.

14. The Respondent was also a Consultant at Chris Bennett and Co LLP, Victory House, 400 Pavilion Drive, Northampton Business Park, Northamptonshire, NN4 7PA from 1 December 2016 to 6 February 2017. The Respondent held a practising certificate for the practice year 2016/2017 which was subject to conditions but was not currently practising as a solicitor.

15. On 12 May 2016, the Respondent was arrested by Nottinghamshire police for an offence of communicating via electronic means with a prison inmate, who was a client. On 15 May 2016 the Respondent informed the SRA of her arrest.

16. On 7 March 2017, at the Cambridge Magistrates Court, the Respondent pleaded guilty to the charge of:

> "Between 28/01/2016 and 12/04/2016 at Ranby did an act, namely repeatedly contacted [X] by mobile phone whilst he was in prison, which was capable of encouraging or assisting the commission of an either way offence, namely the transmissions by [X] of any image, sound or information from inside a prison by electronic communications for simultaneous reception outside the prison, intending to encourage or assist in its commission. Contrary to sections 44 and 58 of the Serious Crime Act 2007."

17. Section 44 of the Serious Crime Act 2007 is an inchoate offence. The Respondent was committed to prison for 4 months suspended for 24 months. The Memorandum of Conviction recorded the Court imposed this sentence because the offence was so serious and also recorded that custody was appropriate because of the sustained nature of the offending.

18. The Respondent was sentenced on 7 March 2017 without a pre-sentence report. She was ordered to pay £85 costs to the CPS and £115 surcharge to fund victim services.

19. The Law Society had issued a Practice Note on 7 July 2011 and again on 21 December 2015 in relation to communicating with prisoners by mobile phone. The purpose of the Practice Note was to alert solicitors and their staff to the illicit possession and use of mobile telephones by prison inmates and to help avoid the risk of inadvertently committing or procuring the commission of a criminal offence. The Practice Note was issued before the Respondent was convicted of the criminal offence.

Witnesses

20. No witnesses gave evidence.

Findings of Fact and Law

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

22. **Allegation 1.1 - The Respondent was convicted on 7 March 2017 of an offence contrary to sections 44 and 58 of the Serious Crime Act 2007 in that between 28 January 2016 and 12 April 2016 she repeatedly contacted a client by mobile phone whilst he was in prison. In doing so, she breached any or all of Principles 1, 2 and 6 of the SRA Principles 2011**.

22.1 The Respondent admitted the allegation.

22.2 The Tribunal had before it a Memorandum of Conviction from the Cambridgeshire Magistrates Court dated 18 July 2017 which confirmed that on 7 March 2017, the Respondent had pleaded guilty and been convicted of:

> "Between 28/01/2016 and 12/04/2016 at Ranby did an act, namely repeatedly contacted [X] by mobile phone whilst he was in prison, which was capable of encouraging or assisting the commission of an either way offence, namely the transmissions by [X] of any image, sound or information from inside a prison by electronic communications for simultaneous reception outside the prison, intending to encourage or assist in its commission. Contrary to sections 44 and 58 of the Serious Crime Act 2007."

22.3 The Memorandum also confirmed the Respondent had been sentenced to 4 months imprisonment suspended for 24 months. She was also required to pay a surcharge to fund victim services of £115 and pay costs of £85.00.

22.4 The Tribunal was satisfied that in light of the Respondent's conviction, she had failed to uphold the rule of law and the proper administration of justice. She had communicated by telephone with an inmate on multiple occasions amounting to criminal conduct. The Respondent had thereby failed to act with integrity. The Tribunal was satisfied her conduct had not maintained the trust the public placed in her or in the provision of legal services as her conduct undermined that trust. The Tribunal found the allegation proved both on the Respondent's admission and on the facts before it.

Previous Disciplinary Matters

23. None.

Mitigation

24. Mr Ruffell provided the Tribunal with a detailed history of the Respondent's career. She had gained good experience in the area of criminal law, having qualified in 2010 and progressed to senior positions within the firms where she was working. However, as criminal legal aid contracts altered, many firms closed down their criminal law departments or made their criminal lawyers redundant. Mr Ruffell stated that the firm where the Respondent had worked after qualifying as a solicitor, which was one of the largest criminal practices in the area, no longer existed. In 2013, the pressures were so manifest that in the firm where the Respondent was working, a number of people left allowing her to move into a senior role very quickly. Although she had the additional responsibilities, her salary did not change to reflect the extra stresses she had taken on.

25. In 2015 the Respondent decided to set up her own practice believing she had the fundamental qualities to be able to succeed. At that time, Mr Ruffell submitted the Respondent did not appreciate the stresses and strains of running a legal practice alone. With hindsight, she realised that it had not been the right decision at that time

as she did not have the experience she needed, even though clients were loyal to her and followed her to her new practice.

26. Mr Ruffell stated that in January 2016, the Respondent opened her practice and immediately faced an air of hostility from established local practices who did not want to lose clients. The Respondent was seen as a threat, especially as clients left well established firms where she had previously worked and came to her new practice. Mr Ruffell reminded the Tribunal that within a busy established firm with no financial worries, clients could come and go but when setting up a new practice, every client mattered especially when former colleagues were trying to poach clients back.

27. As a result of this, the Respondent was extremely busy and under immense pressure not to lose clients to other firms. Mr Ruffell stated she became more and more reclusive, not attending family events, becoming socially isolated and just working constantly. She had set up her firm using her home address and her own personal mobile number not appreciating that it would have been more appropriate to use a separate work mobile number which could be switched off. Mr Ruffell submitted that due to her inexperience, the Respondent did not realise that she was vulnerable from being too available and found herself living her life through the eyes of her clients. She had no other professional person to advise her to say no to clients.

28. Due to her success, Mr Ruffell submitted the Respondent was under a great deal of pressure at work and found that sending text messages to clients was an effective way of communication to remind them of court hearing dates, meetings and other appointments. The Respondent accepted she should have read the Law Society's Practice Note in December 2015 but unfortunately she did not see it.

29. Mr Ruffell stated that when the Respondent received the first text from Client X, she accepted she realised he was using a mobile phone that he should not have had in custody. She also accepted she should not have replied to the text message but this did not occur to her as heavily as it should have done. The Respondent believed that Client X had been raising genuine issues and was fearful of threats of retribution whilst he was in prison. An Osman Warning issued by the police was in place which meant that his life was in danger and these were issues he, and she, had raised with the Prison Governor. The text messages sent to the Respondent contained the same theme wanting to know when she would get Client X out of prison, when she was coming to see him and what she was doing about his situation. The texts were sent daily and, Mr Ruffell submitted it was easy for the Respondent to simply reply by sending a text back and then continuing with her other work. She now accepted this conduct was wrong, indeed she had ended the contact a few days before the police contacted her.

30. Mr Ruffell referred the Tribunal to the various character references provided. He submitted it was clear from these that the Respondent had found herself in this situation due to her inexperience, her fear of losing clients and her own ambition to succeed. These factors enabled her to justify what she was doing to herself. She accepted that the purpose of the legislation was to prevent prisoners from communicating with those outside prison and Mr Ruffell submitted the sentence imposed upon her was a deterrent message. There was no suggestion that the content

of the text messages the Respondent had sent to Client X were inappropriate. They should simply have not been sent by text from mobile phone to mobile phone.

31. Mr Ruffell reminded the Tribunal that the Respondent had immediately self-reported her conduct to the SRA. She felt a tremendous sense of shame over these incidents which took place almost two years ago and as a result of this she decided she did not wish to continue with her practice. Mr Ruffell informed the Tribunal the Respondent had not worked as a solicitor since February 2016, having self-imposed a suspension on herself. He stated the Respondent had also suffered some medical issues due to her exhaustion.

32. Mr Ruffell informed the Tribunal that the Respondent realised she was in grave danger of being struck off. She would like to continue working as a solicitor which had been her lifelong ambition and of which she was proud, but would never work as a sole practitioner again. He stated her life had completely changed and he provided details of her current personal circumstances. The Respondent was likely to work part-time and as part of a team. Indeed the Tribunal had been provided with a character reference from a partner at Bennett and Co Solicitors who were aware of the conviction and were willing to again employ and supervise the Respondent by ensuring all her emails and text messages would be copied to another partner of the firm. That partner still had a high regard for the Respondent and believed she would be a credit to his firm.

33. Mr Ruffell submitted the risk of recurrence was remote as these were a unique set of circumstances which would not be repeated. The Respondent had learnt a salutary lesson, she had pleaded guilty having recognised her wrongdoing, she had demonstrated remorse and insight and she had a previously unblemished career. Mr Ruffell submitted the Respondent was a "rising star who fell from grace". She was a good solicitor who could be a credit to the profession again and he reminded the Tribunal that the purpose of sanction was to consider whether the Respondent's behaviour was fundamentally incompatible with remaining a member of the profession. Mr Ruffell submitted that the Respondent was now a different person and she could be trusted to work properly in a larger firm under supervision where the pressures were shared.

34. Mr Ruffell submitted a suspension with restrictions thereafter could be an appropriate sanction in this case. The Respondent's suspended sentence ended on 7 March 2019, and Mr Ruffell submitted the suspension could continue over the same period. He submitted the Tribunal should take into account the Respondent's self-imposed suspension which had already lasted twelve months and had effectively restricted her practice.

Sanction

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

36. The Respondent was an experienced solicitor in criminal law and had direct control over her actions. Her motivation had been to provide a proper service to her clients so that they would not go to her competitors at a time when she was seeking to establish a new business in a very competitive environment. Whilst the Tribunal did not consider the Respondent had deliberately planned to break the law, she had responded to numerous text messages that she had received, without giving proper thought to the appropriateness of her conduct. Her level of culpability was therefore low.

37. In relation to the harm caused by the Respondent's actions, whilst she had been trying to do the right thing for her client, her conduct had caused harm to the public and to the reputation of the profession as her actions had undermined the rules and regulations that applied to inmates. By responding to text messages from an inmate, the Respondent had, albeit unintentionally, encouraged Client X to send further communications from a mobile phone illegally in his possession. She had sent a total of 102 text messages over a 2½ month period but had not actually spoken to Client X on his mobile phone during that time. Her conduct had been a significant departure from the integrity, probity and trustworthiness expected of a solicitor. Her error of judgement had caused harm to the relevant prison authorities and the confidence placed by them in the legal profession.

38. The Tribunal considered the aggravating and mitigating factors in this case. The Respondent had a criminal conviction. Her actions had been sustained over a period of 2½ months. She ought reasonably to have known those actions were in breach of her obligations to protect the public and the reputation of the profession. These were aggravating factors.

39. The conduct occurred in relation to one specific client as the Respondent did not sufficiently distinguish him and his situation from others. The contact had been initiated by that client in circumstances where the Respondent believed that client was in genuine fear of his life whilst in custody. Indeed the Respondent had taken steps to contact the Prison Governor herself to express her concerns. The Respondent had a previously unblemished record and this was a single set of circumstances within that career. She had self-reported her conduct, she had co-operated with the police, pleaded guilty at court, shown genuine insight, made open and frank admissions and had fully co-operated with her regulator. These were all mitigating factors.

40. The Respondent had been given a custodial sentence, albeit suspended, which indicated this was a very serious matter. The offence had been committed by a prisoner and the Tribunal took into account the fact that the Respondent did not speak to the inmate on the telephone but had simply responded to his text messages under highly pressurised circumstances where she was also communicating with a number of other clients in the same way. The content of the text messages had not been inappropriate and would have been entirely acceptable if they had been contained in a letter or in another legitimate form of communication. The Tribunal also considered that whilst the Respondent had been experienced in criminal law, she had been very inexperienced in terms of running a practice. She had acted naively at a time when she had been under intense pressure to acquire and retain clients, having set up a new practice, in a challenging area of work.

41. The Respondent had made a grave error of judgement at a vulnerable time in her life and this had been followed by a dawning realisation of the seriousness of what she was doing. She had voluntarily stopped the communication by text herself, prior to be being discovered, when the penny had dropped. The Respondent had provided excellent references which confirmed her conduct was completely out of character. The Tribunal was therefore satisfied the risk of repetition was very low.

42. The Tribunal considered each of the sanctions available to it and concluded that given the serious nature of the conviction it was not appropriate to make no order or to impose a reprimand. The Tribunal also considered that as a suspended custodial sentence had been imposed on the Respondent, a Fine and/or a Restriction Order would not be sufficient to protect the reputation of the profession.

43. The Tribunal then considered a Suspension. The Respondent was clearly someone who had demonstrated a great desire to serve the public in a difficult and not particularly profitable area of law where many law firms were finding it hard to survive. The Tribunal did not consider the Respondent was a risk to the public and accepted she was a good solicitor when working within the confines of a larger practice. The Tribunal gave very careful consideration to the public interest in this case and the need to uphold the reputation of the profession. Whilst the Tribunal felt that this case fell very much at the boundary between a Strike Off and a Suspension, the Tribunal concluded that the public interest would be best served by allowing the Respondent to return to practise in due course with the benefit of the experience of going through these criminal proceedings. They had provided a very salutary lesson for the Respondent and one which was highly unlikely to be repeated. The Tribunal was satisfied a period of suspension was a proportionate and sufficient sanction taking into account all the facts of this case.

44. In considering the period of suspension, the Tribunal took into account the Respondent had already been effectively suspended for a year due to her self-imposed suspension as she had not taken on any work throughout that time. The Tribunal also noted that her suspended sentence would expire in March 2019. It would very rarely be appropriate for a solicitor to be able to practise whilst serving a custodial suspended sentence. Bearing this in mind, the Tribunal Ordered the Respondent be suspended for 18 months from the date of the hearing. This would cover the period of the suspended sentence and would mean she had been effectively out of practice for almost two and a half years.

45. On the expiry of the 18 months suspension, the Tribunal also Ordered that for a further 18 month period, the Respondent may not practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body. This would ensure that she would not be exposed to the pressures that had previously led to her conduct, as she would be working within a supported environment.

Costs

46. Ms Trench requested an Order for the Applicant's costs in the total sum of £3,230.30. She provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. She submitted the amount claimed was reasonable and whilst the Respondent had submitted a Statement of Means, the SRA Costs Recovery

Department would take a pragmatic approach and would negotiate with the Respondent allowing her time to pay by way of instalments if appropriate.

47. Mr Ruffell accepted the costs claimed by the Applicant were reasonable but submitted the Respondent did not have the means to pay these at the moment.

48. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed by the Applicant was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £3,230.30.

49. In relation to enforcement of those costs, the Tribunal noted the Respondent had provided a Statement of Means which showed she currently had very little finances available. However, the Tribunal had not taken away the Respondent's ability to work as a solicitor permanently and indeed Bennett and Co Solicitors had indicated they would be willing to re-employ the Respondent in the future. The Tribunal accepted Ms Trench's assurance that the Applicant would be willing to negotiate payment terms with the Respondent and allow her time to pay the costs. Taking all these matters into account, the Tribunal saw no reason to restrict enforcement of the costs order.

50. **Statement of Full Order**

1. The Tribunal Ordered that the Respondent, ANGELA CAROLINE HUDSON, solicitor, be suspended from practice as a solicitor for the period of 18 months to commence on the 16th January 2018 and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,230.30.

2. For a period of 18 months from the expiry of the fixed term of suspension referred to above, the Respondent shall be subject to conditions imposed by the Tribunal as follows:

2.1 The Respondent may not practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body.

3. There be liberty to either party to apply to the Tribunal to vary the condition set out at paragraph 2 above.

Dated this 12th day of February 2018
On behalf of the Tribunal

S. Tinkler
Chairman