

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11865-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

THARANJIT BIRING

Respondent

Before:

Mr J. P. Davies (in the chair)

Mr P. Jones

Mr S. Howe

Date of Hearing: 12 December 2018

Appearances

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

Sidhu-Brar, counsel, of Citadel Chambers, 190 Corporation Street, Birmingham, B4 6QD for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent were made by the Applicant in a Rule 5 Statement dated 10 September 2018 and were that on 20 July 2017 she was convicted after trial of committing an act/series of acts with intent to pervert the course of justice, and thereby failed to:
 - uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011 (the Principles); and/or
 - act with integrity in breach of Principle 2 of the Principles; and/or
 - behave in a way that maintained the trust the public placed in her and in the provision of legal services in breach of Principle 6 of the Principles.

Documents

2. The Tribunal considered all of the documents in the case which included the following:

Applicant:

- Application and Rule 5 Statement dated 10 September 2018 and exhibit JRL1
- Statement of costs at issue dated 10 September 2018 and updated statement of costs for the hearing dated 5 December 2018

Respondent:

- Letters dated 15 October and 20 November 2018
- Personal financial statement
- Documents contained within the hearing bundle (pages 33 to 81) containing character references and two expert reports

Factual Background

3. The Respondent was admitted to the Roll of Solicitors on 1 March 2004. At the date of the hearing she did not hold a practising certificate.
4. A certificate of conviction provided by Bristol Crown Court stated that the Respondent was convicted on 20 July 2017 of committing “an act/series of acts with intent to pervert the course of public justice”. The certificate of conviction also stated that the Respondent was sentenced on 23 August 2017 to 19 months imprisonment (and ordered to pay a victim surcharge of £100).

Witnesses

5. There was no live evidence during the hearing. The documentary evidence referred to by the parties is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the

Tribunal read all of the documents in the case. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read or consider that evidence.

Findings of Fact and Law

6. 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.
7. **The allegation: On 20 July 2017 the Respondent was convicted after trial of committing an act/series of acts with intent to pervert the course of justice, and thereby failed to:**
 - **uphold the rule of law and the proper administration of justice in breach of Principle 1 of the Principles; and/or**
 - **act with integrity in breach of Principle 2 of the Principles; and/or**
 - **behave in a way that maintained the trust the public placed in her and in the provision of legal services in breach of Principle 6 of the Principles.**

The Applicant's Case

- 7.1 Having obtained a copy of the certificate of conviction and sentencing remarks, and received confirmation that the Respondent had been released from prison, the Applicant wrote to the Respondent on 30 April 2018, raising allegations against her. The Respondent replied on 15 May 2018 and admitted the allegations made, stating she "does not require a fact finding exercise to ascertain my dishonesty as I admit that in providing the false statement I acted recklessly and therefore mislead the court".
- 7.2 The background events giving rise to the conviction were briefly summarised as:
 - The Respondent had previously had an employment arrangement with (and was a friend of) Mrs B, who was the principal of a firm of solicitors and her co-defendant in the criminal trial.
 - A dispute arose between Mrs B and an ex-employee of the firm, Mrs A.
 - Mrs B created false documentation regarding Mrs A's employment and used this documentation in civil proceedings and to present to the police, in the context of their investigation of her, with Mrs B being prosecuted for fraud and intending to pervert the course of justice.
 - The Respondent subsequently provided a false witness statement in support of Mrs B's position, which was subsequently served on the prosecuting authorities.

- 7.3. The trial related to the Respondent and her co-defendant, Mrs B. HHJ M Horton made various statements during his sentencing remarks relevant to the Respondent, including:
- 7.3.1 “There can be few Defendants who are more troubling to a Court than Defendants who are professional people, trusted by a Court and who, above all else, have a duty to the legal system as officers of the Court.”
- 7.3.2 “[The statement]...sadly, contained different lies about her knowledge of Mrs A than [the Respondent] had provided in her original harassment statement to the police”.
- 7.3.3 “...you were prepared to sign a Section 9 statement which told very clear and targeted lies about your knowledge of and discussions with Mrs [A]...you then lied about the signing and witnessing of your own contract by Mrs [C]...You knew this was a lie to assist Mrs [B], and I am in no doubt you were very clear it was for use by Mrs [B] in the Court proceedings. You also, I am sure, knew, as has now been conceded, that [Mrs B] had been charged with fraud and that your statement, you knew, was for use in those proceedings. I find and it is not suggested that there was any evidence for pressure upon you to sign the document, the significance of which you, as a criminal lawyer, knew very clearly.”
- 7.3.4 “As I have indicated from the evidence in my findings and indeed the concessions made by your counsel perfectly fairly on your behalf, you proved a very willing participant in helping Mrs [B].....Solicitors who produce false statements to support a defence to a criminal charge do so knowing only too well that they strike a blow at the very heart of the whole legal system....you did it knowing and intending that it would or might affect a serious criminal allegations against Mrs [B]”.
- 7.4. The conviction received media coverage, in various press outlets, which noted the Respondent’s (and her co-defendant’s) position as solicitors.
- 7.5 Mr Griffiths, for the Applicant, submitted that the relevant Principles also applied to the conduct of a solicitor outside their legal practice. Principle 1 placed an obligation on a solicitor to uphold the rule of law and the proper administration of justice. This required them, amongst other things, to abstain from criminal behaviour at all times. It was submitted that as the Respondent was convicted of a serious criminal offence, in this case involving an intention to pervert the course of justice through providing a false witness statement setting out “targeted lies”, she had breached Principle 1 of the Principles.
- 7.6. Principle 2 required a solicitor to act with integrity. Mr Griffiths referred the Tribunal to the test for integrity set out in paragraphs [95] to [97] of Wingate and another v SRA [2018] EWCA Civ 366. It was submitted that a solicitor acting with integrity would not engage in serious criminal activity such as that of which the Respondent has been convicted which involved intent to pervert the course of justice. It was submitted that a solicitor engaging in such criminal activity may properly be said to

lack moral soundness, rectitude and a steady adherence to an ethical code so as to lack integrity, in breach of Principle 2 of the Principles.

- 7.7 Principle 6 required a solicitor to behave in a way that maintained the trust the public placed in them and in the provision of legal services. This trust depends upon the reputation of the solicitors' profession as one in which every member "may be trusted to the ends of the earth". It was submitted that the conviction of a solicitor for serious criminal offences, involving an intent to pervert the course of justice, undermined the trust that the public places in the Respondent and in the provision of legal services, in breach of Principle 6 of the Principles. In addition, it was submitted that public trust was likely to be eroded by the publication of the Respondent's actions and conviction.

The Respondent's Case

- 7.8 The Respondent admitted the allegation, acknowledging the conviction and the alleged breaches of the Principles.

The Tribunal's Decision

- 7.9 The allegation was admitted. The Tribunal concluded that the admission was properly made and found that the allegation was proved beyond reasonable doubt. The Respondent had admitted the conviction for an offence involving intent to pervert the course of public justice and sentence of 19 months imprisonment. A certified copy of the Certificate of Conviction had been produced in respect of which a Civil Evidence Act Notice had been served. The Respondent had failed to uphold the rule of law and proper administration of justice, to act with integrity and to behave in a way that maintained the trust placed by the public in her and in the provision of legal services in breach of Principles 1, 2 and 6 of the Principles.

Previous Disciplinary Matters

8. There were no previous Tribunal findings.

Mitigation

9. Mr Sidhu-Brar, for the Respondent, acknowledged that the bar for exceptional circumstances being found by the Tribunal such that strike off would not follow such a conviction was high in the light of the SRA v James and others [2018] EWHC 3058 (Admin). He then set out the factors which he submitted led to the Respondent's actions, when considered in context, meeting that high bar.
10. He submitted that the Respondent was not the prime mover in the events which gave rise to the conviction. Mrs B, who was sentenced to four and a half years imprisonment, had undertaken a large scale fraudulent exercise involving the production of fraudulent documents and contracts. The Respondent's own actions were on a much smaller scale and the conviction rested on the provision of a single statement. He submitted that whereas Mrs B had stood to benefit personally, there was no benefit to the Respondent whatsoever. The Respondent did not seek to challenge the Applicant's evidence, but submitted that the fact it was a single incident

and the lack of any benefit which was relevant to an assessment of whether exceptional circumstances existed.

11. Mr Sidhu-Brar stated that the sentencing judge HHJ M Horton noted that Mrs B had used her position with other staff to perpetrate the fraud. He described the Respondent as having been taken into Mrs B's confidence and Mrs B manipulating the Respondent including through providing assistance to the Respondent in a case where she was acting for a family member. It was submitted that this was a deliberate ploy to influence the Respondent and through the gaining of her confidence make her more susceptible to providing the assistance sought by Mrs B.
12. At the relevant time the Respondent worked full time at Birmingham City Council prosecuting cases. She also worked as a duty solicitor at the weekends. Mr Sidhu-Brar stated that once arrested, the Respondent was devastated and had paid an extremely high price already. She took it upon herself not to practice from shortly after her arrest and had notified the Applicant. She was thoroughly ashamed of her actions. The Respondent had not worked since her arrest, but at the time of the hearing was seeking part time work.
13. Mr Sidhu-Brar submitted that the Respondent was someone of positive good character and had been a model solicitor. He stated that she was a deeply religious individual who had given up time to help the community. She supplied numerous extremely positive character references in support of these submissions. Mr Sidhu-Brar submitted that there had been a moment of madness in her life, which he acknowledged she had not remedied promptly by withdrawing the statement, for which she had already paid very heavily. Given the impact the conviction had already had, and the other challenging circumstances briefly described in relation to her family life, the Respondent was asking for mercy to be shown by the Tribunal so that she may have the prospect of what Mr Sidhu-Brar described as light at the end of the tunnel.
14. The Respondent had also supplied detailed financial information which Mr Sidhu-Brar invited the Tribunal to take into account in the event any financial sanction was contemplated.

Sanction

15. The Tribunal referred to its Guidance Note on Sanctions (5th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.
16. In assessing culpability, the Tribunal found that the motivation for the Respondent's conduct was to assist Mrs B with her dispute. The conduct involved an ongoing falsehood in that the statement was not withdrawn after its initial production. The conduct was not planned by the Respondent, but she had been found by the trial judge to have acquiesced without the application of pressure. As a solicitor with duties to the court the Respondent was in a position of trust which prompted the trial judge to state: "There can be few Defendants who are more troubling to a Court than Defendants who are professional people, trusted by a Court and who, above all else,

have a duty to the legal system as officers of the Court.” The Respondent had control over her initial act, of providing the statement, and her subsequent failure to withdraw it. The Tribunal accepted that she did not draft the statement and was not the prime mover in the events giving rise to her conviction, but as a solicitor with over four years’ PQE the Respondent must have been very aware that her actions in seeking to influence the outcome of a legal dispute through the production of a false document were unconscionable. The Tribunal assessed the Respondent’s culpability as high.

17. The Tribunal considered the harm caused by the conduct. The impact on Mrs A and Mrs C was very significant as they were the subject of lengthy police investigations to which the false evidence provided by the Respondent had contributed at least in part. HH Judge Horton stated in his sentencing remarks that Mrs A may to some extent always be affected by the events in which the Respondent played a part by virtue of the damage to her reputation. The press coverage of the conviction was also highly likely to have caused reputational damage to the profession. The Tribunal assessed the harm to be very significant.
18. The conduct was aggravated by the fact that it represented serious criminal misconduct. The Respondent’s conduct was deliberate and extended and helped conceal Mrs B’s improper conduct. The Tribunal also considered that the significant impact on Mrs A and Mrs C and the fact that the Respondent must have known that her actions were thoroughly inappropriate further aggravated the conduct.
19. The Tribunal considered mitigation. The Tribunal accepted that Mrs B was the prime mover in the conduct giving rise to the convictions. The Respondent had cooperated fully with her regulator and was remorseful for her actions. The Tribunal also carefully considered the numerous extremely positive character references submitted by the Respondent.
20. Having found the Respondent’s culpability to be high and the harm caused very significant, the Tribunal assessed the appropriate sanction. The Respondent had been sentenced to 19 months imprisonment for a conviction which included intent to pervert the course of justice. The fact that the Respondent was not the prime mover, was not motivated by any benefit to herself, had numerous extremely positive character references and was subject to the significant personal pressures to which Mr Sidhu-Brar referred were all accepted by the Tribunal. This did not, however, outweigh the seriousness of the conduct or the harm caused to the reputation of the profession and the public’s trust in it.
21. The Tribunal considered the decision in James and SRA v Sharma [2010] EWHC 2022. In Sharma it was held that save in exceptional circumstances a finding of dishonesty would lead to strike off. The Tribunal considered that this approach was also necessarily applicable to a conviction for intent to pervert the course of justice. . In deciding whether or not a particular case fell into that category, it was held in Sharma that the nature, scope and extent of the dishonesty would be relevant factors, as would whether it was momentary or over a lengthy period of time, whether it was of benefit to the solicitor and whether it had an adverse effect on others. The Tribunal had found that the dishonesty itself, including intent to pervert the course of justice was very serious misconduct, it had extended over time as the false statement had not been withdrawn, and the impact on others was very significant. Accordingly, the

Tribunal did not consider that this case fell within the residual category described in Sharma where there were exceptional circumstances.

22. The Tribunal considered that No Order, Reprimand, Fine or Suspension were inadequate sanctions which did not reflect the seriousness of the conduct and the finding that exceptional circumstances did not exist. The misconduct was of the utmost seriousness and this fact, together with the need to protect the reputation of the legal profession, required that the appropriate sanction was Strike Off from the Roll.

Costs


23. Mr Griffiths applied for the Applicant's costs in the sum of £2,934.19 as set out in the Schedule of Costs dated 5 December 2018. In reply Mr Sidhu-Brar stated that the Respondent's evidence of means was not disputed. He stated that the Respondent accepted the principle that in light of the finding an award for costs would be made, and did not take issue with any specific matters on the schedule of costs, but he invited the Tribunal to make a reduction to reflect her ability to pay.
24. The Tribunal assessed the costs for the hearing. The Tribunal considered the costs claimed to be reasonable. However, in the light of the Respondent's comprehensive evidence and submissions on her means the Tribunal determined that the amount awarded for costs should be reduced. The Respondent was ordered to pay the costs of and incidental to the application and enquiry fixed in the sum of £1,000.

Statement of Full Order

25. The Tribunal Ordered that the Respondent, THARANJIT BIRING, 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 £1,000.00.

Dated this 31st day of January 2019

On behalf of the Tribunal



J. P. Davies
Chairman

Judgment filed
with the Law Society
on 01 FEB 2019