

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11938-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

FIONA ONASANYA

Respondent

Before:

Mr E. Nally (in the chair)

Mr P. Lewis

Mr S. Hill

Date of Hearing: 6 August 2019

Appearances

Nimi Bruce, barrister of Capsticks Solicitors LLP, 1 St George`s Road, London, SW19 4DR,
for the Applicant.

The Respondent represented herself.

JUDGMENT

Allegations

1. The Allegation against the Respondent was that on 19 December 2018 at the Central Criminal Court she was convicted on indictment of a single count of doing an act tending and intended to pervert the course of public justice and thereby failed to:
 - 1.1. Uphold the proper administration of justice in breach of Principle 1 of the SRA Principles 2011 (“the Principles”);
 - 1.2. Act with integrity in breach of Principle 2 of the Principles;
 - 1.3. Behave in a way that maintains the trust the public places in her and the provision of legal services in breach of Principle 6 of the Principles;
2. It was further alleged against the Respondent that by reason of the facts and matters giving rise to the conviction referred to at Allegation 1 above, she acted dishonestly, but proof of dishonesty was not a necessary ingredient of a finding that the Allegations set out at 1 above were proved.

Factual Background

3. The Respondent was admitted to the Roll of Solicitors on 2 November 2015. In the General Election of 8 June 2017, the Respondent was elected as the Member of Parliament for the Peterborough constituency. Thereafter, the Respondent ceased to practice as a solicitor and at the time of the hearing she did not hold a Practising Certificate.
4. The Respondent was convicted on 19th December 2018 after a trial which took place before a jury at the Central Criminal Court, presided over by Mr Justice Stuart-Smith. This was a re-trial, following an earlier trial that had ended in a hung jury. On 29 January 2019 the Respondent was sentenced to three months’ imprisonment and ordered to pay a victim surcharge of £115.
5. On or about 24 July 2017, the Respondent’s car had activated a speed camera, travelling at 41mph on a 30mph road. In early August 2017, a Notice of Intended Prosecution (“NIP”) was received at the Respondent’s address. The Respondent passed the NIP to another member of her family. This was returned to the police with a nominated driver identified who was a third party. This was false information. The Respondent’s brother was found to have provided this false information.
6. On or about 14 September 2017 the Respondent received a letter from the police raising queries about the response which had been received to the NIP. The Respondent’s answer was inaccurate. However, at the trial at the Central Criminal Court, although this inaccurate response from an MP and solicitor was described by Mr Justice Stuart-Smith as “unsatisfactory and infinitely regrettable”, it was not found to have been sent with the intention of perverting the course of justice.
7. The Respondent was contacted by a civilian investigator employed by the police on 2 November 2017 and supplied false information about the identity of the driver of the car at the time when the speed camera was triggered. The investigator recorded in a

note of a telephone conversation with the Respondent that “Have talked with [the Respondent] and she stands by her nomination. When challenged about the mobile number provided...she did not have an answer. She states that she did sign the response but the details within the document were completed by the nominated driver. I have asked her to find the nominated driver and get him to make contact or provide an address.” This was described by the prosecution as “adopting knowingly the false nomination that had been provided by [the Respondent’s brother]”.

8. The Judge remarked that “I am certain, and I think that the jury’s verdict mandates this, that by 2 November [the Respondent] knew what was going on and that her response on 2 November was a criminal response with the intention of perverting the course of justice.”
9. In mitigation, counsel for the Respondent said that she “will inevitably be struck off as a solicitor” and that “her life as a solicitor (has) effectively come to an end.” In sentencing, the Judge said to the Respondent that “both as a solicitor and as a Member of Parliament you are fully aware of the importance of upholding the proper administration of justice...You have let down...your profession...”. He further remarked that, “it seems inevitable that you will be struck off as a solicitor.”

Findings of Fact and Law

10. 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.
11. The Tribunal considered carefully all the documents presented. In addition it had regard to the oral and written submissions of both parties, which are briefly summarised below.
12. **The Allegation against the Respondent was that on 19 December 2018 at the Central Criminal Court she was convicted on indictment of a single count of doing an act tending and intended to pervert the course of public justice and thereby failed to:**
 - 1.1. **Uphold the proper administration of justice in breach of Principle 1 of the SRA Principles 2011 (“the Principles”);**
 - 1.2. **Act with integrity in breach of Principle 2 of the Principles;**
 - 1.3. **Behave in a way that maintains the trust the public places in her and the provision of legal services in breach of Principle 6 of the Principles;**
2. **It was further alleged against the Respondent that by reason of the facts and matters giving rise to the conviction referred to at Allegation 1 above, she acted dishonestly, but proof of dishonesty was not a necessary ingredient of a finding that the Allegations set out at 1 above were proved.**

Applicant's Submissions

- 12.1 Ms Bruce told the Tribunal that the Applicant relied on the certificate of conviction, which was proof of the conviction for the offence of doing an act tending and intended to pervert the course of justice. The sentencing remarks included findings of fact which stand as proof of those facts, including that:
- The Respondent was driving the car at the time when the speed camera was activated;
 - The Respondent was aware by 2 November 2017 that false information had been provided to the police as to the identity of the driver;
 - The Respondent knowingly and dishonestly provided false information to the police; and
 - The Respondent deliberately committed the offence of which she was convicted.
- 12.2 Ms Bruce submitted that knowingly allowing a false account, provided to the police in respect of a criminal offence, to persist in the knowledge of its falsehood, and providing knowingly untrue information to the police, amounted, as was said in the sentencing remarks, to conduct which “undermines the very system of criminal justice and impedes its proper functioning”. The Respondent had therefore failed to uphold the proper administration of justice, and in doing so breached Principle 1 of the Principles.
- 12.3 Ms Bruce further submitted that the Respondent failed to act with integrity, because the commission of this particular offence amounted to a failure to act with moral soundness, rectitude and steady adherence to an ethical code. Ms Bruce reminded the Tribunal of the test in Wingate v Solicitors Regulation Authority [2018] EWCA Civ 366, where it was said that integrity connoted adherence to the ethical standards of one’s own profession. The standards of the profession obviously required that solicitors do not commit offences of dishonesty.
- 12.4 Ms Bruce submitted that the Respondent, in providing dishonest support to the provision of false information to the police, for her own benefit, had plainly acted in a manner which would undermine public trust both in solicitors and in the Respondent herself, and in doing so she had breached Principle 6 of the Principles. The Respondent’s conviction, and the fact that the Respondent was a solicitor, had attracted national media attention which would have caused trust in the Respondent and in the provision of legal services to be considerably undermined.
- 12.5 Ms Bruce also submitted that the Respondent’s conduct had been dishonest. She referred to the test for dishonesty set out in Ivey v Genting Casinos [2017] UKSC 67, namely whether the person had acted dishonestly by the ordinary standards of reasonable and honest people.
- 12.6 The Respondent had been convicted of an offence of dishonesty, namely doing an act tending and intended to pervert the course of public justice. The Respondent was expressly found to have “persisted in (her) dishonest support for the false information”

provided to police. Ms Bruce submitted that ordinary, decent people would consider the behaviour giving rise to the conviction to be dishonest.

Respondent's Submissions

- 12.7 The Respondent denied all the Allegations on the basis that she had not committed the offence of which she had been convicted. The Respondent told the Tribunal that she had taken advice from leading counsel and had lodged an application with the Criminal Cases Review Commission (CCRC). The outcome of that application was awaited.
- 12.8 The Respondent denied doing an act intended to and tending to pervert the course of justice and as such she denied breaching Principle 1. She told the Tribunal that her understanding was that the conviction was on the basis of one telephone call on 2 November 2017 and limited to that. The prosecution at the trial had not been required to prove that she was the person who had been driving and this was not the basis of the conviction. There had also been no express finding that the Respondent was the person who signed the form. The Respondent submitted that there was no motive for her to have acted dishonestly and she told the Tribunal that she had a clean driving licence at the time.
- 12.9 The Respondent told the Tribunal that she had not practised since June 2017 and she described herself as "a solicitor in name only". After her election to Parliament she had focussed on her duties as a Member of Parliament, including her constituency work. This was particularly relevant to the allegation that she had breached Principle 6.
- 12.10 The Respondent referred the Tribunal to her response to the Rule 5 statement. She told the Tribunal that she had previously sought an adjournment of the hearing, but that had been refused.

The Tribunal's Findings

12.11 Allegation 1

12.11.1 The Tribunal noted that the Applicant's case was based solely on the fact of the Respondent's criminal conviction. The Respondent did not dispute that she had been found guilty but she strongly denied committing the offence for which she had been convicted. The Respondent maintained that position and was seeking to have the conviction quashed.

12.11.2 The position at the time of the hearing, however, was that the conviction stood and was proved by the certificate of conviction. Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR 2007") stated as follows:

"A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of the facts in question".

12.11.3 The Respondent had told the Tribunal that she had an application before the CCRC, which she hoped would ultimately result in the quashing of her conviction. If she was successful in getting the conviction quashed then it would be open to her to make an application to the Tribunal pursuant to Rule 21(5) of the SDPR 2007, which stated the following:-

“Where the Tribunal has made a finding based solely upon the certificate of conviction for a criminal offence which is subsequently quashed, the Tribunal may, on the application of the Law Society or the respondent to the application in respect of which the finding arose, revoke its finding and make such order as to costs as shall appear just in the circumstances”.

12.11.4 The effect of Rule 21(5) was to deal with the scenario that the Respondent was hoping would occur, namely the quashing of her conviction. However the Tribunal’s duty was to consider the matter as it stood presently, which was that she had been convicted of a criminal offence.

12.11.5 The Tribunal found the factual basis of Allegation 1 proved beyond reasonable doubt based on the certificate of conviction.

12.12 Allegation 1.1

12.12.1 The Tribunal had noted that the wording of Principle 1 as pleaded in the section of the Rule 5 statement headed ‘Allegations’ only referred to the second part of Principle 1, namely upholding the proper administration of justice, and not the first, which referred to upholding the rule of law. In response to the Tribunal’s request for clarification on this point, Ms Bruce had told the Tribunal that this was an omission but that the totality of the Rule 5 statement made clear that a breach of the entirety of Principle 1 was alleged.

12.12.2 The Respondent had also made clear in her submissions that she understood the nature of the Allegation against her and she denied the breach of Principle 1 in its entirety.

12.12.3 The offence for which the Respondent had been convicted was one that went to the heart of the rule of law and the administration of justice. In the circumstances the Tribunal was satisfied beyond reasonable doubt that the Respondent had breached Principle 1.

12.13 Allegation 1.2

12.13.1 Ms Bruce had correctly submitted that the test for integrity was set out in Wingate. At [100] Jackson LJ had stated:

“Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more

scrupulous about accuracy than a member of the general public in daily discourse”.

12.13.2 Wingate had continued a line of authorities that included SRA v Chan [2015] EWHC 2659, Scott v SRA [2016] EWHC 1256 (Admin), Newell-Austin v SRA [2017] EWHC 411 (Admin) and Williams v SRA [2017] EWHC 1478 (Admin).

12.13.3 The Tribunal was satisfied beyond reasonable doubt that doing an act tending and intended to pervert the course of public justice clearly lacked integrity and the breach of Principle 2 was therefore proved.

12.14 Allegation 1.3

12.14.1 The Tribunal accepted that at the time of the offence and the conviction, the Respondent was not practising. However she was on the Roll and her commission of this offence would undermine trust in her and in the provision of legal services. The public would not consider it acceptable conduct for a member of the legal profession. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

12.15 Allegation 2

12.15.1 The test for considering the question of dishonesty was that set out in Ivey at [74] as follows:

“the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

12.15.2 The Tribunal applied this test and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of the Respondent’s knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.
- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

12.15.3 In assessing the Respondent's state of knowledge, the Tribunal noted that the wording of the offence for which the Respondent had been convicted included the word "intended" in relation to perverting the course of justice. On the jury's verdict therefore the Respondent had done an act that was intended to achieve this outcome.

12.15.4 The Tribunal also noted the sentencing remarks of the Judge, in which he stated:

"...the jury's verdict and the evidence compels the conclusion that by 2 November 2017 you knew that false information had been supplied. I have no reason to doubt that Mr Williams' note of the conversation was accurate. On that basis the information you have provided to him must have been knowingly untrue".

12.15.5 The Tribunal found beyond reasonable doubt that this conduct would be considered dishonest by the standards of ordinary decent people. The Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt.

Previous Disciplinary Matters

13. There was no record of any previous disciplinary findings by the Tribunal.

Mitigation

14. After announcing its findings the Tribunal rose to give the Respondent time to review the Guidance Note on Sanctions before making her submissions in mitigation.

15. In mitigation the Respondent made the following points:-

- The Respondent maintained that she had not committed the offence for which she had been convicted ;
- She was actively pursuing avenues to clear her name;
- The role of her brother in this matter was the background to the conviction;
- The Respondent had voluntarily notified the SRA and had kept it informed throughout;
- The Respondent had been convicted of a single count relating to an incident that was brief in duration and she had a previously unblemished career.

16. The Respondent submitted that there were exceptional circumstances present in this case, such that she should not be struck off. These were:

- The nature and scope of the dishonesty, which the Respondent had already submitted was limited;
- There had been no monetary gain;

- The alleged offence had not taken place over a lengthy period of time;
- The commission of the offence was not of benefit to her ;
- There had been no adverse effect on others, as reflected in the sentence itself.

Sanction

17. The Tribunal had regard to the Guidance Note on Sanctions (December 2018). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.
18. In assessing culpability the Tribunal adopted the trial Judge's analysis. The Respondent had sought to avoid the correct person being identified as the driver and in doing so maintained the deceit contained in the completed form. The events were not spontaneous but nor did they appear to be elaborately planned. The Respondent had direct control and responsibility over her answer to the civilian investigator.
19. In assessing harm, the Tribunal noted that there had been the potential for an innocent third party to face prosecution for the speeding offence. The Respondent was in the public eye and in public life and her status as a solicitor was known. This had an impact on the reputation of the profession. The Tribunal noted that the public's view of the Respondent's conduct was reflected in the recall petition signed by her constituents which ultimately led to her removal as a Member of Parliament.
20. The matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

“34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.”
21. The Respondent had committed an offence of dishonesty that was deliberate, albeit not repeated. The Respondent had been an officer of the Court and she would have known that she was in material breach of her obligations.
22. The matters were mitigated by the fact that she had voluntarily notified the SRA of the fact she had been charged with the offence and had continued to co-operate throughout. This was a single episode in an otherwise unblemished career. The Tribunal recognised that the personal and professional consequences for the Respondent had been disastrous.
23. The Tribunal noted the involvement of the Respondent's brother, which was a factor in underlying facts. However this did not assist the Respondent with her conduct at the moment of the offence committed by her for which she was convicted.

24. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The reputation of the profession demanded nothing less in circumstances where a solicitor was convicted of doing an act tending to an intended to pervert the course of justice. As a Parliamentarian the Respondent would have a role in making new law. By contrast, her professional obligations as a solicitor and officer of the court required her to uphold the rule of law and the proper administration of justice. She had failed in those duties by her dishonest conduct.
25. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal had regard to the Respondent's personal circumstances both at the material time and at the time of the hearing and it noted the matters put forward by the Respondent in mitigation. The Tribunal accepted that this was not an offence involving monetary gain and it had not taken place over a lengthy period of time. The Tribunal also noted the fact that the Respondent's brother had pleaded guilty to the offences he faced in connection with this matter.
26. The Tribunal considered that there had been multiple opportunities for the Respondent to have attempted to correct the dishonest representation that she made on 2 November 2017. It was, in that sense, not a momentary lapse that was immediately corrected. The Respondent knew that enquiries had been made previously about this incident. As early as September 2017 she knew that there was a concern about the response to the Notice of Intended Prosecution. This was the context in which the offence was committed. There was no evidence, nor was it suggested, that the Respondent was under any sort of duress.
27. The Tribunal found there to be nothing that would justify a lesser sanction, such as an indefinite suspension. The only appropriate and proportionate sanction was that the Respondent be Struck Off the Roll.

Costs

28. Ms Bruce applied for the Applicant's costs in the sum of £22,762.50.
29. Ms Bruce told the Tribunal that although the case was simple factually, it was a high-profile case. The Applicant had a duty to look at matters evidentially and with a view to the reputation of the profession. It had therefore taken more time to prepare the case than might otherwise be anticipated.
30. In response to a query from the Tribunal about the number of hours spent on the case, Ms Bruce submitted that the costs of investigation were entirely reasonable. The legal costs were a matter for Tribunal. Ms Bruce accepted that there had been full co-operation from the Respondent.
31. The Respondent referred the Tribunal to her statement of means including the updated position as communicated by email shortly before the hearing. She told the Tribunal that she had raised concerns about the level of costs with the Applicant previously.

The Tribunal's Decision

32. The Tribunal considered whether the costs claimed were reasonable and proportionate in all the circumstances.
33. The Tribunal found that the investigation costs were reasonable and proportionate and saw no basis for reducing those.
34. In relation to the legal costs, the Tribunal noted that this was a very straightforward case that did not rely on many documents. The exhibits to the Rule 5 statement consisted of the certificate of conviction, the transcript of the sentencing hearing and a small amount of correspondence. The Respondent's Answer had been clear and concise. The Tribunal considered that 33 hours preparation was excessive and the appropriate number of hours was 11. In addition the hearing had concluded in half a day and so attendance at the Tribunal should be reduced from six hours to three.
35. The appropriate number of hours in total that should have been spent on this case was 25 hours. The Tribunal applied a notional rate of £200 per hour, which produced a figure of £5,000 plus VAT, making a total of £6,000 for the legal costs.
36. The Tribunal added the investigation costs to this figure, making a total of £6,562.50.
37. The Tribunal then considered whether to reduce the costs further in light of the Respondent's means. The Tribunal took into account her statement of means and noted that she was presently unemployed and had limited resources. However there was possibly some equity in her house and she may be able to secure employment in the future. The Tribunal noted that the SRA adopted a pragmatic and reasonable approach to enforcement. The Tribunal saw no basis to reduce the costs further to take account of the Respondent's means or to defer payment.

Statement of Full Order

38. The Tribunal ORDERED that the Respondent, FIONA ONASANYA, 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 £6,562.50.

Dated this 13th day of August 2019

On behalf of the Tribunal



E. Nally
Chairman

Judgment filed
with the Law Society

on 13 AUG 2019