SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11978-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

ASTRID HALBERSTADT-TWUM — First Respondent
JOSEPH TWUM — Second Respondent

Before:

Ms A. Horne (in the chair)
Mr R. Nicholas
Mr S. Howe

Date of Hearing: 12 November 2019

Appearances

Alastair Willcox, solicitor of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

The Respondents did not attend and were not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement dated 27 June 2019.

   The allegations against each of the First Respondent and the Second Respondent, together "the Respondents" and both formerly of Cleveland & Co Solicitors ("the Firm"), were that the Respondents:

1.1 By virtue of being convicted on 9 July 2018 for the following offences:

   1.1.1: conspiracy to defraud the Legal Aid Agency and;

   1.1.2: committing an act/series of acts with intent to pervert the course of public justice;

   breached all or alternatively any of:

   a) Principle 1 of the SRA Principles 2011("the Principles");
   b) Principle 2 of the Principles;
   c) Principle 6 of the Principles.

1.2 Failed to report their convictions to the SRA in breach of all or alternatively any of Principles 2, 6 and 7 of the Principles.

Documents

Applicant:

- Application and Rule 5 Statement with exhibit "AHJW1" dated 27 June 2019
- Schedules of Costs dated 27 June 2019 and 1 November 2019
- Interim Report of Jonathan Chambers, Forensic Investigation Officer dated 25 November 2013
- Final Report of Jonathan Chambers, Forensic Investigation Officer dated 9 December 2013.
- Certificate of Conviction: First Respondent dated 12 October 2018
- Certificate of Conviction: Second Respondent dated 12 October 2018
- Email from the Criminal Appeal Office dated 25 March 2019

Respondent:

The Respondent did not file any documents.

The Tribunal had before it the following documents:

- Letter from the First Respondent to Ms Jyoti Kumar, Investigation Officer dated 4 December 2018
- Letter from the Second Respondent to Ms Jyoti Kumar, Investigation Officer dated 31 January 2019

- Email dated 8 October 2019 from the First Respondent to the Applicant and Tribunal
- Email dated 9 October 2019 from the Second Respondent to the Applicant and Tribunal

Preliminary Matter – Application to Proceed in Absence

The Applicant's Application

2. Mr Willcox applied to proceed in the Respondent's absence.

3. The Rule 5 statement in this matter was dated 27 June 2019. Standard Directions were issued on 3 July 2019. On 5 July 2019 the Tribunal's office informed the Applicant that the papers sent to the Second Respondent in prison had been returned to the Tribunal. The Applicant discovered that the Second Respondent had been released from prison. He was subsequently served with the papers and revised Standard Directions.

4. On 24 July 2019 the Applicant had applied to amend the application to reflect the Second Respondent's up to date address. On 10 September 2019 the Applicant applied to amend the application to reflect the First Respondent's up to date address. Both of these applications were precipitated by the Respondents' release from custody.

5. The Respondents applied to adjourn the substantive hearing listed for 12 November 2019 pending the outcome of civil proceedings in which the Respondents were engaged, and pending a challenge to worldwide freezing orders placed over their assets. A Case Management Hearing ("CMH") by telephone was held on 1 October 2019. The Memorandum of that hearing recorded that the Tribunal had considered the application carefully, but had refused an adjournment. The Tribunal had noted that under Rule 21(5) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR 2007") if the conviction was quashed, where the Tribunal had made a finding based solely upon the certificate of conviction, the Respondents would be at liberty to apply to the Tribunal to revoke that finding.

6. Mr Willcox invited the Tribunal to proceed in the Respondents' absence. He relied on R v Hayward [2001] EWCA Crim 168 and General Medical Council v Adeogba [2016] EWCA Civ 162. Mr Willcox submitted that the Respondents had voluntarily absented themselves. There was no evidence that, if the hearing was adjourned, the Respondents would engage and attend the adjourned hearing.

7. The Tribunal had to take into account all the relevant circumstances and all of the factors set out at paragraph 22 of Hayward. Mr Willcox emphasised that the Tribunal had to consider whether the Respondents had deliberately and voluntarily absented themselves from the hearing, thereby waiving their right to attend; whether an adjournment would be likely to secure the Respondents' attendance; the delay caused by the length of any potential adjournment; and the general public interest that the hearing should take place within a reasonable time of the events to which it related. In accordance with the judgment in Adeogba, the decision should be made in the context

of the Tribunal's duty to protect the public, and bearing in mind that the Respondents had a responsibility to co-operate with the regulator.

8. Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 states: "If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing." Mr Willcox invited the Tribunal to conclude that the Respondents had been properly served and to proceed in their absence.

9. On 1 October 2019 the Applicant had opposed the application to adjourn, and had submitted that the Respondents had not demonstrated how the civil proceedings were relevant to the allegations they faced. The alleged misconduct flowed from the criminal convictions and the Tribunal could not go behind them. The Second Respondent, when seeking an extension for time to serve his Answer in August, had not made reference to the freezing order. The inability to secure representation was not generally to be regarded as justification for an adjournment. The Respondents had not presented any medical evidence in support of their submissions about their ill-health. The Respondents' application for an adjournment had been refused.

The Respondents' Position

10. The Second Respondent was released from prison on 6 June 2019 and the First Respondent was released from prison on 27 August 2019.

11. On 16 August 2019 the Second Respondent applied to the Tribunal for an extension of the date by which he and the First Respondent were to file and serve their responses to the Rule 5 statement, as the First Respondent was due to be released from prison on 27 August 2019, and additional time was required for them to formulate their answer to the Rule 5 statement. The Tribunal granted the requested extension.

12. Neither the First Respondent nor the Second Respondent filed and served a response to the Rule 5 statement. The First Respondent made an application to the Tribunal for an adjournment of the Substantive Hearing on the basis that the Respondents had civil proceedings ongoing and could not access their finances to fund expert representation before the Tribunal. The Applicant opposed the adjournment application, which was considered at the CMH on 1 October 2019.

13. On that date the Respondents told the Tribunal that they could not afford representation due to a freezing order in place against them since June 2019. They therefore had no access to their funds. They submitted that they were not specialists in the area of professional regulation, and would require representation to effectively put their case. The Respondents were also involved in civil proceedings arising out of an allegation of breach of contract by the LAA, and they submitted that this may be of relevance to the Tribunal proceedings. The Respondents made clear that these were separate from the Proceeds of Crime Act matters, which were now concluded.

14. The Respondents had recently been released from custody and the criminal proceedings had been traumatic and left the Respondents unwell. The Respondents submitted that their criminal convictions were unsafe and may be overturned.

15. On 8 October 2019, the First Respondent wrote to the Tribunal and the Applicant under cover of an email dated 8 October 2019 and timed at 18:28 which stated:

> "Dear Sir/Madam
>
> As stated in previous communications and also during the CMH last Tuesday, the 1st, due to our current circumstances (financially, emotionally and psychologically), we are unable to defend ourselves without the assistance of legal representation in the form of a specialist lawyer.
>
> We therefore respectfully ask the Tribunal to make a decision in this matter, based on the information provided by the SRA.
>
> Yours sincerely,
> Joseph Twum and
> Astrid Halberstadt-Twum."

16. The Second Respondent was not copied into the First Respondent's email, but subsequently confirmed to the Applicant and the Tribunal that the First Respondent's email dated 8 October 2019 accurately confirmed his position.

<u>The Tribunal's Decision</u>

17. The Tribunal retired to consider the Applicant's application to proceed in the Respondents' absence. It considered the guidance in <u>Adeogba</u> which applied <u>Hayward</u> and <u>R v Jones</u> [2002] UKHL 5 to regulatory proceedings. The starting point was that Respondents had a right, in general, to be present at the hearing of allegations made against them. However, the Tribunal, had a discretion to proceed with the hearing in the absence of the Respondents, but that discretion had to be exercised with great care and it was only in rare and exceptional circumstances that it should be exercised in favour of the hearing continuing in the absence of the Respondents. In deciding whether to proceed in the Respondents' absence, fairness to the Respondents was a prime consideration, but fairness to the Applicant and the interests of the public also had to be considered.

18. The Tribunal was satisfied that the Respondents had been properly served. Further, they had participated in the case management hearing of 1 October 2019, and had received the Memorandum of that hearing which referred to the date of this hearing. There was no doubt that they were aware of this hearing. The Respondents had not complied with the Tribunal's directions and, if the case was adjourned, there was no evidence to suggest that the Respondents would attend the adjourned hearing. They had invited the Tribunal to make a decision in this matter based on the Applicant's evidence, the inference being that they expected the hearing to proceed in their absence.

19. The Tribunal concluded that the Respondents had voluntarily absented themselves. The Tribunal decided to exercise its power to proceed in the Respondents' absence. The Respondents were facing serious allegations and it was in the public interest to proceed.

Factual Background

20. The First Respondent was born in May 1962. The First Respondent was admitted to the Roll of Solicitors on 1 November 2000. At the date of the hearing she did not hold a practising certificate. The First Respondent is also admitted in Germany as the equivalent of both a solicitor and a barrister, as well as being a Rechtsanwalt, which translates as a state prosecutor. Prior to her admission to the Roll of Solicitors, the First Respondent practised in England as a Foreign Qualified Lawyer from July 1998.

21. The First Respondent and the Second Respondent are married. The First Respondent was practising at the Firm on her own account between 1 January 2003 to 31 August 2013 and latterly as the sole director between 11 June 2013 and 31 October 2014.

22. At the time of the Legal Aid Agency ("LAA") investigation the First Respondent employed her husband, the Second Respondent, who is an unadmitted individual, as the Firm's Practice Manager and the Compliance Officer for Finance and Administration ("the COFA").

23. On 4 November 2013, the LAA commenced an official investigation into the Firm on a 'no notice' basis. The Firm ceased trading as a result of that investigation and was dissolved by a compulsory strike-off on 30 October 2018.

24. The Applicant commissioned a Forensic Investigation into the Firm. The Forensic Investigator set out his findings in his Interim Report dated 25 November 2013, and in his Final Report dated 9 December 2013.

25. As the Second Respondent was an unadmitted individual the Applicant sought an order under section 43 of the Solicitors Act 1974 ("the Act") in respect of him.

26. The Applicant was aware that the First Respondent had applied for permission to appeal against her criminal conviction and sentence. On 25 March 2019 the Criminal Appeal Office had confirmed to the Applicant that the Second Respondent had also lodged an appeal against conviction and sentence. At that time both cases were about to be lapsed as they had not been renewed, and permission to appeal had not been granted to either Respondent.

Witnesses

27. The written evidence 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 Tribunal did not hear any oral evidence. 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

28. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family lives under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Applicant's Case

Background to Allegations 1.1 and 1.2

29. On 4 November 2013 the LAA served an investigation notice on their arrival at the Firm. The summary of the grounds contained in that document stated:

> "…On 30 May 2013 you were requested to provide the Legal Aid Agency ("LAA") with a sample of 50 files which were requested due to concerns identified from billing patterns. The claims were noted to be for individuals with the same names but slightly differing dates of birth and post codes.
>
> A review of these files was conducted and the LAA now has reason to believe that the claims are not true and accurate.
>
> For this [sic] reasons it has been determined that an OI [i.e. Official Investigation], as defined in the SCC [i.e. Standard Civil Contract] is warranted."

30. The notice made it clear that, until the investigation was complete, no further contract payments would be made; and no further Legal Aid client matters could be started. The First Respondent told the Forensic Investigation Officer ("FIO") that the Firm derived 95% of its income from Legal Aid contract payments; that any degree of cessation of the LAA contract would cause a notable financial impact, and that a total pause on the contract placed the Firm on an unsustainable footing. The notice set out the right of the First Respondent to appeal the LAA's decision. There was no evidence that the decision was appealed.

31. In the Interim Forensic Investigation Report ("Interim FIR") the FIO reported that the First Respondent was not present in the office when the LAA arrived to inspect on either 4, 5 or 11 November 2013. The outcome of this was that the LAA could not obtain all of the information it required to inspect the Firm. The LAA formally requested that 600 files were provided for inspection. As at 21 November 2013, the First Respondent had only provided 150 of these, and was also obliged to provide all electronic records. The First Respondent stated she was attending to these outstanding matters.

32. In the Final Forensic Investigation Report ("Final FIR") the FIO reported that, on 3 December 2013, the Firm had still not provided all of the information requested by the LAA. The Firm had also failed to accept an offer to meet with the LAA to discuss the matter further. The total files provided by the Firm was 210, which still fell significantly short of the 600 requested; this was partially attributed to the loss and/or destruction of some files.

33. The Applicant was made aware that the First and Second Respondents were bailed pending the enquiries of the LAA. As a consequence of the LAA investigation, the First and Second Respondents were each convicted of conspiracy to defraud the LAA and committing an act/series of acts with intent to pervert the course of justice at the Southwark Crown Court. The Respondents were sentenced by His Honour Judge Goymer (sitting as a Deputy Circuit Judge) on Tuesday 10 July 2018.

34. The First Respondent was sentenced to a total of 3 years imprisonment. The Second Respondent was sentenced to a total of 2 years and 6 months imprisonment. Both of the Respondents were disqualified, under section 2 of the Company Directors Disqualification Act 1986, from acting as a director or taking part in the management of a company for a period of 5 years. To date, neither Respondent had successfully appealed their convictions.

35. In passing sentence, His Honour Judge Goymer made various statements, including that:

> "These two defendants, Astrid Halberstadt-Twum and her husband, Joseph Twum, both of them aged 56 years, have been convicted after a trial lasting approximately 15-20 days of evidence and four or five days of jury retirement considering their verdicts and, as a result of this, they have been convicted on both counts of this indictment. The first being conspiracy to defraud the Legal Aid Agency and the second; perverting the course of justice by being parties to the falsification of the documents."
>
> "Both of these defendants are persons of previous good character. Not merely that they lack previous convictions but throughout the trial I have heard evidence of positive good character. Mrs Halberstadt-Twum is a qualified solicitor. She was born and brought up in Germany. She came to this country, having qualified in her country of birth, and she requalified as a solicitor here. She was the founder of the firm of Cleveland and Company, which was the subject of this trial. Her husband, not a qualified solicitor but plainly a man of intelligence and education, he was the Practice Manager at the firm. Clearly, somebody with some business sense. And the two of them have a son, aged 17, and now about to embark upon further education. There can be few tasks more disagreeable for a judge than to have to sentence two persons of this kind of character for this kind of dishonesty."
>
> "…it is clear, from the jury's verdict and the evidence in the trial, that what occurred here was fraud over a period of about four and a half years, from May 2007 to November 2011. Certainly, a period of four years."
> "They were both there throughout…they held the most important and responsible positions within the firm."
>
> "Each of them, in due course, either by way of evidence from the witness box in the case of the first defendant or by admission in interview and concession by counsel on his behalf in the case of the second defendant, accepted that a fraud had taken place. Their case was that they knew nothing of that and had no part in it. It might, to anybody listening to the evidence, have seemed

inconceivable that this fraud in a firm of this size could have run itself without the intervention of these two defendants."

"I need to just make some mention of the abuse of the position of trust. The public is entitled to assume that the legal profession is run by men and women of honesty and integrity. The public are entitled to assume that solicitors are honest."

"…the fact is that public money has been appropriated here. The Legal Aid system is under financial pressure. It is sometimes criticised by ill-informed people as being abused and when it is abused in this way, it must be dealt with appropriately. And the other serious feature about this case is that it damages public confidence in the integrity of the legal profession."

"…in the case of the first defendant…the reduction cannot be a very great one because of the very serious breach of trust that is involved."

"Astrid Halberstadt-Twum…it is no pleasure to sentence a woman such as you, of previous good character who has led a respectable life as a solicitor, but what you have been convicted of is a very serious breach of trust which damaged the confidence in the profession of which you were, no doubt, once proud to be a member."

"As far as you are concerned, Joseph Twum, you are in a lesser position, you are not an admitted solicitor but you nevertheless, had an active part in running this company. It is no pleasure to have to sentence you either. You are a man of good character, a man of intelligence and education, as I have already said."

36. **Allegation 1.1 - By virtue of being convicted on 9 July 2018 for conspiracy to defraud the LAA and for committing an act/series of acts with intent to pervert the course of public justice, the Respondents breached all or alternatively any of Principles 1, 2 and 6 of the Principles.**

<u>The Applicant's Case</u>

36.1 The Applicant alleged that both the First Respondent and the Second Respondent had breached Principles 1, 2 and 6.

Breach of Principle 1 of the SRA Principles 2011

36.2 The Applicant submitted that the First Respondent knew that as a solicitor she was obliged to uphold the law and the proper administration of justice. It was submitted that, by being convicted of two criminal offences, she has breached this Principle. The First Respondent had not challenged the existence of her convictions.

36.3 The Second Respondent knew that, as the COFA, he was bound to work in a way that was compliant with the Principles. The Applicant submitted that, by being convicted of two criminal offences, the Second Respondent had breached this Principle. The existence of these convictions had not been challenged by the Second Respondent.

36.4 Additionally, the Applicant submitted that for both the First Respondent and the Second Respondent to be part of a conspiracy to defraud the LAA was self-evidently preventing the proper administration of justice. Legal Aid is a finite resource and is there to enable those who may not have the means to seek properly qualified and regulated legal assistance. To provide false or dubious claims for fees undermined the ability of those who needed to access the funding to do so.

36.5 Further the Applicant drew the Tribunal's attention to the fact that to be disqualified for 5 years from acting as a director, or taking part in the management of a company, was a significant period, which underlined the serious nature of each of the Respondent's breach of the law. It also showed that the Respondents have failed to uphold the rule of law in relation to their fiduciary duties.

36.6 For the reasons above, the Applicant asserted that the First Respondent and the Second Respondent had both breached Principle 1 of the Principles.

Breach of Principle 2 of the SRA Principles 2011

36.7 Mr Willcox submitted that the relevant test for "integrity" in the context of disciplinary proceedings before the Tribunal was as set out by the Court of Appeal in Wingate v Solicitors Regulation Authority [2018] 1 WLR 3969. The Court held that integrity was "a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members." The Court added that: "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty."

36.8 The Applicant repeated its submissions at paragraphs 36.2 to 36.5, above. The Applicant submitted that such acts were also demonstrative of a lack of integrity. The Applicant particularly drew attention to the nature of the convictions as being criminal offences of dishonesty. Both Respondents had been involved in a course of conduct which lacked integrity by its very nature. The Applicant asserted that the First Respondent and the Second Respondent had thereby failed to act with integrity and had breached Principle 2 of the Principles.

Breach of Principle 6 of the SRA Principles 2011

36.9 The Applicant submitted that the matters set out above also demonstrated that the First Respondent and the Second Respondent had breached Principle 6 of the Principles, in that they had failed to maintain the trust the public placed in them and in the provision of legal services. The Applicant submitted that the public would not deem this to be acceptable conduct for a solicitor or for someone employed in a position of responsibility in legal practice. The Respondents had therefore failed to maintain the trust the public placed in them and in the provision of legal services.

36.10 The Applicant further submitted that the fact that a number of classes of people were no longer eligible for legal aid made this a particularly emotive issue for members of the public, and one which was likely to provoke a feeling of moral outrage. A solicitor and her husband being seen to have profited from a finite resource during a time of fiscal retrenching was likely to be particularly concerning to members of the public, and cause concern that others in the profession may behave in such a manner.

36.11 Given the matters set out, the Applicant submitted that the First Respondent and the Second Respondent had failed to behave in a way that maintains the trust the public placed in them and in the provision of legal services, and had therefore breached Principle 6.

The First Respondent's Case

36.12 The First Respondent had not filed an Answer in these proceedings. The allegation was treated as denied. In her letter to the Investigation Officer, dated 4 December 2018, the First Respondent accepted the fact of her conviction. She considered the nature of her case to be very unusual.

36.13 The First Respondent stated that the Firm had had a good relationship with the LAA until August 2013, when they experienced problems with their new relationship manager. The Firm underwent a number of audits, and in April 2013 was successful in its contract tender and opened eleven branch offices besides their head office. In May/June 2013 there had been a validation audit, followed by a no notice inspection in early November 2013. This LAA inspection had resulted in a visit from the FIO.

36.14 In January 2014 both Respondents were arrested together with two colleagues. They were bailed. In February 2014 the cases were dropped by the Police and Serious Fraud Office. In July 2016 a local authority had charged the First Respondent with conspiracy to defraud and perverting the course of justice. In May 2017 that local authority had been deemed to have acted unlawfully. In July 2017 the prosecution was taken over by the CPS. In July 2018 the First Respondent had been convicted to her and her legal team's shock.

36.15 The First Respondent had been convicted although she had never submitted the files to the LAA herself, and she said that there was no evidence of any wrongdoing on her side, and nor was there any encouragement to illegal/unlawful actions. She considered that she had been unjustly treated, prosecuted, convicted and imprisoned, purely in her capacity as an owner of and director of the Firm.

The Second Respondent's Case

36.16 The Second Respondent had not filed an Answer in these proceedings. The allegation was treated as denied. In his letter dated 31 January 2019 the Second Respondent denied that he had willingly or knowingly aided and abetted anyone in the Firm to be involved in any fraudulent activities or perversion of justice against the LAA, and he denied that he had known of such activities. The LAA investigation had come as an astonishment to him. The Second Respondent said that during his tenure in office in the Firm he had always done his best to uphold the integrity and reputation of the Firm, in line with the requirements of the SRA.

36.17 The Second Respondent accepted that he had been convicted of the offences specified by the Applicant, and that he had received the custodial sentence which he had served. He had started working with the Firm when it was formed, and remained with the Firm until it was closed down. He stated that the allegations which were made against him and the First Respondent by the LAA were a concerted plan, plotted by the LAA to use its power as a government agency to bring charges against the Respondents on

the basis they were the owners of, and the most senior managers at, the Firm. He expressed surprise that, given the seriousness of the allegations, they had been left to a local authority to investigate, and noted that that local authority had been found to have acted unlawfully in prosecuting the case instead of handing it over to the CPS. The Second Respondent believed that the investigation was biased. He said that evidence that was crucial to both Respondents' defence was not available at the trial.

36.18 The Second Respondent's position was that the Firm had complied with its obligations to the LAA, but the LAA had treated the Firm badly. The Firm had asked the LAA for time to extract the clients' information relevant to the LAA's request, so as not to breach client privilege, and had subsequently provided the information.

The Tribunal's Findings

36.19 *Breach of Principle 1 of the SRA Principles 2011*

36.19.1 Both Respondents had been convicted of conspiracy to defraud the LAA and for committing an act/series of acts with intent to pervert the course of public justice. These were very serious convictions for offences that involved dishonesty. The legal aid fund was integral to the administration of justice, and being convicted of conspiracy to defraud that fund (as well as the second offence) meant that both Respondents had clearly failed to uphold the law and the proper administration of justice. The Respondents had breached Principle 1.

36.20 *Breach of Principle 2 of the SRA Principles 2011*

36.20.1 The Tribunal considered the test for integrity as set out in Wingate. The Respondents conduct had clearly fallen far below the higher standards which society expects from professional persons, and which the profession expects from its own members. Solicitors and solicitors' employees would not expect a member of the profession – whether qualified or not- to be convicted of these offences. Neither Respondent had adhered to the ethical standards of their own profession. Adherence to such ethical standards was not compatible with convictions for these offences. The Respondents had lacked integrity in breach of Principle 2.

36.21 *Breach of Principle 6 of the SRA Principles 2011*

36.21.1 The Tribunal found that by the very fact of their convictions for the above offences the Respondents had breached Principle 6. They had failed to maintain the trust the public placed in them and in the provision of legal services. The public would regard any conspiracy to defraud as serious and a breach of trust. In the Tribunal's view the fact that the Respondents were convicted of a conspiracy to defraud the LAA would have an even greater negative impact on the public trust in the provision of legal services. Legal Aid is a safety net for those in need, and for providers of legal services to conspire to defraud the LAA was a clear breach of Principle 6.

36.22 Allegation 1.1 was proved in full beyond reasonable doubt, including breaches of Principles 1, 2 and 6.

37. **Allegation 1.2 - The Respondents failed to report their convictions to the SRA in breach of all or alternatively any of Principles 2, 6 and 7 of the Principles.**

The Applicant's Case

37.1 The Applicant alleged that both the First Respondent and the Second Respondent had breached Principles 2, 6 and 7.

Breach of Principle 2 of the SRA Principles 2011

37.2 Both the First Respondent and the Second Respondent were obliged under the reporting requirements of the SRA Code of Conduct 2011 to update the SRA as to the progress of criminal allegations against them. A deliberate failure to do so was indicative of a lack of integrity.

37.3 Additionally, the First Respondent and the Second Respondent were reminded of their specific obligations by an Investigation Officer of the Applicant. In support of this, the Applicant referred to a reference made in a letter dated 8 November 2018 to the First Respondent to earlier correspondence. The letter of 8 November 2018 stated that:

> "…We wrote to you on 29 April 2016, at that time, the LAA investigation was ongoing, you were advised in that letter *"please note you are expected to contact us should the LAA decide to pursue charges. Should they do so we may also review this file at that time."*"

37.4 The Applicant did not accept that it was correct for the First Respondent to seek to excuse the failure to notify the Applicant of the conviction by stating that it was for another agency, such as the CPS or the Court, to do so. The Second Respondent has provided no response or explanation as to why he did not comply with his obligations under the reporting requirements.

37.5 For the reasons set out above, it was asserted that the First Respondent and the Second Respondent had failed to act with integrity and had therefore breached Principle 2.

Breach of Principle 6 of the SRA Principles 2011

37.6 The Applicant submitted that the behaviour of the First Respondent and the Second Respondent was such that it failed to maintain the trust the public placed in them and in the provision of legal services.

37.7 The First Respondent was an experienced legal professional in two jurisdictions, who had no reason not to be aware of her regulatory duties and the high importance placed on professional conduct by the wider public. The First Respondent had no reason not to be aware of her wider professional duties for the upkeep of good regulatory standards expected of the profession by the public.

37.8 The Second Respondent was the COFA of the Firm from the creation of that role in 2013. He would have been aware of his responsibilities and the wider reputational impact on the legal profession of being convicted of conspiracy to defraud a public agency. The Applicant submitted that breaching such a position of trust, particularly in handling public funds, was a situation that was self-evident in its impact on the standing of the legal profession.

37.9 For the reasons set out above, it was asserted that the First Respondent and the Second Respondent failed to behave in a way that maintained the trust the public placed in them and in the provision of legal services and that they had therefore breached Principle 6.

Breach of Principle 7 of the SRA Principles 2011

37.10 The Applicant commissioned a Forensic Investigation into the Firm. The FIO set out his findings in the Interim FIR and the Final FIR.

37.11 On 9 November 2018, the Applicant sent an Explanation with Warning ("EWW") letter to the First Respondent, giving a deadline of 5pm on 26 November 2018 to respond. On 21 November 2018, the First Respondent wrote to the Investigation Officer acknowledging receipt of her letter dated 9 November 2018, and asking for an extension of the date by which she was required to respond. The deadline for her response was subsequently extended to 10 December 2018. The First Respondent replied substantively to the EWW on 4 December 2018.

37.12 On 13 November 2018, the Applicant sent an EWW letter to the Second Respondent. By 19 December 2018, the Investigation Officer had not received a response to her letter, so she sent a further letter chasing a response. The letter renewed the deadline for a response and asked for a response to be provided by Friday 11 January 2019.

37.13 The Second Respondent replied to the Applicant's letter dated 19 December 2018 on 11 January 2019. It was received at the SRA on 16 January 2019. In his letter, he requested an extension of three weeks to the date by which he was required to respond to the allegations in the EWW so that he could obtain documentary evidence. The Investigation Officer, granted the Second Respondent an extension to 5pm on 7 February 2019 to respond to the EWW. The Second Respondent had written to the Investigation Officer on 31 January 2019. The Applicant received that letter on 11 February 2019. The Applicant submitted that the Second Respondent had not provided a substantive response to the allegations in the EWW.

37.14 The Applicant submitted that the First Respondent and the Second Respondent had failed to comply with their legal and regulatory obligations or deal with their regulator in an open, timely and co-operative manner.

37.15 For the reasons set out above, it was submitted that the First Respondent and the Second Respondent had failed to deal with their regulator in an open, timely and co-operative manner and had therefore breached Principle 7 of the Principles.

The First Respondent's Case

37.16 The First Respondent had not filed an Answer in these proceedings. The allegation was treated as denied. In her letter dated 4 December 2018, the First Respondent said that when the matter escalated to a no notice inspection by the LAA she was in regular contact with the SRA. She kept in close communication with the SRA until about July 2016. Until the CPS took over the criminal prosecution the First Respondent had thought that the case against her had come to an end. She had been surprised when the CPS had suddenly taken over the case, which had then gone somewhat dormant until April 2018.

37.17 The First Respondent's conviction had been unforeseen and unexpected, and she had immediately been taken into custody. She was in shock. She had been transferred between prisons and cells. Her belongings had been in bin bags and she had hardly the opportunity to make calls. She could not send emails or faxes or receive incoming calls. She had assumed that the Applicant would have been informed of her fate by the LAA, Court or CPS. This did indeed seem to have been the case, as the SRA had written to her with her prison number as far back as July 2018.These were the main reasons she had not contacted the Applicant.

The Second Respondent's Case

37.18 The Second Respondent had not filed an Answer in these proceedings. The allegation was treated as denied. In his letter dated 31 January 2019 the Second Respondent said that he was of the view that the LAA or CPS had informed the SRA. As they had initiated this matter, the Second Respondent believed that they had contemporaneously updated the SRA about the progress of the case. When the SRA had initially been informed of the LAA investigation, in November 2013, the SRA had followed this up with an inspection in December 2013. Furthermore the Second Respondent described himself, when he was imprisoned on 10 July 2018, as mentally and emotionally distressed about the situation. His world had broken into pieces. He was being moved frequently to different cells and prisons.

The Tribunal's Findings

37.19 The Tribunal found that both the First Respondent and the Second Respondent were obliged under the reporting requirements of the SRA Code of Conduct 2011 to update the SRA as to the progress of criminal allegations against them, and particularly their conviction. They had not done so.

37.20 *Breach of Principle 2 of the SRA Principles 2011*

37.20.1 The Applicant had alleged that a deliberate failure to update the SRA as to the progress of criminal allegations against them was indicative of a lack of integrity. There was no clear chronology before the Tribunal as to the timeline of the criminal investigation and the progress of the allegations. The Applicant's case centred around the Respondents' convictions. The Respondents were convicted on one day and received a custodial sentence the next. A number of reasons supporting the difficulty of contacting the Applicant from prison had been advanced, and there was no evidence to

contradict that. Whilst the Tribunal considered that the Respondents should have advised the Applicant of their conviction, it was difficult to conclude that the failure to do so in all the prevailing circumstances was so egregious that it reached the threshold of a lack of integrity. Accordingly the Tribunal could not be sure that, in failing to notify the Applicant, the Respondents had not adhered to the ethical standards expected of the profession such that they had lacked integrity. and the Tribunal did not find proved to the required standard that, in this Allegation, either Respondent had breached Principle 2.

37.21 *Breach of Principle 6 of the SRA Principles 2011*

37.21.1 The Respondents had failed to report their convictions to the Applicant when they were under a duty to do so. Whilst the Tribunal had not found that this conduct lacked integrity, the Tribunal did find that the Respondents' failure had failed to maintain the trust the public placed in them and in the provision of legal services. The public would indeed expect any solicitor or solicitor's employee convicted of offences such as these to report their conviction to the SRA.

37.22 *Breach of Principle 7 of the SRA Principles 2011*

37.22.1 The Tribunal had found that the Respondents had failed to report their convictions to the Applicant. It was no defence for them to say that they thought that the Applicant would be informed by a third party. The First and Second Respondents' failures had failed to comply with their legal and regulatory obligations and their obligation to deal with their regulator in an open, timely and co-operative manner in breach of Principle 7.

37.23 Allegation 1.2 was proved beyond reasonable doubt in respect of the underlying facts and the breaches of Principles 6 and 7 only.

Previous Disciplinary Matters

38. Neither the First Respondent nor the Second Respondent had previous disciplinary findings by the Tribunal made against them.

Mitigation

39. <u>The First Respondent</u>

39.1 In her response to the EWW letter the First Respondent outlined the background of her case to the Investigation Officer and explained that she regarded herself as a very honest and law abiding person with very strong integrity, ethics and values. She said that she had always tried to be a role model to others, living the values of honesty, altruism, love, kindness and helpfulness. She had never put herself first in life, or made money or held materialistic values. She was very shocked and extremely traumatised to find herself in this situation, which she described as being like a nightmare. The case had overshadowed and tarnished her always very spotless reputation and record. She had never received a reprimand or condition on her practising certificate.

40. The Second Respondent

40.1 The Second Respondent had not submitted any specific mitigation to the Tribunal. The Tribunal noted the contents of his letter dated 31 January 2019 in respect of the background to his conviction, and the impact that the conviction had had on him.

Sanction

41. The Tribunal referred to its Guidance Note on Sanctions (6th Edition) when considering sanction.

42. First Respondent

42.1 The Tribunal assessed the seriousness of the First Respondent's misconduct. The Tribunal had no direct evidence as to the First Respondent's motivation for the misconduct. However given that the First Respondent had been convicted of conspiracy to defraud the LAA, the Tribunal concluded that the motivation was financial. The improper claims for fees had all been made in the name of the Firm, of which the First Respondent was the sole principle. The misconduct had spanned a period of at least four years and had been planned. The legal aid system relies, at least in part, on trust between the LAA and the individual legal aid practitioners/firms. The First Respondent had breached this trust. Although the First Respondent denied that she was responsible for the misconduct, she had clearly been unable to convince the jury of this, as she had been convicted of two serious offences, and the Tribunal found that she had direct control of or responsibility for the circumstances giving rise to the misconduct, together with the Second Respondent. The First Respondent was an experienced solicitor and had previously been a Registered Foreign Lawyer. She was a very experienced legal professional. Whilst there was no evidence that the First Respondent had deliberately misled the regulator, she had not been open and honest with the regulator.

42.2 The Tribunal identified three types of harm that had been caused by the First Respondent's conduct. The first was harm to the Legal Aid fund. The fund, which was under considerable financial pressure, had been the subject of a conspiracy to defraud it. There had been a significant diminution of public funds. The second was the harm to the reputation of the profession as a whole. The public would not expect a Legal Aid practitioner to take advantage of the LAA and to diminish the funds available to those who needed the assistance of the Legal Aid fund. This reflected badly on the profession as a whole. The third element of harm was to the reputation of Legal Aid practitioners generally. The vast majority of Legal Aid practitioners were hard working, and received limited financial remuneration for the hours worked because of the constraints on the availability of Legal Aid. When one of their number acted as the First Respondent had, this reflected badly on them as a cohort of practitioners, and harmed their reputation and public confidence. The First Respondent's actions were a complete departure from the standards of integrity, probity and trustworthiness expected of her, and the harm caused by her misconduct was entirely foreseeable.

42.3 The First Respondent's misconduct involved the commission of two serious criminal offences. The misconduct had been deliberate, calculated and repeated. It had continued over a period of time. Whilst the First Respondent had not taken advantage of a vulnerable person, she had taken advantage of the Legal Aid fund which was designed to ensure that those in need of legal advice and assistance, but without means to pay for that advice, could receive the help and assistance required. As identified above the Legal Aid system runs on trust, and is vulnerable to exploitation by unscrupulous people. The First Respondent had concealed her wrongdoing. The First Respondent must have known or ought reasonably to have known that the conduct complained of was in material breach of her obligations to protect the public and the reputation of the legal profession. The Tribunal identified all of these factors as aggravating factors. The Tribunal considered that the extent of the impact on those affected by the misconduct had been encompassed in its assessment of harm above, and did not consider this as a separate, additional aggravating factor.

42.4 The Tribunal was unable to identify any mitigating factors. The First Respondent continued to deny any wrong doing, despite her conviction, and had shown no insight. The First Respondent's misconduct was at the highest level of seriousness.

42.5 Having assessed the level of seriousness the Tribunal proceeded to consider the appropriate sanction commencing with No Order. It quickly moved through the range of sanctions dismissing in turn No Order, a Reprimand, a Fine and/or a Restriction Order. The seriousness of the misconduct was such that these orders were not a sufficient sanction and did not protect the reputation of the profession or the public from future misconduct.

42.6 The Tribunal carefully considered whether a Suspension would be sufficient sanction. In light of the First Respondent's convictions the Tribunal determined that the seriousness of the misconduct made this an insufficient sanction, and concluded that the protection of the public and the protection of the reputation of the legal profession required the Respondent's name to be struck off the Roll of Solicitors.

43. Second Respondent

43.1 Having assessed the seriousness of the misconduct, including the level of culpability, the harm caused, and the aggravating and mitigating factors for the First Respondent, the Tribunal then assessed these factors in relation to the Second Respondent. The Tribunal concluded that these factors were virtually identical for both Respondents. Although the Second Respondent was not a solicitor, he had been involved in legal practice for many years, and was the Firm's Practice Manager. He was very experienced. The misconduct was at the most serious level. He had been convicted of offences that were offences of dishonesty. The Tribunal's observations in respect of the impact on the legal aid fund applied equally to both Respondents. They were both equally culpable for the misconduct, and the same harm had been caused. The same aggravating factors applied, and there were no mitigating factors.

43.2 The Applicant had sought an order under section 43 of the Act in respect of the Second Respondent.

43.3 Section 43 (1) of the Act provides as follows:

> "Where a person who is or was involved in a legal practice but is not a solicitor—
>
> (a) has been convicted of a criminal offence which is such that in the opinion of the Society it would be undesirable for the person to be involved in a legal practice in one or more of the ways mentioned in subsection (1A), or
>
> (b) has, in the opinion of the Society, occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the Society it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in subsection (1A),
>
> the Society may either make, or make an application to the Tribunal for it to make, an order under subsection (2) with respect to that person.
>
> (1A) A person is involved in a legal practice for the purposes of this section if the person—
>
> (a) is employed or remunerated by a solicitor in connection with the solicitor's practice;
> (b) is undertaking work in the name of, or under the direction or supervision of, a solicitor;
> (c) is employed or remunerated by a recognised body;
> (d) is employed or remunerated by a manager or employee of a recognised body in connection with that body's business;
> (e) is a manager of a recognised body;
> (f) has or intends to acquire an interest in such a body."

43.4 The Tribunal reminded itself that an order under section 43 of the Act was not a sanction. It performed a regulatory function and not a punitive function. The Tribunal had found beyond reasonable doubt that the Second Respondent had, by virtue of being convicted on 9 July 2018 of conspiracy to defraud the Legal Aid Agency and committing an act/series of acts with intent to pervert the course of public justice, breached Principles 1, 2 and 6. It had also found that his failure to report his conviction to the Applicant breached Principles 6 and 7.

43.5 The Tribunal was satisfied beyond reasonable doubt that this conduct was of such a nature that it was undesirable for the Second Respondent to be involved in a legal practice in the ways set out in the order. The Second Respondent had been convicted of criminal offences which the Tribunal was sure made it undesirable for the Second Respondent to be involved in a legal practice in any of the ways mentioned in S.43 (1A). The misconduct had taken place in the course of his role in the Firm. The Tribunal therefore granted the Applicant's application for an order under section 43.

This was necessary for the protection of the public and the reputation of the profession.

43.6 The Tribunal considered whether or not to impose a financial penalty on the Second Respondent. The Tribunal was mindful that the S43 Order did not prevent the Second Respondent working outside of legal practice. However, the Tribunal concluded that in this instance a financial penalty in addition to the S43 Order was not appropriate.

Costs

44. The Applicant applied for its costs in the sum of £3,982.10 as set out in the costs schedule dated 1 November 2019. Mr Willcox addressed the Tribunal on the various elements included in the schedule. He invited the Tribunal to reduce the time claimed for the hearing given the actual duration of the hearing. He told the Tribunal that the Respondents had been directed to file evidence of means and had not done so. The costs schedule had been served on the Respondents but they had not acknowledged receipt or commented upon it.

45. The Tribunal considered the costs claimed. The Tribunal determined that the Respondents should pay the Applicant's costs. It was appropriate for the Tribunal to assess the costs. The matter had been dealt with by the SRA's internal team, and Mr Willcox was both the advocate and the casehandler. Firstly, the Tribunal assessed quantum. It decided that an hour should be deducted to reflect the actual duration of the hearing. It then considered whether or not a deduction should be made for the breach of Principle 2 that had not been proved. The Tribunal considered that this allegation had not added to the preparation for or duration of the hearing. It was interlinked with the other allegations. The appropriate costs to be awarded was £3,852.

46. The Tribunal considered whether the Respondents should each be responsible for a proportion of the costs, or whether they should be jointly and severally responsible for the costs awarded. Given their personal relationship and the fact that the criminal convictions arose out of the same misconduct, it was appropriate for them to be jointly and severally responsible.

47. The Tribunal was mindful that the Respondents, whilst having not submitted any evidence of means, had told the Tribunal that their assets and accounts were frozen. The Tribunal considered whether it should reduce the amount of costs due to the Respondents means, but given the absence of financial information decided that this was not appropriate. Further it was not appropriate for the Tribunal to make an order that the costs should not be enforced without leave of the Tribunal given the lack of financial information. The timing of and means of enforcement of the costs order would be a matter for the Applicant.

Statement of Full Order

48. The Tribunal Ordered that the Respondent, ASTRID HALBERSTADT-TWUM, 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 £3,852.00 on a joint and several basis with the Second Respondent.

49. The Tribunal Ordered that as from 12 November 2019 except in accordance with Law Society permission:-

    (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor JOSEPH TWUM;
    (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Joseph Twum;
    (iii) no recognised body shall employ or remunerate the said Joseph Twum;
    (iv) no manager or employee of a recognised body shall employ or remunerate the said Joseph Twum in connection with the business of that body;
    (v) no recognised body or manager or employee of such a body shall permit the said Joseph Twum to be a manager of the body;
    (vi) no recognised body or manager or employee of such a body shall permit the said Joseph Twum to have an interest in the body;

    And the Tribunal further Ordered that the said Joseph Twum do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,852.00 to be paid on a joint and several basis with the First Respondent.

Dated this 10th day of December 2019
On behalf of the Tribunal

A. Horne
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
10 DEC 2019