

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12070-2020

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

ROSS IAN MCKAY

Respondent

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Before:

Ms A. E. Banks (in the chair)

Mr P. Jones

Mrs C. Valentine

Date of Hearing: 27 May 2020

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## **Appearances**

There were no appearances as the matter was dealt with on the papers.

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## **JUDGMENT ON AN AGREED OUTCOME**

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## **Allegations**

1. The allegation made against the Respondent was that:-
  - 1.1 On 21 December 2018 he was convicted on indictment of offences involving money laundering, under sections 328(1) and 327 of the Proceeds of Crime Act 2002, and in doing so breached any or all of Principles 1, 2 and 6 of the SRA Principle 2011 ('the Principles').
  - 1.2 In relation to the Principles breached, these relate to:
 

Failure to uphold the rule of law and the proper administration of justice in breach of Principle 1 of the Principles.

Failure to act with integrity in breach of Principle 2 of the Principles.

Failure to behave in a way that maintains the trust the public places in him and the provision of legal services, in breach of Principle 6 of the Principles.

## **Documents**

2. The Tribunal had before it the following documents:-
  - Application and Rule 12 Statement dated 30 March 2020 and exhibits
  - Statement of Agreed Facts and Indicated Outcome dated 20 May 2020

## **Admissions**

3. The Respondent admitted all the allegations made against him in the statement and as set out above.

## **Factual Background**

4. The Respondent was admitted to the Roll of Solicitors on 1 April 2004. As of 27 May 2020 the Respondent remained upon the Roll of Solicitors but did not hold a current practising certificate.
5. On 21 December 2018 the Respondent was convicted after trial of two counts of breaches of section 328 of the Proceeds of Crime Act 2002 ("POCA"), relating to his work as a solicitor for Mr R and Ms B, and one count of breach of section 327 of POCA (in relation to his involvement as in house solicitor of a company).
6. On 4 January 2019 the Respondent was sentenced to a total of 7 years' imprisonment.
7. The background to the convictions can be briefly summarised as:
  - Counts 1 and 2 (breach of section 328(1) of POCA) related to the Respondent's work as a solicitor for Mr R and Ms B, assisting them in developing a property portfolio based substantially on fraudulently obtained funds - over at least a five year period.

8. The property portfolio was substantial, with the Judge sentencing the Respondent on the basis of over £1m being involved. The other offence (breach of section 327 of POCA) related to the Respondent's later work as an in-house solicitor for a company (of which he was also a shareholder) and a finding by the jury regarding the conversion through that company of money introduced by a convicted drug dealer (BB).
9. The convictions related to findings of serious money laundering offences.
10. During his sentencing remarks, HHJ Smith made various statements regarding the Respondent's actions including that:
  - The work for Mr R (and Ms B) involved total purchase prices of over \$7.3m, with Mr R making a number of "unexplained and unwarranted cash deposits" before completion of sales.
  - He was satisfied that "by reason of the number, the frequencies of the transactions, the unexplained cash deposits and the continuing and repeated alert signs that were demonstrated in the transactions...that [the Respondent] must have been aware that by continuing to act for Mr R [and Ms B], [he was] thereby assisting him and her in the acquisition of criminal property".
  - The jury were satisfied, in relation to matters where the Respondent was an in-house solicitor, that his involvement was such that he was involved in the manipulation, use and distribution of the criminal property, and that when he did so, he knew or suspected that the money he was converting and dealing with was criminal property and that the money originated from BB.
  - In relation to Counts 1 and 2 the Respondent's culpability "could only be determined as high culpability...a result of your abuse of your position of trust and responsibility as a solicitor".
11. The Respondent's conviction was publicised in various media outlets, with the reports noting his position as a solicitor.

### **Application for the matter to be resolved by way of Agreed Outcome**

12. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

### **Findings of Fact and Law**

13. The Applicant was required to prove the allegations to the standard applicable in civil proceedings (the balance of probabilities). The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

14. The Tribunal noted that the Respondent was legally represented when he had made his admissions. The Tribunal reviewed all the material before it.
15. The Tribunal considered the Guidance Note on Sanction (November 2019). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
16. This was serious matter in which the Respondent had been convicted of money laundering offences relating to two separate sections of his career. His offending had resulted in a substantial criminal sentence.
17. In relation to culpability, his conviction arose from matters over which he had direct control with findings by the jury of facilitation or concealment of criminality over a long period of time, thereby failing to uphold the rule of law or act with integrity.
18. Significant wider harm to the reputation of the profession arose from the Respondent's conviction for serious offences related to money laundering. Keeping the solicitors' profession free of money laundering, and complying with its legal and regulatory requirements, is in the interest of the profession and the public as it is a key way of disrupting serious crime.
19. The Tribunal found that the following aggravating factors applied to the Respondent's misconduct: the breaches of the law took place over a lengthy period and it was misconduct that he knew or ought reasonably to have known was in material breach of obligations to uphold the proper administration of justice and protect the reputation of the legal profession.
20. The Respondent was convicted of serious offences, with a 7 year custodial sentence being imposed.
21. In mitigation it was noted that the Respondent had made early admissions in these proceedings. The Respondent acknowledged that he has been convicted of multiple offences involving money laundering, and did not contend that the making of any order other than that his name should be struck off the Roll of Solicitors would be suitable.
22. In the case of SRA v Farrimond [2018] EWHC 321 (Admin) it was stated by Sir Brian Leveson P (President of The Queen's Bench Division) that, in his judgment, "it is beyond argument that a solicitor sentenced to any substantial term of imprisonment should not be permitted to remain on the Roll...[and] it is simply inconceivable that a prisoner, serving a sentence of 6 years' imprisonment [as was the case for Mr Farrimond] should be able to describe himself as a solicitor and officer of the court".
23. The Tribunal, having determined that the proposed sanction was appropriate and proportionate, granted the application for matters to be resolved by way of the Agreed Outcome.

24. Accordingly, having regard to the Respondent's convictions and admissions to the misconduct charges, the Tribunal considered the proposed Agreed Outcome inviting the Tribunal to make an Order that the Respondent be Struck off the Roll of Solicitors and pay costs of the SRA's application fixed in the agreed sum of £1,450.00.

**Costs**

25. The parties agreed that the Respondent should pay the Applicant's costs of these proceedings fixed in the sum of £1,450.00. The Tribunal considered the costs application to be appropriate and proportionate, and ordered that the Respondent pay the costs in the agreed amount.

**Statement of Full Order**

26. The Tribunal ORDERED that the Respondent, ROSS IAN MCKAY solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,450.00.

Dated this 17<sup>th</sup> day of June 2020  
On behalf of the Tribunal



A. E. Banks  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**19 JUN 2020**

**IN THE MATTER OF THE SOLICITORS ACT 1974**

**SOLICITORS REGULATION AUTHORITY**

**Applicant**

**ROSS IAN MCKAY**

**Respondent**

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**STATEMENT OF AGREED FACTS AND INDICATED OUTCOME**

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1. By its application dated 30 March 2020, and the statement made pursuant to Rule 12(2) Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application (“the statement”), the Solicitors Regulation Authority (“SRA”) brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of Ross Ian McKay.

**The allegations**

2. The allegation made against Mr McKay within the statement was that: on 21 December 2018 he was convicted on indictment of offences involving money laundering, under sections 328(1) and 327 of the Proceeds of Crime Act 2002, and in doing so breached any or all of Principles 1, 2 and 6 of the SRA Principle 2011.
3. In relation to the Principles breached, these relate to a failure to:
  - 3.1 uphold the rule of law and the proper administration of justice in breach of Principle 1 of the SRA Principles 2011 (“the 2011 Principles”);
  - 3.2 act with integrity in breach of Principle 2 of the 2011 Principles.
  - 3.3 behave in a way that maintains the trust the public places in him and the provision of legal services, in breach of Principle 6 of the 2011 Principles.

**Admissions**

4. Mr McKay admits all the allegations made against him in the statement and as set out in paragraph 2 above.

**Agreed Facts**

5. The following facts and matters are agreed between the SRA and Mr McKay:

5.1 Mr McKay was admitted to the Roll of Solicitors on 1 April 2004. At the date of this statement, Mr McKay remains upon the Roll of Solicitors but does not hold a current practising certificate.

5.3 On 21 December 2018 Mr McKay was convicted after trial of two counts of breaches of section 328 of the Proceeds of Crime Act 2002 (“POCA”), relating to his work as a solicitor for Mr R and Ms B, and one count of breach of section 327 of POCA (in relation to his involvement as in house solicitor of a company).

5.4 On 4 January 2019 Mr McKay was sentenced to a total of 7 years’ imprisonment.

5.5 The background to the convictions can be briefly summarised as:

- i. Counts 1 and 2 (breach of section 328(1) of POCA) related to the Respondent’s work as a solicitor for Mr R and Ms B, assisting them in developing a property portfolio based substantially on fraudulently obtained funds – over at least a five year period. The property portfolio was substantial, with the Judge sentencing Mr McKay on the basis of over £1m being involved.
- ii. The other offence (breach of section 327 of POCA) related to Mr McKay’s later work as an in-house solicitor for a company (of which he was also a shareholder), and a finding by the jury regarding the conversion through that company of money introduced by a convicted drug dealer (BB).

5.6 The convictions related to findings of serious money laundering offences.

5.7 During his sentencing remarks, HHJ Smith made various statements regarding Mr McKay’s actions. Several of these were set out at paragraphs 11 and 12 of the statement, including that:

- i. The work for Mr R (and Ms B) involved total purchase prices of over £7.3m, with Mr R making a number of “*unexplained and unwarranted cash deposits*” before completion of sales.
- ii. He was satisfied that “*by reason of the number, the frequencies of the transactions, the unexplained cash deposits and the continuing and repeated alert signs that were demonstrated in the transactions...that [Mr McKay] must have been aware that by continuing to act for Mr R [and Ms B], [he was] thereby assisting him and her in the acquisition of criminal property*”.
- iii. The jury were satisfied, in relation to matters where the Respondent was an in-house solicitor, that his involvement was such that he was involved in the manipulation, use and distribution of the criminal property, and that when he did so, he knew or suspected that the money he was converting and dealing with was criminal property and that the money originated from BB.
- iv. In relation to Counts 1 and 2 the Respondent’s culpability “*could only be determined as high culpability...a result of your abuse of your position of trust and responsibility as a solicitor*”.

5.8 Mr McKay’s conviction was publicised in various media outlets, with the reports noting his position as a solicitor.

## Mitigation

6. Mr McKay has previously stated that he accepts, as a consequence of his conviction, that his name be removed from the Roll. He has made early admissions in these proceedings.
7. Mr McKay acknowledges that he has been convicted of multiple offences involving money laundering, and does not contend that the making of any order other than that his name should be struck off the Roll of Solicitors would be suitable.

## Proposed penalty

8. Mr McKay and the SRA agree that the seriousness of Mr McKay's misconduct / convictions is such that the Tribunal should order that he be Struck off the Roll of Solicitors, with any lesser sanction being inappropriate.
9. With respect to costs, Mr McKay agrees to pay the SRA's costs of the application fixed in the sum of £1,450

## Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance

10. Mr McKay has been convicted of money laundering offences relating to two separate sections of his career. In relation to culpability, his conviction arose from matters over which he had direct control with findings by the jury of facilitation or concealment of criminality over a long period of time, thereby failing to uphold the rule of law or act with integrity.
11. Significant wider harm to the reputation of the profession arose from Mr McKay's conviction for serious offences related to money laundering. Keeping the solicitors' profession free of money laundering, and complying with its legal and regulatory requirements, is in everyone's interest as a key way of disrupting serious crime
12. The following aggravating factors apply to Mr McKay's misconduct:
  - i) the breaches of the law took place over a lengthy period.
  - ii) it is misconduct that he knew or ought reasonably to have known was in material breach of obligations to uphold the proper administration of justice and protect the reputation of the legal profession.
13. Mr McKay was convicted of three serious offences, with a seven year custodial sentence being imposed. In the case of ***SRA v Farrimond [2018] EWHC 321 (Admin)*** it was stated by Sir Brian Leveson P (President of The Queen's Bench Division) that, in his judgment, *"it is beyond argument that a solicitor sentenced to any substantial term of imprisonment should not be permitted to remain on the Roll...[and] it is simply inconceivable that a prisoner, serving a sentence of 6 years' imprisonment [as was the case for Mr Farrimond] should be able to describe himself as a solicitor and officer of the court"*.
14. Accordingly, having regard to Mr McKay's convictions and admissions to the misconduct charges, the SRA and Mr McKay invite the Tribunal to make an Order that Ross Ian McKay be Struck off the Roll of Solicitors and pay costs of the SRA's application fixed in the agreed sum of £1,450.



Dated this 20<sup>th</sup> day of May 2020

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Jonathan Richard Leigh

On behalf of the SRA

Mr Ross Ian McKay or

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Mr Alan Maidment of Maidments (on behalf of Mr Ross Ian McKay)