

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12144-2020

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

VICTORIA BROWN

Respondent

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Before:

Mr J. P. Davies (in the chair)

Mrs C. Evans

Mr R. Slack

Date of Hearing: 18 March 2021

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## **Appearances**

Mr Rory Mulchrone, barrister, of Capsticks Solicitors LLP of 1 St. George's Road, London, SW19 4DR, for the Respondent.

The Respondent did not appear and was not represented.

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## **JUDGMENT**

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## **Allegations**

1. The allegation made by the Applicant against the Respondent, who is not a solicitor, was that whilst employed as an Assistant Management Accountant and undertaking work under the direction of solicitors as a person involved in a legal practice, she was guilty of conduct of such a nature that in the opinion of the Solicitors Regulation Authority (“SRA”) it would be undesirable for her to be employed by a solicitor in connection with his or her practice as a solicitor, in that:
  - 1.1 Between 2011 and 2017, she dishonestly misappropriated monies in the sum of approximately £400,000 from the office account of Clyde & Co LLP, such conduct amounting to Fraud by False Representation under s2 of the Fraud Act 2006 and, in so doing, breached Principles 2 and 6 of the SRA Principles 2011.

## **Documents**

### Applicant

- Application and Rule 12 Statement dated 18 November 2020
- Exhibit HWP1 20 November 2020
- Index to Exhibit HWP1 20 November 2020
- Pages X53-56 of Exhibit HWP1 24 February 2021
- Letter from the Respondent to Capsticks dated 28 October 2020
- Letter from Capsticks to the Respondent dated 16 December 2020
- Letter from Capsticks to the Respondent dated 13 January 2021
- Letter from Capsticks to the Respondent dated 26 January 2021
- Letter from Capsticks to the Respondent dated 2 February 2021
- Letter from Capsticks to the Respondent dated 3 March 2021
- Letter from Capsticks to the Respondent dated 4 March 2021
- Letter from the Respondent to Capsticks 7 March 2021
- Letter from Capsticks to the Respondent dated 15 March 2021
- Email from Capsticks to Respondent’s associate (17 March 2021) M51
- Letter from the Respondent to Capsticks (19 January 2021) B1 - B3
- Solicitors Disciplinary Tribunal Guidance Note on Sanctions 8<sup>th</sup> Edition
- Solicitors Disciplinary Tribunal Guidance Note on Other Powers of the Tribunal 4<sup>th</sup> edition
- Costs at Issue dated 18 November 2020
- Schedule of Costs dated 12 March 2021

### Respondent

- Letter from the Respondent to Capsticks dated 19 January 2021

## **Preliminary Matters**

2. The Respondent did not attend the hearing and was not represented. The Respondent had not applied to adjourn or vacate the hearing.

3. However, Mr Mulchrone set out the chronology of the Respondent's contact with the Applicant and explained that the Respondent in correspondence, both to the Applicant and the Tribunal, had in clear terms indicated that she was aware of the proceedings; that she admitted the allegations which had been made against her and that she did not oppose the making of an order under s.43 of the Solicitors Act 1974. The Respondent had requested that no financial penalty be imposed as she was facing bankruptcy and her finances were subject to a freezing order.

#### Service of Proceedings

4. The Tribunal was concerned to ensure that the Respondent had been correctly served and was aware of the hearing date.
5. Mr Mulchrone submitted that the Respondent had been correctly served with the proceedings under Rule 13(5) the Solicitors Disciplinary Procedure Rules 2019 ("SDPR 2019") and there was evidence that the Respondent was on notice of the listed hearing.
6. In this case Mr Mulchrone said that the correspondence to which he had taken the Tribunal demonstrated that the Tribunal could be satisfied that proceedings had been served correctly upon the Respondent and that she was aware of the listed hearing but that, notwithstanding her present incarceration, she had voluntarily absented herself and she had made admissions.
7. The Rule 12 Statement in this matter was dated 18 November 2020. Standard Directions were issued by the Tribunal dated 24 November 2020, which required the Respondent to file at the Tribunal and serve on every other party an Answer to the Rule 12 Statement and all documents on which she intended to rely at the substantive hearing by 4.30pm on Thursday 7 January 2021.
8. By a letter sent by the Respondent to the Applicant dated 19 January 2021 she stated the following:

*"Apologies for the delay in responding to your letters we are in the midst of a Serious Covid outbreak here at Send and I have been isolating via the track and trace system up until the beginning of the week. (Our letters and post - have been held in quarantine).*

*I confirm safe receipt of your letters dated 01/12/20 and 16/12/20, respectively. By way of a response to the Rule 12 allegations made, I do not contest any of these. As I am sure you are aware from the Court recording papers received, I pleaded guilty to all charges against me and admitted full responsibility. I do not therefore wish to submit any additional paperwork or evidence in relation to this. Financially, I am currently going through the process of Proceeds of Crime brought by the CPS at my Sentencing. Clyde Co have also filed a Civil case against me which is also currently on going. As a result of these there is a freezing order in place across all of my assets (bank accounts, Car, house, pension) and once the Proceeds of Crime and Civil Suits are finalised I will likely be made bankrupt or forced to file for bankruptcy.*

*I wish to re-iterate again that I do not wish to attend the tribunal in person due to the ongoing pandemic situation and the prison are unable to facilitate my attendance via a call or video link. Please continue with the hearing in my absence. I hope this letter satisfies all that is required from me at this time, but do of course please let me know if not, and it here is anything further you require.”*

9. Mr Mulchrone said that there was nothing in the later correspondence from the Respondent which contradicted the view she had set out in this letter and he invited the Tribunal to rule that good service had been effected.

#### The Tribunal’s Decision

10. The Tribunal considered with care the submissions made by Mr Mulchrone and the evidentiary material with respect to service and later contact between the Respondent and the Applicant to which its attention had been drawn.
11. The Tribunal was satisfied that the Respondent had been correctly served with the proceedings and it was also satisfied that there was sufficient evidence to demonstrate that the Respondent was aware of the substantive hearing which was due to take place on 18 March 2021.
12. Having established that the Respondent had been properly served the Tribunal next considered whether the hearing should be adjourned, and if not adjourned, whether the hearing should continue in the absence of the Respondent.

#### Adjournment

13. Mr Mulchrone submitted that the material to which he had drawn the Tribunal’s attention made it clear that the Respondent had been correctly served and that she was aware of the date of the hearing and that in the light of this knowledge the Respondent had made no application for an adjournment.

#### The Tribunal’s Decision

14. The Tribunal was aware of its current Policy/Practice Note on Adjournments which sets out the principles to be applied in consideration of such applications.
15. In this case the Respondent, who, the Tribunal was satisfied was aware of the proceedings, had made no application to adjourn. The Tribunal decided not to adjourn the hearing as there was no evidence upon which it could reasonably do so.

#### Application to proceed in absence

16. Mr Mulchrone applied for the substantive hearing to proceed in the Respondent’s absence and relied upon the decisions in General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 16231 which in turn approved the principles set out in R v Hayward, R v Jones, R v Purvis QB 862 [2001], EWCA Crim 168 [2001] namely that proceeding in the absence of the Respondent was a discretion

which a Tribunal should exercise with the upmost care and caution bearing in mind the following factors:

- The nature and circumstances of the Respondent's behaviour in absenting herself from the hearing;
- Whether an adjournment would resolve the Respondent's absence;
- The likely length of any such adjournment;
- Whether the Respondent had voluntarily absented herself from the proceedings and the disadvantage to the Respondent in not being able to present her case.

17. It was held in Adeogba that in determining whether to continue with regulatory proceedings in the absence of the accused, the following factors should be borne in mind by a disciplinary tribunal:-

- the Tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;
- the fair, economical, expeditious and efficient disposal of allegations was of very real importance;
- it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and
- there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession (although it is accepted that the respondent in this case is not a member of the profession).

18. In Mr Mulchrone's submission the Tribunal had evidence that the Respondent had been correctly served and that she was aware of the hearing date but that she had voluntarily absented herself by stating that:

*".... I do not wish to attend the tribunal in person due to the ongoing pandemic situation and the prison are unable to facilitate my attendance via a call or video link. Please continue with the hearing in my absence. I hope this letter satisfies all that is required from me at this time, but do of course please let me know if not, and it here is anything further you require."*

19. Mr Mulchrone reminded the Tribunal that under Rule 36 SDPR 2019 if a party failed to attend and was not represented at the hearing and the Tribunal was satisfied that notice of the hearing was served on the party in accordance with the Rules, the Tribunal may hear and determine any application and make findings, hand down sanctions, order the payment of costs and make such orders as it considers appropriate notwithstanding that the party failed to attend and is not represented at the hearing.

### The Tribunal's Decision

20. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution.
21. The Tribunal considered the factors set out in Jones and Adeogba in respect of what should be considered when deciding whether or not to exercise its discretion to proceed in the absence of the Respondent. The Tribunal noted that the Respondent had been served with notice of the hearing under Rule 13(5) SDPR 2019 and the Tribunal had the power under Rule 36 SDPR 2019, if satisfied service had been effected, to hear and determine the application in the Respondent's absence.
22. The Tribunal considered the Respondent had been correctly served and was aware of the date of the proceedings and that an adjournment would not resolve her absence. The Respondent had a duty to engage and there was evidence in the correspondence that she had engaged and made her position with respect to her wish not to attend very clear.
23. The Tribunal was satisfied that even if the Respondent had been able to attend the hearing she would not have done so and there was nothing to suggest that she would attend a hearing on a future date. On the basis of the Respondent's written communications the Tribunal concluded that the Respondent had voluntarily absented herself.
24. The Tribunal also took into account the serious nature of the allegations which had been made against the Respondent. These involved allegations of dishonesty and related to events that had taken place as far back as 2011. A significant period of time had elapsed since then and it was therefore in the public interest that this case should be concluded expeditiously and without further delay.
25. Taking all these matters into account, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence and the Tribunal decided that it should exercise its power under Rule 36 SDPR to hear and determine the application in the Respondent's absence.

### **Factual Background**

26. The Respondent is a non-admitted person. The Respondent was employed by Clyde UK Services Company to work under the direction of solicitors at Clyde & Co LLP ("the Firm") from 4 August 2008 until 29 September 2017, when she left the Firm following her resignation.
27. The Respondent was initially employed by Clyde UK Services Company as a legal cashier. On 5 November 2010 her role changed to an Assistant Management Accountant. In the latter role, the Respondent had responsibility for arranging UK payments for overseas operations of the Firm, was part of the payment releasing team within the payable department and had authority to create and release payments requested by various departments.

28. The Respondent was employed by a service company Clyde UK Services Company that is wholly owned by the Firm. All of the Firm's employees, including fee earners, are employed by the service company. The Firm is a recognised body and was a recognised body at all material times. The Respondent was undertaking work under the direction of solicitors, as she could not perform her job without a solicitor authorising the relevant payments. Therefore the Respondent was a person involved in a legal practice and is subject to the jurisdiction of section 43 Solicitors Act 1974.
29. The Respondent is currently a serving prisoner.
30. The Firm's concerns initially arose in April 2018, as a result of irregularities with certain payments that had been made by the Respondent. Following investigation by the Firm, it was determined that there had been payments made from the Firm's office account into seven suspicious bank accounts belonging to the Respondent, including the Respondent's payroll bank account. Further forensic investigation (conducted by BDO LLP on behalf of the Firm) identified 134 suspect payments made by the Respondent totalling just under £400,000 (from the Firm's office account) between 2011 and September 2017.
31. The BDO report (dated 11 December 2018) identified that the payments were made by the Respondent under disguise of payments to suppliers and employees of the Firm in two ways:
  - Editing and resending legitimate emails to use as supporting documents to authorise fraudulent payments to herself; and
  - Authorisation of a bank transfer for a transaction which had already been paid in cash.
32. The BDO investigation reviewed transactions from October 2011 and notes that there may also have been fraudulent transactions at earlier dates.
33. The Respondent's conduct was reported to the SRA in October 2018.
34. On 15 April 2019, judgment was entered against the Respondent in relation to civil proceedings commenced by the Firm. The Respondent did not file a defence to the civil proceedings. A freezing order was also obtained in these proceedings.
35. On 28 October 2019, the Respondent was convicted of one count of fraud by false representation at Guildford Crown Court (having pleaded guilty to the offence) and was sentenced to 3 years and 6 months' imprisonment.
36. In passing sentence HHJ Fraser stated that *"this was a very clear case of a category A, because not only of the abuse of your position of trust, but there was some sophistication in the way you went about this to hide what you were doing and, indeed, I can't ignore the fact you carried it on for over six years. As to value, it is, I agree, a category 2 and that means I have to take a starting point essentially of six years' imprisonment, which is a long time. Now what I can do in your case is I'm going to reduce it obviously by a third, as I indicated I would, but I'm also going to reduce another six months to take account of the fact, as I'm - as I should do, factors reducing*

*the, or reflecting your personal mitigation, which is your good character and obviously the remorse, which I do accept is genuine in your case, so that means the shortest sentence I can put in place in your case is one of three years and six months.”*

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

37. The Applicant was required to prove the Allegation 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.
38. **Allegation 1.1 - Between 2011 and 2017, she dishonestly misappropriated monies in the sum of approximately £400,000 from the office account of Clyde & Co LLP, such conduct amounting to Fraud by False Representation under s2 of the Fraud Act 2006 and, in so doing, breached Principles 2 and 6 of the SRA Principles 2011.**

### Applicant’s Submissions

- 38.1 The Applicant relied on the certificate of conviction of Guildford Crown Court dated 28 October 2019 to prove the conviction of the Respondent for fraud by false representation.
- 38.2 Mr Mulchrone said that under Rule 32 SDPR 2019 the conviction stands as conclusive proof of the underlying facts upon which it is based and he submitted that it was appropriate to impose a section 43 order.
- 38.3 The Respondent had entered a plea of guilty and had not lodged an appeal against her conviction or sentence.
- 38.4 It was said that the Respondent’s conduct amounted to:
- 38.4.1 Breach of Principle 2 of the Principles - Principle 2 requires employees of a recognised body to act with integrity. By dishonestly misappropriating approximately £400,000 from her employer, the Respondent had failed to act with integrity. An employee acting with integrity, would not engage in activity that involved dishonestly making false representations to fraudulently obtain money belonging to their employer for personal gain.
- 38.4.2 Furthermore, in committing a criminal offence, the Respondent may properly be said to lack moral soundness, rectitude and steady adherence to an ethical code so as to lack integrity in breach of Principle 2 of the 2011 Principles.
- 38.4.3 Breach of Principle 6 of the Principles - Employees of solicitors’ firms must behave in a way that maintains the trust the public places in them and in the provision of legal services in accordance with Principle 6 of the 2011 Principles. The effective operation of the legal profession depends on the public being able to place its trust in legal services and the people who work in the legal sector.



- 38.4.4 The Respondent was entrusted by the Firm with handling large sums of money and ensuring that it was only transferred to accounts for which it was intended. The public would not expect the Respondent to take money that did not belong to her, or to deceive her employer or the Firm about doing so. The Respondent's behaviour in dishonestly appropriating money from the Firm's office account undermined the trust the public places in the provision of legal services and amounted to a breach of Principle 6 of the 2011 Principles.
- 38.4.5 Furthermore, the fact that the Respondent has been convicted of a serious criminal offence resulting in immediate custody, devalued the standing of those involved in legal practice and would be likely to undermine the trust that the public places in the provision of legal services amounting to a breach of Principle 6 of the 2011 Principles. Public confidence in the legal sector is of the utmost importance. Those involved in legal practice are expected by clients, and the wider public, to act in a way that upholds the law.

#### Dishonesty with respect to Allegation 1.1

- 38.5 Mr Mulchrone submitted that the Respondent's conduct with respect to Allegation 1.1 had been dishonest but that dishonesty was not a separate element which he was required to prove as dishonesty was a component of the offence of fraud by false representation.
- 38.6 The Respondent's conviction for fraud by false representation was therefore conclusive proof that she acted dishonestly however this facet of the case against the Respondent had been included for completeness.
- 38.7 Mr Mulchrone relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67 which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

*“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 knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder 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.”*

#### Respondent's Submissions

- 38.8 The Respondent admitted Allegation 1.1.
- 38.9 In a letter dated 25 September 2020 and received by the SRA on 29 September 2020 and also in her later correspondence the Respondent set out that she had no intention of opposing a Section 43 Order as she had no intention of working within the legal sector

again. She also requested that no financial penalty was imposed by the Tribunal as a result of ongoing confiscation proceedings under the Proceeds of Crime Act 2002, which included a freezing order on her assets and bank account. She explained that she will be left with no money or assets as a result of the confiscation proceedings.

### The Tribunal's Findings

- 38.10 The Tribunal was satisfied that the admission was properly made and found it proved to the requisite standard, namely the balance of probabilities.
- 38.11 The Tribunal was satisfied that in light of the nature of the conviction it would be undesirable for the Respondent to be involved in a legal practice. It therefore granted the section 43 order.
- 38.12 The Tribunal considered the question of whether to impose a fine. Whilst there was no doubt that the Respondent had been convicted of a serious criminal offence this was reflected in the length of her custodial sentence.
- 38.13 It was entirely right and proper that the public be protected and this was achieved by the imposition of the section 43 order. The Tribunal did not consider that a further sanction of a fine was necessary and it noted that this had not been the subject of any application by the Applicant.
- 38.14 Given that the Respondent had served a significant period of time in custody as part of her sentence the Tribunal did not consider that it was proportionate to impose a fine in circumstances where there had been no detriment to the clients of the firm (clients' money had not been taken by the Respondent) and the reputation of the profession was protected by the imposition of the section 43 order.
- 38.15 The Tribunal did not therefore impose a financial penalty in this matter.

### **Costs**

39. Mr Mulchrone applied for the Applicant's costs in the sum of £3,600.00. There had been no need to conduct a forensic investigation in this case and the costs claimed represented a bespoke fixed fee which was both reasonable and proportionate for a case of this nature.
40. There were no submissions from the Respondent. The Respondent had not filed a statement of means.

### The Tribunal's Decision

41. The Tribunal summarily assessed costs to consider whether they were reasonable and proportionate in all the circumstances of this case. The Tribunal had heard the case and it was appropriate for the Tribunal to determine the liability for costs and the quantum of any costs it ordered to be paid.

42. The Tribunal considered that the case had been properly brought by the Applicant. This had been a straightforward conviction case in which the Tribunal had imposed a section 43 order as part of its duty to protect the public.
43. Whilst the Tribunal considered the costs on the whole to be proportionate and reasonable it also noted that a portion of the costs had been predicated on the basis that this would be 6 hour substantive hearing whereas in the event the hearing had taken only about 1 ½ hours. The Tribunal considered that there should be a reduction in the costs claimed to take into account the reduced hearing time and that on the basis of a notional hourly rate of £50.00 per hour (calculated in this case by dividing the sum claimed by the number of hours worked) would give a remaining costs figure of £3,200.00 inclusive of VAT.
44. The appropriate and proportionate level of costs in this case, taking into account the above factors, was therefore £3,200.00.

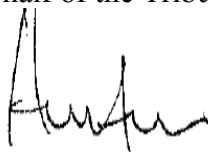
### **Statement of Full Order**

45. The Tribunal Ordered that as from 18 March 2021 except in accordance with Law Society permission:-
- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Victoria Lucy Brown;
  - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Victoria Lucy Brown;
  - (iii) no recognised body shall employ or remunerate the said Victoria Lucy Brown;
  - (iv) no manager or employee of a recognised body shall employ or remunerate the said Victoria Lucy Brown in connection with the business of that body;
  - (v) no recognised body or manager or employee of such a body shall permit the said Victoria Lucy Brown to be a manager of the body;
  - (vi) no recognised body or manager or employee of such a body shall permit the said Victoria Lucy Brown to have an interest in the body;

And the Tribunal further Ordered that the said Victoria Lucy Brown do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,200.00.

Dated this 29<sup>th</sup> day of March 2021

On behalf of the Tribunal



J. P. Davies  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**29 MAR 2021**