

# **SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12183-2021

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

NINA KOUSHI.

Applicant

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Before:

Mr P S L Housego (in the chair)  
Mr R Nicholas  
Mr P Hurley

Date of Hearing: 28 July 2021

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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 allegations were set out in a Rule 12 Statement dated 29 March 2021 and were that:
  - 1.1 On 12 November 2019, when parking her car in a disabled space, the Respondent used a disabled person's badge which she was not entitled to use and she did so with intent to deceive. In doing so, she breached either or both of Principles 2 and 6 of the SRA Principles 2011 ("the Principles").
  - 1.2 On 12 November 2019 the Respondent made statements to a Fraud Investigator for London Borough of Ealing Council, concerning the ownership of the disabled badge she had used which were untrue and which she knew, or ought to have known, were untrue at the time they were made. In doing so, she breached either or both of Principles 2 and 6.
2. Dishonesty was alleged with respect to both allegations but was not an essential ingredient to prove the allegations.

## **Documents**

3. The Tribunal had before it the following documents:
  - The Application and Rule 12 Statement dated 29 March 2021 (with exhibits)
  - The Respondent's Answer dated 27 April 2021
  - The Respondent's statement dated 14 June 2021
  - Five character statements submitted on the Respondent's behalf
  - Application for an Agreed Outcome with Statement of Agreed Facts and Proposed Outcome
  - Applicant's statement of costs dated 30 March 2021
  - Consultant psychiatrist's medical report from Dr Mala Singh dated 21 June 2021

## **Background**

4. The Respondent was admitted to the Roll of Solicitors on 2 September 2019 and at the date of the Rule 12 Statement held a practising certificate free of conditions.
5. At the material time she was employed as an Associate Solicitor at McMillan Williams Solicitors Limited. In May 2020 MWSL merged with Taylor Rose TTKW Limited where the Respondent remained employed as a solicitor.
6. On 12 November 2019 the Respondent parked her car in a disabled parking space in Ealing, London and displayed a disabled person's badge on her dashboard. On 3 February 2020 the Respondent appeared at Ealing Magistrates' Court and entered a guilty plea to an offence under section 115 of the Road Traffic Regulation Act 1984, namely that she used a disabled person's badge with intent to deceive. The court sentenced the Respondent to a fine of £1,125, costs of £690.92 and a victim surcharge of £181.

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

7. The parties invited the Tribunal to deal with the allegations against the Respondent in accordance with the Statement of Agreed Facts and Proposed 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**

8. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with 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.
9. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.
10. The Tribunal considered the Guidance Note on Sanction (8<sup>th</sup> Edition). In doing so, the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The admitted conduct was inevitably very serious as dishonesty was admitted in respect of both allegations. However, the Tribunal accepted the submissions made by the parties, and set out in the appended Statement of Agreed Facts and Proposed Outcome, as to why exceptional circumstances existed such that the normal sanction for dishonesty of strike off would be disproportionate in this case. The Tribunal accepted and endorsed the approach, analysis and sanction proposed by the parties.
11. The Tribunal considered that the appropriate sanction in this matter was that the Respondent be suspended from practice for a period of six months. 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.

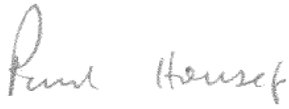
### **Costs**

12. The parties agreed that the Respondent should pay the Applicant's costs of these proceedings fixed in the sum of £2,300. 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**

13. The Tribunal ORDERED that the Respondent, NINA KOUSHI, solicitor, be suspended from practice for the period of 6 months to commence on the 28<sup>th</sup> day of July 2021 and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the agreed sum of £2,300.

Dated this 18<sup>th</sup> day of August 2021  
On behalf of the Tribunal

A handwritten signature in dark ink, appearing to read 'P S L Housego', written in a cursive style.

P S L Housego  
Chair

**Judgment filed with the Law Society**  
**18 Aug 2021**

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

**SOLICITORS REGULATION AUTHORITY LIMITED**

Applicant

and

**NINA KOUSHI**

Respondent

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**STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME**

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1. By its application dated 29 March 2021 and the statement made pursuant to Rule 12 (2) of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority<sup>1</sup> ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making two allegations of misconduct against Nina Koushi.

**The allegations**

2. The allegations against Nina Koushi ("the Respondent"), made by the SRA within that statement were that: -

- 2.1 On 12 November 2019, when parking her car in a disabled space, the Respondent used a disabled person's badge which she was not entitled to use, and she did so with intent to deceive. In doing so, she breached either or both of Principles 2 and 6 of the SRA Principles 2011.

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<sup>1</sup> As of the 1 June 2021 the conduct of this matter has been undertaken by the Solicitors Regulation Authority Limited

2.2 On 12 November 2019 the Respondent made statements to Stephen Cook, a Fraud Investigator for London Borough of Ealing Council, concerning the ownership of the disabled badge she had used which were untrue and which she knew, or ought to have known, were untrue at the time they were made. In doing so, she breached either or both of Principles 2 and 6 of the SRA Principles 2011.

3. In addition, dishonesty was alleged as an aggravating factor with respect to each of these allegations.
4. The Respondent admits each of these allegations. She also admits that her conduct in acting as alleged was dishonest.

### **Agreed Facts**

5. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraphs 2.1 and 2.2 of this statement, are agreed between the SRA and the Respondent.

### **Background**

6. The Respondent, whose date of birth is [REDACTED], is a solicitor having been admitted to the Roll on 2 September 2019 and holds a practising certificate free of conditions. The Respondent's home address is [REDACTED].
7. At the material time she was employed as an Associate Solicitor at McMillan Williams Solicitors Limited ("MWSL"). In May 2020 MWSL merged with Taylor Rose TTKW Limited where the Respondent remains employed as a solicitor.
8. On 12 November 2019 the Respondent was employed at MWSL at the offices located at Ealing Cross, 1st Floor, 85 Uxbridge Road, London, W5 5BW. On that date the Respondent parked her car in a disabled parking space on Mattock Lane, Ealing, London and displayed a disabled person's badge<sup>2</sup> on her dashboard.

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<sup>2</sup> Also referred to as a "blue badge"

9. A disabled person's badge allows a vehicle to park in a disabled parking bay for free providing that the badge holder is present to benefit. In addition, disabled person's badges contain a paragraph on the back, in red lettering which states: -

*"This badge can only be used by the named badge holder, or by a person who has dropped off or is collecting the Badge holder from the place where the vehicle is parked. It is a criminal offence for anyone else to use this Badge in any other circumstances."*

10. Section 115 of the Road Traffic Regulation Act 1984 ("RTR Act 1984") sets out the law as regards the mishandling of parking documents and related offences. This is the relevant section (emphasis added):

*115. Mishandling of parking documents and related offences.*

*(1) A person shall be guilty of an offence who, with intent to deceive-*

*(a) uses, or lends to, or allows to be used by, any other person, -*

*(i) any parking device or apparatus designed to be used in connection with parking devices;*

11. An offence under section 115 of the RTR Act 1984 carries a penalty on summary conviction of a fine, whilst on indictment a penalty of up to two years imprisonment can be imposed. This is in contrast to an offence under section 117 of the RTR Act 1984, which relates to wrongful use of a disabled person's badge, that offence does not require proof of intent to deceive, may only be tried summarily and carries a maximum penalty of a fine.

#### Allegations 2.1 and 2.2

12. On the 12 November 2019 Stephen Cook, a Fraud Investigator for London Borough of Ealing Council, was on duty in company with Fred Williams, a Parking Maintenance & Monitoring Officer for London Borough of Ealing Council.

13. At approximately 17:02 hours they saw a white Mercedes registration [REDACTED] ("the vehicle") parked in a designated disabled bay. He says that the signage clearly stated, *"Disabled badge holders only"*

14. Stephen Cook saw that a blue badge was displayed in the front windscreen of the vehicle and that its time clock was set at 12:00 hours. On checking the blue badge's serial number, he established that the blue badge had been issued to AN, who was born in 1957, but the badge had been cancelled after AN reported the loss of the badge<sup>3</sup>.

15. At 17:42 hours the Respondent returned to the vehicle at which time Stephen Cook identified himself to her. He explained his role and asked to examine the blue badge. The Respondent handed it to him saying, "*It's my dad's.*". When challenged and advised that the blue badge had been cancelled the Respondent replied, "*It's actually my friend's dad. I don't know his name.*"

16. Believing that the blue badge was being fraudulently misused, Stephen Cook cautioned the Respondent and then explained it. The following is an extract of the conversation after the caution: -

*I said, 'Who is the badge holder?'*

*Miss Koushi replied, 'My friend's dad. I don't know his name.'*

*I said, 'Who's your friend?'*

*She replied, 'Danny. I don't know his surname He's a mutual friend of a friend. I can get it for you.'*

*Mr Williams asked, 'Is Danny a male or female?'*

*Miss Koushi replied, 'Male.'*

*I said, 'What is his address?'*

*She replied, 'I think the address it's around [REDACTED].'*

*I said, 'How can I speak with the badge holder or Danny?'*

*She replied, 'I don't have their numbers.'*

17. Stephen Cook then asked the Respondent who put the badge on display and the Respondent then confirmed that she did. The Respondent stated that she had only had the badge for one day.

18. Following this Stephen Cook advised the Respondent that the facts would be reported to the London Borough of Ealing to decide what action to take and further cautioned her. The Respondent replied: -

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<sup>3</sup> AN reported the blue badge as lost on 5 September 2019



*“I want you to tell them I park on Mattock Lane every day. I have a pay by phone account and pay £4.00 per day. I only used it today because the badge was left in my car by a mutual friend. I wasn’t aware I wasn’t allowed to use it. I am a solicitor and an officer of the court and if I knew I couldn’t use it, I wouldn’t absolutely have used it, as I wouldn’t put my legal career in jeopardy. I didn’t know it was fraud.”*

19. A copy of the front and rear of the blue badge shows that it has a picture of the owner and his name along with the warning as set out at paragraph 9 above.

#### The court proceedings

20. Subsequently a summons was issued requiring the Respondent to attend at Ealing Magistrates’ Court on the 3 February 2020 for an offence contrary to section 115(1)(a)(i) of the Road Traffic Regulation Act 1984 as amended.
21. On the 3 February 2020 the Respondent appeared at Ealing Magistrates’ Court and entered a guilty plea to the section 115 offence, namely that she used a blue disabled person’s badge with intent to deceive.
22. The court sentenced the Respondent to a fine of £1125, costs of £690.92 and a Victim Surcharge of £181.

#### Non-Agreed Mitigation

23. The following mitigation, which is not agreed by the SRA, is put forward by the Respondent:

23.1 At the time of the allegations set out in 2.1 and 2.2 she was [REDACTED] that had a significant effect on her mental health as set out in the psychiatric report of Dr Mala Singh dated 21 June 2021.

23.2 On the 12 November 2021 (the day of the allegations) the Respondent was late arriving at work so temporarily parked in a space allocated to her firm in the building where she worked. She was aware that she would have to move her car later in the morning.

- 23.3 On that morning to her surprise the partner who she had worked with over the last three years announced to her and the office that he was leaving the firm with immediate effect. This led to a series of crisis meetings being arranged throughout the day and the Respondent was highly emotional and extremely stressed by this announcement.
- 23.4 At this point the Respondent remembered that she had to move her car and then return to the office as quickly as possible. Unfortunately, as she drove around looking for a space she was unable to find a space and she started to panic as she needed to get back to the office. In a moment of panic and without thinking about the consequences she used the disabled person's badge, that had been left in her car, to park in a disabled bay.
- 23.5 The Respondent had found the disabled person's badge in her car on the morning of the 12 November 2019. She had found it amongst a quantity of letters that were between the passenger seat and car door. At the time she could not recall or understand where these came from. She now recalls that the previous day she gave her father a lift after he had cleared out the communal area of a block of flats and understands that he must have left the badge, along with the letters in her car.
- 23.6 Having parked her car, the Respondent returned to her office and continued with her work. By the time she left the office it was dark and when walking to her car she was approached by two unknown men. This caused her to feel anxious and scared as [REDACTED].
- 23.7 When being asked about the disabled person's badge the Respondent does accept that she said it was her dad's then her friend's dad. The conversation between her and the parking officers was lengthy, and she offered other explanations as to how the badge may have come to be in her car.
- 23.8 On being charged with the offence the Respondent attended court and pleaded guilty at the first opportunity. On pleading guilty, the Respondent expressed her sincere remorse for her behaviour on the 12 November 2019.
- 23.9 The Respondent is deeply ashamed and embarrassed by her actions and acknowledges that she has disappointed herself, her family and her profession. Her actions do not reflect the values of the way she was raised.

23.10 In preparing her report Dr Singh conducted a lengthy interview with the Respondent to understand her situation back in November 2019. Dr Singh states that the Respondent was suffering from severe mental distress because of [REDACTED]. Dr Singh goes on to state, *“An individual not suffering from the mental disorders she was suffering at the time would have been able to act differently.”*

23.11 As well as the impact of the relationship she was in and the stresses that the Respondent experienced at work on 12 November 2019 there was further impact on her mental health due to the fact that [REDACTED]

23.12 At the time of the allegations the Respondent had been qualified as solicitor for just over a month. She has remained as an employee before and since the allegations took place at the same firm.

23.13 Statements provided by some of her colleagues and another in the profession assert that she is someone who has always demonstrated honesty and integrity in her work. They have stated that her actions on the 12 November 2019 were completely out of character for her.

23.14 Finally, the Respondent is no longer in [REDACTED], and Dr Singh details that the Respondent is not currently suffering from any mental disorders.

24. The Respondent accepts that the two allegations are aggravated by dishonesty.

### **Penalty proposed**

25. It is proposed that the Respondent should be suspended from practice for a period of six months.

26. With respect to costs, it is further agreed that the Respondent should pay the SRA's costs of this matter agreed in the sum of £2,300.

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

27. The Respondent has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (8th edition), at paragraph 51, states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)).*"

28. In **Sharma [2010] EWHC 2022 (Admin)** at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:

*"(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...*

*(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...*

*(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others..."*

29. The Respondent and the SRA agree that the circumstances of the misconduct, including those set out at paragraphs 23.1 to 23.14, are such that this is a case where exceptional circumstances mean striking off would be a disproportionate sentence.

30. The two acts of dishonesty are restricted to the misuse of the disabled person's badge on the 12 November 2019 and the subsequent incorrect statements to the parking officers on the same day. Whilst the Respondent's action could have denied someone with a disabled person's badge from using the parking space on that afternoon there is no other loss. The benefit to the Respondent was mainly of convenience and of limited financial benefit as normal parking charges were only £4.00. With regard to her statements as to ownership

of the badge, these had no effect as the parking officers already knew who the badge was issued to and that it had been cancelled on the system due to it being lost.

31. At the time of these two acts the Respondent was suffering from moderate to severe mixed anxiety and depressive disorder. In addition, the Respondent was at the same time suffering from panic disorder. In the opinion of Dr Singh she was experiencing mental health issues because [REDACTED].

32. In **SRA v James and others [2018] EWHC 3058 (Admin) at [101] Flaux LJ s stated** *“...the exceptional circumstances must relate in some way to the dishonesty.”*

33. In her report Dr Singh gives an opinion that *“This led to a moment of madness, leading to poor judgement and not being able to appraise the consequences of her action”* and *“An individual not suffering from the mental disorders she was suffering at the time would have been able to act differently.”* The Respondent does not contest that the conduct was dishonest. However, the medical evidence supports the contention that the conduct was a moment of madness arising from the Respondent’s circumstances at the time.

34. Whilst the case does not warrant striking off it does warrant suspension from the Roll. The Tribunal’s Guidance Note on Sanction (8<sup>th</sup> Edition) at paragraph 38 states that suspension from the Roll will be appropriate where: -

- *the seriousness of the misconduct is such that neither a Restriction Order, Reprimand nor a Fine is a sufficient sanction or in all the circumstances appropriate.*
- *there is a need to protect both the public and the reputation of the legal profession from future harm from the respondent by removing their ability to practise, but*
- *neither the protection of the public nor the protection of the reputation of the legal profession justifies striking off the Roll.*
- *public confidence in the legal profession demands no lesser sanction.*
- *professional performance, including a lack of sufficient insight by the respondent (judged by the Tribunal on the basis of facts found proved and the respondent’s*

*evidence), is such as to call into question the continued ability to practise appropriately.*

35. In this case the misconduct of the Respondent is still too serious for a Restriction Order, Reprimand or a Fine to be sufficient sanction. Public confidence in the legal profession demands no lesser sanction.

36. The Tribunal's **Guidance Note on Sanction (8<sup>th</sup> Edition)** at paragraph 45 states the following with regard to a Fixed Term of Suspension, *"the Tribunal will fix a term of suspension of such length both to punish and deter whilst being proportionate to the seriousness of the misconduct."*

37. In all the circumstances of the case, it is therefore proportionate and in the public interest that the Respondent should be suspended from practice for a period of six months.

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Oliver Sweeney  
Head of Legal & Enforcement  
On behalf of the SRA

22 July 2021

Nick Trevette, Murdochs Solicitors  
On behalf of the Respondent

22 July 2021