

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12274-2021

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

SCOTT AINGE

Respondent

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Before:

Mr A Ghosh (in the chair)

Mr P S L Housego

Mrs C Valentine

Date of Hearing: 10 February 2022

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**Appearances**

Mr I Johal, barrister in the employ of the Solicitors Regulation Authority Limited of The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent represented himself.

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**JUDGMENT**

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## **Allegations**

1. The allegations made against Mr Ainge by the Solicitors Regulation Authority Limited (“SRA”) was that whilst employed as a Crown Prosecutor by the Crown Prosecution Service, he unlawfully accessed data held in a computer on three separate occasions on:

- 1.1 25 October 2016
- 1.2 3 November 2016
- 1.3 22 February 2017

and that by doing so Mr Ainge breached all or any of Principles 1, 2 and 6 of the SRA Principles 2011 (“the Principles”).

2. The Applicant relied on Mr Ainge’s convictions for three counts of Unauthorised Access to a Program or Data held in a Computer, contrary to the Misuse of Computer Act 1990 on 18 December 2020, as evidence that he was guilty of that offence, and relied upon the findings of fact upon which that conviction was based as proof of those facts.

## **Executive Summary**

Allegation 1 – Proved – The Tribunal’s Findings can be found here.

## **Sanction**

Fixed Period Suspension – 18 Months

## **Documents**

3. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):
- Rule 12 Statement and Exhibit AB1 dated 8 November 2021
  - Respondent's Answer and Exhibits dated 2 December 2021
  - Applicant’s Schedule of Costs dated 3 February 2022

## **Factual Background**

4. Mr Ainge was admitted to the Roll in September 1997. He was employed by the Crown Prosecution Service (“CPS”) in 2004. At the material time, he was employed by the CPS in the role of Senior Crown Prosecutor. He was dismissed from his employment by the CPS on 12 February 2021. Mr Ainge holds a current unconditional practising certificate.

## **Witnesses**

5. None.

## Findings of Fact and Law

6. 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 Mr Ainge'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.

## Integrity

7. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

“Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members ... [Professionals] are required to live up to their own professional standards ... Integrity connotes adherence to the ethical standards of one's own profession”.

8. **Allegation 1 - whilst employed as a Crown Prosecutor by the Crown Prosecution Service, he unlawfully accessed data held in a computer on three separate occasions on: (1.1) 25 October 2016; (1.2) 3 November 2016; and (1.3) 22 February 2017. By doing so Mr Ainge breached all or any of Principles 1, 2 and 6 of the Principles.**

## The Applicant's Case

- 8.1 On 27 January 2020, Mr Ainge emailed the SRA, explaining that he was due to appear before Liverpool Magistrates Court on 31 January 2020. On 18 December 2020 the Respondent was convicted of three counts of Unauthorised Access to a Program or Data held in a Computer.
- 8.2 On 25 October 2016, without lawful authority, he used the CPS CMS system to access a file from December 2014 relating to a criminal conviction of Person A, then the partner of his former wife. On 3 November 2016, Mr Ainge, again unlawfully, accessed the 2014 file of Person A. On 22 February 2017, he accessed a different file, relating to separate conviction of Person A.
- 8.3 Mr Ainge subsequently disclosed the information within the accessed files, to individuals outside of the CPS who would not ordinarily have access to such information.
- 8.4 On 7 January 2020, Mr Ainge was charged. On 18 December 2020 he stood trial at Liverpool Crown Court and was convicted of three counts of Unauthorised Access to a Program or Data held in a Computer Contrary to Section 1 of the Computer Misuse Act 1990.
- 8.5 Mr Ainge was sentenced to the following: (to run concurrently for all three counts):
- 20 weeks imprisonment suspended for 18 Months.

- Required to undertake all Rehabilitation Activity requirements as directed by an authorised provider of Probation for 20 days.
- Required to undertake unpaid work for 100 hours before 18 January 2022.
- To pay a victim surcharge of £115.

8.6 At the sentencing hearing on 19 January 2021, the Judge made the following comments:

“You committed a grave breach of trust. The vital importance of maintaining the integrity of the Crown Prosecution Service’s case management system and other business platforms, such as the Crown Court Digital Case System is obvious. It is fundamental to the wellbeing of society that the public have faith and confidence, that personal information relating to them will not be accessed and released by CPS employees for ulterior motives. Your abuse of the level of trust bestowed on you as a Senior Crown Prosecutor is a very serious factor.

...

I also reject your contention that your offences were motivated by concern for your younger child. I do not doubt that you are a devoted father, but you accessed the information for your own benefit to deploy it in the context of your divorce. Your mindset was that you wanted to win and you sought access with that aim.

...

Your offending was deliberate, planned and persistent, spanning a period of four months. Although the nature of it did not require sophisticated planning, the evidence showed that having been locked out of the file you sought to obtain Person A’s pre-sentence report, without leaving a digital footprint on CMS.

...

The features of actual, intended, or foreseeable harm are these: The principal harm is to public trust and confidence in the security and integrity of personal information held by the Crown Prosecution Service on its databases. Witnesses and victims as well as defendants entrust the CPS with the most sensitive of information. Public knowledge that a Senior Crown Prosecutor has accessed and disseminated sensitive information for personal reasons undermines trust and confidence in the CPS, potentially discouraging engagement with the criminal justice system by witnesses and victims of crime.”

8.7 Mr Johal submitted that Principle 1 required solicitors to uphold the rule of law and the proper administration of justice. By virtue of his criminal conviction, Mr Ainge had undermined the rule of law in breach of Principle 1. He was an experienced criminal law solicitor who ought to have known his conduct was unlawful but, if he was in any doubt on the point, the CPS CMS log in page made clear the rules when accessing it:

“Only authorised users can access this application. Unauthorised access to this application may constitute a criminal offence under the Computer Misuse Act 1990...Accessing case related information must be strictly based on business need. Users are reminded that they are forbidden to access cases which may involve family/friends etc...Obtaining or disclosing personal information held on CMS, other than for business purposes, will be considered a security breach. In such circumstances, you may face disciplinary action and/or criminal prosecution”

- 8.8 By knowingly committing a criminal offence Mr Ainge undermined the rule of law. Furthermore, as the trial judge rightly found, witnesses and victims as well as defendants entrust the CPS with the most sensitive of information. Mr Ainge’s actions in accessing and disseminating sensitive information for personal reasons had the potential to discourage engagement with the criminal justice system. Those actions, therefore, tended to impede the administration of justice.
- 8.9 Principle 6 required solicitors to behave in a way that maintained the trust the public placed in them and in the provision of legal services. Mr Ainge was entrusted with confidential information, including of vulnerable individuals who might be in compromising positions. All those that engaged with the CPS including victims of crime, witnesses and defendants ought to be able to trust that their information was being treated with sensitivity and respect and was only used for the purposes of legal services. Mr Ainge’s behaviour in accessing and disclosing sensitive information undermined the trust the public placed in the provision of legal services and amounted to a breach of Principle 6.
- 8.10 Principle 2 required solicitors to act with integrity. A solicitor of integrity would not act in a way which did, or could, constitute a criminal offence.
- 8.11 By accessing information that he was not lawfully permitted to, Mr Ainge failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. A solicitor of integrity, acting in accordance with the high ethical standards of the solicitor’s profession would not access confidential information, held by his employer in connection with his duties, to misuse it for personal purposes.
- 8.12 Furthermore, the Respondent did so in circumstances where the statement on the login page made it clear that he could not lawfully access and disseminate the information for the purposes for which he was proposing to use it. Therefore, he acted in circumstances where he knew that his actions were unlawful and not permitted by his employer. A solicitor of integrity did not act with such conscious impropriety. In doing so, Mr Ainge failed to act with integrity in breach of Principle 2.

### The Respondent’s Case

- 8.13 Mr Ainge admitted the allegation including that he had breached the Principles as alleged. He accepted that his conduct was wrong and did not seek to blame anyone else for his misconduct.

### The Tribunal's Findings

- 8.14 The Tribunal found the allegation proved on the facts and evidence. The Tribunal found Mr Ainge's admissions to have been properly made. Mr Ainge referred to others who he asserted had also committed similar acts. The Tribunal could only adjudicate on matters that were brought before it. In the circumstances, the actions of other people were not relevant to the Tribunal's decision; the Tribunal was only considering whether Mr Ainge had committed the misconduct alleged.

### **Previous Disciplinary Matters**

9. None.

### **Mitigation**

10. Mr Ainge confirmed that he had never denied the conduct. Notwithstanding the sentencing remarks, Mr Ainge stated that his motivation related to the safety of his daughter. He was concerned that his daughter would be seeing Mr A, so he checked to see whether Mr A had a criminal record.
11. The CPS became aware in January 2018 of Mr Ainge accessing the material. At that stage he was not suspended from work, nor was his access to the CPS case management system restricted. Mr Ainge was suspended in February 2019, after he informed the CPS that he had been diagnosed as suffering with stress for which he held the CPS partly responsible given its failure to offer him appropriate support.
12. Mr Ainge directed the Tribunal to other cases that were of a similar nature and the sentences imposed in those cases, which were far less severe than the sentence that he received.
13. The Tribunal was directed to the many testimonials supplied as to Mr Ainge's character. Mr Ainge confirmed that he had completed the unpaid work requirement, and was complying with probation.
14. Mr Ainge asked the Tribunal to impose a sanction that it considered to be appropriate in all the circumstances. He admitted his misconduct, and would accept whatever sanction was imposed.

### **Sanction**

15. The Tribunal had regard to the Guidance Note on Sanctions (9<sup>th</sup> Edition). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances. The Tribunal took account of the references provided by Mr Ainge when considering the appropriate sanction.

16. The Tribunal noted that Mr Ainge referred to sentences imposed in other cases for similar matters by the criminal courts. The purpose of sanction in the Tribunal related to maintaining public confidence in the integrity of the profession. The Tribunal considered the appropriate sanction in relation to the misconduct that was admitted and proved. In deciding upon the appropriate sanction the Tribunal did not consider the criminal sanctions imposed on others who had committed similar misconduct.
17. The Tribunal found Mr Ainge to be entirely culpable for his misconduct. His actions were planned. He was an experienced solicitor and had abused his position of trust, authority and responsibility as a senior crown prosecutor. Mr Ainge had direct control and responsibility for his misconduct.
18. He had caused harm to the reputation of the profession. Members of the public would not expect a solicitor who had access to sensitive information to deploy that information when he knew he was prohibited from doing so.
19. His conduct was aggravated by his commission of criminal offences. His actions were deliberate, calculated and repeated over a period of time. He had abused his position of power and authority to access the information. The Tribunal found that Mr Ainge knew that he was in material breach of his obligation to protect the public and the reputation of the profession.
20. In mitigation, Mr Ainge had voluntarily notified the SRA of his charges and conviction. He had displayed genuine insight into his misconduct and was clearly remorseful. He had made open and frank admissions at an early stage and had co-operated fully with the SRA. The Tribunal gave due weight to the testimonials as to his previous good character.
21. The Tribunal concluded that the seriousness of Mr Ainge's misconduct was such that sanctions such as no order, a reprimand or a financial penalty were insufficient and inappropriate. The Tribunal considered that the seriousness of the misconduct was such that the public interest required that Mr Ainge's conduct be marked by a suspension from the right to practise, but did not consider that the protection of the public or the reputation of the profession justified striking him off the Roll.
22. The Tribunal considered that a definite period of suspension properly reflected the seriousness of his misconduct. The Tribunal determined that a suspension of 18 months was the appropriate and proportionate sanction.

### **Costs**

23. Mr Johal applied for costs in the sum of £2,260.00, accepting that a small reduction was appropriate by reason of the shortened hearing time.
24. Mr Ainge explained that he was of very limited means. He had no permanent employment. When he was dismissed from the CPS, he took a number of jobs at the minimum wage. He had been able to take a six month mortgage payment break, but that had now ended. He had considered moving but lived with his elderly mother, who was anxious about moving to a new property. When he was employed by the CPS, he had received a good wage, however since losing his job, things were much more

difficult financially. The work that he was now doing was on a day-to-day basis, and he had no secure income. His financial position was precarious. Mr Ainge considered that he had no future in the legal profession and so would not be able to replicate the income he had when employed by the CPS.

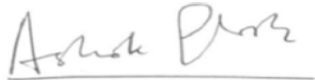
25. The Tribunal considered that a reduction of £130.00 was appropriate to reflect the shortened hearing time, leaving costs of £2,130.00, which, it was found, was reasonable. The Tribunal then considered Mr Ainge's means. The Tribunal determined that in light of his limited means, it was appropriate to reduce the costs order, notwithstanding that the costs claimed were reasonable. The Tribunal reduced the costs to be paid to the sum of £1,000.00 and ordered Mr Ainge to pay costs in that sum.

### **Statement of Full Order**

26. The Tribunal Ordered that the Respondent, SCOTT AINGE, solicitor, be suspended from practice as a solicitor for the period of 18 months to commence on the 10th day of February 2022 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,000.00.

Dated this 25<sup>th</sup> day of February 2022

On behalf of the Tribunal



A Ghosh  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**25 FEB 2022**