

IN THE MATTER OF USHMA MISTRY, solicitor

- AND -

IN THE MATTER OF THE SOLICITORS ACT 1974

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Mr D J Leverton (in the chair)  
Mr S N Jones  
Mr M G Taylor CBE

Date of Hearing: 27th March 2002

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## FINDINGS

of the Solicitors Disciplinary Tribunal  
Constituted under the Solicitors Act 1974

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An application was duly made on behalf of the Office for the Supervision of Solicitors ("OSS") by Iain George Miller solicitor of Wright Son & Pepper, 9 Gray's Inn, London, WC1R 5JF on 8<sup>th</sup> November 2001 that Ushma Mistry of c/o Mr R Foreman, Murdochs, 45 High Street, Wanstead, London, E11 2AA (now of Rayners Lane, Middlesex) solicitor might be required to answer the allegation contained in the statement which accompanied the application and that such order might be made as the Tribunal should think right.

The allegation against the Respondent was that she had been guilty of conduct unbefitting a solicitor in that she amended a psychiatric report which was adduced in evidence at a sentencing hearing without the knowledge or consent to the author of the report.

The application was heard at the Court Room, 3rd Floor, Gate House, 1 Farringdon Street, London EC4M 7NS on 27<sup>th</sup> March 2002 when Mr Iain George Miller solicitor and partner in the firm of Wright Son & Pepper, 9 Gray's Inn, London, WC1R 5JF appeared as the Applicant and the Respondent was represented by Mr Neil Griffin of Counsel.

The evidence before the Tribunal included the admission of the Respondent together with her written statement of mitigation, a report from Susan Epstein, Psychological Counsellor and a bundle of references in support of the Respondent.

At the conclusion of the hearing the Tribunal ordered that the Respondent Ushma Mistry of Rayners Lane, Middlesex, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 27<sup>th</sup> day of March 2002 and they further ordered that she do pay the costs of and incidental to the application and enquiry fixed in the sum of £800.

The facts are set out in paragraphs 1 to 8 hereunder: -

1. The Respondent born in 1966 was admitted as a solicitor in 1992 and her name remained on the Roll of Solicitors.
2. At all material times the Respondent practised as an assistant solicitor at Veja & Co in Hayes, Middlesex.
3. Veja & Co acted on behalf of SL who had been charged with dangerous driving, driving with excess alcohol and possessing an offensive weapon. At a hearing of the matter on 24<sup>th</sup> August 2000 before Redditch Magistrates Court, SL pleaded guilty to these charges.
4. The case was adjourned for the preparation of pre-sentencing reports and was re-listed for 25<sup>th</sup> September 2000. For the purpose of that hearing the Respondent obtained on behalf of SL a report from a Consultant Psychiatrist, Dr C. Counsel was instructed to appear at the hearing.
5. Prior to the hearing on 25<sup>th</sup> September 2000 the Respondent considered the Report and removed with Tippex the final sentence which stated:-
 

"I am doubtful as to whether he will have the motivation to engage in either alcohol counselling or long term psychotherapy."
6. Copies of the original report and of the report as amended by the Respondent were before the Tribunal. It was admitted by the Respondent that she made this amendment without reference to Dr C. Copies of the amended Report (which showed no evidence of the deletion) were then placed in the Court bundle and relied upon on behalf of SL by Counsel at the hearing on 25<sup>th</sup> September 2000.
7. Counsel had no knowledge of the amendments until these came to light as a result of a conversation between the Respondent and Counsel in October 2000.
8. In the light of the Respondent's conduct, sentencing of Mr SL was re-listed before Redditch Magistrates Court. However, they declined to change their original sentence.

#### **The Submissions of the Applicant**

9. The Respondent had admitted the allegation and the facts.
10. The Applicant put the case as an act of serious misjudgement on the part of the Respondent but no more.
11. The matter was nevertheless serious.

12. It could not be characterised as an oversight as this was an act of commission involving tippexing, copying and the placing of the amended document in a Bundle.
13. The matter concerned the relationship of the profession with the Court. Misleading the Court was a serious matter.
14. The statement of Mrs Epstein did not take the matter further forward as it focused on events after the act in question and as the Respondent was only seen by Mrs Epstein after the event.
15. Mrs Epstein's statement showed that the Respondent was suffering from stress and pressure but, in the submission of the Applicant, only as was common within the profession.
16. In her statement Mrs Epstein quoted an earlier statement from the Respondent in which the Respondent said she had formed the view that the sentence deleted was opinion evidence which she was entitled to take out.
17. This made no sense to any solicitor who applied his/her own mind to it as expert evidence was by its nature opinion evidence.

#### **The Submissions on behalf of the Respondent**

18. The Respondent was grateful for the way in which the Applicant had put this case.
19. While there was no attempt by the Respondent to justify what she had done it was only right to note that in her earlier statement quoted by Mrs Epstein the Respondent had said that she had intended to contact the psychiatrist to amend the report.
20. The Respondent had been very busy in a high street criminal practice with one secretary between five solicitors.
21. On the morning in question she had hurriedly tippexed out the sentence in the report and had given it to in-house Counsel before rushing off to a rape trial.
22. The Respondent did not however want to make excuses.
23. Counsel had been able to contact Dr C the day before the Tribunal hearing and Dr C had said that if the Respondent had asked her to delete the line she would have considered it.
24. The deletion was not an abhorrence which Dr C would never have considered.
25. The Magistrates who imposed the sentence on SL had reconsidered sentence and had not altered it.
26. This did not mean that the Respondent's conduct was alright, but in terms of the issue of misleading the Court the sentence had remained the same.
27. The Respondent had told in-house Counsel that she had deleted the line. The Tribunal was asked to take into account that it was as a result of the Respondent telling someone else what she had done that these charges arose.

28. When confronted by her senior partner the Respondent had fully accepted responsibility for what she had done and had showed immediate and genuine remorse and had been very upset.
29. The Tribunal was referred to the bundle of references in support of the Respondent. The references did not shy from the fact that the matter was serious but the Tribunal was asked to note the following points in the references in particular:-
- (a) Ms Croxon writing in full knowledge of the matter before the Tribunal had spoken highly of the valuable support given to her by the Respondent while Ms Croxon was training. She described the Respondent as a well respected and popular member of staff at her former firm.
  - (b) Mr Cosma, solicitor, had described the Respondent as hard working and honest.
  - (c) Ms McGuinness, solicitor, had spoken of the Respondent's high standing in the local Courts and the total respect in which she was held by her peers. Ms McGuinness had further said:-

"I feel that where Ms Mistry would ordinarily discuss the difficult expert's report with one of her colleagues, under the pressure she took an unusual course of action, without considering the consequences. It is so wildly out of character."

30. The Tribunal was invited to approach this case on the basis that there had been no planning by the Respondent. Although she had chosen to do the act the deletion had been done on the spur of the moment.
31. Mr Smith, solicitor, had written that at no time had he ever doubted the honesty or integrity of the Respondent as a professional lawyer and colleague.
32. Mr Waskett, solicitor, had written:-

"She has always been held in high esteem by both myself and all other advocates in regular attendance at Uxbridge Magistrates Court. Her personal integrity has never been questioned.

During the period of time that I have known Ms Mistry I have never been aware of any complaints or criticisms about her work by fellow advocates, Court staff or clients. Indeed, I have observed her to be a conscientious and diligent advocate and police station duty solicitor.

There must have been extenuating circumstances..."

33. The Tribunal was asked to take account of the stress and pressure referred to in Mrs Epstein's statement in which she said that the Respondent was severely clinically depressed.
34. Mr Enright of Counsel had written a letter of reference in support of the Respondent when he had heard of the matter before the Tribunal and without being asked. He had spoken of the difficulties of a case in which the Respondent had been his instructing

solicitor which had taken place at around the same time as the matter which was before the Tribunal. Mr Enright had written:-

"It was apparent to me then that Ushma Mistry found the case to be stressful and upsetting.... I confess that I was surprised, given the complexity and difficulty of the trial, that Ms Mistry had so many other cases and duties to perform. It was the subject of discussion between us at the time. It was plain to see Ms Mistry working flat out in the Spring and Summer of 2000.

It was obvious to me that she was carrying a very heavy caseload with minimal supervision.... I have conducted a number of other cases for Ms Mistry and I have never had cause to doubt her professionalism and honesty.

I invite the Tribunal to take my remarks into account in mitigation. I also wish to place on record that notwithstanding what has taken place I regard Ushma Mistry as a young lady of innate decency. Given the opportunity I firmly believe that she could become a very real asset to our profession."

35. The Tribunal was referred to two further letters written in relation to the case referred to by Mr Enright.
36. One of those letters was from Mr Evans of Queen's Counsel who had given permission for his letter to be used and sent his apologies to the Tribunal as he was abroad. Had he not been abroad he would have come to the Tribunal to speak on behalf of the Respondent. He was fully aware of the circumstances.
37. It was evident from Mr Evans' letter that he had not been aware of the stress which the Respondent had been hiding at the time.
38. The Respondent's husband had said that she had been hiding her stress from him as well.
39. The final letter had been a letter written by Mr Evans to the senior partner of the Respondent's firm following the conclusion of the difficult trial and paying tribute to the work done by the Respondent.
40. Although this was a matter which was in the hands of the Tribunal the Respondent would hope at some stage in the future to return to work in the law. There would be mountains to climb to achieve this but she hoped to return in due course.
41. The Respondent had been the first in her family to obtain a degree and had been a very hardworking solicitor in a very busy criminal practice.
42. When confronted she had made a full admission.
43. There had been no planning of this matter and no bearing on the Court's decision.
44. The Respondent had been very upset not because she felt sorry for herself but when she had heard of the support she had received.

45. If allowed she would continue to be a solicitor but she would never forget what she had done and the potential there had been for putting a blot on this honourable profession.
46. The Respondent apologised for what she had done and regretted it severely.
47. The Tribunal was urged to show some mercy towards the Respondent.

### **The Findings of the Tribunal**

The Tribunal found the allegation to have been substantiated indeed it was not contested.

The Tribunal considered very carefully what had been said and the documents before it. It was a very serious matter for a solicitor to alter a medical report without reference to the person who had written the report in an attempt to mislead the Court.

When considering the sentence the Tribunal had taken account of everything that had been said in mitigation. The Tribunal accepted that the Respondent had been under pressure at the time as set out in Mrs Epstein's report. The Tribunal took note of the excellent references in support of the Respondent and of the manner in which the Applicant had opened the proceedings.

The Tribunal would normally order a striking off for such conduct which reflected very badly on the solicitors' profession but in these exceptional circumstances the Tribunal had given the Respondent the benefit of the doubt and had decided to impose an indefinite suspension upon the Respondent.

The Respondent at an appropriate time in the future would be able to make an application for the lifting of the indefinite suspension if so advised.

The Tribunal therefore ordered that the Respondent Ushma Mistry of Rayners Lane, Middlesex, solicitor be suspended from practice as a solicitor for an indefinite period to commence on the 27<sup>th</sup> day of March 2002 and they further ordered her to pay the costs of and incidental to the application and enquiry fixed in the agreed sum of £800.

DATED this 14<sup>th</sup> day of June 2002

on behalf of the Tribunal

D J Leverton  
Chairman