

The Tribunal's Order dated 4 October 2018 is subject to appeal to the High Court (Administrative Court) by the Respondent. The Order remains in force pending the High Court's decision on the appeal.

## SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11819-2018

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

HELEN LYDIA DUGDALE

Respondent

---

Before:

Mr D. Green (in the chair)

Mr P. Booth

Mr R. Slack

Date of Hearing: 4 October 2018

---

### **Appearances**

Shaun Moran, Solicitor employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

Stephen J. Pinder, Solicitor, EAD Solicitors LLP, Prospect House, Columbus Quay, Liverpool L3 4DB for the Respondent

---

## **JUDGMENT**

---

(N.B. Part of this hearing was in private)

## **Allegations**

1. The allegations made by the SRA against the Respondent Helen Lydia Dugdale were that contrary to section 5(1)(a) of the Road Traffic Act 1988, on 29 June 2017 she drove a motor vehicle on a road after consuming so much alcohol that her alcohol levels exceeded the prescribed limits, and was convicted on 25 September 2017. She thereby failed to:
  - 1.1 act with integrity in breach of Principle 2 of the SRA Principles 2011 (“the 2011 Principles”); and/or
  - 1.2 behaved in a way that maintains the trust the public places in her and the provision of legal services in breach of Principle 6 of the 2011 Principles.

## **Documents**

2. The Tribunal reviewed all the documents including:

### **Applicant**

- Application dated 24 April 2018 with Rule 5 Statement and exhibit JRL1
- Applicant’s Statement of Costs for hearing on 4 October 2018 dated 27 September 2018 with Statement of Costs as at date of issue.

### **Respondent**

- Respondent’s Reply in response to Rule 5 Statement dated 4 June 2018 drafted by Mr Stephen J. Pinder with attachments
- Email from EAD Solicitors to the Tribunal dated 26 September 2018
- Respondent’s Personal Financial Statement dated 14 August 2018 with attachments
- Bank account statements
- Testimonial from Oakmount Law dated 3 October 2018

## **Preliminary and Other Issues**

3. The Respondent applied for evidence and submissions relating to certain matters to be heard in private. Mr Pinder directed the attention of the Tribunal to documents in the evidence which indicated the sensitive nature of this personal information. The Applicant did not oppose the application. Rule 12(4) of the Solicitors (Disciplinary Proceedings) Rules 2007 (“SDPR”) provided:

“Any party to an application and any person who claims to be affected by it may seek an order from the Tribunal that the hearing or part of it be conducted in private on the grounds of—

- (a) exceptional hardship; or
- (b) exceptional prejudice,

to a party, a witness or any person affected by the application.”

The Tribunal gave permission for those parts of the hearing which related to the matters in question to be heard in private. This decision extended to what might be included in the Tribunal's published judgment.

### **Factual Background**

4. The Respondent was admitted to the Roll of Solicitors in 1994. She was born in 1969. She had a practising certificate free from conditions.
5. The Respondent was an experienced solicitor who specialised in matters involving criminal defence work, including defence of motoring offences.
6. The certified copy provided by Greater Manchester Magistrates' Court of the Memorandum of an entry in the Register of the Manchester and Salford Magistrates' Court confirmed that the offence took place on 29 June 2017 and that the Respondent pleaded guilty shortly before the hearing on 25 September 2017. The Certificate also included that:
  - 6.1 The Respondent was fined £650.00 (plus a victim surcharge of £65.00) and disqualified from holding or obtaining a driving licence for 36 months. Costs of £250.00 were awarded to the CPS.
  - 6.2 The disqualification period was obligatory for the offence by reference to Section 34(1) Road Traffic Offenders Act 1988 – with this being the Respondent's second conviction.
7. The Respondent had previously been convicted of driving under the influence of alcohol in October 2013. The Respondent reported this earlier matter to the Applicant, advising that she received an 18 month disqualification from driving and a fine of £800.00 with £650.00 costs. The Applicant at that time decided against pursuing formal disciplinary action for such a first offence.
8. On 14 February 2018, an Authorised Officer of the Applicant decided to refer the conduct of the Respondent to the Tribunal after an exchange of letters between the parties.

### **Witnesses**

9. There were no witnesses.

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

10. The Applicant was required to prove the allegations 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.
11. **Allegation 1 - The allegations made by the SRA against the Respondent Helen Lydia Dugdale were that contrary to section 5(1)(a) of the Road Traffic Act 1988, on 29 June 2017 she drove a motor vehicle on a road after consuming so much alcohol that her alcohol levels exceeded the prescribed limits, and was convicted on 25 September 2017. She thereby failed to:**

- 1.1 act with integrity in breach of Principle 2 of the SRA Principles 2011 (“the 2011 Principles”); and/or**
- 1.2 behaved in a way that maintains the trust the public places in her and the provision of legal services in breach of Principle 6 of the 2011 Principles.**

11.1 SRA Principles 2011:

“You must:

2. act with integrity;
6. behave in a way that maintains the trust the public places in you and in the provision of legal services;

11.2 For the Applicant, Mr Moran relied upon the Memorandum as proof of the conviction of the Respondent under Rule 15(2) of the SDPR which stated:

“A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances.”

By way of factual summary only, Mr Moran referred to the CPS case summary which stated that the factual background collated by the prosecution (with some background subsequently reported in the media) included that:

- The Respondent was observed by a witness Mr C driving her car and “zig-zagging” along a road (with two flat tyres);
- Mr C followed the Respondent’s car and observed it swerving to avoid pedestrian lighting equipment. Mr C thought it was lucky that no one was hit by the car.
- Mr C approached the car when it stopped at traffic lights, then called the police after he followed the Respondent’s car into a car park.
- When the police arrived, the Respondent complied with the requirements of the drink-drive procedure, providing samples containing 63 micrograms of alcohol per 100ml of breath and providing a “No Comment” interview to the police.

The Respondent’s conviction was subject to extensive media coverage in local and national press, which highlighted her specialism in motoring law and the fact that this was not her first conviction.

11.3 Mr Moran submitted that the Respondent co-operated throughout and notified the Applicant when charged and indicated that she would plead not guilty. Her response to

the Explanation With Warning (“EWW”) letter from the Applicant and her Response to the Rule 5 Statement detailed the allegations admitted by the Respondent.

- 11.4 Mr Moran referred to the Rule 5 Statement where it was set out in respect of the Principles alleged that Principle 2 required a solicitor to act with integrity. A solicitor acting with integrity would not break the law (as a repeat offence) in a way which places other members of the public at significantly increased risk. A solicitor engaging in such criminal activity that risked the safety of other members of the public might properly be said to have lacked moral soundness, rectitude and steady adherence to an ethical code so as to lack integrity in breach of Principle 2. Principle 6 required a solicitor to behave in a way that maintained the trust the public placed in them and in the provision of legal services. This trust depended upon the reputation of the solicitors’ profession as one in which every member “may be trusted to the ends of the earth”. The Respondent’s behaviour in increasing the danger on the roads through driving with excess alcohol (now on two separate occasions), and being convicted of this offence, would be likely to undermine the trust that the public placed in solicitors in breach of Principle 6. This might particularly be the case as the Respondent was herself a solicitor dealing with criminal defence work, including acting for clients charged with motoring offences which the Applicant regarded as an aggravating factor. Trust placed in solicitors was also likely to be eroded by the reporting of the conviction in the media.
- 11.5 For the Respondent, Mr Pinder referred the Tribunal to the Respondent’s Reply in which she accepted that she had breached the Principles alleged and recognised the importance of the matter and the seriousness of the issues. He also clarified that in her initial report to the Applicant that she had been charged, the Respondent indicated that she would plead not guilty; in the event she pleaded guilty and recognised that was the right way to deal with the matter. There had been some initial publicity but this was in the locality and Mr Pinder submitted that it did not become a matter of public notoriety; there was no trial and so no need to call the witness Mr C which mitigated the publicity.
- 11.6 The Tribunal had regard to the evidence and the submissions for the Applicant and the Respondent. The Respondent did not challenge the fact of her conviction which was proved by the Memorandum of Conviction upon which the Tribunal could rely by virtue of Rule 15(2) of the SDPR. The Tribunal found the facts giving rise to the allegation proved on the evidence to the required standard. The Tribunal also determined that the Respondent’s behaviour and the resulting conviction demonstrated that she lacked integrity and that Principle 2 had been breached (allegation 1.1). The fact of the conduct and the conviction constituted a failure to maintain the trust of the public and therefore Principle 6 had also been breached (allegation 1.2). Allegation 1 was therefore found proved in its entirety.

### **Previous Disciplinary Matters**

12. None.

### **Mitigation**

13. For the Respondent, Mr Pinder submitted that the Respondent whom he knew as a solicitor since April 2015 was both a Tribunal and court advocate and a founder member, builder and rain maker of a firm before becoming a consultant. She had been voted out of her partnership and made an employee and what she had built had been taken away from her in a matter of months. Mr Pinder had acted for her when she went to an Employment Tribunal. At that point she had not been paid for several months and was very short of money. She had been unsuccessful because the Employment Tribunal had decided that she did not count as an employee. The Respondent had appealed to the Employment Appeal Tribunal but lost her case. Initially the Respondent had resorted to Employment Support Allowance to maintain herself and a family member. She had then had several different consultancy roles while trying to return to legal practice. Mr Pinder referred the Tribunal to a testimonial provided by Oakmount Law dated 3 October 2018 where she was currently employed as a Consultant Solicitor (the hearing bundle contained two other testimonials one from Mr Pinder and another from a barrister). The testimonial included:

“We found [the Respondent] to have been a very honest individual and found that she has a wealth of experience as a practising Solicitor and Advocate. She explained that she has a good loyal client base, which came to light now as also being genuine and honest, through her client matters with us.

...we have had good positive feedback from our clients. She is said to be thorough, punctual and very client focused.”

14. Mr Pinder submitted that the Respondent's history showed a determination to get into employment and to support her family. It was difficult to make a career out of criminal defence work. She had provided evidence from her bank statements that her normal income was £3,400 a month. She had been accepted back onto the Duty Solicitor Scheme at Police Stations and hoped that her new employment would be a great success. Mr Pinder submitted that the Respondent had struggled for some three years and the medical evidence reflected some very bad times and difficulties dealing with her own and family health issues. She was now back in a good job and earning reasonable money. She was no longer receiving counselling sessions; these had stopped in January 2018. The offence had occurred at a time when the Respondent had reached a really low ebb. Her financial experience as a self-employed consultant had not been happy. She had incurred debt. Her bank statement reflected that she was just about managing. She had taken a number of loans. Mr Pinder's firm had provided more information about her debts in an email to the Tribunal dated 26 September 2018. (The total outstanding against credit cards and two loans was a little over £37,000.00, in addition to a mortgage on her home). The Respondent did not have a guaranteed monthly income. She did occasionally go overdrawn. Mr Pinder submitted that no-one was underplaying the seriousness of this matter; the Respondent deplored drink driving but asked for the Tribunal's understanding of her personal circumstances when it considered the appropriate sanction. The Respondent asked not to be treated more harshly because her work included motoring matters than any other lawyer. She had a mixed criminal practice and undertook conventional motoring defence work as part of her practice. She also defended the most serious types of criminal charge including murder. This was the reason she had been accepted back onto the Police Stations Scheme panel by the legal aid authority. The Respondent hoped that there would be a financial penalty but at the lower end of the scales reflecting her means and how she

had dealt with the proceedings. She had co-operated throughout. What had happened had reflected a really bad period in her life from which she had now moved on.

15. The Respondent was proud to be a solicitor and understood that it carried with it a particular element of trust with the public. Mr Pinder submitted that the Respondent pleading guilty had reduced the damage to public trust. The Respondent also had a really excellent reputation doing good work for clients and acting in the most difficult cases. Her reputation reflected well on her as an individual. Her testimonial from her employers could not be more positive. Mr Pinder had not asked for this reference to be prepared. The Respondent could not change her past and was trying to give a good impression of herself and her work. Mr Pinder submitted that the Respondent had been treated by a Hypnotherapist who had given a report dated 22 September 2017. In her letter dated 12 December 2017 to the Applicant, the Respondent had made various points including that she realised she had two flat tyres and it was difficult to keep the car straight. She withdrew her not guilty plea as she thought running the defence she had intended “would only cause damage to the profession and me.” She stated that she accepted that on the day of the accident she used alcohol as an “emotional crutch” to try and see through her problems.
16. The Respondent gave sworn evidence by way of mitigation much of which was heard in private. The Respondent stated that she had been recommended to a hypnotherapist by a former colleague. She felt that treatment of a different nature would help her. The process she had undergone for 6-7 months had given her the strength to go forward. The Respondent explained to the Tribunal how she benefitted from the treatment in practical ways in managing her situation. The Respondent gave evidence that the offence had occurred at a particular time when three detrimental factors in her life, both personal and professional, came together. She felt that she had now turned a corner. Her current employer was aware of her earlier conviction.

### **Sanction**

17. The Tribunal had regard to its Guidance Note on Sanctions (December 2016), to the mitigation offered including the Respondent’s evidence and to the testimonials submitted. The Tribunal considered the seriousness of the Respondent’s misconduct. The Respondent was culpable for her misconduct and as a solicitor was in a position of trust. She was in direct control of the circumstances and had responsibility for them. She was an experienced solicitor of almost 24 years’ admission. The potential for harm to other road users of her driving with excess alcohol was very high. The harm to the reputation of the profession was also considerable and all the harm was reasonably foreseeable. The Tribunal considered that because the Respondent’s practice included motoring offences she should have had greater insight into the perils of driving with excess alcohol and should have been more engaged with the risks as she had dealt with their consequences in her work. The fact this was the second time she had been convicted, albeit she had suffered no adverse professional consequences the first time around, showed that this was misconduct continuing over a period of time and was an aggravating factor. As to general mitigation, the Respondent had voluntarily notified the regulator that she had been charged. She had an otherwise unblemished professional record. She had admitted the allegations and co-operated with the Applicant. As to insight the Respondent had given evidence about seeking help. Following her second conviction she had sought the assistance of a hypnotherapist, but did not appear to have taken any other steps.

18. As to sanction, the Respondent had already been punished in the criminal proceedings. The Tribunal had therefore to consider the protection of the public and maintaining the reputation of the profession which included considering how best to mark with the public and the profession the seriousness with which the Tribunal viewed the offence of driving with excess alcohol. The misconduct was too serious for no order or a reprimand. The imposition of a significant fine seemed appropriate to mark the seriousness of the offence but the Tribunal was concerned about the level of assurance offered that the conduct would not be repeated. It was noted that there was medical reporting between her convictions in 2015 and 2017 but there was no up to date medical report to give assurance. The Tribunal therefore very seriously considered suspending the Respondent from practice. However, the Respondent had assured the Tribunal that her conduct would not be repeated as following on from the treatment she had sought after the offence, she now had coping mechanisms to address her various personal problems which the Tribunal accepted were very serious at the material time and some of which were ongoing. The Tribunal also noted that the coincidence of those problems at exactly the time of the offence created a particular set of circumstances. Based on the evidence about her personal circumstances which had been dealt with in private during the hearing, it would not be too strong to say that a combination of factors plunged the Respondent's life into chaos at that time. The Respondent was clearly held in high regard by colleagues and clients and had worked very hard to re-establish her career after her break up from the firm she had helped to found. The Tribunal had had the benefit of hearing her give evidence in mitigation and noted her deep commitment as a solicitor. She had been an honest and straightforward witness. Although the Tribunal was concerned that there may be an increased risk of her once again using alcohol inappropriately were she to find herself in a similarly stressful situation, there was no expert evidence available to demonstrate that she currently suffered from a drink problem. The Tribunal also noted that the Magistrates' Court had chosen not to impose a period of imprisonment which meant they regarded the second offence as being at the lower end of the range. After deliberating long and hard, and considering what measures it had available to it, the Tribunal determined that a suspension could not be justified in the particular circumstances of this case.. The Tribunal would not deprive the Respondent of the ability to practise; it must however mark the seriousness of the misconduct which it placed at the top of Level 3 and bottom of Level 4 of its Guidance Note – conduct assessed as more serious, bordering on very serious. A fine of £15,000.00 would be imposed. The Tribunal considered whether to reduce the fine having regard to the Respondent's means. It was true that she had debts but she had a co-owned property with equity and an interest in another property. She was once again in receipt of a reasonable salary. She had indicated regarding any fine and costs awarded against her that she could make a lump sum payment of £2,000.00 and monthly payments of £500.00 thereafter. The Tribunal did not consider it appropriate to reduce the level of fine.

### **Costs**

19. For the Applicant, Mr Moran applied for costs in the sum of £3,751.00. He referred to the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) and indicated that it was a matter for the Tribunal if it decided to take the Respondent's means into account. Mr Pinder did not challenge the time spent by the Applicant or the hourly rate but asked that the Tribunal should exercise its discretion to make an appropriate and proportionate order for costs against the Respondent. She accepted that the proceedings

were initiated as a result of her conduct. The Tribunal noted that the amount of costs claimed was not challenged and considered it to be reasonable and proportionate in the circumstances. Costs in the amount sought would be awarded and for the reasons set out above under Sanction would not be subject to any reduction.

### **Statement of Full Order**

20. The Tribunal Ordered that the Respondent, HELEN LYDIA DUGDALE solicitor, do pay a fine of £15,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,571.00.

Dated this 16<sup>th</sup> day of October 2018

On behalf of the Tribunal

D. Green  
Chairman