

Ziva Robertson

Solicitor

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Agreement Date: 15 August 2022

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 15 August 2022

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Firm details

Firm or organisation at date of publication and at time of matters giving rise to outcome

Name: McDermott Will & Emery UK LLP

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Firm ID: 419702

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome

1.1 Ms Ziva Robertson, a partner in McDermott Will & Emery UK LLP ("the Firm"), agrees to the following outcome to the investigation of her conduct by the Solicitors Regulation Authority (SRA):

- a. she is rebuked
- b. to the publication of this agreement and
- c. she will pay the costs of the investigation of £600.

2. Summary of Facts

2.1 The Firm acted for the Claimants in a libel trial. Ms Robertson was the solicitor with overall responsibility for the matter. Another partner in the firm was responsible for day-to-day conduct of the matter.

2.2 On 25 June 2020, the Court gave directions at a pre-trial review (which Ms Robertson did not attend) for the trial to take place on a socially

distanced basis in light of the Covid-19 pandemic. To facilitate this, a second courtroom was reserved to enable members of the press and public who wished to observe the trial to do so via a live video feed.

2.3 On 14 July 2020, the Court made a further Order permitting certain witnesses to give evidence remotely by video link. In the Order, the Judge also included (of the Court's own motion) that the second courtroom would be deemed an extension of the primary courtroom and that (unless the Court so directed) there would be no transmission of a live transcript, audio or video feed of the trial, to any location except the second courtroom.

2.4 Ms Robertson received a copy of the Order of 14 July 2020. She did not share it with the clients or with Opus 2, the company responsible for arranging the live transmission of the trial.

2.5 On Friday 17 July 2020, the Defendants applied to the Court requesting permission for one of their representatives to view the live transcript of the trial remotely. The application was granted the same day and Ms Robertson was copied into the email confirming this. The same day, Opus 2 circulated invitations to a Zoom webinar for the trial. Ms Robertson, others on her team and her clients were sent these Zoom invitations to allow them to view the evidence of the remote witnesses on their laptops from inside the primary courtroom, as they were not in clear view of the courtroom screens which would display the remote witness evidence.

2.6 On Sunday 19 July 2020, one of Ms Robertson's clients messaged her about the Zoom link. She advised them that the link should not be shared with third parties. During the email exchange, Ms Robertson became aware that her clients had already shared the Zoom link with a third party.

2.7 On Monday 20 July 2020, shortly before the trial was due to begin, Ms Robertson incorrectly advised her clients that they could share the Zoom link with a third party who wanted to observe the trial remotely. She repeated that advice later that evening when the Zoom link had become password protected. The clients then shared the link (or caused it to be shared) with a number of individuals who were not in either the primary or secondary courtroom. The Court had not given permission for those individuals to observe the trial so when they watched it remotely, the Order was breached.

2.8 On 22 July 2020, it came to the attention of the Judge that someone appeared to be observing the trial remotely without the Court's permission to do so. Ms Robertson realised that she had incorrectly advised her clients that they could share the Zoom link and immediately arranged for this to be brought to the Court's attention. The Court asked her to provide an explanation as to how the breach of the Order had occurred.



2.9 After court on 22 July 2020, counsel for the Claimants advised Ms Robertson that she should draft a letter to the Court to explain the error, to be sent urgently that evening. Ms Robertson's initial draft of the letter was reviewed and amended by counsel instructed for the Claimants. In the letter sent to the Court, Ms Robertson stated, "... having advised the claimants on Sunday not to disseminate the Zoom link they received from Opus, I gained the impression on Monday – and told them – that they would be able to do so. I cannot now recall how or from whom I gained that impression, but I entirely accept that it was wrong... As [counsel for the Claimants] told his Lordship, I am embarrassed and apologise unreservedly to the Court. I should make it clear that at all times my clients were simply following my advice. Until I informed them (wrongly) that they were at liberty to disseminate the link they did not do so". The final two sentences quoted above had not been included in Ms Robertson's initial draft letter and were added to her draft letter by counsel.

2.10 The Judge was not satisfied by Ms Robertson's explanation and directed that if the Firm or any solicitor wished to provide further representations or evidence they must do so by 28 July 2020. To this end, Ms Robertson and the partner who had day to day conduct of the matter provided witness statements to the Court.

2.11 In Ms Robertson's witness statement dated 27 July 2020, she made the following points:

- a. On the evening of 19 July 2020, she advised her client that he should not disseminate the Zoom link. The client accepted her advice that the link should not be passed on to third parties.
- b. At all material times she was aware of the Court Order dated 14 July 2020 and, the evening before the trial, she understood that it meant that the Court's permission was required for anyone to view the trial remotely. Notwithstanding this, on 20 July 2020, and without enquiring as to whether the Order had been varied, she gained the mistaken impression that the arrangements for the trial had evolved (as they had done continuously in the weeks preceding the trial) and that the parties were permitted to share the Zoom link with the third party associates and advised the clients accordingly.
- c. Her view was based partly on a conversation that she had had with the partner with day-to-day conduct of the matter on the morning of 20 July 2020. She explained that "I asked my partner..., who had been closer to the 'Opus coalface' whether the Zoom link was streaming the trial and whether it was unsecure. She said she thought so, and I asked



whether it would be ok for the clients' US team to use it too. I had thought she said yes but I now think that we were at cross purposes..."

- d. She was also influenced by the fact that the Zoom link was unsecure and was being used in the courtroom next door by anyone there who chose to access it.
- e. She did not make any enquiries with the Opus 2 team about the Zoom link and the fact that it appeared to be unsecure.
- f. On the evening of 20 July 2020, when the Zoom link became password protected, she again advised the clients that they could share it with third parties.

2.12 The partner's witness statement confirmed that she recalled speaking briefly to Ms Robertson on 20 July 2020, though her account of the details of the conversation differed. She stated that she joined a discussion between Ms Robertson and another member of the team for a short period (around 30 seconds to one minute) and commented that, "...this was a public hearing and members of the public had the right to attend it". She did not recollect Ms Robertson specifically asking her about the Zoom link.

2.13 On 28 July 2020, the Judge considered the further information provided and decided to refer the matter to the High Court under the Hamid Jurisdiction.

2.14 The High Court considered the explanations provided by Ms Robertson and the partner and accepted that this was not a case of deliberate defiance of a Court Order. However, noting that the Firm had already referred the matter to the SRA, it directed that a copy of its judgment be sent to the SRA so that its views of the seriousness of the breaches could be made known to it.

3. Admissions

3.1 Ms Robertson makes the following admissions which the SRA accepts:

- a. On 20 July 2020, she advised her clients that they could act in a way which she ought to have known would result in breach of the terms of a Court Order, and in so doing she breached principles 1, 2 and 7 of the SRA Principles.
- b. On 22 July 2020, she wrote a letter to the Court stating that her clients had not disseminated the Zoom link until she advised them on Monday 20 July 2020 that they could do so. She ought to have known this statement to the Court was misleading because her client had already told her on Sunday 19 July 2020 that they had shared the Zoom link



with a third party. In doing so she breached principles 1 and 2 of the SRA Principles.

4. Why a written rebuke is an appropriate outcome

4.1 The SRA's Enforcement Strategy sets out its approach to the use of its enforcement powers where there has been a failure to meet its standards or requirements.

4.2 When considering the appropriate sanctions and controls in this matter, the SRA has considered the admissions made by Ms Robertson and the following mitigation which she has put forward:

- a. her conduct was inadvertent
- b. she is remorseful
- c. the incorrect advice she provide her clients on 20 July 2020 was given during a demanding trial
- d. there was a general confusion and uncertainty surrounding the differences between remote and hybrid trials in the first stage of the Covid-19 restrictions
- e. she relied on advice from counsel in respect of the letter dated 22 July 2020 and she did not appreciate that the wording they suggested adding could be misleading
- f. the stress and anxiety caused to her by these events
- g. she has no previous adverse regulatory history
- h. she has accepted full responsibility; and
- i. she has cooperated fully with the SRA's investigation.

4.3 The SRA considers that a written rebuke is the appropriate outcome because:

- a. there was no lasting significant harm to consumers or third parties
- b. there is a very low risk of repetition; and
- c. some public sanction is required to uphold public confidence in the delivery of legal services.

5. Publication

5.1 The SRA considers it appropriate that this agreement is published in the interests of transparency in the regulatory and disciplinary process. Ms Robertson agrees to the publication of this agreement.

6. Acting in a way which is inconsistent with this agreement

6.1 Ms Robertson agrees that she will not deny the admissions made in this agreement or act in any way which is inconsistent with it.

6.2 If Ms Robertson denies the admissions, or acts in a way which is inconsistent with this agreement, the conduct which is subject to this agreement may be considered further by the SRA. That may result in a disciplinary outcome or a referral to the Solicitors Disciplinary Tribunal on the original facts and allegations.

6.3 Denying the admissions made or acting in a way which is inconsistent with this agreement may also constitute a separate breach of principles 2 and 5 of the Principles and paragraph 7.3 of the Code of Conduct for Solicitors, RELs and RFLs.

7. Costs

7.1 Ms Robertson agrees to pay the costs of the SRA's investigation in the sum of £600. Such costs are due within 28 days of a statement of costs due being issued by the SRA.

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