

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 10882-2011

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ANDREW GIBB

Respondent

Before:

Mr A. G. Gibson (in the chair)

Mr R. Prigg

Mrs S. Gordon

Date of Hearing: 15th May 2012

Appearances

Nicholas Leale, solicitor of Blake Laphorn, Watchmaker Court, 33 St John's Lane, London EC1M 4DB for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent were that he:
 - 1.1 Failed to settle service charge and ground rent arrears with the purchaser's solicitors in a conveyancing transaction within a reasonable time of the completion of the transaction, contrary to Rule 1.02 and Rule 1.06 of the Solicitors' Code of Conduct 2007;
 - 1.2 Failed to promptly comply with a Notice given by the SRA in accordance with Section 44B of the Solicitors Act 1974, contrary to Rule 20.08 of the Solicitors' Code of Conduct 2007;
 - 1.3 When discussing with the SRA a Notice given by them in accordance with Section 44B of the Solicitors Act 1974, he made misleading comments to the SRA, contrary to Rule 1.02 and Rule 1.06 of the Solicitors' Code of Conduct 2007. It was alleged the Respondent acted dishonestly;
 - 1.4 Failed to deal with the SRA in an open, prompt and co-operative way, contrary to Rule 20.05 of the Solicitors' Code of Conduct 2007;
 - 1.5 Failed to comply with the Adjudicator's direction of 22 February 2011 to pay former client Mr RB compensation of £1,800, a costs refund of £200 and to account for Mr RB's property purchase deposit of £6,975 and to pay such sum to Mr RB, contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007;
 - 1.6 Failed to comply with the Adjudicator's direction of 22 February 2011 to pay the Legal Complaints Service ("LCS") costs of £551.81 in connection with its investigation of the service complaints made by Mr RB, contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007;
 - 1.7 Failed to act in good faith and to his best ability for his client Mrs IR, contrary to Rule 1.04 and Rule 1.06 of the Solicitors' Code of Conduct 2007;
 - 1.8 Failed to provide a good standard of client care and work, skill and diligence to his client Mrs IR, contrary to Rule 1.05 and Rule 1.06 of the Solicitors' Code of Conduct 2007;
 - 1.9 Failed to provide a good standard of client care and work, skill and diligence to his client, Mrs EF, contrary to Rule 1.05 and Rule 1.06 of the Solicitors' Code of Conduct 2007;
 - 1.10 When discussing with the LCS matters relating to a Grant of Probate concerning his client, Mrs EF, made misleading comments to the LCS, contrary to Rule 1.02 and Rule 1.06 of the Solicitors' Code of Conduct 2007. It was alleged the Respondent had acted dishonestly;
 - 1.11 Failed to pay the premium due for indemnity insurance for the indemnity year 2010/2011 to Capita (which managed the Assigned Risks Pool ("ARP") on behalf of

the SRA) within the prescribed period of payment and was in policy default in breach of Rule 16.2 of the Solicitors Indemnity Insurance Rules 2009;

- 1.12 Failed to pay the premium for run-off indemnity insurance to Capita within the prescribed period for payment and was in policy default in breach of Rule 16.2 of the Solicitors Indemnity Insurance Rules 2009.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 18 November 2011 together with attached Rule 5 Statement and all exhibits
- Schedule of Costs

Preliminary Matters

3. The Applicant confirmed he had spoken to the Respondent on 14 May 2012 and that the Respondent was aware of the substantive hearing but had no comment to make on the allegations, other than that he was not sure about the allegations relating to indemnity insurance. The Respondent had said that he had been declared bankrupt on 28 October 2011 and that he had nothing to lose or gain from attending the hearing. He had said the hearing was a waste of time and that he accepted he would be struck off.
4. The Applicant had also spoken to the Respondent on 10 February 2012, when he had been served with notice of the substantive hearing. On that occasion the Respondent had also told the Applicant that he was bankrupt, he had ceased practice and did not intend to practise again. He had said he was resigned to his fate, he would be struck off the roll, he could not pay the SRA's costs and he wanted to dispose of the matter without a substantive hearing. The Applicant had asked the Respondent to put all this in an email but the Respondent had not done so.
5. The Tribunal, having considered the matter, was satisfied the Respondent had been properly served and that he was aware of the substantive hearing. The Tribunal granted leave to the Applicant to proceed in the Respondent's absence.

Factual Background

6. The Respondent, born on 14 February 1950, was admitted to the Roll on 15 December 1975. At all material times he was practising on his own account as Purdy Solicitors at Market Place, Reepham, Norwich, NR10 4LZ ("the firm"). The firm closed on 29 October 2010. Following the Respondent's indication that he did not wish to renew his practising certificate, his practising certificate was terminated on 5 April 2011.

Allegation 1.1

7. The Respondent acted for sellers of a property in Norwich which was sold at auction on 9 September 2009 for £60,000. The intended completion date was 7 October 2009. On 6 October 2009 the purchaser's solicitors wrote to the firm stating that no information had been supplied in respect of outstanding service charges or ground rent and requiring the Respondent to give an undertaking that after redeeming his client's mortgage, he would retain the balance due to his client until all the apportionments had been agreed between the parties. By a handwritten note dated 7 October 2009 it appeared the Respondent agreed to this undertaking and completion took place the same day.
8. During the period 19 October 2009 to 26 January 2010 the Respondent failed to confirm the outstanding sums so that matters could be settled. He did not reply to letters from the purchaser's solicitors dated 26 November 2009, 12 January 2010 and 26 January 2010, at which time service charge and ground rent arrears remained outstanding.
9. The purchaser's solicitors were eventually provided with information about the outstanding apportionments on 26 February 2010 by a third party. Thereafter the purchaser's solicitors wrote to the firm requesting payment of £1,433.76 which was the apportionment due from the sellers pursuant to the undertaking the Respondent had given. The Respondent did not reply and the purchaser's solicitors complained to the Legal Complaints Service ("LCS") on 23 March 2010.

Allegations 1.2, 1.3 and 1.4

10. The SRA wrote to the Respondent on 5 August 2010 under the provisions of section 44B of the Solicitors Act 1974 giving notice to the Respondent to produce his original complete file and client ledger relating to the above mentioned property in Norwich within 14 days. The Respondent did not reply. The SRA sent a further letter to the Respondent on 26 August 2010.
11. The Respondent telephoned the SRA on 1 September 2010 explaining he would respond to the request the following week. Further conversations between the SRA and the Respondent took place.
12. On 8 September 2010 the SRA telephoned the Respondent and asked him whether he had now sent the required documents to the SRA. The Respondent stated the documents had been sent the previous night. On 15 November 2010 the Respondent telephoned the SRA and stated he was out of the office and that he would send the file to the SRA the following day, on 16 November 2010. He also confirmed his practice had closed on 29 October 2010. The SRA had not received any documents or file from the Respondent.
13. Further letters were sent by the SRA to the Respondent relating to the section 44B Notice on 28 September 2010, 5 November 2010 and 1 December 2010. The relevant documents had not been received by the SRA. The SRA also sent a number of letters to the Respondent dated between 10 June 2010 and 25 July 2011, relating to various matters. The Respondent did not reply to any of those letters.

Allegations 1.5 and 1.6

14. On 22 February 2011 an Adjudicator directed the Respondent must pay Mr RB £1,800 compensation, £200 costs refund and account for £6,975 deposit received and repay that to Mr RB within seven days of the letter enclosing the decision. The Respondent did not comply with the Adjudicator's directions.
15. On 22 February 2011 an Adjudicator directed the Respondent should pay the LCS costs in connection with its investigation concerning Mr RB's complaint. The Adjudicator had made findings of inadequate service and found that the Respondent had failed to deal properly with the complaints or investigations by the LCS. The Respondent failed to pay the LCS costs which remained outstanding.

Allegations 1.7 and 1.8

16. On 12 September 2007 Mr DR died, having appointed his wife, Mrs IR and their son as Executors of his estate. In November 2007 Mrs IR and her son instructed the Respondent to deal with Mr DR's estate and provided the Respondent with the original Will and death certificate. They contacted the Respondent in June 2008 for an update and he apologised for the fact that he had not started work on their file. They received two letters from the Respondent in October 2008, and they visited his office in February 2009 to sign papers on oath. They continued to chase the Respondent by telephone throughout the year but no progress was made.
17. In December 2009 Mrs IR and her son were asked to sign some more forms and they recalled by that time that they had been told on two separate occasions that a Grant of Probate had been obtained. In early 2010 they became concerned at the delay. They recalled the Respondent had told them that the work relating to the Inland Revenue had been completed in March 2009. Mrs IR asked the Respondent for a copy of the Grant of Probate so that she could deal with some shares. The Respondent promised to send this in the post but it did not arrive.
18. In June 2010 the Respondent requested the title deeds to the property, which Mrs IR provided. Thereafter Mrs IR contacted the Probate Registry to carry out a search of their records, however she was informed in a letter dated 27 August 2010 that there was no record of an application.
19. Mrs IR tried to contact the Respondent in September 2010 in order to complain about the standard of service provided. The Respondent did not respond to her letters or answer her telephone calls. Mrs IR instructed another firm of solicitors in November 2010 and discovered from them that the Respondent's firm had ceased trading. Neither Mrs IR nor her son had been informed of this by the Respondent.

Allegation 1.9 and 1.10

20. In October 2009 the Respondent was instructed by Mrs EF to deal with the Grant of Probate in respect of her late husband, NF. On a date prior to 4 June 2010 Mrs EF complained to the LCS about the slow progress on the Respondent's part in relation to the estate. On 4 June 2010, the LCS spoke to the Respondent about the matter and he

informed them that he had spoken to the Probate Office the previous week and had been told no queries remained in relation to the Grant of Probate. He said that the issue of the Grant of Probate was imminent and he would chase it again that day.

21. Ten further telephone conversations took place between the Respondent and the LCS between 18 June 2010 and 14 September 2010. During these conversations the Respondent repeatedly stated to the LCS that the Grant of Probate had been applied for and that the delays were being caused by the Probate Registry Office. On a number of occasions he left the LCS in no doubt that the application had been made well in advance of his first conversation with the LCS on 4 June 2010.
22. During a telephone conversation on 22 September 2010 the Respondent provided the LCS with probate details so that the LCS could contact the Ipswich Probate Registry to take matters forward. On the same day the LCS spoke to Ipswich Probate Registry and discovered there was no record of any application being made by the Respondent in respect of Mr NF. A further telephone conversation took place between the Respondent and the LCS on the same day in which the Respondent assured the LCS that the application had been made. He was asked to fax a copy of the application to the LCS by the end of the day but no such application was received.
23. A further conversation took place on 23 September 2010 when the LCS informed the Respondent that Mrs EF would be taking the file to another firm and wanted to collect it later in the week. The Respondent informed the LCS that the original Will was not on the file as this had been sent to Winchester Probate Registry with the application. This was the first mention of Winchester Probate Registry. The following day the LCS contacted Winchester Probate Registry who would not inform the LCS as to whether an application had been made due to data protection issues.
24. On 27 September 2010 Mrs EF's new solicitors contacted the LCS to inform them that their client had collected the file from the Respondent. The new solicitors stated the original Will was missing from the file and that the Winchester Probate Registry had confirmed there was no application for a Grant of Probate pending with them.
25. On the same day the LCS contacted the Respondent's firm. The Respondent was on holiday but the Office Accountant confirmed there was no record on the ledger of any probate application fee on Mrs EF's case. A Consultant at the practice confirmed the original Will along with some other original oaths and papers were still on the file held at the firm, even though a file had been handed over to the new solicitors. The Consultant agreed to send the documents by Special Delivery to the new solicitors that night.
26. On 12 October 2010 during a telephone conversation between the LCS and the Respondent, the level of compensation to Mrs EF and Mr C was discussed. The Respondent stated during the conversation that he had behaved appallingly and inexplicably. He confirmed he understood that the LCS would have to report the fact that he had provided inaccurate information to both the client and the LCS. An undated letter was sent to the Respondent from the LCS confirming that conversation. The matter was referred to the SRA and letters were sent to the Respondent on 14 January 2011 and 3 February 2011. The Respondent did not reply.

Allegations 1.11 and 1.12

27. The Solicitors Indemnity Insurance Rules 2010 (“the Rules”) required solicitors in private practice to maintain a minimum level of qualifying professional indemnity insurance. Where firms were unable to obtain insurance on the open market in a particular year, they were required to apply to enter the Assigned Risks Pool (“ARP”). A firm could leave the ARP at any time if it obtained qualifying insurance outside the ARP or ceased practice. Otherwise a firm could only remain in the ARP for a maximum period of 12 months in any four consecutive indemnity periods. The maximum period a firm could be insured through the ARP was 24 months in any five year indemnity period. Under the Rules, if a firm was admitted to the ARP, the firm and any Principal of that firm, were jointly and severally liable to pay the ARP premium and any sums due under the ARP policy.
28. The Respondent failed to pay the 2010/2011 indemnity premium for cover within the ARP to Capita (who manage the ARP on behalf of the SRA) in the sum of £62,631.32. He also failed to pay the run-off indemnity premium for run-off cover within the ARP in the sum of £62,631.32. The SRA wrote to the Respondent about these matters on 10 May 2011 and 2 June 2011. The Respondent did not reply to these letters.

Witnesses

29. No witnesses gave evidence.

Findings of Fact and Law

30. The Tribunal had considered carefully all the documents provided and the submissions of the Applicant. The Respondent had not engaged with the Tribunal and had made no submissions or provided any evidence. The Tribunal confirmed that all allegations had to be proved beyond reasonable doubt and that the Tribunal would be using the criminal standard of proof when considering each allegation.
31. **Allegation 1.1: The Respondent failed to settle service charge and ground rent arrears with the purchaser's solicitors in a conveyancing transaction within a reasonable time of the completion of the transaction, contrary to Rule 1.02 and Rule 1.06 of the Solicitors’ Code of Conduct 2007.**
- 31.1 The Tribunal had been referred to a number of letters that had passed between the Respondent’s firm and the purchaser’s solicitors’ firm. In their letter dated 6 October 2009 the purchaser's solicitors had required an undertaking from the Respondent, which the Respondent appeared to have agreed and given. Thereafter, the Respondent failed to provide information about the outstanding service charges and ground rent and, indeed, the purchaser's solicitors obtained this information from a third party on 26 February 2010, some four months later. In the circumstances, the Tribunal was satisfied this allegation was proved.
32. **Allegation 1.2: The Respondent failed to promptly comply with a Notice given by the SRA in accordance with Section 44B of the Solicitors Act 1974, contrary to Rule 20.08 of the Solicitors’ Code of Conduct 2007.**

Allegation 1.3: When discussing with the SRA a Notice given by them in accordance with Section 44B of the Solicitors Act 1974, the Respondent made misleading comments to the SRA, contrary to Rule 1.02 and Rule 1.06 of the Solicitors' Code of Conduct 2007. It was alleged the Respondent acted dishonestly.

Allegation 1.4: The Respondent failed to deal with the SRA in an open, prompt and co-operative way, contrary to Rule 20.05 of the Solicitors' Code of Conduct 2007.

- 32.1 The Tribunal had been provided with a number of letters sent by the SRA to the Respondent dated between 10 June 2010 and 25 July 2011 on various matters to which the Respondent had not replied or had provided an inadequate response. The Respondent had failed to produce documents and a file, despite having been served with a Notice pursuant to section 44B of the Solicitors Act 1974 requiring him to do so. In the circumstances, the Tribunal was satisfied allegations 1.2 and 1.4 were proved.
- 32.2 Allegation 1.3 was an allegation of dishonesty. The Applicant's case was that the Respondent had informed the SRA on the telephone on 8 September 2010 that he had sent the file "last night" and yet in another telephone conversation on 15 November 2010, he promised to send the file "tomorrow". That particular file was never received by the SRA. The Tribunal had no doubt that by telling the SRA he had sent the file the previous night on 8 September 2010, when he had clearly not done so, the Respondent had made a misleading comment to the SRA.
- 32.3 The Tribunal had been referred to the case of *Twinsectra Ltd v Yardley & Others* [2002] UKHL 12 which set out the test to be applied when considering the issue of dishonesty. Firstly, the Tribunal had to consider whether the Respondent's conduct was dishonest by the ordinary standards of reasonable and honest people. Secondly, the Tribunal had to consider whether the Respondent himself realised that by those standards his conduct was dishonest. The Tribunal was satisfied that to have claimed to have sent a file when the Respondent had not done so would be regarded as dishonest by the ordinary standards of reasonable and honest people. Furthermore, the Tribunal was satisfied that on 8 September 2010 the Respondent must have known he had not sent the file the night before to the SRA, as in a later conversation with them on 15 November 2010 he promised he would send the file the following day. The Tribunal was satisfied the Respondent was concealing the fact that the file had not been sent on 7 September 2010 and accordingly he knew that by the ordinary standards of reasonable and honest people, his conduct would be regarded as dishonest. The Tribunal found allegation 1.3 proved.
33. **Allegation 1.5:** The Respondent failed to comply with the Adjudicator's direction of 22 February 2011 to pay former client Mr RB compensation of £1,800, a costs refund of £200 and to account for Mr RB's property purchase deposit of £6,975 and to pay such sum to Mr RB, contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007.

Allegation 1.6: The Respondent failed to comply with the Adjudicator's direction of 22 February 2011 to the pay Legal Complaints Service ("LCS") costs of £551.81 in connection with its investigation of the service complaints made by Mr RB, contrary to Rule 1.06 of the Solicitors' Code of Conduct 2007.

33.1 There was no evidence before the Tribunal that the Respondent had complied with the Adjudicator's directions dated 22 February 2011. In the absence of any such evidence, the Tribunal was satisfied both allegations 1.5 and 1.6 were proved.

34. **Allegation 1.7: The Respondent failed to act in good faith and to his best ability for his client Mrs IR, contrary to Rule 1.04 and Rule 1.06 of the Solicitors' Code of Conduct 2007.**

Allegation 1.8: The Respondent failed to provide a good standard of client care and work, skill and diligence to his client Mrs IR, contrary to Rule 1.05 and Rule 1.06 of the Solicitors' Code of Conduct 2007.

34.1 The Respondent had been instructed to deal with a probate matter in November 2007. The clients signed oath papers in February 2009, some 15 months later. In December 2009, over two years later the clients were asked to sign some further papers and by this time were informed that the Grant of Probate had been obtained. In August 2010 the client was informed by the Probate Registry that there was no record of any application. The Tribunal was satisfied that the Respondent had failed to act in good faith and to the best of his ability, and that he had failed to provide a good standard of client care, work, skill and diligence to Mrs IR. The Tribunal was particularly concerned this conduct and delay had taken place over an extended period of time. The Tribunal found both allegations 1.7 and 1.8 proved.

35. **Allegation 1.9: The Respondent failed to provide a good standard of client care and work, skill and diligence to his client, Mrs EF, contrary to Rule 1.05 and Rule 1.06 of the Solicitors' Code of Conduct 2007.**

Allegation 1.10: When discussing with the LCS matters relating to a Grant of Probate concerning his client, Mrs EF, the Respondent made misleading comments to the LCS, contrary to Rule 1.02 and Rule 1.06 of the Solicitors' Code of Conduct 2007. It was alleged the Respondent had acted dishonestly.

35.1 The Respondent was instructed by Mrs EF in October 2009 to deal with the probate in respect of her late husband. By 4 June 2010 the LCS had become involved as a result of a complaint made by Mrs EF regarding the slow progress on the matter. During a series of conversations with the LCS that took place between 18 June 2010 and 14 September 2010, the Respondent had repeatedly maintained that the Grant of Probate had been applied for before 4 June 2010. It was only when the LCS contacted Ipswich Probate Registry on 22 September 2010 that it transpired there was no record of any application having been made. This was also confirmed by the Winchester Probate Registry when Mrs EF's new solicitors took over the matter shortly after. In these circumstances, the Tribunal was satisfied the Respondent had failed to provide a good standard of client care, work skill and diligence to Mrs EF and that the Respondent had made misleading comments to the LCS.

- 35.2 Allegation 1.10 was made on the basis that the Respondent had acted dishonestly. The Applicant's case was that it was clear that an application for a Grant of Probate had not been made and that when the Respondent informed the LCS that he had made the application, he must have been aware that it had not been made, as it had not. The other aggravating feature in relation to this matter was that the Respondent had tried to explain the missing original Will by stating it had been sent to Winchester Probate Registry, yet the Respondent's staff had confirmed, whilst the Respondent was on holiday, that there was no record of any fee being paid to the Probate Registry on Mrs EF's ledger, and that in fact the original Will and other original papers were still on the file held at the firm.
- 35.3 The Tribunal again considered the case of *Twinsectra Ltd v Yardley & Others*. The Tribunal was satisfied that claiming to have made an application to the Probate Registry when such an application had not been made would be regarded as dishonest by the ordinary standards of reasonable and honest people. The Tribunal was also satisfied that the Respondent must have been aware that such an application had not been made when he claimed that it had, and by holding back the original Will and other original oath papers when releasing the file to Mrs EF's new solicitors, the Respondent knew that his conduct was dishonest by those standards. The Tribunal was satisfied both allegations 1.9 and 1.10 were proved.
36. **Allegation 1.11: The Respondent failed to pay the premium due for indemnity insurance for the indemnity year 2010/2011 to Capita (which managed the Assigned Risks Pool ("ARP") on behalf of the SRA) within the prescribed period of payment and was in policy default in breach of Rule 16.2 of the Solicitors Indemnity Insurance Rules 2009.**
- Allegation 1.12: The Respondent failed to pay the premium for run-off indemnity insurance to Capita within the prescribed period for payment and was in policy default in breach of Rule 16.2 of the Solicitors Indemnity Insurance Rules 2009.**
- 36.1 The Tribunal had been provided with no evidence that the Respondent had paid his professional indemnity insurance premium for the indemnity year 2010/2011 when his firm was in the ARP, or the premium for run-off indemnity insurance which became due once his firm closed down. Accordingly, the Tribunal was satisfied both allegations 1.11 and 1.12 were proved.

Previous Disciplinary Matters

37. None.

Sanction

38. The Tribunal had considered carefully the documentary evidence provided. The Tribunal was of the view that the Respondent's behaviour had been disgraceful and he had caused serious damage to the reputation of the profession. The Tribunal had found the Respondent acted dishonestly on two separate occasions, and it was clear that a number of clients had suffered greatly, causing them immense distress as a result of the Respondent's conduct.

39. The Tribunal had no doubt that the Respondent was a risk to the public and was not fit to be a solicitor. In the case of the SRA v Sharma [2010] EWHL 2022 (Admin) Coulson J had stated:

“Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll”

The Tribunal was satisfied that there were no exceptional circumstances and that the appropriate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

40. The Applicant requested an Order for his costs in the total sum of £8,328.00 as set out in his Schedule of Costs. The Tribunal was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant’s costs in the sum of £8,328.00.
41. In relation to enforcement of those costs, the Respondent had informed the Applicant that he had been declared bankrupt on 28 October 2011. The Tribunal had particular regard for the case of SRA v Davis and McGlinchy [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

“If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive.”

In this case the Respondent had not provided the Tribunal or the Applicant with any evidence of his bankruptcy. He had not engaged with the Tribunal at all and therefore the Tribunal did not have any information or evidence of his current income, expenditure, capital or assets. In the absence of these, the Tribunal could not take a view of his financial circumstances.

Statement of Full Order

42. The Tribunal Ordered that the Respondent, Andrew Gibb, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £8,328.00.

Dated this 28th day of June 2012
On behalf of the Tribunal

Mr A. G. Gibson
Chairman