

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11345-2015

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

MARK CHRISTOPHER UNGOED DAVIES

Respondent

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Before:

Mrs J. Martineau (in the chair)

Mr J. A Astle

Mr S. Hill

Date of Hearing: 31 July 2015

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## **Appearances**

Robin Horton of the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent appeared in person.

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## **JUDGMENT**

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## **Allegations**

1. The allegations against the Respondent were that:
  - 1.1 The Respondent misled his clients into believing that he had issued, and conducted, court proceedings on their behalf when in fact no such proceedings had been issued, in breach of any or all of Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 (“SCC”) and, where the conduct occurred after 6 October 2011, in breach of any or all of Principles 2, 4, 5 and 6 of the SRA Principles 2011 (“Principles”). It was alleged the Respondent had acted dishonestly.
  - 1.2 The Respondent misled his clients into believing that their personal injury claims had been settled, when in fact he had not issued any claims, in breach of any or all of Rules 1.02, 1.04, 1.05 and 1.06 of the SCC and, where the conduct occurred after 6 October 2011, in breach of any or all of Principles 2, 4, 5 and 6 of the Principles. It was alleged the Respondent had acted dishonestly.
  - 1.3 The Respondent made payments to clients purportedly in settlement of their claims in breach of Rule 1.02 of the SCC and, where the conduct occurred after 6 October 2011, in breach of Principle 2. It was alleged the Respondent had acted dishonestly.
  - 1.4 [Withdrawn]
  - 1.5 The Respondent took no action on claims resulting in some of them becoming statute barred, in breach of any or all of Rules 1.04 and 1.05 of the SCC and, where the conduct continued after 6 October 2011, in breach of any or all of Principles 4 and 5 of the Principles.

The Respondent admitted Allegations 1.1, 1.2, 1.3 and 1.5 but did not admit he had acted dishonestly.

## **Documents**

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

Applicant:

- Application dated 6 February 2015 together with attached Rule 5 Statement and all exhibits
- Application to withdraw Allegation 1.4 dated 29 July 2015
- Skeleton Submissions on behalf of the SRA
- Statement of Costs dated 23 July 2015

Respondent:

- Answer dated 12 March 2015
- Written Submissions from the Respondent

### **Application to withdraw Allegation 1.4**

3. Mr Horton, on behalf of the Applicant, made an application to withdraw Allegation 1.4. Mr Horton submitted the evidence against the Respondent in relation to this allegation was hearsay evidence and, on reviewing the papers, the Applicant was of the view that that evidence was insufficient to prove Allegation 1.4 to the requisite criminal standard. The Respondent had no objection to the application.
4. The Tribunal, having considered the application to withdraw Allegation 1.4 accepted the Applicant's written submissions and granted the application to withdraw Allegation 1.4.

### **Factual Background**

5. The Respondent, born in October 1950, was admitted to the Roll on 1 December 1975. He did not hold a current practising certificate.
6. From 1999 until 2 April 2013, the Respondent was a partner in the firm of Trevor Griffiths Solicitors ("Griffiths"). On 2 April 2013, Griffiths was taken over by the firm of Hugh Jenkins Limited ("Jenkins"), where the Respondent was an assistant until 18 June 2013.
7. Between 2008 and 2013 the Respondent paid £28,950 to 6 clients. He informed those clients that the money was compensation for their claims. However, the Respondent had not issued proceedings in any of those cases and some of them had become statute barred. Instead of telling clients he had not issued proceedings, the Respondent paid them from Griffiths' office account, with money coming from his own personal account.
8. In April 2013, after Jenkins discovered one payment, the Respondent said that this had been a one-off payment. However, Jenkins discovered there were further such payments.

### Allegations 1.1 to 1.3

9. On or around April/May 2012, Mrs D and her son, Mr D, instructed the Respondent to deal with a breach of contract claim. On 9 May 2012, the Respondent wrote to Mrs D with advice and a draft letter of claim to the proposed defendant. The Respondent raised an invoice on the same date although it was not clear when, or if, that invoice was sent.
10. On 10 May 2012, the Respondent sent the letter of claim to the proposed defendant and on 6 June 2012, following further correspondence, the Respondent wrote to the proposed defendant threatening to issue proceedings.
11. On 7 June 2012, 15 June 2012 and 27 June 2012 the solicitors acting for the proposed defendant wrote to the Respondent but he did not reply. On 28 June 2012 the Respondent raised an invoice for Mrs D. Although there was no record of an email, a note on the invoice indicated it had been sent by email that day. On the same day the Respondent wrote to the defendant's solicitors making an offer and on 12 July 2012,

the defendant's solicitors wrote back with a counter offer. On 13 July 2012 the Respondent spoke to Mr D.

12. The file contained a copy of a letter from the Respondent to Mr D, incorrectly dated 15 June 2012, as the letter made reference to an offer of settlement which had been made on 12 July 2012. The file contained a signed copy Claim Form and on 19 July 2012 the firm raised a cheque for £120 to pay the court issue fee.
13. On 25 July 2012 the Respondent wrote to the defendant's solicitors rejecting their offer and stating:

“We are now in funds to issue proceedings without further delay.”

The file also contained a copy of a letter dated 26 July 2012 from the Respondent to Salford County Court. That letter stated:

“Please find enclosed herewith Claim Form with Particulars of Claim attached together with our cheque in the sum of £120 in payment of your fee.”

However, the Respondent did not send this letter or the cheque. The cheque was recorded on the office ledger as cancelled on 15 January 2013. The Respondent did not do any work on the claim after July 2012.

14. A letter from Mr D to Jenkins date stamped 9 July 2013 suggested the Respondent had told Mrs D and Mr D at various times that:
  - The Respondent had issued proceedings;
  - The Court had listed the case for hearing a number of times, but the case had been postponed;
  - Mr D and Mrs D had finally won the case on most of the heads of claim;
  - The only outstanding issue was Mr D's loss of earnings claim.

The letter suggested the Respondent had told Mr D that the Court had listed the hearing in relation to his loss of earnings claim for 8 July 2013.

15. On 17 June 2013, Mr D telephoned Jenkins to ask the Respondent about the hearing on 8 July 2013. The Respondent was not in the office and Mr D spoke to another member of staff. Mr D stated the Respondent had told him that he had:

“...been to Court on the case on 3 or 4 occasions and that the case had been adjourned on each occasion.”

Mr D also stated that the Respondent had sent £1,800 to Mr D as part of a compensation payment. However, when the staff member reviewed the file, there was no record of Court proceedings being issued. The staff member therefore telephoned the defendant's solicitors and was informed no court proceedings had been issued and no compensation payments made.

16. On 25 July 2013, Jenkins wrote to the clients to confirm that:
- Mr D and Mrs D had paid £414 to Jenkins for costs and disbursements and a cheque was attached by way of reimbursement;
  - The Respondent had raised bills for £294
  - The Respondent had personally pay £1,800 to Mr D
  - Jenkins terminated the retainer with Mr D and Mrs D.
17. On an unknown date the Respondent wrote to Mrs D and Mr D to apologise. He stated:
- “Please accept my deepest apologies for my failure to deal with your claim against [defendant] in an adequate and responsible way..... I very much regret the circumstances in which my failures came to light. I had gone on holiday expecting and intending to resolve this matter with you openly and face to face upon my return. I ought to have addressed my failings much earlier.”

#### Allegation 1.5

18. There were a number of cases which the Respondent did not progress, with the result that some of them became statute barred. The Respondent did not keep full files of these matters.
19. On the case of Mrs G, the Respondent informed her that he had issued proceedings, obtained a medical report, and offered a settlement, purportedly from the defendant which Mrs G accepted. A payment of £900 was made from Griffiths’ office account to the client in 2011. The Respondent had not issued proceedings and he had allowed the claim to become statute barred.
20. On the cases of Ms C, Mr E1 and Mr E2 the Respondent obtained medical reports and offered settlements, purportedly from the defendants in each case, which the clients accepted. A payment of £750 was made to Mrs C in 2008, a payment of £12,000 was made to Mr E1 on an unknown date and a payment of £12,000 was made to Mr E2 in November 2012. The Respondent had not issued proceedings on any of these cases.
21. In relation to the case of Family E, the Respondent offered a settlement, purportedly from the defendant, which the clients accepted. Such offer had not been made by the defendant and there had been a lack of progress on the claim.

#### **Witnesses**

22. The following witnesses gave evidence:
- Mark Christopher Ungoad Davies (the Respondent)

## Findings of Fact and Law

23. The Tribunal had carefully considered all the documents provided, the evidence given and the submissions of both parties. 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

24. **Allegation 1.1: The Respondent misled his clients into believing that he had issued, and conducted, court proceedings on their behalf when in fact no such proceedings had been issued, in breach of any or all of Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC") and, where the conduct occurred after 6 October 2011, in breach of any or all of Principles 2, 4, 5 and 6 of the SRA Principles 2011 ("Principles"). It was alleged the Respondent had acted dishonestly.**

**Allegation 1.2: The Respondent misled his clients into believing that their personal injury claims had been settled, when in fact he had not issued any claims, in breach of any or all of Rules 1.02, 1.04, 1.05 and 1.06 of the SCC and, where the conduct occurred after 6 October 2011, in breach of any or all of Principles 2, 4, 5 and 6 of the Principles. It was alleged the Respondent had acted dishonestly.**

**Allegation 1.3: The Respondent made payments to clients purportedly in settlement of their claims in breach of Rule 1.02 of the SCC and, where the conduct occurred after 6 October 2011, in breach of Principle 2. It was alleged the Respondent had acted dishonestly.**

**Allegation 1.5: The Respondent took no action on claims resulting in some of them becoming statute barred, in breach of any or all of Rules 1.04 and 1.05 of the SCC and, where the conduct continued after 6 October 2011, in breach of any or all of Principles 4 and 5 of the Principles.**

24.1 The Respondent admitted Allegations 1.1, 1.2, 1.3 and 1.5 but did not admit he had acted dishonestly in relation to Allegations 1.1 to 1.3. The Tribunal found, on the Respondent's own admissions, that he had acted with a lack of integrity, he had not acted in the best interests of his clients and had failed to provide a proper standard of service to them. The Respondent's conduct had also diminished the trust the public placed in the profession. The Tribunal was satisfied the Respondent had breached Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2011 as well as Principles 2, 4, 5 and 6 of the SRA Principles 2011.

24.2 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.

- 24.3 Mr Horton, on behalf of the Applicant, submitted the Respondent had tried to rectify the position by paying compensation to clients when it was not due. He submitted the Respondent had also informed clients of progress on their cases when no such progress had taken place. The Respondent had misled clients by not telling them the truth. Mr Horton submitted both tests of dishonesty as set out in Twinsectra Ltd v Yardley & Others were established.
- 24.4 The Tribunal heard evidence from the Respondent. In his written submissions the Respondent stated he became indecisive and dilatory, losing his confidence due to ever changing rules in his area of work. He accepted he should have been firmer and stronger with his clients but stated that the longer he delayed, the more difficult it became to be resolute in the manner in which he dealt with them. The Respondent stated:
- “I had always intended to resolve my stupidity in the proper way but my resolve always failed.”
- He stated he had never intended to take advantage or defraud any individual client and indeed, there may have been a few who had benefited from his behaviour in that they obtained damages which may otherwise have been denied to them. The Respondent stated it had not occurred to him that he was putting his insurers at a disadvantage, as he thought he had been saving them money because most of the cases fell within the policy excess.
- 24.5 The Respondent stated in his written submissions that he had not made any conscious effort to cover his tracks and the sums, which were paid from his own funds and some through his office account, were made for convenience at the time and to spare him embarrassment.
- 24.6 When giving his evidence, the Respondent accepted he had been extremely stupid and had acted with a lack of integrity. He had not thought at the time that his conduct had been dishonest. He had convinced himself that there was no victim, and it had not occurred to him that the clients may feel cheated that payments had not been made by the respective defendant. There were cases where he had had doubts about liability but he did not have the “wit to do anything about it”. The Respondent stated he did not hide or destroy files. He had been “at a low ebb” and thought he was solving problems.
- 24.7 The Respondent accepted with the benefit of hindsight his conduct had been dishonest but stated he did not see that at the time. He had acted for Mr D for a number of years and had got on well with him, although he was a difficult client.
- 24.8 Under cross-examination the Respondent accepted he had taken steps to “cover it up” where there were difficulties on cases. He was misguidedly “making it good”. He accepted he had been wrong in what he had done and that a white lie had snowballed. He stated Mr D had had an expectation that his case would go to court but the Respondent had been struggling with the prospects of success. He thought he had told Mr D there had been hearings in order to give himself time to organise the resolution of the matter. The Respondent stated he had asked a member of staff to draft the particulars of claim while he was on holiday but he did not know whether

they had ever been sent to the Court or returned by the Court. He had not been happy with the draft prepared.

- 24.9 The Respondent stated that in relation to other clients, he had obtained medical reports, looked at the Judicial Studies Board Guidelines and had paid compensation to clients at the higher end of the brackets indicated.
- 24.10 The Respondent accepted that he had sent a letter of apology to Mrs D and Mr D explaining that he had wanted to resolve matters with them openly and face to face on his return from holiday.
- 24.11 The Tribunal, having considered the Respondent's evidence and written submissions, found the Respondent to have been candid and open about his errors. However, the Tribunal noted the Respondent had in fact lied to a number of his clients on various occasions over a long period of time about the state and progress of their respective claims. He had repeatedly informed clients of fabricated settlement offers from opponents and then had made payments to those clients, albeit from his own funds, for offers they thought they had accepted. The Tribunal was satisfied that misleading clients into believing court proceedings had been issued and conducted when no such proceedings were issued, and misleading clients into believing their personal injury claims had been settled when no such offers had been made and thereafter making payments in settlement when no payments had been made by the defendants, was conduct that would be regarded as dishonest by the ordinary standards of reasonable and honest people.
- 24.12 In relation to the subjective test of dishonesty, the Tribunal particularly noted the comments of Lord Hutton in Twinsectra Ltd v Yardley & Others where he stated:
- “31. In R v Ghosh [1982] QB 1053 Lord Lane CJ held that in the law of theft dishonesty required that the defendant himself must have realised that what he was doing was dishonest by the ordinary standards of reasonable and honest people..... after stating that dishonesty is assessed on an objective standard he continued, at p389 C:
- ‘ .....Further, honesty and its counterpart dishonesty are mostly concerned with advertent conduct, not inadvertent conduct. Carelessness is not dishonesty. Thus for the most part dishonesty is to be equated with conscious impropriety. However, these subjective characteristics of honesty do not mean that individuals are free to set their own standards of honesty in particular circumstances. The standard of what constitutes honest conduct is not subjective. Honesty is not an optional scale, with higher or lower values according to the moral standards of each individual. If a person knowingly appropriates another's property, he will not escape a finding of dishonesty simply because he sees nothing wrong in such behaviour.’... “
- 24.13 The Respondent had made conscious decisions, having given matters considerable thought and assessment, making his own judgments on the level of settlements rather than pursuing claims properly as clients had expected him to. He had gone so far as to obtain medical reports, assess the level of compensation offers himself and make



payments to clients whilst allowing clients to believe these assessments/payments had been made by his opponents. Whilst the Tribunal accepted the Respondent did not set out to act dishonestly, his conduct was such that the Tribunal had no doubt he had embarked upon a deliberate course of action to conceal the true position from his clients. It was not sufficient for the Respondent to state that he had not realised his conduct was dishonest at the time as he was effectively setting his own standard of honesty. He had acted with conscious impropriety and the Tribunal concluded therefore, that he must have realised that by the ordinary standards of reasonable and honest people, his conduct was dishonest.

- 24.14. The Tribunal found Allegations 1.1 to 1.3 proved including the allegations of dishonesty. The Tribunal also found Allegation 1.5 proved on the Respondent's own admission.

### **Previous Disciplinary Matters**

25. None.

### **Mitigation**

26. The Respondent again referred the Tribunal to his written submissions and his earlier evidence. In his written submissions he stated he was deeply embarrassed to be appearing before the Tribunal and that the last two years had been very difficult for him. He apologised to all his clients who had been affected by his conduct. The Respondent stated that he had found the environment of civil litigation more and more onerous and stressful. He also stated that he had found it difficult to cope with the ever changing rules and the aggression/confrontation he encountered from opponents.
27. The Respondent reminded the Tribunal he had not made any profit from what he had done. He had tried to do his best for his clients albeit misguidedly. He had tried to ensure they would not suffer any financial loss and indeed some of those clients may not have been entitled to the amount of compensation he had paid to them or any compensation at all.
28. The Respondent also provided details of his personal circumstances which had been difficult. He stated his conduct had been due to years of accumulating stress and pressure both at home and at work. He had been overwhelmed by circumstances. He did not intend to be an active member of the profession and reminded the Tribunal of his past contribution to the profession over many years. He requested the Tribunal not to impose the ultimate sanction, and to allow him the possibility of working in some supervised capacity should he feel able to do so in the future.

### **Sanction**

29. The Tribunal had considered carefully the Respondent's written and oral submissions. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

30. The Respondent had a previous good record over a long period of time, he had shown genuine remorse and insight, and had not profited from his actions. However, his dishonest conduct has taken place over a long period of time. It was deliberate, calculated, repeated and he ought reasonably to have known that it was in material breach of his obligations to protect the public and the reputation of the profession. While the Respondent's conduct may have allowed some clients to receive payments which they may not have been entitled to, equally his conduct could have led to some clients recovering lower damages than they might otherwise have received. The Tribunal took into account the Respondent's personal difficult circumstances at the time but concluded these could not be an excuse for behaving in the way that he had, misleading his clients.
31. The Tribunal was mindful of the case of The SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:
- “Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll”
32. The Tribunal was satisfied that there were no exceptional circumstances and that accordingly the appropriate sanction was to strike the Respondent off the Roll of Solicitors. This was the minimum sanction necessary to maintain and uphold professional standards, and protect the reputation of the profession.

### **Costs**

33. Mr Horton requested an Order for the Applicant's costs in the total sum of £4,019. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. Mr Horton indicated the Respondent owned two properties and accordingly the Applicant could obtain a Charging Order over them if necessary. This would not have any immediate impact on the Respondent who could still make payments towards the costs.
34. The Respondent did not contest the amount of costs claimed. He indicated one of his properties was being sold that day but there was no equity in that property. His remaining property had very little equity in it.
35. The Tribunal considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. Accordingly, the Tribunal made an Order that the Respondent pay the Applicant's costs in the sum of £4,019.
36. In relation to enforcement of those costs, the Tribunal was mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay the costs. The Tribunal noted the Respondent had assets although he had submitted there was little equity available. The Respondent had been deprived of his livelihood as result of the Tribunal's Order and, given his age, may have difficulty obtaining alternative employment. In the circumstances, the Tribunal was satisfied that the Order for costs should not be enforced without leave of the Tribunal, save that the Applicant was at liberty to apply for a Charging Order over any properties owned by the Respondent.

**Statement of Full Order**

37. The Tribunal Ordered that the Respondent, MARK CHRISTOPHER UNGOED DAVIES 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 £4,019.00, such costs not to be enforced without leave of the Tribunal save that the Applicant may apply for a Charging Order over any properties owned by the Respondent.

Dated this 17<sup>th</sup> day of September 2015  
On behalf of the Tribunal

J. Martineau  
Chairman