

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11521-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

PAUL ANDREW SMITH

Respondent

Before:

Mr A. Ghosh (in the chair)

Miss H. Dobson

Mr S. Howe

Date of Hearing: 17 November 2016

Appearances

Alastair Willcox, solicitor of The Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent appeared in person.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:
 - 1.1 Between 27 June 2013 and 2 July 2014 the Respondent made statements concerning the progress of personal injury claims being brought by his clients Mrs PB, Mr SS, Mr MK and Mrs DO to those clients and to a third party funder (USDAW) which were untrue and which he knew to be untrue and thereby breached all or any of Principles 2, 4 and 6 of the SRA Code of Conduct 2011.
 - 1.2 On dates unknown to the SRA, but reasonably believed by it to be within the period set out above, the Respondent fabricated documents and made payments from his own bank account in order to verify untrue statements made by him to Mrs PB, Mr SS, Mr MK, Mrs DO and USDAW and thereby further breached any or all of Principles 2 and 6 of the SRA Code of Conduct 2011.
 - 1.3 The Respondent fabricated a letter of instruction to C Costs Consultants Ltd, purportedly dated 17 October 2013, and thereby further breached any or all of Principles 2 and 6 of the SRA Code of Conduct 2011.
 - 1.4 The Respondent failed to issue proceedings on behalf of his clients, Mrs PB, Mr SS, Mr MK and Mrs DO either in time or at all, in breach of Principles 4 and 5 and Outcome 1.2 of the SRA Code of Conduct 2011.
 - 1.5 In relation to allegations 1.1 to 1.4 it was further alleged that the Respondent was dishonest.

The Respondent admitted all the allegations.

Documents

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

Applicant:

- Application dated 31 May 2016 together with attached Rule 5 Statement and all exhibits
- Email dated 12 September 2016 from the Applicant to the Tribunal and to the Respondent attaching emails between the Respondent and the Applicant dated 12 August 2016, 6 September 2016 and 9 September 2016
- Applicant's Schedule of Costs dated 9 November 2016

Respondent:

- Letter dated 4 July 2016 from the Respondent to the Applicant

- Statement of Means of Paul Andrew Smith (the Respondent) dated 20 October 2016 together with exhibits

Factual Background

3. The Respondent, born in May 1977, was admitted to the Roll of Solicitors on 1 December 2011.
4. At the material time, the Respondent practised as a solicitor at Williamsons Solicitors Limited at 45 Lowgate, Hull, HU1 1EN (“the firm”). He was employed as a trainee solicitor by the firm from 1 July 2008 to 4 January 2010 and was retained as a paralegal until 1 July 2011. He was a solicitor employee from 1 July 2011 to 5 August 2015 when he resigned from the firm. He does not currently hold a practising certificate.
5. On 14 September 2015, the firm’s Compliance Officer for Finance and Administration (“COFA”) sent a report to the Solicitors Regulation Authority (“SRA”) regarding the Respondent’s conduct in a number of personal injury matters. The report stated that on 31 July 2015, the Respondent was informed that the firm was to undertake a routine file audit and that a number of matters were to be transferred to another file handler in the department for review.
6. The report further stated that on 5 August 2015, the Respondent attended work and informed the firm’s COFA of his intention to resign with immediate effect because he believed the firm would dismiss him as soon as they found out what he had done. The Respondent provided the firm’s COFA with a copy of an email dated 5 August 2015 which the Respondent had sent from his personal email address to his work email address highlighting a number of issues on various personal injury matters he had worked on.
7. The firm subsequently conducted a review of the Respondent’s files and identified areas of concern on five files relating to the matters of Mrs PB, Mr SS, Mrs ZS, Mr MK and Mrs DO.
8. These files were also reviewed by the SRA who identified a number of issues as set out below.

Mrs PB

9. The Respondent was instructed to act for Mrs PB in relation to a personal injury matter in November 2011. The Respondent wrote to the defendant insurer’s claims management company, GB, on 23 June 2014 inviting them to make a settlement proposal. A response was received from GB in an email dated 15 July 2014 which stated:

“Liability is firmly denied and we have no offers to make.”
10. In a further letter addressed to GB dated 21 July 2014, the Respondent made an offer pursuant to Part 36 of the Civil Procedure Rules to settle the matter in the sum of £9,500. GB replied on 5 August 2014 stating:

“Your Part36 offer is rejected.
Our stance on liability remains unchanged”.

11. The Respondent issued proceedings but failed to serve those on the defendant. Despite that, on 10 April 2015, the Respondent wrote to Mrs PB to inform her that he had received a defence from the defendant’s solicitors and that:

“They have indicated that they intend to defend your claim.”

There was no evidence on the file of such a defence having been received from the defendant’s solicitors. There was a defence on the file dated 6 April 2015 purportedly signed on behalf of the defendant, however, the Respondent admitted he had fabricated this document.

12. In the email dated 5 August 2015 which the Respondent had sent from his personal email address to his work email address, the Respondent stated:

“I issued out of time on this matter. I assumed that either Counsel or USDAW would kill the matter off as the defect is less than an inch deep. Neither did. I did not serve proceedings on this claim. I sent the client a defence that I had created to buy some time so that I could get some money together and pay the client off.”

Mr SS

13. The Respondent was instructed to act for Mr SS in relation to a personal injury claim in February 2013. It appeared from the file that a Claim Form was received by the Court on 10 February 2014 but was returned without being issued on 14 February 2014 as the defendant’s address was incorrect. It did not appear that this was rectified. Accordingly the Respondent failed to issue proceedings and the limitation date expired. The Respondent did not advise Mr SS that he had failed to issue his claim within the limitation period.

14. The Respondent sent an email to Mr SS dated 20 January 2015 stating:

“I have disclosed your medical evidence to your opponent. Unfortunately, they continue to deny liability for your accident and will not negotiate settlement at this stage.”

There was no evidence on the file of this disclosure having been made.

15. In his email dated 5 August 2015 the Respondent stated:

“On this matter I did not serve proceedings in time. I have told the client that I am negotiating with the Defendant as I wanted to buy time to pay him off.”

Mrs ZS

16. The Respondent was instructed to act for Mrs ZS in relation to a personal injury matter in July 2012. He informed the funders of the matter, USDAW, that he had

obtained a medical report when he had not done so. In a report provided to USDAW dated 25 November 2014, the Respondent stated:

“We now have a medical report prepared by an Orthopaedic surgeon on file.”

17. There was no evidence on the file of a medical report having been commissioned or received. In addition, the Respondent failed to issue proceedings in order to protect his client’s position and the limitation date expired.

18. In his email dated 5 August 2015, the Respondent stated:

“This claim was not issued and limitation has expired. I haven’t heard from the client in about 18 months.”

MR MK

19. The Respondent was instructed to act for Mr MK in relation to a personal injury matter in February 2010. On 27 June 2013, the Respondent wrote to Mr MK stating he had made a settlement offer to the defendant, who was represented by AI, in the sum of £3,000 which had been rejected and that a counter offer had been put forward in the sum of £1,500.

20. There was no correspondence on the file either to or from AI about settlement offers. The last correspondence from AI on the file was a letter dated 1 November 2010 which advised that, at the conclusion of their investigation, the land upon which the incident took place was not occupied by their insured client.

21. On 31 July 2013 the Respondent prepared a letter to AI which was placed on the file stating:

“We refer to your letter dated 27th July 2013 and write to confirm that our client is prepared to accept your offer of £2,250.00 net of recoverable benefits, plus costs to be assessed if not agreed.”

However, there was no evidence on the file of a letter having been received from AI dated 27 July 2013. Nor was it clear whether the Respondent’s letter of 31 July 2013 had been sent.

22. There was evidence on the file of a telephone note dated 31 July 2013 at 18:15 which stated:

“PAS called Mr [MK] and advised him that his opponent had offered the sum of £2,250 in full and final settlement of his claim.”

This was followed by a letter to Mr MK stating:

“...we have notified the insurance representatives that agreement has been reached and requested two cheques in order to conclude matters”.

There was no evidence on the file of the insurer agreeing to pay compensation to Mr MK.

23. The file also contained a letter dated 17 October 2013 addressed to C Costs Consultants Ltd in relation to this matter which stated:

“We are pleased to advise that the above claim has now reached a successful conclusion and we would be grateful if you would now deal with this matter regarding the recovery of our costs and disbursements.”

24. On 3 August 2015 the firm contacted C Costs Consultants Ltd to establish the current position regarding the costing of the file however the matter could not be traced by them. The firm confirmed that the Respondent had admitted paying the client £2,250 directly from his own bank account in “settlement” of the matter.

25. In his email dated 5 August 2015 the Respondent stated:

“Proceedings in this matter were not served. I paid the client off with my own money to settle the matter.”

Mrs DO

26. The Respondent was instructed to act for Mrs DO in a personal injury matter in March 2011. It appeared the Respondent did progress this file and attempted to issue proceedings on 11 March 2014, which was the date limitation expired on this claim. Having heard nothing further from the Court, the Respondent contacted the Court and it transpired the Claim Form may have been misplaced. He was advised to re-issue the Claim Form which he did on 16 May 2014.

27. On 28 May 2016 the Respondent contacted the Court and was advised that they would not issue the Claim Form as the Defendant’s address was incorrect. There was no evidence on file to suggest the Respondent had made an application to the Court to correct the defective proceedings and subsequently, the limitation period expired without proceedings being properly issued.

28. The Respondent wrote to Mrs DO on 19 June 2014 and 2 July 2014 indicating the matter was proceeding. He failed to inform her that proceedings had not been issued correctly and limitation had expired.

29. In his email dated 5 August 2015 the Respondent stated:

“Proceedings in this matter were not served. I paid the client off with my own money to settle the matter.”

30. The firm confirmed that the Respondent had admitted paying the client compensation directly from his own bank account in “settlement” of the matter of approximately £2,500.

Witnesses

31. The following witnesses gave evidence:
- The Respondent, Paul Andrew Smith
 - Dennis Malcolm Brewer

Findings of Fact and Law

32. 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.

33. **Allegation 1.1: Between 27 June 2013 and 2 July 2014 the Respondent made statements concerning the progress of personal injury claims being brought by his clients Mrs PB, Mr SS, Mr MK and Mrs DO to those clients and to a third party funder (USDAW) which were untrue and which he knew to be untrue and thereby breached all or any of Principles 2, 4 and 6 of the SRA Code of Conduct 2011.**

Allegation 1.2: On dates unknown to the SRA, but reasonably believed by it to be within the period set out above, the Respondent fabricated documents and made payments from his own bank account in order to verify untrue statements made by him to Mrs PB, Mr SS, Mr MK, Mrs DO and USDAW and thereby further breached any or all of Principles 2 and 6 of the SRA Code of Conduct 2011.

Allegation 1.3: The Respondent fabricated a letter of instruction to C Costs Consultants Ltd, purportedly dated 17 October 2013, and thereby further breached any or all of Principles 2 and 6 of the SRA Code of Conduct 2011.

Allegation 1.4: The Respondent failed to issue proceedings on behalf of his clients, Mrs PB, Mr SS, Mr MK and Mrs DO either in time or at all, in breach of Principles 4 and 5 and Outcome 1.2 of the SRA Code of Conduct 2011.

Allegation 1.5: In relation to allegations 1.1 to 1.4 it was further alleged that the Respondent was dishonest.

- 33.1 The Respondent had admitted the allegations including the allegations of dishonesty.
- 33.2 The Tribunal's attention had been drawn 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.

- 33.3 The Tribunal heard evidence from the Respondent in which he provided a great deal of mitigation. He also stated he admitted the allegations including those of dishonesty and that he understood his behaviour had fallen below what was expected. He was asked by the Tribunal if he had read the case of Twinsectra and whether he properly understood it, to which he stated he had and that he did.
- 33.4 The Tribunal also heard evidence from Mr Brewer who was a solicitor. Mr Brewer confirmed he had recently engaged the Respondent for 14 days in October 2016 as a clerk dealing with property matters. He spoke highly of the Respondent and indicated he would like to engage the Respondent's services at a later date working under strict supervision with the SRA's permission.
- 33.5 The Tribunal took this character evidence into account pursuant to case of Donkin v The Law Society [2007] EWHC 414 (Admin) in view of the fact that dishonesty had been alleged.
- 33.6 Whilst the Tribunal had considerable sympathy for the particular circumstances in which the Respondent found himself at that time, he had made admissions. After considerable deliberations the Tribunal found it had no alternative but to find that the allegations were proved on his admissions and on the documents provided.
- 33.7 The Respondent had deliberately created false documents on a number of files, misled clients and a third party and failed to issue proceedings on a number of files but did not inform clients of this. The Tribunal was satisfied that such conduct would be regarded as dishonest by the ordinary standards of reasonable and honest people.
- 33.8 The Respondent's conduct had concealed the true position on a number of files and the fact that he had not done the work that was required, or which he claimed to have done. In relation to allegation 1.3, he had created a letter purportedly dated 17 October 2013 to C Costs Consultants Ltd to give the impression on the file that the claim had concluded when it had not. The Respondent had made payments from his own personal funds to Mr MK and Mrs DO to ensure they did not suffer any loss but unfortunately he did not inform them that he had done this and the Tribunal's view was that this was because he knew that they would then realise their files had not been properly conducted. The Tribunal was satisfied that the Respondent knew that his conduct was dishonest by the ordinary standards of reasonable and honest people.

Previous Disciplinary Matters

34. None.

Mitigation

35. The Respondent, in his evidence, provided the Tribunal with details of his background and the circumstances which had led to his conduct. Prior to working in the Personal Injury Department, the Respondent stated he had worked in the property department for two years. He stated he had only undertaken personal injury work in the final six months of his training contract and that at the end of that training contract there were no solicitor positions available in the property department. He had instead been offered a position as a paralegal working in the personal injury department with a

caseload of 70-80 cases. This was at the time of the recession. The Respondent stated that having had limited experience of work in this area prior to taking the position as a paralegal, he did not have much knowledge of personal injury work and therefore asked a lot of questions which meant that it took him longer to deal with matters.

36. The Respondent stated that he had been grateful for the position which he thought he had obtained “by the skin of my teeth” due to the recession at that time. He did not want to cause any problems which might jeopardise his position. He was eventually taken on as a solicitor by which time his caseload increased to 170 files. The Respondent stated that he started work early in the morning and would work late into the evening in order to keep on top of everything.
37. The Respondent stated that he had managed his caseload until 2014, when a close relative became ill and was admitted to hospital. As a result of this, the Respondent was visiting the relative in hospital daily and coming home late in the evening. Whilst this was going on the matter of Mr MK was causing problems as the Respondent had difficulties identifying the defendant. Eventually the limitation period expired. The Respondent had felt his position at the firm was precarious and thought he would lose his job and that would be the end of his career. He accepted now that he should have asked for help at that time.
38. On the matter of Mrs DO, again the Respondent had encountered difficulties in trying to identify the defendant. He had even taken measures to travel to Telford several times at the weekend to try and resolve this issue. The Respondent confirmed he did issue proceedings within the limitation period but these were rejected and the limitation date expired. This had all happened around the time that the Mitchell case was dealt with and there was huge pressure on solicitors to ensure they did not miss deadlines otherwise they would be severely penalised on costs.
39. The Respondent felt that he could not tell anyone about the situation. He thought that if he explained he was struggling with his work, he would lose his job and he wanted to stay at the firm as he enjoyed working with the people there. He stressed that whilst there were five files which he had “messed up”, there were many others that he had dealt with properly.
40. He apologised profusely to everyone who had been affected by his conduct. He confirmed he had made payments to Mr MK and Mrs DO from his own funds in order to ensure they did not suffer any financial loss due to his conduct.
41. In relation to the issue of supervision, the Respondent confirmed matters were regularly discussed at meetings and that he worked very hard but felt that he never seemed to get on top of things. He said that as he was inexperienced in personal injury claims, he did not have the confidence to tell clients that their cases were unlikely to be successful. Instead, papers were routinely sent to a barrister and this also required time to draft lengthy and detailed instructions.
42. The Respondent confirmed he had written the email of 5 August 2015 from his personal email address to his work email address as he had wanted to make it easier for the firm to deal with his difficult files after he had left.

43. Mr Brewer in his evidence stated he considered the Respondent had understated the personal problems he was experiencing at the time and that in his view, the Respondent had been, and continued to be, suffering from depression. He was of the view that the Respondent was a credit to the profession and was a competent solicitor in property work. Mr Brewer expressed his wish to employ the Respondent again as a legal clerk in the future.

Sanction

44. The Tribunal considered carefully the Respondent's submissions and statement. The Tribunal also took into account the character evidence given by Mr Brewer. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.
45. Dishonesty had been found proved in this case. The Respondent's conduct had been deliberate and repeated over a period of time. He ought to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession. These were all aggravating factors.
46. However, the Respondent had made payments from his own personal funds to two clients in order to ensure they did not suffer any losses. He had notified his employers of the circumstances and had made early admissions in these proceedings with which he had co-operated. The Tribunal was satisfied the Respondent had shown genuine insight and remorse, and that there was a low risk of repetition of his conduct. He had a previously unblemished career and Mr Brewer had spoken very highly about him indicating he would be willing to employ the Respondent in the future. These were all mitigating factors.
47. The Tribunal concluded the Respondent had acted very naïvely and his inexperience had been his downfall. He had got himself into difficulties early on in his career and instead of seeking assistance from senior colleagues he had attempted to deal with the problems on his own using his own money. It was quite clear that he had not wanted client to suffer losses by virtue of the payments he had made to them from his own personal funds. Nor had he wanted to cause further difficulties for his employer by virtue of his email dated 5 August 2015 which was effectively a "handover" concerning all his files.
48. The Tribunal had considerable sympathy for the circumstances in which the Respondent found himself and gave careful prolonged consideration to sanction in this case. A key consideration was that solicitors "must be trusted to the ends of the earth" and the Respondent's conduct had undermined the trust clients had placed in him and in the profession.
49. The Tribunal carefully considered the various sanctions available but concluded that in view of the finding of dishonesty, which was very serious misconduct, it was not sufficient to impose either a Reprimand or a fine. The Tribunal also considered that a Restriction Order would not be appropriate or sufficient in this case taking into account the nature of the Respondent's conduct. It was difficult to formulate workable conditions which would address the issue of dishonesty.

50. The Tribunal did consider whether a suspension could be imposed in this case but 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”

The Respondent had not advanced any exceptional circumstances, despite the mitigating personal circumstances in the case, for the Tribunal to consider and no such circumstances were found.

51. The legal position was clear in that, in the absence of finding exceptional circumstances where an allegation of dishonesty was found proved, it was not open to the Tribunal to take any course other than the removal of a respondent from the Roll. The Tribunal concluded that any lesser sanction would not be sufficient to ensure public confidence and protect the reputation of the legal profession. The Tribunal therefore Ordered the Respondent be struck off the Roll of Solicitors. The Tribunal reminded the Respondent that in due course he could apply for restoration to the Roll and in the meantime he would be able to work in a clerical role in a legal practice.

Costs

52. Mr Willcox, on behalf of the Applicant requested an Order for his costs in the total sum of £4,790.15. He provided the Tribunal with a Statement of Costs and indicated some reduction would need to be made for the hearing time as this had not taken as long as estimated on the schedule. Mr Willcox confirmed the Respondent had offered to make payments of £150 per month towards the costs and this was likely to be acceptable to the SRA.
53. The Respondent did not make any submissions on costs.
54. The Tribunal considered carefully the Schedule of Costs provided. The costs claimed were high in light of the fact that there were early admissions in this case. The Tribunal reduced the amount of time claimed for the hearing to 2 hours. The Tribunal allowed £650 for drafting and £500 for preparation time. Having made those reductions, the Tribunal assessed the overall costs in the sum of £3,847 and Ordered the Respondent to pay this amount.
55. In relation to enforcement of those costs, the Respondent was relatively young and it was likely he would obtain some form of employment in the future. He had offered to make payments of £150 per month and the Statement of Means provided indicated he had limited savings and assets. In such circumstances, the Tribunal did not consider this was a case where there should be any deferment of the costs order.

Statement of Full Order

56. The Tribunal ORDERED that the Respondent, PAUL ANDREW SMITH, 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 £3,847.00.

Dated this 22nd day of December 2016
On behalf of the Tribunal

A. Ghosh
Chairman