

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11553-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ELIZABETH BESSIE ANNE COUSINS,

First Respondent

SIMON SMITH

Second Respondent

Before:

Mr J. A. Astle (in the chair)

Mr J. C. Chesterton

Mrs C. Valentine

Date of Hearing: 14 June 2017

Appearances

There were no appearances as the matter was dealt with on the papers.

JUDGMENT

Allegations

1. The allegations against the First Respondent were that:
 - 1.1 Between 22 November 2006 and 2 April 2012 the First Respondent made a claim(s) for costs which could not be justified and thereby overcharged the estate of Mr BM deceased and in doing so:
 - 1.1.1 in the period up to 30 June 2007 breached Rule 1(a), (d) and (e) of the Solicitors Practice Rules 1990 ("SPR 1990"), and/or
 - 1.1.2 in the period from 1 July 2007 to 5 October 2011 breached Rules 1.02, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 ("SCC 2007") and/or
 - 1.1.3 From 6 October 2011 breached Principles 2, 5 and 6 of the SRA Code of Conduct 2011 ("SCC 2011").

It was alleged the First Respondent had acted dishonestly.

- 1.2 Between 23 July 2007 and 1 October 2010 the First Respondent made a claim(s) for costs which could not be justified and thereby overcharged the estate of Mr VDP deceased and in doing so:
 - 1.2.1 breached Rules 1.02, 1.04, 1.05 and 1.06 of the SCC 2007.

It was alleged the First Respondent had acted dishonestly.

2. The allegations against the Second Respondent were that:
 - 2.1 Whilst the Second Respondent, who was not a solicitor, was employed by the First Respondent's practice, Scannells Hunt between 2006 – 31 March 2010, and who then became a member of Scannells Hunt LLP from 1 April 2010 until 31 August 2012, he had been guilty of conduct of such a nature that in the opinion of the SRA it would be undesirable for him to be employed by a solicitor in connection with his or her practice as a solicitor in that the Second Respondent:
 - 2.1.1 between 22 November 2006 and 2 April 2012 made a claim(s) for costs which could not be justified and thereby overcharged the estate of Mr BM deceased and in doing so:
 - 2.1.2 in the period up to 30 June 2007 breached Rule 1(a), (d) and (e) of the SPR 1990;
 - 2.1.3 in the period 1 July 2007 to 5 October 2011 breached Rules 1.02, 1.05, 1.06 of the SCC 2007 and/or
 - 2.1.4 from 6 October 2011 breached Principles 2, 5 and 6 of the SCC 2011.

It was alleged the Second Respondent had acted dishonestly.

Documents

3. The Tribunal reviewed the documents submitted by the parties which included:
- Application dated 7 September 2016 together with attached Rule 5 Statement and all exhibits
 - Statement of Agreed Facts and Outcome signed by all parties and served on 15 May 2017
 - Applicant's Statements of Costs dated 7 September 2016 and 21 November 2016
 - Answer of the Second Respondent dated 16 October 2016 together with exhibits
 - Medical letters from Dr Gray dated 8 November 2016 and 2 December 2016 in relation to the First Respondent
 - Witness statement of S Austin dated 15 December 2016
 - Statement of Means of the First Respondent dated 18 April 2017
 - Statement of Means of the Second Respondent dated 18 April 2017

Agreed Outcome Procedure

4. The Application in this matter was certified by the Tribunal as showing a case to answer on 9 September 2016 and directions were issued.
5. On 15 May 2017 the Applicant submitted an application on behalf of both parties for the Tribunal to approve the Statement of Agreed Facts and Outcome to the proceedings, a copy of which is annexed to this Judgment.
6. In accordance with paragraph 2.2 of the Tribunal's standard directions, the matter was listed for consideration by a division of the Tribunal, in private, on 14 June 2017.
7. For the reasons set out below, the Tribunal was satisfied that the Statement of Agreed facts and Outcome should be approved on the basis of the documents provided without requiring any submissions from the parties. The Tribunal's decision was announced in open court, and an Order setting out the Tribunal's order was prepared. This Judgment sets out the circumstances of the matter and the Tribunal's reasons for its decision.

Factual Background

8. The First Respondent, born in June 1957, was admitted to the Roll of Solicitors on 16 January 1995. At all relevant times the First Respondent carried on practice on her own account as Scannells Hunt between 1 October 2005 – 31 October 2008, and thereafter, as a Member of Scannells Hunt LLP between 1 November 2008 - 30 September 2012. On 7 March 2016 the SRA resolved to intervene into the practice of Scannells Hunt LLP.

9. The Second Respondent, who was not a solicitor, was employed as a Clerk by Scannells Hunt between 2006 - 31 March 2010 and from 1 April 2010 he became a Member of Scannells Hunt LLP.

Witnesses

10. There were no witnesses as the matter proceeded on the basis of the Statement of Agreed Facts and Outcome and no parties attended.

Findings of Fact and Sanction

11. The Tribunal had carefully considered all the documents provided. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
12. The Respondents had made a number of admissions as set out in the Statement of Agreed Facts and Outcome. The Respondents did not admit dishonesty.
13. The Tribunal was satisfied that based on the admissions made and the facts presented, the Respondents' admissions were properly made. The Tribunal found the allegations which had been admitted were proved to the requisite standard.
14. In relation to the issue of dishonesty and those allegations which were not admitted, the Tribunal considered carefully the medical reports provided by Dr Gray dated 8 November 2016 and 2 December 2016 which related to the First Respondent's health. Those reports provided details of the First Respondent's symptoms and stated that the First Respondent was not fit to attend Tribunal procedures, that she was no longer capable of functioning in such an environment and that the stress of trying to do so would be detrimental to her health and would present an unacceptable risk. The reports confirmed that although the First Respondent's cognition remained affected, she would still be able to read, assimilate and understand legal documents provided she could do so at a time of her choosing and that this did not take more than an hour at a time.
15. The Second Respondent had filed a detailed Answer dated 16 October 2016 in which he disputed many of the facts and the evidence relied upon by the Applicant. He disputed the allegations, including the allegation of dishonesty.
16. At a Case Management hearing on 20 April 2017, the same division of the Tribunal had heard submissions from Mr Jonathan Goodwin, on behalf of the Applicant and Mr Gareth Edwards, solicitor for the First and Second Respondents. At that hearing Mr Goodwin had explained and the Tribunal had accepted, that, although these were serious allegations, proceeding by way of a Statement of Agreed Facts and Outcome was a pragmatic, proportionate and reasonable way to ensure the public and the reputation of the profession were protected. Mr Goodwin submitted that the First Respondent was unable to participate in proceedings and it would be unfair in such circumstances to expect her to do so when she could not defend herself. Mr Goodwin

further submitted the Second Respondent's case was intrinsically linked to the First Respondent and this left the Applicant in a very difficult position.

17. The First Respondent, having made some admissions, had given an undertaking to apply to the SRA to remove herself from the Roll of Solicitors within 14 days and she had given a further undertaking that she would not make any application for restoration to the Roll of Solicitors at any time in the future. The Second Respondent having made some admissions had agreed to an order pursuant to s43 the Solicitors Act 1974.
18. Mr Edwards, who was acting on behalf of both Respondents, had given a certification to the Tribunal that the First Respondent understood the issues involved and the options available to her. He confirmed she had received independent legal advice on the Statement of Agreed Facts and Outcome.
19. On that occasion the parties were still negotiating the costs position and on that basis the Statement of Agreed Facts and Outcome had not been fully concluded.
20. The Tribunal now having considered the submissions of both parties, and the documents provided, was satisfied that even absent dishonesty, the admitted allegations were very serious, particularly given the amount of funds involved and the proximity of both Respondents to the admitted conduct. The First Respondent's health prevented her from participating in any final substantive hearing for the foreseeable future. In addition to this the position of the Second Respondent who in his Answer had denied all the allegations against him, meant that the Applicant could be placed in a very difficult position if both Respondents were not able to give an account of themselves or challenge each other's account. In such circumstances the Tribunal accepted the case could be concluded without pursuing the issue of dishonesty, particularly as the admissions made related to very serious misconduct involving overcharging clients costs that could not be justified.
21. The Tribunal also referred to its Guidance Note on Sanctions when considering the proposed sanction. In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The parties had proposed the First Respondent would give an undertaking to apply to the SRA to remove herself from the Roll of Solicitors within 14 days and that she would give a further undertaking not to make any application for restoration to the Roll of Solicitors at any time in the future. The Second Respondent had agreed to an order pursuant to s43 of the Solicitors Act 1974.
22. The Tribunal had to consider whether, in the light of the admitted facts and allegations, the proposed Outcome was just and proportionate. The Tribunal noted that if it was satisfied with the proposed sanction, it could proceed to make an Order in those terms. If it was not so satisfied, it could list the matter for a hearing and invite further submissions from both parties to address any points of concern.
23. The Tribunal noted from the Statement of Agreed Facts and Outcome that the sum of £75,000 had been paid by the firm's insurers to the beneficiary of BM to compensate BM for wrongly taking costs from BM's estate. Furthermore DP had been overcharged by as much as £105,000. The Respondents had acted in breach of their positions of trust and had direct control over the sums billed. They were therefore

both culpable. The First Respondent also had many years of experience, having been admitted in 1995. Both Respondents had acted with a lack of integrity, probity and trustworthiness. These were qualities expected of members of the legal profession. Their conduct had caused a great deal of harm to the public and to the reputation of the profession.

24. The Tribunal considered that the aggravating factors in this case were that the conduct was deliberate and calculated. It involved taking advantage of vulnerable clients. In the First Respondent's case the conduct had been repeated over a long period of time. The mitigating factors were that some admissions had been made in the Statement of Agreed Facts and Outcome, and both Respondents appeared to have co-operated with the regulator.
25. Taking into account the seriousness of the conduct, the degree of culpability, the harm caused and the aggravating/mitigating factors, the Tribunal concluded that neither a Reprimand nor a Fine would be a sufficient sanction for the First Respondent in this case. Nor would it be appropriate to impose conditions on the First Respondent's practising certificate as it would be difficult to formulate appropriate workable conditions that would adequately address the First Respondent's actions whilst also protecting the public and reflecting the serious nature of her misconduct.
26. The Tribunal also concluded that a suspension order would not be sufficient to protect the public or the reputation of the profession in circumstances where the very serious misconduct related to a solicitor deliberately overcharging and making claims for costs which were not justified.
27. The Tribunal was satisfied that the proposed sanction of the First Respondent undertaking to voluntarily remove herself from the Roll of Solicitors within 14 days and thereafter undertaking not to make any application for restoration to the Roll of Solicitors at any time in the future was both reasonable and proportionate. It would not only reflect the seriousness of the misconduct, protect the public and the reputation of the profession but it would also maintain public confidence in the profession.
28. In relation to the Second Respondent, as he was not a solicitor, the only Order the Tribunal could have imposed was the one contained in the Statement of Agreed Facts and Outcome, namely that he be subject to an Order pursuant to s43 of the Solicitors Act 1974. Such an Order would ensure the Second Respondent would not be able to work or hold any interest in any regulated legal practice without the prior permission and approval of the Solicitors Regulation Authority.
29. The Tribunal was satisfied that in this case the Statement of Agreed Facts and Outcome was a proportionate, reasonable and pragmatic way to proceed. The Tribunal did not require any further submissions from the parties to consider the matter further, and determined the case could be concluded on the basis of the Statement of Agreed Facts and Outcome.

30. Accordingly, the Tribunal required the First Respondent to give undertakings to remove herself from the Roll of Solicitors within 14 days and not to apply for restoration to the Roll at any time in the future. The Tribunal Ordered the Second Respondent be subject to an Order pursuant to s43 of the Solicitors Act 1974.

Costs

31. As part of the proposed Statement of Agreed Facts and Outcome, the parties had agreed that the Respondents should pay the Applicant's costs to be assessed if not agreed, such costs not to be enforced without the leave of the Tribunal.
32. The Tribunal noted the Statement of Means for the First Respondent indicated she was unable to work due to her ill health and that she was currently receiving state benefits. She had not worked since April 2015 and did not have any assets or savings. She was currently living in rented accommodation.
33. The Second Respondent's Statement of Means showed that he was receiving state benefits and was unable to work due to health issues. He did not have any savings or assets either and was also living in rented accommodation.
34. The Tribunal concluded that neither Respondent currently had the means to meet a costs order and was unlikely to be able to do so in the near future. Accordingly the Tribunal made an Order that the First and Second Respondents pay the Applicant's costs to be assessed if not agreed, such costs not to be enforced without leave of the Tribunal.

Statement of Full Order

35. Upon the Respondent, ELIZABETH BESSIE ANNE COUSINS, solicitor, undertaking to:-
- Apply to the Solicitors Regulation Authority for removal of her name from the Roll of Solicitors within 14 days of the date of this Order;
 - Not apply for Restoration to the Roll of Solicitors at any time in the future

The Tribunal Ordered that the Respondent do pay the costs of and incidental to this application and enquiry, such costs to be assessed if not agreed and not to be enforced without leave of the Tribunal.

36. The Tribunal Ordered that as from 14th day of June 2017 except in accordance with Law Society permission:-
- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor SIMON SMITH;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Simon Smith
 - (iii) no recognised body shall employ or remunerate the said Simon Smith;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Simon Smith in connection with the business of that body;

- (v) no recognised body or manager or employee of such a body shall permit the said Simon Smith to be a manager of the body;
- (vi) no recognised body or manager or employee of such a body shall permit the said Simon Smith to have an interest in the body;

And the Tribunal further Ordered that the said Simon Smith do pay the costs of and incidental to this application and enquiry, such costs to be assessed if not agreed and not to be enforced without leave of the Tribunal.

Dated this 24th day of July 2017
On behalf of the Tribunal



J. A. Astle
Chairman

Judgment filed
with the Law Society
on 24 JUL 2017

**IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
AND
THE ADMINISTRATION OF JUSTICE ACT 1985 (as amended)
AND
IN THE MATTER OF ELIZABETH BESSIE ANNE COUSINS (a solicitor)
AND
SIMON SMITH (a solicitor's clerk)**

BETWEEN

SOLICITORS REGULATION AUTHORITY

Applicant

AND

ELIZABETH BESSIE ANNE COUSINS

First Respondent

AND

SIMON SMITH

Second Respondent

**Statement of Agreed Facts and Outcome
In relation to the first and second Respondent**

1. By a Statement made by Jonathan Richard Goodwin on behalf of the Solicitors Regulation Authority pursuant to Rule 5 (2) and 8 (1) of The Solicitors Disciplinary Proceeding Rules 2007 dated 7 September 2016 ("the Rule 5/8 Statement"), the Solicitors Regulation Authority ("SRA") brought proceedings before The Tribunal making allegations of misconduct against the First and Second Respondents.
2. The Tribunal gave directions for the preparation of the matter for hearing by a Case Management Hearing on 1 November 2016 and by way of a subsequent Case Management Hearing on 2 December 2016. The First and Second Respondents are

prepared to make admissions to allegations set out in the Rule 5/8 Statement and accept the factual basis of the admitted allegations as set out in this document.

3. The allegations arise out of a Forensic Investigation which commenced on 14 August 2012. A Forensic Investigation Report was produced dated 21 February 2013. The First Respondent carried on practice on her own account as Scannells Hunt between 1 October 2005 – 31 October 2008 and, thereafter as a member of Scannells Hunt LLP between 1 November 2008 and 30 September 2012. The Second Respondent, who is not a solicitor, was employed as a Clerk by Scannells Hunt between 2006 and 31 March 2010, and from 8 February 2011 he was for a time a member of Scannells Hunt LLP and remained on the staff until 31 August 2012. In brief summary it is alleged against, and admitted by the First Respondent that in respect of the estates of Mr BM and Mr VDP, she made a claim for costs which could not be justified and, thereby, overcharged the above mentioned estates, and in relation to the second Respondent it is alleged, and admitted by him in relation to the estate of Mr BM, he made a claim for costs which could not be justified, thereby overcharged the estate.
4. The SRA has considered the admission being made, and has considered whether those admissions, in the circumstances of this case, and the outcome proposed in this document, meet the public interest having regard to the gravity of the matters alleged.
5. The SRA is satisfied that the admissions and outcomes satisfy the public interest.

Admissions

First Respondent

6. The First Respondent will admit that she;
 - (a) Between 22 November 2006 and 2 April 2012 she made a claim(s) for costs which could not be justified and thereby overcharged the estate of Mr BM deceased and in so doing;
 - i in the period up to 30 June 2007 breached Rule 1 (a) (d) and (e) of the Solicitors Practice Rules 1990 ("SPR") 1990; and
 - ii in the period from 1 July 2007 – 5 October 2011 breached Rules 1.02, 1.05 and 1.06 of The Solicitors Code of Conduct 2007 ("SCC 2007") and
 - iii from 6 October 2011 breach Principles 2, 5 and 6 of the SRA Code of Conduct 2011 ("SCC 2011").

b) between 23 July 2007 and 1 October 2010 she made a claim(s) for costs which could not be justified and thereby overcharged the estate of Mr VDP deceased and in so doing;

I breached Rules 1.02, 1.04, 1.05 and 1.06 of the "SCC 2007".

Second Respondent

7. The Second Respondent will admit that he;
 - a) On 2 April 2012 made a claim for costs which could not be justified and thereby overcharged the estate of Mr BM deceased and in so doing breached Principles 2,5 and 6 of the SCC 2011.
8. The Second Respondent agrees to an Order pursuant to s.43 of the Solicitors Act 1974 in the terms set out in the Application made on behalf of the SRA dated 7 September 2016.

Agreed Facts

9. The First and Second Respondents agree the following facts.
10. The First Respondent was executor in the estates of ;
 - Mr VDP deceased, and
 - Mr BM deceased.

Estate of Mr VDP

11. Mr VDP died on 1 July 2007. Probate was granted on 19 December 2007 to his Executors and Trustees, namely the first Respondent and Mrs Carol Erben, the deceased's sister and sole beneficiary of the estate.
12. The First Respondent had raised 16 bills of costs between 23 July 2007 and 1 October 2009 totalling £144,942.98 inclusive of VAT.
13. The assets collected by the First Respondent on behalf of the estate totalled £492,221.63.

14. The First Respondent had included as part of the total costs a "value element" in the sum of £56,770.00 representing 11.5% of the assets that had been collected.
15. The firm's time recording system showed that the time recorded by the First Respondent relating to work done on the matter totalled £36,698.25.

Estate of Mr BM

16. Mr BM died on 8 October 2006. Probate was granted on 28 March 2007 to his executor, the First Respondent.
17. The Second Respondent had conduct of the matter on behalf of the executor.
18. Mrs WM, being the sole beneficiary of the estate, raised a complaint with the Legal Ombudsman in relation to the level of costs charged by Scannells Hunt relating to her husbands estate.
19. Between 22 November 2006 and 1 October 2008 bills were delivered by the firm totalling £175,573.21 Inclusive of VAT and the 'value element'.
20. The firms time reporting system recorded that a total value in the sum of £27,890.00 have been recorded by the First and Second Respondents.
21. The costs claimed included a value element in the sum of £79,200.00 plus VAT.
22. As a consequence of detailed assessment proceedings in relation to the costs, the Court ordered in August 2012, amongst other things, that the value element be assessed and allowed at nil.
23. On 22 October 2013 an order was made by consent, upon the parties agreeing confidential terms of settlement, and which ordered that the detailed assessment proceedings be discontinued and that any previous costs orders be waived and deemed unenforceable.
24. The SRA instructed a costs lawyer to provide an analysis of the costs in relation to the estates of Mr VDP and Mr BM and who produced a Report dated 30 April 2015.
25. Ms Corbin, costs lawyer, said, amongst other things, that in her professional opinion the firm has overcharged by as much as £105,000.00 in the case of DP. Furthermore, the Respondents admit that in the case of BM the insurers had to compensate the beneficiary in the sum of £75,000.00 for wrongly taking costs.

Agreed Outcomes


First Respondent


26. The First Respondent undertakes to apply to the SRA to remove herself from the Roll of solicitors within 14 days of the date of this Agreement.
27. The First Respondent undertakes that she will not make any application for restoration to the Roll of Solicitors any time in the future.
28. The First Respondent agrees to pay the costs of the SRA, such costs to be assessed if not agreed, such order not to be enforced without leave of the Solicitors Disciplinary Tribunal.
29. This Agreed outcome will be published by the SRA and may be disclosed by the SRA as deemed appropriate.
30. The First Respondent agrees that she will not act in any way that is Inconsistent with this Agreement such as, for example, by denying the misconduct set out in her admissions.
31. If the First Respondent acts in any way inconsistent with this agreement her conduct maybe referred to the Solicitors Disciplinary Tribunal (or SRA for internal sanction) on the basis that such failure to comply with the terms of this Agreement may constitute a breach of Principles 2, 6 and 7 of the SRA Principles 2011.

Second Respondent

32. The Second Respondent agrees to an order pursuant to s.43 of the Solicitors Act 1974 in the terms set out in the Application dated 7 September 2016.
33. The Second Respondent agrees to pay the costs of the SRA, such costs to be assessed if not agreed, such order not to be enforced without leave of the Solicitors Disciplinary Tribunal.
34. This Agreed Outcome will be published by the SRA and may be disclosed by the SRA as deemed appropriate.
35. The Second Respondent agrees that he will not act in any way which is inconsistent with this Agreement such as for example, by denying the misconduct set out in his admissions.
36. If the Second Respondent acts in any way inconsistent with this Agreement his conduct maybe referred to the Solicitors Disciplinary Tribunal (or SRA internal

sanction) on the basis that such failure to comply with this Agreement may constitute a breach of Principles 2, 6 and 7 of the SRA Principles 2011.

Signed..........
Elizabeth Bessie Ann Cousins – first Respondent

Signed..........
Simon Smith – Second Respondent

Signed..........
Hazel Padmore on behalf of the Solicitors Regulation Authority