

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11633-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

LYNNE MUSCROFT

Respondent

Before:

Mr L. N. Gilford (in the chair)

Mrs A. Kellett

Dr P. Iyer

Date of Hearing: 6 July 2017

Appearances

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

JUDGMENT

Allegations

1. The Allegations contained in the Rule 5 statement against the Respondent, Lynne Muscroft, made by the SRA were that:-
 - 1.1 Between February 2013 and November 2013 she misled her client JW and the solicitors acting for the defendant insurers in JW's personal injury claim including as to the progress and outcome of matters and thereby breached Principles 2, 4, 5 and 6 of the SRA Principles 2011 (the "SRA Principles").
 - 1.2 Between June 2013 and November 2013 she made improper payments and withdrawals into and from client account to client JW and thereby breached Rules 6.1, 14.2, 17.1 and 20.1 of the SRA Accounts Rules 2011 (the "SAR 2011") and Principles 2, 4, 5, 6 and 10 of the SRA Principles.
2. Dishonesty was alleged with respect to the Allegations at paragraphs 1.1 and 1.2 but dishonesty was not an essential ingredient to prove those allegations.

Documents

3. The Tribunal had before it the following documents:-
 - Rule 5 statement dated 5 April 2017
 - Statement of Agreed Facts and Outcome dated 4 July 2017
 - Memorandum of Case Management Hearing dated 7 June 2017
 - Respondent's Personal Financial Statement dated 24 June 2017

Factual Background

4. The Respondent was born in March 1964 and admitted to the Roll of Solicitors on 17 April 1990. At the date of the Rule 5 statement the Respondent remained on the Roll of Solicitors but did not currently hold a practising certificate. The Respondent's last practising certificate expired on 31 October 2014.
5. At all material times, the Respondent practised at Slater Heelis LLP and its earlier forms ("the firm"). The Respondent's entire professional career was spent at the firm and she was made Partner on 1 April 2004 and Member on 1 May 2012, a position which she held until she left the firm on 14 January 2014. The Respondent led the firm's personal injury department. According to SRA records, the Respondent has not practised since leaving the firm.

Application for the matter to be resolved by way of Agreed Outcome

6. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

7. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
8. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.
9. The Tribunal considered the Guidance Note on Sanction (December 2016). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal noted the Respondent's mitigation set out at paragraph [22] of the Statement of Agreed Fact and Outcome. The Tribunal was satisfied that the appropriate sanction in all the circumstances was a strike-off. The Respondent had not presented, and the Tribunal was unable to identify, any exceptional circumstances that would enable a lesser sanction to be imposed.

Costs

10. The parties had agreed that the Respondent would pay the Applicant's costs fixed in the sum of £17,438.00, such costs not to be enforced without leave of the Tribunal. The Tribunal was satisfied that this was an appropriate and proportionate level of costs and that the order. The Applicant had proposed that the costs not be enforced without leave. While this was relatively unusual, the Tribunal took the view that the SRA had considered the matter carefully before making this proposal and the Tribunal did not wish to go behind that. The Tribunal agreed to make the order in those terms.

Statement of Full Order

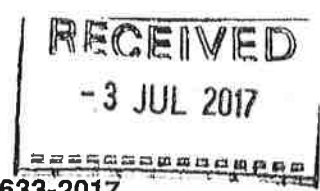
11. The Tribunal Ordered that the Respondent, LYNNE MUSCROFT, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £ 17,438.00, such costs not to be enforced without leave of the Tribunal.

Dated this 18th day of July 2017

On behalf of the Tribunal


L. N. Gilford
Chairman

Judgment filed
with the Law Society
on 21 JUL 2017



Number: 11633-2017

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

and

LYNNE MUSCROFT

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

1. By its application dated 5 April 2017, and the statement made pursuant to Rule 5 (2) of the Solicitors (Disciplinary Proceedings) Rules 2007 which accompanied that application, the Solicitors Regulation Authority ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making a total of 3 allegations of misconduct against Ms Lynne Muscroft ("the Respondent").

Allegations

2. The allegations underlying the applications were as follows and arise out of a complaint received from the Respondent's former firm, Slater Heelis LLP, Lloyds Bank Buildings, 16 School Road, Sale, Cheshire, M33 7XP and its earlier forms ("the firm").

3. The allegations against the Respondent made by the SRA are that:-

3.1. Between February 2013 and November 2013 she misled her client JW and the solicitors acting for the defendant insurers in JW's personal injury claim including as to the progress and outcome of matters and thereby breached Principles 2, 4, 5 and 6 of the SRA Principles 2011 (the "SRA Principles").

3.2. Between June 2013 and November 2013 she made improper payments and withdrawals into and from client account to client JW and thereby breached Rules 6.1, 14.2, 17.1 and 20.1 of the SRA Accounts Rules 2011 (the "SAR 2011") and Principles 2, 4, 5, 6 and 10 of the SRA Principles.

4. It is further alleged that the Respondent was dishonest in relation to the misconduct set out in paragraph 3 above. The test for dishonesty to be applied by the Solicitors Disciplinary Tribunal is that set out in **Twinsectra v Yardley [2002] UKHL 12** at [27]: *"...before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest..."*.

Admissions

5. The Respondent admits the breaches of the SRA Principles and dishonesty as set out in paragraph 3 and 4 above.

Agreed facts

6. At all material times, the Respondent practised at the firm. The Respondent's entire professional career was spent at the firm as a Partner and Member, a position which she held until she left the firm on 14 January 2014. The Respondent led the firm's personal injury department.
7. The firm's Managing Partner and COLP reported a number of concerns regarding the conduct of the Respondent including failing to protect the interests of clients, concealing incidences of negligence and failing to notify the firm of associated rule breaches. The report highlighted that the Respondent had concealed her alleged negligence by making a series of improper payments to "satisfy" clients' expectations and/or third party cost orders.
8. On 17 May 2016, a duly authorised officer of the Applicant ("the FI Officer") commenced an inspection of the books of account and other documents of the firm. On 13 September 2016, the FI Officer interviewed the Respondent. That

inspection culminated in a report dated 30 September 2016 ("the FI Report") which concerned the conduct of the Respondent only.

9. At the material time, the Respondent acted for a claimant client JW ("JW") in relation to a dental negligence claim. During the course of correspondence with the solicitors acting for the defendant's insurer the Respondent accepted an offer of £5,000.00 to settle the matter. The Respondent admitted that JW was not aware of this offer and had not instructed her to accept it. The Respondent further admitted that her letter to the defendant's insurers in August 2013 accepting the offer was misleading.
10. Following enquiries undertaken by the firm after the Respondent's resignation from the firm, it was ascertained that JW understood that her matter had settled out of court in February 2013 in the sum of £60,500.00 ("the settlement sum") which was paid to her. The Respondent subsequently admitted that there had never been an agreement reached between the parties in relation to the settlement sum.
11. The Respondent failed to seek JW's instructions when accepting an offer made in relation to her case and misled her to the extent that JW believed that she had received a genuine settlement when that was not the case. The Respondent also presented to the defendant's solicitors, by accepting the £5,000 offer that she had taken instructions from her client when that was not the case. The Respondent's actions in so doing demonstrated a lack of integrity, in that a solicitor of integrity would not mislead their client and opponents as to instructions received and the progress of the litigation. Such actions were not in the best interests of her client, would not satisfy a proper standard of service to her clients and would also undermine the trust and confidence the public would place in her and the provision of legal services.
12. The JW matter client ledger recorded seven payments into client account during the period June 2013 - September 2013. The Respondent subsequently admitted that she had authorised the payments into the JW matter client ledger and six of the payments credited to JW's matter were from unrelated client matters. On a further matter, monies received on an unrelated client matter were wrongly paid out to JW. As a result of these payments from unrelated matters, JW paid out the settlement sum to JW.

13. The Respondent admitted that she knew that she was acting improperly in recording the above receipts to the JW client matter and that there was no relationship between JW and the files from which the monies in question were improperly transferred. The Respondent admitted that she was aware when mis-using client or office monies at the material time that her actions were wrong and that she knowingly misled clients and that the seven payments to JW were improper and not properly due to her, that she had misled her client, the firm, the defendant insurer's solicitors and the defendant insurer. Prior to the FI inspection, the Respondent had admitted that she had mis-used client funds over a period spanning more than 10 years.
14. The Respondent failed to comply with Rule 6.1 of the SAR 2011. As a member of the firm the Respondent had a duty to ensure compliance with the SAR 2011 both by herself and others in the firm. Instead, the Respondent breached the SAR 2011 by her own actions in utilising clients' money without authority to provide payments of purported damages to an unrelated client JW.
15. The Respondent failed to only pay into or hold client money on a client account in breach of Rule 14.2 of the SAR 2011. The sums received should have been paid into the office account (as it was predominantly monies received in respect of the firm's costs) and relevant sums paid into the correct relevant client accounts as necessary rather than paid into the JW client account.
16. The Respondent failed to deal with money received in accordance with Rule 17.1 of the SRA 2011. The sums received were properly due in other unrelated client matters and comprised almost entirely if not exclusively of office money (e.g. costs and paid disbursements owed to the firm). The composition of the money ought to have been determined without delay and dealt with accordingly. Instead, the Respondent improperly and dishonestly banked those monies in client account and simultaneously wrongly recorded those monies as belonging to the JW matter when they did not.
17. Rule 20.1 of the SAR 2011 prescribes the circumstances in which money can be paid out of client account. Withdrawals from client account in circumstances other than those prescribed by Rule 20.1 of the SAR 2011 are in breach of that rule. In order to make a payment of purported damages to client JW, the Respondent

permitted money to be transferred from the client account in respect of 7 unrelated clients without authority. By withdrawing funds from the client account ledgers of the 7 unrelated clients, without their knowledge or consent, the Respondent made withdrawals from client account which were not properly required for a payment to or on behalf of the 7 unrelated clients in breach of Rule 20.1 of the SAR 2011.

18. The Respondent's actions in so doing also demonstrated a lack of integrity, in that a solicitor of integrity would not divert money properly due to other clients and her employers. Such actions would not be in the best interests of each client, would not satisfy a proper standard of service to her clients and would also undermine the trust and confidence the public would place in her and the provision of legal services. Further, the Respondent failed to protect client money and assets.

19. The Respondent's actions were dishonest in accordance with the test for dishonesty accepted in **Bullitude v Law Society [2004] EWCA Civ 1853** as applying in the context of solicitors disciplinary proceedings i.e. the combined test laid down in **Twinsectra Ltd v Yardley and Others [2002] UKHL 12**: the person has acted dishonestly by the ordinary standards of reasonable and honest people and realised that by those standards he or she was acting dishonestly.

20. In misleading her client JW and the defendant insurer's solicitors and making improper payments and withdrawals into and from client account to client JW, the Respondent admits that she acted dishonestly by the ordinary standards of reasonable and honest people and she realised that by those standards she was acting dishonestly.

Agreed Outcome

21. The Respondent agrees to:

- a. be struck off the Roll of Solicitors. The Applicant submits and the Respondent accepts that this sanction is consistent with the seriousness of the matters admitted and with the Tribunal's Guidance Note on Sanctions (5th edition), in circumstances in which admissions have been made to dishonestly misleading her client JW and the defendant insurer's

solicitors and making improper payments and withdrawals into and from client account to client JW;

- b. pay costs to the SRA in the sum of £17,438.00, such costs not to be enforced without leave of the Tribunal.

Mitigation

22. The Respondent asserts that she did not gain personally from her actions and that her misuse of funds was undertaken in a misguided attempt to conclude cases to the satisfaction of clients and the firm. However, she does not seek to contend that her circumstances affected her decision making to the extent that she did not appreciate that her actions were dishonest. Further, the Respondent does not assert that there are exceptional circumstances in this case which would justify the Tribunal in finding that it fell into the "*...small residual category where striking off will be a disproportionate penalty...*" identified by Mr. Justice Coulson in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin).

Explanation as to why such an order would be in accordance with Tribunal's sanction guidance

23. The Respondent was partner and then a member of the firm and chose to deliberately mislead her client JW and the defendant insurer's solicitors and make improper payments and withdrawals into and from client account to client JW. The Respondent's actions in so doing also demonstrated a lack of integrity, in that a solicitor of integrity would not divert money properly due to other clients and her employers. Such actions were not in the best interests of each client, did not satisfy a proper standard of service to her clients and also undermined the trust and confidence the public placed in her and the provision of legal services. Further, the Respondent failed to protect client money and assets.

24. The public expects solicitors to act with integrity, to act in the best interests of each client, to provide a proper standard of service to clients and to behave in a way that maintains the trust the public places in them and in the provision of legal services. The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in

exceptional circumstances (**Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)**).

25. The following factors aggravate the seriousness of the Respondent's misconduct:

- 25.1. the misconduct involves dishonesty;
- 25.2. the misconduct in relation the breach of the SAR 2011 was deliberate and repeated;
- 25.3. the misconduct continued over a period of time;
- 25.4. the misconduct involved the concealment of wrongdoing;
- 25.5. the misconduct occurred where the Respondent knew or ought to reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

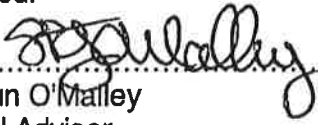
26. The following factors mitigate the seriousness of the Respondent's misconduct:


- 26.1. the Respondent made open and frank admissions at an early stage and has cooperated with the SRA;
- 26.2. there is evidence of insight on the part of the Respondent in light of the admissions made;
- 26.3. save for the misconduct highlighted the Respondent has no regulatory disciplinary history.

27. Taking all of the above together, the seriousness of the Respondent's misconduct is such that a Reprimand or a Fine is not a sufficient sanction or in all the circumstances appropriate. The seriousness of the misconduct is at the highest level, such that a lesser sanction is inappropriate and the protection of the public and the protection of the legal profession requires that the Respondent's name is struck off the Roll. Having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions the SRA contends, and the Respondent accepts,

that the proper penalty in this case is an Order that the Respondent be struck off the Roll of Solicitors.

Signed:


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Shaun O'Malley
Legal Adviser
On behalf of the Solicitors Regulation Authority
Date: 4/7/17.


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Lynne Muscroft
Respondent
Date:

