

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11691-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ROBERT LESLIE PERRY

Respondent

Before:

Mr D. Green (in the chair)

Mr P. Booth

Mrs C. Valentine

Date of Hearing: 24-25 September 2018, 19 & 21 November 2018

Appearances

Mr Selva Ramasamy QC, barrister of QEB Hollis Whiteman, 1-2 Laurence Pountney Hill, London, EC4R 0EU instructed by Robin Horton, solicitor of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent attended and represented himself.

JUDGMENT

Allegations

The Allegations made against the Respondent were as follows.

Use of personal bank account

1. In breach of Principles 2 and 6 of the SRA Principles 2011 (“the Principles”), the Respondent improperly requested a client to pay money for legal fees into his personal bank account.
2. As an alternative to Allegation 1, in breach of Principles 2 and 6, the Respondent accepted a gift or a loan from a client without telling them to get independent legal advice.
3. In breach of Principles 2 and 6, the Respondent misled his employer as to the work he was doing in that:
 - 3.1 he told his employer that he had done £2,000 worth of work for a client outside his employment, when he had not done so;
 - 3.2 he sent his employer a false invoice to persuade it that he had done work.

Unauthorised practice

4. In breach of Rule 1.1 of the SRA Practice Framework Rules 2011, the Respondent worked for clients on his own account, without the authority to do so
5. Allegation 5 - In breach of:
 - 5.1. Principles 5, 6 and 7;
 - 5.2. Rule 4.1 of the SRA Indemnity Insurance Rules 2011;
 - 5.3. and by failing to achieve Outcome 1.8,

the Respondent had worked for clients without the benefit of professional indemnity insurance.

Dishonesty

The Applicant alleged that the Respondent was dishonest in Allegation 3 above. The Applicant did not need to prove dishonesty to prove that Allegation.

Preliminary Matters

6. Anonymisation of Mr C
 - 6.1 Mr Ramasamy applied for Mr C to be anonymised during the hearing and in the Judgment. He was a former client of the Respondent and had reported matters to the SRA. It was therefore in the interests of justice that he not be identifiable.

- 6.2 The Respondent had no objection to this application.
- 6.3 The Tribunal noted that the starting point was the principle of open justice. However, the Tribunal had to balance that against Mr C's right not to have his personal business aired in open Court when he was identifiable. The matters that would form the basis of his evidence related to his instructions to the Respondent and his personal circumstances including his health.
- 6.4 The Tribunal was satisfied that it was in the interests of justice for Mr C to be anonymised in the course of the hearing and the Tribunal's written Judgment. The Tribunal further directed that the audio discs should not be sent to any non-party as Mr C had been inadvertently identified during the course of the hearing.

Factual Background

- 7 The Respondent was born in 1968 and was admitted to the Roll in November 1998.
8. From 4 January 2013 until 13 July 2014 the Respondent was an assistant solicitor at Burrell Jenkins ("the firm").
9. Allegations 1 and 2
- 9.1 On 2 November 2012 Mr C had instructed the firm to defend him in relation to a criminal allegation of harassment. The Respondent became the fee-earner. Mr C's partner, Ms P, later instructed the firm on the same matter. In March 2013 the clients both accepted a caution and this ended their criminal retainer. On 16 May 2013 the firm sent Mr C a letter stating that the matter was now concluded and that "an interim bill has recently been sent to you this is in fact a final bill".
- 9.2 The letter did not include a copy of the interim bill.
- 9.3 Between March and July 2013, Mr C instructed the Respondent to obtain an injunction against one of his former partners, who he claimed was harassing him. The Applicant's case was that the Respondent acted in this matter without the firm's knowledge. In July 2013 the Respondent asked Mr C to pay £1,000 for work on the injunction. Mr C paid £1,000 to the firm. Mr C's letter of complaint stated that neither the Respondent nor the firm carried out any work on the injunction retainer.
- 9.4 In the period between December 2012 and July 2013 Mr C made the following payments:

Date	Amount	Account
07.12.12	£500	The Respondent t/a Norton Law
11.01.13	£1,000	The Respondent t/a Norton Law
16.01.13	£2,000	The firm
06.02.13	£2,000	The Respondent t/a Norton Law
21.02.13	£1,000	The Respondent t/a Norton Law
21.03.13	£500	The firm
21.03.13	£100	The Respondent t/a Norton Law
15.05.13	£150	The Respondent t/a Norton Law
22.07.13	£1,000	The firm

9.5 The Applicant's case was that Mr C believed that all of these payments were being made into an account run by the firm, when in fact some of them were being paid into the personal business account of the Respondent.

9.6 Mr C had given the Respondent a number of gifts, including a torch, a coat, car oil and some cash. However, the Applicant's case was that none of the gifts were made by way of a bank transfer. The Respondent's position was that the additional monies were indeed gifts from Mr C. The Applicant did not accept that they were gifts. However, if they were gifts, then the Applicant's case was that the Respondent should not have accepted them.

10. Allegation 3

10.1 In January 2015 Mr C requested invoices from the firm to reflect the payments he had made for work undertaken. He was given a copy of a letter dated March 2013 which included a copy of an interim bill. This was in the sum of £2,000. The Applicant's case was that Mr C had paid a total of £6,500 by this point, which he had believed had gone to the firm. Mr C had therefore requested a refund and filed a complaint.

10.2 The firm investigated the complaint and as part of that investigation, had spoken to the Respondent. The Respondent told the firm that the payments were for additional work he had done for Mr C and Ms P, separate to his work with the firm. The Respondent produced an invoice for this work, which he had later accepted in an interview with the SRA, did not relate to any work actually done. The Respondent also accepted in his interview with the SRA that what he had told the firm was incorrect.

11. Allegation 4

11.1 The Applicant's case was that by doing work under the banner of Norton Law, the Respondent had breached the SRA Practice Framework Rules 2011 as he was not registered as a sole practitioner with the SRA and the SRA had no record of "Norton Law". The Applicant's case was that he had undertaken work despite not having the appropriate authorisation.

12. Allegation 5

12.1 The Applicant's case was that the Respondent had lacked Professional Indemnity Insurance ("PII") when carrying out work under the banner of Norton Law.

Live Witnesses

13. Mr C

13.1 Mr C gave evidence via video-link and confirmed his name by reference to a document in the papers. Mr C confirmed that his letters to the SRA dated 23 March 2015 and 23 May 2015, his witness statement dated 5 February 2016 and his witness statement dated 5 January 2018 should be adopted as his evidence in chief.

- 13.2 Mr C told the Tribunal that he had first come into contact with the Respondent when he attended the offices of the Firm following his arrest on suspicion of harassment. Upon being arrested he had been represented by one of the Respondent's colleagues at the police station. Mr C had been bailed to return to the police station at a later date.
- 13.3 Mr C confirmed that he had provided witness statements to the Respondent, as had his partner. He had indicated that were the matter to come to trial there were a number of witnesses who would be required to attend. The Respondent put to Mr C that the reason that he had quoted him £25,000 to take the matter to trial was because of the number of witnesses that would be required to attend. Mr C told the Tribunal that he did not know how the Respondent has calculated the fee. He told the Tribunal that the Respondent had said to him that if he did not accept a caution he would need to find £25,000 if the matter went to trial.
- 13.4 Mr C told the Tribunal that on a subsequent attendance at the police station he had been interviewed for 12 hours continuously. The Respondent put to Mr C that this was not true and that there had been numerous breaks. Mr C denied this but accepted that he had had a break although he had not been given food. The Respondent asked Mr C why he had continued to instruct him to represent in the police station given his dissatisfaction. Mr C told the Tribunal that he had faced an impossible position and with hindsight he would have instructed a different solicitor.
- 13.5 The Respondent asked Mr C why, given that he had a number of complaints about how he had been represented at the police station, he had sought to instruct him on a fresh matter, namely the recovery of monies owed from another former partner. Mr C told the Tribunal that he had approached the Respondent because he believed that the Respondent knew how to contact Mr C's former partner.
- 13.6 Mr C denied saying to the Respondent during the course of the police station investigation "I must give you something for your time". The Respondent told him that he had said this but Mr C firmly denied it. Mr C also denied having any difficulty with his memory.
- 13.7 Mr C told the Tribunal that he had been told that one of the bank accounts was presented as a client account and one as a working account. The Respondent put to Mr C that it was "ridiculous" to suggest it was a client account when the account was in the Respondent's name. Mr C told the Tribunal that he had only been given sort code and account number and the name was not needed for the payment to be made. He had believed that he was paying money to the Firm.
- 13.8 Mr C confirmed that he had given gifts to the Respondent and this had included some cash. He denied that any of the banking payments he had made were gifts. It was put to Mr C that he was generally litigious. Mr C denied this. It was put to Mr C that he had been advised by the Respondent that his representation of the police station was free. Mr C stated that this was not the case. The Respondent put to him that he was making up his evidence as it went along, something that Mr C denied.

14. The Respondent

- 14.1 The Respondent had served a witness statement in the proceedings which adopted as part of his evidence.
- 14.2 The Respondent told the Tribunal that he had accepted his wrongdoing as he saw it. When he came into the law he had never envisaged finding himself before the Tribunal. The Respondent told the Tribunal that he accepted that he had left himself "wide open" to allegations being made against him particularly by Mr C. He accepted that he should have declared that he had taken money from him but that there was no way that this money was for legal fees. The Respondent described the allegation as "bizarre and ridiculous" and the most obscure suggestion that he had ever heard. Mr C had never been given details of the Firm's account and the Respondent told the Tribunal that he was entirely satisfied, when he looked back over his dealings with Mr C, that he could not believe the money to be fair fees.
- 14.3 The Respondent described the circumstances of his instruction to act for Mr C at the police station. He maintained that he had protected Mr C's interests at all times and represented him to the best of his ability. He denied that Mr C had been interviewed for twelve hours. The Respondent told the Tribunal that breaks had been taken at regular intervals and that the quality of his representation at the police station was such that even police officers would instruct him to help family members who found themselves in difficulty. The Respondent described Mr C's evidence on this point as "hurtful" and suggested that the only reason he had raised it was to try to get a caution, which he had accepted, expunged.
- 14.4 Mr C had given the Respondent a long list of witnesses, some 15 to 20, who might have been required should the matter have gone to trial. Many of his witnesses were not in the United Kingdom and would therefore have to be flown in to give evidence. The Respondent told the Tribunal that he had not made any bones about that.
- 14.5 The Respondent told the Tribunal that Mr C had told him, at the police station, that "I must give you something for your time". The Respondent stated that he found Mr C's evidence, in which he denied saying this, surprising. Mr C had said this to him on at least three occasions. The Respondent had told Mr C "that is kind of you", something he accepted that he should not have done. The Respondent reiterated that the money he received from Mr C was a gift. He had tried to repay the funds but the account number that Mr C had provided was incorrect. Since these allegations were made the Respondent had left the Firm and had come off the duty solicitor rota and started doing CPS work.
- 14.6 The Respondent told the Tribunal that his mind-set at the time was a desire to sort the problem out. It was his fault as the solicitor in the case that the situation had arisen and he felt that it was down to him to resolve it. It was not fair to the Firm otherwise. He had sent the invoice because he genuinely wanted the matter to come to him so that he could deal with the matter. The Respondent told the Tribunal that he didn't think that he could forgive himself for having taken that view but he had not done it to be dishonest. What he had done was wrong but there had been no gain to him and no loss to anyone else. He invited the Tribunal to take account of the fact that the test of dishonesty had changed since the events in question.

- 14.7 In cross examination the Respondent confirmed that he had been troubled by the payments from Mr C and accepted that he should have declared the gift. He had no idea why Mr C had given him £1,500 before he had paid the Firm. The Respondent was adamant however that Mr C could not have thought that he was paying fees.
- 14.8 Mr Ramasamy put to the Respondent that by telling his employer an untruth and producing a false document to back up the claim he was hoping that the Firm would accept this and bring their enquiry to an end. The Respondent denied this and stated that this was “the last thing on my mind”. The Respondent told the Tribunal that he had told the SRA the true position. He fully accepted that the invoice should never have been sent. The Respondent did not believe that he had put the Firm at any risk by producing a false document. He did not know the nature of the difficulties with Mr C at that point.
- 14.9 Mr Ramasamy took the Respondent to the invoice in the Taxi Drivers Association matter. He pointed out that the account number and sort code related to the bank account which was described as the Respondent trading as Norton Law. The Respondent told the Tribunal that there was no mention of Norton Law on the invoice.

Findings of Fact and Law

15. 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.
16. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition, it had regard to the oral and written submissions of both parties, which are briefly summarised below.

General Approach Dishonesty

17. The test for considering the question of dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

“the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

18. The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.
- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

19. When the Tribunal was required to consider whether the Respondent had lacked integrity it applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

“Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse”.

20. Wingate and Evans and Malins had continued a line of authorities that included SRA v Chan [2015] EWHC 2659, Scott v SRA [2016] EWHC 1256 (Admin), Newell-Austin v SRA [2017] EWHC 411 (Admin) and Williams v SRA [2017] EWHC 1478 (Admin).

21. **Allegations 1 - In breach of Principles 2 and 6 of the SRA Principles 2011 (“the Principles”), the Respondent improperly requested a client to pay money for legal fees into his personal bank account.**

Allegation 2 - As an alternative to Allegation 1, in breach of Principles 2 and 6, the Respondent accepted a gift or a loan from a client without telling them to get independent legal advice.

Applicant’s Submissions

21.1 The Applicant’s case was that if the money was for legal work, then the Respondent should not have asked Mr C to pay the money directly to him, and should not have accepted it in his own account. Mr C had paid £4,500 to the Respondent before the instructions in respect of the injunction. The Tribunal was invited to infer that this money was received for legal work in respect of the criminal matter for which the firm was retained. Mr Ramasamy relied on the evidence of Mr C in support of Allegation 1 and submitted that the Respondent had breached Principles 2 and 6. Mr Ramasamy had also cross-examined the Respondent and the Tribunal took those exchanges into account in assessing matter.

- 21.2 In the alternative, if the Tribunal accepted the Respondent's contentions that the money was a gift, the Respondent should either have not have accepted it or should have told Mr C to get independent advice.

Respondent's Submissions

- 21.3 In addition to his evidence the Respondent made the following points in closing submissions:

- The Tribunal was reminded of the burden and standard of proof;
- Mr C's evidence had been clear up to a point, but once he had been asked questions this had changed. His answers about the bank account details and conversations that had taken place were examples;
- All that Mr C had done was give the Respondent gifts;
- There was absolutely no possibility at all that he could think that this was money for fees;
- As soon as SRA had contacted the Respondent he had given an account and provided every piece of information he could;
- He had not been able to repay Mr C when he wanted to;
- He accepted lack of integrity and had given his account. He accepted that it was not a very good one but it was the truth and he had not lied.

The Tribunal's Findings – Allegation 1

- 21.4 In considering Allegation 1, the Tribunal recognised that there was a conflict of evidence between Mr C and the Respondent.
- 21.5 There was a pattern of payments, six of which went to the Respondent and the rest to the Firm's client account. The fact of the payments was not in dispute but the reason for them and their intended purpose had been the subject of bitter disagreement between Mr C and the Respondent.
- 21.6 The Tribunal did not consider Mr C to be a reliable witness. His evidence had clearly been driven by a loathing of the Respondent. There had been a serious falling out between the two of them and this had resulted in Mr C displaying an element of vindictiveness in his evidence.
- 21.7 The Tribunal noted that his account of his treatment at the police station while being represented by the Respondent was implausible. He had initially told the Tribunal that he had been interviewed for 12 hours without any sort of break. His position then changed under cross examination and he had then conceded that there had been some breaks but he had not been offered any food. This lacked credibility in itself, but was reinforced by the fact that he had chosen to continue instructing the Respondent despite these serious complaints about his representation. Mr C had then, several months later,

sought to instruct the Respondent on a fresh matter. This was completely at odds with his stated view that the Respondent had allowed his basic rights to be infringed whilst at the police station.

- 21.8 In his evidence Mr C had accepted that he had given some gifts to the Respondent, albeit he stated that none of them were in the form of bank transfers.
- 21.9 The Tribunal was also unimpressed with the Respondent's evidence. He had given his personal bank details to Mr C and had told the Tribunal that Mr C could not have thought that he was paying for fees without the client care letter having been sent. This assumed that a client would insist on a client care letter before paying any fees to their solicitor.
- 21.10 The Tribunal noted that the Respondent had received substantial sums of money from Mr C at a time when Mr C had paid no money in fees to the Firm. The Respondent had told the Tribunal that he had been troubled by these payments but had nevertheless accepted them.
- 21.11 The Tribunal found that neither Mr C nor the Respondent were reliable witnesses. The Tribunal considered the documentary material but this did little more than confirm the fact of the payments, one of the few points that were not in dispute. There was no evidence of a written request for payment of fees into the Respondent's bank account.
- 21.12 The Tribunal had firmly in mind the standard of proof that the Applicant had to meet in order that an allegation could be proved. In order for the Tribunal to have found Allegation 1 proved it would have to have been satisfied beyond reasonable doubt that Mr C had given evidence that could be believed. He had not done so and the fact that the Tribunal also found the Respondent to have given evidence that was not capable of belief did not displace the burden on the Applicant. The Tribunal therefore found Allegation 1 not proved.

The Tribunal's Findings – Allegation 2

- 21.13 The Respondent had admitted this allegation in full and the Tribunal found these admissions to be properly made on the evidence. There was clearly evidence of the payments having been made and Mr C had accepted making other gifts to the Respondent such as a torch and a coat. The Respondent had admitted that he did not advise Mr C to obtain legal advice. The result had been a string of payments adding up to a significant sum of money. The Tribunal was satisfied beyond reasonable doubt that by accepting those payments the Respondent had lacked integrity. In addition, the public trust in the profession was undermined by the acceptance of large gifts by a solicitor. The public would trust their solicitor to tell them if they needed to obtain independent legal advice.
- 21.14 The Tribunal found Allegation 2 proved in full beyond reasonable doubt.

22. **Allegation 3 - In breach of Principles 2 and 6, the Respondent misled his employer as to the work he was doing in that:**

3.1 he told his employer that he had done £2,000 worth of work for a client outside his employment, when he had not done so;

3.2 he sent his employer a false invoice to persuade it that he had done work.

Applicant's Submissions

22.1 It was submitted that the Respondent, having admitted that he told the Firm something which he did not believe was correct and by producing the false invoice to them, had been dishonest. The Respondent knew he had not done work in return for Mr C's payments, and he knew the invoice that he had created to produce a deceptive paper trail, was not one he had sent to Mr C for such services.

22.2 This conduct would be considered dishonest by the objective standards of ordinary decent people.

Respondent's Submissions

22.3 The Respondent made the following points in closing submissions:

- Sending the invoice did not and had not assisted him;
- He accepted it was the wrong thing to have done;
- He had made a conscious decision to do the right thing and had not been underhand;
- He would not find himself in that position ever again;
- He had not been dishonest;
- He had worked conscientiously and hard throughout his career helping people who could not otherwise represent themselves obtain representation;
- There had never been any complaints about his work at any of his previous firms.

The Tribunal's Findings

22.4 The factual basis of this Allegation had been admitted by the Respondent. He had accepted telling his employer something which was not correct and producing an invoice which was also incorrect in order to back up the initial statement. The Tribunal found these admissions properly made on the evidence. The admission extended to an acceptance that the Respondent had lacked integrity and undermined the trust the public placed in the provision of legal services. The Tribunal again found the admissions properly made. It clearly lacked integrity to provide an explanation which was untrue and to prepare a document which did not reflect the reality of the situation. The Tribunal found the factual basis of Allegation 3 together with the breaches of Principle 2 and 6 proved beyond reasonable doubt.

Dishonesty

- 22.4 The Tribunal considered the Respondent's state of knowledge at the material times. The Respondent knew that he had not done £2,000 worth of work. He knew that what he had told his employers was, in his own words, "rubbish". The Respondent had prepared the invoice himself and he knew that the contents of the invoice did not reflect the truth.
- 22.5 The Tribunal considered the Respondent's explanation for this, namely that he intended to bring the matter to his own doorstep and thereby ensure that the Firm was absolved from any blame. The Tribunal found it implausible that the Respondent had some altruistic approach to this matter. The Respondent had the option of confessing to his manager that he had accepted gifts from Mr C when he should not have done. He had not done this but had instead embarked on an elaborate deception of his employers. The obvious inference from his actions was that the employer would accept what the Respondent had told him and put an end to the investigation.
- 22.6 The Respondent stood to gain in the form of being able to retain the £2,000 in addition to the Firm's investigation into him being wound up. The Tribunal found that the Respondent's intention was to conceal the gift that he had accepted. The Tribunal rejected the Respondent's explanations for his actions and did not find his evidence credible on this point.
- 22.7 The Tribunal found that it would clearly be considered dishonest by the standards of ordinary decent people to deliver a false document in order to substantiate a lie told to an employer. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.
- 22.8 Allegation 3 was proved in full beyond reasonable doubt including the allegation of dishonesty.
23. **Allegation 4 - In breach of Rule 1.1 of the SRA Practice Framework Rules 2011, the Respondent worked for clients on his own account, without the authority to do so.**

Applicant's Submissions

- 23.1 Mr Ramasamy submitted that the Respondent had breached Rule 1.1 of the PFR in respect of both the Taxi Drivers Association matter and the copyright matter. The Tribunal noted the exchanges in cross-examination on this Allegation.

Respondent's Submissions

- 23.2 The Respondent reiterated the points he had made in his evidence in relation to this Allegation.

The Tribunal's Findings

- 23.3 The Respondent had admitted this Allegation in part, in that he accepted it in relation to one client only, namely the copyright matter. The Tribunal found this admission to be properly made and supported by the evidence. The draft letter on behalf of the client

was legal work for which the Respondent had prepared an invoice payable to Norton Law. The letter itself was headed paper from Norton Law.

- 23.4 The Respondent had denied that the work for the Taxi Driver Association was an example of practising without authorisation. The Tribunal noted that the invoice in this case did not refer to Norton Law, although the bank details were for an account which is described as the Respondent trading as Norton Law. However, in the absence of any other documentation making reference to Norton Law, the Tribunal could not be satisfied beyond reasonable doubt that this was an example of practising without authorisation.
- 23.5 The Tribunal found Allegation 4 proved to the extent of one matter as admitted by the Respondent.

24. **Allegation 5 - In breach of**

5.1. Principles 5, 6 and 7;

5.2. Rule 4.1 of the SRA Indemnity Insurance Rules 2011;

5.3. and by failing to achieve Outcome 1.8,

the Respondent had worked for clients without the benefit of professional indemnity insurance.

Applicant's Submissions

- 24.1 It was submitted that by doing work without insurance, the Respondent had breached Principles 5, 6 and 7. The public, including clients, would expect solicitors to have insurance for their protection, and without such protections the profession may lack public trust. The Respondent had effectively bypassed the requirements and left clients exposed. The Tribunal noted Mr Ramasamy's cross-examination in respect of this Allegation.

Respondent's Submissions

- 24.2 The Respondent reiterated the points he had made in his evidence in relation to this Allegation.

The Tribunal's Findings

- 24.3 There was no evidence that the Respondent held PII. He had admitted this allegation as a matter of strict liability. It was certainly the case that the Respondent had been practising without PII in respect of the copyright matter as any policy that had been in force would only have been applicable to work that the Respondent was authorised to conduct. The Tribunal found the factual basis of Allegation 5 proved beyond reasonable doubt.

- 24.4 It was clearly not consistent with the provision of a proper standard of service to clients operate without PII. Those clients would not be protected as they ought to be in circumstances where such a policy was absent. The Tribunal found the breach of Principle 5 proved beyond reasonable doubt.
- 24.5 The public would expect solicitors to hold PII and the requirement to do so was a key part of the regulatory framework set up to protect the public. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.
- 24.6 For the reasons stated above, the Respondent had failed to comply with his regulatory obligations, one of which was to hold PII and accordingly the Tribunal found the breach of Principle 7 proved beyond reasonable doubt.
- 24.7 It followed as a matter of logic from the Tribunal's findings above that the Respondent had breached Rule 4.1 and failed to achieve Outcome 1.8.
- 24.8 Allegation 5 was proved in full beyond reasonable doubt.

Previous Disciplinary Matters

25. There were no previous findings before the Tribunal.

Mitigation

26. During the course of his mitigation the Respondent was given a copy of the Guidance Note on Sanction to give him an opportunity to address any matters he wished to.
27. The Respondent told the Tribunal that things had moved on since the events in this case, which went back some time. No subsequent difficulties had arisen or were ever likely to happen again. The Respondent had left his employment and removed himself from the Duty Solicitor scheme as he felt that this was the right thing to do. He had been prosecuting for the Crown Prosecution Service (CPS) 3-4 days a week. It had been his intention to join the CPS on a full-time basis. He had not sought employment while the proceedings were ongoing as that would have been improper.
28. He was extremely disappointed in himself for getting embroiled in this situation. He told the Tribunal he would never find himself in this position again. He had got through 16 years without blemish on his character. He had complied with all requests throughout the investigation and had admitted a large part of this matter from the outset. The law had been his life since 1987. He had never sought to give anything other than the best of his ability to clients. He had done a lot of Legal Aid work and no issues had arisen on audits. The Respondent told the Tribunal that character references had been offered to him but he had declined as he wanted to deal with matters himself. There had been no difficulties with his work and no complaints about his conduct.
29. The Respondent reiterated that he had intended to sort out the matter himself in relation to Allegation 3. However, he accepted the Tribunal's findings in that regard.

30. He told the Tribunal that his ability to meet the SRA's costs would be impacted if he was not able to practise. The process of paying costs would serve to act as a constant reminder of these matters. He told the Tribunal it would be incredibly difficult to change career at this stage in life. He stated that it was those close to him who would suffer more.
31. The Respondent told the Tribunal that he had not gained from production of the invoice in Allegation 3. This was a one-off that had not happened before or would happen again. It was a stupid decision and not a course of conduct.
32. The Respondent told the Tribunal if he was ever faced with the same circumstances again, he would not act in the same way. There was therefore no risk to the public. The damage caused in this case was limited. He would not have let the matter go any further and would have got onto the firm to tell them not to send it.
33. The Respondent invited the Tribunal to consider placing restrictions on his practising certificate which would enable him to make good any costs orders.
34. He invited the Tribunal to take into account the change in the test for dishonesty brought about by the Ivey decision.
35. Allegation 4 had not been a course of conduct, it was a one-off, consistent with the Tribunal's findings.
36. The Tribunal was invited to display a degree of mercy. He told the Tribunal that the actions had not been planned. He had spontaneously sent the invoice. There had not been a breach of trust. He accepted that he had direct control of the situation. The Respondent submitted there was no harm caused.
37. The Respondent submitted that there was no suggestion he had misled the regulator. He accepted there had been a dishonesty finding. The matter had not been over a period of time. He accepted that he ought to have known he was in material breach of his obligations. This was a single episode of very brief duration in a previously unblemished career. He had made early admissions to a number of matters.
38. The important factor was that these were one-off incidents. He invited the Tribunal to consider imposing a suspension and give consideration to a suspended suspension. It would act as a "sword of Damocles" over him. There was no prospect of him appearing before the Tribunal again. He had demonstrated full co-operation with the regulator and made prompt admissions.

Sanction

39. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
40. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

41. In assessing culpability the Tribunal identified the following factors:
- The Respondent's motivation for the misconduct arose from a desire to hide the true situation from his employer. The reason for the false invoice was so that he would not have to repay the money;
 - The misconduct was planned. A false invoice could not be produced spontaneously;
 - He had breached the trust of his employer;
 - The Respondent had direct control of the situation and was an experienced solicitor.
42. In assessing harm, the Tribunal identified the following factors:
- The harm in this case was principally to the reputation of the profession;
 - The acceptance of gifts of significant sums money without advising Mr C to get independent legal advice was damaging to the reputation of the profession, as were the dishonest attempts to mislead his employer;
 - Did not mislead the SRA;
 - It was not a one-off gift for a small amount, it was over £4,000 made up of significant payments on several occasions over a four-month period.
43. The Tribunal found the following aggravating features to be present:
- Dishonesty;
 - The misconduct was deliberate calculated and repeated;
 - The misconduct continued over a period time – the payments were over a period of time, 4 months. The dishonest invoice perpetuated an existing lie over a period time. The invoice was dated August 2014, and was produced to the Firm to support a lie told in 2015;
 - The Respondent knew or ought to have known was in material breach of his obligations;
 - The purpose of the lie to his employer and the invoice was concealment of wrongdoing.
44. The Tribunal identified the following mitigating factors:
- The Respondent had made a number of admissions;
 - He had no previous disciplinary matters and a previously unblemished career;
 - He had co-operated with the SRA.

45. The misconduct was so serious that a Reprimand, Fine or Restriction Order and/or a Suspension, as suggested by the Respondent, would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

“34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.”

46. The Tribunal rejected the Respondent’s submission that the change in the test for dishonesty was relevant to the question of sanction. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.
47. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal had regard to the Respondent’s personal circumstances both at the material time and at the time of the hearing. The Tribunal found there to be nothing that would justify an indefinite suspension. The only appropriate and proportionate sanction was that the Respondent be Struck-Off the Roll.

Costs

Applicant’s Submissions

48. Mr Ramasamy applied for costs in the sum of £24,790.10.
49. Mr Ramasamy told the Tribunal that there was no update to the September costs schedule despite additional days on which the Tribunal had sat. This followed a review of the Respondent’s statement of means. The schedule covered two days. The SRA was right to bring the matter consistent with its public duty.

Respondent’s Submissions

50. The Respondent told the Tribunal that the hearing had taken two and a half days, and the majority was over the arguments concerning Mr C, which he had admitted in part. The Tribunal had found Allegation 1 not proved. He invited the Tribunal to reduce the costs to reflect this.
51. He had put his case to the SRA at an early stage before referral to the Tribunal. There had been no reply and seven months later statements had been taken as part of the investigation. The Respondent asked the Tribunal to take that into account. This was a feature of the way matters had been dealt with. He had provided what he was asked for. The Respondent noted that the claim for 40 hours work on the Forensic Investigation was not broken down. There had been significant time delays and much of the work had been spent taking statements from and relating to Mr C.

52. The Respondent took the Tribunal through his Personal Financial Statement dated 19 November 2018 in detail. The maximum in theory he could earn was £4,000 a month. In reality it was nearer to £400-600. His monthly surplus should be £349. He had no significant assets and did not own any property.

The Tribunal's Decision

53. The Tribunal reviewed the cost schedule and the Respondent's personal financial statement, notwithstanding the lateness of service.
54. The Forensic Investigation costs were not broken down and Allegation 1 had not been proved.
55. The Applicant had confined its claim to a two-day hearing.
56. The Tribunal considered it appropriate to make a small reduction to reflect the fact that Allegation 1 had not been proved and to take account of the lack of detail in relation to the Forensic Investigation costs, while recognising that the costs claimed could have been higher. The Tribunal assessed the costs at £22,000.
57. The Tribunal then considered the Respondent's means. He clearly had a modest income which was likely to be further reduced by the loss of his ability to practice. He had no significant assets and would likely not be able to pay a costs order. Taking all those factors into account the Tribunal reduced the costs order against him to £11,000.

Statement of Full Order

58. The Tribunal Ordered that the Respondent, ROBERT LESLIE PERRY, 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 £11,000.00.

Dated this 11th day of December 2018

On behalf of the Tribunal



D. Green
Chairman

Judgment filed
with the Law Society

on 11 DEC 2018