

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11713-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

SARAH ANNE HEMMINGS

Respondent

Before:

Mr J. C. Chesterton (in the chair)

Ms A. Horne

Mr M. Palayiwa

Date of Hearing: 2 March 2018

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The Allegations against the Respondent were that she, while in practice as a Member at Wilkins Solicitors LLP (“the Firm”):

Client 4 Matter

- 1.1 Between 1 January 2014 and 6 February 2014, failed to advise Client 4 that she should seek independent legal advice prior to bequeathing a £2,000 legacy to the Respondent in her Will. She thereby:
 - 1.1.1 breached any or all of Principles 3, 4 and 5 of the SRA Principles 2011; and
 - 1.1.2 failed to achieve Outcome 3.4 of the SRA Code of Conduct 2011.
- 1.2 On or about 5 April 2016, requested a cheque for £2,000 made payable to herself from Client 4’s Estate, in circumstances where the Respondent had failed to advise Client 4 to take independent legal advice concerning the bequeathing of the legacy to the Respondent. She thereby:
 - 1.2.1 breached any or all of Principles 3 and 4 of the SRA Principles 2011; and
 - 1.2.2 failed to achieve Outcome 3.4 of the SRA Code of Conduct 2011.
- 1.3 On or about 22 April 2016, requested a cheque for £2,000 made payable to National Savings from Client 4’s Estate when she knew the cheque was intended to be directed to an account in her own name in order to conceal the true beneficiary from the other managers at the Firm. She thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011.
- 1.4 Between 22 April 2016 and 25 April 2016, sent the cheque resulting from the request at paragraph 1.3 above, to be drawn from Client 4’s Estate, together with a covering letter directing that the monies be held on her behalf, when she had been told by Mr Robert Smith of the Firm that she was not entitled to the monies. She thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011.
- 1.5 The Respondent acted dishonestly in respect of the matters set out in Allegations 1.3 and 1.4 above or any of them. Whilst dishonesty was alleged in respect of Allegations 1.3 and 1.4 above, proof of dishonesty was not an essential ingredient to prove those allegations.

Client 1 Matter

- 1.6 Between October 2010 and May 2011, accepted instructions to act on behalf of Client 2 and Client 3 in circumstances where their instructions gave rise to a conflict of interest. She thereby breached any or all of Rules 1.04, 1.05, 1.06 and 3.01 of the SRA Code of Conduct 2007.
- 1.7 Between December 2010 and May 2011, breached Client 2’s client confidentiality by informing Client 3 of the following facts:

- 1.7.1 On 14 December 2010, that Client 2 had been in contact to discuss the Lasting Power of Attorney and Deputyship;
- 1.7.2 on 16 February 2011, that Client 2 had been in contact regarding the Power of Attorney; and
- 1.7.3 on 10 May 2011, that Client 2 wanted to go ahead with applying for the Lasting Power of Attorney and that Client 2 had been in contact with Client 1's GP;

and in doing so breached any or all of Rules 1.02, 1.04, 1.05 and 1.06 of the SRA Code of Conduct 2007.

- 1.8 On or about 9 May 2011, sent an email to Client 2 in which she stated, "With regard to [Client 3]...The only contact I have had with her was sometime last year when she called the office to make an appointment for me to go out and see [Client 1] alone to discuss the power of attorney." when she had in fact been in contact with her in December 2010, January 2011 and/ or February 2011 in respect of both a Lasting Power of Attorney and an application for a Deputyship Order. She thereby breached any or all of Rules 1.02, 1.05 and 1.06 of the SRA Code of Conduct 2007.
- 1.9 The Respondent acted dishonestly in respect of the matters set out in Allegation 1.8 above. Whilst dishonesty was alleged in respect of Allegation 1.8 above, proof of dishonesty was not an essential ingredient to prove those Allegations.

Documents

2. The Tribunal had before it the following documents:-
- Application and Rule 5 Statement dated 8 September 2017
 - Statement of Agreed Facts and Outcome
 - Schedule of Costs
 - Chronology of Correspondence

Factual Background

3. The Respondent was admitted to the Roll of Solicitors on 1 September 1997. At the time of the hearing she held a current practising certificate free from conditions. The Respondent resigned from the Firm on 29 April 2016. She was currently employed as a Private Client solicitor at Caversham Solicitors, Caversham Chambers, 51a Church Street, Caversham, Reading, RG4 8AX. At all relevant times the Firm operated from premises at Lincoln House, 6 Church Street, Aylesbury, Bucks, HP20 2QS.

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

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

The Tribunal's Decision

5. 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 her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
6. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.
7. 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.
8. The Respondent had admitted to serious professional misconduct including dishonesty. The breaches of the Rules and Principles included breaches of trust, acting where there was a conflict of interest and misappropriating client funds for personal financial gain. She was an experienced solicitor and these matters went to the heart of a solicitor's duties. The misconduct had taken place on a number of occasions over a significant period of time. The level of culpability was at the highest end of the scale and the harm done to the reputation of the profession was very significant. The Tribunal found that the matters were too serious for a reprimand, fine or suspension. The gravity was such that the only appropriate sanction was a strike-off, as had been agreed between the parties. The protection of the public and the reputation of the profession demanded no less.
9. The Tribunal considered whether there were any exceptional circumstances that might justify a departure from a strike-off. It could find none and indeed no mitigation had been advanced. In all the circumstances no lesser sanction than a strike-off could be justified.
10. The Tribunal found that the proposed Agreed Outcome was appropriate and therefore approved it.

Costs

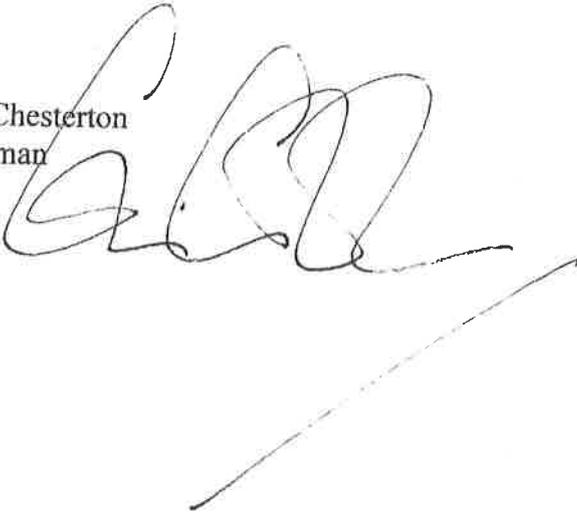
11. The parties had agreed that the Respondent would pay the Applicant's costs fixed in the sum of £15,000. The Tribunal noted that the costs at the date of the issuing of proceedings had been £27,850.78. The Tribunal was satisfied that the agreed figure was reasonable and proportionate and therefore also approved this aspect of the Agreed Outcome.

Statement of Full Order

12. The Tribunal Ordered that the Respondent, SARAH ANNE HEMMING, 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 £15,000.00.

Dated this 12th day of March 2018
On behalf of the Tribunal

J. C. Chesterton
Chairman

A handwritten signature in black ink, appearing to be 'J. C. Chesterton', written over a horizontal line.

Judgment filed
with the Law Society
on 13 MAR 2018

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

Case Number: 11713-2017

IN THE MATTER OF THE SOLICITORS ACT 1974 (AS AMENDED)

B E T W E E N:

SOLICITORS REGULATION AUTHORITY

Applicant

and

SARAH ANNE HEMMINGS

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

1. By a Statement made by Mark Whiting on behalf of the Solicitors Regulation Authority ("SRA") pursuant to Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007, dated 8 September 2017, the SRA brought proceedings before the Tribunal making allegations of misconduct against the Respondent. The Tribunal gave directions on 11 May 2017, which were amended on 19 September 2017. The substantive hearing is listed for 2 days on 13 and 14 March 2017.
2. The Respondent is willing to make admissions to the allegations against her in the Rule 5 Statement as set out at paragraph 4 below, and she accepts the factual basis of the admitted allegations as set out in this document. The Respondent also agrees to an Order that she be struck off the Roll of Solicitors.
3. The SRA has considered the admissions made and whether those admissions, and the outcome proposed in this document, meet the public interest having regard to the gravity of the matters alleged. In circumstances where the Respondent has admitted all the allegations and accepted that the ultimate sanction of a strike off is appropriate, the

Applicant is satisfied that the admissions and outcome satisfy the public interest. A higher sanction could not be achieved through a hearing which would therefore incur unnecessary costs.

ADMISSIONS

4. The Respondent admits the following allegations:

Client 4 matter

- 1.1. Between 1 January 2014 and 6 February 2014, she failed to advise Client 4 that she should seek independent legal advice prior to bequeathing a £2,000.00 legacy to the Respondent in her Will. She thereby:
 - 1.1.1. breached any or all of Principles 3, 4 and 5 of the SRA Principles 2011; and
 - 1.1.2. failed to achieve Outcome 3.4 of the SRA Code of Conduct 2011.

- 1.2. On or about 5 April 2016, she requested a cheque for £2,000.00 made payable to herself from Client 4's Estate, in circumstances where the Respondent had failed to advise Client 4 to take independent legal advice concerning the bequeathing of the legacy to the Respondent. She thereby:
 - 1.2.1. breached any or all of Principles 3 and 4 of the SRA Principles 2011; and
 - 1.2.2. failed to achieve Outcome 3.4 of the SRA Code of Conduct 2011.

- 1.3. On or about 22 April 2016, she requested a cheque for £2,000.00 made payable to National Savings from Client 4's Estate when she knew the cheque was intended to be directed to an account in her own name in order to conceal the true beneficiary from the other managers at the Firm. She thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011.

- 1.4. Between 22 April 2016 and 25 April 2016, sent the cheque resulting from the request at paragraph 1.3 above, to be drawn from Client 4's Estate, together with a covering letter directing that the monies be held on her behalf when she had been told by Mr Robert Smith of the Firm that she was not entitled to the monies. She thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011.
- 1.5. The Respondent acted dishonestly in respect of the matters set out in allegations 1.3 and 1.4 above or any of them, for the reasons set out at paragraphs 23-27 of the Rule 5 Statement. Whilst dishonesty is alleged in respect of allegations 1.3 and 1.4 above, proof of dishonesty is not an essential ingredient to prove those allegations.

Client 1 matter

- 1.6. Between October 2010 and May 2011, she accepted instructions to act on behalf of Client 2 and Client 3 in circumstances where their instructions gave rise to a conflict of interest. She thereby breached any or all of Rules 1.04, 1.05, 1.06 and 3.01 of the SRA Code of Conduct 2007.
- 1.7. Between December 2010 and May 2011, she breached Client 2's client confidentiality by informing Client 3 of the following facts:
- 1.7.1. on 14 December 2010, that Client 2 had been in contact to discuss the Lasting Power of Attorney and Deputyship;
 - 1.7.2. on 16 February 2011, that Client 2 had been in contact regarding the Power of Attorney; and
 - 1.7.3. on 10 May 2011, that Client 2 wanted to go ahead with applying for the Lasting Power of Attorney and that Client 2 had been in contact with Client 1's GP;
- and in doing so breached any or all of Rules 1.02, 1.04, 1.05 and 1.06 of the SRA Code of Conduct 2007.
- 1.8. On or about 9 May 2011, sent an email to Client 2 in which she stated, "*With regard to [Client 3]...The only contact I have had with her was sometime last year when she called the office to make an appointment for me to go out and see [Client 1] alone to discuss the*

power of attorney.“ when she had in fact been in contact with her in December 2010, January 2011 and/ or February 2011 in respect of both a Lasting Power of Attorney and an application for a Deputyship Order. She thereby breached any or all of Rules 1.02, 1.05 and 1.06 of the SRA Code of Conduct 2007.

- 1.9. The Respondent acted dishonestly in respect of the matters set out in allegations 1.8 above, for the reasons set out at paragraphs 40-42 of the Rule 5 Statement. Whilst dishonesty is alleged in respect of allegations 1.8 above, proof of dishonesty is not an essential ingredient to prove those allegations.

AGREED FACTS

Summary

5. Matters came to the attention of the SRA when the SRA received a complaint from Client 2, the step-son of Client 1, on 31 August 2014. The SRA subsequently received a report from the COLP of the Firm, Robert Smith, dated 27 October 2015. In brief summary, it is alleged against the Respondent that:

5.1 In respect of the matter of Client 4, the Respondent advised Client 4 in respect of the redrafting of her Will in 2013/ 2014. In the redraft, the Respondent was named as an executor and Client 4 increased the legacy left to each of the executors from £1,000 to £2,000. Client 4 passed away in March 2015. In April 2016, the Respondent made a request for a cheque of £2,000.00 from the Firm's client account (which held Client 4's Estate funds) to be made payable to herself. The cheque was brought to the attention of the COLP of the Firm, Mr Smith. Mr Smith spoke with the Respondent and the Respondent agreed that she was not entitled to the money. Thereafter, the Respondent made a request for a cheque from the Firm's client account made payable to National Savings in the sum of £2,000.00. The cheque was produced and the Respondent sent it to National Savings, together with a letter requesting that the funds be directed to an account in her own name.

5.2 In respect of the matter of Clients 1 and 2, Client 1 had been a client of the Firm for a number of years. In July 2010 he suffered a stroke and was subsequently placed

into care. Prior to being taken into care, Client 1 had a cleaner, Client 3, to whom it appears he had become close. Following his admission into a care home, both Client 2 and Client 3 contacted the Respondent in order to instruct her to execute a Lasting Power of Attorney and/ or a Deputyship order. It was clear that a conflict of interest existed as between Client 2 and Client 3. The Respondent nevertheless accepted instructions to act on behalf of both parties. In the months that followed, the Respondent disclosed details of Client 2's instructions to Client 3. In May 2011, the Respondent informed Client 2 that she had had no contact with Client 3 since 2010, when in fact there had been a number of contacts in 2011.

Client 4 Matter

6. Client 4 first instructed the Firm in 2001, at which time a Will was prepared on her behalf which named a former partner at the Firm as an executor. The Will provided that all executors would receive a legacy of £1,000.00. A first Codicil was executed by Client 4 on 8 November 2005.
7. On 7 January 2014, the Respondent had a conference with Client 4 regarding Client 4's Will. The attendance note states, "*as DJC had retired it may be a good idea for her to appoint another Solicitor to act with them in the Will.*" There was no discussion regarding an increase in the legacy to the Executors, nor did the Respondent advise Client 4 to seek independent legal advice in respect of the increase in legacy.
8. Following the meeting, the Respondent wrote to Client 4 to advise on the Will. Within the letter, the Respondent suggested that Client 4 execute a Codicil to remove the former partner of the Firm and appoint another solicitor (*'such as myself*) to act as Executor. The Respondent also requested that Client 4 instruct her on whether the legacy of £1,000.00 to each Executor should remain. The letter did not advise Client 4 to seek independent legal advice in respect of the increase in legacy to the Executors.
9. The second Codicil was executed on 6 February 2014. Within the Codicil, Client 4 appointed the Respondent as an Executor in place of the former partner of the Firm, and increased the legacy to each of the Executors from £1,000.00 to £2,000.00.
10. The Respondent did not advise Client 4 to seek independent legal advice in respect of the increase in legacy.

11. Client 4 passed away on 6 March 2015 and the Grant of Probate was received on 25 August 2015. On 5 April 2016, the Respondent issued a request to the Firm's accounts department to issue a cheque in the sum of £2,000.00 from the ledger account of Client 4, to be made payable to the Respondent.
12. The accounts department prepared the cheque for the Partner and COLP of the Firm, to sign. The COLP asked why the Respondent had made the cheque payable to herself and she referred him to the Will of Client 4.
13. The COLP asked the Respondent to telephone the Professional Ethics Helpline to check what the position was in the circumstances. The Respondent reported back that the Professional Ethics Helpline had stated that Client 4 should have been advised to seek independent legal advice. The Respondent stated that she had not advised Client 4 to seek independent legal advice prior to the increase in legacy taking place. The Respondent agreed that she was not entitled to the monies. The COLP thereafter wrote 'no longer required' on the cheque requisition, and returned it to the accounts department.
14. On 22 April 2016, the Respondent submitted a request for a cheque for £2,000.00 made payable to National Savings from the ledger account of Client 4. In the 'details' section, the Respondent wrote "*investment of unpaid legacy on behalf of [unreadable]*". The cheque was issued by the accounts department.
15. On 22 April 2016, the Respondent drafted a letter to National Savings. The letter stated,

"On behalf of Miss Sarah Anne Hemmings, we enclose a cheque in the sum of £2,000 for investment in her Premium Bonds."
16. The letter was sent to National Savings, together with a cheque in the sum of £2,000. On the reverse of the cheque was written, "*Miss Sarah Anne Hemmings. Holder's number [...]. NS [Unreadable] number [...]*"
17. On 25 April 2015, National Savings wrote to the Firm to request further information prior to the banking of the cheque. On 28 April 2016, the Respondent voluntarily attended the room of the COLP of the Firm, produced a copy of the documents from National Savings and stated she had sent the cheque to £2,000.00 so that the money would be

paid into an account for the Respondent's benefit. When asked why the Respondent had done it and she stated that she, "needed the money."

18. The Respondent admits that she acted dishonestly in respect of Client 4's matter in the following ways:
 - 18.1. the Respondent was told that she was not entitled to the monies and yet still attempted to obtain them.
 - 18.2. the Respondent requested a cheque to be made payable to National Savings in order to hide the identity of the true beneficiary (herself) from the other partners at the Firm.
 - 18.3. as an experienced solicitor, the Respondent was aware of her general duties to be honest. No solicitor in the position of the Respondent would think it was honest by the standards of honest and reasonable people to deliberately conceal that they were the true beneficiary of client monies.

Client 1 Matter

19. Client 1 had been a client of the Firm since 2001, when the Respondent assisted in the drafting of his Will. The Respondent also assisted in the redrafting of Client 1's Will in 2006. Client 1 suffered a stroke on 26 July 2010 and, as a consequence, was in hospital for a period before being placed into a care home.
20. In October 2010, Client 2 spoke with the Respondent regarding the preparation of a Lasting Power of Attorney in his name in respect of Client 1. During the conversation, Client 2 advised that he had concerns about the relationship between Client 1 and Client 3. The Respondent advised Client 2 not to have any further contact with Client 3.
21. The Respondent, following receipt of a telephone call from Client 3, visited Client 1 at the care home in order for him to sign a Lasting Power of Attorney. At the meeting, it became clear to the Respondent that Client 1 did not have the capacity to sign or provide instructions. Following the visit, the Respondent's secretary made an appointment for Client 3 to attend for a conference with the Respondent on 14 December 2010.

22. On 14 December 2010, the Respondent met with Client 3 to discuss a proposed application for a Deputyship Order in respect of Client 1. The Respondent disclosed to Client 3 that Client 2 had been in contact with the Respondent to request a copy of Client 1's Will and discuss the Lasting Power of Attorney and Deputyship. The Respondent confirmed that she would assist Client 3 in making the application for Deputyship and provided advice in respect of the making of the application.
23. On 20 December 2010, the Respondent wrote to Client 3 to request further information in respect of Client 1's finances and documents to confirm Client 3's identity.
24. On 26 January 2011, the Respondent wrote to Client 3 enclosing the draft application for the Deputyship Order for Client 3's signature and to request payment of £131.07 for the Medical Assessment Form from Client 1's GP.
25. On 14 February 2011, Client 2 emailed the Respondent to confirm he wished her to act for him in applying for a Power of Attorney in respect of Client 1. In the email, Client 2 set out his concerns in respect of Client 3. The Respondent replied on 15 February 2011, advising Client 2 of the steps to take in respect of the application.
26. On 16 February 2011, the Respondent wrote to Client 3 to confirm she had received contact from Client 2. In the email, the Respondent confirmed she had first received instructions to assist Client 2 with a Lasting Power of Attorney in October/ November 2010.
27. On 4 April 2011, the Respondent wrote to Client 3 to confirm receipt of £132 in cash. The letter requests copies of Client 3's identification documents for money laundering/ due diligence purposes.
28. On 9 May 2011, the Respondent emailed Client 2. Within her email, the Respondent stated, "*With regard to [Client 3]...The only contact I have had with her was sometime last year when she called the office to make an appointment for me to go out and see [Client 1] alone to discuss the power of attorney.*"
29. On 10 May 2011, the Respondent wrote to Client 3, informing her that Client 2 wanted to go ahead with applying for the Lasting Power of Attorney and that Client 2 had been in contact with Client 1's GP.

30. The Respondent proceeded to act for Client 3 in his application for a Deputyship Order. The Order was granted on 12 November 2012.

31. The Respondent admits that she acted dishonestly in respect of Client 1's matter in the following way:

31.1. Contrary to the statement made by the Respondent to Client 2 on 9 May 2011 (i.e. that the only contact she had had with Client 3 was sometime in 2010), she had in fact had contact with Client 3 on a number of occasions from 2010 to 2011.

MITIGATION

32. The Respondent has confirmed that she does not wish to advance any mitigation at this time.

AGREED OUTCOME

33. The Respondent is an experienced practitioner, having been admitted to the Roll of Solicitors on 1 September 1997. Her actions amount to a serious breach of the SRA Code of Conduct 2011 in two separate matters.

34. In respect of harm, in Client 4's matter the Respondent acted dishonestly with the intention of making personal financial gain to the detriment of third parties. In respect of Client 1's matter, the Respondent made a misleading statement to Client 2 whilst also disclosing confidential matters to a third party with whom she knew Client 2 was in conflict. Her actions would have a serious negative effect on public confidence in the profession.

35. With reference to paragraph 19 of the 5th Edition of the Solicitors Disciplinary Tribunal Guidance Note on Sanctions (December 2016) ("the Guidance") the seriousness of the misconduct is at the highest level. Dishonesty is admitted in relation to both matters. In respect of Client 4's matter, the Respondent made two attempts to make personal

financial gain. When the first attempt did not work, she attempted to conceal the true beneficiary from the Firm so that the cheque would be approved. Not only was her conduct dishonest, the Respondent knew or ought to have known that the conduct complained of was in material breach of her obligations to protect the public and the reputation of the legal profession.

36. It is agreed that a lesser sanction than striking off the Roll would be inappropriate.

37. The Respondent agrees to be struck from the Roll of Solicitors and to pay costs to the SRA in the sum of £15,000.00.

SIGNED:

.....
MARK HOWARD WHITING

On behalf of the Solicitors Regulation Authority

.....
SARAH HEMMINGS

Respondent

DATE: