

## **SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11749-2017

### **BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

AMANDA ELIZABETH DAVIES

Respondent

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Before:

Ms N. Lucking (in the chair)

Mr G. Sydenham

Mrs L. McMahon-Hathway

Date of Hearing: 31 May 2018

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### **Appearances**

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

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## **JUDGMENT ON AN AGREED OUTCOME**

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### **Allegations**

1. The allegations made against the Respondent by the Applicant were set out in a Rule 5 Statement dated 6 November 2017 and were that:
  - 1.1. On 10 June 2016, she made statements to the Mother of her client, Ms. K.C, concerning the progress of a claim for damages under the Fatal Accident Act 1976 which were untrue and which she knew, or should have known, to be untrue at the time that they were made. She thereby breached any or all of:
    - 1.1.1. Principle 2 of the SRA Principles 2011; and
    - 1.1.2. Principle 6 of the SRA Principles 2011
  - 1.2. Between 30 December 2015 and 15 September 2016, she created twenty three letters which, to her knowledge, were each dated earlier than the actual date of their creation and placed them on the relevant client matter files so as to make it appear that she had progressed those matters when she had not. She thereby further breached any or all of:
    - 1.2.1. Principle 2 of the SRA Principles 2011; and
    - 1.2.2. Principle 6 of the SRA Principles 2011
2. In addition, dishonesty was alleged with respect to each of these allegations.

### **Documents**

3. The Tribunal had before it the following documents:-
  - Application and Rule 5 (2) Statement dated 6 November 2017
  - The Respondent's Response to the Rule 5(2) Statement dated 19 December 2017
  - Statement of Agreed Facts and Proposed Outcome
  - Applicant's Statement of Costs dated 6 November 2017
  - Emails from the Applicant to the Tribunal and Respondent's legal representative dated 24 May 2018, 30 May 2018 and 31 May 2018

### **Factual Background**

4. The Respondent was born in April 1986 and was admitted to the Roll of Solicitors on 3 September 2012. At the date of the Rule 5 Statement she did not hold a practising certificate and had not done so since 31 October 2016.
5. From 5 April 2015 until 21 September 2016 the Respondent was employed as an Assistant Solicitor by JCP Solicitors Ltd which carried on practice from offices in Swansea. The Respondent undertook personal injury work.
6. Between 30 December 2015 and 15 September 2016, the Respondent created a total of twenty three backdated letters on clinical negligence and personal injury files relating to nine separate clients. Twenty two of those letters were between July and September 2016. She did so to conceal her inactivity on those files.

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

7. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Proposed 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**

8. 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.
9. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.
10. 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 Respondent had faced allegations of dishonesty and had admitted dishonesty. Whilst she advanced a number of factors by way of mitigation she did not seek to establish that there were exceptional circumstances. The proposed sanction was that the Respondent be struck off the Roll of Solicitors and the Tribunal considered that this was the appropriate sanction and made the order sought.

### **Costs**

11. The parties agreed that the Respondent should pay costs in the sum of £2,500. The Tribunal considered this to be appropriate and proportionate and ordered that the Respondent pay costs in the agreed amount.

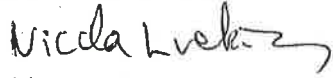
### **Redaction of the Agreed Facts and Proposed Outcome Document**

12. The Tribunal had received a version of the Agreed Facts and Proposed Outcome document that it considered could potentially identify a client. The parties were asked to make two amendments in respect of the information contained about that client prior to publication. This information did not relate to the Respondent or the Tribunal's decision on whether or not to approve the proposed outcome it purely related to that client's personal circumstances.

### **Statement of Full Order**

13. The Tribunal Ordered that the Respondent, AMANDA ELIZABETH DAVIES, 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 £2,500.00.

Dated this 13<sup>th</sup> day of June 2018  
On behalf of the Tribunal



N. Lucking  
Chair

Judgment filed  
with the Law Society  
on 12 JUN 2018

Number:1202591-2017

**IN THE MATTER OF THE SOLICITORS ACT 1974**

**SOLICITORS REGULATION AUTHORITY**

**Applicant**

**AMANDA ELIZABETH DAVIES**

**Respondent**

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**STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME**

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1. By its application dated 6 November 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 two allegations of misconduct against Ms. Amanda Elizabeth Davies.

**The allegations**

2. The allegations against Ms. Davies, made by the SRA within that statement were that: -

- 2.1. On 10 June 2016, she made statements to the Mother of her client, Ms. K.C, concerning the progress of a claim for damages under the Fatal Accident Act 1976 which were untrue and which she knew, or should have known to be untrue at the time that they were made. She thereby breached any or all of:

- 2.1.1. Principle 2 of the SRA Principles 2011; and

- 2.1.2. Principle 6 of the SRA Principles 2011

- 2.2. Between 30 December 2015 and 15 September 2016, she created 23 letters which, to her knowledge, were each dated earlier than the actual date of their creation and

placed them on the relevant client matter files so as to make it appear that she had progressed those matters when she had not. She thereby further breached any or all of:

2.2.1. Principle 2 of the SRA Principles 2011; and

2.2.2. Principle 6 of the SRA Principles 2011

3. In addition, dishonesty was alleged with respect to each of these allegations.
4. In her Response to the Statement of the Applicant dated 19 December 2017 Ms. Davies admitted both the allegations. She also admitted that her conduct was dishonest.

#### Agreed Facts

5. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraph 2 of this statement, are agreed between the SRA and Ms. Davies.

5.1. Miss Davies, who was born on 18 April 1986, was admitted to the Roll of Solicitors on 3 September 2012. She does not presently hold a practising certificate and has not done so since 31 October 2016.

5.2. From 5 April 2015 until 21 September 2016 Miss. Davies was employed as an Assistant Solicitor by JCP Solicitors Ltd, a recognised body which carries on practice from offices in Swansea ("JCP"), where she undertook personal injury work. From 14 October 2014 until 5 April 2015 she had been employed by John Collins & Partners LLP to which JCP was the successor practice.

5.3. Between 30 December 2015 and 15 September 2016, during that employment, Ms. Davies created a total of 23 back dated letters on clinical negligence and personal injury files relating to 9 separate clients. 22 of those letters were between July and September 2016. She did so to conceal her inactivity on those files.

5.4. In addition, on 10 June 2016 Miss. Davies had also provided Mrs. H.D, the mother of her client Miss K.C, with information which was untrue, and which she knew to be

untrue, concerning the progress of a claim being brought by Miss. K.C. The circumstances in which that untrue information was provided was as follows: -

- 5.4.1. Miss. K.C was the Administrator of the Estate of her husband, Mr. S.C. She had instructed JCP to bring a claim against a Ms. J.M for damages in relation to his death in a road traffic accident on 19 April 2014, including damages under the Fatal Accident Act 1976. Mr. Thomas, a director of JCP and the head of its catastrophic injury team, had conduct of the file but was being assisted by Miss. Davies.
- 5.4.2. Ms K.C. suffered from various health difficulties in consequence of which her parents were assisting her with her claim.
- 5.4.3. Liability for the claim was admitted but the amount of damages was in dispute. Ms. J.M's insurers were disputing a claim by Ms. K.C for loss of dependency because she was separated from Mr. S.C.
- 5.4.4. On the 13 April 2016 Miss. Davies met with Ms. K.C and Mr. T.D, at the office of JCP. The purpose of that meeting was to discuss an offer of £20,000 in full and final settlement of the claim which had been received from Ms. J. M's insurers. and was instructed to make an offer of settlement in the sum of £120,000.
- 5.4.5. Following that meeting, on 9 June 2016, Mrs. H.D emailed Miss. Davies saying "...[KC] has been asking me about the claim and wondering if there is any progress regarding the same..." and Miss. Davies replied on the next day saying "...I have chased the Defendant's Insurers for a response to the counter offer which we have put forward in an attempt to conclude Kary's claim as unfortunately I had not heard from them. I hope to receive their response in the next few weeks and shall contact you as soon as I have further news..."
- 5.4.6. This statement was untrue because Miss. Davies had not put forward a counter-offer as she had been instructed to do. It was also a statement which Miss. Davies knew to be untrue.

5.4.7. On 21 September 2016 Mr. Thomas reviewed the file and spoke to Ms. J. M's insurers. The relevant attendance note records "...Have they had Part 36 from us? No. They have chased us in response to their Part 36 by way of letter of the 18th July. Unfortunately that letter is not on our file. Can we email across our Part 36? They are keen to settle this if they can."

5.4.8. A Part 36 offer was made by Mr. Thomas on behalf of Ms. K.C that same day and the claim eventually settled based on a payment to Ms. K.C of the sum of £65,000.

5.5. On 22 September 2016 an investigation meeting was convened by JCP to discuss these various concerns. At the outset of that meeting, Miss. Davies admitted that she had fabricated documents and records and handed in a letter resigning with immediate effect. As a result the investigation did not continue.

5.6. On 27 September 2016, Mr. Kevin O'Brien, another director of JCP and its Compliance Officer for Legal Practice, submitted a report to the SRA concerning the conduct of Miss. Davies.

5.7. The SRA subsequently commenced an investigation into the conduct of Miss. Davies.

5.8. In the course of that investigation, on 3 March 2017, the Regulatory Supervisor wrote to Miss. Davies asking her to answer various allegations including that she had informed Mrs. H.D that a Counter-offer had been made on behalf of Ms. K.C when it had not, that she had created and backdated correspondence to make it appear that the relevant client file had been progressed when it had not and dishonesty. Under the heading "Summary of facts" it stated, in relation to Ms. K.C

*"You attended a client meeting on 13 April 2016 together with your colleague Mr. Keith Thomas. The meeting was in relation to your client [Ms. K.C] who was the claimant in this litigation. The client was represented by a litigation friend (her mother) [Mrs. H.D]. At the meeting you were instructed to make a Part 36 settlement offer of £120,000 to the Defendant on behalf of your client..."*

*On 9 June 2016 you received an email from the client's litigation friend [Mrs. H.D] [Mrs. H.D] wanted a progress update in respect of [Ms. K.C]'s claim. You replied to*



*[Mrs. H.D] by email on 10 June 2016 stating "I have chased the Defendant's insurers for a response to the counter offer which we have put forward...*

*At the point of sending your email on 10 June 2016 no counter offer had been communicated to the Defendant on behalf of your client ... In fact, the counter offer was first put to the Defendant on 21 September 2016."*

In relation to the question of the backdating of correspondence, it stated under the same heading:

*"It appears that during your employment with JCP you created a number of back-dated letters in order to your Supervisors the impression you were progressing client files in circumstances when you were not"*

It then gave details of each of the letters concerned, identifying in each case the actual date of creation and date of writing given on the correspondence.

- 5.9. In her response to that letter, which was dated 23 March 2017, Miss. Davies admitted the allegations made against her and agreed the statement of facts set out by the Supervisor. She explained that she had been working long hours at the relevant time because of a heavy case load and that her Grandfather had been diagnosed with terminal cancer. She goes on to say:

*"The actions described within your letter dated 3rd March 2017 were taken in an effort to give myself some breathing space in dealing with the files. I amended letters to show my supervisors that I was in control of my files and they were progressing appropriately. I did not send any of the letters created and always tried to act in the best interests of my clients, it was simply a case that I was no longer able to cope. My plan had been to show my supervisors that I was on top of my work and I could then do the work needed on the relevant files.*

*I did not set out to mislead JCP or my clients. I have never misled the Court or solicitors acting for other parties in the cases I am involved with. I am hugely embarrassed and distressed by the situation I now find myself in"*

- 5.10. On 17 July 2017, an Authorised Officer of the SRA decided to refer the conduct of Miss. Davies to the Tribunal.

### Non-Agreed Mitigation

6. The following mitigation, which is not agreed by the SRA, is put forward by Miss. Davies:

6.1. This is the first occasion on which she has appeared before the Solicitors Disciplinary Tribunal. She has never been the subject of a disciplinary finding by the SRA.

6.2. She made early admissions to her misconduct to both JCP as her employer and the SRA as her regulator. She has also shown insight into the seriousness of her misconduct by accepting that she should be subject to the usual penalty in cases involving dishonesty.

6.3. The misconduct occurred at a time when there were extenuating circumstances in her private life, namely her Grandfather's final illness. Miss Davies was her Grandfather's primary carer, he was diagnosed with terminal lung cancer in August 2016 and passed away on 5<sup>th</sup> October 2016.

6.4. She had been employed as a personal injury solicitor by JCP Solicitors. During the relevant period, she was asked to take over conduct of a significant number of head injury and medical negligence cases all of which were outside of her area of specialism and for which she received no additional training or support;

6.5. Her work load was too much for her to handle on her own, her employers offered no support and she was regularly struggling to sleep and was suffering from anxiety (albeit undiagnosed). Not only was she required to carry out her own case load, she was expected to supervise the work of junior members of staff.

6.6. In April 2016, she was encouraged by her supervising partners to take up a position as a Secretary for a local charity in order to progress her career and give good exposure for the Firm. This added to the pressures of her already significant workload;

6.7. Miss Davies received no financial gain for her misconduct. Her actions were simply to buy her time in an effort to keep on top of her ever increasing workload;

- 6.8. None of the clients who were given incorrect information suffered financially as a result of Miss Davies' actions.
- 6.9. With regard to the matter of Ms. K.C, Miss Davies was not aware of the extent of the disability of her client. That disability was not so serious as to require a litigation friend in any event.
7. However, Miss. Davies does not contend that the mitigation set out above amounts to exceptional circumstances which would justify the Tribunal in making any order other than that she be struck off the Roll.

#### **Penalty proposed**

8. It is therefore proposed that Miss. Davies should be struck off the Roll of Solicitors.
9. With respect to costs, it is further agreed that Miss. Davies should pay the SRA's costs of this matter agreed in the sum of £2,500.

#### **Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance**

10. Miss. Davies has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (5th edition), at paragraph 47, states that: "*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 (see Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)).*"
11. In Sharma [2010] EWHC 2022 (Admin) at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:
- "(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...*
- (b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...*

*(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others..."*

12. Miss. Davies dishonestly created 23 separate back dated documents over a nine-month period and, separately, made untrue statements to the parents of a vulnerable client concerning the progress of litigation. Her case does not fall within the small residual category where striking off would be a disproportionate sentence. Accordingly, the fair and proportionate penalty in this case is for Miss Davies to be struck off the Roll of Solicitors.

**A J BULLOCK**

**Andrew John Bullock, Senior Legal Adviser upon behalf of the SRA**

**A E DAVIES**

**Amanda Elizabeth Davies**