

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11755-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ANDREW JOHN PUDDICOMBE

Respondent

Before:

Mr D. Green (in the chair)

Mr B. Forde

Mrs C. Valentine

Date of Hearing: 8 February 2018

Appearances

There were no appearances on behalf of the parties as they had submitted a Statement of Agreed Facts and Indicated Outcome which was considered by the Tribunal in private.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent were that:
 - 1.1 Between November 2012 and October 2015, by undertaking work for clients in respect of immigration and asylum matters on a privately paying basis, whilst employed by the Gloucester Law Centre, without his employer's knowledge or consent, the Respondent breached either or both of:
 - 1.1.1 Principle 2 of the SRA Principles 2011; and
 - 1.1.2 Principle 6 of the SRA Principles 2011.

It was alleged the Respondent acted dishonestly in relation to allegation 1.1.
 - 1.2 Between November 2012 and October 2015, by failing to pay into the Gloucester Law Centre's office account monies received from clients of a minimum total of £7,950 in respect of agreed fees for work undertaken in their immigration and asylum matters, and failing to maintain proper accounting records, the Respondent breached any or all of:
 - 1.2.1 Principle 7 of the SRA Principles 2011;
 - 1.2.2 Rule 1.2 (e) of the SRA Accounts Rules 2011;
 - 1.2.3 Rule 1.2(f) of the SRA Accounts Rules 2011;
 - 1.2.4 Rule 29.1(b) of the SRA Accounts Rules 2011; and
 - 1.2.5 Rule 29.4 of the SRA Accounts Rules 2011.
 - 1.3 Between November 2012 and October 2015, by charging clients agreed fees which were not evidenced in writing for carrying out work on their immigration and asylum, the Respondent breached all or any of:
 - 1.3.1 Principle 7 of the SRA Principles 2011; and
 - 1.3.2 Rule 17.5 of the SRA Accounts Rules 2011.
 - 1.4 Between November 2012 and October 2015, the Respondent carried out work as a solicitor without authorisation, and thereby breached or failed to achieve any or all of:
 - 1.4.1 Principle 4 of the SRA Principles 2011;
 - 1.4.2 Principle 7 of the SRA Principles 2011;
 - 1.4.3 Principle 8 of the SRA Principles 2011;
 - 1.4.4 Rule 1 of the SRA Practice Framework Rules 2011.

- 1.5 Between November 2012 and October 2015, the Respondent failed to effect a policy of insurance which indemnified him against civil liabilities arising from his provision of legal services in private practice, and thereby breached or failed to achieve any or all of:
- 1.5.1 Principle 4 of the SRA Principles 2011;
 - 1.5.2 Principle 8 of the SRA principles 2011;
 - 1.5.3 Outcome O(1.8) of the SRA Code of Conduct 2011; and
 - 1.5.4 Rule 5.1 of the Solicitors Indemnity Rules 2011.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:
- Application and Rule 5 Statement dated 23 November 2017 together with attached exhibits
 - Statement of Agreed Facts and Indicated Outcome
 - Letter dated 19 December 2017 from the Respondent to the Tribunal
 - Standard Directions
 - The Respondent's Answer to the Rule 5 Statement dated 19 December 2017
 - Email from the Respondent to the Tribunal dated 5 January 2018
 - Applicant's Statement of Costs dated 23 November 2017

Preliminary Matters – Agreed Outcome Procedure

3. On 5 February 2018 the Applicant submitted an application on behalf of both parties for the Tribunal to approve an Agreed Outcome to the proceedings. In accordance with paragraph 2.2 of the Tribunal's standard directions, the matter was listed for consideration by a division of the Tribunal, in private, on 8 February 2018. For the reasons set out below, the Tribunal was satisfied that the Agreed Outcome should be approved without requiring any further submissions from the parties. The Tribunal's decision was announced in open court, and an Order setting out the Tribunal's Order was filed with the Law Society on 8 February 2018. This Judgment sets out the circumstances of the matter and the Tribunal's reasons for its decision. The Statement of Agreed Facts and Indicated Outcome dated 9 February 2018 is attached to this Judgment.

Agreed Factual Background

4. The Respondent, born in 1956, was admitted to the Roll of Solicitors on 15 June 1993.
5. At all material times the Respondent was employed by the Gloucester Law Centre, Third Floor, Beatrice Webb House, 75-81 Eastgate Street, Gloucester, GL1 1PN ("GLC"), where he specialised in immigration and asylum matters.
6. GLC is a charity and not-for-profit organisation. It does not charge for its services and is not authorised by the SRA. The majority of its cases were funded by legal aid, with a small number of non-legally aided cases being funded by local authority grants.
7. At the start of November 2015, GLC discovered that from November 2012 until October 2015 the Respondent had concealed from GLC the fact that he had been charging clients on a privately paying basis, without GLC's authority or knowledge, for immigration and asylum work carried out in the name of GLC. The work was undertaken on GLC's premises and using GLC's name, materials, including letterhead paper and resources.
8. The clients the Respondent acted for on a privately paying basis were not eligible for Legal Aid. Most of them were existing clients of GLC, although occasionally the Respondent would act for non GLC clients who had heard of his work.
9. The Respondent verbally advised his clients of the fee at the beginning of each matter, but as a matter of course he did not confirm this in writing to them.
10. The Respondent did not pay any of the monies received from these clients into an office account of GLC. Instead he retained all of the payments, which ranged from £50 to £200 per matter, for himself. The Respondent failed to keep any accounting records for the monies he received from these clients.
11. The Respondent was essentially practising as a solicitor on his own account in respect of these clients, but at no point was he recognised by the SRA as a Recognised Sole Practitioner. Accordingly, he failed to have in place an effective policy of insurance to indemnify him against the civil liabilities arising from his provision of legal services in private practice.
12. On 10 November 2015, Mrs W, the supervising solicitor at GLC, wrote to the Respondent confirming that she was commencing a formal investigation into the matter, and that he would be suspended on full pay from close of business the following day.
13. On 17 November 2015 Mrs W sent a report to the SRA regarding the Respondent's actions.
14. A disciplinary meeting was held on 19 November 2015, attended by the Respondent, Mrs W and Mr Y (a senior member of staff with responsibility for GLC's finances). Following this disciplinary meeting, the Respondent was dismissed by GLC, without notice, for gross misconduct.

15. As a result of concerns that the Respondent was conducting privately paying client work whilst an employee of GLC, the Supervision Department of the SRA commissioned an investigation into his conduct.
16. On 8 December 2016, a duly authorised officer in the employment of the SRA commenced the inspection pursuant to that commission. This inspection culminated in a Forensic Investigation Report dated 16 January 2017. The allegations against the Respondent arose out of the content of that Report.

Findings of Fact and Law

17. The Tribunal had carefully considered all the documents provided. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and 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.
18. The Respondent had admitted all the allegations made against him, including the allegation of dishonesty, in his Answer dated 19 December 2017. The Tribunal was satisfied on the basis of the admissions and the agreed facts presented that the allegations had all been proved to the requisite standard.

Previous Disciplinary Matters

19. None.

Sanction

20. The Respondent's mitigation was contained in the Statement of Agreed Facts and Indicated Outcome. In that it was stated the Respondent had practised as a solicitor for nearly 20 years with a previously unblemished record. His clients had been aware of the basis upon which he was representing them, and the great majority were more than happy with the work he had carried out. These clients would not have been eligible for Legal Aid following changes implemented in 2012, before which time funding would have been available to them. It was submitted that there was therefore a genuine need amongst the clients for the work to be done.
21. It was stated that the Respondent had returned the total sum received of £8,400 to GLC. Although he did not consider the need to take out professional indemnity insurance when representing these clients, it was stated the Respondent always ensured that the cases he took on involved work he was familiar with and would therefore produce an outcome that his clients would be happy with.
22. It was stated the Respondent had made full and frank admissions to the allegations, and his dismissal from GLC had had a profound effect on him and his family.
23. The parties both submitted the proper penalty in this case was for the Respondent to be struck off the Roll of Solicitors.

24. The Tribunal had considered carefully the Statement of Agreed Facts and Indicated Outcome proposed by the parties. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.
25. In considering the matter, the Tribunal noted in particular that the Respondent had admitted the allegations in full. There was, accordingly, no need for a trial on the facts and allegations. The Tribunal had to consider whether, in light of the admitted facts and allegations, the proposed Outcome was just and proportionate. The Tribunal noted that if it was satisfied with the proposed sanction it could proceed to make the necessary Order.
26. It was clear from the agreed facts in this case that the Respondent had been charging clients on a private basis whilst he was employed by GLC, which was a charity that did not charge for services, and he had kept the monies for himself. He did not confirm his fees in writing, or keep accounting records and nor did he inform GLC of what he was doing. Nor was he registered as a Recognised Sole Practitioner at the material time or have any professional indemnity insurance in place. The Tribunal concluded that the Respondent's level of culpability was very high. His motivation was to earn fees for himself thereby increasing his income, his actions were planned, and he had breached the trust placed in him by his employers who were unaware of his conduct. The Respondent had clearly had direct control over his actions, he was a solicitor with many years of experience and his conduct had caused harm to his employers who were unaware he was taking money from clients.
27. The Respondent had acted dishonestly and had also caused a great deal of harm to the reputation of the profession.
28. The aggravating factors in this case were that the Respondent had acted dishonestly, his misconduct had been deliberate, planned and repeated over a long period of almost 3 years, he had concealed his actions from his employers. By not confirming the fees in writing and not informing his employers, it was evident the Respondent knew that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession.
29. The Tribunal also took into account the Respondent's previously long unblemished record, the fact that he had repaid £8,400 to GLC and the admissions he had made. These were all mitigating factors.
30. The Tribunal concluded that the Respondent's conduct was extremely serious as he had acted dishonestly in order to gain additional income for himself whilst taking advantage of his position as an employee of GLC. He had not had any professional indemnity insurance in place and had thereby placed clients at risk. The Tribunal was satisfied that a Reprimand, Fine or Restriction Order were insufficient to reflect the seriousness of the Respondent's conduct.
31. The Tribunal then considered whether a Suspension was an appropriate sanction in this case in light of the finding of dishonesty. The Tribunal was mindful of the case of the SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

“Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll”

The Tribunal was satisfied that there were no exceptional circumstances and that the appropriate sanction would be to strike the Respondent off the Roll of Solicitors.

32. The Tribunal did not require any further submissions from the parties to consider this sanction further, and determined that the case could be concluded on the basis of the statement of Agreed Facts and Indicated Outcome. An Order was made that the Respondent be Struck Off the Roll of Solicitors.

Costs

33. As part of the proposed Agreed Outcome, it was further proposed that the Respondent should pay £5,000 towards the Applicant's costs.
34. Based on the agreement between the parties, the Tribunal was satisfied that the agreed costs in the sum of £5,000 were reasonable and proportionate, particularly as a full trial had not been necessary in this case. Accordingly the Tribunal Ordered the Respondent pay the Applicant's costs in the agreed sum of £5,000.

Statement of Full Order

35. The Tribunal Ordered that the Respondent, ANDREW JOHN PUDDICOMBE, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00.

Dated this 6th day of March 2018
On behalf of the Tribunal



D. Green
Chairman

Judgment filed
with the Law Society
on 06 MAR 2018

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

and

ANDREW JOHN PUDDICOMBE

Respondent

STATEMENT OF AGREED FACTS

AND INDICATED OUTCOME

1. By its application dated 23 November 2017 and the statement made pursuant to Rule 5 (2) Solicitors (Disciplinary Proceedings) Rules 2007 which accompanied that application, the Solicitors Regulation Authority ("SRA") brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of Mr Andrew John Puddicombe ("Mr Puddicombe").
2. The allegations made against Mr Puddicombe within that statement are that:
 - 2.1 Between November 2012 and October 2015, by undertaking work for clients in respect of immigration and asylum matters on a privately paying basis, whilst employed by the Gloucester Law Centre, without his employer's knowledge or consent, he breached Principles 2 and 6 of the SRA Principles 2011;
 - 2.2 Between November 2012 and October 2015, by failing to pay into the Gloucester Law Centre's office account monies received from clients of a minimum total of £7,950 in respect of agreed fees for work undertaken in their immigration and asylum matters, and failing to maintain proper accounting records, he breached Principle 7 of the SRA Principles 2011, and Rules 1.2(e), 1.2(f), 29.1(b) and 29.4 of the SRA Accounts Rules 2011;
 - 2.3 Between November 2012 and October 2015, by charging clients agreed fees which were not evidenced in writing for carrying out work on their immigration and asylum, he breached Principle 7 of the SRA Principles 2011 and Rule 17.5 of the SRA Accounts Rules 2011;
 - 2.4 Between November 2012 and October 2015, he carried out work as a solicitor without authorisation, and thereby breached Principles 4, 7 and 8 of the SRA Principles 2011 and Rule 1 of the SRA Practice Framework Rules 2011;
 - 2.5 Between November 2012 and October 2015, he failed to effect a policy of insurance which indemnified him against civil liabilities arising from his provision of legal services in private practice, and thereby breached Principles 4 and 8 of the SRA Principles

2011, Rule 5.1 of the SRA Indemnity Rules 2011 and failed to achieve Outcome 0(1.8) of the SRA Code of Conduct 2011.

3. Dishonesty was alleged with respect to the allegation at paragraphs 2.1 above.

Admissions

4. In his Answer dated 19 December 2017 Mr Puddicombe admitted the allegations in and contents of the Rule 5 Statement referred to above, (including, for the avoidance of doubt, the allegation of dishonesty).

Agreed Facts

5. The following facts and matters are agreed between the SRA and Mr Puddicombe:

5.1 Mr Puddicombe was born [redacted] 1956 and was admitted to the Roll of Solicitors on 15 June 1993. His last known address is

REMOVED BY THE TRIBUNAL PRIOR TO PUBLICATION

5.2 Mr Puddicombe remains upon the Roll of Solicitors but does not have a current practising certificate.

5.3 At all material times Mr Puddicombe was employed by the Gloucester Law Centre, Third Floor, Beatrice Webb House, 75-81 Eastgate Street, Gloucester, GL1 1PN ("GLC"), where he specialised in immigration and asylum matters.

5.4 GLC is a charity and not-for-profit organisation. It does not charge for its services and is not authorised by the SRA. The majority of its cases were funded by legal aid, with a small number of non-legally aided cases being funded by local authority grants.

5.5 At the start of November 2015, GLC discovered that from November 2012 until October 2015 Mr Puddicombe had concealed from GLC the fact that he had been charging clients on a privately paying basis, without GLC's authority or knowledge, for immigration and asylum work carried out in the name of GLC. The work was undertaken on GLC's premises and using GLC's name, materials, including letterhead paper, and resources.

5.6 The clients Mr Puddicombe acted for on a privately paying basis were not eligible for Legal Aid. Most of them were existing clients of GLC, although occasionally he would act for non GLC clients who had heard of his work.

5.7 Mr Puddicombe verbally advised his clients of the fee at the beginning of each matter, but as a matter of course he did not confirm this in writing to them.

5.8 Mr Puddicombe did not pay any of the monies received from these clients into an office account of GLC; instead he retained all of the payments, which ranged from £50 to £200 per matter, for himself. Mr Puddicombe failed to keep any accounting records for the monies he received from these clients.

5.9 Mr Puddicombe was essentially practising as a solicitor on his own account in respect of these clients, but at no point was he recognised by the SRA as a Recognised Sole Practitioner. Accordingly, he failed to have in place an effective policy of insurance to

indemnify him against civil liabilities arising from his provision of legal services in private practice.

- 5.10 On 10 November 2015, Mrs AW, the supervising solicitor at GLC, wrote to Mr Puddicombe confirming that she was commencing a formal investigation into the matter, and that he would be suspended on full pay from close of business the following day.
- 5.11 On 17 November 2015 Mrs AW sent a report to the SRA regarding Mr Puddicombe's actions.
- 5.12 A disciplinary meeting was held 19 November 2015, attended by Mr Puddicombe, Mrs AW and Mr AY (a senior member of staff with responsibility for GLC's finances). Following this disciplinary meeting Mr Puddicombe was dismissed by GLC, without notice, for gross misconduct.
- 5.13 As a result of concerns that Mr Puddicombe was conducting privately paying client work whilst an employee of GLC, the Supervision Department of the SRA commissioned an investigation into his conduct.
- 5.14 On 8 December 2016, a duly authorised officer in the employment of the SRA commenced the inspection pursuant to that commission. This inspection culminated in a Forensic Investigation Report dated 16 January 2017. The allegations against Mr Puddicombe arise out of the content of the FI Report.

Mitigation

6. The following mitigation is advanced by Mr Puddicombe and is not endorsed by the SRA.
7. Mr Puddicombe practised as a solicitor for nearly 20 years with an unblemished record prior to the events described at paragraph 5 above.
8. Mr Puddicombe did not act dishonestly towards his clients. They were completely aware of the basis in which he was representing them, and the great majority were more than happy with the work he carried out for them.
9. The clients that Mr Puddicombe acted for would not have been eligible for Legal Aid following the changes in Legal Aid in 2012, before which time funding would have been available for them. There was therefore a genuine need amongst the clients for the work to be done.
10. Mr Puddicombe has since returned the total sum received of £8,400 to GLC.
11. Although he did not consider the need to take out professional indemnity insurance, when representing these clients, he always ensured that the cases he took on involved work that he was familiar with and was thus never likely to produce an outcome which the client would not be happy with.
12. Mr Puddicombe's dismissal from GLC as a result of these actions has had a profound effect on himself and his family.
13. Mr Puddicombe has made full and frank admissions to the SRA, and also to the allegations that were made against him in the current proceedings before the Solicitors Disciplinary Tribunal.

Outcome

14. Having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions the SRA contends and Mr Puddicombe accepts that the proper penalty in this Case is that Mr Puddicombe is struck off the Roll of Solicitors.
15. With respect to costs, Mr Puddicombe agrees to pay the SRA costs of the application in the sum of £5,000.

Dated this 9 day of February 2018

E. PRIEST

.....
Emma Priest - Legal Adviser

On behalf of the SRA

A J PUDDICOMBE

.....
Mr Andrew John Puddicombe