

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11833-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

PETER HAMILTON ROLLIN

Respondent

Before:

Mr A. Ghosh (in the chair)

Mr M. Jackson

Mr S. Howe

Date of Hearing: 19 September 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 made by the Applicant were that:
 - 1.1 He practised as a sole practitioner between an unknown date in 2004 and December 2016 without authorisation to do so from the SRA and without indemnity insurance and thereby breached all, or any, of the following:

From 2004 until June 2007

- 1.2 Rule 1 (a) of the Solicitors Practice Rules 1990 (SPR90) which requires a solicitor not do anything in the course of practising as a solicitor which compromises or impairs or is likely to compromise or impair his independence and integrity;
- 1.3 Rule 1 (c) of the SPR90 which requires a solicitor not do anything in the course of practising as a solicitor which compromises or impairs or is likely to compromise or impair his duty to act in the best interests of his client;
- 1.4 Rule 1 (d) of the SPR90 which requires a solicitor not do anything in the course of practising as a solicitor which compromises or impairs or is likely to compromise or impair the good repute of a solicitor or the solicitors profession;
- 1.5 Solicitors Indemnity Insurance Rules 2004 (and the Solicitors Indemnity Insurance Rules for the following years until 2007), in particular Rule 2.5 which states "Each firm is required to secure professional indemnity insurance with Qualifying Insurer(s) to a limit of indemnity of £1,000,000 any one claim.....".

From June 2007 until 5 October 2011

- 1.6 Rule 12.01 of the Solicitors Code of Conduct 2007 (SCC07) which states "you may practise as a solicitor from an office in England and Wales in the following ways only (a) as a recognised sole practitioner..."
- 1.7 Rule 1.2 SCC07 which requires you to act with integrity;
- 1.8 Rule 1.04 SCC07 which requires you act in the best interests of each client;
- 1.9 Rule 1.06 SCC07 which requires that you must not behave in a way that is likely to diminish the trust the public places in you or the profession;
- 1.10 Solicitors Indemnity Insurance Rules 2007-2011.

From June 2009 until 5 October 2011

- 1.11 Rule 20.03(1) of the SCC states "if you are a solicitor or REL you must not practise as a sole practitioner unless (a) the Solicitors Regulation Authority has first authorised you as a recognised sole practitioner by endorsing your practising certificate or certificate of registration to that effect".

From 6 October 2011

- 1.12 Rule 1(a) of the SRA Practice Framework Rules 2011 (PFR11) which states “you may practice as a solicitor from an office in England and Wales only as a sole practitioner of a recognised sole practice.”
- 1.13 Rule 10.1 of the PFR11 which requires you not to practise as sole practitioner unless the SRA has authorised your practise as a recognised sole practise;
- 1.14 Principle 2 of the SRA Principles 2011 (SP11) by failing to act with integrity;
- 1.15 Principle 4 of the SP11 by failing to act in the best interests of clients;
- 1.16 Principle 6 of the SP11 by failing to behave in a way that maintains the trust the public places in him and in the provision of legal services;
- 1.17 The SRA Indemnity Insurance Rules 2011 (and the SRA Indemnity Insurance Rules for the following years until December 2016)
- 2.1 He failed to carry out regular client account reconciliations and failed to keep a daily cash journal in breach of all, or any, of the following:
- 2.2 Principle 2 of the Principles by failing to act with integrity;
- 2.3 Principle 6 of the Principles by failing to behave in a way that maintains the trust the public places in him and in the provision of legal services.
- 2.4 Rule 29.1 of the SRA Accounts Rules 2011 (“SAR”) which states, amongst other things, you must at all times keep accounting records properly written up to show your dealings with client money and office money;
- 2.5 Rule 29.2 of the SAR which states, among other things, all dealings with client money must be appropriately recorded in a client cash account and on the client side of a separate client ledger account for each client;
- 2.6 Rule 29.12 of the SAR which states, amongst other things, that you must, at least once every five weeks, compare the balance on the client cash account(s) with the balances shown on the statements and passbooks of all general client accounts and separate designated client accounts.

Documents

- 3. The Tribunal had before it the following documents:
 - Rule 5 Statement dated 6 June 2018
 - Respondent’s Answer to the Rule 5 Statement dated 20 June 2018
 - Statement of Agreed Facts and Indicated Outcome dated 12 September 2018

Factual Background

4. The Respondent was born in 1942. He was admitted to the Roll of Solicitors on 11 January 1969. He does not hold a current Practising Certificate. He resides in Diss, Norfolk.
5. The Respondent was at the material time practising as a sole practitioner (unauthorised) as Peter H. Rollin Solicitor.

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

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

Findings of Fact and Law

7. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal gave due weight to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with 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.
8. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.
9. The Tribunal considered the Guidance Note on Sanction (December 2016). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
10. The Respondent had admitted serious professional misconduct. The Tribunal was particularly concerned with his deliberate decision not to take out indemnity insurance. It was also very concerning that the conduct, which involved an admitted lack of integrity, extended over 12 years. The Respondent was directly responsible for his actions as a sole practitioner. There was a clear risk of harm to the profession and to clients arising from his actions. Given his extensive experience he ought to have known his conduct was in breach of his obligations and the Tribunal considered this to be an aggravating factor.
11. The Tribunal noted the mitigation put forward by the Respondent. In all of the circumstances the Tribunal accepted the assessment made by the parties of the appropriate sanction and approved their proposal.

Costs

12. The parties had agreed costs in the sum of £5,000. The Tribunal was satisfied that this was an appropriate sum and approved this element of the Agreed Outcome.

Statement of Full Order

13. The Tribunal ORDERED that the Respondent, PETER HAMILTON ROLLIN, 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 £5,000.00.

Dated this 3rd day of October 2018
On behalf of the Tribunal



A. Ghosh
Chairman

Judgment filed
with the Law Society
on 08 OCT 2018

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

SOLICITORS REGULATION AUTHORITY

APPLICANT

AND

PETER HAMILTON ROLLIN

RESPONDENT

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

By its Application dated 6 June 2018 and statement 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 the Respondent. The allegations against him in the Rule 5(2) statement are set out below.

The allegations

- 1.1 He practised as a sole practitioner between an unknown date in 2004 and December 2016 without authorisation to do so from the SRA and without indemnity insurance and thereby breached all, or any, of the following:

From 2004 until June 2007

- 1.2 Rule 1 (a) of the Solicitors Practice Rules 1990 (SPR90) which requires a solicitor not do anything in the course of practising as a solicitor which compromises or impairs or is likely to compromise or impair his independence and integrity;
- 1.3 Rule 1 (c) of the SPR90 which requires a solicitor not do anything in the course of practising as a solicitor which compromises or impairs or is likely to compromise or impair his duty to act in the best interests of his client;
- 1.4 Rule 1 (d) of the SPR90 which requires a solicitor not do anything in the course of practising as a solicitor which compromises or impairs or is likely to compromise or impair the good repute of a solicitor or the solicitors profession;
- 1.5 Solicitors Indemnity Insurance Rules 2004 (and the Solicitors Indemnity Insurance Rules for the following years until 2007), in particular Rule 2.5 which states *"Each firm is required to secure professional indemnity insurance with Qualifying Insurer(s) to a limit of indemnity of £1,000,000 any one claim....."*

From June 2007 until 5 October 2011

- 1.6 Rule 12.01 of the Solicitors Code of Conduct 2007 (SCC07) which states *"you may practise as a solicitor from an office in England and Wales in the following ways only (a) as a recognised sole practitioner....."*
- 1.7 Rule 1.2 SCC07 which requires you to act with integrity;
- 1.8 Rule 1.04 SCC07 which requires you act in the best interests of each client;
- 1.9 Rule 1.06 SCC07 which requires that you must not behave in a way that is likely to diminish the trust the public places in you or the profession;
- 1.10 Solicitors Indemnity Insurance Rules 2007-2011.

From June 2009 until 5 October 2011

- 1.11 Rule 20.03(1) of the SCC states *"If you are a solicitor or REL you must not practise as a sole practitioner unless (a) the Solicitors Regulation Authority has first authorised you as a recognised sole practitioner by endorsing your practising certificate or certificate of registration to that effect"*.

From 6 October 2011

- 1.12 Rule 1(a) of the SRA Practice Framework Rules 2011 (PFR11) which states *"you may practice as a solicitor from an office in England and Wales only as a sole practitioner of a recognised sole practice."*
 - 1.13 Rule 10.1 of the PFR11 which requires you not to practise as sole practitioner unless the SRA has authorised your practise as a recognised sole practise;
 - 1.14 Principle 2 of the SRA Principles 2011 (SP11) by failing to act with integrity;
 - 1.15 Principle 4 of the SP11 by failing to act in the best interests of clients;
 - 1.16 Principle 6 of the SP11 by failing to behave in a way that maintains the trust the public places in him and in the provision of legal services;
 - 1.17 The SRA Indemnity Insurance Rules 2011 (and the SRA Indemnity Insurance Rules for the following years until December 2016)
- 2.1 He failed to carry out regular client account reconciliations and failed to keep a daily cash journal in breach of all, or any, of the following:
 - 2.2 Principle 2 of the Principles by failing to act with integrity;
 - 2.3 Principle 6 of the Principles by failing to behave in a way that maintains the trust the public places in him and in the provision of legal services.
 - 2.4 Rule 29.1 of the SRA Accounts Rules 2011 ("SAR") which states, amongst other things, you must at all times keep accounting records properly written up to show our dealings with client money and office money;

- 2.5 Rule 29.2 of the SAR which states, among other things, all dealings with client money must be appropriately recorded in a client cash account and on the client side of a separate client ledger account for each client;
- 2.6 Rule 29.12 of the SAR which states, amongst other things, that you must, at least once every five weeks, compare the balance on the client cash account(s) with the balances shown on the statements and passbooks of all general client accounts and separate designated client account

Admissions

3. Subject to the following amendments and qualifications, the Respondent admits all allegations in the Rule 5(2) statement.
4. The Respondent admits allegation 1.1 in an amended form which is:

'He practised as a sole practitioner between an unknown date in 2004 and December 2016 without registering his sole practice or obtaining authorisation to practise from the SRA and without indemnity insurance and thereby breached all, or any, of the following'
5. The Respondent admits a breach of Rule 12.01 of the Solicitors Code of Conduct 2007 (SCC07) which states "you may practise as a solicitor from an office in England and Wales in the following ways only (a) as a recognised sole practitioner, from 1 July 2009 until 5 October 2011.
6. The Respondent admits a breach of Rule 20.03(1) of the SCC which states "If you are a solicitor or REL you must not practise as a sole practitioner unless (a) the Solicitors Regulation Authority has first authorised you as a recognised sole practitioner by endorsing your practising certificate or certificate of registration to that effect", from the 1 July 2009 until 5 October 2011.
7. The SRA has considered the admissions made by the Respondent and whether the outcome proposed in this document is in the public interest having regard to the seriousness of the matters alleged. The SRA is satisfied that the admissions and outcome proposed is in the public interest and that it is a proportionate and appropriate way of resolving this matter.

Admitted facts

Allegation 1.1 – Practising as a sole practitioner without registration/authorisation and without indemnity insurance

8. The SRA has no record of the Respondent's practising arrangements from 2004 to December 2016 as the Respondent failed to advise the SRA that he was practising as a sole practitioner. He failed to register his sole practice and failed to apply for authorisation/recognition to practise as a sole practitioner.
9. It was only after the Forensic investigation commenced in December 2016 that the SRA became aware that the Respondent had been practising as a sole practitioner since 2004 without registering his practice or seeking authorisation.
10. In interview with the Forensic Investigation Officer ("FIO") on 6 December 2016 the Respondent informed the FIO that he had practised on his own

account since 2004 and believed he was authorised to do so as he held a personal practising certificate.

11. The Respondent operated as a sole practitioner for some 12 years without seeking registration or authorisation to do so.
12. The Respondent did not require specific authorisation to practise as a sole practitioner before June 2009, however he was required to notify his regulator that he had had a sole practice.
13. Following the introduction of the SRA Recognised Bodies Regulations 2009, all sole practitioners were required to be recognised bodies. All new sole practitioners had to apply to become recognised sole practitioners and all registered sole practitioners were automatically passported over to become recognised sole practitioners. The Respondent did not apply to become a recognised sole practitioner and he was not capable of being passported as his sole practice was not registered.
14. From 2009 until 2015, recognised sole practitioners were required to renew annually their recognition (in line with applications for their practising certificates) and their status would be endorsed on their practising certificates or registration certificate. The annual renewal process continued until 2015 when all practices of recognised sole practitioners were passported to become recognised sole practices. New sole practices continued to have to apply to become recognised.
15. Both the SCC 2007 (June 2009 edition) and the SPR11 made specific provision for sole practitioners to be authorised by the SRA. The Respondent was either ignorant of these rules or simply ignored them.
16. Further, when applying for a new practising certificate post 6 October 2011 the Respondent would have had to apply through mySRA. In completing the application, the Respondent was referred to the provisions of Regulation 3 of the SRA Practising Regulations 2011.
17. Regulation 3.1 (vi) poses the question as to whether a sole practitioner has ever been refused authorisation as a recognised sole practice under Rule 6 of the SRA Authorisation Rules or had such authorisation revoked under Rule 22.1 of the SRA Authorisation Rules.
18. The Respondent either failed to read the provisions of Regulation 3.1 above or disregarded them. They would have put him on notice that a sole practitioner required authorisation by the SRA.
19. In the Respondent's response to the SRA's letter of 23 August 2017 the Respondent he advised that he kept abreast of all legal matters by reading The Law Society Gazette.
20. The SRA has identified four articles in The Law Society Gazette that relate to sole practitioners and the need for them to be authorised/recognised.
21. The Respondent failed to obtain professional indemnity insurance from 2004 to December 2016.

22. The Solicitors Indemnity Insurance Rules 2004 state at Rule 2.5 *"Each firm is required to secure professional indemnity insurance with Qualifying Insurer(s) to a limit of indemnity of £1,000,000 any one claim"*.
23. Solicitors were required to write to the Law Society and confirm that they had professional indemnity insurance.
24. The Respondent failed to confirm to the Law Society that he had professional indemnity insurance from 2004 to 2011.
25. Rule 1.3 of the SRA Indemnity Insurance Rules 2011 state *"These Rules require solicitors, REL's, RFLs, recognised bodies and their managers and licensed bodies (in respect of their regulated activities) in private practice in England and Wales to take out and maintain professional indemnity insurance with qualifying insurers with effect from 1 October 2011"*.
26. Since 2011, when making an application for authorisation of a sole practice or a firm (which the Respondent did not do) the SRA would have required a quote for indemnity insurance for all new sole practitioners and firms.
27. If the sole practitioner or firm didn't provide this, the SRA would have rejected the application for authorisation as incomplete. Once the SRA received the quote/evidence, it would ask for further proof once the sole practitioner or firm was authorised.
28. On the Respondent's own admission in interview with the FIO he confirmed that he had not applied for indemnity insurance. He stated *"They (Jackmans solicitors) seemed reluctant to recommend me to their Insurer, it then got overlooked and I took the view around mid-2005 that it would then be difficult to get insurance so I decided therefore not to apply.....I did not believe I needed recognition as a sole practitioner from The Law Society therefore I did not make those enquiries."*

Breaches of the codes of conduct and Authorisation Rules

29. The Respondent breached the Rules set out in allegations 1.6, 1.11, 1.12 and 1.13 above as he failed to obtain authorisation/recognition to practice as a sole practitioner from the SRA.
30. By acting as a sole practitioner without registering his practice or seeking authorisation/recognition, the Respondent acted without integrity. That is irrespective of whether he was ignorant of the fact that he was required to register his practice and seek authorisation or whether he deliberately ignored the rules requiring authorisation. He failed to comply with the standards that society or the profession expected of him.
31. His client's interests were not best served as they were provided legal services through an unauthorised and unregulated firm.
32. The public would expect their interests to be protected by solicitors' firms being properly registered and authorised and thus fully compliant with regulations. Public trust in the Respondent and the provision of legal services is undermined in circumstances where his firm was not authorised.

Breaches of the Indemnity Insurance Rules and the Principles

33. The Respondent knew that he had to take out professional indemnity insurance. By failing to comply with the Indemnity Insurance Rules the Respondent has failed to act with integrity as he knew was required to have indemnity insurance but failed to obtain it from 2004 to December 2016.
34. The Respondent practised in various fields, including high risk areas such as conveyancing and probate and wills. Practising in these areas would no doubt have resulted in the payment of high insurance premiums, which the Respondent avoided paying as he did not have any insurance cover.
35. By failing to obtain indemnity insurance, and thereby putting clients at risk if they needed to make a claim against the Respondent, he failed to act in his client's best interests and failed to maintain public trust in him and the profession.

Allegation 2 – Breaches of the SAR and Principles

36. The Respondent did not carry out regular client account reconciliations, did not keep a daily cash journal and did not record the dates of transactions on his client account ledgers as he was required to.
37. The Respondent informed the FIO that he carried out a client account reconciliation on 2 December 2016 as he had received notification of the SRA visit but prior to this he reconciled his client account some months ago but did not keep a record of this reconciliation.
38. A copy of the client matter listing prepared by the Respondent on 2 December 2016 together with active client ledgers appear at pages 13 to 25 of the exhibit to the Rule 5 statement.
39. The Respondent also informed the FIO that he would only open a client ledger if funds were received by him from a client.

Breaches of the SAR and Principles

40. By failing to carry out regular client account reconciliations, failing to keep a daily cash journal and by failing to record the dates of transactions on his client ledgers the Respondent failed to act with integrity in breach of Principle 2 of the Principles and in breach of the SAR.
41. A solicitor acting with integrity would have ensured that his books of account were properly written up in accordance with the SAR, but the Respondent did not do this.
42. Members of the public would expect a solicitor to keep his accounts properly written up and comply with the SAR. By failing to do so the Respondent has failed to behave in a way that maintains the trust the public places in him and the provision of legal services in breach of Principle 6 of the Principles.

Mitigation

43. In mitigation the following is put forward by the Respondent and is not endorsed by the SRA:

44. He effectively admitted all the allegations in his Answer.
45. He cooperated with the SRA Investigation.
46. He had practised as a sole practitioner for 12 years between 1985 and 1997 (with the exception of one year) and to the best of his knowledge he had not in that time had to apply to practise as a sole practitioner, having been inadvertently misled by an article in The Law Society's Gazette.
47. He accepts that he should have registered his practise with the SRA when he set up his practice and should have applied to become a recognised sole practitioner in 2009.
48. He should have taken out indemnity insurance and accepts he has no excuse for not doing so. However, no client ever intimated a claim against him or his firm either during his time of practising or subsequently
49. He did keep accounts records but not in the proper format as required by the rules. He did not carry out reconciliations but had very few live clients at any one time.

Outcome

50. The Respondent accepts that the seriousness of his admitted misconduct is such that neither a reprimand, a fine or being suspended from practice as a solicitor would be a sufficient sanction. Indeed, the later sanction would not have any impact as the Respondent has ceased to practice.
51. The Respondent accepts that the protection of the public and the protection of the reputation of the profession justifies him being struck off the Roll of Solicitors.
52. The SRA and the Respondent submit to the Tribunal that the following are appropriate outcomes and are consistent with the seriousness of the matters admitted and with the Tribunal's Guidance Note on Sanctions:
53. An order that the Respondent be struck off the Roll of Solicitors; and
54. Further ordering that the Respondent do pay the SRA costs of the application and enquiry in the sum of £5,000.

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

55. The Respondent is highly culpable for the misconduct as he was solely responsible for ensuring that his sole practice was registered and properly authorised by his regulator, that he had in place indemnity insurance and that his practice complied with the accounts rules. He was a very experienced solicitor having previously had a sole practice for some 12 years. He had direct control and responsibility for the circumstances giving rise to the misconduct.
56. He was a sole practitioner for 12 years between 2004 and 2016 during which he failed to notify his regulator that he had a sole practice and failed to seek

authorisation. During the same-time he deliberately failed to take out indemnity insurance, his motivation for doing so was partly a financial one.

57. Not being properly authorised and having no insurance represented potential risks to his clients which they would not have been aware of. His clients would not have had the protection of being able to make a claim for negligence under professional indemnity insurance as the firm did not have any.
58. The Respondent was able to avoid regulatory safeguards by not being registered or authorised, for example he did not submit any accountants' reports despite handling client money. The Respondent left his clients exposed. The Respondent's conduct had the potential to cause damage to public confidence in the reputation of the profession and in the delivery of legal services.
59. The potential harm was clearly foreseeable to the Respondent and his actions were planned, at least in respect of not taking out indemnity insurance. He would have been aware that his conduct was in breach of the rules in respect of not having indemnity insurance and he should have been aware of the same, if indeed he was not in respect of failing to obtain authorisation of his sole practice.
60. The Respondent conduct was a departure from the "*complete integrity, probity and trustworthiness*" to be expected of a solicitor.
61. The following factors aggravate the seriousness of the Respondent's misconduct:
 - 61.1 the misconduct involves a lack of integrity over a period of 12 years;
 - 61.2 the misconduct occurred where the Respondent knew or ought to reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.
60. Although dishonesty is not alleged against the Respondent, he has acted without integrity over a very lengthy period. He did so deliberately and to avoid having to pay for indemnity insurance. His actions should attract the ultimate sanction.

Inderjit S Johal
Solicitors Regulation Authority

Peter Hamilton Rollin
Respondent

Dated this 12 September 2018