

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11860-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

LEE ROBERT LIPSON

Respondent

Before:

Mrs J. Martineau (in the chair)

Mr J. Evans

Mrs L. Barnett

Date of Hearing: 13 February 2019

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 Solicitors Regulation Authority ("SRA") within its Rule 5 Statement were that:
 - 1.1 by accepting a conditional caution on 9 April 2016 for the possession of Class A and Class B drugs, he breached all or alternatively any of Principles 2 and 6 of the SRA Principles 2011 ("the Principles").
 - 1.2 by failing to inform the SRA that he had accepted a conditional caution on 9 April 2016, he breached all or alternatively any of Principles 2 and 7 of the Principles and failed to achieve Outcome 10.3 of the SRA Code of Conduct 2011 ("the Code of Conduct").
 - 1.3 by virtue of his conviction on 13 March 2017 for driving whilst under the influence of drugs contrary to section 5A(1)(a) and (2) of the Road Traffic Act 1988, he breached all or alternatively any of Principles 2 and 6 of the Principles.
 - 1.4 by failing to inform the SRA that he had been charged with drug driving on 30 November 2016 until after his conviction, he breached all or alternatively any of Principles 2 and 7 of the Principles and failed to achieve Outcome 10.3 of the Code of Conduct.
 - 1.5 by providing a misleading statement to the SRA on 24 August 2016 as to the circumstances underlying the conditional caution dated 9 April 2016, he breached all or alternatively any of Principles 2, 6 and 7 of the Principles.
 - 1.6 in the alternative to allegation 1.5, that by providing a misleading statement to the police on 9 April 2016 as to the circumstances underlying the conditional caution dated 9 April 2016, he breached Principles 1, 2, 6 and 7 of the Principles.
2. Allegations 1.5 and 1.6 were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the allegations.
3. The Applicant applied to withdraw the allegation that the Respondent's conduct as regards allegation 1.4 was in breach of Principle 2 on the basis that his failure to inform the SRA that he had been charged with drug driving on 30 November 2016 until after his conviction was based on advice that he had received from his instructed solicitors.
4. The Applicant further applied to withdraw the allegation of dishonesty detailed in paragraph 2 above on the basis that in light of the Respondent's admissions and his acceptance that he should be struck off the Roll for his admitted misconduct, it was not proportionate or in the public interest to proceed to a disputed hearing in order to prove that his misconduct was aggravated by dishonesty.

Documents

5. The Tribunal had before it the following documents:-
- Rule 5 Statement dated 15 August 2018
 - Respondent's Statement dated 25 October 2018
 - Statement of HL in support of the Respondent
 - Statement of Agreed Facts and Proposed Outcome dated 13 February 2019 and signed by the Applicant and the Respondent

Factual Background

6. The Respondent was born in 1977 and was admitted to the Roll as a solicitor in 2005. He did not hold a current practising certificate. The Respondent accepted a police caution on 9 April 2016 for possession of Class A and Class B drugs. The Respondent failed to report his conviction to the Applicant. On 13 March 2017, the Respondent was convicted of driving whilst under the influence of drugs. He was sentenced to an immediate custodial sentence of 12 weeks, suspended for 12 months. He was also disqualified from driving for 18 months, and ordered to pay costs in the sum of £85 and a victim surcharge in the sum of £115. The Respondent failed to report that he had been charged with driving whilst under the influence of drugs to the Applicant until after his conviction.

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 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 his 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. The Tribunal granted the applications to withdraw the allegation of a breach of Principle 2 as regards allegation 1.4 and the allegation that the Respondent's conduct as regards allegations 1.5 and 1.6 was aggravated by dishonesty. The Tribunal noted the extensive admissions made by the Respondent and found that it was neither in the public interest nor proportionate for those matters to be pursued.
10. The Tribunal considered the Guidance Note on Sanctions (December 2018). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal considered that the level of culpability and harm of the Respondent's misconduct was high. He had been convicted of criminal offences and had misled the Applicant and the police. The

Tribunal considered that given the nature and circumstances of his misconduct, the only appropriate sanction was to strike the Respondent off the Roll. The Tribunal did not find, and indeed the parties did not submit, that there were any exceptional circumstances in this matter such that striking the Respondent from the Roll would be a disproportionate sanction.

11. Having determined that the proposed sanction was appropriate and proportionate, the Tribunal granted the application for matters to be resolved by way of the Agreed Outcome.

Costs

12. The parties agreed that the Respondent should make a contribution to costs in the sum of £3,585.00. The Tribunal considered the agreed costs to be appropriate and proportionate, and ordered that the Respondent pay a contribution to the costs in the agreed amount.

Statement of Full Order

13. The Tribunal Ordered that the Respondent, LEE ROBERT LIPSON 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 agreed sum of £3,585.00.

Dated this 21st day of February 2019

On behalf of the Tribunal

J. Martineau

J. Martineau
Chair

Judgment filed
with the Law Society
on 22 FEB 2019

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

LEE ROBERT LIPSON

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 15 August 2018, 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 seven allegations of misconduct against Mr Lee Robert Lipson.

The allegations

2. The allegations against Mr Lipson, made by the SRA within that statement were that:
 - 2.1. by accepting a conditional caution on 9 April 2016 for the possession of Class A and Class B drugs, he breached all or alternatively any of:
 - 2.1.1. Principle 2 of the SRA Principles 2011; and
 - 2.1.2. Principle 6 of the SRA Principles 2011.

2.2. by failing to inform the SRA that he had accepted a conditional caution on 9 April 2016, he breached all or alternatively any of:

2.2.1. Principles 2 of the SRA Principles 2011; and

2.2.2. Principle 7 of the SRA Principles 2011;

and failed to achieve Outcome 10.3 of the SRA Code of Conduct 2011.

2.3. by virtue of his conviction on 13 March 2017 for driving whilst under the influence of drugs contrary to section 5A (1)(a) and (2) of the Road Traffic Act 1988, he breached all or alternatively any of:

2.3.1. Principle 2 of the SRA Principles 2011; and

2.3.2. Principle 6 of the SRA Principles 2011.

2.4. by failing to inform the SRA that he had been charged with drug driving on 30 November 2016 until after his conviction, he breached all or alternatively any of:

2.4.1. Principle 2 of the SRA Principles 2011; and

2.4.2. Principle 7 of the SRA Principles 2011;

and failed to achieve Outcome 10.3 of the SRA Code of Conduct 2011.

2.5. by providing a misleading statement to the SRA on 24 August 2016 as to the circumstances underlying the conditional caution dated 9 April 2016, he breached all or alternatively any of:

2.5.1.1. Principle 2 of the SRA Principles 2011;

2.5.1.2. Principle 6 of the SRA Principles 2011; and

2.5.1.3. Principle 7 of the SRA Principles 2011.

2.6. in the alternative to allegation 2.5, that by providing a misleading statement to the police on 9 April 2016 as to the circumstances underlying the conditional caution dated 9 April 2016, he breached:

2.6.1. Principle 1 of the SRA Principles 2011;

2.6.2. Principle 2 of the SRA Principles 2011;

2.6.3. Principle 6 of the SRA Principles 2011; and

2.6.4. Principle 7 of the SRA Principles 2011.

2.7. in addition, allegations 2.5 and 2.6 are advanced on the basis that Mr Lipson's conduct was dishonest. Dishonesty is alleged as an aggravating feature of Mr Lipson's misconduct but is not an essential ingredient in proving the allegations.

3. The SRA applies to withdraw the allegation against Mr Lipson, set out in paragraph 2.4.1, on the basis that Mr Lipson's failure to inform the SRA that he had been charged with drug driving on 30 November 2016 until after his conviction was based on advice that he had received from his instructed solicitors.

4. The SRA also applies to withdraw the allegation against Mr Lipson, set out in paragraph 2.7, on the basis that in light of the admissions made by Mr Lipson and his acceptance that he should be struck off the Roll for his admitted misconduct, it is not proportionate and in the public interest to proceed to a disputed hearing in order to prove that his misconduct was also aggravated by dishonesty. In particular, the SRA:

4.1. notes that proof of dishonesty will not add to penalty following such a hearing;

4.2. accepts that, at the time of the misconduct alleged, Mr Lipson was suffering from an addiction to prohibited drugs. The fact that a regulated person is suffering from

mental or physical ill-health is a factor to which the SRA is obliged to have regard under published guidance in deciding whether to issue proceedings before the Tribunal;

- 4.3. further accepts that that misconduct had occurred at a time when Mr. Lipson had consumed cocaine and cannabis. The SRA accepts that there is a triable issue as to whether or not the effect of that consumption was such that Mr. Lipson lacked the mens rea for dishonesty at the relevant time such that there is a possibility of the allegation of dishonesty being found not proven after the Tribunal has heard him being cross-examined upon his evidence.
5. As Mr Lipson accepts the allegation against him set out in paragraph 2.6, the allegation against him set out in paragraph 2.5 (which was pleaded in the alternative) does not apply.

Agreed Facts

6. The following facts and matters, which are relied upon by the SRA in support of the allegations which are admitted by Mr. Lipson and which have not been withdrawn by the SRA, are agreed between the SRA and Mr Lipson.
- 6.1. Mr Lipson, who was born in 1977, is a solicitor, having been admitted to the Roll on 3 October 2005. He does not currently hold a PC. His last known place of abode is Douglas, Isle of Man.
- 6.2. Mr Lipson was, from 1 December 2013 to 2 September 2016, a member of the LLP at BPS Law LLP (the Firm), 4th Floor, Old Bank Chambers, 2 Old Bank Street, Manchester, M2 7PF. From 2 September 2016 to 11 August 2017, an assistant solicitor at the Firm.

Allegation 2.1 - accepting a conditional caution on 9 April 2016 for the possession of Class A and Class B drugs

6.3. Mr Lipson was arrested in Birmingham on 9 April 2016, having been found in possession of cannabis and cocaine.

6.4. In his interview with the police, also on 9 April 2016, Mr Lipson stated that both the cannabis and the cocaine belonged to him and were for his own use.

6.5. Having tested positive for cocaine and opiates in his system, Mr Lipson accepted a caution for the possession of Class A and Class B drugs for his own use.

Allegation 2.2 - failing to inform the SRA that he had accepted a conditional caution on 9 April 2016

6.6. The Respondent was arrested in Birmingham on 9 April 2016.

6.7. The Respondent's arrest and caution was disclosed to the SRA by West Midlands Police on 22 April 2016.

Allegation 2.3 – conviction on 13 March 2017 for driving whilst under the influence of drugs contrary to section 5A (1)(a) and (2) of the Road Traffic Act 1988

6.8. Mr Lipson was arrested on 30 November 2016, having been found to have 187 microgrammes of cocaine per litre of blood in his system, exceeding the threshold limit of 10 microgrammes per litre. He was charged contrary to section 5A (1)(a) and (2) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988.

6.9. In its letter dated 15 March 2017 Slater and Gordon LLP (S&G), representing Mr Lipson, explain that he was also charged with having benzococaine in his system. S&G stated that *"it is accepted that benzococaine is a [sic] produced by the body when an individual takes cocaine, and therefore, he fell to be sentenced as if he had taken one drug"*.

6.10. On 13 March 2017 Mr Lipson pleaded guilty to driving with cocaine in his system. This followed a not guilty plea, entered on 10 March 2017.

6.11. Mr Lipson was sentenced to a twelve-week custodial sentence which was suspended for 12 months. Mr Lipson was also disqualified from driving for 18 months, ordered to pay a £115 victim surcharge and £85 towards the costs of the prosecution.

6.12. The notes in the Memorandum of Entry state that the reason for the suspended custodial sentence was "Offence so serious. Reason for custody: extremely high reading showing heavy use of cocaine, 2nd charge aggravates 1st due to high level of reading".

Allegation 2.4 - failing to inform the SRA that he had been charged with driving whilst under the influence of drugs on 30 November 2016 until after his conviction

6.13. Mr Lipson was charged in relation to driving whilst under the influence of drugs on 30 November 2016 and convicted on 13 March 2017.

6.14. Mr Lipson's arrest and conviction for driving with cocaine in his system was disclosed to the SRA by S&G on 15 March 2017 and by the Firm, also on 15 March 2017.

Allegation 2.5 - providing a misleading statement to the SRA on 24 August 2016 as to the circumstances underlying the conditional caution dated 9 April 2016

6.15. In a telephone call to the SRA on 17 August 2016, Mr Lipson stated that, when he was arrested, he had been with his ex-partner in Birmingham. He went on to state that he had taken the drugs in question from her and that they had been found on him when the police had searched him.

6.16. In a letter to the SRA dated 24 August 2016 (the First Response) Mr Lipson stated *"I would like to explain why i [sic] was found in possession of the drugs referred to"*. He explains that he had met a partner who had turned out to be a cocaine and cannabis addict. He had tried to help her but had been unable to do so, so was driving from Manchester to London to return her to her father's care. The journey included an overnight stop in Birmingham..

6.17. Mr Lipson goes on to state that *"having informed D [his partner] what was to happen the situation worsened and money was stolen from [him] in Manchester and the money used by D to purchase cocaine and cannabis, which [he] found whilst unpacking things in the hotel in Birmingham. [He] "confiscated" the drugs and put them in [his] pocket with an intention to dispose of them the next day rather than immediately to avoid an immediately explosive situation. [He] had not realised either that some had been put in [his] drink by D for being, in her view, self righteous! It is for this reason it was found in [his] system a short while after following attendance for the argument and their searching [him]. When the police attended [he] had totally forgotten that [he] had confiscated the drugs and when they were found by the police officer, [he] immediately realised what a disastrous situation [he] had put myself in... [he] was found in possession of the drugs for unfortunate reasons and*

therefore simply admitted the same; the specific circumstances of course being irrelevant to the offence".

6.18. In his interview with the police on 9 April 2016 (two months before the SRA first wrote to him on 10 June 2016), Mr Lipson stated that the drugs belonged to him and were for his own use. The transcript of the interview states as follows:

"PC L ...I searched him and inside his left coat pocket, there for me, I found two brown blocks of resin..."

LRL Yeah

PC L Which is eh Exhibit TA. I asked Lipson what that was, he said, and he replied by saying Hash ... is that correct?

LRL Yes

PC L Is that what you said to the officer? I then said to Lipson is that Cannabis resin? and he replied by saying Yes. Do you agree with that?

LRL Yeah

PC L So I have to ask you again on tape what is that?

LRL Um a small amount of Cannabis resin

PC L Right and whose it for?

LRL Uh it's myself

PC L Right, just personal use

LRL Yeah because I have a neurological condition so

PC L Right

LRL It helps with the uh pains somewhat

PC L So its medicinal

LRL Uh yes"

PC L ... I then continued to search Lipson and inside his righthand rear trouser pocket. I found four clear bags containing a white powder, which I believed to be cocaine....

LRL Yeah

PC L What is that?

LRL Um I, I believe it's cocaine

PC L Ok any reason why it was on you in your back pocket?

LRL Um actually I've no idea

PC L Ok so obviously you're found in possession for using it...

LRL Yeah, yeah

PC L So is it yours or not?

LRL Um well it, it was in my jeans, so I have to say for that purpose yes

PC L Are you using it [cocaine] at the moment?

LRL I haven't actually even got round to touching it.

PC L Was that your intention though was it

LRL Well, it was yeah I mean my girlfriend had been away for, in hospital for a month and uh she'd been staying with me for a month and I was taking her up to London and thought we'd have there

PC L Yeah

LRL Bit of

...

LRL Just fun

PC L I know you've said you were in possession of it was it something you were going to use yourself is that right?

LRL Yeah, I mean I was I, I, I hadn't ruled it out um whether yeah so we had it and didn't get round to even obviously doing it."

Non-Agreed Mitigation

7. The following mitigation, which is not agreed by the SRA, is put forward by Mr Lipson:

7.1. he has no adverse regulatory history;

7.2. he was suffering from an addiction to prohibited drugs at the time of the misconduct for which he is now seeking treatment; and

7.3. he recognises the seriousness of his actions by acknowledging that the proper penalty is for him to be removed from the Roll.

Penalty proposed

8. It is therefore proposed that Mr Lipson should be struck off the Roll.

9. With respect to costs, it is further agreed that Mr Lipson should pay the SRA's costs of this matter agreed in the sum of £3,585.

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

10. At the time of the matters giving rise to the allegations against him, Mr Lipson was an experienced solicitor. He was directly responsible for the matters which led to the allegations against him, which span an 11 month period between March 2016 and April 2017, and which are all occasioned by his consumption of prohibited substances in that period. His culpability for his misconduct is correspondingly high.

11. Mr. Lipson's conduct will inevitably have caused significant harm to the reputation of the legal profession. The fact that he gave misleading information to the police in the course of his interview on 9 April 2016 was a significant departure from the standards of "complete integrity, probity and trustworthiness" to be expected from a solicitor. The trust the public would place in him, and in the provision of legal services, would inevitably have been undermined by the imposition upon him of a custodial sentence, albeit suspended, following his conviction for a motoring offence committed after the consumption of Class A drugs.

12. The principal factors which aggravate the seriousness of the misconduct in this case are that:

- 12.1. his misconduct involved the commission of criminal offences;
- 12.2. his misconduct was repeated over time;
- 12.3. the nature of his misconduct was such that he ought to have appreciated it was in material breach of his obligation to protect the reputation of the profession;
- 12.4. his misconduct in misleading the police on 9 April 2016 had the capacity to affect their investigation into the offences which he was suspected of having committed.

13. The principal factor which mitigates the seriousness of the misconduct in this case is that Mr. Lipson has demonstrated genuine insight into the seriousness of his misconduct by reason of his acceptance that the appropriate penalty in this case is for him to be struck off the Roll of Solicitors

14. Taking all the above into account, the seriousness of the misconduct is such that a reprimand, a fine, a Restriction Order or a Suspension would not be a sufficient sanction. Mr Lipson accepts that the protection of the public and the protection of the reputation of the legal profession justifies an order that he be struck off the roll.

Simon Griffiths, Legal Adviser upon behalf of the SRA

Lee Robert Lipson

13 FEBRUARY 2019