

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11971-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

RHODD LLWYD HUMPHREYS

Respondent

Before:

Mrs A. Kellett (in the chair)

Mr J. P. Davies

Mrs S. Gordon

Date of Hearing: 8 August 2019

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations made against the Respondent by the Solicitors Regulation Authority (“SRA”) were that:

Employment at BBH (Legal Services) Limited (“BBH”)

- 1.1 She made a statement which was untrue in her email of 24 December 2014 to Miss NM, a beneficiary in the estate of VGR, namely, “I have written to NS&I for a statement and will forward this to you when received”, when no investment had been made so no statement had been requested. She thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011 (“the Principles”).

Employment at GHP Legal (“GHP”)

- 1.2 She made untrue statements to her clients and third parties in the estate of HER as follows:

To Clients

- 1.2.1 On 29 September 2017, in a telephone call informed her client BEP that the Grant of Probate had been obtained when she knew that it had not been. The Grant of Probate was not obtained until 14 May 2018;
- 1.2.2 On 3 October 2017 in an email informed her client BEP that “The revenue are asking for further information regarding the farm - it would be prudent to obtain a statement from you (and your brother) to confirm use of house and land as a farm” and “I have refrained from sending the probate to Hadlow Edwards or Clerical Medical until the Revenue has been dealt with ...” when she knew that probate had not been obtained and that HMRC had closed the matter down post 26 May 2017 until 3 April 2018;
- 1.2.3 On 20 December 2017 in an email informed her client BEP: “I am waiting for the final calculation from the HMRC, I am told it has been sent out but will be here in the New Year” when she knew that HMRC had closed the matter down;
- 1.2.4 In or around January 2018 informed her client DLR that HMRC had agreed the IHT position and that there was no tax to pay, when she knew that HMRC had not agreed the tax position as they were yet to determine whether there was any tax to pay as they had closed the matter down;
- 1.2.5 On 20 March 2018, at a meeting with the clients, BEP and DLR, informed them that the probate document had been sent to Hadlow Edwards by letter when she knew that probate had not been obtained;
- 1.2.6 On 4 April 2018, assuring her client BEP at the offices of GHP Legal that the Grant of Probate was being walked around to the offices of Hadlow Edwards when she knew that the Grant of Probate had not been obtained;

To Third Parties

- 1.2.7 On 27 February 2018 in an email informed LI, (a PA at Hadlow Edwards) “Just to let you know I have just dictated a letter to come to you with the Grant of Probate”, knowing that Probate had not been obtained;
- 1.2.8 On 26 March 2018 in a letter informed Hadlow Edwards: “Please find enclosed herewith Grant of Probate for your attention” knowing that Probate had not been obtained. She thereby breached any or all of Principles 2 and 6 of the Principles.
2. Dishonesty was alleged with respect to the allegations at paragraphs 1.1 and 1.2 but dishonesty was not an essential ingredient to prove those allegations.
3. The Respondent admitted all the allegations including that her conduct was dishonest.

Documents

4. The Tribunal had before it the following documents:-
- Rule 5 Statement dated 4 June 2019
 - Respondent's Answer to the Rule 5 Statement dated 5 July 2019
 - Statement of Agreed Facts, Admissions and Outcome dated 8 August 2019

Factual Background

5. The Respondent was born in 1977 and was admitted to the Roll in November 2002. She remained on the Roll. Between 10 December 2012 and 15 April 2016, she was an Assistant Solicitor at BBH in Wirral, Cheshire. Between 25 April 2016 and 7 April 2018 she was an Assistant Solicitor at GHP in Wrexham.
6. The SRA received two reports relating to the Respondent. The first was dated 7 December 2017 and was sent by BBH. The second was dated 12 April 2018 and was sent by GHP.

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, Admissions 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 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 2018). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal noted that the Respondent had admitted all the allegations, including that her conduct was dishonest. She had made untrue statements to clients and third parties. Her misconduct had continued over a period of 4 years and had been deliberate. That such conduct was dishonest was plain. Given the serious nature of the Respondent's misconduct, in that it involved admitted dishonesty, the Tribunal considered that the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.
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 £2,500.00. The Tribunal considered the costs application 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, RHODD LLWYD HUMPHREYS of solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,500.00.

Dated this 8th day of August 2019
On behalf of the Tribunal



A. Kellett
Chair

Judgment filed
with the Law Society
on 08 AUG 2019

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

RHODD LLWYD HUMPHREYS

Respondent

STATEMENT OF AGREED FACTS, ADMISSIONS AND OUTCOME

1. By its application dated 4 June 2019, 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 concerning the conduct of Ms Humphreys. ("The Respondent")

Allegations

2. The allegations against the Respondent are that-

Employment at BBH (Legal Services) Limited ("BBH")

- 2.1 She made a statement which was untrue in her email of 24 December 2014 to Miss NM, a beneficiary in the estate of VGR, namely, "*I have written to the N S & I¹ for a statement and will forward this to you when received*", when no investment had been made so no statement could have been requested. She thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011.

Employment at GHP Legal ("GHP")

- 2.2 She made untrue statements to her clients and third parties in the estate of HER as follows:

¹ National Savings and Investments.

To Clients

2.2.1 On 29 September 2017, in a telephone call informed her client BEP that the Grant of Probate had been obtained when she knew that it had not been. The Grant of Probate was not obtained until 14 May 2018.

2.2.2 On 3 October 2017 in an email informed her client BEP that "*The revenue are asking for further information regarding the farm – it would be prudent to obtain a statement from you (and your brother) to confirm use of house and land as a farm*" and "*I have refrained from sending the probate to Hadlow Edwards or Clerical Medical until the Revenue has been dealt with ...*" when she knew that probate had not been obtained and that HMRC had closed the matter down post 26 May 2017 until 3 April 2018.

2.2.3 On 20 December 2017 in an email informed her client BEP: "*I am waiting for the final calculation from the HMRC, I am told it has been sent out but will be here in the New Year*" when she knew that HMRC had closed the matter down;

2.2.4 In or around January 2018 informed her client DLR that HMRC had agreed the IHT position and that there was no tax to pay, when she knew that HMRC had not agreed the tax position as they were yet to determine whether there was any tax to pay as they had closed the matter down.

2.2.5 On 20 March 2018, at a meeting with the clients, BEP and DLR, informed them that the probate document had been sent to Hadlow Edwards by letter when she knew that probate had not been obtained.

2.2.6 On 4 April 2018, assuring her client BEP at the offices of GHP Legal that the Grant of Probate was being walked around to the offices of Hadlow Edwards when she knew that the Grant of Probate had not been obtained.

To Third Parties

2.2.7 On 27 February 2018 in an email informed LI, (a PA at Hadlow Edwards) "*Just to let you know I have just dictated a letter to come to you with the Grant of Probate*", knowing that Probate had not been obtained.

2.2.8 On 26 March 2018 in a letter informed Hadlow Edwards: "*Please find enclosed herewith Grant of Probate for your attention*" knowing that Probate had not been obtained.

She thereby breached any or all of Principles 2 and 6 of the SRA Principles 2011.

3. Dishonesty is alleged with respect to the allegations at paragraphs 2.1 and 2.2.

Admissions

4. The Respondent admits the allegations against her as set out in paragraphs 2 and 3 above in their entirety. She further accepts the factual basis of the admitted allegations as set out in this document.

Agreed facts

The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraphs 2 and 3 of this statement, are agreed between the SRA and the Respondent:

5. The Respondent was admitted as a solicitor on 1 November 2002. Between 10 December 2012 and 15 April 2016, she was an Assistant Solicitor at BBH of the Wirral, Cheshire. Between 25 April 2016 to 7 April 2018 she was an Assistant Solicitor at GHP of Wrexham.
6. The Respondent is on the Roll of Solicitors but does not hold a current practising certificate.
7. Prior to this matter the Respondent had a clear regulatory history.
8. The Respondent made admissions at an early stage and has co-operated with the SRA in the course of its investigation.
9. Two reports were made to the SRA. One by BBH dated 7 December 2017 and the other by GHP dated 12 April 2018. The reports detailed the conduct undertaken by the Respondent at the two respective firms on two probate matters.

In the Estate of VGR when working at BBH

Allegation 2.1 – Making an untrue statement in an email to a beneficiary in the estate of VGR

10. The Respondent was administering the estate of VGR. A beneficiary under the will, Miss NM had been left a legacy which was not payable to her until her 22nd birthday. She had been notified in a letter dated 5 June 2014 that her legacy would be invested until 28 May 2016 in National Savings and Investments (NS&I)
11. The beneficiary made a request by email dated 18 November 2014, for details of the date on which the investment was made and asked for a copy of any relevant documentation. The request for the information was chased on 11 December 2014.
12. The Respondent replied in an email dated 24 December 2014 to say, "*I have written to the NS&I for a statement and will forward this to you when received*". No letter had been written to NS&I requesting a statement.
13. Some months later the Respondent then began the process of making the application to invest the legacy with NS&I. She sent a letter to NS&I dated 24 April 2015, enclosing the cheque for investment and completed application to invest the money.
14. By confirming that she had written to NS&I for a statement in response to a query from Miss NM about the date of the investment, the Respondent was implying that she had already invested the legacy. This was untrue as the Respondent had not by that stage made the investment and did not do so until some 4 months after her e-mail to Miss MN.
15. A solicitor of integrity would not provide untrue information to a beneficiary of an estate she was administering. The public would expect a solicitor to be full and frank and honest in their communications with a beneficiary. Accordingly, such conduct undermines the Respondent's integrity in breach of Principle 2 of the 2011 Principles and undermines the trust that the public places in her and in the provision of legal services in breach of Principle 6 of the 2011 Principles.

In the Estate of HER whilst working at GHP

Allegation 2.2- making untrue statements to her clients and third parties in the estate of HER

16. The Respondent had conduct of the administration of the estate of HER. Her clients were the executors, BEP and DLR. Probate was issued on 14 May 2018 out of the Liverpool District Probate Registry. The Respondent resigned from the firm on 7 April 2018.
17. In a telephone call on 5 April 2018, DLR spoke to SR, a legal secretary at GHP, and requested a copy of the Grant of Probate to the Estate. DLR wanted to take the document with him to an appointment with Hadlow Edwards Wealth Management Ltd (Hadlow Edwards) on 9 April 2018.
18. After the call SR sent the Respondent an email saying DLR would like the Respondent to ring him and that a letter had gone to Hadlow Edwards but with no enclosures. The Respondent then went to see SR and told her that she did not have the Grant of Probate and that she had lied to the client and had sent a letter to Hadlow Edwards purportedly enclosing the Grant of Probate when the Probate had not been received.
19. Thereafter, the firm ordered an investigation of the file. PB, the person at the firm investigating the matter, phoned the Capital Taxes Office sometime after 5 April 2018. He was told that HMRC had a file note dated 26 May 2017 to the effect that GHP were chasing IHT 421, that they considered the estate to be taxable, and the person calling from GHP, said there was believed to be an error with the documentation which was submitted and that HMRC should not process that documentation. As a result, HMRC closed the matter. On 3 April 2018 they then received a revised IHT400 and other documents. Probate was obtained by the firm and issued on 14 May 2018.
20. The following was ascertained from an examination of the file:
21. On the 6 April 2017 the Respondent sent the Executors Oath with the will to Liverpool District Probate Registry and said that form IHT441 would follow. This was sent to the Capital Taxes Office together with IHT400 and supplementary pages on 27 April 2017. In a letter dated 20 March 2018, the Respondent sent to the Capital Taxes Office an

amended IHT400 with supplementary pages including IHT421, saying that the original contained errors.

22. From around September 2017 the Clients were seeking to be provided with the Grant of Probate. The following is relevant:

- Email: 13 September 2017, 14:52: LI (A PA at Hadlow Edwards) to the Respondent *"EP (the client BEP) rang a few weeks ago to let me know that you now have probate. She said you were going to send me over an original copy, are you able to send this over to myself at the address below please?"*
- Email: 29 September 2017, 15:07: BEP to the Respondent: *"Also could you follow up getting the Probate document to Medwyn Edwards at SJP" (Hadlow Edwards)*
- Email: 3 October 2017 12:47: From the Respondent to BEP: *"I have refrained from sending the probate to Hadlow Edwards or Clerical Medical until the Revenue has been dealt with – I am told this will only take 2-3 weeks at most so no major delay".*
- Email: 20 December 2017 12:53: From the Respondent to BEP: *"I am waiting for the final calculation from the HMRC, I am told it has been sent out but will be here in the New Year"*
- Email: 22 February 2018: 11:11 LI to the Respondent: *"EP has been in touch to let me know that Probate is now ready. Please can you advise when we can expect to receive this?"*
- Email: 27 February 2018 11:43: The Respondent to LI: *"Just to let you know that I have just dictated a letter to come to you with the Grant of Probate"*
- Email: 8 March 2018 16:05: LI to the Respondent: *"We still haven't received this Probate; do you know when we should expect this?"*
- Letter: (Ref:RH.SR.111270) 13 March 2018: Hadlow Edwards to GHP Legal: *"We would be grateful if you could confirm when we may expect to receive the following documents:

Original Grant of probate or Letters of Administration showing the name of the Executors

The Executors' written instructions confirming their chosen option.

Please let us know if you are now in a position to send us these requirements"*
- Letter: (Ref: RH.111270) 26 March 2018: GHP Legal to Hadlow Edwards: *"Please find enclosed herewith Grant of Probate for your Attention"*
- 29 March 2018: Letter created by the Respondent dated 20 March 2018 to Capital Taxes Office enclosing amended IHT400 with supplementary pages and IHT421.

23. The firm had a meeting with the executors on 6 April 2018. They discovered the following:

- 3 October 2017 12:47: An email was sent by the Respondent to BEP saying: "*The revenue are asking for further information regarding the farm – it would be prudent to obtain a Statement from you (and your brother) to confirm use of house and land as a farm – could you telephone me to discuss matters further so I can prepare something for you to sign.*" There was no evidence on the file that HMRC had asked for any further information. Furthermore, HMRC had confirmed that they had closed the matter following a call to them on 26 May 2017.
- The Respondent discussed this request with the clients and obtained information from them. A two-page draft statement was sent to the clients by email dated 1 November 2017, for approval and signature. An amended signed statement was delivered back to the Respondent, who informed the clients that the statement would be submitted to HMRC. This was not done.
- The email of the 20 December 2017, from the Respondents to the clients detailed above, informed them that the Respondent was waiting for a final calculation from HMRC, which they had confirmed had been sent out. There is no evidence on the file that HMRC had told the Respondent this.
- The Respondent told the client's in January 2018 that HMRC had agreed the IHT position and that there was no tax to pay. HMRC had however yet to determine whether there was any tax to pay.
- The client's attended for a meeting with the Respondent on 19 January 2018. They were informed that everything had been resolved and that they were entitled to a clearance certificate from HMRC. They signed an Application for a clearance certificate. The Application was not submitted. There were no grounds on which this could have been submitted, as HMRC had not made any determination regarding whether Inheritance Tax was payable.
- At an appointment with the clients on 20 March 2018, the Respondent told the clients that the Grant of probate had been sent to Hadlow Edwards.
- The letter dated 26 March 2018 to Hadley Edwards saying it enclosed the Grant of Probate did not enclose the document.
- On the 4 April 2018 BEP attended the firm to collect the Grant of Probate. The Respondent told BEP that one of the Administrative members of staff was walking the document to Hadlow Edwards office.

24. Accordingly, the Respondent made several untrue statements to her clients and third parties regarding the estate. A solicitor of integrity would not make untrue statements to clients of an estate she was administering or to third parties who were helping the clients. The public would expect a solicitor to be full and frank and honest in their communications with clients and those assisting the clients. Accordingly, such conduct undermines the Respondent's integrity in breach of Principle 2 of the 2011 Principles and undermines the trust that the public places in her and in the provision of legal services in breach of Principle 6 of the 2011 Principles.

Dishonesty

25. The Respondent's actions were dishonest in accordance with the test for dishonesty laid down by the Supreme Court in Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67, which applies to all forms of legal proceedings:

"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest".

26. The actual state of her mind as to knowledge or belief concerning those actions was as follows:

Allegation 2.1 – Untrue statement to a beneficiary in the estate of VGR

26.1 The Respondent was the solicitor at BBH dealing with the administration of the estate of VGR. She therefore had knowledge of the file and what work had been carried out on the file.

26.2 At the time the Respondent informed the beneficiary that she had written to NS&I for a statement of the investment, no investment had been made. The investment was not made for another four months. Notwithstanding this, no correction was made by the Respondent to the information she had provided to the beneficiary. The Respondent

knew that she had not sent a request to NS&I. There was no way she could have sent a request as no investment had been made and therefore there was no reference to identify the matter by.

26.3 The Respondent acted dishonestly by the standards of ordinary decent people in making an untrue statement to the beneficiary of the estate and, by her admission to the allegation made against her by the SRA, has accepted that she knew and believed that those actions were dishonest.

Allegation 2.2 – untrue statements / information in the estate of HER

26.4 The Respondent was the solicitor at GHP dealing with the administration of the estate of HER. She therefore had knowledge of what stage the administration had reached and what work she had carried out on the file.

26.5 Having full knowledge of the file the Respondent made untrue statements to both the clients and third parties of the estate of HER in connection with the Grant of Probate and in relation to the position regarding HMRC. The Respondent claimed that the grant of Probate had been issued when she knew that it had not. Further, she maintained that HMRC were raising queries and had finalised their dealing with the estate when she knew this not to be the case. HMRC having closed the case in May 2017 whilst waiting for a revised IHT400 from the Respondent which was not received by them until 3 April 2018.

26.7 On the 5 April 2018, the Respondent admitted to SR a legal secretary at GHP that she had lied to the client, as she did not have the Grant of Probate and that she had sent a letter to Hadlow Edwards purportedly enclosing the Grant of Probate when the Probate had not been received. Probate was not granted until the 14 May 2018.

26.8 The untrue information was provided on several occasions over a continuous period from approximately September 2017 to April 2018.

26.9 The Respondent acted dishonestly by the standards of ordinary decent people in providing the clients and third parties with untrue information and, by her admission to the allegations made against her by the SRA, has accepted that she knew and believed that those actions were dishonest.

Mitigation

27. The following is put forward by the Respondent as mitigation for the breaches admitted above. These are not adopted or necessarily accepted by the SRA:

When working at BBH:

27.1 She was struggling with her workload which she had made management aware of.

27.2 The environment at BBH was at times difficult.

27.3 The file had previously been managed by another solicitor before the Respondent joined the firm.

General:

27.4 She apologises for any distress or any inconvenience caused "*as it is out of character*". She has decided "*in light of these issues to no longer practice within the law*".

Agreed Outcome

28. The Respondent accepts that the seriousness of her admitted misconduct is such that neither a reprimand, a fine or being suspended from practice would be a sufficient sanction.

29. The Respondent accepts that the protection of the public and the protection of the reputation of the profession justifies her being struck off the Roll of Solicitors.

30. 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:

30.1 An Order that the Respondent be struck from the Roll of Solicitors; and

30.2 A further Order that the Respondent do pay the SRA's costs of £2,500.00.

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

31. The Respondent 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)).*"

32. 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..."

33. The following factors aggravate the seriousness of the Respondent's misconduct:

33.1 it involved dishonesty;

33.2 it was deliberate and repeated.

33.3 it continued over a period of 4 years.

33.4 it involved the concealment of wrong doing.

33.5 it involved material breaches of obligations to protect the public and the reputation of the legal profession.

34. The public expects solicitors to act with integrity and behave in a way that maintains the trust the public places in them. The most serious misconduct involves dishonesty. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off.

35. There are no exceptional circumstances and this case does not fall into the small residual category of cases where a strike off would be disproportionate

36. Having regard to all the facts giving rise to the allegations, the admissions made by the Respondent and her willingness to submit to such an Order, the SRA invites the Tribunal to make an Order that the Respondent be struck off the Roll of Solicitors.

Dated this 8 day of August 2019

Suzanne Jackson

On behalf of the Applicant, the Solicitors Regulation Authority

Rhodd Llwyd Humphreys