

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11994-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

BETHANY SARAH REAY

Respondent

Before:

Mr D. Green (in the chair)

Ms N. Lucking

Dr S. Bown

Date of Hearing: 5 November 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 were that:-
 - 1.1 between 23 December 2013 and 30 August 2017 she made statements to her client, Mr RB, which were untrue and apt to mislead him as to the progress of a personal injury claim which she was conducting upon his behalf and which she knew, or ought to have known, were liable to have this effect at the time they were made. In doing so she breached Principles 2 and 6 of the SRA Principles 2011;
 - 1.2 between 6 August 2013 and 30 August 2017 she made statements to her client Mr AM, which were untrue and apt to mislead him as to the progress of a personal injury claim which she was conducting upon his behalf and which she knew, or ought to have known, were liable to have this effect at the time they were made. In doing so she breached Principles 2 and 6 of the SRA Principles 2011;
 - 1.3 between 12 October 2015 and 30 August 2017 she made statements to her opponent in the litigation concerning AM which were untrue and which she knew, or ought to have known, to be untrue at the time they were made. In doing so she breached Principles 2 and 6 of the SRA Principles 2011;
 - 1.4 between 14 September 2015 and 30 August 2017 she made statements to her client, Mr DS, and Mrs N, his litigation friend, which were untrue and apt to mislead him as to the progress of a personal injury claim which she was conducting on his behalf and which she knew, or ought to have known, were liable to have this effect at the time they were made. In doing so she breached Principles 2 and 6 of the SRA Principles 2011;
 - 1.5 between 16 September 2016 and 30 August 2017 she made statements to her client, Mrs L, which were untrue and apt to mislead her as to the progress of a personal injury claim which she was conducting upon her behalf and which she knew, or ought to have known, were liable to have this effect at the time they were made. In doing so she breached Principles 2 and 6 of the SRA Principles 2011;
 - 1.6 she agreed to discontinue proceedings issued on behalf of Mrs L, and/or sought to do so, without her knowledge or consent. In doing so she breached Principle 5 of the SRA Principles 2011;
 - 1.7 in addition, Allegations 1.1, 1.2, 1.3, 1.4 and 1.5 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.

Factual Background

2. The Respondent was born in 1981 and was admitted to the Roll on 15 October 2007. At the time of the hearing the Respondent did not hold a Practising Certificate, having last held one for the 2017/2018 practice year. The Respondent was, from 23 January 2012 to 30 April 2013, an assistant solicitor at JMW Solicitors LLP (JMW), 1 Byrom Place, Spinningfields, Manchester, Lancashire, M3 3HG; from

1 May 2013 to 30 April 2015 she was an associate solicitor at JMW and from 1 May 2015 to 30 August 2017 she had been a non-member partner at JMW.

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

3. 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.
4. The matter had been before the Tribunal earlier in the day for a Case Management Hearing by telephone. At that hearing, Mr Griffiths on behalf of the Applicant, had told the Tribunal that the parties would be submitting an application for approval of an Agreed Outcome later the same day. The Tribunal had directed that the time estimate of the substantive hearing be reduced from three days to one day on the basis of the Respondent's admissions, but had not given any consideration at that stage to the merits of any Agreed Outcome application.
5. The parties submitted the application later in the day when this Division of the Tribunal were still present. The Tribunal proceeded to consider the application in the usual way.

Findings of Fact and Law

6. 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.
7. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.
8. 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. This was a serious case of numerous incidents of dishonest conduct spanning a significant period of time. The Tribunal agreed with the parties' submissions that there were no exceptional circumstances such that would come close to justifying a lesser sanction than a strike-off. It therefore approved the proposed outcome.

Costs

9. The parties had agreed that the Respondent would pay costs in the sum of £3,800 and the Tribunal saw no reason to interfere with that.

Statement of Full Order

10. The Tribunal Ordered that the Respondent, BETHANY SARAH REAY, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,800.00.

Dated this ^{25th} ~~22nd~~ day of November 2019
On behalf of the Tribunal



D. Green
Chairman

JUDGMENT FILED WITH THE LAW SOCIETY
26 NOV 2019

Case Number:

11994-2019

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

BETHANY SARAH REAY

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 29 July 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 making six allegations of misconduct against Ms Bethany Sarah Reay.

The allegations

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

- 2.1. between 23 December 2013 and 30 August 2017 she made statements to her client, Mr RB, which were untrue and apt to mislead him as to the progress of a personal injury claim which she was conducting upon his behalf and which she knew, or ought to have known, were liable to have this effect at the time they were made. In doing so she breached Principles 2 and 6 of the SRA Principles 2011

2.2. between 6 August 2013 and 30 August 2017 she made statements to her client Mr AM, which were untrue and apt to mislead him as to the progress of a personal injury claim which she was conducting upon his behalf and which she knew, or ought to have known, were liable to have this effect at the time they were made. In doing so she breached Principles 2 and 6 of the SRA Principles 2011

2.3. between 12 October 2015 and 30 August 2017 she made statements to her opponent in the litigation concerning AM which were untrue and which she knew, or ought to have known, to be untrue at the time they were made. In doing so she breached Principles 2 and 6 of the SRA Principles 2011

2.4. between 14 September 2015 and 30 August 2017 she made statements to her client, Mr DS, and Mrs N, his litigation friend, which were untrue and apt to mislead him as to the progress of a personal injury claim which she was conducting on his behalf and which she knew, or ought to have known, were liable to have this effect at the time they were made. In doing so she breached Principles 2 and 6 of the SRA Principles 2011

2.5. between 16 September 2016 and 30 August 2017 she made statements to her client, Mrs L, which were untrue and apt to mislead her as to the progress of a personal injury claim which she was conducting upon her behalf and which she knew, or ought to have known, were liable to have this effect at the time they were made. In doing so she breached Principles 2 and 6 of the SRA Principles 2011

2.6. she agreed to discontinue proceedings issued on behalf of Mrs L, and/or sought to do so, without her knowledge or consent. In doing so she breached Principle 5 of the SRA Principles 2011.

3. In addition, dishonesty was alleged as an aggravating factor with respect to each of these allegations, *save for allegation 2.6. 6.11.19*

4. Ms Reay admits each of these allegations. She also admits that her conduct in acting as alleged was dishonest.

Agreed Facts

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

5.1. Ms Reay was born on 1981 and was admitted to the Roll as a solicitor on 15 October 2007. Ms Reay does not currently hold a practising certificate and last held one for the 2017/2018 practice year.

5.2. Ms Reay was:

5.2.1. from 23 January 2012 to 30 April 2013, an assistant solicitor at JMW Solicitors LLP (JMW), 1 Byrom Place, Spinningfields, Manchester, Lancashire, M3 3HG;

5.2.2. from 1 May 2013 to 30 April 2015, an associate solicitor at JMW;

5.2.3. from 1 May 2015 to 30 August 2017, a non-member partner at JMW.

Allegation 2.1

- 5.3. JMW received instructions in March 2012 in relation to a claim against two NHS trusts and a named individual. The claim was for damages up to £50,000 resulting from a failure to diagnose Type 1 Diabetes. Ms Reay was the solicitor with conduct of the matter.
- 5.4. The limitation date for the issue of proceedings in this matter was 18 December 2013. Proceedings were issued on 23 December 2013, outside of the limitation period, but were not served.
- 5.5. The last date for service of the claim form (in accordance with Rule 7.5 of the Civil Procedure Rules 1999) was 23 April 2014. The proceedings were not served before this date or at all.
- 5.6. The file did not have any expert evidence on it save for a preliminary opinion in 2011. When reviewed in June 2017, there was no evidence that anything had been actioned since 23 August 2016. On this date, Ms Reay met Mr RB and took a statement from him when there was no obvious purpose for doing so.
- 5.7. During the period 23 April 2014 to 30 August 2017 (the date Ms Reay left JMW), Ms Reay failed to inform Mr RB that proceedings had neither been issued within the applicable limitation period nor served, either within the time limit for service prescribed by the Civil Procedure Rules or at all.

5.8. Ms Reay also, on 5 separate occasions following the issue of proceedings on 23 December 2013, made statements to Mr RB which were apt to mislead him into believing that his claim was being progressed properly when it had either not yet been served or had lapsed for want of service.

Allegation 2.2 and 2.3

5.9. JMW received instructions in May 2012 to pursue a claim for damages in relation to a hip replacement.

5.10. Ms Reay was the solicitor with responsibility for the matter.

5.11. The limitation date for the issue of proceedings in this matter was 21 July 2013, subsequently extended by agreement to 13 April 2015 and then to 14 October 2015.

5.12. Proceedings were received by Manchester County Court on 14 October 2015, and issued on 21 October 2015. Mr AM was not advised that the claim had been issued.

5.13. As the Claim Form was issued on 21 October 2015, the period for serving the proceedings expired on 21 February 2015. An extension to the period for serving the proceedings was agreed until 14 May 2016. The proceedings were not served by Ms Reay, either before this or at all.

5.14. In correspondence on the matter file for Mr AM, two potential experts are referred to, Mr NSh and Mr SW.

- 5.15. During the period 6 August 2013 to 30 August 2017, Ms Reay made five statements to Mr AM in relation to the purported instruction of either Mr NSh or Mr SW to provide expert evidence.
- 5.16. In addition, on 12 October 2015, Ms Reay emailed Mr GM of the NHS Litigation Authority, who were representing the Defendant. She stated "I have now received some comments from my expert who has requested sight of some updated radiology from RNOH before he can finalise his opinion". Ms Reay went on to seek a further extension to the limitation deadline, which was declined.
- 5.17. Neither Mr NSh nor Mr SW were instructed by Ms Reay to provide expert evidence in relation to Mr AM's matter.
- 5.18. Further, in an email dated 10 February 2016 Ms Reay wrote to Ms JM at the Defendant, stating "I have been unable to get instructions from my client and as a result I will have to serve proceedings and apply for an extension of time for service of the Particulars of Claim, C&P report, preliminary Schedule of Loss". As a result of this statement, the period of time for serving proceedings was extended from 21 February 2016 to 14 May 2016. However, at the time of making this statement, Mr AM was in contact with Ms Reay and was providing her with documentation to assist his claim. On 8 February 2016, two days before Ms Reay's statement to Ms JM above, Mr AM had emailed Ms Reay asking for an update as to progress and attaching medical documentation.

Allegation 2.4

- 5.19. JMW received instructions to pursue a claim for damages in relation to clinical negligence. JMW received instructions through the daughter of Mr DS, acting as a litigation friend (Mrs N).
- 5.20. Ms Reay was the solicitor with responsibility for the matter.
- 5.21. Instructions were received to issue proceedings and a draft Claim Form and a Certificate of Suitability of Litigation Friend were signed and returned to Ms Reay on 13 May 2015.
- 5.22. Ms Reay did not issue proceedings on behalf of Mr DS.
- 5.23. On 14 September 2015 Ms Reay emailed Mrs N stating “[y]our Dad’s case has been issued in the High Court and allocated to [Master Y]. [Master Y] will be in charge of all hearings in your Dad’s case, and make decisions about the Court timetable. The Defendant has until 20 November 2015 to file a Defence with the Court”.
- 5.24. In four emails to Mrs N, sent between 10 December 2015 and 22 June 2016, Ms Reay made detailed statements to Mrs N relating to the alleged progression of the proceedings.

Allegations 2.5 and 2.6

- 5.25. JMW received instructions from Mrs L to pursue a claim for damages against a consultant, Mr W.
- 5.26. Ms Reay was the solicitor with responsibility for the matter. The trial was fixed for 12 to 15 December 2016.
- 5.27. On 3 June 2016, Firm B (the Defendant's representatives) filed an application to strike out the claim, with the Claimant paying the Defendant's costs. Firm B's application stated that the Claimant, as represented by Ms Reay, had (among other things) failed "to serve liability condition, prognosis and quantum evidence, together with the schedule of loss". The application was to be heard on 15 September 2016.
- 5.28. On 13 September 2016 Ms Reay emailed the Court stating that "[t]he parties are now in the process of agreeing the terms of discontinuance of the claim and the hearing of the Defendant's application will not need to go ahead."
- 5.29. On 14 September 2016, Firm B emailed Ms Reay attaching a draft Consent Order for agreement. The Terms of the Consent Order were that the claim be discontinued and that the Claimant pay the Defendant £20,000 in full and final settlement of its costs. A Consent Order was filed at the Court by Ms Reay on 4 October 2016. A further copy was filed on 29 November 2016 after the Court confirmed that they had not received the Order filed in October 2016. The sealed Consent Order discontinuing the claim is dated 2 December 2016.

5.30. Over the period 16 September 2016 to 19 October 2016, Ms Reay entered into email correspondence with Mrs L which suggested that additional evidence, namely an expert's report, had been received from Firm B which undermined Mrs L's position and would make the matter difficult to progress. Firm B's radiologist's report had been sent to Ms Reay on 25 May 2016. The correspondence did not refer to an agreement being reached with Firm B to discontinue the claim or a consent order being agreed and filed.

5.31. A file note, dated 21 October 2016 and prepared by Ms Reay, relates to a visit Ms Reay made to Mrs L at her home. The note suggests that Ms Reay advised Ms L to discontinue the claim but does not record Mrs L's express consent to do so. Mrs L then emailed Ms Reay on 9 November 2016 requesting a copy of the report, and Ms Reay's comments on it, so that she could go through it and draw up some questions. Ms Reay did not reply to the email.

5.32. In March 2017, in response to a request for an update from Mrs L, Ms Reay emailed Mrs L and advised her that she was "[j]ust waiting for Counsel's advice for you, apologies for the delay. Will get it to you as soon as I receive it". Counsel had not been instructed.

Mitigation

6. Ms Reay puts forward the following by way of mitigation (which is not adopted or necessarily accepted by the SRA):

6.1. She was suffering from an anxiety disorder whilst employed by JMW, and JMW was aware that she was being treated for mental health problems.

- 6.2. She was unable to cope with her workload and was offered little support by JMW.
 - 6.3. She was unable to cope with the demands of her role and tried to resign on more than one occasion. She was working extremely long hours and was expected to work at the weekend and when she was on annual leave.
 - 6.4. She failed to persuade clients, on matters where their claims were not meritorious, to accept their position and then did not handle the situation in an acceptable way. She did not respond appropriately when she felt intimidated and threatened by clients who were not prepared to accept that their claims could not proceed.
 - 6.5. She is no longer practising or involved in any work that is regulated by the SRA. She does not give any legal advice of any kind.
 - 6.6. She does not intend to practise as a solicitor again.
7. However, Ms Reay does not contend that the mitigation set out above amounts to exceptional circumstances which would justify the Tribunal in making any order other than that she be struck off the Roll.

Penalty proposed

8. It is therefore proposed that Ms Reay should be struck off the Roll of Solicitors.
9. With respect to costs, it is further agreed that Ms Reay should pay the SRA's costs of this matter agreed in the sum of £3,800.00.

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

10. Ms Reay has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (5th edition), at paragraph 47, states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)).*"

11. In **Sharma [2010] EWHC 2022 (Admin)** at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:

"(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...

(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...

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

12. Over a period of four years (August 2013 to August 2017), Ms Reay made untrue statements to four of her clients which were apt to mislead and which she knew, or ought to have known, were liable to have this effect at the time that they were made. She also made statements to an opponent in litigation which were untrue and which she knew, or ought to have known, to be untrue at the time they were made. These misleading statements were made to individuals who would have trusted her to be truthful and accurate when making statements to them.

13. These were serious acts of dishonesty committed over an extended period. The case does not fall within the small residual category where striking off would be a disproportionate sentence. Accordingly, the fair and proportionate penalty in this case is for Ms Reay to be struck off the Roll of Solicitors.

Simon Griffiths, Legal Adviser upon behalf of the SRA

Bethany Sarah Reay