

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12191-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

KALUM GUNARATHNA
(A.K.A. LAKSHAPATHI GUNARATHNA)

Respondent

Before:

Mr J P Davies (in the chair)
Mr J Evans
Mrs L McMahan-Hathway

Date of Hearing: 24 August 2021

Appearances

Rory Mulchrone, barrister, of Capsticks LLP, 1 St George's Road, Wimbledon, London, SW19 4DR, for the Applicant.

Jonathan Goodwin, solicitor, of Jonathan Goodwin Solicitor Advocate, 69 Ridgewood Drive, Pensby, Wirral CH61 8RF, for the Respondent.

JUDGMENT

Allegations

The allegations against the Respondent, made by the SRA, were that, having been admitted as a solicitor of the Senior Courts:

1. On or about 13 February 2019, he drove a motor vehicle dangerously, resulting in:
 - 1.1 his conviction on indictment at Snaresbrook Crown Court on 12 April 2019 of one count of dangerous driving;
 - 1.2 him being sentenced at Snaresbrook Crown Court on 10 May 2019 to, inter alia, nine months' imprisonment, suspended for 24 months.

The Respondent therefore breached any or all of Principles 2 and 6 of the SRA Principles 2011 ("the Principles").

Documents

2. The Tribunal considered all of the documents in the case which included:
 - Rule 12 Statement dated 7 April 2021 and Exhibit MLR1.
 - Answer to the Rule 12 Statement dated 7 May 2021.
 - Respondent's Personal Financial Statement dated 24 May 2021.
 - Respondent's "Statement of Apology".
 - Respondent's self-report to the Applicant dated 19 March 2019.
 - Nine character references.
 - Applicant's Statement of Costs at Issue dated 8 April 2021.
 - Applicant's Statement of Costs at Hearing dated 17 August 2021.

Agreed Facts

3. The Respondent was admitted to the Roll in November 2004. At the material time he was practising at S. Satha & Co Solicitors. He originally qualified as an Attorney-at-Law in Sri Lanka where he practised for 18 years prior to relocating with his family in the United Kingdom in 2000. At the material time he held, and continued to hold, a practising certificate free from conditions.
4. At around 20:00 hours on 13 February 2019, the Respondent left work, having consumed alcohol, to get into his vehicle. He proceeded to drive his vehicle down a one way residential road, towards a junction. The Respondent ignored the traffic coming from his right that had right of way over his position, did not stop and drove into the oncoming traffic.
5. A witness who was in another vehicle stated that the Respondent looked straight at him, did not acknowledge him and he was forced to brake in order to avoid a collision. He then saw the Respondent drive into a telegraph post or utility post before speeding up in his vehicle and colliding with four separately parked vehicles one of which was propelled into the middle of the road. The witness then saw the Respondent reverse at speed and attempt to drive away from the scene. He was prevented from so doing as he was blocked by another vehicle that he had previously

struck and pushed into the road. The Respondent was seen to reverse again, collide with another vehicle which was shunted into yet another parked car.

6. The Respondent then reversed his vehicle again and hit the first car that had been struck before hitting a further two more cars and finally driving the wrong way down a one way street. He hit another car in so doing before he eventually stopped his own vehicle.
7. The witness approached the Respondent in his vehicle and asked for the keys. The Respondent was apologising and saying that he had been trying to reverse in order to leave but was unable to do so.
8. The police arrived at the scene and confirmed that the Respondent smelt strongly of alcohol, was having difficulty in standing up straight and was unable to take a roadside breath test.
9. The Respondent self-reported his conduct to the Applicant on 19 March 2019 which was shortly after he was charged but prior to him having been convicted or sentenced for the criminal offences.
10. On 12 April 2019 the Respondent pleaded guilty to and was convicted of dangerous driving at Snaresbrook Crown Court. He was sentenced on 10 May 2019 to nine months imprisonment which was suspended for 24 months. He was ordered to carry out 150 hours of unpaid work before 10 May 2020, disqualified from driving for 24 months and ordered to pay compensation of £750.00 in respect of three complainants who had suffered loss/damage as a consequence of his actions. He was further ordered to pay the prosecution costs of the criminal proceedings in the sum of £1,500.00 and a victim surcharge of £140.00.
11. On 7 January 2020 the Respondent emailed the Applicant and expressed his “deep regret and sincere remorse” about the incident. He added that he was “extremely sorry for my despicable actions and would like to apologise to the SRA and the community as a whole.” The Respondent confirmed in that email that he had completed the unpaid work that he was ordered to undertake and paid his fine.

Witnesses

12. None.

Findings of Fact and Law

13. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard 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.

14. **Allegation 1 - On or about 13 February 2019, he drove a motor vehicle dangerously, resulting in:**

1.1 his conviction on indictment at Snaresbrook Crown Court on 12 April 2019 of one count of dangerous driving;

1.2 him being sentenced at Snaresbrook Crown Court on 10 May 2019 to, inter alia, nine months' imprisonment, suspended for 24 months.

The Respondent therefore breached any or all of Principles 2 and 6 of the SRA Principles 2011 ("the Principles").

The Applicant's Case

14.1 Mr Mulchrone reminded the Tribunal that the Respondent, in his Answer to the Rule 12 Statement, had made full admissions to the factual matrix of the allegations as well as the Principle Breaches. He asserted that the Tribunal should find Allegation 1, 1.1 and 1.2 proved in its entirety.

14.2 With regards to the Principle breaches, Mr Mulchrone asserted:

Principle 2: Duty to act with integrity

14.2.1 Mr Mulchrone submitted that in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, the Court of Appeal held that integrity (i.e. moral soundness, rectitude and steady adherence to an ethical code) connotes adherence to the ethical standards of one's own profession and that this involves more than "mere" honesty. The duty to act with integrity applied not only to what professional persons say, but also to what they do.

14.2.2 Mr Mulchrone contended that such adherence applied beyond the ethical standards of one's own profession and extended to the wider law of the land, especially the criminal law, not least because solicitors are officers of the court.

14.2.3 Mr Mulchrone stated that a solicitor acting with integrity would not commit serious breaches of the criminal law. In particular, they would not engage in offending that put other members of the public at risk, such as driving dangerously having consumed alcohol to excess. A solicitor who has been found guilty of such a criminal offence may properly be said to have conducted himself in a manner lacking in moral soundness, rectitude and steady adherence to an ethical code as well as ethical standards of the profession.

14.2.4 Mr Mulchrone therefore submitted that, by virtue of his convictions, the Respondent breached Principle 2.

Principle 6: Duty to maintain public trust in solicitors and the profession

14.2.5 Mr Mulchrone stated that Principle 6 required solicitors not to behave in a manner that brings or is capable of bringing the individual and/or the profession into disrepute. He submitted that the Respondent's behaviour which put other road users at risk through and having been convicted of the criminal offence of dangerous driving profoundly damaged public trust in him and in the profession. He stated that the public would be shocked to learn that a solicitor had been sentenced to a term of imprisonment irrespective of the fact that the term was suspended.

14.2.6 Mr Mulchrone therefore submitted that, by virtue of his convictions, the Respondent breached Principle 6.

The Respondent's Position

14.3 The Respondent admitted the factual matrix of Allegation 1, 1.1 and 1.2 as well as the breach of Principles 2 and 6.

The Tribunal's Findings

14.4 The Tribunal considered that the Respondent's admissions were properly made and accepted the same.

14.5 The Tribunal therefore found Allegation 1, 1.1 and 1.2 proved on a balance of probabilities.

Previous Disciplinary Matters

15. None.

Mitigation

16. Mr Goodwin reminded the Tribunal that the Respondent made a self-report to the Applicant within days of his first appearance at Thames' Magistrates' Court when the matter was committed to the Crown Court sitting at Snaresbrook. The title of that self-report was "Notification of impending conviction" which demonstrated the candour, transparency and acceptance of responsibility of his failures from the outset of the criminal proceedings which was to his credit.

17. The Respondent qualified as an Attorney-at-Law in Sri Lanka 35 years ago. He qualified in the United Kingdom in 2004. He was a solicitor of 17 years post qualification experience within England and Wales and 35 years in totality. He had previously held an unblemished regulatory record, was an honest and hardworking solicitor. Since admission to the Roll and subsequent to his self-report, the Applicant had issued him with an unconditional Practising Certificate. That in and of itself demonstrated, Mr Goodwin submitted, the Applicant's assessment of the risk posed to the public and the profession by the Respondent.

18. He acknowledged and accepted full responsibilities for his failures from the outset of the criminal proceedings and throughout the Tribunal proceedings. He apologised profusely to the Crown Court Judge, the Applicant during the course of the investigation, the Tribunal, the profession and the public at large.
19. Mr Goodwin submitted that the Respondent was, as evidenced by the character references, committed to the profession, his family and his community. The events in the evening of 13 February 2019 were isolated, wholly out of character and represented a serious error of judgement that had not occurred previously or since.
20. Mr Goodwin reiterated that the Respondent sought in no way to derogate from the seriousness of the admitted misconduct for which he expressed great shame, remorse and regret.
21. Mr Goodwin invited the Tribunal to impose a sanction that would adversely impact on the Respondent's ability to practice law. Mr Goodwin submitted that a financial penalty at Level 2 (moderately serious misconduct) was a reasonable and proportionate sanction to reflect the seriousness of the admitted misconduct whilst acknowledging the mitigating circumstances advanced above. Mr Goodwin referred the Tribunal to the Respondent's Personal Financial Statement which demonstrably showed that he was of limited means and asked for that to be taken into account if minded to impose a financial penalty.

Sanction

22. The Tribunal referred to its Guidance Note on Sanctions (Eighth Edition) when considering sanction and in so doing determined that:
23. Whilst the Tribunal accepted that the Respondent was unlikely to have made a conscious decision to become intoxicated and drive having known that he was intoxicated, that initial error of judgement, which the Tribunal accepted was spontaneous as opposed to planned, was exacerbated by a number of consequent decisions to continue driving his vehicle and attempt to leave the scene namely:
 - Ignoring traffic at a junction that had right of way
 - Striking a telegraph/utility post
 - Speeding up and consequently hitting four parked vehicles with such force that one of them was pushed into the middle of the road
 - Reversing back at speed and colliding with a parked vehicle which was shunted into another parked vehicle
 - Reversing again and hitting the first vehicle that he had struck as well as another two vehicles
 - Proceeding to drive the wrong way down a one way street and hitting another vehicle
24. The Tribunal determined that whilst the Respondent's motivation represented an initial serious error of judgement, that was compounded by numerous subsequent decisions in respect of which the Respondent had direct control. He should have known better as a man of his age and professional experience. He was solely and highly culpable.

25. The Tribunal considered that the underlying facts upon which the criminal conviction was predicated in conjunction with a flagrant disregard to the standards and duties incumbent on him as a Solicitor of the Supreme Court, caused immense harm to the reputation of the profession. It was fortuitous that no physical harm was caused to the public but emotional harm was undoubtedly caused to those that observed the events as they unfolded. Those observers included children in a vehicle with their father.
26. The Tribunal found that the following factors aggravated the admitted misconduct, (a) it was a criminal offence, (b) it was deliberate, (c) it was a protracted course of conduct, (d) the Respondent could have, but failed to, stop driving at any given time, (e) the various attempts made to flee the scene, (f) the Respondent knew or ought to have known that his actions represented a material breach of his obligation to protect the public and the profession from harm.
27. The Tribunal found that the following factors mitigated against the admitted misconduct, (a) the self-report made by the Respondent at the outset of the criminal proceedings, (b) his candour with the Applicant, (c) his genuine insight into his failings, (d) the admissions made at the outset of the Tribunal proceedings, (e) the financial reparation made to the owners of the vehicles he had struck and (f) that the event in question was a single episode in a lengthy and otherwise unblemished career. The Tribunal accepted that the Respondent's misconduct was an aberration and was highly unlikely to be repeated.
28. Weighing all of those factors in the balance the Tribunal determined that the overarching public interest, comprising of the need to protect the public from harm, protection of the reputation of the profession and maintenance of public confidence in the regulator, could be met by the imposition of a financial penalty. The Tribunal did not accept Mr Goodwin's submissions that such a penalty was properly assessed as Level 2 - moderately serious misconduct. The Tribunal categorised the same as Level 4 – very serious misconduct.
29. The Tribunal found that a fine in the sum of £20,000.00 was the appropriate and proportionate sanction to impose but, given the Respondent's limited means, reduced the same by 50%
30. The Tribunal therefore imposed a financial penalty in the sum of £10,000.00.

Costs

31. The parties agreed costs in the sum of £2,000.00 to be paid by the Respondent to the Applicant. The Tribunal, having considered the limited means of the Respondent and the straightforward nature of the investigation, the full admissions made by the Respondent from his self-report, determined that amount was reasonable and proportionate in all the circumstances.

Statement of Full Order

32. The Tribunal Ordered that the Respondent, Kalum GUNARATHNA (A.K.A. LAKSHAPATHI GUNARATHNA), solicitor, do pay a fine of £10,000.00 such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do

pay the costs of and incidental to this application and enquiry fixed in the sum of £2,000.00.

Dated this 7th day of September 2021
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
7 SEPT 2021

A handwritten signature in black ink, appearing to read 'J P Davies', is positioned to the left of the printed name.

J P Davies
Chair