

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12221-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

JAMES MICHAEL GREGSON

Respondent

Before:

Mr R Nicholas (in the chair)
Ms A E Banks
Mr R Slack

Date of Hearing:
03 November 2021

Appearances

Andrew Bullock, counsel, of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations made against the Respondent, made by the Applicant are that:
 - 1.1 On 29 April 2018 he assaulted person A by beating her and, in doing so breached any or all of Principles 2 and 6 of the SRA Principles 2011.
 - 1.2 He failed to report his conviction to the SRA in circumstances where he had an obligation to comply with his legal and regulatory obligations and deal with his regulators in an open, timely and co-operative manner. The Respondent breached any or all of principle 7 of the SRA Principles 2011 and Outcome 10.3 of the Solicitors Code of Conduct 2011.
 - 1.3 He failed to respond to requests for information from the SRA during the investigation into his conviction. In doing so breached any or all of paragraphs 7.3 and 7.4 of the Code of Conduct 2019 for Solicitors, RELs and RFLs.

Documents

2. The Tribunal considered all of the documents in the case which included:
 - Rule 12 Statement dated 9 July 2021 and Exhibit AB1.
 - Applicant's Schedule of Costs at Issue dated 9 July 2021.
 - Applicant's Schedule of Costs at Substantive Hearing dated 27 October 2021.
 - Restraining Order dated 17 August 2018.
 - Variation of Restraining Order dated 26 July 2019.

Preliminary Matters

Applicant's Application to Proceed in the Respondent's Absence

3. The Respondent was not in attendance. Mr Bullock applied for the Tribunal to proceed to hear the case in the Respondent's absence and submitted that service of the proceedings papers had been effected to all of the Respondent's known email addresses (on 13 July and 16 August 2021), via post to the registered addresses provided by the Respondent on his ("mySRA") account as well as a business address that was discovered by the Applicant following a search undertaken with Companies House. None of the emails had "bounced back" and the hard copy proceedings papers had not been "returned to sender".
4. Mr Bullock reminded the Tribunal that included in the proceedings papers, which were sent on numerous occasions, were the standard directions which set out the date of the substantive hearing. Mr Bullock therefore submitted that the Respondent had been properly served notice of the hearing in accordance with rules 36, 44 and 45 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR 2019").
5. With regards to proceeding in the Respondent's absence, Mr Bullock submitted that the Respondent had never engaged in the Tribunal proceedings, had not filed an Answer to the Rule 12 Statement, did not attend the non-compliance hearing listed in

that regard on 20 August 2021 and had not communicated with the Tribunal at any time.

6. Mr Bullock contended that the Respondent had voluntarily absented himself from the substantive hearing and that he was unlikely to attend should the matter be adjourned. Mr Bullock therefore submitted that the Tribunal should proceed in the Respondent's absence.

The Tribunal's Decision

7. The Tribunal considered the representations made by the Applicant in conjunction with its powers pursuant to Rule 36 of the SDPR 2019 namely:

“...If a party fails to attend and is not represented at the hearing and the Tribunal is satisfied that notice of the hearing was served on the party in accordance with these Rules, the Tribunal may hear and determine any application and make findings, hand down sanctions, order the payment of costs and make orders as it considers appropriate notwithstanding that the party failed to attend and is not represented at the hearing...”

8. The Tribunal was satisfied that notice of the hearing (by way of the standard directions included in proceedings papers) had been effected in accordance with rule 36 on 13 July 2021 and 16 August 2021 by way of hard copy post as well as soft copy email to all addresses provided by the Respondent.

9. The Tribunal therefore proceeded to consider whether or not to exercise its discretion to proceed in the Respondent's absence. In so doing it applied the principles set out in the seminal authority of GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162, in which Leveson P made plain that, with regards to regulatory proceedings, there was a need for fairness to the regulator as well as a Respondent. At §19 he stated:

“... It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when the practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed...”

10. Leveson P went on to state at §23 that discretion must be exercised:

“...having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interest of the public also taken into account...”

11. The Tribunal noted that the Respondent (a) had not engaged with the Applicant with regards to the investigation, (b) had not engaged with the Tribunal upon issue of the proceedings, (c) had not filed an Answer to the Rule 12 Statement, (d) failed to attend the non-compliance hearing, (e) had not made an application to adjourn the substantive hearing and (f) had not advanced any reason for his lack of engagement.

12. Weighing all of the attendant circumstances in the balance, the Tribunal determined that the Respondent had voluntarily absented himself from the proceedings without any good reason. The overarching public interest in the expeditious consideration of allegations and fairness to the Applicant required the matter to proceed in the Respondent's absence as there was nothing to suggest that he would attend a substantive hearing at a later date if the matter was adjourned.
13. The Tribunal therefore granted the application to proceed in the Respondent's absence.

Factual Background

14. The Respondent was admitted to the Roll on 1 October 2004. At the time of the incident, he was not employed but held a practising certificate free from conditions. The Respondent last held a practising certificate for the practice year 2019 to 2020 which expired on 31 October 2020. As at the time of the Substantive Hearing the Respondent did not hold a current practising certificate.
15. The conduct in this matter came to the attention of the Applicant on 21 August 2019 after it received a report from the Respondent's former employer at the time. The Respondent commenced working at the Firm on 11 June 2019 as a solicitor specialising in probate and estate planning on a trial basis.
16. The offer of employment was subsequently withdrawn, and the Respondent was excluded from the Firm's premises on 21 June 2019 as the Firm considered that the Respondent was not in a position to undertake his duties due to intoxication.
17. The Respondent's former employer explained that he later discovered that the Respondent had been convicted of assaulting Person A on 29 April 2018.

Witnesses

18. The written evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.
19. For the avoidance of doubt, the Tribunal did not receive any oral evidence and considered the allegations on the documentary evidence filed and the Applicant's submissions.

Findings of Fact and Law

20. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

21. Allegation 1.1: The conviction

The Applicant's Case

- 21.1 On 3 August 2018, the Respondent stood trial for common assault before Blackpool Magistrates Court. It was alleged that on 29 April 2018, the Respondent used a weapon, a pan to assault Person A in her own home. Person A was aged 71 at the relevant time.
- 21.2 The Respondent pleaded not guilty on 1 May 2018 but was subsequently found guilty at trial. On 17 August 2018, the Respondent was convicted and sentenced to an 18-week custodial sentence (suspended for 12 months). A restraining order was also imposed on the Respondent preventing him contacting Person A directly or indirectly or entering Person A's home for one year, lasting until 16 August 2019. The Respondent was ordered to pay £200 compensation, £200 costs and ordered to pay £115 surcharge to fund victim services.
- 21.3 Mr Bullock relied upon a copy of the Certificate of Conviction, which proved that the Respondent was convicted of the offence in question by virtue of Rule 32 (1) Solicitors (Disciplinary Proceedings) Rules 2019 which provides:
- “...A conviction for a criminal offence in the United Kingdom may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction will constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based will be admissible as conclusive proof of those facts save in exceptional circumstances...”
- 21.4 Mr Bullock further relied upon local newspaper reports which confirmed that the Respondent subsequently appealed his conviction at Preston Crown Court, but the appeal was dismissed.
- 21.5 On 26 July 2019 Person A made an application to Blackpool Magistrates Court to extend the restraining order for a further period of time and extend it to Person B who was 92 years old, suffered from Alzheimer's and resided with Person A. The restraining order was extended to prevent the Respondent from (a) contacting Person A and Person B directly or indirectly and (b) entering Person A's home for two years, lasting until 16 August 2021.
- 21.6 The Respondent made an application to Preston Crown Court requesting to discharge the Court's decision to extend the restraining order. A hearing took place on 17 October 2019 to consider the Respondent's application. The Appeal was dismissed and the Judge held:

“We have in considering all the matters we have heard come to the view that the magistrates were fully entitled to come to the view that they did after

hearing the evidence. We have no evidence before us to indicate that there is anything new that has occurred or anything that we should consider afresh that causes us to vary or discharge the order made by the magistrates. As I say, they were entitled to make such an order and there is nothing new that indicates to us why we should disturb that order and as such this application is refused”.

- 21.7 The Respondent’s conviction and subsequent appeals also received local media attention in the Blackpool Gazette with articles being published on 24 January 2019 and 30 July 2019.

Regulatory Breaches

- 21.8 Mr Bullock submitted that Principle 2 required the Respondent to act with integrity. By assaulting a 71 year old individual with a weapon, the Respondent has failed to act with integrity in that he failed to live up to the higher standards which society expected from him and which the profession expected from their own members, in accordance with the privileged and trusted role he has in society. Mr Bullock therefore submitted that the Respondent breached Principle 2.
- 21.9 Mr Bullock further submitted that Principle 6 required the Respondent to behave in a way that maintained the trust the public placed in him and in the provision of legal services. The trust that the public placed in solicitors, and in the provision of legal services, was dependent upon the reputation of the solicitors’ profession as one in which every member may be trusted to the ends of the earth. The conviction of a solicitor for serious criminal offences which resulted in the imposition of a custodial sentence (albeit suspended), Restraining Orders to manage his conduct and which attracted adverse publicity that referred to his status as a solicitor of the Supreme Court undermined the trust that the public placed in him and in the provision of legal services. Mr Bullock therefore submitted that the Respondent breached Principle 6.

The Respondent’s Position

- 21.10 The Respondent did not file an Answer to the Rule 12 Statement and was not present at the Substantive Hearing therefore his position with regards to Allegation 1.1 was not known to the Tribunal.

The Tribunal’s Findings

- 21.11 The Tribunal applied the requirements of Rule 32(1) to the evidence and facts presented by Mr Bullock. In so doing the Tribunal found that the “MEMORANDUM of an ENTRY entered in the REGISTER of the Lancashire Magistrates’ Court LJA:1790” on 17 August 2019 in respect of the Respondent amounted to a certified copy of the certificate of conviction.
- 21.12 The Tribunal considered the findings of fact upon which that conviction for common assault was based as set out in the local press reports dated 24 January 2019 and 30 July 2019. The Respondent had not advanced any exceptional circumstances, or indeed any comment whatsoever, in respect of the criminal findings of fact to undermine the same.

- 21.13 Having found that the Respondent assaulted a 71 year old person, with whom he lived at the material time, the Tribunal proceeded to consider Principle 2 namely the duty incumbent on him to act with integrity. The Tribunal determined that no solicitor acting with integrity would commit and be convicted of an act of violence against an elderly and vulnerable victim who sustained injury as a result. The Tribunal therefore concluded that the Respondent had, by virtue of his misconduct, breached Principle 2.
- 21.14 The Tribunal further found that the fact and nature of the conviction undoubtedly undermined public trust in the Respondent and in provision of legal services. The public would not expect a solicitor to be convicted of such an offence and the fact that the Respondent had been, particularly given the circumstances, breached Principle 6.
- 21.15 The Tribunal therefore found the factual matrix of Allegation 1.1 and the breach of Principles 2 and 6 proved on a balance of probabilities.

22. **Allegation 1.2: Failure to report the conviction to the Applicant**

The Applicant's Case

- 22.1 The Respondent did not report his conviction to the Applicant following (a) his conviction on 17 August 2018 at Blackpool Magistrates Court, (b) the variation of the restraining order on 26 July 2019 at Blackpool Magistrates Court and (c) his appeal to discharge the restraining order on 17 October 2019 at Preston Crown Court.

Regulatory Breaches

- 22.2 Mr Bullock submitted that Principle 7 required the Respondent to comply with his legal and regulatory obligations and to deal with his regulator in an “open, timely and co-operative manner”. In so doing, the Respondent was required to ensure compliance with all reporting and notification requirements as well as respond promptly and substantively to communications. At no stage during the criminal prosecution and subsequent appeals did the Respondent report the same to the Applicant. Mr Bullock therefore submitted that the Respondent breached Principle 7.
- 22.3 Mr Bullock further submitted that Outcome 10.3 required the Respondent to notify the Applicant promptly of any material changes to relevant information including “serious failure to comply with or achieve the principles, rules, outcomes and other requirements of the handbook”. The Respondent should have notified the Applicant about his conviction at the time of his conviction or at the very latest by the time his appeal was heard. The Respondent did not do so and therefore failed to meet Outcome 10.3.

The Respondent's Position

- 22.4 The Respondent did not file an Answer to the Rule 12 Statement and was not present at the Substantive Hearing therefore his position with regards to Allegation 1.2 was not known to the Tribunal.

The Tribunal's Findings

- 22.5 The Tribunal considered the submissions made by Mr Bullock on behalf of the Applicant that the Respondent did not notify the Applicant of the criminal proceedings upon arrest, charge, conviction, sentence and/or appeal. Were it not for the report made against the Respondent from his former employer, the Applicant would have been unaware of the conviction which plainly breached Principle 7 and amounted to a failure to meet Outcome 10.3.
- 22.6 The Tribunal therefore found Allegation 1.2 proved in its entirety on a balance of probabilities.
23. **Allegation 1.3: Failure to respond to the Applicant's request for information**

The Applicant's Case

- 23.1 The Applicant wrote to the Respondent on 27 February 2020 at the last known address held on SRA records. The Applicant asked the Respondent for his comments on the concerns raised against him. This letter was returned to the Applicant on 6 April 2020.
- 23.2 The Applicant sent an email to the Respondent at his last known email address on 20 March 2020 attaching the letter dated 27 February 2020. The letter asked for a response by 3 April 2020. No response was received.
- 23.3 The Applicant sent a further email to the Respondent on 9 April 2020 in which the Respondent was reminded of his obligations to cooperate under paragraphs 7.3 and 7.4 of the Code of Conduct for Solicitors, RELs and RFLs. The deadline to respond was extended to 17 April 2020. The Applicant received confirmation, via Microsoft Outlook, that the email was successfully delivered. No response was received.
- 23.4 The Applicant conducted a search on Companies House website and discovered that the Respondent was listed as a Director of Apex Wealth Structuring Limited. The company, at the material time was active and a business address was provided. The Applicant wrote to the Respondent at that business address and contacted him by email on 31 July 2020. The letter sent to the business address was not returned and the Applicant received confirmation, via Microsoft Outlook, that the email was successfully delivered. No response was received to either the letter or the email.
- 23.5 On 20 August 2020, the Respondent changed his postal address and email address on the SRA's record system ("mySRA"). Consequently the Applicant wrote to the Respondent on the 5 October 2020 via post and contacted him by email requesting a response by 16 October 2020. The letter sent to his residential address was not returned and the Applicant received confirmation, via Microsoft Outlook, that the email was successfully delivered. No response was received to either the letter or the email.

Regulatory Breaches

- 23.6 Mr Bullock submitted that paragraph 7.3 of the Code of Conduct 2019 required the Respondent to “cooperate with the SRA, other regulators, ombudsmen, and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services”.
- 23.7 Mr Bullock further submitted that paragraph 7.4 required the Respondent to “respond promptly to the SRA and (a) provide full and accurate explanations, information and documents in response to any request or requirement; and (b) ensure that relevant information, which is held by [him], or by third parties carrying out functions on [his] behalf which [were] critical to the delivery of your legal services, [was] available for inspection by the SRA”.
- 23.8 Mr Bullock contended that the Respondent failed to respond to the investigation officer’s requests for information on 27 February 2020, 20 March 2020, 9 April 2020, 31 July 2020 and 20 August 2020 which plainly breached paragraphs 7.3 and 7.4 of the Code of Conduct.

The Respondent’s Position

- 23.9 The Respondent did not file an Answer to the Rule 12 Statement and was not present at the Substantive Hearing therefore his position with regards to Allegation 1.3 was not known to the Tribunal.

The Tribunal’s Findings

- 23.10 The Tribunal considered the submissions made by Mr Bullock on behalf of the Applicant, the letters and emails sent in that regard and the lack of response from the Respondent to any of those communications.
- 23.11 There was a duty incumbent on the Respondent, by virtue of paragraphs 7.3 and 7.4 of the Code, to (a) ensure that his correct contact details were provided to the Applicant, (b) engage with the Applicant in relation to any concerns raised regarding his conduct and (c) to respond to communications sent to him from the Applicant fully and promptly.
- 23.12 On the basis of the evidence before it and the submissions made it was plain to the Tribunal that the Respondent failed to respond to any of the communications sent to him at the residential and email addresses provided to him on numerous occasions throughout 2020.
- 23.13 The Tribunal therefore found Allegation 1.3 proved in its entirety on a balance of probabilities.

Previous Disciplinary Matters

24. None.

Mitigation

25. None.

Sanction

26. The Tribunal referred to its Guidance Note on Sanctions (Eighth Edition) when considering sanction.
27. With regards to culpability, the Tribunal determined that the assault upon which the conviction was predicated was spontaneous and, as he was under the influence of alcohol at the material time, he may not have fully been in control of his actions. However, his failure to report the fact of his conviction to the Applicant was deliberate, persistent and continued over a protracted period of time as was his failure to respond to requests for information from the Applicant during the course of its investigation. The Respondent was in direct control of his subsequent failures. Person A was elderly and resided with the Respondent. His assault upon her was therefore in breach of trust. The Respondent was entirely culpable for his misconduct and for misleading the Applicant in respect of the same.
28. The Respondent caused direct and significant harm to Person A as well as the other elderly person whom resided with them and who themselves were elderly. The extent of the harm was marked by the fact that a Restraining Order was made against the Respondent communicating or having any contact with Person A as part of the criminal sentence imposed upon him. It was further marked by the fact that the Restraining Order was extended to prevent the Respondent from communicating with or having any contact with the other elderly person who continues to reside with Person A. The conviction, failed appeal and terms of the Restraining Orders were reported in the local press. That press coverage expressly stated that the Respondent was a solicitor. That caused significant and severe harm to the profession.
29. The Tribunal found a number of aggravating features to the matters found proved namely (a) the misconduct involved the commission of a criminal offence, (b) the repeated and consistent attempts by the Respondent over a protracted period of time to conceal his wrongdoing from the Applicant by his failure to report his conviction and respond to requests for information in that regard and (c) the Respondent ought to reasonably to have known that his misconduct was in material breach of his obligations to protect the public and the reputation of the profession.
30. There were no mitigating features found on the face of the papers or advanced by the Respondent at any time during the proceedings.
31. The Tribunal therefore determined that the misconduct was extremely serious such that No Order, a Reprimand or a Fine was appropriate. Given that the matters found proved did not relate to professional practice, the Tribunal did not consider that a Restriction Order was appropriate. The seriousness of the misconduct was at the highest end of the spectrum such that the overarching public interest could only be met by removal from the Roll. However, given the underlying material evidence from the initial report and subject to judicial comment during the criminal proceedings, the Tribunal considered that there appeared to be an underlying issue with regards to

alcohol abuse. Whether or not that was the case and whether or not the Respondent chose to address that apparent issue was a matter for him but the Tribunal determined that he should be given the opportunity to do so.

32. The Tribunal therefore concluded that the overarching public interest, namely the protection of the public from harm, the declaration and upholding of standards within the profession and maintenance of public confidence in the Applicant, could properly be met by the imposition of an indefinite period of suspension. The onus was therefore firmly on the Respondent, given time, to seek help and apply for the lifting of his suspension in the future if he was able to justify to the Tribunal that he no longer posed a threat to the public and the profession in the future.

Costs

33. Mr Bullock applied for costs in the sum of £2,543.00 as particularised in the schedule dated 27 October 2021.
34. The Respondent, having not engaged in the proceedings, did not file or serve a Personal Statement of Financial Means.

The Tribunal's Decision

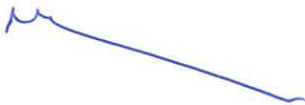
35. The Tribunal considered the costs claimed to be both reasonable and proportionate to the case. The Tribunal therefore determined that the Respondent do pay the full amount claimed to the Applicant.

Statement of Full Order

36. The Tribunal Ordered that the Respondent, JAMES MICHAEL GREGSON, solicitor, be suspended from practice as a solicitor for an indefinite period to commence on the 3rd day of November 2021 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,543.00.

Dated this 30th day of November 2021

On behalf of the Tribunal



R Nicholas
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
30 NOV 2021