SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12227-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

GARETH ROWAN EVANS Respondent

Before:

Mr A Ghosh (in the chair)
Mr G Sydenham
Mrs N Chavda

Date of Hearing: 14 October 2021

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent, made by the Solicitors Regulation Authority Ltd ("SRA") were that whilst in practice as a Solicitor at Slater and Gordon UK Limited:

1.1 that by arranging that the following payments be made from the firm's client account and recorded against the ledger of client H:

1.1.1 to client G in the sum of £17,000 on 18 April 2016; and,

1.1.2 to client P in the sum £4,661.75 on 6 September 2016

the Respondent misused client money and thereby breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011 ("the Principles") and Rules 1.2(c) and 20.1 of the SRA Accounts Rules 2011 ("the SAR").

1.2 that between 8 March 2016 and 21 February 2018, the Respondent misled client H by one or more of the following:

1.2.1 failing to advise her that her personal injury claims had settled on 8 March 2016 for the sum of £45,000; and

1.2.2 providing the impression to client H that her personal injury claim remained ongoing by continuing to engage with her about her claim and arranging further medical appointments for her under the guise that these were to obtain evidence in support of her claim.

and thereby breached all or any of Principles 2 and 6 of the Principles and Outcomes 1.1 and 1.12 of the SRA Code of Conduct 2011 ("the Code").

1.3 that between 28 August 2014 and 8 March 2016, the Respondent failed to act in the best interests of client H and/or failed to provide her with a proper standard of service by reason of one or more of the following:

1.3.1 failing to comply with Court Directions issued on 28 August 2014 and 23 March 2015, leading to an application for relief from sanction being required and a subsequent application that the matter be struck out; and

1.3.2 failing to advise or take instructions in relation to the need to apply for relief from sanction and the application that the matter be struck out; and

1.3.3 failing to seek client instructions before serving documents, including the medical report served on 16 July 2015 and schedule of costs served on 14 October 2015; and

1.3.4 failing to seek client H's instructions before settling the claim by way of a consent order dated 8 March 2016.

and thereby

1.3.5 breached all or any of Principles 4 and 5 of the Principles and Outcome 1.2 of the Code;

1.3.6 acted in a manner which was manifestly incompetent and in doing so breached Principle 6 of the Principles.

2. Dishonesty was alleged with respect to allegations 1.1 and 1.2 but dishonesty was not an essential ingredient to prove either of those allegations.

3. The Respondent admitted all the allegations, including that his conduct was dishonest.

Documents

4. The Tribunal had before it the following documents:-

- Rule 12 Statement and Exhibit NC1 dated 15 July 2021

- Statement of Agreed Facts and Proposed Outcome of 11 October 2021

Background

5. The Respondent was admitted to the Roll in October 1993. At the material time, he was a solicitor at Slater and Gordon UK Limited within the Personal Injury department at the Chelmsford Office.

6. In 2018, the Chelmsford office was closed and the Respondent's employment ended on 28 February 2018. The files of which the Respondent had conduct were passed to a new fee earner and reviewed. On 17 August 2018, the Firm sent a report to the SRA raising concerns about 3 files that the Respondent had been responsible for.

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

7. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Proposed 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 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.

9. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.

10. The Tribunal considered the Guidance Note on Sanction (8th edition/December 2019). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal found that the Respondent had dishonestly misled his client by giving her the impression that her claim was ongoing, when it had, in fact, been settled. The Respondent's dishonesty had continued over an extended period of time. Such conduct was in breach of the integrity, probity and trustworthiness expected of solicitors. The Respondent was entirely culpable for his misconduct, which the Tribunal found was extremely serious. The Tribunal determined that the nature of the Respondent's misconduct and the length of time over which it had occurred was such that the proportionate sanction was to strike the Respondent from the Roll of the solicitors. The sanction proposed adequately protected the public and the reputation of the profession. Accordingly, the Tribunal granted the application for the matter to be dealt with by way of an Agreed Outcome.

Costs

11. The parties agreed costs in the sum of £2,300. The Tribunal considered those costs to be appropriate and proportionate. Accordingly, the Tribunal ordered costs be paid by the Respondent in the agreed amount.

Statement of Full Order

12. The Tribunal Ordered that the Respondent, GARETH ROWAN EVANS, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,300.00.

Dated this 29th day of October 2021
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
29 OCT 2021

A Ghosh
Chair

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No. 12227-2021**

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

GARETH ROWAN EVANS

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

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1. By its application dated 15 July 2021, and the statement made pursuant to Rule 12 (2) of the Solicitors (Disciplinary Proceedings) Rules 2019] which accompanied that application, the Solicitors Regulation Authority Limited ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making three allegations of misconduct against Gareth Rowan Evans ("the Respondent").

The allegations

2. The allegations against the Respondent, made by the SRA within that statement were that whilst in practice as a Solicitor at Slater and Gordon UK Limited:

   2.1 That by arranging that the following payments be made from the firm's client account and recorded against the ledger of client H:

      2.1.1 To client G in the sum of £17,000 on 18 April 2016; and,

      2.1.2 To client P in the sum £4,661.75 on 6 September 2016

the Respondent misused client money and thereby breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011 and Rules 1.2(c) and 20.1 of the SRA Accounts Rules 2011.

2.2 That between 8 March 2016 and 21 February 2018, the Respondent misled client H by one or more of the following:

2.2.1 Failing to advise her that her personal injury claims had settled on 8 March 2016 for the sum of £45,000; and

2.2.2 Providing the impression to client H that her personal injury claim remained ongoing by continuing to engage with her about her claim and arranging further medical appointments for her under the guise that these were to obtain evidence in support of her claim.

And thereby breached all or any of Principles 2 and 6 of the SRA Principles 2011 and Outcomes 1.1 and 1.12 of the SRA Code of Conduct 2011.

2.3 That between 28 August 2014 and 8 March 2016, the Respondent failed to act in the best interests of client H and/or failed to provide her with a proper standard of service by reason of one or more of the following:

2.3.1 Failing to comply with Court Directions issued on 28 August 2014 and 23 March 2015, leading to an application for relief from sanction being required and a subsequent application that the matter be struck out; and

2.3.2 Failing to advise or take instructions in relation to the need to apply for relief from sanction and the application that the matter be struck out; and

2.3.3 Failing to seek client instructions before serving documents, including the medical report served on 16 July 2015 and schedule of costs served on 14 October 2015; and

2.3.4 Failing to seek client H's instructions before settling the claim by way of a consent order dated 8 March 2016.

And thereby

2.3.5 breached all or any of Principles 4 and 5 of the SRA Principles 2011 and Outcome 1.2 of the SRA Code of Conduct 2011;

2.3.6 acted in a manner which was manifestly incompetent and in doing so breached Principle 6 of the SRA Principles 2011.

3. Dishonesty is alleged with respect to allegations 2.1 and 2.2 but dishonesty is not an essential ingredient to prove either of those allegations.

4. The respondent admits each of these allegations. He also admits that his 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 2.1, 2.2 and 2.3 of this statement, are agreed between the SRA and the Respondent.

Background

6. The Respondent was originally employed by a firm known as Silverbeck Rymer from 2001, this subsequently merged with Slater Gordon Solutions Legal Limited in 2012 which subsequently changed its name to Slater & Gordon UK Ltd ("the firm") in July 2018.

7. In 2018 the firm closed the Chelmsford office and as a result the Respondent's employment ended on the 28 February 2018. As a result, the files that the Respondent had conduct of were passed to a new fee earner and reviewed. On the 17 August 2018 the firm submitted a report entitled "Group Incident Investigation Report" to the SRA. This report raises concerns about three files that the Respondent had been responsible for namely the files of client H, client G and client P.

8. As a result, an investigation was undertaken by two SRA Financial Investigation Officers who attended the firm's Birmingham office on 28 May 2019 where they examined the client files and relevant ledgers. Subsequently a Forensic Investigation Report, dated 17 December 2019, was prepared.

9. From the Group Incident Investigation Report and the Forensic Investigation Report it is established that client H had original instructed the former firm of Silverbeck Rymer to pursue a personal injury claim in May 2008 following a road traffic accident. The

Respondent was the fee earner responsible for this file from August 2008 until he left the firm in February 2018.

10. The matter was protracted as client H developed further medical issues and there was delay in obtaining medical evidence. On 4 April 2011 proceedings were issued in the matter as it was approaching the date of limitation as nearly three years had passed since client H's accident.

11. During the course of the proceedings there were as expected court hearings at which directions were made. It seems that some of these directions were not complied with by the Respondent as required and the details of these are set out below. The matter continued until 8 March 2016 when the proceedings were concluded by an order made by consent, it should be noted that this was without the knowledge or instructions of client H.

12. By way of background, it is worth providing details of two other files that the Respondent had conduct of. The first of these was the file of client G that was a personal injury matter that concluded in April 2015 when a payment of £10,610.00 was made to the client. The second is the file of client P that was also a personal injury matter were an offer to settle was made in the sum of £4,661.75 on 31 March 2016 but there was no evidence on the file that the client accepted or rejected this offer. In addition, there was evidence on the file that the claim was unsuccessful and there was an attendance note dated 6 December 2016 that stated, "*Claim w/drawn due to lack of prospects.*"

<u>Allegation 2.1</u>

13. On 30 March 2016 the sum of £37,594.14 was received into the firm's client account from Elephant Insurance. This was the outstanding settlement due to client H, following the order of 8 March 2016 and this is shown on the relevant ledger. There is no evidence of client H being informed of receipt of this sum.

14. On 18 April 2016 the Respondent submitted a payment requisition for £17,000 to be sent from funds held in relation to client H's matter by "BACS" to a Santander Bank account. The account details given on the requisition, to which the payment was to be made, were not those of client H but they were those of client G.

15. The file for client G was another, entirely separate and unrelated personal injury claim that the Respondent had conduct of. The payment of £17,000 was recorded on client H's ledger as "FUTURE PAYMENT".

16. On 6 September 2016 the Respondent submitted a further payment request for a cheque in the sum of £4,661.75 from funds held in relation to the file of client H be sent to him. The payment of funds from the client account was recorded against the ledger of client H. However, the request was for a cheque for payment to client P and the reason given on the requisition was "*Private treatment fees*". The cheque was cashed on the 13 September 2016.

17. Client P was another client who had a personal injury matter, separate and unrelated to client H's matter, on which the Respondent was the fee earner with responsibility. It seems that there had been a previous offer to settle that matter for the sum of £4,661.75 and the Respondent had written to client P to advise of this on 16 April 2012.

18. The file of client P contained a file note dated 6 December 2016 with the Respondents details that stated, "*Claim w/drawn due to lack of prospects.*"

19. The Respondent has been asked by the SRA's Financial Investigation Officer to comment on the files of clients H, G and P. With regard to the improper payments of £17,000 to client G and £4,661.75 the Respondent said that he could not recall the specifics but stated, "..*I am fairly certain that court directions had not been complied with..*" *so in respect of client G, "..claim being settled for less than it was worth...*" and for client P, "..*claim not being able to proceed.*"

Allegation 2.2

20. On the 8 March 2016 client H's matter was settled by way of consent and an order was made on the 8 March 2016 that stated, "*The parties have agreed to settle the claim for damages and costs globally at £45,000.*"

21. Client H has provided a statement and in this client H confirms that this settlement was done without her agreement and that she was not told of the settlement.

22. Although the matter was settled client H continued to attend medical appointments that were arranged as part of the litigation. This included an appointment that was arranged for the 10 March 2016 but was then re-arranged to the 6 April 2016 and client H confirms this was discussed with the Respondent in a telephone call.

23. On the 20 April 2016 the Respondent sent an email to client H advising that an offer had been received from the other side of, "*a lump sum of £60,000..*" In the same email the Respondent advised client H to reject the offer as he felt more could be obtained and advised seeking an increased offer of £75,000. At that time the matter had already concluded as stated above at paragraph 20.

24. The respondent continued to give client H the impression that the matter was continuing and that discussions were ongoing. This included sending emails on 17 October 2016, 18 October 2016, 19 October 2016 and 21 October 2016 to client H. In an email on the 19 October 2016 the Respondent stated, "*I had previously discussed the other aspects of the claim with the other side and am awaiting their formal response*." In an email on the 21 October 2021 he stated, "*Just to keep you in the loop, I can confirm that the other side have increased to a figure of £47,000.00 for your pain, suffering and loss of amenity….*"

25. On the 3 October 2016 the Respondent sent a further email to client H in which he stated, "*They have offered a lump sum of £85,310.00 in order to conclude the claim*."

26. The statement provided by client H details that contact with the Respondent then continued throughout the rest of 2016 and that it included discussion of the expert evidence and delay. Client H in fact attended an appointment on the 21 November 2016 with an ENT consultant at Harley Street that had been arranged by the Respondent.

27. During 2017 the Respondent continued to liaise with client H as regards the claim even though it had settled the previous year. This contact included discussion of client H's expenses and client H received three cheques whilst at least one of these was from the firm one cheque in the sum of £632.60 was from the Respondent's personal account. When client H queried this the Respondent explained that this was an account he had that was linked to the firm's account. In addition, in December 2017 client H attended a further medical appointment with an Orthopaedic specialist at Harley Street in December 2017, again the Respondent arranged and directed client H to this appointment.

28. Client H has been asked what the impact on her has been following the discovery that the Respondent settled the matter without her knowledge or instructions. Client H says it, "*has caused considerable stress, anger, anxiety, and sleepless nights*." Client H also states that she has yet to receive any of the settlement as a result of the accident in

2008 and has had to instructed solicitors to pursue a negligence claim against the Respondent's former firm.

Allegation 2.3

29. In relation to the claim of client H a case management conference took place on 14 August 2014 when the court gave directions that the claimant (client H), "*file and serve an updated provisional schedule of damages and witness statement by 4.00pm on 16/10/2014.*" There is no evidence on the file that the Respondent complied with this court order by the date required.

30. The Respondent filed and served an updated provisional schedule of damages and witness statement on 12 January 2015. The solicitors acting for the defendant, in client H's claim, advised the Respondent he would be required to obtain relief from the court to rely upon the witness statement and provisional schedule of damages.

31. The Respondent drafted and sent an application for relief from sanction. At a court hearing on the 25 March 2015 the application for relief from sanction was successful although costs against the defendant (client H) were awarded in the sum of £1500. At this hearing the court also made a number of further directions that included, "*The claimant to provide an updated witness statement by 4pm on 24/07/2015.*"

32. There is no evidence on the file that the Respondent advised client H as to the need to submit an application for relief from sanction or that a hearing was to take place that could affect her claim. Client H also confirms that she was not aware of this hearing nor did the Respondent take any instructions with regard to it.

33. On the 15 July 2015 the Respondent sent a medical report from the ENT Consultant to client H. However before receiving client H's instructions the Respondent served the report on the 16 July 2015. Client H's instructions were not received until 21 July 2015 and in these client H raised issues with the medical report.

34. On the 20 July 2015 the Respondent wrote to the defendant's solicitor requesting an extension from the 24 July 2015 to 31 July 2015 for client H's witness statement to be served. There is no evidence that an extension was agreed and in any event the witness statement was not served until 14 August 2015.

35. On 13 August 2015 an application that the claim of client H be struck out was served on the Respondent by Horwich Farrelly Solicitors who were acting for the defendant in the matter. The defendant's application to strike out the matter was listed on 30 September 2015. Whilst, on this occasion the court decided that the claim would not be struck out the court made a number of directions that were detrimental to client H. These included directions that client H's claim for interest be struck out, that client H cannot rely on the statement served on 14 August 2015 and also awarded the defendant costs for the application in the sum of £3,017.60.

36. There is no evidence on the file that the Respondent advised client H as to the application to strike out, that a hearing was to take place that could involve the claim being struck out or the resulting directions that were detrimental to her claim. Client H also confirms that she was not aware of this hearing nor did the Respondent take any instructions with regard to it.

37. On 18 December 2016 the Respondent served a schedule of loss. There is no evidence on the file that he sent this to client H or that it was confirmed it included all of client H's losses. Client H does not recall the Respondent ever mentioning it or taken instruction on it and client H does not know what a "*Schedule of Loss*" is.

38. As already stated, (at paragraph 20) on the 8 March 2016 client H's matter was settled by way of consent and an order was made on the 8 March 2016 that stated, "*The parties have agreed to settle the claim for damages and costs globally at £45,000.*" Client H confirms that this that, "*This was done without my knowledge or agreement.*" In addition, that the Respondent, *"…never asked for my instructions or agreement in doing so."*

39. It was not until 29 June 2018 that client H discovered that the claim had been settled when another fee earner from the firm telephoned. Client H states with regard to the telephone call, "…*said that Gareth EVANS had settled my case and the file was closed. I was in state of shock (sic) when I heard this*."

Non-Agreed Mitigation

40. The following mitigation, which is not agreed by the SRA, is put forward by the Respondent:

40.1 The respondent was admitted to the Roll on 1 October 1993 and until now had an unblemished record.

40.2 The Respondent was employed by the firm between 2001 and 2018 (as set out in paragraph 6 above). During this period the Respondent was a solicitor in the personal injury department and maintained all of his own cases.

40.3 The Respondent does not recall his cases being supervised, although there were team structures in place and referrals were dealt with by team leaders. There was no monitoring of outgoing post as far as he can recall.

40.4 The Respondent had one of the highest caseloads in the office but as he was a solicitor the presumption was that he could cope with it. The Respondent now realises that he should have been more vocal with his worries. Instead, he tried to keep a lid on matters and hoped everything would be okay.

40.5 The Respondent does not believe that caseloads were properly monitored by the firm and that a number of fee earners had too many cases to deal with properly. It was for this reason that issues escalated on his files as whilst he was trying his best to keep all his clients happy in doing so it meant that some cases were neglected so giving rise to issues.

40.6 At no point did the Respondent take any time off work because of stress. However, there was an occasion when he started to cry at work as he felt out of his depth due to the amount of work he had. This was a result of him “inheriting” a number of multi-track cases from another office and these being a type of case he was not used to dealing with. The Respondent recalls that his manager was understanding and asked if he wanted to go home. However, the Respondent declined as he was worried that if he took time off things would get worse.

40.7 Regarding the payments to client G and client P the Respondent accepts that these were made from client H’s settlement. The Respondent cannot recall the specific circumstances that led to these payments, but he is fairly certain that court directions had not been complied with. This had resulted in client G’s claim being settled for less than it was worth and client P’s claim not being able to proceed.

40.8 The Respondent does not think he was directly responsible for some of the breaches on the files but as he was the fee earner with conduct he accepted he was ultimately responsible. As such, payments were made to settle their claims from client H's funds to avoid them becoming aware of what had happened on their respective cases. By this point, the Respondent was in a desperate position and was no longer thinking straight when he adopted this course of action.

40.9 These actions were out of character for the Respondent and those that know him would find it incredulous that he was capable of doing something like this. He believes that he has always been regarded with a fair amount of respect by friends and work colleagues. The Respondent believes that this shows how parlous a situation he found himself in and the fact that he decided to keep it to himself and adopt the course of action he did.

40.10 Looking at the situation now, in the cold light of the day, the Respondent knows the best policy would have been to admit that he had made an error and allow his managers to deal with the situation. Unfortunately, at the time, he was worried that his errors might result in disciplinary action being taken and so he foolishly kept them to himself. The result clearly being far worse than would have been the case if he had admitted them at the time.

40.11 Despite these issues the Respondent was on the face of it doing a good job with decent billing figures and numerous successful cases for clients who would always give him a glowing report in the client feedback forms at the conclusion of cases. The Respondent had a good work ethic often working late and at weekends to try and get on top of his cases. Furthermore, he would always go "the extra mile" if required.

40.12 The Respondent sees his biggest weakness as simply "clamming up" about some of his cases where he was having problems and not seeking help at an earlier point, as he felt this would be perceived as a weakness or inability to cope on his part but all it did was exacerbate the original problem.

40.13 Prior to these events the Respondent had a hitherto unblemished record and the vast majority of his clients found him to be a diligent and hard-working solicitor. In addition, his employers equally found him to be a loyal and responsible employee whose attitude was to always go the extra mile without complaint. Ironically this

was what led to the issues arising, as had he been more vocal about the problems he was experiencing then things could have ended up very differently.

40.14 Finally, the Respondent wishes to say sorry for what has happened and how his conduct has affected those involved especially client H.

Penalty proposed

41. It is therefore proposed that the Respondent should be struck off the Roll of Solicitors.

42. With respect to costs, it is further agreed that the Respondent should pay the SRA's costs of this matter agreed in the sum of £2,300.

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

43. 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)**).*"

44. 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…"

45. The dishonesty on the part of the Respondent can be summarised as follows: -

45.1 The Respondent arranged for client H's money to be improperly sent to two other clients.

45.2 The Respondent misled client H by failing to tell her that her claim settled on the 8 March 2016 for the sum of £45,000.

45.3 The Respondent misled client H by giving her the impression that her claim was continuing after 8 March 2016 by continuing to engage with her about her claim and arranging further medical appointments.

46. These were serious acts of dishonesty committed over an extended period to the detriment of client H and the case plainly 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 the Respondent to be struck off the Roll of Solicitors.

Nathan Cook, Senior Legal Adviser upon behalf of the SRA

Gareth Evans, the Respondent