

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12269-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

MICHAEL EDWARD GARSTANG

Respondent

Before:

Mr G Sydenham

Mr R Nicholas

Mrs L McMahon-Hathway

Date of Hearing: 17 January 2022

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

The allegations made by the Applicant against the Respondent, Michael Garstang were that, whilst he was working as a solicitor for Cartwright King (“the Firm”):

1. Between September 2018 and October 2018, he inappropriately requested and received the sum of £100 from Client A.

And in doing so breached all or any of Principles 2, 4 and 6 of the SRA Principles 2011.

2. By reason of the conduct referred to at Allegation 1 above, he acted dishonestly, but dishonesty is not a necessary ingredient to Allegation 1 being found proved.

3. [WITHDRAWN]

4. [WITHDRAWN]

5. Submitted, or caused or allowed to be submitted, a claim to the Legal Aid Agency (“the LAA”) for the case of Client A, when a payment had already been received from or claimed from Client A.

And in doing so breached either or both of Principles 2 and 6 of the SRA Principles 2011.

6. By reason of the conduct referred to at Allegation 5 above, he acted dishonestly, but dishonesty is not a necessary ingredient to Allegation 5 being found proved.

7. On an unknown date in early 2019, he made a telephone call to Client A and requested that Client A write a letter stating that the payment of £100 had been a gift and not payment for time and expenses.

And in doing so breached all or any of Principles 2, 4 and 6 of the SRA Principles 2011.

8. By reason of the conduct referred to at Allegation 7 above, he acted dishonestly, but dishonesty is not a necessary ingredient to Allegation 7 being found proved

Documents

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

- Rule 12 Statement dated 27 October 2021.
- Statement of Agreed Facts and Proposed Outcome dated 13 January 2022.
- Joint application for an Order dated 14 January 2022.
- Character reference of MC dated 9 August 2021.

Background

10. The Respondent was admitted to the Roll of Solicitors in July 1978. At the time of the underlying conduct contained within allegations he was employed by Cartwright King. That underlying conduct came to the attention of the Applicant in May 2019. The

Applicant undertook an investigation and the matter was certified as showing a case to Answer by the Tribunal in November 2021.

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

11. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome dated 13 January 2022 (annexed to this Judgment). The parties submitted that the outcome proposed, namely an Order striking the Respondent from the Roll of Solicitors and costs in the sum of £16,950.00, was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

12. 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.
13. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.
14. The Tribunal considered the Guidance Note on Sanction (Ninth Edition). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
15. The Respondent had admitted three instances of dishonesty all of which centred on his dealings with a client and handling of client money. He was solely culpable for the admitted misconduct which caused severe harm to the reputation of the legal profession which was eminently foreseeable. The repeated dishonesty was planned, deliberate and repeated and the Respondent must have known that it amounted to a material breach of his professional obligations to protect the public and the reputation of the profession. It was, however, to the Respondent's credit that he made full admissions and accepted the likely consequence of his actions.
16. Given the seriousness of the admitted misconduct and the absence of any exceptional circumstances having been advanced by the Respondent or evident on the papers, the Tribunal determined that the public interest required the imposition of an Order striking the Respondent from the Roll.

Costs

17. Costs were agreed by the parties in the sum of £16,950.00 which was endorsed by the Tribunal.

Statement of Full Order

18. The Tribunal Ordered that the Respondent, MICHAEL EDWARD GARSTANG, 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 £16,950.00.

Dated this 20th day of January 2022
On behalf of the Tribunal

A handwritten signature in black ink, appearing to read 'G Sydenham', is written over a faint, light-colored rectangular stamp or watermark.

G Sydenham
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
20 JAN 2022

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

Case No:

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

MICHAEL EDWARD GARSTANG

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

1. By a statement made by Mark Rogers on behalf of the Solicitors Regulatory Authority Limited ("the SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019, dated 27 October 2021, the SRA brought proceedings before the Tribunal making allegations of professional misconduct against the Respondent. Definition and abbreviations used herein are those set out in the Rule 12 Statement. The Tribunal made standard directions on 4 November 2021. There is a substantive hearing listed for 27 - 28 January 2022.
2. The Respondent is prepared to make admissions to Allegations 1, 2, 5, 6, 7 and 8 in the Rule 12 Statement, as set out in this document.
3. The Applicant applies to withdraw Allegations 3 and 4, as set out in paragraph ^{22/24}xx below, on the basis that it is not in the public interest to invite the Tribunal to determine those

allegations in light of the admissions in this document, which include dishonesty, and the Respondent's agreement to be struck off the Roll of Solicitors.

Admissions

4. The Respondent admits that whilst he was working as a solicitor for Cartwright King ("the Firm") (adopting the numbering of the allegations in the Rule 12 Statement):

Claim for money from Client A

1. *Between September 2018 and October 2018, he inappropriately requested and received the sum of £100 from Client A*

And in doing so breached all or any of Principles 2, 4 and 6 of the SRA Principles 2011

2. *By reason of the conduct referred to at Allegation 1 above, he acted dishonestly, but dishonesty is not a necessary ingredient to Allegation 1 being found proved.*

Claim to Legal Aid Agency ("LAA")

5. *Submitted, or caused or allowed to be submitted, a claim to the Legal Aid Agency ("the LAA") for the case of Client A, when a payment had already been received from or claimed from Client A*

And in doing so breached either or both of Principles 2 and 6 of the SRA Principles 2011.

6. *By reason of the conduct referred to at Allegation 5 above, he acted dishonestly, but dishonesty is not a necessary ingredient to Allegation 5 being found proved.*

Telephone call to Client A

7. *On an unknown date in early 2019, he made a telephone call to Client A and requested that Client A write a letter stating that the payment of £100 had been a gift and not payment for time and expenses.*

And in doing so breached all or any of Principles 2, 4 and 6 of the SRA Principles 2011.

8. *By reason of the conduct referred to at Allegation 7 above, he acted dishonestly, but dishonesty is not a necessary ingredient to Allegation 7 being found proved.*

Agreed Facts

5. The Respondent is a solicitor (SRA ID: 114040), albeit one who does not currently hold a Practising Certificate. He was admitted to the Roll on 1 July 1978.
6. At the time of these Allegations, the Respondent was employed as a solicitor by Cartwright King ("the Firm").
7. The issues surrounding these Allegations were brought to the SRA's attention by the Firm in an e-mail dated 23 May 2019. The Firm became aware of these issues due to their Head of Compliance reviewing case files in preparation for an audit by the LAA.
8. On 29 August 2018, an e-mail exchange took place between Client A and the Respondent. Client A was due to be interviewed at Winsford Police Station on 27 September 2018 in relation to an allegation of possession of Class A drugs with intent to supply. This e-mail exchange referred to the fact that representation at the police station would be covered by Legal Aid. A further e-mail was sent by Client A on 24 September 2018, seeking confirmation that the Respondent would be attending to provide representation.
9. The Respondent attended Winsford Police Station on 27 September 2018 and represented Client A during his police interview. Following this interview, no further action was taken against Client A by the police.
10. On 30 September 2018, a letter was sent to Client A confirming that he had Legal Aid, the outcome of the police station attendance and providing the Firm's Terms of Business.
11. On 30 September 2018, the Respondent sent an e-mail to Client A. This e-mail included the words:

"As agreed, cost of travel is £100 – please send me a cheque for this payable to 'M GARSTANG'"
12. Client A responded on 3 October 2018 by stating that he did not have a cheque book, but was able to pay by bank transfer. The Respondent replied to Client A that same day, confirming that a bank transfer would be acceptable and provided his bank details. Client A has confirmed that he did make this payment of £100, as requested by the Respondent.
13. The representation provided to Client A at the police station on 27 September 2018 was included in the Firm's monthly bill to the LAA.

Client A

14. The SRA, as part of its investigation, sent an e-mail to Client A on 26 February 2020, seeking his recollection for the payment of £100 to the Respondent. Client A replied on 3 March 2020 and the following points can be discerned from his e-mail:

14.1. As far as he was concerned, the payment he made to the Respondent was for his time and travel expenses;

14.2. He had not been made aware that Legal Aid would cover these costs; and

14.3. He had asked the Respondent what the day would cost and he was told £100.

15. A Witness Statement was then obtained from Client A, dated 22 July 2020. Client A repeated his assertions about the payment of £100:

"After the interview, when I was alone with Mr GARSTANG, I asked him about the cost of his representing me. I am not able to remember the conversation in its entirety but he did inform me that it was £100 for his time and travel expenses. He stated that he would e-mail me the details. He did not inform that I was entitled to Legal Aid."

"The figure of £100 was not my suggestion and I have never offered him a gift or tip of a £100 or any other amount."

16. Client A also stated that he had been contacted by the Respondent via telephone in early 2019. In relation to this telephone call, Client A states that:

"It was a strange conversation in which he asked me to write a letter saying the £100 I transferred into his account was a thank you gift and not a payment for his time and travel expenses. He dictated to me what he wanted me to write in the letter."

I can confirm that I never wrote or sent the letter as what he wanted me to write was not a true reflection of what happened and I found the telephone call from Mr GARSTANG disconcerting."

Relevant Legal Aid provisions

17. Regulation 8 of the Criminal Legal Aid (Remuneration) Regulations 2013 (as amended) states as follows:

"(2) Claims for fees in cases to which this regulation applies must—

(a) be made and determined in accordance with the 2017 Standard Crime Contract;"

18. Clause 7.18 of the Standard Terms of the Standard Crime Contract 2017¹ states as follows:

"7.18 Except where this Contract or Legal Aid Legislation so provides, you must not claim or seek to claim any payment from any Client or Former Client for any Contract Work or for any work that was performed in your or your Client's or Former Client's reasonable belief that it was Contract Work."

19. This point is expanded upon in the Specification document² issued in conjunction with the Standard Terms. Paragraphs 8.41 and 8.44 of the Specification state as follows:

"8.41. Subject to Paragraph 8.43 below, you must not charge a fee to the Client or any person for the services provided under this Specification or seek reimbursement from the Client or any other person for any Disbursements incurred as part of the provision of such services..."

8.44. You must not charge the Client for the provision of Contract Work or seek payment of Disbursements incurred from the Client unless an exception under this Contract applies...You cannot be retained to act for the Client in the same Matter or Case under the Contract and on a privately paying basis at the same time."

20. None of the exceptions listed in Paragraph 8.43 apply to the facts of this case.
21. It follows that the charging of a fee or the seeking of reimbursement from a client is prohibited under the Standard Crime Contract, apart from the limited exceptions, which do not apply to the Respondent's case.

Withdrawal of Allegations 3 and 4

22. Allegations 3 and 4 in the Rule 12 Statement are as follows:

Claim for travel expenses from the Firm

3. *Made and accepted a claim for travel expenses from the Firm, for Client A's case, without disclosing that he had already requested and/or received payment for travel expenses from Client A*

And in doing so breached either or both of Principles 2 and 6 of the SRA Principles 2011.

¹ Version 2 (effective from 25 May 2018 to 31 December 2020)

² Version 4 (effective from 23 July 2018 to 21 July 2019)

4. *By reason of the conduct referred to at Allegation 3 above, he acted dishonestly, but dishonesty is not a necessary ingredient to Allegation 3 being found proved.*
23. The Respondent denies allegations 3 and 4 for the following reasons:
 - 23.1. The Respondent accepts that he made a claim for mileage from the firm, which because it was calculated in the usual way in terms of miles travelled was designed to compensate him for expenses that he incurred in respect of petrol and general wear and tear to his vehicle, insurance etc. The Respondent maintains that this was distinct from the payment sought from Client A.
 - 23.2. The Respondent says that the payment from the client was *not in respect of mileage, but was for the time he spent* (rather than the expenses he incurred) in attending a distant police station, for which no additional remuneration could be claimed from the Legal Aid Agency.
 - 23.3. The Respondent says that the disbursement of actual mileage driven is a separate matter which was correctly claimed from the Firm. He therefore avers that there is no 'double counting' in respect of the amount paid by client A, since the two amounts were separate and distinct and paid for different things, although both amounts could be referred to as payments for 'travel'.
 24. Whilst the SRA considers the issue to be arguable on the evidence of those involved, irrespective of the merits of allegations 3 and 4 the SRA considers that it is not in the public interest to proceed to a substantive hearing on those remaining two allegations for the following reasons:
 - 24.1. Three allegations of dishonesty have been admitted by the Respondent;
 - 24.2. The Respondent has agreed to the ultimate sanction of being struck off the Roll of Solicitors;
 - 24.3. Should the Tribunal find allegations 3 and 4 proved at a substantive hearing, it will have no impact on the sanction as otherwise agreed between the parties on the admitted allegations;
 - 24.4. The Respondent has provided some evidence of ill health.

Mitigation

25. The following points are advanced by way of mitigation on behalf of the Respondent, but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:
 - 25.1.

- Mr Garstang has had a long and successful career as a criminal defence solicitor with no other regulatory or disciplinary issues ever raised.
- He has co-operated with the SRA from the outset of this investigation, admitted the charges in the early stages and entered into discussion to resolve the case in an open and respectful manner throughout.
- Mr Garstang voluntarily, acting on his own initiative, sought to come off the solicitors roll and surrender his practising certificate well before resolution of this case.
- He has accepted his fate, namely the 'ultimate sanction' of being struck off, a terrible outcome for a solicitor who has given so much to the profession and assisted many thousands of clients with distinction over very many years.
- By his conduct in these proceedings and by taking full responsibility for his actions early on he has acted so as to try to minimise any professional embarrassment to his former employers, colleagues and the profession.
- Mr Garstang has worked tirelessly as a dedicated criminal defence lawyer largely operating within legal aid. He has been highly respected in that role by colleagues, the judiciary and by clients. Until this case his honesty and integrity as a solicitor have never been in question. Please see the character references within the SDT bundle at pages X142 to X145; also, a reference from Mr Matthew Cloughton of Olliers Solicitors dated 9th August 2021 which is attached to this document. It was served on the SRA but is not included in the bundle.
- Please also see a medical report from Dr Phillip Edwards dated 31st March 2021 at page X146 of the bundle. This matter has certainly taken its toll upon Mr Garstang's health. He has completed one 6 month course of counselling and is considering a further one, rather than resorting to anti-depressant medication.
- Any publicity of this case will further substantially punish Mr Garstang in these particular circumstances.
- The facts of these charges are completely out of character and bring to an end what should otherwise be regarded as a legal career of great success and of service to his clients, who are often amongst the most vulnerable within society, of service to the community and of service to the criminal justice system as a criminal defence solicitor working within legal aid and in very challenging circumstances.

Agreed Outcome

26. The Respondent agrees:

26.1. To be struck off the Roll of Solicitors;

26.2. To pay costs to the SRA in the sum of £16,950.00.

27. The parties consider and submit that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter, consistent with the Tribunal's Guidance Notes on Sanction 9th Edition.
28. It is agreed that:
- 28.1. With matters including issues of integrity and dishonesty, the seriousness of the misconduct is at the highest level, such that a lesser sanction is inappropriate;
 - 28.2. There are no exceptional circumstances which would justify a departure from the normal and necessary outcome in cases of dishonesty; and
 - 28.3 The protection of the public and/or the protection of the reputation of the legal profession requires the Respondent to be struck off the Roll.

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

29. The Respondent has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanctions" (9th edition), at paragraph 51, states that: "*Some of 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)**).*"
30. 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..."*
31. The Applicant has considered the relevant factors, including 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. In this regard it is submitted that:

- 31.1. Following representation provided to Client A at Winsford Police Station on 27 September 2018 and the subsequent e-mail exchange between Client A and the Respondent (between 30 September 2018 and 3 October 2018), Client A transferred £100 to the Respondent's bank account. Client A was deceived by the Respondent; he was led to believe that he was required to make a payment to the Respondent, when that was palpably not the case. Furthermore, as an experienced criminal defence solicitor, the Respondent understood that the Legal Aid regime expressly prohibits the recovery of additional money from a legally aided client in these circumstances. Nevertheless the Respondent, in essence, requested and obtained additional money for travel time and/or expenses, direct from a client who should not have been required to pay anything, on top of the claims made to the Firm and the LAA.
- 31.2. The subsequent claim to the Legal Aid Agency was in direct violation of the Standard Crime Contract 2017. Any such claims to the Legal Aid Agency are required to be in accordance with terms of the 2017 Contract which, as set out above, expressly prohibits the charging of a fee to a client, save for in a number of limited circumstances. Given his length of experience practising in criminal law, the Respondent would have known only too well that charging a client and/or receiving payment from that client would have been in breach of the Standard Crime Contract 2017.
- 31.3. The Respondent telephoned Client A in early 2019 and requested that he provide a written account that the payment of £100 was a thank you gift, and not a payment for his time and expenses. Requesting that a client provide a false account that would, on the face of it, serve only to conceal a solicitor's own misconduct, could never be considered to be acting in the client's best interests.
- 31.4. Such conduct, on any view, would be considered dishonest by the standards of ordinary decent people.
32. In addition to admissions of Principles 2, 4 and 6 of the SRA Principles 2011, the Respondent admits that his conduct was dishonest. He does not assert that exceptional circumstances, which might justify a departure from the inevitable consequence of striking off, arise in this case.
33. The Parties consider that, in light of the admissions set out above, and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate and appropriate resolution of the matter, which is in the public interest. These were serious matters involving breaches of the requirements to act with integrity, act in the best interests of clients (in this case a legally aided client) and maintain trust in the solicitor and the provision of legal services. In addition, the case involved acts of admitted dishonesty to which no exceptional circumstances apply.

Accordingly, the fair and proportionate outcome in this case is for the Respondent to be struck off the Roll of Solicitors.

Mark Rogers, Partner, Capsticks Solicitors LLP

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On behalf of Solicitors Regulation Authority Limited

Date: 14 January 2022

Michael Edward Garstang

Date: 13th January 2022.