

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12304-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

DEREK HAYWARD.

Respondent

Before:

Mr R Nicholas(in the chair)

Ms A E Banks

Mrs L McMahon-Hathway

Date of Hearing: 15 July 2022

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations made against Mr Hayward by the SRA were set out in a Rule 12 Statement dated 8 February 2022 and were that:
 - 1.1 Between 23 October and 29 November 2019, whilst in consultation with his clients who had been arrested and detained in a custody suite at Medway Police station in Kent, he passed money to them and attempted to conceal his actions from the custody officers, in breach of:
 - (i) Up to 25 November 2019, either or both of Principles 2 and 6 of the SRA Principles 2011 (“the 2011 Principles”); and
 - (ii) From 25 November 2011, any or all of Principles 2,4 and 5 of the SRA Principles 2019 (“the 2019 Principles”)
 - 1.2 Dishonesty was alleged as an aggravating feature of allegation 1.1(i).

Admissions

2. The Respondent admitted the above allegations.

Documents

3. The Tribunal considered all the documents contained within an electronic bundle prepared and agreed by the parties.

Background

4. Mr Hayward was admitted as a solicitor in December 1976. He was a sole practitioner at Derek J Hayward & Co which was based in Rainham, Gillingham. The firm closed on 30 June 2022.
5. Mr Hayward specialised in criminal defence work and was a duty solicitor. By the date of the Rule 12 Statement, he was no longer practising as a solicitor but had a current practising certificate (containing a condition that he may not undertake any police station representation work).
6. Kent Police made reports to the SRA that Mr Hayward had passed what appeared to be money to his clients whilst consulting with them in the custody suite of Medway police station. This had occurred on four separate occasions and CCTV footage from the consulting rooms showed that he had attempted to conceal the passing of the money to his clients. The money was discovered by custody officers on the clients after the Mr Hayward’s consultation with them.

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

7. The parties invited the Tribunal to deal with the allegations against Mr Hayward in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal’s Guidance Note on Sanctions.

8. The proposed sanction was that Mr Hayward be struck off the Roll of Solicitors.

Findings of Fact and Law

9. The SRA 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 Mr Hayward'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.
10. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Mr Hayward's admissions were properly made.
11. The Tribunal considered the Guidance Note on Sanction (10th Edition/ June 2022) ("the Sanctions Guidance"). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
12. The Tribunal observed that Mr Hayward was an extremely experienced criminal law and duty solicitor who was aware of the proper mechanism for providing any money or items to clients where this may be warranted. He had sought to conceal his actions in the knowledge that they were improper. He had had full control of the circumstances of his misconduct, and this was not an isolated incident or one-off 'moment of madness'.
13. Mr Hayward had admitted that his conduct described in allegation 1.1(i) was dishonest. The Sanction Guidance states at [51] that: "*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)).*" The Tribunal did not consider there were exceptional circumstances present such that a lesser sanction was warranted. Mr Hayward had accepted in the Statement of Agreed Facts and Outcome that this was not a case in which striking off would be a disproportionate sanction.
14. Public confidence in the profession and the reputation of the profession required no lesser sanction than that Mr Hayward be removed from the Roll. The Tribunal found that the proposed sanction of striking Mr Hayward from the Roll was appropriate, proportionate and in accordance with the Sanctions Guidance.

Costs

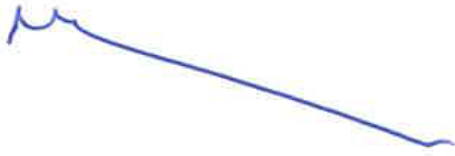
15. The parties agreed that Mr Hayward should pay costs in the sum of £3,419.00. The Tribunal determined that the agreed amount was reasonable and proportionate. Accordingly, the Tribunal ordered that Mr Hayward pay costs in the agreed sum.

Statement of Full Order

16. The Tribunal ORDERED that the Respondent, DEREK HAYWARD of Derek J Hayward & Co Solicitors, 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 £3,419.00.

Dated this 22nd day of July 2022.
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
22 JUL 2022

A handwritten signature in blue ink, consisting of a stylized initial 'R' followed by a long, sweeping horizontal line that tapers to the right.

R. Nicholas
Chair

IN THE MATTER OF THE SOLICITORS ACT 1974

Number:12304-2022

And

IN THE MATTER OF DEREK HAYWARD

BETWEEN:

SOLICITORS REGULATION AUTHORITY LIMITED

And

Applicant

DEREK HAYWARD

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 8 February 2022 which included a statement pursuant to Rule 12 Solicitors (Disciplinary Proceedings) Rules 2019, the Solicitors Regulation Authority ("SRA") brought proceedings before the SDT against the Respondent.

ALLEGATIONS

2. The allegations in the proceedings against the Respondent are that:
 - 2.1** Between 23 October and 29 November 2019, whilst in consultation with his clients who had been arrested and detained in a custody suite at Medway Police station in Kent, passed money to them and attempted to conceal his actions from the custody officers, in breach of:
 - (i) Up to 25 November 2019, any or all of Principles 2 and 6 of the SRA Principles 2011 ("SRAP11") and
 - (ii) From 25 November 2011, any or all of Principles 2,4 and 5 of the SRA Principles 2019 ("SRAP19")
3. Dishonesty is alleged as an aggravating feature of allegation 2.1(i), however proof of dishonesty is not an essential ingredient for proof of the allegation.

ADMISSIONS

4. The Respondent admits allegation 2.1 in its entirety and admits that he was dishonest.

BACKGROUND

5. The Respondent's date of birth is 1952, and he was admitted as a solicitor on 1 December 1976. He was a sole practitioner at Derek J Hayward & Co which operated from an office at 25 High Street, Rainham, Gillingham, ME8 7HX. The firm closed on 30 June 2022.
6. The Respondent specialised in criminal defence work and was a duty solicitor. He is no longer practising as a solicitor although he still has a current practising certificate. His practising certificate has a condition that he shall not undertake any police station representation work. That condition was imposed by the Applicant on 25 October 2021.

AGREED FACTS

7. Kent Police made reports to the Applicant that the Respondent had passed what appeared to be money to his clients whilst consulting with them in the custody suite of Medway police station. This had occurred on four separate occasions and CCTV footage from the consulting rooms showed that the Respondent had attempted to conceal the passing of the money to his clients. The money was discovered by custody officers on the clients after the Respondent's consultation with them.
8. The Police reports described the Respondent's conduct as a breach of trust and integrity and as being a threat to their custody suite. They also referred to his motive for providing money as being to convince his clients to use and to continue to use his services.
9. The Police reports also include the following comments:

"The Chief Constable expects the highest levels of integrity from those who work within the police and particularly the custody environment and this includes legal representative attending and representing detainees..."

The Chief Constable promotes and supports the safe and decent delivery of custody facilities. The custody officer has specific responsibility and authority for the custody and protection of detainees. The PACE 1984 provides several powers to the custody officer enabling his responsibilities to be discharged. One of those is the power to search detainees and establish any property that may

belong to them. The supply of any item of any kind to a detainee without the knowledge and authorisation of the custody officer presents a real and significant threat to the safety of all persons in the custody suite.”

10. The Police reports (which attached internal police reports) detail four incidents where the Respondent passed money to his clients. The incidents occurred on:
 - 23 October 2019 (incident 1)
 - 28 October 2019 (incident 2)
 - 7 November 2019 (incident 3) and
 - 29 October 2019 (incident 4)
11. The Police provided the Applicant with CCTV footage of incidents 1, 2 and 4. The CCTV footage contains extracts of video recording of the Respondent and his clients in the consultation rooms in Medway police station. No sound can be heard from the video footage.

ALLEGATION 2.1

12. The summaries of incidents 1-4 below are made from the Police reports, witness statements of the Custody Sergeants on duty at Medway Police Station, the detainees custody record and where available CCTV footage.

Incident 1

13. Client SB (“SB”) was remanded in custody on 21 October 2019. He was strip searched on his arrival into custody as he showed warning signs for concealing items on his person whilst in custody. The result of the search was negative as nothing was found in SB’s possession.
14. A strip search is an intrusive search of a person. If necessary, to assist a strip search, the detainee may be asked to facilitate a visual examination of the genital and anal areas.
15. SB requested to see the Respondent prior to his appearance at a virtual court on 23 October 2019. At 09:00 SB had a consultation with the Respondent in a consultation room before attending a virtual court in the custody suite at Medway police station.
16. CCTV footage from the consultation room shows that between 09:37:24 and 09:37:50 the Respondent placing his hand in his right trouser pocket and removing something, leaning forward and then place whatever he has in his left hand under the table. The Respondent then reaches behind his laptop and

passes the item to his client, which SB takes before placing his hand under the table as though he is concealing something.

17. At 12:00 SB went to the custody desk to receive medication and then went back to his cell. CCTV footage of the Custody desk at the custody suite shows a small item dropping on the floor from SB's trouser pocket at 12.04.
18. At 12.06, Nicola McCabe, a Forensic Health Practitioner found two screwed up £20 notes on the floor in front of the custody desk and gave them to PS Cook, the Custody Sergeant. At about the same time of the discovery of the money, SB called the front desk on the intercom and said he had lost something. He said he had £40 which were hidden in his buttocks the whole time he had been in custody and that he had dropped the money.
19. The money was seized from SB who explained that a prisoner had given the money to him whilst in hospital by leaving it in a toilet. SB had been in hospital for 3 days after his arrest and before arriving in custody.
20. SB was again strip searched after the discovery of the money and nothing was found in his possession.
21. Following the virtual hearing SB was remanded in custody awaiting a trial date to be fixed.

Incident 2

22. Client JA ("JA") was arrested on 27 October 2019 and a normal search was carried out on him on the same day which revealed amongst other things, that he had 20 pence in his possession which was retained by the Custody Officer as JA's property.
23. On 28 October 2019 JA had a consultation with the Respondent in the consultation room at Medway police station prior to a virtual court hearing. The Consultation was between 09:27 and 09:50.
24. CCTV footage between 09:50:02 and 09:50:08 shows the Respondent putting his right hand into his trouser pocket, removing an item, and then moving his right arm towards JA and shake hands with JA. JA then takes the item in his right hand and puts it into his trouser pocket. JA then attended the virtual court hearing.
25. PS Cook who had seen the CCTV footage went to JA's cell at 10:50 and asked JA if he had anything in his pockets. JA gave PS Cook a £20 note from his right trouser pocket and said that he had forgotten that he had it when he came in.

26. JA was remanded to 30 days imprisonment following his appearance at the virtual court.

Incident 3

27. Client DL (“DL”) was brought into custody on 6 November 2019 and as he was a well-known drug user and known for concealing, a strip search was conducted upon his arrival into the custody suite and a drug related item recovered from him. DL was subsequently put under constant supervision for 2 hours which was subsequently downgraded to visits to his cell every 30 minutes.
28. On 7 December 2019, the Respondent had a consultation with DL prior to an interview taking place. Following the interview and a conversation about bail between the Custody sergeant, PS McLaughlin, the Respondent and DL, a further consultation took place between the Respondent and DL.
29. Following the second consultation and due to suspicions that the Respondent was passing money to detainees, a further strip search was carried out and £20 note was found in DL’s bandage. DL was unable to account for the £20. PS McLaughlin was satisfied that the £20 note had come into DL’s possession during the period of his detention as he was previously strip searched.
30. DL was later charged and remanded in police custody. He was again remanded in custody on the following day at a virtual court hearing where a 190-day suspended sentence was activated.

Incident 4

31. Client MH (“MH”) was arrested on 28 November 2019 and his detention was authorised at Medway Police Station at 00:31 on 29 November 2019. A search was carried out on him at 00:57. The search did not reveal any money in his possession. On the same day, MH had a consultation with the Respondent which began at 13:50.
32. The Custody Sergeant, PS Chase’s internal police report sent to the Legal Services Department included the following comments:
- “I am aware that you are dealing with the issues surrounding Legal Representative Derek Hayward and the exchange of money during consultations. It has come to my attention that it has happened again today at Medway Police Station.”*

PS Chase then describes what appears on the CCTV footage of the consultation between the Respondent and MH.

33. CCTV footage of the consultation shows the Respondent reaching into his trouser pocket and take an item out. He proceeds to put his hands under the table and then passes the item over the desk in one hand to MH whilst using the other hand to cover the exchange with a piece of paper. MH is seen taking the item from the Respondent's left hand and placing it in his pocket. This occurs between 14:02:42 and 14:02:56.
34. MH was granted bail on 29 November 2019.

Police And Criminal Evidence Act (PACE) 1984 and Code of Practice C

35. Under Section 66 of PACE, the Secretary of State issues codes of practice in connection with the exercise of statutory powers by Police Officers. Code C is the code of practice relating to the detention, treatment, questioning and identification of persons by Police Officers.
36. Paragraph 4 of Code C relates to a Custody Officers' responsibilities for ascertaining what property a detainee has, might have acquired for an unlawful or harmful purpose whilst in custody and the safekeeping of any property from a detainee at a police station.
37. Paragraph 4.2 of Code C provides that detainees may retain personal effects at their own risk unless the custody officer considers that they may use them to cause harm to themselves or others, interfere with evidence, damage property, effect an escape or they are needed as evidence.
38. Paragraph 4.3 of Code C provides *"Personal effects are those items a detainee may lawfully need, use or refer to while in detention but do not include cash and other items of value"*.
39. During the Applicant's investigation, the Investigation Officer raised a query with the Legal Services Department of the Kent Police regarding guidelines applying to duty solicitors handing money/items to people in custody.
40. The following text is an extract of a response received from the Legal Services Department of Kent Police to the Investigation Officer's query:

"In relation to your query regarding Duty Solicitors handing money/items to people in custody I have contacted officers and summarise their views below: -

PACE confirms the details of detainees retaining property and the relevant section is below for reference.

The passing on of property or cash is perfectly acceptable in most circumstances, as long as the Custody Officer is consulted, can make a decision regarding the appropriateness, the transaction is documented on the custody record, and that cash or items of value are retained by Police for safe keeping. It is not uncommon for family to want to pass on cash or clothing etc., no special provisions need to be set up to accommodate this.

The important thing is that the Custody Officer has complete oversight of what goes on in their suite. It is a requirement in PACE. PACE specifically excludes cash from the items a detainee may retain in custody (highlighted below).¹

BREACHES OF PRINCIPLES 2 AND 6 OF SRAP11 AND PRINCIPLES 2 AND 5 OF SRAP19

41. The Respondent passed money to each of his clients whilst they were detained in the custody suite at Medway Police Station and tried to conceal the same.
42. The Respondent is required to act with integrity. That was a requirement of Principle 2 of the SRAP11 and continues to be a requirement under Principle 5 of the SRAP19.
43. The Respondent lacked integrity in passing money to his clients and concealing his actions from the custody officers. A solicitor acting with integrity would not pass money to clients in detention and conceal the same. The Respondent did so on 4 occasions over a period of some 5-6 weeks.
44. A solicitor acting with integrity and having a legitimate reason to pass money to his clients whilst they were in detention would have contacted the Custody Sergeant and sought his permission to give money to his clients. Had the Custody Sergeant agreed, he would have recorded the receipt of the money on the client's custody record and retained the money as part of the client's property. The client would then be given the money on his release from detention.
45. The Respondent was an experienced criminal solicitor and was aware of the proper route of giving money to detainees and that it was wrong to give money directly to his clients whilst in custody. He was aware that his clients could not lawfully retain money as part of their possessions whilst in custody.

46. The Respondent was aware that consultations with his clients were being recorded by CCTV in the consultation rooms and that the Custody officers could access and view the CCTV footage. The Respondent's attempted to conceal the passing of the money from the CCTV as he was aware of what he was doing was improper and that he did not have a legitimate reason for passing money to his clients.
47. Principle 6 of the SRAP11 required the Respondent to behave in a way that maintains the trust the public places in him and in the provision of legal services. From 25 November 2019, Principle 2 of the SRAP19 requires the Respondent to act in a way that upholds public trust and confidence in the solicitor's profession and in legal services provided by authorised persons.
48. The Respondent's actions have undermined public trust in him and confidence in the profession. The public would not expect a solicitor to pass monies to clients who have been arrested for committing criminal offences and held in police custody. The public would expect solicitors to be open and transparent with the police and not to act in an improper manner with their clients.
49. It is a fundamental part of the criminal justice system that solicitors can be trusted to act properly when allowed access to their detained clients in custody to allow the giving of legal advice in private. The Respondent's actions have undermined a belief that solicitors can be trusted to act properly in such a situation.
50. The Respondent's actions had the potential to compromise the Custody Officer's responsibility to ascertain what property a detainee might have acquired for an unlawful purpose.

Dishonesty and a breach of Principle 4 of the SRAP19

51. Dishonesty is alleged as an aggravating factor allegation 2.1(i). Principle 4 of the SRAP19 requires the Respondent to act with honesty.
52. The Respondent's actions were dishonest in accordance with the test for dishonesty laid down in **Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67:**
53. The Respondent accepts that he acted dishonestly according to the standards of ordinary decent people by passing money to his clients who were in custody and concealing the same from the custody officers.
54. The Respondent accepts that he:

- was a very experienced criminal law and a duty solicitor having been practising in the criminal law for over 30 years;
- was aware that his clients could not lawfully retain money as part of their possessions whilst in custody;
- was aware that the proper route of giving money to detainees was to give it to the custody sergeant who would record it in their custody record and retain it as the detainee's property.
- was aware that consultations with his clients were being recorded by CCTV in the consultation rooms and he was aware that the Custody Officers could access and view the CCTV footage.
- knew his actions in giving money directly to clients in custody was wrong.

MITIGATION

55. The following mitigation is put forward by the Respondent but is not endorsed by the SRA:

- that he is ashamed of his actions and thoroughly embarrassed;
- in all probability the money he passed to his clients would only have been to assist his clients getting home;
- he makes no excuses for his actions which were to say the least of utmost stupidity and certainly not for any personal gain;
- that he had run his criminal practice for some 30 years without issue and he would be happy to personally offer his apologies to those concerned.
- He has admitted his conduct and the allegations against him from the outset.
- He has co-operated with the SRA investigation.
- that his actions were not made to "curry favour" with clients. He had for many years a very loyal caseload of clients who he liked to think used him because of the services offered by him, his firm and counsel instructed and certainly not because of any inducements given;
- His personal situation at the time was not something that affected his day-to-day work but clearly affected his judgment in the situation when a client would ask for assistance which he succumbed to. He gave into pressure on these occasions which was to say the least unprofessional;

PROPOSED SANCTION

56. The proposed outcome is that the Respondent is struck off the roll and pays the SRA costs in the fixed sum of £3,419.00.

Explanation as to why the sanction is in accordance with the SDT's guidance note on sanction

57. The Respondent is highly culpable for his actions. This is because:
- He was a very experienced criminal law and duty solicitor and knew that it was improper to give his clients' money. That is why he concealed the passing of money to his clients.
 - His actions were deliberate and planned;
 - His actions involved a significant breach of trust placed in him by the police;
 - He had direct control of and was entirely responsible his actions.
58. His conduct is aggravated by his:
- repeated dishonesty over 5-6 weeks involving 4 clients;
 - abuse of trust placed in him;
 - his concealment of wrongdoing;
 - misconduct which he knew was in material breach of his obligations to protect the public and the reputation of the legal profession.
59. Mitigating features of his conduct include his cooperation with his regulator and his open and frank admissions.
60. 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)**).*"

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...”

61. This case does not fall within the small residual category where striking off would be a disproportionate sentence. Accordingly, the fair and proportionate penalty in this case is for the Respondent to be struck off the Roll of Solicitors.
62. The Respondent’s misconduct is at the highest level. Protection of the public and public confidence in the provision of legal services requires the Respondent to be struck off the roll.
63. The parties invite the SDT to impose the sanction proposed as it meets the seriousness of the admitted misconduct and is proportionate to the misconduct in all the circumstances.

Dated this

Signed.....

INDERJIT S JOHAL
Senior Legal Adviser
For and on behalf of the Solicitors Regulation Authority
The Cube

199 Wharfside Street
Birmingham
B1 1RN

Signed.....

Derek Hayward

Respondent

