

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12343-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

ZOE ANN LOWE

Respondent

Before:

Ms A E Banks (in the chair)
Ms T Cullen
Dr S Bown

Date of Consideration: 25 August 2022

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 were that:
 - 1.1 Having missed court deadlines of 20 and 27 September 2013 for filing witness statements, updated medical evidence and updated Schedule of losses, and having been notified by the Defendant's solicitors, by a letter dated 22 January 2014, that they would apply to court to have the claim struck out, she failed to notify Client A of the situation and failed to obtain her instructions. In doing so, she breached any or all of Principles 2, 4, 5 and 6 of the SRA Principles 2011 and/or failed to achieve either or both of Outcomes 1.1 and 1.2 of the SRA Code of Conduct 2011.
 - 1.2 On 30 January 2014, she accepted an offer in settlement from the Defendant which was lower than an offer that Client A had previously rejected, without taking Client A's instructions and, in fact, contrary to her last known instructions. In doing so, she breached any or all of Principles 2, 4, 5 and 6 of the SRA Principles 2011 and/or failed to achieve either or both of Outcomes 1.1 and 1.2 of the SRA Code of Conduct 2011.
 - 1.3 That having accepted the offer of settlement, she failed to inform Client A that she had settled the claim and that the settlement monies had been received into the firm's client account. In doing so, she breached any or all of Principles 2, 4, 5 and 6 of the SRA Principles 2011 and/or failed to achieve either or both of Outcomes 1.1 and 1.2 of the SRA Code of Conduct 2011.
 - 1.4 That between 30 January 2014 and 8 March 2018, she made statements to Client A, which were untrue and were likely to mislead Client A as to the progress of her personal injury claim and which she knew or ought to have known were liable to have this effect at the time they were made. In doing so, she breached any or all of Principles 2, 4, 5 and 6 of the SRA Principles 2011 and/or failed to achieve either or both of Outcomes 1.1 and 1.2 of the SRA Code of Conduct 2011.
2. In addition, dishonesty was alleged as an aggravating factor with respect

Documents

3. The Tribunal considered all of the documents in the case which included:
 - Rule 12 Statement dated 14 June 2022 and Exhibit AML1.
 - Letter from Saunders Law (on behalf of the Respondent) dated 15 July 2022.
 - Statement of Agreed Facts and Proposed Outcome ("AO") dated 18 August 2022.

Background

4. The Respondent was admitted to the Roll in November 1995. She last held a Practising Certificate in 2019/2020.
5. At all material times, the Respondent was employed by Ewart Price ("the Firm") based in Welwyn Garden City. She was employed by the Firm from March 1996 until June 2020.

6. Client A instructed the Respondent to act on her behalf with regards to a personal injury claim in 2012. The Defendants to that claim admitted liability at the outset. The contentious issue was quantum of damages which required evidence to be filed on behalf of Client A in order to substantiate her losses and medical evidence in relation to her injuries. Prior to the deadline for evidence to be filed, those representing the Defendants made a settlement offer in the sum of £7,500.00 plus reasonable costs.
7. The Respondent failed to inform Client A of that offer within the prescribed deadline which Client A rejected nonetheless. Further, the Respondent failed to comply with the Court deadlines for filing evidence to substantiate Client A's losses and injuries. Consequently, those representing the Defendants made a reduced offer in settlement of the claim in the sum of £5,000.00 plus reasonable costs. The Respondent, without having taken instructions from Client A, accepted the same.
8. The Respondent proceeded to mislead Client A that her claim was ongoing when, in fact, she was well aware that it had been settled. The Respondent's misconduct only came to light when Client A complained to the Firm in April 2018 about the service she had received from the Respondent. The Firm investigated that complaint and it transpired that the Respondent had settled the claim in January 2014.

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

9. The parties invited the Tribunal to deal with the Allegations against the Respondent 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.

Findings of Fact and Law

10. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
11. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.
12. The Tribunal applied the Guidance Note on Sanction (Tenth Edition: June 2022). In so doing the Tribunal was satisfied that the proposed sanction was the appropriate and proportionate sanction given the dishonest misconduct admitted by the Respondent. The Tribunal noted that exceptional circumstances were neither advanced nor found on the papers. An order striking the Respondent from the Roll was therefore required in order to protect the public from harm, declare and uphold proper standards in the profession and maintain public confidence in the regulatory process.

Costs

13. Costs were agreed in the sum of £4,721.00 which the Tribunal considered to be reasonable and proportionate.

Statement of Full Order

14. The Tribunal Ordered that the Respondent, ZOE ANN LOWE, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £4,721.00.

Dated this 14th day of September 2022
On behalf of the Tribunal



JUDGMENT FILED WITH THE LAW SOCIETY
14 SEPT 2022

A E Banks
Chair

Case Number: 12343-2022

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

ZOE ANN LOWE

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 14 June 2022 and the statement made pursuant to Rule 12 (2) of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority Ltd ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making four allegations of misconduct against Zoe Ann Lowe ("the Respondent").

The allegations

2. The allegations against the Respondent, made by the SRA within that statement were that: -

2.1 having missed court deadlines of 20 and 27 September 2013 for filing witness statements, updated medical evidence and updated Schedule of losses, and having been notified by the Defendant's solicitors, by a letter dated 22 January 2014, that they would apply to court to have the claim struck out, she failed to notify Client A of the situation and failed to obtain her instructions. In doing so, she breached any or all of Principles 2, 4, 5 and 6 of the SRA Principles 2011 and / or failed to achieve either or both of Outcomes 1.1 and 1.2 of the SRA Code of Conduct 2011.

2.2 On 30 January 2014, she accepted an offer of settlement from the Defendant which was lower than an offer that Client A had previously rejected, without taking Client A's instructions

and, in fact, contrary to her last known instructions. In doing so, she breached any or all of Principles 2, 4, 5, 6 of the SRA Principles 2011 and / or failed to achieve either or both Outcomes 1.1 and 1.2 of the SRA Code of Conduct 2011.

2.3 That having accepted the offer of settlement, she failed to inform Client A that she had settled the claim and that the settlement monies had been received into the firm's client account. In doing so she breached any or all of Principles 2, 4, 5 and 6 of the SRA Principles 2011 and / or failed to achieve either or both of Outcomes 1.1 and 1.2 of the SRA Code of Conduct 2011.

2.4 That between 30 January 2014 and 6 March 2018, she made statements to Client A, which were untrue and were likely to mislead Client A as to the progress of her personal injury claim and which she knew or ought to have known were liable to have this effect at the time they were made. In doing so, she breached any or all of Principles 2, 4, 5 and 6 of the SRA Principles 2011 and /or failed to achieve either or both of Outcomes 1.1. and 1.2 of the SRA Code of Conduct 2011.

3 In addition, dishonesty was alleged as an aggravating factor with respect to allegation 2.4.

4 The Respondent admits each of these allegations. She also admits that her conduct in acting as alleged in allegation 2.4 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 6 to 21 of this statement, are agreed between the SRA and the Respondent.

Professional Details

6 The Respondent was born on 1965 and is a solicitor having been admitted to the Roll on 1 November 1995. The Respondent does not hold a practising certificate and the last one held was for the practice year 2019/2020.

7 At the time of the events which are the subject of these allegations, she was employed by Ewart Price ("the firm") at 1st Floor, 16-18 Church Road, Welwyn Garden City, Hertfordshire, AL8 6PS. She worked as a solicitor specialising in Personal Injury work. She had worked at the firm since March 1996 and she left the firm on 30 June 2020.

Background to the allegations

- 8 The Respondent was instructed by Client A to act for her in a Personal Injury claim. Client A was an Occupational Therapy student on a work placement at St Mary's Hospital, London ("the hospital"). She sustained injuries when she slipped and fell down a flight of stairs at the hospital, on 10 December 2009. The Respondent was the fee earner with responsibility for the matter.
- 9 The claim was issued in 2012. The First Defendant was the hospital and the Second Defendant was a cleaning company. The Second Defendant, via its solicitors, Weightmans LLP ("Weightmans"), admitted liability. The next stage in the litigation was for the Respondent to collate the necessary documentation in support of Client A's claims for her injuries and her financial losses. A court order for the filing and serving of a witness statement, updated medical evidence and an updated Schedule of losses was made on 9 July 2013. The deadline for filing and serving the witness statement and Schedule of losses was 20 September 2013 and for filing and serving the medical evidence was 27 September 2013.
- 10 In a letter to the Respondent dated 29 August 2013, Weightmans stated that they had been instructed to put forward an offer of settlement of £7,500.00. The offer would remain open for 21 days and if accepted, the Defendant would pay Client A's reasonable legal costs, to be assessed if not agreed, on the standard basis.
- 11 The Respondent did not inform Client A of the Defendant's settlement offer until she wrote to her on 6 November 2013. In the letter, the Respondent also told Client A that she was hopeful of securing an improved offer. By this time, the Respondent knew that an improvement on the offer was highly unlikely because of the missed court deadlines and the fact that Weightmans had repeated their client's original offer of £7500.00 in their letter of 18 October 2013. She did not refer to the missed deadlines in the letter to Client A.
- 12 Client A replied in an email of 7 November 2013 to say that she was extremely disappointed with the Defendant's settlement offer of £7500.00 and would not accept it.
- 13 In a letter to the Respondent dated 22 January 2014, Weightmans referred to the fact that 4 months had elapsed since the missed court deadlines and that the required documentation had not been filed and served.

- 14 Weightmans told the Respondent that in their view, Client A would be unable to now file the documentation and she, therefore had no evidence to support her claim. They stated that the only option would be for the Respondent to apply for relief from sanctions. In Weightmans's view, the prospect of relief from sanctions being granted was remote and, if granted, they would appeal the decision. They referred to caselaw in which cases where there had been similar non-compliance with a court order had been struck out.
- 15 However, to conclude matters, Weightmans stated that their client was prepared to make a settlement offer of £5000.00 which would remain available until 4pm on 30 January 2014. If Client A accepted the offer, the Defendant would also pay her reasonable legal costs to be assessed if not agreed, on the standard basis.
- 16 The Respondent did not inform Client A of the revised offer. Without notifying Client A of the situation and without taking her instructions, the Respondent accepted the offer of £5000.00 to settle the claim. This was done by a letter dated 30 January 2014.
- 17 The Respondent did not, subsequently, inform Client A that the claim had settled, nor did the Respondent inform Client A that the settlement monies had been received into the firm's client account.
- 18 Between January 2014 and March 2018, the Respondent gave misleading responses when answering Client A's requests for updates on the progress of her claim. She also encouraged Client A to provide updates on her medical condition and asked Client A to sign further letters of authority for the release of hospital scans and medical evidence, all of which would have led Client A to believe that her claim was ongoing and that updated medical evidence was still relevant to the claim.
- 19 At no stage did the Respondent inform Client A that she had settled her claim. By failing to specifically inform Client A that the claim had been settled, or even failing to correct Client A's mistaken belief that her claim was ongoing, the Respondent misled Client A by omission. Instead, the Respondent allowed Client A to continue to think that her claim was progressing when the Respondent was fully aware that this was not the case.
- 20 The Respondent not only misled Client A by omission but also actively encouraged Client A to update her on her medical condition when she knew that the claim was settled and that further medical evidence was irrelevant.

21 On 25 April 2018, Client A made a service complaint to the firm. Mr Michael Briscoe, the firm's COLP, at the time, investigated and on 15 May 2018, the Respondent informed Mr Briscoe that she had settled the claim on 30 January 2014.

Non-Agreed Mitigation

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

22.1 Early in 2013, the firm notified the Respondent and the other fee earner in the personal injury department that the department would be closing on an unspecified date later that year. The Respondent's colleague promptly found a new job and the Respondent was left to handle both of their cases. The overwhelming increase in workload and the uncertainty about her future meant that this was a very stressful time for the Respondent.

22.2 Due to spending the majority of her time reading into her colleague's cases, the Respondent missed the court deadline on Client A's case.

22.3 When she received the letter from Weightmans, the Respondent was horrified, embarrassed and ashamed that she had missed the court deadline. She panicked and acted out of character by accepting the lower settlement offer.

22.4 Without her colleague she felt isolated. She was too embarrassed to inform her manager but states that this is no reflection on the firm.

22.5 She accepted the offer of £5000.00 because she feared that the client might end up with nothing.

22.6 She has expressed remorse and regret for her actions and is deeply sorry for the distress caused to Client A by her actions, including any impact on her physical and mental health.

22.7 She has not derived any financial benefit from her actions.

22.8 She has shown insight into the seriousness of her actions and is aware of and accepts that the consequences will reflect the seriousness.

23 However, the Respondent does not contend that the mitigation set out above amounts to exceptional circumstances which would justify the Tribunal in making any order other than that she be struck off the Roll.

Penalty proposed

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

25 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 £4721.00

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

26 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)).*"

27 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..."

28 Having settled Client A's claim in January 2014, between February 2014 and March 2018, the Respondent gave misleading responses to Client A's requests for updates on the progress of her claim. The responses together with the Respondent's requests for updates on her medical condition and requests for further medical evidence were likely to lead Client A to believe that her claim was ongoing. The Respondent committed repeated acts of dishonesty over a prolonged period which adversely affected Client A. Client A was relying on the Respondent for information about the progress of her claim. By misleading the client over a four-year period, the Respondent was able to conceal her acts of negligence, namely, failing to comply with the court directions and settling the claim without Client A's instructions. Also, this prolonged dishonesty deprived Client A of the opportunity to take independent legal advice and try to have the situation rectified whether by court proceedings or a claim on the firm's professional indemnity insurance. These were serious acts of dishonesty committed over an extended period

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.

- 29 The seriousness of the Respondent's conduct is such that a lesser sanction would be inappropriate and a strike off is required for the protection of the public and the reputation of the legal profession.

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Head of Legal and Enforcement, upon behalf of the SRA
Date

Zoe Ann Lowe
Date 18 August 2022