

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12348-2022

## BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

MD MOHIUDDIN HOSSAIN

Respondent

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Before:

Mr P Lewis (in the chair)  
Mrs L Boyce  
Mrs L McMahon-Hathway

Date of Hearing:  
18 October 2022

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## Appearances

Michael Collis, barrister of Capsticks LLP, for the Applicant.

The Respondent did not attend and was not represented.

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## JUDGMENT

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## **Allegations**

1. The Allegation against Mr Hossain, was that having been admitted as a Solicitor of the Senior Courts, he:
  - 1.1. On or around 18 May 2017, signed a lease for Property A to confirm that he had witnessed Mr Ali sign that lease in his presence, when he had not, and in doing so breached any or all of Principles 2 and 6 of the SRA Principles 2011.
2. In addition, Allegation 1.1 above is advanced on the basis that Mr Hossain's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the misconduct but proof of dishonesty was not required to establish the Allegation or any of the particulars.

## **Executive Summary**

3. Mr Hossain signed a declaration lease for Property A in which he confirmed that he had witnessed Mr Ali sign the document, when in fact he had not been present when Mr Ali signed the document. Mr Hossain admitted this and the Tribunal found the allegation proved in full, including the aggravating element of dishonesty.

[Click here](#) for the Tribunal's Findings in relation to Allegation 1.1

## **Sanction**

4. Mr Hossain was struck off the Roll of Solicitors and ordered to pay £1,800 in costs.

## **Documents**

5. The Tribunal considered all of the documents in the case which were contained in an electronic hearing bundle.

## **Preliminary Matters**

### **Anonymity**

6. Mr Collis invited the Tribunal to maintain the anonymity of the individuals described as Persons B and C in the Rule 12 statement, Mr Ali and Mr Haque respectively. Mr Collis told the Tribunal that it was unclear which of them had been Mr Hossain's client, but that one of them clearly was. Mr Collis also invited the address of the property to remain unidentified as it was owned by Mr Ali.

### **The Tribunal's Decision**

7. The starting point was the principle of open justice, as emphasised in Lu v SRA [2022] EWHC 1729 (Admin) at [138]:

“Courts and tribunals should not be squeamish about naming innocent people caught up in alleged wrongdoing of others. It is part of the price of open

justice and there is no presumption that their privacy is more important than open justice.”

8. The Tribunal refused the application for any anonymity in these proceedings. The Tribunal noted that there had been County Court proceedings, which would have been in public. The property involved appeared to be a commercial property, but in any event there was uncertainty as to who the client actually was.
9. The Tribunal saw no basis for anonymity in the judgment and refused the application.

### **Application to proceed in absence**

10. Mr Hossain did not appear and was not represented. Mr Collis applied for the matter to proceed in his absence. Mr Collis drew the Tribunal’s attention to confirmation that Mr Hossain had notice of the hearing and service of the proceedings. He referred to correspondence from Mr Hossain confirming that he would not be attending the hearing.

### **The Tribunal’s Decision**

11. The Tribunal was satisfied that Mr Hossain was aware of the date of the hearing and SDPR Rule 36 was therefore engaged. The Tribunal had regard to the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

“In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:

- (i) the nature and circumstances of the defendant’s behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
- (ii) ...;
- (iii) the likely length of such an adjournment;
- (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
- (v) ...;
- (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
- (vii) ...;
- (viii) ...;
- (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
- (x) the effect of delay on the memories of witnesses;
- (xi) ...;”

12. In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

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

13. Leveson P went on to state at [23] that discretion must be exercised “having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account”.
14. On 14 September 2022, Mr Hossain had emailed the Tribunal and the solicitors for the SRA as follows:

“Dear Sirs,

Further to the Tribunal's order dated 1 September 2022, I herewith file and serve my 'answer to the allegations' to the SDT and the applicant also under the same email. I am not attending the Tribunal on the hearing to save courts time and costs as I am not financially capable to employ such counsel to represent me. My answers and mitigating circumstances, enclosed herewith, are the only statement in this matter.

Please contact me for more info.”

15. Mr Hossain was clearly aware of the proceedings and had taken a clear decision that he would not be attending the hearing. There was therefore no point in adjourning the matter as it was highly unlikely he would attend any re-scheduled hearing. These were serious matters and the public interest lay in dealing with them without further delay.
16. The Tribunal therefore granted Mr Collis’ application.

### **Factual Background**

17. Mr Hossain was admitted to the Roll on 15 July 2009. At the time material time he was registered with the SRA as practising as a consultant at both Raiyad Solicitors (“the Firm”) and Citygate Solicitors. At the time of the hearing Mr Hossain did not hold a Practising Certificate.
18. The Allegations related to Mr Hossain’s conduct in relation to the signing of a lease to suggest that the document had been signed and delivered by Mr Ali in his presence, when that was not the case.

19. This matter first came to the attention of the SRA following contact by Mr Rafique Ahmed of Raiyad Solicitors on 25 January 2019. Following telephone contact with the SRA, Mr Ahmed sent an e-mail setting out his concerns in writing. At that stage the concern was that Mr Hossain may have been acting in an area in which he did not have sufficient knowledge and skill. In the course of this contact with the SRA, a copy of the lease dated 18 May 2017, for a property on Romford Road in East London was produced. The lease contained Mr Hossain's signature and stamp on the first page and final page Mr Hossain's signature on the final page appeared to confirm that the document had been signed and delivered in Mr Hossain's presence by both Mr Ali and Mr Haque.
20. The matters came to light as a result of a subsequent dispute about the lease, which resulted in civil proceedings in the County Court.
21. It was not disputed by Mr Hossain that in fact Mr Ali had not been present when Mr Hossain signed the lease and that Mr Ali had not signed the lease in the presence of Mr Hossain.
22. On 14 June 2019, the SRA wrote to Mr Hossain seeking an explanation. Mr Hossain appeared to confirm that it his signature on the lease and that he had been present when Mr Haque, Mr Asgar and Mr Mobasser had signed the lease. In relation to Mr Ali, Mr Hossain told the SRA that he recalled that Mr Ali was unwell at the time and he had spoken to him over the telephone. Mr Ali had told him that he would sign the documents in the presence of Mr Asgar.
23. On 8 July 2019, the SRA had sought clarification as follows:

“I understand from your response that you witnessed [Mr Haque], [Mr Mobasser] and [Mr Asgar] sign the document. [Mr Ali] was not present, but you spoke to him on the phone. After this, you understand that [Mr Ali] signed the document separately in the presence of [Mr Asgar]. The document was then returned to you with four signatures on, and at that point you signed to say you had witnessed it.”
24. Mr Hossain replied to the SRA on 23 July 2019 and stated that as far as he could recall, the summary provided by the SRA in their 8 July 2019 e-mail was accurate.
25. In subsequent exchanges with the SRA in April 2019, Mr Hossain stated that he had been approached by Mr Haque to act for him and that he had never acted for Mr Ali.

### **Findings of Fact and Law**

26. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Mr Hossain'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.

27. **Allegation 1.1 - On or around 18 May 2017, signed a lease for Property A to confirm that he had witnessed Mr Ali sign that lease in his presence, when he had not, and in doing so breached any or all of Principles 2 and 6 of the SRA Principles 2011.**

**In addition, Allegation 1.1 above is advanced on the basis that Mr Hossain's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the misconduct but proof of dishonesty was not required to establish the Allegation or any of the particulars.**

#### Applicant's Submissions

- 27.1 Mr Collis acknowledged that there was in fact no legal requirement for the signatures to be witnessed by Mr Hossain. However, the way in which the declaration was worded, including the words "In the presence of..." gave the clear impression that the document has been signed and witnessed in Mr Hossain's presence. Mr Collis submitted that by signing to confirm that Mr Ali had signed in his presence, Mr Hossain had made a false statement that he was present when the lease had been validly executed by Mr Ali. In doing so, Mr Hossain had failed to behave in a way that maintained the trust the public placed in solicitors and the provision of legal services, in breach of Principle 6.
- 27.2 Mr Collis referred the Tribunal to Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, and submitted that a solicitor acting with integrity would not have signed the lease to suggest that Mr Ali had signed that document in their presence, when they had not.
- 27.3 Mr Collis further submitted that Mr Hossain had acted dishonestly by reference to the test in Ivey v Genting Casinos [2017] UKSC 67. Mr Collis reminded the Tribunal that Mr Hossain had confirmed in his correspondence with the SRA that he was not with Mr Ali when Mr Ali signed the lease. Mr Collis submitted that it therefore followed that Mr Hossain had knowingly made a false statement and that such conduct that would be viewed as dishonest by the standards of ordinary decent people.

#### Respondent's Submissions

- 27.4 Mr Hossain had filed a written answer to the Allegations. In that document he stated the following:

"14. On 17 May 2018, as I can remember, Mr. Haque signed the lease agreement and when Mr. Ahmed and Mr. Asgar signed as witnesses.

15. So far, I knew that those terms and conditions in the lease were agreed upon by both parties before meeting me and Mr. Asgar ensured that he, along with Mr. Haque would meet Mr. Ali, as he was sick then, and would get his Mr. Ali's signature.

16. At the request of Mr. Asgar, I talked to Mr. Ali on Mr. Asgar's phone in English, explained the main clauses to which he consented, [redacted to remove reference to medical symptoms], but I should prepare the draft as

Mr. Haque instructed me and follow Mr. Asgar as if Mr. Asgar is his representative.

17. Later on the same day, Mr. Ali put his initials on the bottom of each page in both draft copies and also put his signature on the last page which was witnessed by Mr. Asgar and Mr. Haque (Mr. Asgar called me over the phone when Mr. Ali was putting his signature). Mr. Asgar and Mr. Haque confirmed that Mr. Ali signed in the presence of both.

18. On 18 May 2017, Mr. Haque and Mr. Asgar - if I am not wrong-met when I see that all relevant signatures are in the draft lease. Once I was satisfied that all relevant signatures were there and witnessed by 3rd party, I put my signature and stamp on the innocent faith that they all signed in front of me as both of Mr. Ali's witnesses put their signatures in front of me.

19. Later I began to think about what I had done. How did it happen and how could I have done this? I have an impeccable record in the profession and have always ensured that I followed the SRA's rules in each possible way.

20. I confirm that I have no issues with the statements of the witnesses, but I would also say however that had I realised what was going on at the relevant time, I would not have conducted myself in the manner that I did. I can only attribute my failings to the medication and treatment I was receiving which led me to lose concentration.

21. I fully accept that I am responsible for the alleged acts and that I should have taken the relevant steps to uphold my profession's dignity. However, I did not, at any relevant time; breach SRA rules.”

27.5 Mr Hossain made various references in his answer to his own poor health but had not submitted any medical evidence as to that. Mr Hossain stated that medication and his poor health had led to him acting in the way he had done.

### The Tribunal's Findings

27.6 The Tribunal noted Mr Hossain's numerous acceptances that he had signed the document at a time when Mr Ali was not present. The Tribunal therefore found the factual basis of Allegation 1 proved on the balance of probabilities.

27.7 In considering whether Mr Hossain had lacked integrity, the Tribunal applied the test set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

“Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse”.

27.8 The Tribunal found that the public would expect higher standards of solicitors. The wording was very clear when it said “in the presence of” and the reality was that Mr Ali was not “in the presence of” Mr Hossain at that moment. This was therefore a fundamental misrepresentation of the reality of the situation. A solicitor acting with integrity would ensure that there was complete accuracy in his statements – this was not merely inaccurate but was completely false. The Tribunal found the breach of Principle 2 proved on the balance of probabilities. It followed from that finding that Mr Hossain was also in breach of Principle 6.

27.9 The test for considering the question of dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

“the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ..... When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

27.10 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of Mr Hossain’s knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.
- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

27.11 The facts in this matter were straightforward. Mr Ali was not present at the time Mr Hossain stated he was and Mr Hossain knew this when he signed the lease, claiming to have witnessed Mr Ali’s signature. The Tribunal noted what Mr Hossain had said about his health in his answer. However, he had provided no medical evidence to support what he was asserting and he had not attended to give evidence. The Tribunal was unable to attach any weight to the references to medical evidence.

27.12 Mr Hossain had also referred to his lack of knowledge of conveyancing matters. The difficulty with that argument was that this particular part of the transaction did not involve any legal complexity and so Mr Hossain’s lack of experience was not relevant to the simple question of signing to declare that he had witnessed a signature when he had not. A solicitor did not need to be experienced to understand that they should not sign a document saying they had witnessed something when they had not actually done so.



27.13 The Tribunal was satisfied on the balance of probabilities that Mr Hossain's conduct would be considered dishonest by the standards of ordinary decent people. The Tribunal therefore found the allegation of dishonesty proved.

### **Previous Disciplinary Matters**

28. There were no previous findings at the Tribunal.

### **Mitigation**

29. In his answer, in addition to the points quoted and referred to above, Mr Hossain stated as follows:

“22. I acknowledge and take full responsibility for my conduct and would invite the Tribunal to consider this in arriving at its decision.

23. I had a 'clean' record prior to this conduct, both in terms of criminal records and disciplinary records with SRA.”

“27. At the relevant time, I was under medication and suffered a loss of concentration and did not realise what I was doing.

28. I am saddened that I am now facing a Disciplinary tribunal but have accepted this position with much regret. I am very sorry for what I have done and believe that had I been in a normal state, I would not have broken SRA's own rules nor broken the law.”

### **Sanction**

30. The Tribunal referred to its Guidance Note on Sanctions (10<sup>th</sup> Edition – June 2022) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering Mr Hossain's culpability, the level of harm caused together with any aggravating or mitigating factors.

31. In assessing culpability, the Tribunal concluded that Mr Hossain wanted to receive the fee for the work he had been asked to do. There was no particular element of planning, though it could not be said to have been entirely spontaneous. Mr Hossain was in direct control of the circumstances and was a relatively experienced solicitor at the time. There was no suggestion he had misled the SRA.

32. In terms of the actual harm caused, it was difficult to assess this without knowing more about the proceedings in the County Court. There was clearly a potential for harm to be caused by reason of the lease not being properly executed. There was clearly harm to the profession when a solicitor acts dishonestly. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

“34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.”

33. The misconduct was aggravated by the fact that it was deliberate and there was a vulnerability due to the lack of literacy on the part of others. Mr Hossain ought to have known he was in material breach of his professional obligations.
34. The misconduct was mitigated by the fact that it was a single episode of brief duration in an otherwise unblemished career. Mr Hossain had co-operated with the SRA but his admissions had been less than open and frank, admitting on the one hand that he had acted as alleged but at the same time denying breaches of the SRA rules.
35. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off and the Tribunal had regard to Sharma. The circumstances in which such a sanction was not imposed were exceptional, described in Sharma as “a small residual category where striking off will be a disproportionate sentence in all the circumstances ...”.
36. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis of which question of exceptional circumstances was assessed:
- “First, although it is well-established that what may amount to exceptional circumstances is in no sense prescribed and depends upon the various factors and circumstances of each individual case, it is clear from the decisions in Sharma, Imran and Shaw, that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation is the nature and extent of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty.”
37. The Tribunal considered whether the circumstances in this case were exceptional, having regard to James. The Tribunal found no such circumstances to exist or to have been advanced. The Tribunal found there to be nothing that would justify a lesser sanction than a strike-off and so the only appropriate and proportionate sanction was that Mr Hossain be struck off the Roll.

### **Costs**

38. Mr Collis applied for costs in the sum of £23,550.
39. Mr Collis told the Tribunal that adjusting the notional rate to allow for the fact that the hearing was one day rather than the listed three days gave an equivalent hourly rate of £141.22.

### The Tribunal's Decision

40. The Tribunal did not consider the notional hourly rate to be excessive. However, it did conclude that there should be some reduction to allow for the case taking significantly less hearing time than anticipated. The Tribunal also reduced the preparation time by approximately three hours for the conference and seven hours for the preparation of the Rule 12 statement in what was, notwithstanding a rather complex backstory, a

straightforward case in terms of the professional misconduct proved against Mr Hossain. The Tribunal assessed the costs at £20,850.

41. When considering Mr Hossain's means, the Tribunal had regard to Barnes v Solicitors Regulation Authority [2022] EWHC 677 (Admin) and the importance of making a "reasonable assessment of the current and future circumstances" in relation to Mr Hossain's ability to pay. At [46], Cotter J stated:

"[46] The courts have held for a long time that the guiding principle is that fines, costs and compensation should be capable of being paid off within a reasonable time if imposed in circumstances such as this (i.e., not in ordinary civil litigation). The decision of the tribunal on the reasonable assumption that she had an entitlement to half the monthly surplus would mean that the Appellant would never pay off the debt, on the then current level of remuneration at the time of the hearing (i.e., before she lost her job). I accept, as Mitting J set out, that the Solicitors Regulation Authority does not have the aim of pursuing impecunious solicitors against whom orders have been made and who cannot pay. However, I cannot see how the Authority or the profession is in any way better off leaving to the Enforcement Unit a debt that can never be paid, save in exceptional circumstances. The exceptional circumstances provision can be dealt with by what is known as "a football pools" order. That description may not now be understood by a number of younger people. I believe "a lottery order" would be more widely understood."

42. At [48] he stated:

"[48] No proper exercise of discretion under the Rules could, produce an order for costs that will never be satisfied and will remain a burden on a party for life. I reject Ms Culleton's submission to the contrary i.e., that that is a proper order open to the tribunal even given the exercise of its generous discretion. Nor, as I have stated, can it be correct to leave what is effectively an unrecoverable debt to the Recovery Unit in the hope that it will then take a reasonable view. The tribunal itself is the one with the regulatory requirement to consider means and the Unit should only be required to recover debts which the tribunal considered to be properly recoverable."

43. The Tribunal noted that there had been no challenge to Mr Hossain's statement of means. The Tribunal noted that he had a joint monthly disposable income of £50. The Tribunal recognised that it should not make a cost order that could not be paid within a reasonable timescale, taking a realistic view of his current and likely future circumstances. The Tribunal also took account of the fact that interest would accrue on any outstanding debt. The Tribunal's decision on sanction did not prevent Mr Hossain obtaining any employment and so it was realistic to work on the basis that he was someone capable for earning an income.
44. The Tribunal determined that it was appropriate to reduce the costs to reflect Mr Hossain's means to £1,800. This was calculated on the equivalent of him repaying at £50 per month for a period of three years, though the details of how the costs order

should be met was entirely between Mr Hossain and the SRA and the Tribunal was not being prescriptive.

**Statement of Full Order**

45. The Tribunal Ordered that the Respondent, MD MOHIUDDIN HOSSAIN solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,800.00.

Dated this 21<sup>st</sup> day of November 2022

On behalf of the Tribunal



**JUDGMENT FILED WITH THE LAW SOCIETY**  
**21 NOV 2022**

P Lewis  
Chair