

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12380-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

JANINE WILKINSON

Respondent

Before:

Mr W Ellerton (in the chair)

Mr P Lewis

Mr R Slack

Date of Hearing: 08 December 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 Ms Wilkinson were that, while in practice as an Assistant Solicitor at Red Kite Law Ltd (“the Firm”):
 - 1.1 Between 9 April 2020 and 4 September 2020 she made false representations by impersonating another person to obtain NHS prescriptions for her personal consumption and that by doing so she:
 - (i) failed to behave in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons in breach of Principle 2 of the SRA Principles 2019 (the Principles).
 - (ii) failed to act with honesty in breach of Principle 4 of the Principles.
 - (iii) failed to act with integrity in breach of Principle 5 of the Principles.

The SRA relied upon Mrs Wilkinson's conviction for the offence of false representation, contrary to section 1(2) of the Fraud Act 2006, on 26 August 2021.

Admissions

2. Ms Wilkinson 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. Ms Wilkinson was admitted to the Roll of Solicitors in November 2009.
5. Her employment at Red Kite Law ended on 28 August 2021.
6. On 21 June 2021, Ms Wilkinson was charged with one offence of fraud by false representation contrary to section 1 of the Fraud Act 2006. On 26 August 2021 she pleaded guilty to the offence and was therefore convicted.

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

Late submission of application

7. The parties submitted the proposed Agreed Outcome shortly before the scheduled substantive hearing, well outside the timescales provided for in the Standard Directions issued by the Tribunal. Such directions are made to assist with the efficient deployment of Tribunal resources and disregarding them can increase costs which are ultimately borne by the profession. However, in all the circumstances, including in particular the periods of illness suffered by Ms Wilkinson, and in furtherance of the overriding objective, the Tribunal was content to consider the proposed Agreed Outcome.

The proposed Agreed Outcome

8. The parties invited the Tribunal to deal with the allegations against Ms Wilkinson in accordance with the Statement of Agreed Facts and Proposed Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.
9. The proposed sanction was that Ms Wilkinson be struck off the Roll of Solicitors.

Findings of Fact and Law

10. 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 Ms Wilkinson's rights to a fair trial and to respect for her 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 admissions were properly made.
12. 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.
13. Ms Wilkinson was convicted of a serious offence which involved falsely assuming the identity of a third party to obtain prescription medication for herself. The offence involved dishonesty and Ms Wilkinson had admitted that her conduct was dishonest.
14. 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)).*" Ms Wilkinson had accepted in the Statement of Agreed Facts and Proposed Outcome that this was not a case where there were any exceptional circumstances such that striking off would be a disproportionate sanction.
15. The Panel noted the very difficult circumstances faced by Ms Wilkinson at the time of the conduct giving rise to the conviction and since. The Panel had considerable sympathy with the position in which Ms Wilkinson had found herself and noted that the misconduct resulted in little, if any, financial gain and had been unrelated to her practise as a solicitor. However, the Tribunal could not go behind the conviction and did not consider there were grounds to go behind or question her agreement to the terms of the Statement of Agreed Facts and Proposed Outcome. The Panel accepted the submission made by the parties that exceptional circumstances as defined in Sharma and elsewhere did not apply such that the proposed sanction was disproportionate.
16. The Tribunal found that the proposed sanction of striking Ms Wilkinson from the Roll was appropriate, proportionate and in accordance with the Sanctions Guidance. The protection of public confidence in the profession and the reputation of the profession required no lesser sanction.

Costs

17. The parties agreed that Ms Wilkinson should pay costs in the sum of £1,038. The Tribunal determined that the agreed amount was reasonable and appropriate. Accordingly, the Tribunal ordered that she pay costs in the agreed sum.

Statement of Full Order

18. The Tribunal ORDERED that the Respondent, Janine Wilkinson, 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 £1,038.

Dated this 3rd day of January 2023
On behalf of the Tribunal



W Ellerton
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
03 JAN 2023

Sen
sitiv Number: 12380-2022
IN: THE MATTER OF THE SOLICITORS ACT 1974
Gen

SOLICITORS REGULATION AUTHORITY LTD
Applicant

JANINE WILKINSON

Respondent

**STATEMENT OF AGREED FACTS AND PROPOSED
OUTCOME**

1. By its application dated 14 September 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 one allegation of misconduct against Mrs Janine Wilkinson.

The allegations

2. The allegation against Mrs Wilkinson made by the SRA within that statement is that, while in practice as an Assistant Solicitor at Red Kite Law Ltd ("the Firm"):

2.1 Between 9 April 2020 and 4 September 2020 Mrs Wilkinson made false representations by impersonating another person to obtain NHS prescriptions for her personal consumption and that by doing so she:

- (i) failed to behave in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons in breach of Principle 2 of the SRA Principles 2019 (the Principles).
- (ii) failed to act with honesty in breach of Principle 4 of the Principles.
- (iii) failed to act with integrity in breach of Principle 5 of the Principles.

The SRA relies upon Mrs Wilkinson's conviction for the offence of false representation, contrary to section 1(2) of the Fraud Act 2006 on 26 August 2021, and relies upon

the findings of fact upon which that conviction was based as proof of those facts.

3. Mrs Wilkinson admits this allegation. She also admits that her conduct in acting as alleged was dishonest.

Agreed Facts

4. The following facts and matters are agreed between the SRA and Mrs Wilkinson;

- 4.1. Mrs Wilkinson falsely used the identity of her friend, Catherine Harries, to obtain GP appointments and request prescriptions.

- 4.2. On 3 September 2020, Mrs Wilkinson sent Ms Harries a WhatsApp message which said *"I'm sorry for taking tablets out in your name, I was desperate and in pain. I promise I will never do it again and I promised Gav I will be true to my word."*

- 4.3. Ms Harries informed her GP of what Mrs Wilkinson had admitted over the WhatsApp message. This was then reported to the NHS counter fraud team by Ms Harries' GP.

- 4.4. The NHS counter fraud team began an investigation into the allegations of Mrs Wilkinson making false representations by impersonating another individual, to obtain NHS prescriptions for her own consumption. This misconduct was suspected to have occurred multiple times, between 9 April 2020 and 2 September 2020.

- 4.5. On 1 February 2021, Mrs Wilkinson attended a voluntary interview under caution. During this interview Mrs Wilkinson admitted that she had obtained prescriptions using Ms Harries' name.

- 4.6. On 21 June 2021, Mrs Wilkinson was charged with one offence of fraud by false representation contrary to section 1(2) of the Fraud Act 2006. A copy of the Charge sheet is at The particulars of the charge were:

“Between 9 April 2020 and 2 September 2020, Mrs Janine Wilkinson – Oram dishonestly made false representations to the National Health Service (NHS) by impersonating to be Ms Catherine Harries and as a result obtained for her personal consumption, 12 prescriptions of Co Codamol and 3 prescriptions of Zopiclone, creating a loss of £77.42 to the NHS, to which she was not entitled, contrary to section 1(2) of the Fraud Act 2006.”

4.7. On 26 August 2021, Mrs Wilkinson pleaded guilty to the offence.

4.8. On 27 September 2021, Mrs Wilkinson appeared before the Crown Court at Swansea and was sentenced as follows:

4.8.1. a 12-month community order

4.8.2. £200 fine

4.8.3. £200 prosecution costs

4.8.4. £72.42 compensation payable to the NHS

Non-Agreed Mitigation

5. The following mitigation, which is not agreed by the SRA, is put forward by Mrs Wilkinson. The conduct in no way affected her work as a Solicitor and did not affect her client base or her firm in any way. Mrs Wilkinson had resigned from her position as a Solicitor before any court proceedings commenced. This decision was a personal one in line with Mrs Wilkinson’s health and would have been made regardless of the court proceedings which followed.

6. However, Mrs Wilkinson 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

7. It is therefore proposed that Janine Wilkinson should be struck off the Roll of Solicitors.

8. With respect to costs, it is further agreed that Janine Wilkinson should pay the SRA's costs of this matter agreed in the sum of £1,038.

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

9. Mrs Wilkinson 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)**).*"

10. 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..."

11. Mrs Wilkinson falsely assumed the identity of her friend, Ms Harries, in order to obtain prescriptions for herself that may not have otherwise been prescribed to her. By obtaining these prescriptions, Mrs Wilkinson potentially prevented Mrs Harries from obtaining legitimate prescriptions for herself, as well as causing an unnecessary expense to the NHS.

12. These were serious acts of dishonesty committed over an extended period which benefitted Mrs Wilkinson to the detriment of Catherine Harries and the NHS. The case plainly does not fall within the small residual category where striking off would be a disproportionate sentence.

13. Accordingly, the fair and proportionate penalty in this case is Mrs Wilkinson to be struck off the Roll of Solicitors.

[NAME], {Senior} Legal Adviser upon behalf of the SRA

.....
[NAME] Janine Wilkinson
06/12/2022 .