

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12382-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

RESPONDENT AG

Respondent

Before:

Mr R Nicholas (in the chair)

Mr E Nally

Mr G Gracey

Date of Hearing: 27 June 2023

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against Respondent AG, made by the Solicitors Regulation Authority Ltd (“SRA”) were that:
 - 1.1 On 15 August 2020 she drove a motor vehicle after consuming so much alcohol that the proportion of it in her blood exceeded the prescribed limit. In doing so, the Respondent breached Principles 2 of the SRA Principles 2019. The SRA relies upon the Respondent's conviction for the offence, dated 22 September 2020, of driving a motor vehicle after consuming so much alcohol that the proportion of it in her blood, namely 113 milligrams of alcohol in 100 millilitres of blood, exceeded the prescribed limit, contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988, as evidence that the Respondent was guilty of that offence. The SRA relies upon the findings of fact upon which that conviction was based as proof of those facts.
 - 1.2 - Withdrawn -
 - 1.3 - Withdrawn -

Documents

2. The Tribunal had before it the following documents:-
 - Rule 12 Statement and Exhibit SG1 dated 15 September 2022
 - Respondent's Answer dated 24 April 2023
 - Statement of Agreed Facts and Proposed Outcome dated 16 June 2023

Application for Anonymity

3. The parties applied for any hearing for the consideration of the Agreed Outcome to be held in private and for the Judgment to be anonymised on the basis that publication would cause Respondent AG exceptional hardship and exceptional prejudice. The Tribunal was referred to paragraph 25 of the Judgment of Nicol J in SRA v Spector [2016] EWHC 37 (Admin):

“the starting point is full openness and it is only if an exception (even a limited exception, such as allowing a witness to be anonymous) is required in the interests of the administration of justice that some limitation is justified. In some contexts at least, curtailment of open justice may also be necessary to avoid a violation of a person's rights under the European Convention on Human Rights - see *Re S (A Child) (Identification Restrictions on Publication)* [2005] 1 AC 593. Either way, I agree with Simler J who in *BBC v Roden* [2015] ICR 985 said at [34] that what was required was a judgment between these competing demands, not the exercise of a discretion.”

4. The parties submitted that should the Tribunal find that anonymity was necessary to protect AG’s rights, it was obliged to make an anonymity order. It was submitted that publication of the Judgment, without anonymising Respondent AG, posed a real risk to her life and would be in contravention of her Article 2 (right to life) and Article 8 (right

to private and family life) rights. The medical evidence submitted supported that contention.

5. The Tribunal considered the submissions made and the medical evidence with great care. The Tribunal determined that publication of the Judgment in an un-anonymised would significantly violate Respondent AG's Article 2 and 8 rights, such that a departure from the usual principles of open justice was necessary. Accordingly, the Tribunal ordered that the Judgment be anonymised.

Withdrawal of allegations

6. The parties applied to withdraw allegations 1.2 and 1.3 and an alleged breach of Principle 5 for allegation 1.1 on the basis that to pursue them was neither proportionate nor in the public interest. The Tribunal agreed that given Respondent AG's admissions, the contents of her Answer and the medical evidence provided it was not proportionate nor was it in the public interest for those matters to be pursued. Accordingly, the Tribunal granted the application to withdraw allegations 1.2 and 1.3. The Tribunal also granted the application to withdraw the allegation that the conduct complained of in allegation 1.1 amounted to a breach of Principle 5.

Background

6. Respondent AG was admitted as a solicitor in 1994. Respondent AG was no longer practising but her name remained on the Roll of Solicitors.

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

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

8. 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.
9. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.
10. The Tribunal considered the Guidance Note on Sanction (10th Edition/June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal determined that the seriousness of the misconduct was such that sanctions of No Order or a Reprimand were not adequate. The Tribunal determined that the misconduct fell within its Indicative Fine Band 1, as it was at the lowest level but sufficiently serious to justify a financial penalty. The Tribunal found that the proposed sanction of a fine in the sum

of £1,000 adequately reflected the seriousness of the misconduct. Accordingly, the Tribunal approved the sanction proposed by the parties.

Costs

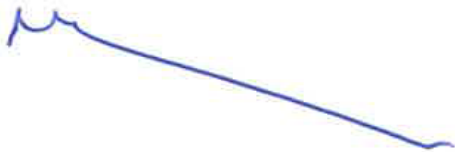
11. The Parties agreed costs in the sum of £2,392.00. The Tribunal determined that the agreed sum was reasonable. Accordingly, the Tribunal ordered that Respondent AG pay costs in the agreed sum.

Statement of Full Order

12. The Tribunal Ordered that the Respondent, RESPONDENT AG, Solicitor, do pay a fine of £1,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,392.00.

Dated this 14th day of July 2023

On behalf of the Tribunal

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

R Nicholas
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
14 JUL 2023

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No: 12382-2022**

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

RESPONDENT AG

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 15 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 three allegations of misconduct against the Respondent.

The allegations

2. The allegations against the Respondent, made by the SRA within that statement were that:
 - 2.1. On 15 August 2020 she drove a motor vehicle after consuming so much alcohol that the proportion of it in her blood exceeded the prescribed limit. In doing so, the Respondent breached Principles 2 and 5 of the SRA Principles 2019.

The SRA relies upon the Respondent's conviction for the offence, dated 22 September 2020, of driving a motor vehicle after consuming so much alcohol that the proportion of it in her blood, namely 113 milligrams of alcohol in 100 millilitres of blood, exceeded the prescribed limit, contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 of the Road Traffic Offenders Act 1988, as evidence that the Respondent was guilty of that offence. The SRA relies upon the findings of fact upon which that conviction was based as proof of those facts.

2.2. She failed to report her conviction, referred to in allegation 1.1 above, to the SRA in circumstances where she had an obligation to comply with her legal and regulatory obligations and deal with her regulators in an open, timely and co-operative manner. In doing so, the Respondent breached Rule 7.6(a) of the SRA Code of Conduct for Solicitors, RELS and RFLs 2019 (the Code 2019) and Principle 2 of the SRA Principles 2019.

2.3. Between 20 November 2020 and 28 January 2021, the Respondent failed to respond promptly to the SRA's requests for information and explanations and did not otherwise cooperate with the SRA investigation. In doing so, she breached paragraph 7.3 and 7.4 (a) of the Code 2019.

3. The Respondent admits the allegations set out in paragraph 2.1 above, save for Principle 5 which is not admitted. The SRA applies to withdraw the allegations further set out in paragraphs 2.2 to 2.3 on the basis that in light of the contents of the Respondent's Answer to the Rule 12 (2) Statement dated 27 April 2023 and the documents disclosed with that document the SRA now considers that it is not proportionate and in the public interest to pursue the allegations set out in paragraph 2.2 and 2.3 or the Principle 5 breach set out in paragraph 2.1.

Agreed Facts

4. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraph 2 of this statement, are agreed between the SRA and the Respondent:

Professional Details

5. The Respondent, who was born on [REDACTED], is a solicitor having been admitted to the Roll on [REDACTED].
6. From 29 March 2000 she was employed at the firm [REDACTED] (the Firm). From 1 April 2018 until 31 March 2020, when she retired from the Firm, she was a director and owner at the Firm. The Respondent ended her employment with the Firm on 31 March 2020.
7. The Respondent does not hold a practising certificate and is no longer practising. The Respondent remains on the Roll of Solicitors.

The facts and matters relied upon in support of the allegations

Background

8. The conduct in this matter came to the attention of the SRA on 16 October 2020 following receipt of a report by a third party, who had become aware of the conviction from a [REDACTED].
9. On [REDACTED], on [REDACTED], a police officer, PC Mason, who stopped the Respondent's vehicle, and arrested the Respondent after a roadside breath test indicated that she was over the legal limit for alcohol in her breath.

10. Later that same day the Respondent was charged with the offence of driving a motor vehicle whilst over the prescribed limit.
11. The Respondent pleaded guilty and was convicted on 22 September 2020.
12. During the SRA's investigation PC Mason provided a summary of the Respondent's conviction and the circumstances surrounding the Respondent's arrest in an MG11 Witness Statement.

Allegation 2.1 – On 15 August 2020 by driving after consuming alcohol over the prescribed limit she breached Principles 2 of the SRA Principles 2019.

13. On 22 September 2020, the Respondent was convicted of driving a vehicle on a road after consuming alcohol that a proportion of it in her blood, namely 113 milligrams of alcohol in 100 millilitres of blood, exceeded the prescribed limit contrary to section 5(1)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offences Act 1988. The Respondent pleaded guilty to the offence.
14. The Respondent was sentenced on 22 September 2020 as follows:
 - 14.1. Community order made: Electronic monitoring of overnight curfew¹ required between [REDACTED] to [REDACTED];
 - 14.2. To pay a victim surcharge of £90;
 - 14.3. To pay costs of £85.00 to the Crown Prosecution service; and
 - 14.4. Disqualified from holding or obtaining a driving licence for 26 months.²

¹ Under Register notes on the Memorandum of Conviction, it confirms that the collection order made was an overnight electronically monitored curfew, not a whereabouts curfew.

² The Respondent's disqualification to be reduced by 197 days if she completed a course approved by the Secretary of State by 6 March 2022 .

15. A copy of the Memorandum of Entry on a Register at [REDACTED] Magistrates Court, which proves that the Respondent was convicted of the offence in question by virtue of Rule 32(1) Solicitors (Disciplinary Proceedings) Rules 2019.
16. The circumstances of the Respondent's offending on 15 August 2020 are described in the witness statement from PC Mason. He observed that the speed of the Respondent's vehicle "*...was inconsistent throughout and was continually speeding up and slowing down. As well as this, it was veering dramatically from side to side towards the opposite side of the road and on more than one occasion narrowly missed colliding with street furniture.*"
17. PC Mason also observed that the Respondent's "*eyes were glazed to the point that it appeared she was struggling to focus on anything and her speech was slurred to the point that she was barely comprehensible. I quickly formed the opinion that XXXXX was drunk. When out of the vehicle, [REDACTED] was struggling to stand and even struggled with walking. I asked [REDACTED] if she had been drinking to which she confirmed she had, and kept repeating herself by saying "sorry" and "I'm very sorry".*

Non-Agreed Mitigation

18. The following mitigation, which is not agreed by the SRA, is put forward by the Respondent:
- 18.1. The Respondent pleaded guilty at the earliest opportunity;
- 18.2. The Respondent has completed all aspects of her sentence including discharging her financial liabilities to the Court in a timely fashion;
- 18.3. The Respondent co-operated with the police at the time of her stop. She was immediately apologetic for her offending.

- 18.4. The Respondent, was, and remains unwell. Her condition (and its associated symptoms) was directly responsible for the commission of the offence;
- 18.5. The Respondent has, and continues to seek treatment for her condition demonstrating insight and remorse;
- 18.6. The Respondent was admitted to the Roll in 2005, there have been no previous allegations of misconduct made against her.

Penalty proposed

19. It is therefore proposed that the Respondent should be fined the sum of £1,000.
20. 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 £2,392.00.

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

21. The sanction outlined above is considered to be in accordance with the Tribunal's sanctioning guidance.
22. The Applicant has also taken into account specific personal information in relation to the Respondent's health when making this decision and coming to this agreement.
23. For the purposes of these proceedings, the Respondent has admitted the allegation 2.1 as set out above at paragraph 3 and in the Applicant's Rule 12 statement.
24. The admitted allegation at paragraph 3 above arose from the Respondent's conviction for driving after consuming alcohol over the prescribed limit.
25. The level of culpability in respect of the allegations above is moderate due to:

- 25.1. The Respondent having direct control and responsibility for the circumstances giving rise to the conduct.
 - 25.2. The conviction of a solicitor for serious criminal offence and driving while intoxicated and increasing the danger to the public.
 - 25.3. A member of the public would not expect a solicitor to be convicted and act in a way that constitutes a criminal offence. Such conduct will inevitably impair the reputation of the profession given the degree of trust which is placed in members of the profession by the public.
 - 25.4. The Respondent is a former Director of an authorised body, she is a senior and experienced solicitor, who should have been familiar with the expectations of her in the profession.
26. As to the level of harm caused, driving in such a manner resulting in a criminal conviction risks the safety of other members of the public. The Applicant notes that no harm was caused to any members of the public on this occasion.
27. The principle factors that aggravate the seriousness of the Respondent's misconduct are:
- 27.1. The seriousness of the conviction is illustrated by the court's decision to ban her from driving for 26 months and make her subject to an electronically monitored curfew.
 - 27.2. The behaviour was further aggravated as the level of alcohol in her breath was 113mg/ 100ml, which is a high amount according to the Sentencing Guidelines
28. The principle factors that mitigate the seriousness of the Respondent's misconduct are:
- 28.1. The misconduct was a single episode, in a previously unblemished career.

29. In the circumstances, the seriousness of the Respondent's misconduct is such that a Reprimand would not be a sufficient sanction but neither the protection of the public nor the protection of the reputation of the legal profession justifies a strike off or a suspension. It is therefore proportionate and in the public interest that the Respondent should be fined.

30. 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 resolution of the matter which is in the public interest and that a trial on the balance of Allegation 2.1 is not proportionate or in the public interest.

31. Taking account of these matters, together with the seriousness of the misconduct committed by the Respondent, the case should be regarded as falling into "*Level 1: Conduct Assessed as sufficiently serious*". The appropriate fine for conduct assessed as falling within Level 1 is £0 - £2,000.

32. In all the circumstances of the case, it is therefore proportionate and in the public interest that the Respondent should be fined the sum of £1,000.

Annabel Joester, Head of Legal and Enforcement, SRA.

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