

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12442-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

ALBERT BARGERY

Respondent

Before:

Ms A Kellett (in the chair)

Mrs L Boyce

Mr R Slack

Date of Hearing: 17 May 2023

Appearances

There were no appearances as the matter was determined on the papers.

**JUDGMENT ON AN APPLICATION FOR APPROVAL OF AN
AGREED OUTCOME**

Allegations

1. The Allegations against Mr Bargery were as follows:
 - 1.1 In or around May 2018, while a solicitor at Parrott & Coales LLP (“the Firm”), he provided to his client a fabricated Court Order dated 15 May 2018, purporting to be made by the County Court Money Claims Court, awarding his client £3,075.00, leading the client to believe that the Court Order was genuine. In doing so he thereby breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011.
 - 1.2 In or around September 2018, while a solicitor at the Firm, he provided his client with an email dated 25 September 2018, purporting to chase payment pursuant to the fabricated Court Order and leading his client to falsely believe that payment relating to the dispute was being actively pursued and progressed by the Respondent. In doing so he thereby breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011.
 - 1.3 Between June and August 2020, he made false and/or misleading representations to his then employers Real Employment Law Advice on the following occasions:
 - a. On 5 June 2020, that he was unaware of the substance of the SRA’s investigation.
 - b. On 6 July 2020, that he had replied in full to the SRA’s investigation into his alleged misconduct in respect of allegations 1.1 and 1.2.
 - c. On 26 August 2020, that the SRA had not provided him with copies of the alleged fabricated Court Order or email in respect of allegations 1.1 and 1.2.

In making those false representations the Respondent breached any or all of Principles 4 and 5 of the SRA Principles 2019.

2. In addition, Allegations 1.1 and 1.2 were advanced on the basis that the Respondent’s conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent’s misconduct but is not an essential ingredient in proving the allegations.

Documents

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

Application for approval of the Agreed Outcome

4. The parties invited the Tribunal to dispose of the matter as set out in the Statement of Agreed Facts and Outcome appended to this Judgment, in accordance with Rule 25 of the SDPR 2019.
5. In summary, Mr Bargery admitted all the Allegations including dishonesty. The parties agreed that Mr Bargery should be struck off the Roll of solicitors and ordered to pay the SRA’s costs in the sum of £10,000.

Findings of Fact and Law

6. 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 Mr Bargery'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.
7. The Tribunal was satisfied that the admissions contained in the Statement of Agreed Facts and Outcome were properly made and supported by the evidence. The admissions were consistent with those made by Mr Bargery in his Answer dated 27 March 2023.
8. The Tribunal had regard to the Guidance Note on Sanctions (June 2022). The Tribunal assessed the seriousness of the misconduct by considering Mr Bargery's culpability, the level of harm caused together with any aggravating or mitigating factors. Mr Bargery had made admissions to serious Allegations involving dishonesty at the highest level. Only exceptional circumstances could justify a sanction other than a strike-off. No such circumstances were advanced, and the Tribunal identified none from the material before it. The Tribunal was satisfied that the only appropriate sanction was that Mr Bargery be struck off the Roll.

Costs

9. The parties had agreed that Mr Bargery would pay costs in the sum of £10,000 and the Tribunal was content to approve that as part of its order. In doing so it reviewed Mr Bargery's statement of means and was satisfied that he could pay that sum in a realistic timeframe.

Statement of Full Order

10. The Tribunal Ordered that the Respondent, ALBERT BARGERY, 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 £10,000

Dated this 22nd day of May 2023

On behalf of the Tribunal



A Kellett
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
22 MAY 2023

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

B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

ALBERT BARGERY

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

1. By its application dated 22 February 2023 and the statement made by Ian Brook, on behalf of the Solicitors Regulation Authority Limited ("SRA"), pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the SRA brought proceedings before the Tribunal making allegations of misconduct against Mr Albert Bargery, ("the Respondent").
2. Definitions and abbreviations used herein are those set out in the Rule 12 Statement.

The allegations

3. The allegations against the Respondent made by the SRA in that statement are:

1. *Whilst in practice as a solicitor, the Respondent, Albert Bargery:*

1.1 *In or around May 2018, while a solicitor at Parrott & Coales LLP ("the Firm"), he provided to his client a fabricated Court Order dated 15 May 2018, purporting to be made by the County Court Money Claims Court, awarding his client £3,075.00, leading the client to believe that the Court Order was genuine. In doing so he thereby breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011.*

1.2 *In or around September 2018, while a solicitor at the Firm, he provided his client with an email dated 25 September 2018, purporting to chase payment pursuant to the fabricated Court Order and leading his client to falsely believe that payment relating to the dispute was being actively pursued and progressed by the Respondent. In doing so he thereby breached any or all of Principles 2, 4 and 6 of the SRA Principles 2011.*

1.3 *Between June and August 2020, he made false and/or misleading representations to his then employers Real Employment Law Advice on the following occasions:*

- a. *On 5 June 2020, that he was unaware of the substance of the SRA's investigation.*
- b. *On 6 July 2020, that he had replied in full to the SRA's investigation into his alleged misconduct in respect of allegations 1.1 and 1.2.*
- c. *On 26 August 2020, that the SRA had not provided him with copies of the alleged fabricated Court Order or email in respect of allegations 1.1 and 1.2.*

In making those false representations the Respondent breached any or all of Principles 4 and 5 of the SRA Principles 2019.

2. *In addition, Allegations 1.1 and 1.2 are advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegations.*

4. The Respondent admits each of these allegations in full, including dishonesty.

Agreed Facts

5. The Respondent, who was born on 8 March 1985, is a solicitor having been admitted to the Roll on 1 May 2014.
6. At the time of the alleged misconduct regarding Allegations 1.1 and 1.2 the Respondent was employed as a solicitor at the Firm. He held a practising certificate free from conditions. He left the Firm on 21 December 2018 and commenced employment as a solicitor at Real Employment Law Advice on 7 January 2019. He left that employment on 31 August 2020.
7. The Respondent does not currently hold a practising certificate. He last held one in 2019/2020 (ending in December 2020).
8. The conduct in this matter came to the attention of the SRA on 17 January 2020, when Client A made a report to the SRA raising concerns about the Respondent's handling of his client matters, including that the Respondent had provided him with a Court Order and email purporting to chase payment in relation to the same, which were not genuine.
9. As a result of the report to the SRA, it commenced a desk-based investigation into the matter.
10. As part of the investigation, the SRA sought information from the Respondent. On 30 May 2020, the SRA wrote to the Respondent attaching copies of the purported Court Order and email and asked for the Respondent's comments on Client A's assertions that the Court Order and email were forged.
11. The Respondent sought extensions of time within which to reply to the SRA's letter. He finally responded on 20 August 2020 and admitted that he created the Court Order in order to hide his lack of progress on the matter. He further clarified on 8 September 2020, in response to the SRA's request of the same, that he had forged the *Court Order and the email*.
12. By the time of the SRA investigation into this matter the Respondent had left the Firm and was employed at Real Employment Law Advice ("Real Employment").

The SRA informed Real Employment of its investigation into the Respondent on 5 June 2020. The Respondent's line manager and Managing Director at Real Employment, Alison Colley, advised the SRA on 8 September 2020 that the Respondent had told her in June and July 2020 that he had co-operated with the investigation and provided all the requested information. Further, that the Respondent told her in August 2020 that he had not even seen the alleged fabricated documents to which the allegations related. It is the representations made to Ms Colley in June to August 2020 which form the subject of Allegation 1.3.

Allegations 1.1 and 1.2 – fabricated Court Order and email purporting to chase the same

13. Client A instructed the Firm to deal with a claim against an individual, Mr A. The claim related to payment for specialist services to remove Japanese knotweed on land owned by Mr A, upon which Client A owned commercial premises. Client A instructed the Firm to issue proceedings against Mr A for payment of these services, which was approximately £3000.00. The Respondent was the solicitor with conduct of the matter and with whom the client had day to day contact.
14. Client A contacted the Respondent by telephone and text message seeking updates on the case.
15. By May 2018, Client A was concerned with the slow progress of the matter and, during a phone call with the Respondent, stated that he would go to Court himself to seek an update. In response, the Respondent stated that he had secured an Order from the Court. Client A attended the offices of the Firm in person to pick up the Order, whereupon the Respondent handed him a document purporting to be a Court Order that awarded Client A £3075.00.
16. Between May 2018 and September 2018, Client A repeatedly contacted the Respondent enquiring as to when the monies would be paid. At the end of September 2018, he attended the Firm in person and spoke to the Respondent. The Respondent handed Client A a copy of an email dated 25 September 2018, which appeared to show that the Respondent was chasing Client A's solicitors, Foulds, for payment. The email stated,

"It is with extreme disappointment that we have not received the sum of £3055 in settlement of the judgment debt, as promised or at all.

It is doubly frustrating and unusual as you have previously attempted to set aside the default judgment. We now require the payment of the judgment debt in full, to clear within the next 7 days.

If you fail to do so, we will take all necessary enforcement action without further notice to you.

If you fail to do so, we will of course oppose any further application you make to set aside the judgment."

17. By handing the email to Client A, he was led to believe that it genuinely showed that the Respondent was chasing payment in relation to a genuine Court Order.

18. Client A provided a copy of the email to the SRA with his report.

19. The Respondent left the Firm on 21 December 2018, upon which solicitor Fiona Hewitt of the Firm, took over the conduct of Client A's matters. In the New Year, Ms Hewitt attended upon the client at his home address. During that meeting, Ms Hewitt advised that the Court Order and email provided to Client A were not documents on the Firm's file and did not match the details the Firm had in relation to the case.

20. Client A made a formal complaint to the Firm in respect of its handling of his matters, including the conduct of the Respondent in respect of the Court Order and email.

21. Ms Hewitt has since left the Firm. However, the Investigation Officer made enquiries with the Firm about the issues raised by Client A's report and specifically on 30 May 2020, asked for the Firm's view of the Court Order and email as follows,

"7. Please confirm the Firm's view of the documents which Client A alleges Mr Bargery forged (copies attached). Please could you confirm if the email can be found in the sent items from Mr Bargery's email account if you can access this. If you can access emails sent around this time and the email is not there, please confirm this.

8. *Please explain why the Firm did not self-report the concerns about the forged documents to the SRA when they became known to the firm (I believe this is in or around March 2019 when Fiona Hewitt met with Client A to take forward the work)."*

22. On 14 July 2020, the Managing Partner of the Firm, Richard Sauvain, replied on behalf of the Firm. In relation to the queries concerning the Court Order and email, Mr Sauvain stated,

"The documents the client has produced do not match any documents on any of his files so we have no explanation for them. We do not know who created them. Mr Bargery's emails go back to 30th November 2018. All emails prior to this have been deleted by Mr Bargery...."

The COLP at the time this matter came to light was Sarah Plumridge who is on sabbatical from the firm. I would need to speak to her in detail to discuss why she decided not to self-report...."

Fiona Hewitt confirmed before she left the firm that she had tried to telephone Mr Bargery without success..."

23. Mr Sauvain has confirmed that when the Firm looked into this matter, there was no client file in existence and that the Firm had to create a client file in order to continue to act for the client on the Mr A matter.

24. The Firm attempted to rectify the issues caused by the Respondent. Ms Hewitt issued a summons against Mr A and secured judgment against him. However, Mr A made an application to set aside judgment on the ground that the claim had not been properly brought to his attention. Client A represented himself at those proceedings. He was unsuccessful and bore the costs of the case.

25. On 30 May 2020, the Investigation Officer of the SRA made enquiries with the County Court Money Claims Centre ("CCMCC") as to the authenticity of the Court Order which he attached to the email. The CCMCC initially advised the Investigation Officer to contact the Basingstoke County Court, as the case was currently held at that Court.

26. On 23 and 25 June 2020, the Basingstoke County Court emailed the Investigation Officer and stated that the case number on the Court Order did not relate to the parties named on the Order, with that case number being for a separate case. The Court suggested reverting to the CCMCC who might be able to undertake further searches based on the names of the parties.
27. On 1 July 2020, the CCMCC emailed the Investigation Officer and stated that the parties detailed in the Court Order are not those held under the case reference on the Order. Furthermore, a search of the case management system revealed that they did not hold a case for those parties.
28. It is admitted by the Respondent that the Court Order provided to Client A was not a genuine Court Order and that it disguised the fact that no progress had been made on the client's matter. The Respondent further admits that the email to Foulds, which he also handed to the client, was a further document that misled the client into believing that the Court Order was genuine and that the email was genuine evidence of the Respondent's attempts to follow up the Court Order.

Allegation 1.3 – false representations to Real Employment

29. On 5 June 2020, the SRA wrote to Alison Colley, the Compliance Officer for Legal Practice at Real Employment, advising her of the SRA's investigation into the Respondent. The letter included information that the SRA was investigating concerns about a fabricated Court Order and email enforcement of the Order. The letter asked the Firm to confirm whether it had received any reports of concern from clients about the Respondent since he had worked at their firm.
30. Ms Colley attended upon the Respondent at his home address on 5 June 2020, along with her colleague Tony Wicks. The SRA investigation was discussed and the Respondent denied any wrongdoing and stated that he did not know the substance of the allegations that were being investigated.
31. The Respondent took some annual leave at the end of June and advised Ms Colley that he had taken the time to complete the required response to the SRA.

32. On 6 July 2020, Ms Colley had a further meeting with the Respondent, this time in the office. During that meeting the Respondent confirmed that he had replied to the SRA with the information requested and did not require any help in that regard.
33. On 21 August 2020, the Respondent was unwell which prompted Ms Colley to access his emails. Having done so, she saw the exchange of emails between the Respondent and the Investigation Officer of the SRA regarding the nature of the allegations and Mr Bargery's response. This alerted Ms Colley to the fact that the Respondent did know the substance of the allegations and had not responded to the SRA in accordance with his assertions to her in June and July.
34. On 26 August 2020, Ms Colley held a further meeting with Tony Wicks and the Respondent at the office. During that meeting the Respondent denied being provided with the alleged forged Court Order and email, and continued to deny any wrongdoing.
35. The Respondent resigned from Real Employment after this meeting.
36. The Respondent was informed by the SRA by way of letter dated 30 May 2020 of the nature of the allegations, and copies of the Court Order and email in question.
37. The Respondent received that letter, as evidenced by his acknowledgment dated 2 June 2020.
38. The Respondent applied to the SRA for extensions of time within which to serve his response to the letter of the 30 May. Those applications were granted and it was not until 20 August 2020 that the Respondent provided a response to the allegations.
39. it is admitted by the Respondent that the following representations to his employer were false:
 - i. On 5 June 2020, that he was unaware of the substance of the allegations.
 - ii. On 6 July 2020, that he had complied with the SRA's request for information in relation to the allegations.
 - iii. On 26 August 2020, that he had not seen the alleged fabricated Court Order and email.

Non-Agreed Mitigation

40. The Respondent does not advance mitigation as any points would not be endorsed or agreed by the SRA.

Proposed Agreed Outcome

41. The Respondent **admits Allegations 1.1, 1.2, 1.3 and 2 above** and it is therefore proposed that he be **struck off the Roll of Solicitors**.

42. With respect to costs, it is further proposed that the Respondent should pay the SRA's costs in this matter agreed in the sum of **£10,000**.

43. The costs set out above include a reduction for the case having concluded by way of an Agreed Outcome and is an apportioned amount of overall SRA costs in total.

Explanation as to why such an order would be in accordance with the Tribunal's Sanction Guidance (10th edition)

72. The Respondent has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (10th edition), at paragraph 51, states that: "*Some of 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)**).*"

73. 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..."

74. In this matter the Respondent admits various acts of dishonesty which occurred in May and September 2018, and then in June to August 2020. The 2018 acts were to the detriment of the client 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.

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Ian Brook, Partner, Capsticks Solicitors LLP
On behalf of the Solicitors Regulation Authority Limited
Date:

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Albert Bargery (Respondent) /
Date: 15th May 2023