

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12428-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

SUSAN HARTLEY

Respondent

Before:

Ms B Forde (in the Chair)

Ms F Kyriacou

Mr P Hurley

Date of Hearing: 27 March 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 the Respondent, Susan Hartley made by the SRA in a Rule 12 Statement dated 13 January 2023 are that, while in practice as a solicitor:

1.1 At JWP Solicitors, she falsified the signatures of the Trustees to the RABS Trusts on the following cheques made out to HMRC:

- Cheque for £2,900.00 dated 15 September 2015, from the RABS No. 2 Discretionary Trust (“Trust No. 2”);
- Cheque for £3,517.81 dated 15 April 2016, from the RABS No. 1 Discretionary Trust (“Trust No. 1”).

In doing so, she thereby breached Principles 2 and 6 of the SRA Principles 2011 (“the Principles”).

1.2 In November 2013, whilst employed at KBL Solicitors, she caused an improper withdrawal from the client account of the TM Will Trust in the sum of £8,891.00 and misappropriated the same to discharge a debt owed to HMRC in respect of the MEF Will Trust.

In doing so she thereby breached Principles 2, 4 and 6 of the Principles and Rule 20.1 of the Solicitors Accounts Rules 2011 (“the SARs”).

3. In addition, both allegations 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 was not an essential ingredient in proving the allegations.

4. Ms Hartley admitted all the allegations in the Rule 12 statement, and further admitted that her conduct in respect of the same was dishonest.

Documents

5. The Tribunal considered the documents submitted in support of the application for an Agreed Outcome which were contained within an electronic hearing bundle agreed by the parties.

Background and factual summary

6. Ms Hartley was admitted to the Roll on 15 May 1986. She does not currently hold a practising certificate and is not presently employed.

7. Upon qualification until 1988, she was an Assistant Solicitor at Last Suddards Solicitors. It was whilst employed at Last Suddards Solicitors that Ms Hartley was instructed to manage the RABS Trusts.

8. Between 1988 and 1998, Ms Hartley was a Salaried Partner at Last & Company Solicitors.

9. Between 1998 and 2003, she was a Salaried Partner at Gordons Solicitors. It was during her employment at Gordons that the Respondent was appointed a Trustee of the MEF Trust.
10. Ms Hartley moved to KBL Solicitors as an Associate Solicitor in 2004. It was during her employment as an Associate Solicitor at KBL Solicitors, in November 2013, that the Respondent committed the misconduct in allegation 1.2.
11. Ms Hartley left her employment at KBL Solicitors shortly after November 2013 and was employed as an Associate Solicitor at JWP Solicitors. It was during this period of employment, in September 2015 and April 2016 that the Respondent committed the misconduct in allegation 1.1.
12. The Respondent moved to Eatons Solicitors as an Associate Solicitor in 2018 and remained employed there until the termination of her employment in January 2020, for gross misconduct in relation to these matters.
13. Ms Hartley practised in Wills and Probate, Estate Planning, Powers of Attorney, Court of Protection, Trust and Property Law.
14. The misconduct first came to light on 10 January 2020, when Ms Hartley sought a confidential meeting with her employers at Eatons Solicitors. During the course of the meeting she admitted that she had been guilty of misconduct in her handling of Trusts matters whilst employed at previous solicitors firms. In particular, she had forged signatures on cheques in order to make payments to HMRC, without the client's authority (allegation 1.1.) and on separate matters, she had used client money held for one client to pay a tax bill due for another client (allegation 1.2).
15. Ms Hartley stated that the motivation for her misconduct had been to conceal the fact of tax penalties that had accrued on the Trusts from the clients. She stated that she had neglected to deal with the self-assessment returns on the Trusts as other work had taken priority.
16. Her decision to reveal her misconduct was triggered by a request from Berwins Solicitors for the Trust documents for the RABS Trusts. Berwins were dealing with the probate of RABS, who passed away in 2019.
17. Ms Hartley told Eatons that she had not acknowledged the request from Berwins. She stated that there had been no benefit to her as a result of her conduct, save for keeping her jobs. She accepted that such conduct would be regarded as dishonest and that she would be dismissed from her employment and may be struck off the Roll of Solicitors.
18. Eatons Solicitors made a report to the SRA dated 30 April 2020.

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

19. The parties invited the Tribunal to deal with the Allegations against Ms Hartley 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 (10th Edition/June 2022) ("the Sanctions Guidance").

20. The proposed sanction was that Ms Hartley be Struck Off the Roll.

Findings of Fact and Law

21. The Applicant was required to prove the allegation on the balance of probabilities. The Tribunal had due regard to the Respondent'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.
22. The Tribunal reviewed all the material before it and the Tribunal was satisfied on the balance of probabilities that the Respondent's admissions were properly made with respect to each allegation, including dishonesty.
23. Having regard to the seriousness of the admitted misconduct the Tribunal was satisfied with the sanction proposed by the parties which it considered was appropriate and proportionate to protect public confidence in the profession and to protect the public against the risk of further harm. The serious circumstances of this case required no lesser sanction.
24. Whilst the misconduct had been deliberate there was no apparent financial gain for Ms Hartley other than to cover up the fact she had not acted in a timely way when dealing with client matters.
25. The misconduct was replicated over many years and in different places where she had worked, and it had become ingrained behaviour on her part.
26. Given this was dishonesty over many years there was no alternative but for the ultimate sanction of Strike Off to be imposed upon Ms Hartley

Costs

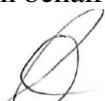
27. The parties agreed that the Respondent should pay the Applicant's costs of this matter in the sum of £5,000.00.

Statement of Full Order

28. The Tribunal Ordered that the Respondent, SUSAN HARTLEY 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 agreed sum of £5,000.00.

Dated this 4th day of April 2023

On behalf of the Tribunal



B Forde
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
4 APR 2023

IN THE SOLICITORS DISCIPLINARY TRIBUNAL

Case No: 12428-2023

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

AND THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

SUSAN HARTLEY

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

Introduction

1. By its application dated 13 January 2023 and the statement made by John Tippet-Cooper, on behalf of the Solicitors Regulation Authority Limited (the "SRA"), pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019, dated 13 January 2022, the SRA brought proceedings before the Tribunal making allegations of professional misconduct against the Respondent.

Allegations

2. The allegations against the Respondent, Susan Hartley, made by the SRA are that, while in practice as a solicitor:
 - 1.1 At JWP Solicitors, she falsified the signatures of the Trustees to the RABS Trusts on the following cheques made out to HMRC:
 - i. Cheque for £2,900.00 dated 15 September 2015, from the RABS No. 2 Discretionary Trust ("Trust No. 2").

- ii. Cheque for £3,517.81 dated 15 April 2016, from the RABS No. 1 Discretionary Trust ("Trust No. 1").

In doing so, she thereby breached Principles 2 and 6 of the SRA Principles 2011 ("the Principles").

- 1.2 In November 2013, whilst employed at KBL Solicitors, she caused an improper withdrawal from the client account of the TM Will Trust in the sum of £8,891.00 and misappropriated the same to discharge a debt owed to HMRC in respect of the MEF Will Trust.

In doing so she thereby breached Principles 2, 4 and 6 of the Principles and Rule 20.1 of the Solicitors Accounts Rules 2011 ("the SARs").

3. In addition, both allegations 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 all the allegations in the Rule 12 statement, and further admits that her conduct in respect of the same was dishonest.

Agreed Facts

5. The following facts and matters, which are relied upon by the SRA in support of the allegations set out at paragraph 2 of this document, are agreed between the SRA and the Respondent.
6. The Respondent was admitted to the Roll on 15 May 1986. She does not currently hold a practising certificate and is not presently employed.
7. Upon qualification until 1988, the Respondent was an Assistant Solicitor at Last Suddards solicitors. It was whilst employed at Last Suddards Solicitors that the Respondent was instructed to manage the RABS Trusts. Between 1988 and 1998, the Respondent was a Salaried Partner at Last & Company solicitors.
8. Between 1998 and 2003, the Respondent was a Salaried Partner at Gordons solicitors. It was during her employment at Gordons that the Respondent was appointed a Trustee of the MEF Trust.
9. The Respondent moved to KBL solicitors as an Associate Solicitor in 2004. It was during her employment as an Associate Solicitor at KBL solicitors, in November 2013, that the Respondent committed the misconduct in allegation 1.2.

10. The Respondent left her employment at KBL solicitors shortly after November 2013 and was employed as an Associate Solicitor at JWP solicitors. It was during this period of employment, in September 2015 and April 2016 that the Respondent committed the misconduct in allegation 1.1.
11. The Respondent moved to Eatons solicitors as an Associate Solicitor in 2018 and remained employed there until the termination of her employment in January 2020, for gross misconduct in relation to these matters.
12. The Respondent practised in Wills and Probate, Estate Planning, Powers of Attorney, Court of Protection, Trust and Property Law.
13. The misconduct first came to light on 10 January 2020, when the Respondent sought a confidential meeting with her employers at Eatons solicitors. During the course of the meeting the Respondent admitted that she had been guilty of misconduct in her handling of Trusts matters whilst employed at previous solicitors firms. In particular, she had forged signatures on cheques in order to make payments to HMRC, without the clients authority (allegation 1.1.) and on separate matters, she had used client money held for one client to pay a tax bill due for another client (allegation 1.2). The Respondent stated that the motivation for her misconduct had been to conceal the fact of tax penalties that had accrued on the Trusts from the clients. She stated that she had neglected to deal with the self-assessment returns on the Trusts as other work had taken priority.
14. The Respondent's decision to reveal her misconduct was triggered by a request from Berwins solicitors for the Trust documents for the RABS Trusts. Berwins were dealing with the probate of RABS, who passed away in 2019. The Respondent told Eatons that she had not she acknowledged Berwins request.
15. The Respondent stated that there had been no benefit to her as a result of her conduct, save for keeping her jobs. She further accepted that such conduct would be regarded as dishonest and that she would be dismissed from her employment and may be struck off the Roll of Solicitors.
16. Eatons solicitors made a report to the SRA dated 30 April 2020.
17. Whilst the investigation into the Respondent by the SRA was underway, the Trustees of the RABS Trusts had become aware following the death of their father in October 2019, that the Respondent had mismanaged the administration of the Trusts. Their investigations also revealed the extent of the tax liabilities and the falsification of their

and their father's signatures on the two cheques to HMRC dated 15 September 2015 and 15 April 2016.

18. A Trustee made a report to the SRA dated 21 January 2021, detailing their concerns regarding the conduct of the Respondent.

Agreed facts pertaining to Allegation 1.1. – falsification of signatures on cheques to HMRC re the RABS Trust

19. In 1986, RABS set up two family trusts;

- i. RABS No. 1 Discretionary Settlement dated 24 January 1986 ("Trust No. 1")
- ii. RABS No. 2 Discretionary Settlement dated 25 January 1986 ("Trust No. 2")

20. The Trustees for the Trusts were RABS, and his children CSC and RAB.

21. The Respondent was instructed by RABS to administer the Trust from 1986 until his death in 2019. As part of this role, the Respondent had filed self-assessment tax returns on behalf of the Trusts.

22. Due to the late filing of tax returns, penalties accrued on the Trusts. The Respondent did not inform RABS or the other Trustees of the late filing of the tax returns nor of the penalties that had accrued.

23. In order to satisfy the liabilities to HMRC that had arisen, the following payments by way of cheques from the Trust accounts to HMRC were made:

- i. Cheque from Trust No. 2 account, dated 15 September 2015 for £2,900.00
- ii. Cheque from Trust No. 1 account, dated 15 April 2016 for £3,517.81

24. The cheques were accepted by HMRC and used to discharge some of the debt owed.

25. The cheques purported to bear the signatures of the Trustees; RABS, CSC and RAB. However, CSC has confirmed that none of the signatures on the two cheques were genuine and that neither she nor her brother were aware of the penalties that had accrued to the Trust.

Agreed facts pertaining to Allegation 1.2. – improper withdrawal on client account for the TM Will Trust to discharge a debt on the MEF Will Trust

26. On 10 April 2000, the Respondent was appointed a Trustee of the MEF Will Trust, whilst she was employed at Gordons solicitors. When the Respondent moved employers she retained her position as Trustee and took the client with her.
27. As with the RABS Trusts, the Respondent filed self-assessment tax returns on behalf of the MEF Will Trust. Due to the late filing of tax returns, penalties accrued on the Trust. The Respondent did not advise the co-trustees of the penalties due from the Trust.
28. On 1 November 2013, whilst employed at KBL solicitors, in order to satisfy the penalties that had accrued to the MEF Will Trust, the Respondent used available funds on a separate client matter, the TM Will Trust. The Respondent knew that there were available funds on that Trust and that previous attempts to pay the beneficiary on that matter had been unsuccessful due to the firm no longer holding the correct address for them. The Respondent therefore instructed the cashiers department at KBL solicitors to write a cheque on the matter of the TM Will Trust made payable to HMRC in the sum of £8,891.00. The Respondent arranged for the cheque to be sent to HMRC but provided the reference for the MEF Will Trust, such that the monies were used to satisfy the penalties on that matter. Accordingly, there was a loss to the TM Will Trust of £8,891.00.
29. The Respondent admitted the misconduct to Eatons solicitors on 10 January 2020. KBL solicitors were able to provide the relevant client ledgers to the SRA and have confirmed that they have rectified the loss to the TM Will Trust.

Penalty proposed

30. It is proposed that the Respondent should be struck off the Roll of Solicitors.
31. With regard to costs, it is further proposed that the Respondent should pay the SRA's costs of this matter agreed in the sum of £5,000.00 inclusive of VAT taking into account her means.

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

32. The Respondent has admitted dishonesty. The Tribunal's Guidance Note on Sanctions (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 a striking off, save in exceptional

circumstances (see Solicitors Regulations Authority v Sharma [2010] EWHC 2022 (Admin))."

33. 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..."

34. The Respondent committed a series of dishonest acts, by falsifying signatures on two cheques and by utilising client funds on one matter to satisfy a debt on another matter. Those dishonest acts occurred over a period of three years between 2013 and 2016. These were serious acts of dishonesty which benefitted the Respondent to the detriment of clients. This case plainly does not fall within the small residual category where striking off would be a disproportionate sanction.

35. Accordingly, the parties submit that the proposed outcome represents the fair and proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanctions 10th Edition.

Signed by the parties

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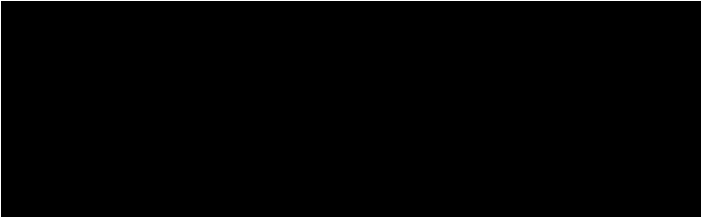
John Tippett-Cooper
For and on behalf of the SRA



Susan Hartley

Dated:

Signed by the parties



John Tippett-Cooper
For and on behalf of the SRA
Dated: 21 March 2023