

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12448-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

And

ROBERT STEVEN CALLEN.

Respondent

Before:

Mrs C Evans (Chair)

Mrs L Boyce

Mrs C Valentine

Date of Hearing: 20 June 2023

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The Allegation against Robert Steven Callen (“the Respondent”), made by the SRA is that, in February 2018, whilst a solicitor, he inappropriately procured payments by cheque from VHJ, a client of his former employer, to all or any of Christine Murphy, Joanne Kaplan, and Joanne Callen.
2. In doing so, the Respondent:
 - 2.1. Breached either or both Principles 2 and 6 of the SRA Principles 2011;
 - 2.2. Failed to achieve Outcome 11.1 of the SRA Code of Conduct 2011.
3. The allegation is advanced on the basis that the Respondent also acted dishonestly. Dishonesty is alleged as an aggravating feature of the Respondent’s conduct but is not an essential ingredient of proving the allegation.

Mr Callen admits the allegation. He also admits that his conduct in acting as alleged was dishonest.

Documents

4. The Tribunal had before it the following documents:-
 - Rule 12 Statement and Exhibit SEJ1 dated 21 March 2023
 - Statement of Agreed Facts and Outcome dated 15 June 2023

Background

5. Mr Callen was born in May 1953, was admitted as a solicitor on 15 December 1984. He retired from practice on 31 December 2017. He no longer holds a Practising Certificate (PC). He last held a PC for practice year 2017/2018. Between 1 February 2016 to 31 December 2017, the Respondent was employed as a consultant by Penman Sedgwick LLP (“the Firm”).

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

6. The parties invited the Tribunal to deal with the Allegations against Mr Callen 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

7. 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 Mr Callen’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.

8. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Mr Callen's admissions were properly made.
9. The Tribunal considered the Guidance Note on Sanction (June 2022/10th Edition). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
10. The Tribunal noted that Mr Callen admitted all the allegations made against him including dishonesty and lack of integrity. However, this was misconduct of the most egregious kind in which he had obtained money, to which he was not entitled, from a woman vulnerable by reason of her age and infirmity. He had paid two visits to her home and following his false representations she handed him her chequebook and he wrote out the cheques. This was disgraceful behaviour capable of shattering the trust the public place in solicitors to protect their interests.
11. The difficulties experienced by Mr Callen as set out in his mitigation, did not, constitute exceptional circumstances (see Solicitors Regulation Authority v James et al [2018] EWHC 3058 (Admin)).
12. The Tribunal found that sanctions such as a Reprimand, Fine or Suspension did not adequately reflect the seriousness of the misconduct. The Tribunal found that given the admission of dishonesty, and the absence of exceptional circumstances the only appropriate and proportionate sanction was to strike Mr Callen off the Roll of solicitors.
13. Accordingly, the Tribunal approved the sanction agreed by the parties.

Costs

14. The parties agreed that Mr Callen would pay costs in the sum of £2574.00. The Tribunal determined that the agreed amount was reasonable and proportionate. Accordingly, the Tribunal ordered Mr Callen to pay costs in the agreed sum.

Statement of Full Order

15. The Tribunal Ordered that the Respondent, ROBERT STEVEN CALLEN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £2574.00

Dated this 7TH day of July 2023
On behalf of the Tribunal



C Evans
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
07 JUL 2023

IN THE MATTER OF THE SOLICITORS ACT 1974

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

Case No: 12448-2023

Between:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

And

ROBERT STEVEN CALLEN

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 21 March 2023, 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 an allegation of misconduct against Robert Steven Callen.

The allegation

2. The allegation against Robert Steven Callen (the Respondent"), made by the SRA within that statement was that: -
 - 2.1 in February 2018, whilst a solicitor, he inappropriately procured payments by cheque from VHJ, a client of his former employer, to all or any of Christine Murphy, Joanne Kaplan, and Joanne Callen.
 - 2.2. In doing so, the Respondent:
 - 2.1. breached either or both Principles 2 and 6 of the SRA Principles 2011;
 - 2.2. failed to achieve Outcome 11.1 of the SRA Code of Conduct 2011.

3. In addition, dishonesty was alleged as an aggravating factor with respect to the allegation.

Admissions

4. The Respondent admits the allegation. He also admits that his conduct in acting as alleged was dishonest.

Agreed Facts

5. The following facts and matters, which are relied upon by the SRA in support of the allegation set out within paragraphs 2 and 3 of this statement, are agreed between the SRA and the Respondent.

5.1 The Respondent was admitted as a solicitor on 15 December 1984. He retired from practice on 31 December 2017. He no longer holds a Practising Certificate (PC). He last held a PC for practice year 2017/2018. He remains on the Roll. From 1 February 2016 to 31 December 2017, the Respondent was employed as a consultant by Penman Sedgwick LLP (“the Firm”).

5.2 VHJ is an 89-year-old woman. In February 2015, when she was 81, she was involved in a road traffic accident which left her with serious injuries. These included spinal injuries which resulted in mobility issues and led to her requiring help with day-to-day activities and suffering constant pain. On 17 June 2015, she instructed the Firm to act on her behalf in relation to the personal injury claim. The Respondent had conduct of her claim on behalf of the Firm after he was employed as a consultant at the Firm.

5.3 VHJ also appointed the Respondent and a friend, as her attorneys to deal with matters due to her health condition. She executed a Lasting Power of Attorney for health and welfare which was registered on 7 September 2017.

5.4 On 12 December 2017, the Respondent negotiated a settlement of VHJ’s personal injury claim on her behalf which she accepted. The Respondent prepared an attendance note of the settlement discussions. This recorded, amongst other things, that the Respondent explained to VHJ that the proposed settlement would leave a shortfall as to costs of £15,000 which would be her responsibility. VHJ states that she was not made aware of any shortfall.

5.5 On 14 December 2017, the Respondent wrote to VHJ confirming the terms of the settlement. VHJ would receive £525,000 and the insurers would pay £75,000 as a contribution towards costs. That letter did not mention any specific shortfall as to costs or that VHJ would be responsible for any costs. The Firm received payment of the settlement from the insurer on 19 December 2017. £75,000 of the Firm’s outstanding costs were paid by the insurers as part of the settlement (an interim payment had previously been paid of £45,000). The Firm’s final invoice was for £78,036.13 including VAT. The Firm wrote off any further balance of its costs and nothing was due from VHJ. The Firm’s final invoice dated 22 December 2017 and schedule of costs confirmed this.

- 5.6 In early 2018, after the Respondent had left the Firm, he visited VHJ at her home. He told her that she owed him £15,000 for the work he had done for her. He did not provide details of the work involved. He also did not provide a written invoice. VHJ refused to pay.
- 5.7 A few days after this initial visit, the Respondent visited VHJ again and again asked for payment of £15,000. VHJ agreed. She handed the Respondent her chequebook for him to write out cheques. The Respondent wrote out three cheques which VHJ signed and gave to him. The cheques were payable as follows:
- £5,000 payable to Mrs C Murphy, the Respondent's partner, dated 27 February 2018;
 - £5,000 payable to Mrs J Kaplan, a friend of the Respondent dated 14 March 2018;
 - £1,000 payable to Joanne Callen, the Respondent's daughter, dated 28 February 2018
- 5.8 The cheques in favour of Mrs Murphy and Mrs Kaplan were presented and paid on, respectively, 2 and 20 March 2018. The cheque in favour of Joanne Callen was not paid.
- 5.9 VHJ told the Firm that she had given the Respondent money. On 3 April 2018, Jaqueline Alderton, senior partner at the Firm, met VHJ who gave her further information about the payments. She stated that she wanted her money back and was unhappy that the payments had been made. She gave Ms Alderton her cheque book which contained the three cheque stubs referred to in paragraph 9.7 above.
- 5.10 Ms Alderton and another partner at the Firm, Alan Mercer, met VHJ again on 5 April 2018. A friend of VHJ's, Rita, and Rita's husband also attended. At that meeting Ms Alderton was given copies of the cheques for £5000 payable to C Murphy and J Kaplan and VHJ's bank statement dated 29 March 2018 which Rita had obtained from VHJ's bank.
- 5.11 Following those meetings, VHJ contacted the Respondent to demand the return of her money. The Respondent subsequently posted a cheque for £10,000 through VHJ's door which she paid into her bank account.

Dishonesty

6. The Respondent admits that his conduct was dishonest in accordance with the test for dishonesty laid down in *Ivey* and he admits that he acted dishonestly according to standards of ordinary decent people.
7. The Respondent knew:
- that VHJ did not owe him or the Firm £15,000 or any other amount and that there was no legitimate basis on which he could have sought any payment from her. The Respondent knew and agreed that, even if there had been a shortfall in the fees paid by the insurers as part of the settlement of VHJ's claim, VHJ should only pay it to the Firm.

- That there was no legitimate basis on which to ask VHJ to make payment to Mrs Kaplan, Mrs Murphy, or Ms Callen. He nevertheless wrote out cheques payable to these parties for VHJ to sign in circumstances where VHJ did not have a chance to read them properly. He, or someone associated with him, presented two of the cheques and received payment of £10,000.

8. The Respondent's actions amount to a serious act of dishonesty.

Non-Agreed Mitigation

9. The following mitigation, which is not agreed by the SRA, is put forward by the Respondent:

9.1 Since these events he has not practiced as a solicitor and despite failing health and bereavement during the subsequent five years it has taken for this matter to reach this stage the Respondent has cooperated fully with the Applicant throughout its enquiries and in the course of these proceedings.

9.2 The Respondent made admissions to the majority of all allegations from the outset and the balance immediately after taking legal advice.

Prior to the issue of this Application the Respondent instructed his solicitors to advise the Applicant's solicitors in an open letter that, as an alternative to Tribunal proceedings, he would apply voluntarily to remove his name from the Roll; undertake never to apply for restoration and meet the Applicant's costs to date in full. This offer was rejected.

9.3 The sum of £10000 referred to in points 5.11 and 7 above was voluntarily refunded in full by the Respondent to VHJ as soon as he was made aware of her reservations; she suffered no loss and there has been no claim to insurers or the Compensation Fund as a consequence.

9.4 During the 33 years the Respondent practiced as a solicitor he was never the subject of any other complaint to the Regulator and can fairly be said to have had an unblemished and exemplary record of professional service. This he has now lost and it is a matter of deep regret and shame to the Respondent that he has done so in a manner wholly alien to his true character and principles and for which he wishes to apologise unreservedly to all affected by his lapse.

10. However, the Respondent 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 he be struck off the Roll.

Penalty proposed

11. It is therefore proposed that the Respondent should be struck off the Roll of Solicitors.

12. The SRA has considered the admissions made by the Respondent and has considered, in light of those admissions, whether the outcome proposed in this document is in the public interest having regard to the seriousness of the matters alleged. The SRA is satisfied that the admissions and outcome proposed are in the public interest and that it is a proportionate and appropriate way of resolving this matter. It is agreed that the necessary and proportionate sanction to protect the public interest and reputation of the profession is for the Respondent to be struck off the Roll of Solicitors
13. 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 £2574.

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

14. *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)**)."*
15. 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..."*
16. The Respondent approached VHJ twice to ask for the payment even though there was no money outstanding to him. VHJ was 83 years old at the time the Respondent obtained the cheques from her. She had been badly injured in a serious accident, suffered constant pain, and required daily care. The payment benefitted the Respondent to the detriment of VHJ. The Respondent had approximately 34 years' experience as a solicitor at the time of asking for the payment. The harm caused was foreseeable. His level of culpability was correspondingly high. The Respondent only re-paid the money after VHJ demanded its return.
17. 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.

18. In light of the misconduct identified and having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions, the SRA contends, and the Respondent accepts, that the proper penalty in this case is an Order that the Respondent be struck off the Roll of Solicitors.

Dated this 15 of June 2023

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Oliver Sweeney
Head of Legal & Enforcement on behalf of the SRA

.....
(on behalf of Robert Steven Callen)
Gareth R Edwards
Consultant with M I Banks
Solicitors for the Respondent.