

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12456-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

KALVINDER GARCHA

Respondent

Before:

Mrs L Boyce (in the chair)

Ms H Appleby

Ms L Fox

Date of Hearing: 2 August 2023

Appearances

Inderjit Johal, barrister of the Solicitors Regulation Authority Ltd for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The Allegations against Ms Garcha, were that, while in practice as a Solicitor in employment with Oadby & Wigston Borough Council and as Chair of the board of the Charity Coping with Cancer:

1.1 Between 5 June 2012 to 30 September 2014 the Respondent conspired to commit fraud against Oadby & Wigston Borough Council (the Council) and the charity Coping with Cancer in Leicestershire and Rutland (the Charity). By doing so the Respondent had breached any and all of Principles 1, 2 and 6 of the SRA Principles 2011; and

PROVED

1.2 From around 25 July 2012 to on or around 4 April 2015 the Respondent conspired to convert criminal property. By doing so, the Respondent had breached any and all of Principles 1, 2 and 6 of the SRA Principles 2011.

PROVED

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

PROVED

Executive Summary

3. This was a set of Allegations brought following Ms Garcha's conviction at Leicester Crown Court on four counts as set out above. Ms Garcha had been found guilty after a contested trial and had lodged an appeal against her conviction. Ms Garcha admitted the Allegations before the Tribunal on the basis that the convictions stood at present, but did not admit dishonesty. The Tribunal found all the Allegations [proved](#).

Sanction

4. The Tribunal [struck Ms Garcha off the Roll](#) and made no order for costs.

Documents

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

Preliminary Matters

6. Application to proceed in the Respondent's absence.

6.1 Ms Garcha did not attend the hearing and was not represented. Mr Johal applied to proceed in her absence.

- 6.2 Ms Garcha had sent an email to the Tribunal on the morning of the hearing, 2 August 2023, in which she indicated that she would not be attending. This was the first time she had indicated an intention not to attend the hearing, having engaged throughout the proceedings and having complied with the Standard Directions.
- 6.3 The email contained a number of references to personal matters, which have been redacted from the published Judgment in protection of Ms Garcha's Article 8 rights and on the basis that publication could cause exceptional harm to Ms Garcha. It was for this reason that Mr Johal's application to proceed in absence was also heard in private, as he addressed this email in his submissions.
- 6.4 REDACTED
- 6.5 REDACTED
- 6.6 REDACTED
- 6.7 REDACTED

Applicant's Submissions

- 6.8 Mr Johal told the Tribunal that Ms Garcha was clearly aware of the hearing date and confirmed that she had complied with directions.
- 6.9 REDACTED
- 6.10 Mr Johal submitted that it appeared from her email that Ms Garcha had a settled intention not to attend the hearing and had voluntarily absented herself. Mr Johal submitted that if the matter was adjourned it was unlikely that she would attend. He referred the Tribunal to GMC v Adeogba [2016] EWCA Civ 162.
- 6.11 Mr Johal indicated that if the Tribunal was minded to adjourn until the next day (the matter having been listed for two days), the SRA would not object.

The Tribunal's Decision

- 6.12 The Tribunal considered the representations made by Mr Johal and all that Ms Garcha had stated in her email.
- 6.13 Ms Garcha was clearly aware of the date of the hearing and SDPR Rule 36 was therefore engaged. The Tribunal had regard to the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

“In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:

- (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in

particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;

- (ii) ...;
- (iii) the likely length of such an adjournment;
- (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
- (v) ...;
- (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
- (vii) ...;
- (viii) ...;
- (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
- (x) the effect of delay on the memories of witnesses;
- (xi) ...;”

6.14 In Adeogba, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

“...It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed”.

6.15 Leveson P went on to state at [23] that discretion must be exercised “having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account”.

6.16 REDACTED

6.17 REDACTED

6.18 The Tribunal noted that Ms Garcha had two safeguards. The first was Rule 32(3) of the SDPR 2019, which provided potential remedy in the event that her conviction was overturned. The other was the right to apply for a re-hearing pursuant to Rule 37.

6.19 The Tribunal therefore granted Mr Johal’s application.

7. Ms Garcha’s request that judgment be anonymised

7.1 In her email of 2 August 2023, Ms Garcha asked that sensitive matters relating to her health and that of her family not be published. The Tribunal agreed to this and it heard

the application to proceed in absence in private on that basis. This Judgment does not refer to the detail of those matters.

7.2 Ms Garcha also requested that the Judgment be either not published, anonymised or only refer to Ms Garcha by her SRA number. Her reasons related to “my family, culture, stigma” and to health issues.

7.3 Rule 35(10) of the SDPR stated:

“The Tribunal may give a direction prohibiting the disclosure of a document or information to a person if it is satisfied that—

- (a) the disclosure would be likely to cause any person serious harm; and
- (b) it is in the interests of justice to make such a direction”.

The Tribunal noted the starting point was the requirement for open justice as affirmed in SRA v Spector [2016] EWHC 37 (Admin).”

7.4 The Tribunal had considered the contents of Ms Garcha’s email in detail and with great care. As noted above, detailed references to health would not appear in the published Judgment. Beyond that, however, the principle of open justice could only be departed from in exceptional circumstances. Ms Garcha’s convictions were a matter of public record, the trial having taken place in public. The test for exceptional hardship or exceptional circumstances had therefore not been made out in respect of the publication of the Judgment as a whole or in respect of anonymising Ms Garcha. No medical evidence had been adduced to demonstrate that the publication of the Tribunal’s Judgment would have an adverse effect on Ms Garcha’s health, particularly in circumstances where the Judgment dealt with matters already aired at her trial. The use of the SRA Number would not assist as Ms Garcha could be identified by that number, but if that was not the case then for the reasons set out, anonymisation was not justified.

Factual Background

8. Ms Garcha was admitted to the Roll on 1 December 2000. During the period in which the conduct occurred, she worked at two separate organisations. She was employed as Head of Corporate Services by Oadby & Wigston Borough Council (“the Council”). The department included the Council’s human resources and legal section. Ms Garcha was responsible for human resources, legal services, licensing and democratic services. Ms Garcha also held the position of chair of the board of trustees at the charity Coping with Cancer (“the Charity”) in Leicestershire and Rutland.

9. On 10 September 2021, following a two-week trial, Ms Garcha was found guilty by a jury at the Crown Court at Leicester of the following:

- Two counts of conspiracy to commit fraud, contrary to section 1(2) of the Criminal Law Act 1977; and
- Two counts of conspiracy to convert criminal property, contrary to section 1(2) of the Criminal Law Act 1977.

10. Ms Garcha was sentenced to 30 months imprisonment for count 1 and 30 months imprisonment for counts 2 to 4, to run concurrently. The SRA relied on these convictions as evidence that she was guilty of those offences, and relied upon the findings of fact upon which those convictions were based as proof of those facts.
11. The conduct in this matter came to the attention of the SRA on 13 September 2021 when it received an email from Ms Garcha disclosing that she had been convicted of fraud offences and stating that she had applied to come off the Roll.
12. The offences took place between approximately 5 June 2012 and 4 April 2015. In summary, Ms Garcha conspired with her colleague Lynn Middleton and Ms Middleton's sister, Sharon Reeve, to create a fake employee at the Council and the Charity using the profile and personal details of Mrs Reeve. Between them they defrauded the Council of £37,606.67 over a period of 27 months from 5 June 2012 to 30 September 2014.
13. Ms Garcha had reported to the senior management team at the Council about the invaluable contributions made by Mrs Reeve to the HR Team. She had recommended that Mrs Reeve's short-term contract be extended on four occasions. However, Mrs Reeve did not work at the Council during this period or at all.
14. Ms Garcha also approved Ms Middleton's suggestion that Mrs Reeve provide cover at the charity. Ms Garcha made others at the charity believe that Mrs Reeve was making a significant contribution of time and services to the charity. A fake invoice was submitted to the charity for services allegedly provided to the Charity by Mrs Reeve between 15 September 2014 to 31 October 2014 totalling £3,675. This was paid into the bank account of Mrs Reeve on 3 April 2015. However, Mrs Reeve did not provide services to the charity during the six-week period or at all.
15. Following the remunerations received by Mrs Reeve from the Council and the Charity, Mrs Reeve transferred funds from her bank account to the bank account of Ms Middleton who then made large cash withdrawals which were paid to Ms Garcha.
16. In sentencing remarks, HHJ Mooney made the following observations:

“The fraud at the council was committed over a long period of time. It started when the council underwent restructuring. Both of you [Ms Garcha and Ms Middleton] lied and misled colleagues and fortunate that some colleagues thought you were friends of theirs. Both of you created false documents and false paper trails or electronic trails promoting the falsehood that Sharon Reeve was working hard and deserving when in reality Sharon Reeve did not work at all”

Although you [Ms Garcha] do not have as much of the proceeds as Middleton did, I form the view that it was a power kick that you got out of it all. You allowed the ghost employee's money to go into Reeve's account which was then transferred to Middleton's account. Middleton then paid your share in cash. You knew by not having any of the money touching your account, it would be difficult to attribute the money to you. When you gave evidence and you spoke

of how hard you worked and how selfless you are, in my judgment, you are not being frank..”

17. HHJ Mooncey went on to note:

“You were both in positions of responsibility and trust at both organisations. Kalvinder Garcha, you were in a very senior role with the council and had also been a solicitor for the council. You were also the chair of the charity which was to help and support those with cancer”.

“The financial loss to the council was £37,600 odd. The other loss to the council is not measurable in terms of trust. This is public money. It is valuable money. It is scarce money. At the time the council made redundant many people in order to save public funds”

18. The Judge continued:

“The cancer charity was a fraud that started later and lasted a short period. It was committed when the charity had some changes in personnel. Void by the success of the fraud on the council you two, disgracefully embarked on a fraud on a charity. The loss to the cancer charity was £3,675. Although relatively not a large sum but it was funds that were of huge importance to those in need. Members of the public who give generously to charity, expect the money to be utilised for those in desperate need. Instead, you two were prepared to defraud the charity, Middleton keeping the money, whereas Garcha enjoying the fact that she could exercise her power and dupe people”.

Findings of Fact and Law

19. 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 Ms Garcha’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.
20. **The Allegations against Ms Garcha, were that, while in practice as a Solicitor in employment with Oadby & Wigston Borough Council and as Chair of the board of the Charity Coping with Cancer:**
- 1.1 **Between 5 June 2012 to 30 September 2014 the Respondent conspired to commit fraud against Oadby & Wigston Borough Council (the Council) and the charity Coping with Cancer in Leicestershire and Rutland (the Charity). By doing so the Respondent had breached any and all of Principles 1, 2 and 6 of the SRA Principles 2011; and**
- 1.2 **From around 25 July 2012 to on or around 4 April 2015 the Respondent conspired to convert criminal property. By doing so, the Respondent had breached any and all of Principles 1, 2 and 6 of the SRA Principles 2011.**

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

20.1 Ms Garcha admitted the Allegations in full, save for dishonesty. In her Answer, Ms Garcha informed the Tribunal that she was appealing against the convictions. That having been noted, Ms Garcha stated the following:

“8. Having regard to Rule 32 of The Solicitors (Disciplinary Proceedings) Rules 2019, I am bound to accept that I have been convicted of a criminal offence in the United Kingdom, which may be proved by the production of a certified copy of the certificate of conviction relating to the offence. Further, proof of a conviction will constitute evidence that I am guilty of the offence. I acknowledge that the findings of fact upon which that conviction was based will be admissible as conclusive proof of those facts, save in exceptional circumstances.”

20.2 Ms Garcha then set out a number of matters by way of exceptional circumstances, which appeared to relate to mitigation and are therefore dealt with below. Ms Garcha stated, under the heading “Admissions” the following:

“11. I accept that I was convicted of the allegations set out at paragraph 1.1 of the Rule 12 Statement. In so far as my appeal has not yet been determined, I accept that a certificate of conviction will constitute evidence that I am guilty of the offence and make the admission in relation to this allegation purely on that basis.”

20.3 Ms Garcha made an identically worded admission in relation to the Allegations set out at paragraph 1.2 of the Rule 12 statement.

20.4 In her email to the Tribunal dated 2 August 2023, Ms Garcha confirmed that her admission included admitting to breaches of the Principles.

20.5 Ms Garcha had not admitted dishonesty. While no detailed reasons were given for the denial, it appeared from the email of 2 August 2023 that Ms Garcha did not consider it appropriate to make such an admission while she was appealing against her convictions. She further noted that it was described as not being a necessary ingredient of the Allegations before the Tribunal.

20.6 Mr Johal relied on the test for dishonesty in Ivey v Genting Casinos [2017] UKSC 67. He submitted that the evidence, based on the convictions, was that Ms Garcha knew that Mrs Reeve did not work for the Council or the Charity, that Ms Garcha intentionally and deliberately used her position and influence to mislead others that Mrs Reeve was providing services to the Council and Charity and that the cash she had received from Ms Middleton was obtained fraudulently. Mr Johal submitted that this would be considered dishonest by the standards of ordinary decent people.

The Tribunal's Findings

- 20.7 The Tribunal noted that, pursuant to Rule 32(1) of the SDPR 2019, the convictions were admissible as conclusive proof the facts, save in exceptional circumstances. The circumstances described as exceptional by Ms Garcha appeared to related to mitigation. In any event, there was no basis on which the Tribunal could go behind the convictions. In the event of those convictions being overturned, there was remedy to Ms Garcha under Rule 32(3), which gave her the right to apply for any finding the Tribunal made based solely upon the certificate of conviction to be revoked. The Tribunal was therefore satisfied that Ms Garcha's admissions were properly made.
- 20.8 In relation to dishonesty, the Tribunal applied the test in Ivey. The first limb was to assess Ms Garcha's state of knowledge. The Tribunal noted that the convictions were for offences of dishonesty. The Crown could not have secured these convictions without persuading a jury, beyond reasonable doubt, that Ms Garcha had intentionally acted dishonestly by participating in a conspiracy to commit fraud and covert criminal property. The Tribunal was therefore able to rely on the certificate of conviction as conclusive proof as to Ms Garcha's state of knowledge. The question was whether the conduct would be considered dishonest by the standards of ordinary decent people had been answered by the jury. In short, the allegation of dishonesty was proved by reason of the convictions.

Previous Disciplinary Matters

21. There were no previous findings at the Tribunal.

Mitigation

22. In her Answer, Ms Garcha raised the following points which the Tribunal took into account when considering sanction. The redacted sections relate to health matters:

"9. I would ask the Tribunal to take into account the following exceptional circumstances in making any Order in this matter, in light of the facts and admissions made below:

9.1. That I applied to come off the Roll on the first available working day of Monday 13 September 2021, following my conviction on Friday 10 September 2021. In my email to the Applicant, I clearly stated "I am seeking advice on appealing the convictions" [B41 - page 79 of the Bundle].

9.2. That I was not aware of any suspension and attach a screen shot taken of my SRA account and the details held by the Law Society on 18 May 2023 attached hereto as "exhibit KG1", regarding my non-practising status. I only learnt of a suspension when I received the Bundle, which I have raised no objections to [A1 - page 7 pf the Bundle]. I have not undertaken any work as a solicitor since my self-referral to come off the Roll on 13 September 2021 nor have I applied for a practising certificate.

9.3. That I pleaded not guilty at the trial and have filed an appeal, the outcome of which is awaited.

9.4. REDACTED

9.5. REDACTED

9.6. I have lost everything including my career and am living on benefits and borrowed monies. The stigma which has affected me is enormous, particularly in my Asian Sikh community.

9.7. That statements prepared from professional colleagues and friends for the sentencing hearing be considered as a testament to my character, which I attach hereto as “exhibit KG2”.

9.8. As was in the case of the late Sally Clarke, solicitor, I am awaiting the outcome of an appeal to clear my name.”

23. In her email of 2 August 2023, Ms Garcha set out in detail the heavy toll that the convictions and that these proceedings had taken on her health and that of her family. Those details are not set out in this Judgment, but the Tribunal had regard to all that Ms Garcha had said in that email.

Sanction

24. The Tribunal had regard to the Guidance Note on Sanctions (June 2022). The Tribunal assessed the seriousness of the misconduct by considering Ms Garcha’s culpability, the level of harm caused together with any aggravating or mitigating factors. The Tribunal drew these factors from the facts that gave rise to the convictions.

25. In assessing culpability, the Tribunal identified the following factors:

- The motivation was financial gain;
- The offending was planned;
- Ms Garcha was in a position of trust at both the Council and the Charity;
- Ms Garcha had complete responsibility for her actions;
- She was an experienced solicitor who was in a position of seniority at the time of the offending.

26. In assessing harm, the Tribunal identified the following factors:

- There was direct harm caused to the Council, the Charity and by extension, the users of those services, many of whom were vulnerable;
- The harm caused was not only reasonably foreseeable, it was inevitable;
- The harm caused to the reputation of the profession was serious. Ms Garcha had significantly abused her position of trust as a solicitor working in public service. The public would not expect a solicitor to behave in such a way.

27. The misconduct was aggravated by the following factors:

- Dishonesty;

- Commission of a criminal offence;
 - The offending was deliberate, calculated and repeated;
 - The offending had continued over a period of time;
 - There had been an abuse of position;
 - Ms Garcha knew that she was in material breach of her obligations.
28. The only identifiable mitigating factor was that Ms Garcha had self-reported and had co-operated with the SRA. It was impossible to assess her insight in circumstances where she was appealing.
29. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by Ms Garcha. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:
- “34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.”
30. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off and the Tribunal had regard to Sharma. The circumstances in which such a sanction was not imposed were exceptional, described in Sharma as “a small residual category where striking off will be a disproportionate sentence in all the circumstances ...”.
31. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis of which question of exceptional circumstances was assessed:
- “First, although it is well-established that what may amount to exceptional circumstances is in no sense prescribed and depends upon the various factors and circumstances of each individual case, it is clear from the decisions in Sharma, Imran and Shaw, that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation is the nature and extent of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty.”
32. The Tribunal considered whether the circumstances in this case were exceptional, having regard to James.
33. Ms Garcha had advanced a number of matters, set out above. The Tribunal took careful note of them. In order for them to amount to exceptional circumstances they had to directly relate to the dishonest conduct. There was no medical evidence produced that indicated that the offences were caused by ill-health or that her judgment was so impaired that Ms Garcha was unaware of what she was doing. The Tribunal was unable to find any exceptional circumstances that could justify a lesser sanction than a strike-off. The Tribunal therefore ordered that Ms Garcha be struck off the Roll.

Costs

34. Mr Johal applied for the SRA's costs in this matter. The cost schedule estimated the costs at £5,835. Mr Johal submitted that this should be reduced due to the hearing taking less time than estimated. Mr Johal made no submissions in respect of the statement of means provided by Ms Garcha.
35. The Tribunal assessed the SRA's costs at £5,445. This reflected the reduction for the reduced time the hearing had taken. Those costs were reasonable and proportionate. The Tribunal considered whether to make a further reduction to take account of Ms Garcha's means.
36. The Tribunal had regard to Barnes v Solicitors Regulation Authority [2022] EWHC 677 (Admin) and the importance of making a "reasonable assessment of the current and future circumstances" in relation to Ms Garcha's ability to pay. At [46], Cotter J stated:

“[46] The courts have held for a long time that the guiding principle is that fines, costs and compensation should be capable of being paid off within a reasonable time if imposed in circumstances such as this (i.e. not in ordinary civil litigation). The decision of the tribunal on the reasonable assumption that she had an entitlement to half the monthly surplus would mean that the Appellant would never pay off the debt, on the then current level of remuneration at the time of the hearing (i.e. before she lost her job). I accept, as Mitting J set out, that the Solicitors Regulation Authority does not have the aim of pursuing impecunious solicitors against whom orders have been made and who cannot pay. However, I cannot see how the Authority or the profession is in any way better off leaving to the Enforcement Unit a debt that can never be paid, save in exceptional circumstances. The exceptional circumstances provision can be dealt with by what is known as "a football pools" order. That description may not now be understood by a number of younger people. I believe "a lottery order" would be more widely understood.”

37. At [48] he stated:

“[48] No proper exercise of discretion under the Rules could, produce an order for costs that will never be satisfied and will remain a burden on a party for life. I reject Ms Culleton's submission to the contrary i.e. that that is a proper order open to the tribunal even given the exercise of its generous discretion. Nor, as I have stated, can it be correct to leave what is effectively an unrecoverable debt to the Recovery Unit in the hope that it will then take a reasonable view. The tribunal itself is the one with the regulatory requirement to consider means and the Unit should only be required to recover debts which the tribunal considered to be properly recoverable.”

38. The SRA had not challenged the statement of means or made any submissions in relation to it. The Tribunal was therefore entitled to take it at face value and indeed had no basis to do otherwise. The Tribunal noted that Ms Garcha was in receipt of state benefits and had no equity in her property, having transferred her share due to financial pressures earlier in the year. Ms Garcha's employment prospects were likely to be poor, in light of her convictions and the Tribunal's sanction.

39. In those circumstances there was no realistic prospect of Ms Garcha being able to pay any costs to the SRA within a reasonable timescale. The Tribunal therefore made no order for costs.

Statement of Full Order

40. The Tribunal Ordered that the Respondent, KALVINDER GARCHA, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that there be no Order as to costs

Dated this 17th day of August 2023

On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY

17 AUG 2023

L Boyce

L Boyce
Chair