

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12512-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

KERRY ANN STEVENS

Respondent

Before:

Ms A E Banks (in the chair)

Ms B Patel

Mr A Lyon

Date of Hearing: 25 March 2024

Appearances

Joshua Bold, solicitor 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 Stevens were that:

Allegation 1

- 1.1 On 25 February 2020, she made a false representation, namely stating that she would return to a Harvester restaurant to pay her bill of £60.91, but, in fact, did not return to pay, intending to make a gain of £60.91 (“the First Offence”) and in doing so, the Respondent breached any or all of Principles 2, 4 and/or 5 of the SRA Principles 2019 (“the Principles”).

PROVED

The Applicant relied on Ms Stevens’ conviction of committing fraud by dishonestly making a false representation contrary to sections 1 and 2 of the Fraud Act 2006 on 22 March 2022 at Suffolk Magistrates’ Court, as evidence that she was guilty of the offence, and it relied on the findings of fact upon which that conviction was based as proof of the underlying facts.

Allegation 2

- 1.2 On 21 January 2021, she made a false representation, namely that she had paid for food delivered when in fact she had not paid and thereby intended to make a gain of £43.47 worth of takeaway food (“the Second Offence”) and in doing so, the Respondent breached any or all of Principles 2, 4 and/or 5 of the Principles.

PROVED

The Applicant relied on Ms Stevens’ conviction of committing fraud by making a false statement contrary to sections 1 and 2 of the Fraud Act 2006 on 22 March 2022 at Suffolk Magistrates’ Court, as evidence that she was guilty of the offence, and it relied on the findings of fact upon which that conviction was based as proof of the underlying facts.

Executive Summary

2. Ms Stevens was convicted of the two offences referred to in the Allegations. The Allegations were based on those convictions. Ms Stevens did not engage with the proceeding and did not attend the hearing. The Tribunal proceeded in her absence and found both Allegations proved in full.

Sanction

3. Ms Stevens was [struck off the Roll of solicitors](#) and ordered to pay £4,489 in costs.

Documents

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

Preliminary Matters

Application to Proceed in Absence

5. Mr Bold applied for the Tribunal to proceed in the absence of Ms Stevens, who was neither present nor represented.
6. Mr Bold told the Tribunal that the proceedings had been served on Ms Stevens, and he referred the Tribunal to the certificate of service from a Process Server dated 19 March 2024. Mr Bold told the Tribunal that Ms Stevens had not engaged with the proceedings at any stage. He invited the Tribunal to proceed in her absence in the circumstances.
7. The Tribunal considered the representations made by Mr Bold. Ms Stevens was aware of the date of the hearing as evidenced by the certificate of service. Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 (“SDPR”) 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) *...;*”

In GMC v Adeogba [2016] EWCA Civ 162, 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”.

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”.*

8. The Tribunal noted the persistent lack of engagement in the proceedings by Ms Stevens. There was nothing to suggest that adjourning the matter would result in her attendance before the Tribunal and no adjournment had been sought. The allegations were serious and there was a public interest in having them resolved without undue delay. The Tribunal was satisfied that Ms Stevens had voluntarily absented herself and it was therefore appropriate to proceed with the matter in her absence. The Tribunal therefore granted Mr Bold’s application.

Factual Background

9. Ms Stevens was admitted to the Roll on 1 February 2016. During the period in which the conduct occurred, she was a solicitor practising criminal law, though not working at a regulated entity on the dates of the offences.
10. The First Offence came to the attention of the SRA on 4 December 2020 when Mr Warren Brazier, a Partner of EBR Attridge LLP, the Respondent’s former employer, stated that Ms Stevens had informed them of an allegation relating to a “food bill at a Harvester restaurant, for which she was not charged but she was arrested”. The Second Offence came to the attention of the SRA on 31 July 2021 when Ms Stevens sent a screenshot of an extract of a document issued by South Essex Magistrates Court to the SRA detailing the offence.
11. On 22 April 2022 Essex Police confirmed to the SRA that Ms Stevens had been found guilty of both offences.
12. On 22 March 2022 the Court had proceeded in Ms Stevens’ absence and convicted her in respect of both offences. In respect of the First Offence, Ms Stevens was fined £440, ordered to pay £100 compensation, £775 costs and a victim surcharge of £88.

13. In respect of the Second Offence, Ms Stevens was again fined £440 and ordered to pay £100 compensation.
14. Ms Stevens lodged an appeal, which was dismissed by Ipswich Crown Court on 7 July 2023.
15. The First Offence
 - 15.1 On 25 February 2020, Ms Stevens attended the Harvester restaurant in Rayleigh Essex, with her boyfriend, and ordered £60.91 worth of food. After they had finished eating, the boyfriend left the restaurant. Ms Stevens informed a member of staff at the restaurant that she was unable to pay for the food bill as her boyfriend had her bank card. She told the member of staff that she would return to settle the bill, provided her telephone number and left her passport. Later that same evening, the Duty Manager called Ms Stevens and confirmed that payment could be taken over the phone. Ms Stevens stated she had no other cards to pay with and agreed to come back in the morning to pay the bill.
 - 15.2 The next day, the General Manager at the restaurant attempted to call Ms Stevens on the telephone number she provided on 25 February 2020, however, the call failed to connect. On 21 May 2020 at 22:24, Ms Stevens contacted the restaurant's guest care team via email, stating that she would need to collect her passport.
 - 15.3 On 6 July 2020, the General Manager at the restaurant contacted Ms Stevens on the second telephone number she had provided when enquiring about the passport and confirmed that she would need to pay the £60.91 bill and retrieve her passport. Ms Stevens did not pay the outstanding bill and nor did she collect her passport. The restaurant reported her to the police. Ms Stevens told the Police that the value of what she had left behind (presumably a reference to the passport) exceeded what she owed.
16. The Second Offence
 - 16.1 On 21 January 2021, a food order worth £43.47 from Essex Grill was placed via the Just Eat app, to be delivered to Ms Stevens' home address. At approximately 20:10 that evening, the delivery driver delivered the food that had been ordered to that address. The driver asked for payment and Ms Stevens stated that she had already paid for it when she placed the order. The delivery driver asked Ms Stevens to wait whilst he confirmed with Essex Grill that the food had been paid for, but Ms Stevens closed the front door. Essex Grill confirmed to the delivery driver that no payment had been made and the bill was due to be paid in cash upon delivery. The delivery driver confirmed that he knocked Ms Stevens' front door for several minutes, but she did not open the door. The cost of the food order was subsequently taken out of the delivery driver's wages.
 - 16.2 Ms Stevens told the Police that she believed her boyfriend had paid when placing the order online.

Findings of Fact and Law

17. 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 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.
18. **Allegations 1 and 2**

Applicant's Submissions

- 18.1 Mr Bold submitted that Ms Stevens had acted dishonestly and lacked integrity as well as failing to uphold public trust and confidence. In relation to a lack of integrity, Mr Bold relied on the test in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, in which it was said that integrity connoted adherence to the ethical standards of one's own profession.
- 18.2 In relation to dishonesty, Mr Bold relied on Ivey v Genting Casinos [2017] UKSC 67, the test for which is set out below.
- 18.3 Mr Bold submitted that although the criminal convictions related to matters in Ms Stevens' private life, they were so serious as to amount to professional misconduct.

The Tribunal's Findings

- 18.4 Rule 32 of the SDPR stated as follows:

"32.—(1) A conviction for a criminal offence in the United Kingdom may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction will constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based will be admissible as conclusive proof of those facts save in exceptional circumstances."

- 18.5 The Allegations against Ms Stevens both related to criminal convictions, evidence of which had been placed before the Tribunal. Ms Stevens had not advanced any exceptional circumstances that would justify not treating the convictions of fact as conclusive proof of the facts. The Tribunal therefore found both Allegations proved on the balance of probabilities.

Principle 2

- 18.6 The Tribunal found that the trust and confidence of the public was seriously diminished when a solicitor committed offences of dishonesty. The Tribunal found the breach of Principle 2 provided on the balance of probabilities.

Principle 4

18.7 The test for considering the question of dishonesty was that set out in Ivey at [74] as follows:

“the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

18.8 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly, the Tribunal established the actual state of Ms Stevens’ knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.
- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

18.9 The Magistrates Court had assessed Ms Stevens’ state of knowledge in respect of each offence as part of the trial process. Both offences required the prosecution to have proved a dishonest intent to the criminal standard. The prosecution had discharged that burden as evidenced by the fact that Ms Stevens was convicted of both offences. Ms Stevens had made a deliberate decision not to pay for her meal at the Harvester and had also decided to lie about having paid for her meal from the Essex Grill.

18.10 The Tribunal further noted that Ms Stevens’ area of practise was criminal law. Ms Stevens would have therefore been in no doubt whatsoever that she was committing criminal offences on each occasion.

18.11 The Tribunal was satisfied that in each instance, such conduct would be considered dishonest by the standards of ordinary, decent people. The Tribunal found the breach of Principle 4 proved on the balance of probabilities.

Principle 5

18.12 It followed as a matter of logic that acting dishonesty would amount to a lack of integrity and so the Tribunal found the breach of Principle 5 proved on the balance of probabilities.

Previous Disciplinary Matters

19. There were no previous findings at the Tribunal.

Sanction

20. The Tribunal had regard to the Guidance Note on Sanctions (June 2022). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors. Ms Stevens had provided no mitigation of her own.
21. In assessing culpability, the Tribunal found that the motivation was personal financial gain. The offences were premeditated and deliberate. Ms Stevens had complete culpability for these matters, as reflected in her convictions.
22. In assessing the harm caused, there was obvious harm caused to the profession by a solicitor committing criminal offences, particularly when it was for financial gain. In this case, there had been loss caused to the Harvester restaurant and to the delivery driver from the Essex Grill who effectively had to pay for Ms Stevens' meal.
23. The misconduct involved criminal offences of dishonesty. They were integral to the Allegations and as such did not count again as an aggravating factor but rather were reflected in the overall seriousness.
24. Ms Stevens committed two criminal offences almost a year apart. The Tribunal was not dealing with an isolated incident, and it noted that Ms Stevens had told her former employer of the First Offence in December 2020, only a few weeks before she committed the Second Offence.
25. There was an element of attempted concealment by Ms Stevens when committing the offences, namely shutting the front door when the delivery driver was trying to check whether she had indeed paid and by evading the numerous attempts by the Harvester to recover the monies.
26. Partly as a result of her area of practice, Ms Stevens would have known that she was in material breach of her professional obligations.
27. There were no mitigating factors that the Tribunal could identify.
28. The Tribunal found that making 'no order' or imposing a reprimand or fine was insufficient to reflect the seriousness of the misconduct, which required a greater sanction. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off and the Tribunal had regard to Solicitors Regulation Authority v Sharma [2010] EWHC 2022. 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 ...".
29. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis on 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.”

30. The Tribunal identified no exceptional circumstances in this case and the only appropriate sanction was that Ms Stevens be struck off the Roll.

Costs

31. Mr Bold applied for an order for costs in the sum of £4,489. The Tribunal reviewed the costs schedule provided and was satisfied that the costs claimed were reasonable and proportionate. Ms Stevens had not provided a statement of means and so there was no basis to reduce the costs. The Tribunal therefore made an order for costs in the sum claimed.

Statement of Full Order

32. The Tribunal ORDERED that the Respondent, KERRY ANN STEVENS, 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 sum of £4,489.00.

Dated this 15th day of April 2024
On behalf of the Tribunal

A E Banks

A E Banks
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
15 APRIL 2024