

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12601-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MARTIN SMITH

Respondent

Before:

Mr G Sydenham (in the chair)

Mrs A Sprawson

Ms L Hawkins

Date of Hearing: 20 November 2024

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

The allegations against the Respondent, Martin Smith, made by the SRA are that, whilst in practice as a Solicitor at Simons Muirhead Burton (“the Firm”) he:

1. Failed to serve a Counternotice by the statutory deadline for service of 4 January 2023, thus impacting Clients A and B’s negotiating position. In doing so, it was alleged that the Respondent has breached any or all of Principle 7 of the SRA’s Principles 2019 (“the Principles”) and paragraph 3.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs (“the Code”)
2. On 6 January 2023 created a letter, and statutory Counternotice, falsely dated 3 January 2023. In doing so, it was alleged that the Respondent has breached any or all of Principles 2, 4 and 5 of the Principles and paragraph 1.4 of the Code.
3. On 6 January 2023 sent or caused to be sent to DKLM the letter and Counternotice falsely dated 3 January 2023. In doing so, it was alleged that the Respondent has breached any or all of Principles 2, 4 and 5 of the Principles and paragraph 1.4 of the Code.
4. On 11 January 2023, he sent an email to DKLM which was misleading and which he knew or ought to have known was misleading as to the date the letter and Counternotice, falsely dated 3 January 2023, were posted. In doing so, it was alleged that the Respondent has breached any or all of Principles 2, 4 and 5 of the Principles and paragraph 1.4 of the Code.

Documents

5. The Tribunal had before it the following documents:-
 - The Form of Application dated 13 April 2024
 - Rule 12 Statement dated 13 May 2024
 - Statement of Agreed Facts and Proposed Outcome signed by the Respondent on 15 November 2024 and by the Applicant on 18 November 2024

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

6. The parties invited the Tribunal to deal with the Allegations against the Respondent 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.
7. The Respondent admitted all Allegations (1 to 4) and all associated breaches of the Principles and Code of Conduct and Rules.

Factual Background

8. The Respondent was admitted as a solicitor on 15 November 1986. He was a Partner at the Firm, within the Property Department, from April 2019 until 31 March 2023. The

Respondent does not currently hold a practising certificate and is not currently employed as a solicitor.

Findings of Fact and Law

9. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
10. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.

Sanction

11. The Tribunal considered the Guidance Note on Sanction (10th Edition/June 2022). The Tribunal's principal objective when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, the Tribunal's role was to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances. In determining the seriousness of the misconduct, the Tribunal was to consider the Respondent's culpability and harm identified together with the aggravating and mitigating factors that existed.
12. The Respondent on his own admission, accepted the allegations made against him which included dishonesty and a lack of integrity.
13. Given the seriousness of the misconduct the Tribunal considered that a Reprimand, Fine, Restriction Order or Suspension would not be adequate sanctions. The Tribunal found that given the admission of dishonesty and in the absence of exceptional circumstances, it had no alternative but to strike the Respondent off the Roll of solicitors.
14. Whilst it is no doubt a serious matter to miss an important deadline, solicitors who find themselves in such a situation will always increase the level of seriousness by choosing to hide the mistake or oversight through acts of dishonesty.

Costs

15. The parties agreed that the Respondent should pay costs in the sum of £10,000. The Tribunal determined that the agreed amount was reasonable and appropriate. Accordingly, the Tribunal ordered that the Respondent pay costs in the agreed sum.

Statement of Full Order

16. The Tribunal ORDERED that the Respondent, Martin Smith, 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 £10,000.00.

Dated this 6th day of December 2024
On behalf of the Tribunal

G. Sydenham

G Sydenham
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
6 DEC 2024

CASE NO: 12601-2024

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

- and -

MARTIN SMITH

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 13 May 2024, and the statement made pursuant 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 four allegations of misconduct against Mr Martin Smith ("**the Respondent**").

The Allegations

2. The allegations against the Respondent, made by the SRA within that statement, are that:

Allegation 1

Failed to serve a Counternotice by the statutory deadline for service of 4 January 2023, thus impacting Clients A and B's negotiating position.

In doing so, it was alleged that the Respondent has breached any or all of Principle 7 of the SRA's Principles 2019 ("**the Principles**") and paragraph 3.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs ("**the Code**").

Allegation 2

On 6 January 2023 created a letter, and statutory Counternotice, falsely dated 3 January 2023.

In doing so, it was alleged that the Respondent has breached any or all of Principles 2, 4 and 5 of the Principles and paragraph 1.4 of the Code.

Allegation 3

On 6 January 2023 sent or caused to be sent to DKLM the letter and Counternotice falsely dated 3 January 2023.

In doing so, it was alleged that the Respondent has breached any or all of Principles 2, 4 and 5 of the Principles and paragraph 1.4 of the Code.

Allegation 4

On 11 January 2023, he sent an email to DKLM which was misleading and which he knew or ought to have known was misleading as to the date the letter and Counternotice, falsely dated 3 January 2023, were posted.

In doing so, it was alleged that the Respondent has breached any or all of Principles 2, 4 and 5 of the Principles and paragraph 1.4 of the Code.

3. The Respondent admits all of these allegations.

Agreed Facts

4. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraph 2 of this statement, are agreed between the SRA and the Respondent.
5. References to certain individuals and entities have been anonymised as per the attached schedule.

Allegation 1

6. In October 2022, the Respondent was instructed by Clients A and B to respond to a

statutory notice ('the Notice'), which had been served by a tenant, in respect of a property that Clients A and B were landlords of ('the Property'). The Notice was served in order for the tenant to obtain a new lease for the Property, and they offered £40,300 to do so.

7. The tenant was legally represented by DKLM Solicitors ('DKLM'). Client A and B's response, by way of a Counternotice, had to be served on DKLM by 4 January 2023.
8. On 11 November 2022, the Respondent instructed a surveyor to provide a valuation report on the Property, following an inspection, which the surveyor conducted on 10 December 2022.
9. The surveyor provided two versions of his valuation report directly to Client A on 28 December 2022 and 29 December 2022. The second version fundamentally mirrored the first version, but with some typographical error having been corrected, and determined that an appropriate premium for the extension of the lease of the Property would be £66,000.
10. Both versions of the valuation report were copied to the Respondent, who was on leave from 23 December 2022 to 4 January 2023 inclusive.
11. The Respondent did not serve the Counternotice by the statutory deadline of 4 January 2023.
12. The Respondent accepts he was aware of the need to serve the Counternotice by 4 January 2023 but failed to do so. He did not inform Clients A and B of this failure, which impacted on their negotiating position and led to a professional negligence claim being made against the Respondent's firm.
13. The Respondent accepts that:
 - 13.1. He was instructed by Clients A and B to respond to the Notice, by serving a Counternotice by 4 January 2023;
 - 13.2. He did not serve the Counternotice by that statutory deadline, and as such the service he provided to Clients A and B was not competent, nor delivered in a timely manner;
 - 13.3. In doing so, he did not act in the best interests of each client, especially in circumstances when he allowed the clients to enter into negotiations with the

tenant, on the assumption that the Counternotice had been served by the statutory deadline;

- 13.4. By his conduct, the Respondent has breached Principle 7 of the Principles, and Paragraph 3.2 of the Code.

Allegations 2 and 3

14. The Respondent returned to work, from his leave, on 5 January 2023.
15. On 6 January 2023 at 05:13, DKLM sent an email to the Respondent, stating that the deadline for the Counternotice had passed and no Counternotice had been received by DKLM.
16. By email of 6 January 2023 at 16:17, the Respondent sent an email to DKLM, which stated:

"Dear Agnieszka

Thank you for your message. I attach a copy of our letter and counter notice sent to you by first class post which you should have received".

Kind regards"

17. Attached to the email was a piece of correspondence and a Counternotice. The correspondence and Counternotice were both dated 3 January 2023, but were created on 6 January 2023 and backdated by the Respondent to the earlier date to purportedly appear served by the statutory deadline of 4 January 2023.

18. The Respondent accepts that:

- 18.1. He falsely represented that the correspondence and Counternotice were created on 3 January 2023 but he, in fact, created them on 6 January 2023;
- 18.2. When he communicated with DKLM on 6 January 2023, and attached the letter and Counternotice dated 3 January 2023, the Respondent knew that he had not created the documents on the date purported, and what he told DKLM was false and misleading;
- 18.3. DKLM could have relied on the Respondent's assertion that the Counternotice had

been served by the statutory deadline, which would have been to the detriment of DKLM's client;

- 18.4. The Respondent did not inform his clients, nor his firm, of the failure to serve the Counternotice by the statutory deadline;
19. By his conduct, the Respondent admits that he breached Principles 2, 4 and 5 of the Principles and paragraph 1.4 of the Code.

Allegation 4

20. The Respondent posted, or caused to be posted, the correspondence falsely dated 3 January 2023, which included the Counternotice also falsely dated 3 January 2023.
21. The hardcopy correspondence was received by DKLM on 9 January 2023. On 10 January 2023, DKLM sent an email to the Respondent asking for evidence of service of the Counternotice by the statutory deadline.
22. By way of reply, the Respondent emailed DKLM on the same date, stating:

"Dear Agnieszka

The letter was posted in the letter box practically outside our office the last collection from which is at 6.30pm daily. It was consigned by first class post and as such is deemed delivered the following day".

23. The Respondent accepts that:

- 23.1. The letter he was referring to within the email was the letter falsely dated 3 January 2023;
- 23.2. He had only posted, or caused to be posted, the letter on or after its creation on 6 January 2023;
- 23.3. The Counternotice, which was enclosed with the correspondence, could not have been properly deemed delivered on the following day, i.e. 4 January 2023, as it was not created until 6 January 2023;
- 23.4. He sent the email to DKLM with the intention that DKLM would be misled as to

when the correspondence and Counternotice were created and posted, and consequently when DKLM may deem them served.

24. By his conduct, the Respondent admits that he breached Principles 2, 4 and 5 of the Principles and paragraph 1.4 of the Code.

Penalty proposed

25. It is therefore proposed that the Respondent should be struck off the Roll of Solicitors.
26. 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 £10,000. The SRA is satisfied that this is a reasonable and proportionate contribution by the Respondent in all the circumstances.

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

27. The Respondent has admitted dishonesty.
28. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (10th edition), at paragraph 47, states that:

"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))."

29. In *Sharma* (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..."

30. With reference to allegation 2 to 3, these were serious acts of dishonesty involving the creation of documents, with false dates included, to purportedly comply with a statutory deadline.
31. In respect of allegation 4, the Respondent's dishonest conduct continued, some days later, by way of the misleading representations made to DKLM as to the mechanics as to when the letter, falsely dated 3 January 2023, had been posted.
32. For these reasons, the case plainly does not fall within the small residual category where striking off would be a disproportionate sentence.
33. Accordingly, the fair and proportionate penalty in this case is for the Respondent to be struck off the Roll of Solicitors.

Dated:

18 November
2024

For and on behalf of the SRA

(Legal Representative)

Dated:

15 November
XX 2024

Martin Smith

Respondent in these proceedings