

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12675-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

SUSAN WHITEHEAD

Respondent

Before:

Ms A Banks (in the chair)

Mr C J Cowx

Mr R Slack

Date of Hearing: 24 January 2025

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against Ms Whitehead made by the Solicitor’s Regulation Authority Ltd (“SRA”) were that, whilst in practice as a Solicitor and Partner at Ferguson Bricknell Solicitors (“the Firm”) :
 - 1.1 On or around 5 August 2021, she caused or allowed a Lasting Power of Attorney (“the LPA”) containing her client’s, the attorney’s, and her signature to be filed with the Office of the Public Guardian (“the OPG”) indicating that her client (“Client A”) and attorney had signed the LPA, and that she had acted as certificate provider, on 9 July 2021 when she knew or ought to have known that such an indication was misleading and thereby breached any or all of Principles 2, 4 and 5 of the SRA Principles (“the Principles”) and Paragraph 1.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs (“the Code for Solicitors”).
 - 1.2 On 7 March 2022, when asked for her name when asking for confidential information regarding Client A, she gave Person W’s name when she knew, or ought to have known, that providing the name was misleading and thereby breached any or all of Principles 2, 4 and 5 of the Principles and Paragraph 1.4 of the Code for Solicitors.
2. Ms Whitehead admitted the allegations.

Documents

3. The Tribunal had before it the following documents:-
 - Rule 12 Statement and Exhibit JD1
 - Respondent’s Answer
 - Statement of Agreed Facts and Proposed Outcome signed by the Applicant and the Respondent

Background

4. Ms Whitehead, who was born in 1949, was a solicitor having been admitted to the Roll in March 1974. As at 3 September 2024, Ms Whitehead held an unconditional practising certificate and was a partner at the Firm.

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

5. The parties invited the Tribunal to deal with the Allegations against Ms Whitehead in accordance with the Statement of Agreed Facts and Proposed 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

6. 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 Ms Whitehead’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.

7. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Ms Whitehead's admissions were properly made.
8. The Tribunal considered the Guidance Note on Sanction (10th Edition – June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. Ms Whitehead had admitted that her conduct had been dishonest. She had instructed the parties not to date the LPA and had inserted dates for the signatures which she knew to be inaccurate. Further, she had called the hospital and provided false information in order to obtain confidential medical information. The Tribunal found that given her admissions, the only appropriate and proportionate sanction was to strike Ms Whitehead off the Roll. The parties had agreed that this was the appropriate sanction. Accordingly, the Tribunal approved the application for the matter to be dealt with by way of the Agreed Outcome.

Costs

9. The parties had agreed costs in the sum of £20,000. The Tribunal considered the amount agreed to be reasonable and accordingly ordered Ms Whitehead to pay costs in the agreed sum.

Statement of Full Order

10. The Tribunal ORDERED that the Respondent, SUSAN WHITEHEAD, 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 £20,000.00.

Dated this 12th day of February 2025

On behalf of the Tribunal

A. Banks

Ms A Banks
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
12 FEBRUARY 2025

CASE NO: 12675-2024

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 -

SUSAN WHITEHEAD

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 2 September 2024, and the statement made pursuant Rule 12(2) of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority Limited ("**the SRA**") brought proceedings before the Solicitors Disciplinary Tribunal, making two allegations of misconduct against Susan Whitehead ("**the Respondent**").

The Allegations

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

Allegation 1

On or around 5 August 2021, she caused or allowed a Lasting Power of Attorney ("the LPA") containing her client's, the attorney's, and her signature to be filed with the Office of the Public Guardian ("the OPG") indicating that her client ("Client A") and attorney had signed the LPA, and that she had acted as certificate provider, on 9 July 2021 when she knew or ought to have known that such an indication was misleading.

In doing so, it was alleged that the Respondent has breached any or all of Principles 2, 4 and 5 of the SRA's Principles 2019 ("**the Principles**") and paragraph 1.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs ("**the Code**").

Allegation 2

On 7 March 2022, when asked for her name when asking for confidential information regarding Client A, she gave Person W's name when she knew, or ought to have known, that providing the name was misleading.

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 both 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. The Respondent acted for Client A on a number of legal matters from 1982, until Client A's death in March 2022. During that time, a relationship between Client A and the Respondent had developed.
7. In April 2021, Client A suffered a stroke, which led to a cognitive decline and his ability to read being impacted. In May 2021, Client A's cognitive ability was assessed and he was determined to be suffering from a '*significant deficit*'. His GP also diagnosed a significant impairment in Client A's visuospatial awareness, and executive functioning, which the Respondent was aware of as she attended with Client A at the GP appointment.
8. On 9 July 2021, a GP attended on Client A at his house, due to a decline with Client A's health caused by vascular dementia. The Respondent was not present.

9. Client A was admitted to hospital on 10 July 2021, due to his ongoing illness. On 15 July 2021, Client A and the Respondent exchanged emails in respect of a Lasting Power of Attorney ('LPA') being prepared on Client A's behalf by the Respondent.
10. The Respondent prepared the LPA for Client A, and provided the document to the appropriate parties but asked them to not date the LPA.
11. The Respondent signed the LPA in the capacity of being a 'certificate provider', and submitted the LPA to the Office of the Public Guardian ('OPG'). She included the date of 9 July 2021, the day before Client A was admitted to hospital, as being the date as to when all signatures were put to the LPA.
12. The Respondent accepts that:
 - 12.1. Client A had asked her to prepare an LPA on 15 July 2021;
 - 12.2. Client A had signed the LPA on 17 July 2021;
 - 12.3. The Respondent had instructed the parties to not date the LPA;
 - 12.4. The LPA states that the dates to be included underneath the signatures is when they are made on the document;
 - 12.5. The order in which the signatures were put to the LPA should be evidenced by the dates given for when the signatures were made;
 - 12.6. To protect the interests of the donor, the signing of the LPA has to be undertaken in a strict order of donor, certificate provider and then attorney;
 - 12.7. That the date of 9 July 2021 included on the LPA by the Respondent as to when all signatures were made was not accurate, and she was aware that the date was not accurate;
 - 12.8. That the OPG would be under the impression that all signatures were made on the LPA on 9 July 2021, rather than on different dates;
 - 12.9. There was a restriction on her acting as the certificate provider, due to her relationship with Client A;
 - 12.10. She was aware that Client A's cognitive function, at the relevant time, was impacted and he may not have been able to understand what he was signing.
13. By her conduct, the Respondent admits that she breached Principles 2, 4 and 5 of the Principles and paragraph 1.4 of the Code.

Allegation 2

14. In late February 2022, Client A was readmitted to hospital. Due to concerns of the family of Client A regarding the Respondent, in order for any medical information for Client A to be provided to a caller to the hospital, the caller had to provide a password.

15. The Respondent accepts that:

15.1. On 7 March 2022, she telephoned the hospital but could not provide the necessary password in order to obtain the confidential medical information;

15.2. When asked for her name, she gave the name of a long standing female friend of Client A, whom the Respondent thought Client A's family would be content to be given the information;

15.3. She gave this name in order to avoid Client A's children being aware that she had telephoned the hospital.

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

Penalty proposed

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

18. 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 £20,000. 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

19. The Respondent has admitted dishonesty.

20. 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))."

21. 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...”

22. With reference to allegation 1, the Respondent admits that she knowingly included an incorrect date on a legal document that, if successfully registered with the OPG, would allow for the transfer of legal power away from the donor.

23. In respect of allegation 2, the Respondent knowingly provided a misleading name in order to avoid it being known that she had attempted obtain confidential medical information, which she knew Client A's family did not want her to have. The name provided was of a person that the Respondent knew to be trusted by Client A's family, at a time just before Client A's death.

24. For these reasons, the case plainly does not fall within the small residual category where striking off would be a disproportionate sentence.

25. Accordingly, the fair and proportionate penalty in this case is for the Respondent to be struck off the Roll of Solicitors and to pay the SRA's costs agreed in the sum of £20,000.

Dated: 23 .01. 2025

For and on behalf of the SRA

Dated: 15 . 1 . 2025

Susan Whitehead

Respondent in these proceedings