

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12201-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

ANDREW EASTHAM

Respondent

Before:

Mrs C Evans (in the chair)

Mr P Jones

Mrs C Valentine

Date of Hearing: 3 August 2021

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The Allegations against the Respondent were that:
 - 1.1 between August 2014 and August 2015, he abused his position as the executor of Client A's estate by fraudulently misappropriating approximately £274,462.63 from Client A's estate.

He thereby breached either or both of:

- 1.1.1 Principle 2 of the SRA Principles 2011
- 1.1.2 Principle 6 of the SRA Principles 2011

- 1.2 In addition, Allegation 1.1 was advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the allegation.

Documents

2. The Tribunal had before it the following documents:-

Background

3. The Respondent was admitted to the Roll of Solicitors on 15 January 1980 and his SRA ID number was: 119504. At the material time, the Respondent was on the Roll of Solicitors but was not practising as a solicitor and did not hold a Practising Certificate. At the time of the hearing the Respondent remains on the Roll of Solicitors and still did not hold a current Practising Certificate.
4. The Respondent pleaded guilty to the offence of fraud by abuse of position contrary to Section 4 of the Fraud Act 2006 at Wolverhampton Crown Court on 11 October 2017. On 5 October 2018, the Respondent was sentenced to 32 months imprisonment and, on 26 July 2019, the Respondent was made subject to a confiscation order under the Proceeds of Crime Act 2002.
5. The Applicant relied on the Respondent's conviction as evidence that the Respondent was guilty of that offence, and relied upon the findings of fact upon which that conviction was based as proof of those facts.

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.

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 the Respondent's rights to a fair trial and to respect for his 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 the Respondent's admissions were properly made.
9. The Tribunal considered the Guidance Note on Sanction (8th Edition, December 2020). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed, noting that the Respondent did not advance any mitigation in these proceedings.
10. The Tribunal was entirely satisfied that no sanction other than a strike-off was appropriate to ensure the protection of the public and the profession. The Respondent had pleaded guilty to a serious offence of fraud by abuse of position in the course of his work as a solicitor. The severity of the Respondent's conduct was reflected in the term of imprisonment he had received at the Crown Court. The Tribunal did not identify any exceptional circumstances and it therefore approved the Statement of Agreed Fact and Outcome and made an Order in those terms.

Costs

11. The parties had agreed that the Respondent would pay the Applicant's costs in the sum of £2,355.00 and the Tribunal was content to make a further Order in those terms.

Statement of Full Order

12. The Tribunal Ordered that the Respondent, Andrew Eastham, 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 £2,355.00.

Dated this 26th day of August 2021
On behalf of the Tribunal



C Evans
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
26 AUG 2021

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

ANDREW EASTHAM

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 5 May 2021, and the statement made pursuant to 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 Andrew Eastham.

The allegations

2. The allegations against Andrew Eastham, made by the SRA within that statement were that: -

Allegation 1.1.

- 2.1. between August 2014 and August 2015, he abused his position as the executor of Client A's estate by fraudulently misappropriating approximately £274,462.63 from Client A's estate. He thereby breached either or both of:

- 2.1.1. Principle 2 of the SRA Principles 2011
- 2.1.2. Principle 6 of the SRA Principles 2011

The Applicant relies on Mr Eastham's conviction for fraud by abuse of position, dated 11 October 2017, as evidence that Mr Eastham was guilty of that offence, and relies upon the findings of fact upon which that conviction was based as proof of those facts.

Allegation 1.2

2.2. In addition, allegation 1.1 is advanced on the basis that Mr Eastham's conduct was dishonest. Dishonesty is alleged as an aggravating feature of Mr Eastham's misconduct but is not an essential ingredient in proving the allegation.

3 Mr Eastham admits each of these allegations. He also admits that his conduct in acting as alleged was dishonest.

Agreed Facts

4 The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraphs 2 of this statement, are agreed between the SRA and Mr Eastham

Professional Details

5 Mr Eastham, who was born on [REDACTED], is a solicitor having been admitted to the Roll of Solicitors on 15 January 1980. His SRA ID number is: 119504.

6 At the material time, Mr Eastham was on the Roll of Solicitors but was not practising as a solicitor and did not hold a Practising Certificate. Mr Eastham remains on the Roll of Solicitors. He does not hold a current Practising Certificate.

Background

7 The conduct in this matter came to the attention of the SRA on around 2 January 2019 when the SRA's External Communications team identified an online news report dated 18 October 2018 about Mr Eastham's conviction for fraud by abuse of position on 11 October 2017.

- 8 In the early 1990s, Mr Eastham's client ("Client A") executed his Will ("the Will") naming his son as his primary beneficiary ("the Primary Beneficiary") and his niece as a contingent beneficiary ("the Beneficiary"). The Will named Mr Eastham and a second executor as executors. At the time Client A executed the Will, Mr Eastham and the second executor practised at the same firm of solicitors.
- 9 Client A died on 10 May 2014. At the time of Client A's death, the Primary Beneficiary and the second executor had died. Therefore, the Beneficiary was due to inherit the whole of Client A's estate, and Mr Eastham was the sole executor of the Will. Mr Eastham was no longer practising as a solicitor and did not hold a Practising Certificate.
- 10 On 20 August 2014, Mr Eastham obtained the Grant of Probate. Subsequently, Mr Eastham arranged for the funds from Client A's estate to be transferred into his personal bank account, and:
 - 10.1 on 27 August 2014, £253,603.54 was transferred into Mr Eastham's personal bank account by Banks Carrington & Co. Banks Carrington & Co was holding the funds on behalf of Client A and was using them to pay his nursing home fees;
 - 10.2 on 3 September 2014, £9,868.25 was transferred into Mr Eastham's personal bank account by Halifax, to settle an account that Client A had;
 - 10.3 on 15 September 2014, £1,143.30 was transferred into Mr Eastham's personal bank account by Natwest, to settle an account that Client A had;
 - 10.4 on 2 September 2014, £10,937.00 was transferred to Mr Eastham's personal bank account by the Post Office, to settle an account that Client A had; and
 - 10.5 £11,373.00 was transferred into Mr Eastham's personal bank account by St Andrews Life, to settle an account that Client A had.
- 11 On 18 December 2014, Mr Eastham made a payment of £7,500.00 to the Beneficiary.

Police Investigation

- 12 In April 2015, the Beneficiary reported the matter to West Midlands Police ("the Police") as Mr Eastham had stopped communicating with her. The Police identified that, between August 2014 and August 2015, Mr Eastham had received a total of £286,962.63 for Client A's estate. Apart from the single payment of £7,500.00 made to the Beneficiary in December 2014, Mr Eastham had misappropriated the remainder of Client A's estate, totalling £279,462.63.

13 The Police identified that, between August 2014 and August 2015, despite having no source of income other than £93,624.16 he had received in pension fund payments, Mr Eastham had:

- 13.1 transferred £149,062.34 from his personal bank account to bank accounts which were controlled by his former wife;
- 13.2 withdrawn £120,305.00 from his personal bank account through counter cash withdrawals;
- 13.3 made six payments to three different debt companies totalling £4,821.50; and
- 13.4 spent over £55,000.00 leading what the Police describe as an “excessive lifestyle”.

14 Mr Eastham was interviewed by the Police on 8 December 2016. During the interview:

- 14.1 Mr Eastham admitted that he had misappropriated all of the funds from Client A’s estate for his own benefit and for the benefit of his former wife (with the exception of the £7,500.00 that he had transferred to the Beneficiary). Mr Eastham claimed that he had not intended to permanently deprive the Beneficiary of these funds. He claimed that he had loaned approximately £260,000.00 of the funds to his former wife and had intended to distribute the money to the Beneficiary when his former wife paid him back. However, she did not pay Mr Eastham back.
- 14.2 The police officer who conducted the interview asked Mr Eastham whether he questioned whether it was legal for him to loan money from Client A’s estate to his former wife. In response, Mr Eastham admitted that he knew that it was improper for him to do so.
- 14.3 Mr Eastham told the Police that, as executor, he would have been entitled to charge approximately £5,000.00 for the work that he did. Therefore, the Police estimated that the total loss to the Beneficiary was approximately £274,462.63.

Conviction and Sentencing

15 Following the Police’s investigation into the matter, Mr Eastham pleaded guilty to and was convicted of the offence of fraud by abuse of position contrary to Section 4 of the Fraud Act 2006 at Wolverhampton Crown Court on 11 October 2017. Subsequently, on 5 October 2018, Mr Eastham was sentenced to 32 months imprisonment and, on 26 July 2019, Mr Eastham was made subject to a confiscation order under the Proceeds of Crime Act 2002.

16 At the sentencing hearing on 5 October 2018, the Judge made the following remarks:

- 16.1 "At the time that [Client A] made his will in 1990 you were a solicitor, a professional. You accepted appointment as executor of his will knowing exactly what your duties were in that role ... upon his death you determined to maintain your position as executor. In that role you requested transfer of what was, in fact the whole of the estate into your account for what should, had you been acting honestly, been the simple and straightforward task in an estate of that size below the level at which duties were payable, of passing the whole sum to the single beneficiary. You did not do that."
- 16.2 "You made one single payment of £7,500 to the lawful beneficiary of the estate. All remaining monies were dealt with dishonestly to the benefit of you and your ex-wife; nothing was left. [The Beneficiary] had been concerned about you acting as executor ... but by letter and a visit you re-assured her. She trusted you. You abused that trust and she has gone on to lose almost the whole of the monies to which she was due from her uncle."
- 16.3 "It is accepted that your culpability is high because of the position you occupied from the outset as a professional executor."
- 16.4 "The impact upon your victim over the time that she was trying to obtain the monies that were hers, the worries that she has had and the consequences for her of not receiving that money and worrying about them are such that the seriousness of the offence rises and so the starting point would have risen but for those factors that reduce the seriousness of your offence."
- 16.5 In respect of factors reducing the seriousness of the offence, the Judge referenced "your lack of any previous convictions; your obvious remorse by co-operating fully in the investigation and explaining what has happened. I take into account that there was limited prospect of success in this case."
- 16.6 "There is a further reduction to be applied because you went further than simply co-operating with the investigation and making early admissions; you went on to make a statement which would have been used in the prosecution of your co-accused."
- 16.7 "You pleaded guilty at the very first opportunity and so you are entitled within the guidelines for the full discount for a guilty plea of one-third."

Non-Agreed Mitigation

17 Mr Eastham does not wish to put forward any mitigation.

Penalty proposed

- 18 It is therefore proposed that Mr Eastham should be struck off the Roll of Solicitors.
- 19 With respect to costs, it is further agreed that Mr Eastham should pay the SRA's costs of this matter agreed in the sum of £2,355.00.

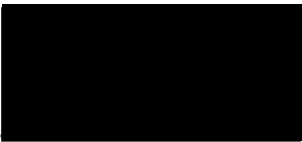
Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance

- 20 Mr Eastham has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (5th 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 [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..."*
- 22 Mr Eastham's dishonesty involved abusing his position as executor of Client A's estate, which he obtained through his status as a solicitor. The dishonesty persisted over a sustained period of time. His conduct enabled Mr Eastham to misappropriate a significant sum of money to which he knew he was not entitled. Mr Eastham's conduct therefore involved serious acts of dishonesty committed over an extended period which

benefitted Mr Eastham to the detriment of the Beneficiary. As a consequence of Mr Eastham pleading and being found guilty of fraud by abuse of position, he was sentenced to 32 months imprisonment. This sentence highlight the seriousness of Mr Eastham's conduct.

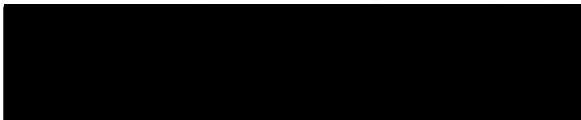
23 Given the serious nature of the dishonesty, the case plainly does not fall within the small residual category where striking off would be a disproportionate sentence. Accordingly, the fair and proportionate penalty in this case is for Mr Eastham to be struck off the Roll of Solicitors.

24 The seriousness of Mr Eastham's conduct was such that a lesser sanction would be inappropriate, and a strike off is required for the protection of the public and the reputation of the legal profession.

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Head of Legal and Enforcement, upon behalf of the SRA

Date: 2021



Andrew Eastham

Date: 29th July 2021