

Stuart Nash

Solicitor

529795

Agreement Date: 30 March 2023

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 30 March 2023

Published date: 17 May 2023

Firm details

Firm or organisation at date of publication and at time of matters giving rise to outcome

Name: Ferbrache & Farrell LLP

Address(es): Somers House, Rue du Pre, St Peter Port, Guernsey, GY1 1LU

Firm ID: 635460

Outcome details

This outcome was reached by agreement.

Decision details

1. Agreed outcome

1.1 Mr Stuart Nash, a solicitor of Ferbrache & Farrell LLP, agrees to the following outcome to the investigation of his conduct by the Solicitors Regulation Authority (SRA):

- a. he is fined £1,600
- b. to the publication of this agreement
- c. he will pay the costs of the investigation of £300.

2. Summary of Facts

2.1 On 21 May 2022, Mr Nash was arrested at the roadside by Guernsey Police, on suspicion of driving whilst under the influence of alcohol. Mr Nash provided a sample of breath at the roadside.



2.2 At the police station, Mr Nash was asked to provide two additional evidential samples of breath on the Home Office approved device. Mr Nash refused to provide a specimen of breath stating that he wanted to speak with his own lawyer who was not on the on-call rota.

2.3 Mr Nash was charged with failing to provide a breath specimen when requested by the police contrary to section 3(9) of Section 2 of the Road Traffic (Drink Driving) (Guernsey Law 1989).

2.4 On 13 June 2022, Mr Nash appeared at Guernsey Magistrates Court and pleaded guilty to the above offence.

2.5 Mr Nash received the following sentence:

- a. he was ordered to pay a fine of £850 or undergo 42 days imprisonment in default of payment
- b. he was disqualified from driving for a period of three years.

2.6 Mr Nash notified the SRA promptly of the charge on 24 May 2022 and of his subsequent conviction.

2.7 Guernsey is a distinct jurisdiction to England and Wales. Under Guernsey legislation, the present practice for an offence for failure to provide a sample of breath is to impose a fine of £500 and a suspension of license for three years.

3. Admissions

3.1 Mr Nash makes the following admissions which the SRA accepts, that by virtue of his conduct and conviction for failing to provide a specimen of breath, he:

- a. failed to uphold the constitutional principle rule of law, and the proper administration of justice in breach of Principle 1 of the SRA Principles 2019
- b. failed to behave in a way which maintains the public trust and confidence in the solicitor's profession, in breach of Principle 2 of the SRA Principles 2019

4. Why a fine is an appropriate outcome

4.1 The SRA's Enforcement Strategy sets out its approach to the use of its enforcement powers where there has been a failure to meet its standards or requirements.

4.2 When considering the appropriate sanctions and controls in this matter, the SRA has taken into account the admissions made by Mr Nash and the following mitigation which he has put forward:

- a. this was an isolated incident
- b. he pleaded guilty at the earliest opportunity and paid the fine of £850 immediately on the day of sentencing
- c. he promptly reported to the SRA that he had been charged and convicted
- d. he has co-operated with the SRA investigation
- e. there was no harm caused to persons or property of others
- f. he has expressed regret for his actions and shown insight and remorse in respect of his conduct

4.3 The SRA considers that a fine is the appropriate outcome because:

- a. Mr Nash was directly responsible for his actions
- b. A fine will act as a credible deterrence to Mr Nash and others in the wider profession from similar behaviour in the future.

4.4 A fine is appropriate to uphold public confidence in the solicitors' profession and in legal services provided by authorised persons. This is because the public would expect a solicitor, as an officer of the court, to comply with a request for a specimen of breath, in order to assist in the proper administration of the criminal justice system. If a solicitor fails to do this, they risk undermining the trust the public places in the profession. A financial penalty therefore meets the requirements of rule 4.1 of the Regulatory and Disciplinary Procedure Rules.

5. Amount of the fine

5.1 The amount of the fine has been calculated in line with the SRA's published guidance on its approach to setting an appropriate financial penalty (the Guidance).

5.2 Having regard to the Guidance, the SRA and Mr Nash agree that the nature of the misconduct was low because the conduct did not form part of a pattern of misconduct, and he has co-operated with the investigation. The Guidance gives this type of misconduct a score of one.

5.3 The SRA considers that the impact of the misconduct was medium because conduct by a solicitor which impedes the proper administration of justice has the potential to cause moderate harm to the reputation of the profession. The Guidance gives this level of impact a score of four.

5.4 The nature and impact scores add up to five. The Guidance indicates a broad penalty bracket of £1,001 to £5,000 is appropriate.

5.5 In deciding the level of fine within this bracket, the SRA has considered the mitigation at paragraph 4.2 above which Mr Nash has put forward:

5.6 On this basis, the SRA considers that because this was an isolated incident and there is no pattern of behaviour, a fine at the lower end of the bracket is appropriate. The SRA considers a basic penalty of £2,000 to be appropriate.

5.7 The SRA considers that the basic penalty should be reduced to £1,600. This reduction reflects Mr Nash's admissions as to his conduct.

6. Publication

6.1 The SRA considers it appropriate that this agreement is published in the interests of transparency in the regulatory and disciplinary process. Mr Nash agrees to the publication of this agreement.

7. Acting in a way which is inconsistent with this agreement

7.1 Mr Nash agrees that he will not deny the admissions made in this agreement or act in any way which is inconsistent with it.

7.2 If Mr Nash denies the admissions or acts in a way which is inconsistent with this agreement, the conduct which is subject to this agreement may be considered further by the SRA. That may result in a disciplinary outcome or a referral to the Solicitors Disciplinary Tribunal on the original facts and allegations.

7.3 Denying the admissions made or acting in a way which is inconsistent with this agreement may also constitute a separate breach of principles 2 and 5 of the Principles and paragraph 7.3 of the Code of Conduct for Solicitors, RELs and RFLs.

8. Costs

8.1 Mr Nash agrees to pay the costs of the SRA's investigation in the sum of £300. Such costs are due within 28 days of a statement of costs due being issued by the SRA.

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