

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Legal Services Commissioner v Greenhalgh* [2020]  
QCAT 349

PARTIES: **LEGAL SERVICES COMMISSIONER**  
(applicant)

v

**JOHN ANTHONY GREENHALGH**  
(respondent)

APPLICATION NO/S: OCR008-20

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 24 July 2020 (*ex tempore*)

HEARING DATE: 24 July 2020

HEARD AT: Brisbane

DECISION OF: Justice Daubney, President

Assisted by:

Mr Geoffrey Sinclair, Legal Panel Member  
Ms Julie Cork, Lay Panel Member

ORDERS: **Upon the respondent, John Anthony Greenhalgh, undertaking to the Tribunal that he will, over the next 12 months, perform not less than 30 hours pro bono legal work in a community legal centre, it is ordered that:**

- 1. In respect of Charge 1, there is a finding that the respondent engaged in unsatisfactory professional conduct.**
- 2. In respect of Charge 2, there is a finding that the respondent engaged in professional misconduct.**
- 3. The respondent shall pay the applicant's standard costs of and incidental to this discipline application, such costs to be assessed as if this were a matter before the Supreme Court of Queensland.**

CATCHWORDS: PROFESSIONS AND TRADES – LAWYERS – COMPLAINTS AND DISCIPLINE – PROFESSIONAL MISCONDUCT AND UNSATISFACTORY PROFESSIONAL CONDUCT – GENERALLY – where the respondent is charged with failing to make disclosure of costs, and acting otherwise than in the best interests of

his client – where the respondent’s firm acted for a beneficiary in relation to his deceased father’s estate – where there was a failure to disclose the matters required by s 308(1)(c) of the *Legal Profession Act 2007* (Qld) during the course of the retainer – where the firm took out an insurance policy over the life of the client as an indemnity for the client’s legal costs, and billed the client for the monthly premiums – where the client was not referred to seek independent legal advice regarding the policy and commitment to paying the premiums – where the respondent has accepted full responsibility for the conduct and failings underpinning the charges – where the respondent has expressed genuine remorse and demonstrated insight into his conduct – where the applicant and respondent agree on the characterisation of conduct for each charge – where the respondent has proffered an undertaking to the Tribunal to engage in pro bono legal work at a community legal centre – whether the imposition of a public reprimand and fine are necessary or warranted

*Legal Profession Act 2007* (Qld) s 308

*Legal Services Commissioner v Bentley* [2016] QCAT 185

*Legal Services Commissioner v Brown* [2018] QCAT 263

*Legal Services Commissioner v Challen* [2019] QCAT 273

#### APPEARANCES & REPRESENTATION:

Applicant:	D A Holliday, instructed by the Legal Services Commission
Respondent:	G J Barr, instructed by Greenhalgh Pickard Solicitors

#### REASONS FOR DECISION

- [1] By this discipline application under the *Legal Profession Act 2007* (Qld) (“LPA”), the applicant Legal Services Commissioner has brought two charges against the respondent, John Anthony Greenhalgh: Charge 1 is that of failing to make disclosure of costs; Charge 2 is that of acting otherwise than in the best interests of the client. The facts underlying each of the charges have been particularised in the discipline application.
- [2] The parties have filed a statement of agreed facts, which sets out the factual matrix within which the charges arise, and both parties accept that the Tribunal should proceed to determine the matter on the basis of that statement. It is sufficient, therefore, to refer to the statement of agreed facts for a recitation of the relevant background.
- [3] The respondent was born on 16 April 1967 and has been admitted to practice as a solicitor since November 1991. He has no adverse disciplinary history as a solicitor.

At the time of the impugned conduct, the respondent was the sole legal practitioner director of an incorporated legal practice, Legio Pty Ltd, trading as Greenhalgh Pickard Solicitors and Accountants, and the principal of Greenhalgh Pickard Solicitors and Accountants.

- [4] So far as Charge 1 is concerned – that, as the Tribunal has noted, is a charge of failing to make disclosure of costs – the charge arises in this way. On or about 13 July 2015, Greenhalgh Pickard started acting for a client, Mr Glenn Palethorpe. Mr Palethorpe was a beneficiary under the will of his late father. Mr Palethorpe’s interest in his late father’s estate was being administered by trustees appointed under the will. Greenhalgh Pickard entered into a client agreement with Mr Palethorpe on about 13 July 2015, and the retainer was described as the firm acting on Mr Palethorpe’s behalf in relation to the estate of the deceased father. On 17 July 2015, the client agreement of 13 July was replaced with an agreement on a deferred fee basis in accordance with a “Deferred Fee Schedule”.
- [5] On 14 August 2015, a further version of the client agreement between Greenhalgh Pickard and Mr Palethorpe was executed. On 17 July and 14 August 2015, the respondent signed the “Deferred Fee Schedule” forming part of the client agreement. However, it is clear, and an agreed fact, that the law practice did not disclose to Mr Palethorpe on 13 July, 17 July and 14 August 2015, or at any other time during the retainer, the matters required to be disclosed under s 308(1)(c) of the *LPA*. That subsection required provision by the firm to the client of:

An estimate of the total legal costs if reasonably practicable or, if that is not reasonably practicable, a range of estimates of the total legal costs and an explanation of the major variables that will affect the calculation of those costs ...

- [6] The firm’s retainer was terminated on 22 August 2017. During the period of the retainer, the firm rendered bills for legal services, totalling \$54,141.17.
- [7] During the currency of the retainer, the firm was provided with, and became aware of, the contents of a report by a consultant psychiatrist dated 20 May 2008, concerning their client. The report stated:

At interview he presents as intelligent. Currently not overtly psychotic but nevertheless extremely difficult to communicate with as his thoughts recurrently go off at tangents. This is highly compatible with the peculiarities of thinking associated with schizotypal personality disorder and schizophrenia-like psychoses.

...

His psychological conditions are likely to continue indefinitely in future at a similar level to that experienced to date, particularly as he is disinclined to use medication.

...

Mr Palethorpe would be at risk of squandering a large sum of money, particularly at times of acute exacerbations of his schizophrenia. His delusions of being unworthy and his involvement with the church would render him prone to giving away larger sums of money than might be appropriate of his circumstances. Hence, whilst he may be reasonably reliable for day-to-day “shopping”, over longer periods of time he would be at risk of squandering much of his Estate.

...

As noted above, his eccentric ... and disorganised psychological state is such that would render him highly susceptible to being taken advantage of by others, even during the more stable periods of his life.

[8] As I have noted, the firm was aware of that report by 22 July 2015, and there was no more recent psychiatric report in relation to Mr Palethorpe available to the firm at that time.

[9] On 22 July 2015, the respondent recorded a file note concerning the client in which he said:

It appears that the specialist says that he has capacity to take care of his affairs on a day by day basis but that also there is some concern as to his ability to take care to [sic] his financial affairs.

[10] Those are the facts underlying Charge 1 which, as noted as a matter of formality, comprised a failure to provide the estimate of total legal costs, required by s 308(1)(c). The Tribunal notes in passing that the particulars underpinning Charge 1 were addressed in some detail by the respondent, both in his initial responses to the applicant when the matters of complaint were first raised with him, and then incorporated in the respondent's formal response to the discipline application filed in this Tribunal.

[11] It is sufficient to note that whilst the actual failures to comply strictly with the terms of s 308 seem to have been attributable to a combination of system issues and activity by the person described in the respondent's statement as the "primary author" of the documents, it is to the credit of the respondent that he has, at all times, fully accepted responsibility for the errors of the system and the mistakes made by those who reported to him and for whom he was responsible.

[12] The circumstances of Charge 2 can be summarised as follows. On about 7 October 2016, the respondent had his staff make enquiries about the prospect of taking out an insurance policy on the life of Mr Palethorpe. Subsequently, on 17 October 2016, a life insurance agent prepared a written statement of advice for the firm and Mr Palethorpe, concerning a proposed life insurance policy. The objectives of the policy were described as follows:

Greenhalgh Pickard Solicitors and Accountants are doing significant work on Glenn's late father's estate. However, if Glenn passes away, Greenhalgh Pickard has no ability to cover the legal costs if Glenn passes away before settlement. Therefore, Greenhalgh Pickard Solicitors and Accountants wish to cover Glenn for Life Cover of \$200,000.00 which is payable to the company.

[13] On 18 October 2016, a staff member of the firm attended on the client and obtained his signature on an "Acknowledgement", which was in the following terms:

I, Glenn Robert Palethorpe, acknowledge and confirm that, in consideration for you continuing to act on my behalf, I agree to reimburse you the costs for you to take out a life insurance policy on me.

I note and agree that in the event that the policy is cancelled within the first 12 months, then I will reimburse you for the life insurance agent's commission payable.

I also understand that in the event that I pass away prior to my ability to repay your account, then you are entitled to the full life insurance policy benefit of \$200,000.00.

- [14] Then, on 21 October 2016, the respondent signed an “authority to proceed” directed to the insurance agent, in which he acknowledged having read and understood the statement of advice referred to above, and authorised the agent to implement the proposal. On that same day, the respondent also signed an application form for a life insurance policy on the life of Mr Palethorpe, a direct debit request, and a “Quotation Summary” confirming the requested cover of \$200,000.00 at a monthly premium of \$359.56.
- [15] That day, Mr Palethorpe also signed the application form as the “life assured”. The requested life insurance policy was issued by the insurer on about 4 November 2016. At the time the policy issued, Mr Palethorpe had accrued bills for legal costs in the amount of \$43,322.05. Mr Palethorpe was subsequently billed by the firm for monthly premiums. Those bills were rendered at the end of November 2016, December 2016, February 2017, March 2017, May 2017 and June 2017, and were for reimbursement of the life insurance premiums that had been paid.
- [16] On 3 October 2017, the respondent approved the inclusion of the insurance policy premiums in the invoices to be submitted to the trustees. On 17 October 2017, after their retainer had been terminated, the firm submitted invoices for legal costs of disbursements to the solicitor for the trustees of the estate seeking payment. It is an agreed fact that the respondent failed either to recommend or insist that Mr Palethorpe take independent legal advice concerning the policy or the matters set out in the acknowledgement described previously in these reasons.
- [17] So far as these facts are concerned, there can be no doubt that this was a circumstance in which the client should have been referred for independent advice. This failing has been freely acknowledged by the respondent, and he has expressed his remorse for the fact that the client was not referred for independent legal advice before committing himself to the provision of that life insurance policy, and indeed, the commitment of paying the premiums for the life insurance policy.
- [18] It is also the case that the terms of the acknowledgement on their face may have been susceptible, if construed strictly according to their terms, to the firm obtaining a windfall in the event of the death of the client. That being said, the respondent has repeatedly said, in terms which the Tribunal accepts, that it was never his intention that the firm would benefit from a windfall in that way. He accepts that the acknowledgement was poorly drafted and did not reflect the intention, which was that the level of indemnity to be provided to the firm was to be equivalent to the quantum of the fees outstanding from time-to-time, and that should there have been any surplus then that, of course, would have gone to the estate of the client.
- [19] As I have said, the Tribunal accepts the respondent’s explanations in this regard, noting that the best that can be said for the drafting of the acknowledgement was that it was sloppy and failed to reflect the intention of the party who stood to receive the benefit from the policy. That being said, the Tribunal also notes, again, the admitted error, and the seriousness of the admitted error, in failing to refer the client for independent legal advice at the time the prospect of an insurance policy of this nature was being canvassed.

- [20] I have already referred to the responses made by the respondent in respect of both charges. It is sufficient to note that he has expressed genuine remorse and displayed actual insight into the issues raised under each of the charges. He has provided explanations, but has never, at any point, sought to excuse himself or avoid responsibility for the errors that were committed.
- [21] He has expressed his deepest regret for the mistakes which he accepts relate to him and his firm. He has also given details of alterations that have been made to the firm's processes to ensure no repetition of the errors. Insofar as the rather novel insurance scheme is concerned, he has assured both the applicant and this Tribunal that there will be no repetition of such an unusual way of seeking to secure payment of fees.
- [22] The parties have, themselves, reached a common position concerning the characterisation of the conduct under each of the charges. Having considered the submissions of the parties and the particular facts underlying the charges, the Tribunal has, itself, reached the view that the common position urged by the parties, so far as characterisation is concerned, is correct. That is, that the conduct referred to in Charge 1 should be characterised as unsatisfactory professional conduct, and the conduct under Charge 2 should be characterised as professional misconduct.
- [23] In particular, there is a concern in relation to the conduct under Charge 2, that the arrangement was one which called for the client to be counselled to obtain independent legal advice in relation to the arrangements, and the need for that independent advice was amplified by the respondent's knowledge of the issues concerning the client's state of mental health.
- [24] So in respect of Charge 1, there will be a finding that the respondent engaged in unsatisfactory professional conduct, and in respect of Charge 2, there will be a finding that the respondent engaged in professional misconduct.
- [25] Turning, then, to the question of sanction, the applicant contends that this is an appropriate case in which the question of public benefit needs to be addressed by the issuing of a public reprimand against the respondent. The applicant also submits that there should be a fine, again by way of a measure of public deterrence. For the respondent, it was submitted that this is not a case in which questions of public deterrence demand the making of a public reprimand, and submissions were also made questioning the appropriateness of the imposition of a fine in this case.
- [26] In the course of argument, and consequent upon certain observations by the Tribunal, the respondent also proffered an undertaking to the Tribunal to the effect that he would be prepared to commit to undertaking 30 hours of pro bono legal work in a community legal centre over the next 12 months. That is an offer that was genuinely made, and is consistent with the repeated expressions of contrition and remorse which appear from the respondent in the material before the Tribunal.
- [27] In terms of the imposition of an appropriate sanction, the principal question for the Tribunal is whether or not this is an appropriate case in which there needs to be a public reprimand. On the one hand, as was noted in cases such as *Legal Services Commissioner v Bentley*,<sup>1</sup> the purpose to be achieved by the imposition of a public reprimand is that of dissuading other practitioners from engaging in the sort of conduct which is the subject of the present proceedings. In other words, as Thomas J said in

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<sup>1</sup> [2016] QCAT 185 ("*Bentley*").

that case, it is essentially a warning for practitioners that such conduct is not acceptable.<sup>2</sup>

- [28] That purpose, however, needs to be balanced against the public and personal impact of the imposition of a public reprimand. A public reprimand is, as has been noted by this and other Tribunals in similar circumstances, a serious step to take.<sup>3</sup> It is one which should not be taken or regarded lightly. It is and will continue to be, if imposed, a permanent public blemish on the practitioner's professional record.
- [29] On the one hand, as was submitted by counsel for the applicant, the circumstances involved failures to reach appropriate professional standards in a case in which the practitioner was dealing with a client who was, to the respondent's knowledge, suffering from mental health issues, and for whom it might be thought some special care and consideration was warranted, particularly in the respects covered by both of the charges now before the Tribunal.
- [30] On the other hand, there are significant mitigating factors, not the least of which are the respondent's long and unblemished time in practice, the peculiar circumstances in which these events unfolded, the singularity of the circumstances of Charge 2, the respondent's early and repeated acceptance of responsibility for the shortcomings, and his genuine expressions of remorse and contrition. Those also need to be taken in the context of his recent genuine offer to perform public service for the benefit of the community. It is also to be noted that there will be a permanent record of the findings of unsatisfactory professional conduct and professional misconduct, simply by virtue of the decision of this Tribunal being a matter of public record.
- [31] In all of the circumstances, the Tribunal is not persuaded that this is a case in which it is necessary for a public reprimand to be cast as a permanent record on this practitioner's career. All of the necessary elements of public deterrence are satisfied by the publication of these reasons, and the public findings of unsatisfactory professional conduct and professional misconduct. Moreover, in light of the practitioner's offer to undertake a significant amount of community legal service, it is neither necessary nor warranted for there to be a fine imposed in the circumstances of this case.
- [32] Accordingly, there will be the following orders. Upon the respondent, John Anthony Greenhalgh, undertaking to the Tribunal that he will, over the next 12 months, perform not less than 30 hours pro bono legal work in a community legal centre, it is ordered:
1. In respect of Charge 1, there is a finding that the respondent engaged in unsatisfactory professional conduct;
  2. In respect of Charge 2, there is a finding that the respondent engaged in professional misconduct; and
  3. The respondent shall pay the applicant's standard costs of and incidental to this discipline application, such costs to be assessed as if this were a matter before the Supreme Court of Queensland.

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<sup>2</sup> Bentley, [48].

<sup>3</sup> See, eg, *Legal Services Commissioner v Brown* [2018] QCAT 263, [42]; and *Legal Services Commissioner v Challen* [2019] QCAT 273, [39].