

# Gary Whitaker

## Solicitor

### 281318

*Agreement Date: 17 April 2024*

#### *Decision - Agreement*

Outcome: Regulatory settlement agreement

Outcome date: 17 April 2024

Published date: 26 April 2024

#### *Firm details*

##### **Firm or organisation at time of matters giving rise to outcome**

Name: DAS Law Limited

Address(es): Trinity Quay, 2 Avon Street, Bristol, BS2 0PT

Firm ID: 423113

##### **Firm or organisation at date of publication**

Name: Scott Rowe Limited

Address(es): Chard Street, Axminster, Devon, EX13 5DS

Firm ID: 599338

#### *Outcome details*

This outcome was reached by agreement.

#### *Decision details*

##### *1. Agreed outcome*

Gary Gray Whitaker, a solicitor of Scott Rowe Limited, agrees to the following outcome to the investigation of his conduct by the Solicitors Regulation Authority (SRA):

- a. he is rebuked
- b. to the publication of this agreement
- c. he will pay the costs of the investigation of £600.

##### *2. Summary of Facts*



2.1 On 18 October 2021, Mr Whitaker's opposing solicitors in personal injury litigation emailed him with a Calderbank offer and an offer under Part 36 of the Civil Procedure Rules to settle the claim made by his client. The Calderbank offer was open for acceptance until 1 November 2021. The Part 36 offer was open until 8 November 2021.

2.2 On 23 November 2021, Mr Whitaker emailed his opposing solicitors on the purported behalf of his client. Mr Whitaker stated that his client had instructed him to reject both offers.

2.3 Mr Whitaker had not been instructed by his client to reject either offer. Nor had he provided any advice to his client about either offer.

### 3. Admissions

3.1 Mr Whitaker makes the following admissions which the SRA accepts:

- a. That by rejecting a Calderbank offer and a Part 36 offer received from opposing solicitors in litigation without having his client's instructions to do so, he failed to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons, in breach of Principle 2 of the SRA Principles ("the Principles"). He also breached Paragraph 3.1 of the SRA Code of Conduct for Solicitors, RELs and RFLs ("the Code").
- b. That he misled his opposing solicitors in litigation by advising them that his client had instructed him to reject a Calderbank offer and a Part 36 offer, when Mr Whitaker had not received any such instructions. He has therefore breached Paragraph 1.4 of the Code.

### 4. Why a written rebuke in 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 Whitaker and the following mitigation which he has put forward:

- a. His conduct did not cause any actual impact or loss to his client. His client later advised him that he did not wish to accept either offer.
- b. He was experiencing difficult personal circumstances at the time of his conduct which may have affected his judgment and conduct.



- c. He does not have any prior regulatory history. We consider that there is a low risk of repetition.

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

- a. Mr Whitaker's conduct was reckless as to the risk of harm. He could have caused financial detriment to his client as there was no guarantee that his client would be awarded settlement or compensation on more favourable terms. There also existed the possibility that his client could have instructed him to accept either offer. Mr Whitaker removed that option. Some public sanction is therefore required to uphold public confidence in the delivery of legal services.
- b. As an experienced solicitor, Mr Whitaker would have been aware that he should only give information to others which is accurate and not in any way misleading. He failed to act accordingly.
- c. Mr Whitaker was responsible for his conduct.

## 5. Publication

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

## 6. Acting in a way which is inconsistent with this agreement

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

6.2 If Mr Whitaker 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.

6.3 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.

## 7. Costs

7.1 Mr Whitaker agrees to pay the costs of the SRA's investigation in the sum of £600. Such costs are due within 28 days of a statement of costs due being issued by the SRA.