SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11082-2012

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PETER ALEXANDER HOLT Respondent

Before:

Mr S. Tinkler (in the chair)
Miss N. Lucking
Mr G. Fisher

Date of Hearing: 23rd April 2013

Appearances

Daniel Purcell, Solicitor of Capsticks Solicitors LLP, 1 St Georges Road, Wimbledon, London SW19 4DR for the Applicant.

Simon Rollason, Solicitor of Cooper Rollason Solicitors, 9b Pemberton House, Stafford Court, Stafford Park 1, Telford, Shropshire TF3 3BD for the Respondent who appeared.

JUDGMENT

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1. The allegations against the Respondent, Peter Holt, on behalf of the Solicitors Regulation Authority were that while in practice as a partner in Field Fisher Waterhouse LLP he acted in breach of the following Rules and/or Principles and/or outcomes in the following respects:

   On dates prior to 5 October 2011, the Respondent acted in breach of Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("the Code") in that he:

1.1 Submitted, or cause to be submitted, expenses claims to Field Fisher Waterhouse LLP which were false in that he had not incurred the expenses in respect of which claims were made;

1.2 submitted, or caused to be submitted, requests for travel arrangements to be made at the expense of Field Fisher Waterhouse LLP which were not related to his professional practice;

1.3 caused or allowed some of the expenses referred to at 1.1 and 1.2 above to be charged to clients.

2. That from 6 October 2011 until January 2012, the Respondent breached all or alternatively any of the Principles 2, 5, 6 and 10 of the 2011 SRA Code of Conduct ("the 2011 Code of conduct") in that he:

2.1 submitted or caused to be submitted, expenses claims to Field Fisher Waterhouse LLP which were false in that he had not incurred the expenses in respect of which claims were made;

2.2 submitted, or caused to be submitted, requests for travel arrangements to be made at the expense of Field Fisher Waterhouse LLP which were not related to his professional practice;

2.3 caused or allowed some of the expenses referred to at 2.1 and 2.2 above to be charged to clients.

3. It was further alleged that the Respondent's conduct as set out at 1 and 2 above was dishonest. For the avoidance of doubt, it was submitted that it was not necessary for dishonesty to be proved for the other allegations to be made out.

Documents

The Tribunal reviewed all the documents including:

Applicant:

- Rule 5 Statement dated 24 October 2012 with exhibit;
- Statement of costs dated 27 March 2013.

Respondent:

- Personal statement of the Respondent dated 17 April 2013 with exhibits;
- Letter from the Respondent to the Applicant dated 25 January 2012 (PAH1);
- Report in the form of a letter from Maja Ranger, Consultant Psychiatrist dated 26 January 2012 (PAH2);
- Income and expenditure plan (March 2013);
- Statement of income for the period 29 May 2012 to 31 March 2013;
- Testimonials (two).

Factual background

4. The Respondent was admitted in 1998 and from 2006 was a Member of Field Fisher Waterhouse LLP ("the firm") in London.

5. According to a statement provided for these proceedings by DG a partner in the firm, throughout the Respondent's time at the firm he was a partner. From 1 May 2011 until the time of his resignation he was a "B Equity Partner".

6. The Respondent's role combined fee earning and supervision, client relationship management and business development. He was regarded as a popular and effective partner and a member of the firm's employment law department.

7. The firm first became aware of potential issues concerning the Respondent's expense handling shortly before Christmas 2011, when a secretary in the firm's employment law group reported to the head of the firm's employment law group, RK, that the Respondent's secretary believed that he might have exaggerated a mileage expense claim. RK discussed this with DG and they agreed that between Christmas and New Year, DG would examine some of the Respondent expenses claims while most of the department including the Respondent were out of the office.

8. During the course of the review, DG became concerned about the legitimacy of expenses claims submitted by the Respondent and on 3 January 2012, when the firm's office reopened DG contacted the firm's Finance Director and began a more structured investigation of the expenses claims submitted by the Respondent. Initially DG focused on six example instances of claiming. During the process the investigation was extended to a seventh claim. The investigation included an examination of client matter files, electronic records (including time recording) and diaries.

9. On 12 January 2011, RK and DG met with the Respondent and gave him a memorandum together with a file of supporting documentation. The memorandum set out the firm's concerns regarding his expenses. It invited him to comment generally and specifically in writing confirming that each item set out in the memorandum or listed in an appendix was a legitimate expense, payable under the firm's policy for the full amount claimed. In the event that factual inaccuracies had been recorded, he was asked to provide the correct factual basis for the claim and supporting evidence or a

clear indication of where that could be found in the firm's records. The memorandum included cases where there were specific concerns on individual claims which had been examined in more detail and the appendix listed cases which showed claims which had not been fully looked into but where there was a concern which was set out in the appendix.

10. After the initial meeting at which the Respondent was given the memorandum, he returned and asked to see RK about 30 minutes later. During a brief discussion, the Respondent admitted that he had falsified expenses claims and was asked immediately to remain at home pending a meeting.

11. On 16 January 2011, SG the firm's Risk and Compliance Partner met with the Respondent, who was effectively suspended from the office. At that meeting, the Respondent said that he had falsified expenses claims since 2010 and believed the total sum involved was £2,000 to £3,000. Subsequently it emerged that the false expense claims commenced at the end of 2008 and that a larger sum was involved.

12. The firm continued its investigation and a further meeting took place with the Respondent on 18 January 2011 at which matters were discussed in principle only because of the volume of information that was becoming apparent. At that stage, it appeared that as many as 300 false claims might have been made. On 19 January 2011, it was decided that the Respondent should be asked to resign immediately. On the following day, the Respondent offered his resignation by letter which was immediately accepted.

13. At the time when the payments were made, the firm operated first a paper based expenses claims system and later an electronic expenses claims system. During the course of the investigation DG reviewed the firm's records of the Respondent's paper claims and printed copies of his electronic claims. The policy setting out the firm system for claiming and paying expenses showed that the Respondent had permission to authorise his own expenses claims up to a value of £150, and could write-off disbursements and so prevent the billing of expenses up to a value of £500.

Expenses claims

14. The firm identified that between November 2008 and January 2012 on about 271 occasions (out of 571 total claims) the Respondent submitted claims for expenses which had not been legitimately incurred or were not incidental to matters on which the firm was instructed or in the course of his work at the firm, in the total sum of £10,781.53. Some of the invalid expenses claims were submitted in respect of expenses purportedly incurred while the Respondent was on leave from the firm.

15. The total value of the false claims admitted by the Respondent was around £8,054. Individual payments varied in value between the smallest payment of £6.20 and the largest payment of £139.40.

Travel arrangements

16. The firm engaged an external provider to make travel arrangements on behalf of staff. Members of staff were able, using an electronic system, to request that travel

arrangements were made for them, the cost of which would then be entered into the firm's cost system and recorded against files by the client matters or files for internal costs. On 22 occasions out of a total of 117 claims, the Respondent submitted requests or caused requests to be submitted of the firm's travel agency, E, in respect of which no record could be found that the travel concerned related to the firm's business or that of its clients or where the firm knew it to relate to travel to the office from the Respondent's then home address in Hampshire. The firm's conclusion was based on a review of the Respondent's calendar, time recording and matter files. The total cost to the firm of the 22 requests was £612.30.

Charging expenses to clients

17. As a partner, the Respondent had authority to write off costs and disbursements up to a defined level of £150. It appeared that in the majority of cases in which invalid expenses claims were submitted, he subsequently wrote off the expenses for billing purposes and so the loss was incurred by the firm, rather than invalid expenses claims being submitted to clients.

18. A proportion of the invalid expenses claims or travel arrangements were recorded against matters which would not be billed to clients, including £1,385.88 of expenses and travel which were recorded against internal files.

19. In his statement, DG set out that a total of £8,727.71 expenses and £612.30 of travel arrangements were recorded against chargeable client matters. The Respondent authorised write-offs of the majority of those expenses however a total of £357.19 of invalid expenses claimed on 12 occasions were charged to six clients by the firm as the firm was unaware at the time that the expenses had not been validly incurred pursuant to the clients' instructions. DG informed the Respondent at their meeting on 16 January 2011 of this fact and received the impression that the Respondent had not been aware of it and DG's review of files indicated that the charges to clients had been made when bills had been signed off by other partners during the Respondent's annual leave.

20. Immediately upon discovery that false claims had been made, the total amount billed to clients was calculated, and compound interest applied to those sums and repayments immediately made by the firm to those clients.

Respondent's admissions

21. In his letter of resignation dated 20 January 2012 the Respondent admitted that he made false expenses claims between late 2008 and late 2011 "under £10,000 in total"

22. In a "self reporting" letter to the Applicant of 25 January 2012, the Respondent admitted that between November 2008 and December 2011:

- He made invalid expenses claims totalling about £8,054, which were reimbursed to him by the firm;
- These claims related to (primarily) travel and entertainment which did not occur; and

- That he had informed the firm on 12 January 2012 that these expenses were "not legitimate".

23. Further admissions were made by the Respondent in a letter from his solicitor to the Applicant of 26 April 2012. In that letter the Respondent admitted that:

> "…between March 2007 and January 2012, he systematically submitted expenses claims which were not legitimately incurred in relation to firm/clients but which related to personal expenses."

The Respondent accepted in that letter that prior to October 2011 he breached Rule 1.02 and Rule 1.06 of the Code and for the period commencing 6 October 2011 he breached Principles 2, 6, and 10, of the 2011 Code of Conduct.

Witnesses

24. None.

Findings of Fact and Law

25. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to 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.

(The submissions recorded below include those made orally at the hearing and those in the documents.)

26. **The allegations against the Respondent, Peter Holt, on behalf of the Solicitors Regulation Authority were that while in practice as a partner in Field Fisher Waterhouse LLP he acted in breach of the following Rules and/or Principles and/or outcomes in the following respects:**

On dates prior to 5 October 2011, the Respondent acted in breach of Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("the Code") in that he:

Allegation 1.1: Submitted, or cause to be submitted, expenses claims to Field Fisher Waterhouse LLP which were false in that he had not incurred the expenses in respect of which claims were made;

Allegation 2: That from 6 October 2011 until January 2012, the Respondent breached all or alternatively any of the Principles 2, 5, 6 and 10 of the 2011 SRA Code of Conduct in that he:

2.1: Submitted or caused to be submitted, expenses claims to Field Fisher Waterhouse LLP which were false in that he had not incurred the expenses in respect of which claims were made;

26.1 Mr Purcell relied on the evidence which he submitted established that 271 false expense claims had been submitted totalling £10,781.53. By way of example, DG in

his statement referred to a matter T/M. On 2 August 2011, the Respondent submitted and self authorised a claim for £65.16 in respect of this matter for a car journey he purportedly completed on 24 June 2011 of 144.8 miles from his home in West London to Uxbridge and then to Reading. The expense report and accompanying email and receipt submitted by the Respondent recorded that this journey related to "Travel to [M] to take witness statements – Uxbridge to Reading". The Respondent's diary for the relevant time did not show any appointments with M in Uxbridge or Reading for 24 June 2011. The firm's time recording system did not show any time by the Respondent for work on the T/M matter on 24 June 2011. Instead, 8.4 hours were recorded by the Respondent on the system for other matters on that day including 3.5 hours of holiday. His diary also recorded a half day's annual leave. Furthermore, correspondence on the file stated in an e-mail from JD of M to the firm dated 22 June 2011 "…we have no witnesses and no evidence". There was nothing on the file to show any change from that position that would explain interviewing witnesses on 24 June 2011. In addition, the claimant in the T/M matter lived in Essex, the case was being heard in Watford and no references to Reading were found in any material on the firm's file. Lastly, the firm's working methods for the T/M matter which, as an employment tribunal matter required the production of witness statements, was that witness statements were generally taken over the phone and that this work was performed by junior lawyers based in Manchester.

26.2 In respect of invalid claims submitted in respect of expenses purportedly incurred while the Respondent was on leave from the firm, by way of example on 29 July 2011 the Respondent submitted two separate claims of £91.35 each for driving 203 miles to the Manchester office on Sunday, 31 July 2011, and for the return trip on Thursday 4 August 2011 respectively. If the Respondent had submitted this journey as one claim, as he should have, it would have required the approval of an "A Equity Partner". The expense reports recorded: "Driving to Manchester to work at Manchester Office" and "Return journey from Manchester Office to London" respectively. The Respondent's diary showed that he was on holiday on 4 (and 5) August 2011. The list of his leave dates confirmed that he was on holiday on 4 August 2011.

26.3 The Respondent admitted allegations 1.1 and 2.1 and the Tribunal found those allegations proved on the evidence.

27. **Allegation 1: On dates prior to 5 October 2011, the Respondent acted in breach of Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("the Code") in that he:**

Allegation 1.2: The Respondent submitted, or caused to be submitted, requests for travel arrangements to be made at the expense of Field Fisher Waterhouse LLP which were not related to his professional practice;

Allegation 2: That from 6 October 2011 until January 2012, the Respondent breached all or alternatively any of the Principles 2, 5, 6 and 10 of the 2011 SRA Code of Conduct in that he:

Allegation 2.2: Submitted, or caused to be submitted, requests for travel arrangements to be made at the expense of Field Fisher Waterhouse LLP which were not related to his professional practice;

27.1 For the Applicant, Mr Purcell submitted that the second type of misconduct perpetrated by the Respondent related to travel arrangements. Mr Purcell relied on the evidence which he submitted established that on 22 occasions the Respondent submitted a request to the firm's travel agency E requesting travel tickets which were not related to the firm's business. The Respondent used his authority as a partner to write off expenses up to £150 so that generally they were not charged to clients and the firm bore the loss (but see allegations 1.3 and 2.3 below). By way of example of improper claims for travel, on 5 May 2011, the Respondent instructed his secretary to purchase tickets through E for rail tickets from the station nearest to his then home in Hampshire to London on 9 May 2011 and then the return of that journey on 10 May 2011. He then authorised that expenditure totalling £67.70 from the Employment and Pensions Department accounts called "Travel expenses to Manchester office" by signing for payment of E's invoice on 11 May 2011. Mr Purcell pointed out that the purchase invoice authorisation form which the Respondent signed authorising payment by the firm for these train journeys included:

> "Please note that by authorising the invoice you are confirming that the goods/services have been received and are correctly chargeable to the matter or nominal ledger code shown and that the price charged is correct and as agreed."

The Respondent had signed this form and charged it to a client matter file in respect of a journey from his home to his office.

27.2 The Respondent admitted allegations 1.2 and 2.2 and the Tribunal found those allegations proved on the evidence.

27.3 **Allegation 1: On dates prior to 5 October 2011, the Respondent acted in breach of Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 ("the Code") in that he:**

Allegation 1.3: Caused or allowed some of the expenses referred to at 1.1 and 1.2 above to be charged to clients.

Allegation 2: That from 6 October 2011 until January 2012, the Respondent breached all or alternatively any of the Principles 2, 5, 6 and 10 of the 2011 SRA Code of Conduct in that he:

Allegation 2.3: Caused or allowed some of the expenses referred to at 2.1 and 2.2 above to be charged to clients.

27.4 For the Applicant, Mr Purcell submitted that the evidence showed that while generally the Respondent wrote off his false claims so that they were not charged to clients, the firm had identified a total of £357.19 of invalid expenses claims linked to client matters which the firm reimbursed as soon as the loss was identified.

27.5 The Respondent admitted allegations 1.3 and 2.3 and the Tribunal found those allegations proved on the evidence.

28. **Allegation 3: It was further alleged that the Respondent's conduct as set out at 1 and 2 above was dishonest. For the avoidance of doubt, it was submitted that it was not necessary for dishonesty to be proved for the other allegations to be made out.**

28.1 For the Applicant, Mr Purcell submitted that the Respondent admitted that he had been dishonest. There had been an intention to mislead. The Respondent had created risks to his partners and to clients. Mr Purcell submitted that his misconduct satisfied the test for dishonesty in the case of Twinsectra Ltd v Yardley 2002 UKHL 12:

> "Before there can be a finding of dishonesty it must be established that the defendant's conduct was dishonest by the standards of reasonable and honest people and that he himself realised that by those standards his conduct was dishonest"

28.2 A solicitor found guilty of any form of dishonesty could be expected to be struck off. In the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) it was set out that save in exceptional circumstances a finding of dishonesty would lead to the solicitor being struck off the roll but there would be a small residual category where striking off would be a disproportionate sentence. Mr Purcell submitted that this was not a case to which exceptional circumstances arose. The Respondent's misconduct had not been momentary as in the case of Burrowes v the Law Society [2002] EWHC 2900 (Admin). He had knowingly and systematically over a period of three years submitted invalid claims. He had also derived a benefit from his dishonest conduct and Mr Purcell submitted that the Tribunal could conclude that the misconduct readily met the Twinsectra test.

28.3 The Tribunal had regard to the evidence and the submissions for the Applicant. The Respondent admitted that his misconduct satisfied both the subjective and objective tests in Twinsectra and the Tribunal found on the evidence that objectively what he had done in submitting expenses and travel claims was dishonest and that he had undertaken his course of conduct knowing it to be dishonest as defined in the test and that the subjective test was also satisfied. The Tribunal therefore found the allegation of dishonesty proved.

Previous disciplinary matters

29. None.

Mitigation

30. Mr Rollason submitted that the Respondent had made full and frank admissions of his dishonesty at the earliest opportunity and thereafter had reported himself to the Applicant. He asked the Tribunal to have regard to the report of a consultant psychiatrist dated 26 January 2012 which gave details of his state of mind during the period when the acts of dishonesty were committed. The Respondent did not seek to minimise his dishonesty or offer that report as a defence but it put his behaviour in context. His judgement had been extremely clouded. Mr Rollason submitted that the Respondent was clearly suffering from some form of depression which affected him significantly. His thinking skills were completely skewed and this was evident from

his personal statement and not disputed by the Applicant. The money which he had obtained was paid back soon after the discovery of his misconduct. He approached his mother and asked for a loan. Mr Rollason submitted that this showed the lack of judgement which he displayed at the time so that when he was experiencing financial difficulties he did not go to his mother. He was a proud man who thought he could cope and take the burden on himself and this had pushed him into dishonesty. With hindsight he bitterly regretted that he had not approached his mother sooner. He also referred the Tribunal to two character references which had been provided for the Respondent including one from a solicitor who had known him since schooldays who expressed surprise and astonishment at his actions. Mr Rollason submitted that as a result of the Respondent's dishonesty he had experienced a dramatic change in his financial circumstances. He was fully aware of the sanction which was likely to befall him. His motive had been a desire to maintain his home and support his two young children, an obligation which he still continued although his income was significantly reduced. The Respondent adopted a neutral position in respect of whether his actions had been perpetrated in exceptional circumstances as referred to in the case of Sharma and left that to the Tribunal to determine.

Sanction

31. The Tribunal had regard to its own Guidance Note on Sanctions, to the mitigation made for the Respondent, to the psychiatric report and to the testimonials. His misconduct had been very serious. He had harmed both his firm and some of its clients. He was in breach of a position of trust. There were aggravating factors in that dishonesty had been alleged and admitted. The Tribunal had regard to the fact that the actions of the Respondent had been well thought out involving the presentation of receipts and drafting e-mails. His actions had been deliberate and calculated and repeated over a period of time. He concealed his wrongdoing until he was discovered and he only made full and frank admissions when he was confronted with a mass of evidence. He clearly should have known that what he did was in material breach of his obligations as a solicitor. In mitigation the Tribunal noted that the Respondent now displayed insight into what he had done and once he had been discovered he had cooperated fully. The Tribunal also noted that he had had difficult personal circumstances and was potentially suffering from depression however it did not consider that his circumstances were exceptional. In Bolton v The Law Society [1994] 1 WLR 512 Sir Thomas Bingham then Master of the Rolls said:

> "It is required of lawyers practising in this country that they should discharge their professional duties with integrity, probity and complete trustworthiness…
>
> Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal...
>
> the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth..."

and

> The reputation of the profession is more important than the fortunes of any individual member..."

The Tribunal determined that the Respondent should be struck off the Roll of Solicitors.

Costs

32. For the Applicant, Mr Purcell submitted that the parties had agreed costs in the fixed - sum of £5,000.

Statement of Full Order

33. The Tribunal Ordered that the Respondent, Peter Alexander Holt, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the agreed costs of and incidental to this application and enquiry fixed in the sum of £5,000.00.

Dated this 22nd day of May 2013
On behalf of the Tribunal

S. Tinkler
Chairman