SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11254-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DALE ROBERT WALKER Respondent

Before:

Mr D. Glass (in the chair)
Mr R. Hegarty
Mr M. R. Hallam

Date of Hearing: 16 September 2015

Appearances

Mr Alastair Willcox, Solicitor employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

The Respondent did not appear and was not represented

JUDGMENT

Allegations

1. The allegations against the Respondent, Dale Robert Walker by the Solicitors Regulation Authority in a Rule 5 Statement dated 19 June 2014 were as follows:

1.1 The Respondent has transferred client monies from client account to office account in respect of fees without sending a bill of costs or other written notification to the client contrary to Rule 19 of the Solicitors Accounts Rules 1998 ("SAR 1998") and/or where such transfers were made after 6 October 2011, Rule 17 of the SRA Accounts Rules 2011 ("SRAAR 2011");

1.2 The Respondent caused or permitted monies to be withdrawn from client account when he was not entitled to do so contrary to Rule 22 SAR 1998 and/or where such conduct relates to a period after 6 October 2011, Rule 20 SRAAR 2011;

1.3 The Respondent failed to retain client money in client account contrary to Rule 15 SAR and/or, where such conduct relates to a period after 6 October 2011, Rule 14 SRAAR 2011;

1.4 The Respondent failed to remedy promptly the breaches of the SAR 1998 and/or, where applicable, SRAAR 2011 upon discovery in breach of Rule 7 SAR 1998 and Rule 7 SRAAR 2011;

1.5 The Respondent failed to give clients the best information possible about costs, contrary to Rule 2.03 of the Solicitors Code of Conduct 2007 ("SCC 2007");

1.6 The Respondent withdrew client monies from client account in respect of costs when he knew he was not entitled to do so contrary to Rules 1.02, 1.04, and 1.06 SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Principles 2, 4, 6 and 10 and Outcomes 1.1 and 1.13 of the SRA Code of Conduct 2011 ("2011 Code");

1.7 The Respondent claimed costs from clients that he knew could not be justified, and thereby knowingly overcharged those clients, contrary to Rules 1.02, 1.06 and 2.03 of the SCC 2007 and/or where such conduct relates to a period after 6 October 2011, Principles 2, 6 and 10 and Outcomes 1.1 and 1.13 of the 2011 Code;

1.8 The Respondent made improper use of the client account of Dale R Walker, Solicitors by utilising it as a banking facility for a client contrary to Rule 14.5 SRAAR 2011;

1.9 The Respondent acted in a way which allowed his independence and the trust held in him and the legal profession to be compromised contrary to Rules 1(a) and (d) of the Solicitors Practice Rules 1990 ("SPR") and/or where such conduct relates to the period after 1 July 2007, Rules 1.03 and 1.06 of SCC 2007 and/or, where such conduct relates to the period after 6 October 2011, Principles 3 and 6 of the SRACC (sic) 2011;

1.10 The Respondent acted for clients in Collective Investment Schemes ("CIS") in relation to Land Banking which were not authorised by the Financial Services Authority ("FSA") and thereby acted contrary to Rule 1(a) and (d) SPR and/or, where such conduct arose after 1 July 2007, Rules 1.02 and 1.06 of SCC 2007.

1.11 The Respondent acted where there existed a conflict of interest contrary to Rule 3.01(1) of SCC 2007.

1.12 In relation to allegations 1.1, 1.2, 1.6 and 1.7, it is alleged that the Respondent acted dishonestly although it was not necessary to prove dishonesty to prove the allegations themselves.

The allegations against the Respondent by the Solicitors Regulation Authority in a Rule 7 Statement dated 12 June 2015 were as follows:

1.13 On 8 April 2015, the Respondent was tried and convicted on indictment of the following offences:

(i) Sections 19 and 23(1) of the Financial Services and Markets Act 2002 ("FSMA"); and
(ii) Proceeds of Crime – Possessing Criminal Property

for which he was subsequently sentenced to a term of imprisonment of five and a half years, contrary to Principles 1, 2 and 6 of the SRA Principles 2011.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 19 June 2014. (The associated exhibits were not considered during the hearing - see Preliminary Issues below - and are therefore not listed here)
- Rule 7 Statement dated 12 June 2015
- Applicant's supplementary bundle of documents comprising:
  - Indictment
  - Sentencing remarks
  - Financial Conduct Authority press release dated 4 June 2015
  - Prosecutor's Opening Note dated 2 January 2015
- Applicant's schedule of costs dated 7 September 2015
- Applicant supplementary bundle regarding service of proceedings extracted from Applicant's documents

Respondent

- None

Preliminary Issues

3. The Tribunal noted that the Respondent was not present. For the Applicant, Mr Willcox asked the Tribunal to proceed in the absence of the Respondent. He referred the Tribunal to the Memorandum of a Case Management Hearing ("CMH") which took place on 14 May 2015. The Applicant had been ordered to file a Rule 7 Statement by 12 June 2015 and the Respondent to file and serve his Response by

24 July 2015. The Respondent had not done so and nothing had been heard from him. Mr Willcox referred the Tribunal to a bundle of documents relating to service upon the Respondent which in order to assist the Tribunal he had extracted from the documents before it. The Applicant had to find out from the Prisoner Location Service where the Respondent was being held in custody and had provided that address to the Tribunal office. On 7 July 2015, the Tribunal office had written to the Respondent enclosing a copy of the Rule 7 Statement endorsed by a solicitor member of the Tribunal as showing a case to answer. On 31 July 2015, Mr Willcox wrote to the Respondent enclosing a copy of the Memorandum from the CMH on 14 May 2015 and reminding the Respondent of his obligation to file and serve a response to the Rule 7 Statement by 24 July 2015. The letter also raised other questions with the Respondent. Having heard nothing from the Respondent, on 19 August 2015 Mr Willcox had again e-mailed the Prisoner Location Service asking for confirmation that the Respondent was still held at the same prison which confirmation he received on 20 August 2015. Mr Willcox had written again to the Respondent on 25 August 2015 referring to the hearing date and asking him to admit all the documents exhibited to the Rule 7 Statement and about other procedural matters and he had further written on 8 September 2015 drawing the attention of the Respondent to the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in respect of any representations he might wish to make about his ability to pay costs. The Memorandum of the CMH on 14 May 2015 recorded that the Respondent was served with the Tribunal proceedings (Rule 5 Statement and associated documents) on 5 January 2015 at the Crown Court on the first day of his criminal trial. Mr Willcox referred the Tribunal to Rule 16(2) of The Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") which stated:

> "If the Tribunal is satisfied that notice of the hearing was served on the Respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

Mr Willcox submitted that on 7 July 2015 the Rule 7 Statement had been served under Rule 10(1)(b) by first class post to the prison where the Respondent was held and that under Rule 10(5) the Tribunal might regard it as duly served if it was satisfied that it was reasonable to expect that the document had been received by or brought to the attention of the person to be served and that it was reasonable to expect that the document had been received by the prison authorities and brought to the Respondent's attention. Mr Willcox also reminded the Tribunal that if it proceeded to deal with this matter in the absence of the Respondent it was open to him to apply for a rehearing if he was dissatisfied with the outcome. The Tribunal had regard to the fact that it must exercise extreme care in deciding whether to proceed under Rule 16(2) but in all the circumstances and being satisfied that both Rule 5 and Rule 7 Statements had been properly served upon the Respondent it would proceed and hear the applications in his absence and without his being represented.

4. Mr Willcox informed the Tribunal that the Applicant did not intend to proceed with allegations 1.1 to 1.12 inclusive, all of which were set out in the Rule 5 Statement but only to proceed with the application on the basis of the allegation 1.13 in the Rule 7 Statement which arose out of the Respondent's criminal conviction. The Applicant asked that the other allegations be permitted to lie upon the Tribunal file. The

Tribunal did not object in principle to proceeding on the basis of the Rule 7 Statement alone; this would lead to a considerable saving in costs and time but it advised Mr Willcox that if allegations 1.1 to 1.12 were allowed to remain upon the file then the Applicant's costs claim associated with them would also lie upon the file. The Tribunal was content to proceed on the basis of allegation 1.13 alone.

Factual Background

5. The Respondent was born in 1960 and admitted to the Roll of Solicitors in 1985.

6. At all material times the Respondent practised on his own account as Dale R Walker, Solicitors of Bromley, Kent and subsequently in Sevenoaks.

7. The proceedings in the Rule 5 Statement were based on two investigations conducted by the Applicant which led to the production of two Forensic Investigation Reports dated 7 December 2011 and 18 September 2013.

8. The investigation led to the institution of proceedings against the Respondent by way of the Rule 5 Statement dated 19 June 2014.

9. The additional allegations set out in the Rule 7 Statement related to the Respondent's conviction upon indictment at Southwark Crown Court on 8 April 2015 of two offences:

   Aiding and abetting the carrying on (or purported carry on) of a regulated activity without authorisation or exemption contrary to sections 19 and 21(1) of the FSMA;

   and

   Possessing criminal property contrary to section 329(1)(c) of the Proceeds of Crime Act 2002.

10. While the Respondent was also charged with conspiracy to defraud contrary to common law, the jury was unable to reach a verdict on that count. It was understood that the Financial Services Authority (subsequently the Financial Conduct Authority) ("the FSA") being the prosecuting authority in the proceedings, decided not to seek a retrial on that count and it had been left to lie on the court file.

11. The Respondent was tried along with four other Defendants. Whilst other individuals were named in the indictment they were tried separately.

12. At the sentencing hearing on 27 April 2015 before His Honour Judge Leonard QC, the Respondent was sentenced to 21 months imprisonment for aiding and abetting the collective investment scheme and five and a half years imprisonment for money-laundering, to run concurrently. He was also disqualified as a director for eight years.

13. The Rule 5 Statement set out details of the Respondent's involvement in land banking/collective investment schemes acting for a number of operators. However whilst reference was made within the Rule 5 Statement to European Property Investments (UK) Ltd ("EPI") and Plott UK Ltd (formerly Plott Investments Ltd)

("Plott") which was central to the criminal proceedings, the Rule 5 Statement focused instead on a group of companies called Ultraclass trading as the Property Partnership and Land Developments Ltd.

Findings of Fact and Law

14. 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.

(Paragraph numbers in quotations have been omitted unless they aid comprehension.)

15. **The allegations against the Respondent, Dale Robert Walker by the Solicitors Regulation Authority in a Rule 7 Statement dated 12 June 2015 were as follows:**

Allegation 1.13 - On 8 April 2015, the Respondent was tried and convicted on indictment of the following offences:

(i) Sections 19 and 23(1) of the Financial Services and Markets Act 2002 ("FSMA"); and

(ii) Proceeds of Crime – Possessing Criminal Property

For which he was subsequently sentenced to a term of imprisonment of five and a half years, contrary to Principles 1, 2 and 6 of the SRA Principles 2011.

15.1 For the Applicant, it was submitted that the offences set out in the allegation were committed pursuant to a very substantial and deliberate fraud on the public through a collective investment scheme which encouraged members of the public to invest in plots of land through countless misrepresentations as to the value and potential of the land they were being asked buy. The scheme was operated through three companies: Plott, EPI and Sterling Alexander.

15.2 As set out in the Rule 7 Statement, in accordance with the scheme the defendants through the companies purchased land in the sum of £361,200 and thereafter subdivided it into smaller plots of land and sold it as part of a development scheme. Whilst the land had limited value, potential investors were told that it would be worth much more and the companies received funds pursuant to the scheme of some £4.3 million over a period from January 2009 to November 2011. Mr Willcox submitted that members of the public were attracted to invest in the land by misleading claims being published and fed to them by salesmen who made cold calls on a vast scale. His Honour Judge Leonard in his Note of Sentence gave an indication of the sorts of representations made:

> "The site on which they were to purchase the plot had residential development potential.
>
> The land had been designated as prime building land.

> The sites had "hope value" because planning permission could be obtained before being sold on to developers.
>
> The returns would be very substantial over a short time frame.
>
> The plots were of interest to a named major developer.
>
> The companies would be responsible for getting in developers.
>
> Planning permission was just about to be granted or had been granted.
>
> The companies would be responsible for obtaining planning permission.
>
> Salesmen only received commission once the investors had made a profit.
>
> Prospects on an alternative site were greater than that held by the investor, a move to which would require an additional investment.
>
> A minimum investment was required before the developers would deal with an investor.
>
> A further investment in plots was necessary to allow an investor to be "traded out" of his holding."

The Judge also commented:

> "It was a subtle and cruel fraud because it involves the concept of owning land, a commodity that the public are bound to think has value and on which they cannot lose and on which they can easily be persuaded that they can make very substantial profits."

Having been persuaded to invest:

> "Investors were encouraged to find additional funds to make even larger investments by mortgaging, or further mortgaging, their properties. They were encouraged to cash in their pensions or to use SIPPs to invest in land and to use inherited money to fund their purchases of land. As a result, some of the investors have been financially ruined by this fraud."

Examples of the sort of hardship caused to those who were defrauded were also set out in the Judge's Note of Sentence:

> "I have read and take into account the victim impact statements provided in this case. A good example of the sort of hardship caused to those who were defrauded is provided by [MA]. In 2009 he had a mortgage free property. He lost his wife that year and, in August 2011, at the age of 60 was made redundant. Between those dates, and as a result of the pressurised sales tactics employed, he took out a £90,000 interest only mortgage on his home and used a lump sum from his pension to invest a total of £232,250 in plots of land. He

> does not know how he will pay back the lump sum under the mortgage and he has lost a valuable pension pot for his retirement.
>
> Another investor lost £527,950 to the scheme. It is causing on-going problems with his marriage. They are living a hand-to-mouth existence and in nine years' time he will need to find £200,000 to repay the lump sum on his mortgage. His two daughters have offered to sell their two houses to help their parents out and, in addition, it has ruined his retirement plans".

15.3 The Rule 7 Statement set out that the Respondent's initial involvement with the other defendants arose following complaints received by the FSA about the scheme and his initial role was to deal with the FSA. The Judge stated:

> "Consequent on receiving complaints from the public, the FSA, as it then was, attempted to stop the unregulated business from continuing by applying to the High Court for an injunction and freezing order on, first, Plott and then EPI and subsequently bringing actions to wind up the companies. These efforts were deliberately frustrated by transferring the business from Plott to EPI and then to Sterling Alexander so as to keep the fraud running.
>
> Between March and November 2011 the business moved offices five times, in part because they could not meet their obligations and in part to keep the fraud alive."

It was submitted that the FSA's early interest in the scheme had an impact on the seriousness of the offences. The Judge stated:

> "This also has an impact on the seriousness with which I have to regard Counts 2* and 3 because the defendants would have been aware from the summer of 2010 of the FSA's concerns that they were running an unregulated Collective Investment Scheme and yet as the names of the companies changed and as the FSA pursued this issue they nevertheless went on conducting the business in breach of the general prohibition."

(*The Respondent was not sentenced on Count 2)

The Rule 7 Statement set out that while the Respondent might initially have been brought on board to deal with the FSA, it was contended that the Respondent's involvement went significantly beyond his dealings with the FSA and not only did he represent his co-Defendants and the companies who were under suspicion of land banking activities, he actively assisted them in those very activities. The Judge found that the Respondent assisted the companies to process transfers of land; receive investors' money into his firm's client account; sourced land and attempted to source land; conducted conveyancing and attempted to convey land; took part in the division of land; lodged estate plans with the Land Registry and provided what were said to be consultancy services. Included in the remarks which the Judge addressed to the Respondent were the following:

> "On the jury's verdict you did this deliberately realising that it was capable of assisting in allowing the companies to conduct unregulated activities and you intended to do so. Further, you accept your expertise in this area meant that you knew all about the Collective Investment Schemes and the need for oversight.…
>
> Nevertheless you deliberately allowed Plott and EPI to carry on in breach of the regulations and I judge you deliberately frustrated and delayed the FSA's investigations.
>
> The more serious charge of which you have been convicted is Count 4, the charge of money-laundering. Not only is the amount involved substantial, being just short of £900,000, but your position as a solicitor makes this very serious indeed. In respect of Count 4, in the way the matter was left to the jury and in the way that your counsel addressed the jury in closing, it is clear to me that the jury's verdict meant that they were sure that at least some of the money was the proceeds of fraud."

15.4 Mr Willcox submitted that the Respondent had not submitted a response to the Rule 7 Statement and as the Tribunal would have noted from the Memorandum of the CMH on 14 May 2015 he did not provide a response to the Rule 5 Statement either. This was a very serious case of a solicitor convicted of criminal offences carrying out regulated activities without authorisation and money-laundering which attracted a custodial sentence of five and a half years. Mr Willcox asked the Tribunal to find the allegations in the Rule 7 Statement proved on the evidence before it.

15.5 The Tribunal considered the evidence including the Certificate of Conviction upon which it was entitled to rely under Rule 15(2) of the SDPR and the submissions for the Applicant. The Tribunal was satisfied that the conviction of the Respondent and his subsequent sentence constituted breaches of Principle 1 his duty to uphold the rule of law and the proper administration of justice; Principle 2 his duty to act with integrity; and Principle 6 his duty to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Accordingly the Tribunal found allegation 1.13 proved to the required standard.

Previous Disciplinary Matters

15.6 The Respondent had appeared before the Tribunal on two previous occasions.

15.7 In case number 9146-2004 heard in April 2005 the allegations were that the Respondent had been guilty of conduct unbefitting a solicitor in that:

> "1. He withdrew money in relation to clients from a general client account which exceeded the money held on behalf of those clients in all the solicitors general client accounts contrary to Rule 22(5) of the Solicitors Accounts Rules 1998;
>
> 2. He failed to provide clients with information about costs and failed to operate a complaints handling procedure in accordance with the Solicitors

Costs Information and Client Care Code contrary to Rule 15 of the Solicitors Practice Rules 1990;

3. He abused the Solicitor/Client fiduciary relationship by taking advantage of clients;

4. He took contrary advantage of clients by overcharging for work done."

The Tribunal found allegation 1 to have been substantiated, indeed it was not contested, and found allegations 2, 3 and 4 to have been substantiated, but in so doing considered that allegations 3 and 4 really amounted to a duplication. The Tribunal ordered that the Respondent pay a fine of £10,000 and that he pay costs in the sum of £12,000.

15.8 In case number 9913-2008 heard in April 2009 the allegations against the Respondent were that he had been guilty of conduct unbefitting a solicitor and/or in breach of the Solicitors' Practice Rules 1990 and the Solicitors Accounts Rules 1998 in that:

"1. The Respondent had withdrawn money from client account when not authorised or permitted to do so in breach of Rule 22 of the Solicitors Accounts Rules 1998 leading to a cash shortage.

2. On discovering the cash shortage the Respondent had failed to remedy promptly the consequent breach of Rule 22 contrary to Rule 7 of the Solicitors Accounts Rules 1998.

3. The Respondent had acted in a way which is likely to compromise or impair his own good repute and that of the Solicitor's profession contrary to Rule 1(d) of the Solicitors Practice Rules 1990.

4. As a condition of his retainer, the Respondent had charged clients a sum equivalent to 15% of the firm's fees on each client matter as a contribution towards the firm's professional indemnity premium such that the cumulative amount of all such contributions exceeded, or was likely to exceed, the premium payable thereby deriving a secret profit."

The Respondent was also charged with acting dishonestly. The Tribunal found allegations 1 to 4 proved; indeed they had been admitted. The Tribunal accepted that the Respondent had been reckless rather than dishonest in his method of charging. The Tribunal ordered that the Respondent pay a fine of £15,000 and further ordered that he pay costs in the sum of £16,000.

Mitigation

16. The Respondent had not offered any mitigation.

Sanction

17. The Tribunal had regard to its Guidance Note on Sanctions. The most serious misconduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty had been proved would almost invariably lead to striking off, save in exceptional circumstances. The offences of which the Respondent had been convicted had a dreadful impact on members of the public and as a result on the reputation of the solicitors' profession. It was clear from the Judge's Note of Sentence that the Respondent's actions had been cynical and utterly calculated. To compound that he had been before the Tribunal on two previous occasions and the amount of fine he had been ordered to pay had escalated. He had been advised that a second appearance before the Tribunal was an extremely serious matter. Clearly that warning had no effect upon him. There was no evidence of any exceptional circumstances such as would justify a lesser sanction than strike off. The criminal offences he had committed were at the higher end of the spectrum of seriousness and the Tribunal could not allow someone with a record of this sort, who had done what the Respondent had done, to continue in practice as a solicitor for a moment longer.

Costs

18. Mr Willcox sought and obtained the permission of the Tribunal to amend the Applicant's costs claim by removing from it elements relating to the Rule 5 Statement. This had the effect of reducing the costs claim to £6,040.80. The Tribunal considered that the element which related to external solicitors previously instructed in the matter by the Applicant to be somewhat high and reduced that part of the claim from £3,259 to £1,500 but considered the costs claimed for work in-house by the Applicant in the person of Mr Willcox to be reasonable at £1,350. VAT was allowable on the costs of the external solicitors. The Tribunal therefore assessed costs fixed in the total amount of £3,150. As to enforceability of the costs order, the Respondent had not engaged with the hearing process and although alerted that it was open to him to make representations about his ability to pay and that if he did not do so the Tribunal would be entitled to determine the sanction and/or costs without regard to the Respondent's means, he had provided no information. An immediately enforceable order would be made.

Statement of Full Order

19. Upon the Application of the Applicant the Tribunal Ordered that allegations 1.1 to 1.12 inclusive in the Rule 5(2) Statement and costs related to that Application should lie on the file at the Tribunal and should not be proceeded with without the permission of the Tribunal. The Tribunal further finding allegation 1.13 in the Rule 7 Statement proved, the Tribunal Ordered that the Respondent Dale Robert Walker, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to the Application in the Rule 7 Statement fixed in the sum of £3,150.00.

Dated this 21st day of October 2015
On behalf of the Tribunal

D. Glass
Chairman