SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11638-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

IAN BRILL Respondent

Before:

Mr A. Ghosh (in the chair)
Miss H. Dobson
Mr P. Hurley

Date of Hearing: 3 October 2017

Appearances

Shaun Moran, 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 made by the Solicitors Regulation Authority ("SRA") were that whilst in practice as a consultant at The Miah Solicitors Limited ("the Firm"):

1.1 He received payment in respect of fees due to the Firm from five clients, totalling £780.00, and failed to account for the money to the Firm and thereby breached all, or any, of the following:

1.1.1 Failed to act with integrity in breach of Principle 2 of the SRA Principles 2011 ("the Principles");

1.1.2 Failed to maintain the trust the public places in him and in the provision of legal services in breach of Principle 6 of the Principles;

1.1.3 Rule 17.1(a) of the SRA Accounts Rules 2011 ("SAR") – when you receive money paid in full or in part settlement of your bill (or other notification of costs) you must determine the composition of the payment without delay and deal with the money accordingly: (i) if the sum comprises office money, … it must be placed in an office account or (ii) if the sum comprises only client money, the entire sum must be placed in a client account.

1.2 Whilst conducting four matters on behalf of clients he failed to comply with court directions, prepared an inadequate court bundle, instructed Counsel late and prepared Wills which were defective in that they failed to give effect to and comply with his instructions. He thereby breached all, or any, of the following:

1.2.1 Failed to act in the best interests of each client in breach of Principle 4 of the Principles;

1.2.2 Failed to provide a proper standard of service to his clients in breach of Principle 5 of the Principles;

1.2.3 Failed to maintain the trust the public places in him and in the provision of legal services in breach of Principle 6 of the Principles.

1.3 He failed to create client ledgers or send bills of costs on his files and thereby breached all, or any, of the following:

1.3.1 Failed to maintain the trust the public places in him and in the provision of legal services in breach of Principle 6 of the Principles:

1.3.2 Rule 1.2(f) of the SAR – you must keep proper accounting records to show accurately the position with regard to the money held for each client and trust;

1.3.3 Rule 29.1 of the SAR – you must at all times keep accounting records properly written up to show your dealings with : (a) client money received, held or paid by you; including client money held outside a client account under Rule

15.1(a) or Rule 16.1(d) and (b) any office money relating to any client or trust matter;

1.3.4 All dealings with client money must be appropriately recorded; in a client cash account or in a record of sums transferred from one client account to another and (b) on the client side of a separate client ledger for each client (or other person, or trust). No other entries may be made in these records.

2. Dishonesty was alleged with respect to allegation 1.1, however dishonesty was not an essential ingredient to prove the allegation.

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included:

- Notice of Application dated 12 April 2017
- Rule 5 Statement and Exhibit MNG1 dated 12 April 2017
- Respondent's Answer to the Rule 5 Statement dated 24 May 2017
- Applicant's Schedule of Costs dated 15 September 2017
- Respondent's Witness Statement dated 16 September 2017

Preliminary Matters

The Respondent's Non-Attendance

4. The Respondent did not attend the hearing.

5. Mr Moran submitted that the Respondent had been in regular contact with both the Tribunal and the Applicant, and had referred to the hearing date in his communications; it was clear that he was aware of the hearing date. He had stated, in his Answer, that he would not be attending the hearing. However, in an email dated 26 September 2017, the Respondent stated that he wished to "put my account of what happened to the Tribunal" and that "if the Tribunal saw fit to adjourn the case on 3 October I will do everything in my power to attend a future hearing."

6. In response to that email the Applicant, on 29 September 2017, informed the Respondent that it would object to any application to adjourn the hearing and would apply for the matter to proceed in his absence in the event that the Respondent did not attend. Attached to that email was a copy of the Tribunal's practice note on adjournments. No adjournment application was made by the Respondent.

7. Whilst the Respondent had cited medical grounds as his reason for not attending, the only medical evidence he had provided was a letter dated 2 May 2017, which had been produced following an examination on 27 April 2017. The letter stated that the prospect of attending a disciplinary hearing was having a "deleterious" effect on the Respondent's mental well-being. Mr Moran submitted that the Respondent had failed to provide any medical evidence setting out a diagnosis and prognosis, and that the letter of 2 May 2017 was insufficient for the purposes of compliance with the requirements of the Tribunal's practice note on adjournments.

8. Mr Moran submitted that the Tribunal should, in considering the application to proceed in the Respondent's absence, have in mind the criteria set out in the cases of R v Hayward, Jones and Purvis [2001] EWCA Crim 168 and GMC v Adeogba [2016] EWCA Civ 162.

9. The Tribunal determined that the Respondent had been properly served with the proceedings and notice of the hearing. He had submitted his answer to the allegations, and had provided updated means information on 29 and 31 August 2017. Further, he had been in contact with the Applicant and the Tribunal in relation to the hearing on 29 September 2017. The Respondent had made clear in his Answer, and other correspondence that he would not be attending the hearing due to the likely effect of the hearing on his health.

10. The Tribunal noted that despite the Tribunal's practice note on adjournments being specifically brought to his attention, the Respondent had made no formal application for the matter to be adjourned due to ill health or any other reason. Further, the Tribunal was not satisfied that the letter dated 2 May 2017 provided sufficient justification for an adjournment. The Tribunal had offered, and the Respondent had rejected, the option of having the hearing take place by way of a video-link. Having regard to the principles in Jones and Adeogba, the Tribunal was satisfied that the Respondent had waived his general right to be present as he had deliberately and voluntarily absented himself from the hearing. Whilst fairness to the Respondent was of prime importance, fairness to the Applicant had also be taken into account. It was in the public interest and in the interests of justice for the case to be heard and determined as promptly as possible. Accordingly, given the circumstances, the Tribunal determined that it was just to proceed with the case, notwithstanding the Respondent's absence.

Application to Amend the Rule 5 Statement

11. Mr Moran applied to amend some typographical errors in the Rule 5 Statement, which included the Respondent's current address and the amendment of a number of dates.

12. The Tribunal considered that there was no prejudice to the Respondent in allowing those changes. Accordingly the application to amend the Rule 5 Statement was granted.

Factual Background

13. The Respondent was born in 1951 and was admitted to the Roll of Solicitors in December 1977. At the material time, he was a consultant at the Firm.

14. On 19 March 2015, Mr Miah, a manager at the Firm received a telephone call from a client who complained about the Respondent's conduct. As a result of that complaint, Mr Miah reviewed the Respondent's files and his client ledgers. The review showed that the Respondent had received cash payments from five clients totalling £780 which had not been paid to the Firm. The review also showed that there were other issues with some of the Respondent's files, including failures to comply with Court directions, failures to provide bills or other notification of costs and other file management issues.

15. Mr Miah reported the matters to the SRA, who then undertook an inspection of the Firm. A Forensic Investigation Officer ("FIO") having inspected the Firm's books of account and other documents, and having interviewed the Respondent and Mr Miah, produced a report dated 16 May 2016 ("the FI Report").

16. On 17 August 2016, the SRA wrote to the Respondent enclosing a copy of the FI Report and setting out a number of allegations. The Respondent replied to that letter on 15 September 2016. In that response the Respondent accepted that:

- he had failed to account to the Firm for cash payments received;
- he had offered discounts for cash payments; and
- there was a lack of formal bills, client ledgers and payment of money into client account.

Witnesses

17. None.

Findings of Fact and Law

18. 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.

19. **Allegation 1.1 - He received payment in respect of fees due to the Firm from five clients, totalling £780.00, and failed to account for the money to the Firm and thereby breached all, or any, of the following: Principle 2 of the Principles; Principle 6 of the Principles; Rule 17.1(a) of the SAR.**

19.1 The Respondent acted for Mr F in the drafting of 2 Wills. He attended Mr F's home together with his wife in order that the Wills could be witnessed. Mr F confirmed in a witness statement dated 24 February 2015 that he paid £180 in cash to the Respondent, who provided him with a receipt.

19.2 The Respondent also acted for Mr L in the drafting of a Will. He met with the Respondent at the Firm's offices and was quoted £180.00 for the work to be completed. In a statement dated 24 February 2016, Mr L stated that he paid £30.00 on his debit card and a further £150.00 in cash. He received a typed receipt for the £30.00 paid on the debit card. It could be seen that the typed receipt had been annotated to include the receipt of the cash payment.

19.3 The Respondent acted for Mr H and his wife in the amending of their Wills. Mr H, in his statement dated 12 February 2016 stated that he was quoted £120 for the work to be completed. On 21 October 2014, the Respondent together with his wife, attended Mr H's home address. He paid the Respondent £120 in cash on that date; he was not provided with an invoice or a receipt.

19.4 The Respondent admitted allegation 1.1

19.5 The Tribunal found allegation 1.1 proved beyond reasonable doubt on the facts and the admission of the Respondent.

20. **Dishonesty**

20.1 The Applicant submitted that the Respondent's actions were dishonest in accordance with the combined test laid down in Twinsectra v Yardley and others [2002] UKHL 12, namely that the person had acted dishonestly by the ordinary standards of reasonable and honest people (the objective test) and realised by those standards he or she was acting dishonestly (the subjective test).

20.2 In receiving payments in cash from clients in respect of fees and failing to account for those payments to the Firm, the Respondent had acted dishonestly by the ordinary standards of reasonable and honest people.

20.3 Further he was aware that his conduct was dishonest by those standards as:

20.3.1 He knew he had a duty to account for money received in respect of fee to the Firm but despite knowing this, he failed to account to the Firm for the money he received in cash in respect of fees.

20.3.2 He specifically asked his clients for cash payments. He knew that these were in respect of fees due to the Firm but failed to account for the Firm for them, instead he retained the payments. The Respondent must have known that retaining payments due to the Firm as opposed to paying them over to the Firm was dishonest.

20.3.3 The Respondent denied that his conduct had been dishonest. In his Answer he stated that:

> "At the time I did not think that I was acting dishonestly. I was working on a commission basis but was not being paid my commission. I thought that I could keep money due to the firm and set it off against the money I was owed by the firm.
>
> Looking back I realise that I was suffering from stress and depression at the time of the events in question, and that I was not thinking clearly, and that is why mistakes arose."

20.4 The Tribunal considered it to be obvious that reasonable and honest people, operating ordinary standards would consider that it was dishonest for a solicitor to accept cash payments from a client, and then fail to account for those payments to the firm. Accordingly, the Tribunal found that the objective test had been satisfied.

20.5 The Tribunal considered the Respondent to be an experienced solicitor who knew that it was dishonest to obtain cash from a client and then fail to account to the firm for that money. Even if, as was the Respondent's case, he believed that he was entitled to monies from the Firm, and he was taking cash from clients by way of a 'set-off' in

relation to monies owed to him by the Firm, he knew that he could not simply take unilateral action and pocket monies that were properly due to the Firm. Any solicitor and especially a solicitor of the Respondent's experience would have been fully aware of the sacrosanct nature of client money, and the need to account for that.

20.6 The Tribunal considered that the issue of whether monies were properly owed to the Respondent by the Firm had no bearing on the Respondent's honesty; he knew that it was dishonest to take money from clients and not account to the firm for it. The Tribunal also noted that the Respondent's 'set-off' explanation had not been provided to the FOI when he was interviewed. Instead he had stated that he had given the cash to either Mr Miah or into the accounts department. The Tribunal had no hesitation in finding, beyond reasonable doubt, that the Respondent knew that by the ordinary standards of reasonable and honest people his actions were dishonest.

20.7 Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had acted dishonestly as alleged.

21. **Allegation 1.2 - Whilst conducting four matters on behalf of clients he failed to comply with court directions, prepared an inadequate court bundle, instructed Counsel late and prepared Wills which were defective in that they failed to give effect to and comply with his instructions. He thereby breached all, or any, of the following: Principles 4, 5 and 6 of the Principles.**

Mr S

21.1 The Respondent acted for Mr S in a road traffic matter, in which Mr S was the Claimant. In a statement dated 24 March 2015, the solicitor for the Defendant applied for the matter to be struck out due to the "Claimant's wilful disregard of all court orders", which, the Defendant submitted "ought to be considered serious and significant".

21.2 Orders not complied with included:

- The provision of a signed authority for the disclosure of medical records by the required date;
- The provision of standard disclosure by way of a list of documents by the required date;
- The exchange of witness statements by the required date;
- The submission of an application for an extension of time for the exchange of witness statements;
- Submission of an application for relief from sanctions by the date required, notwithstanding an undertaking from counsel as regards service of the application within the requisite time;
- The provision of an updated Schedule of Loss by the date required.

21.3 As a result of the Respondent's failure to comply with court Orders, a costs award was made against Mr S in the sum of £1,500.00.

Ms D

21.4 The Respondent acted for Ms D in matrimonial proceedings, in which he was responsible for the preparation of a bundle for the court hearing. The bundle was served late, the day before the matter was due to be heard. The hearing was adjourned. In the recital to the Order, the District Judge recorded the reason for the adjournment as:

> "upon the hearing not proceeding because of the lateness of filing and service of the bundle and the bundle not being in a fit state for the case to proceed and there being insufficient time for the bundle to be corrected and put before the court and the matter to be heard".

21.5 As a result of the late service of the bundle and the inability to hear the matter, a wasted costs order was made against the Firm in the sum of £5,636.40. The Firm was also ordered to pay the other party's costs in relation to the wasted costs hearing assessed in the sum of £799.80

MM

21.6 The Respondent acted for MM in a right of way dispute. Despite being asked by the client and Mr Miah to instruct counsel in November 2014, the Respondent did not instruct counsel until the week before the hearing. The case was lost on a point of law. Mr Miah agreed to pay the costs on behalf of MM, those costs being approximately £18,000.00.

Mr T

21.7 In a complaint made on 19 March 2015, Mr T advised the Firm that he had instructed the Respondent to draft 2 Wills. He was not satisfied with the drafts and instructed the Respondent to amend them; the Respondent had failed to include in the Wills a section whereby the estates of Mr T and his wife should be left to each other in the first instance. The Respondent, together with his wife, attended Mr T's house. The amended Wills were signed and witnessed. Thereafter, the Respondent asked Mr T for £240.00 in cash. He advised Mr T that this was a reduced rate as it did not include VAT. Mr T advised the Respondent that he did not have £240.00 in cash on him, and further, he had not received a bill.

21.8 In a statement dated 4 March 2016 Mr T describes being "shocked" that the Respondent had asked for a cash payment and offered a reduced rate without tax or a formal bill, and as such decided to make a complaint to the Firm. Further, he was not provided with a client care letter, nor was he made aware that he could make a complaint to the Legal Ombudsman or the SRA if he was dissatisfied with the service he received.

21.9 The Respondent admitted allegation 1.2.

21.10 The Tribunal found allegation 1.2 proved beyond reasonable doubt on the facts and the Respondent's admission.

22. **Allegation 1.3 - He failed to create client ledgers or send bills of costs on his files and thereby breached all, or any, of the following: Principle 6 of the Principles; Rule 1.2(f) of the SAR; Rule 29.1 of the SAR; All dealings with client money must be appropriately recorded; in a client cash account or in a record of sums transferred from one client account to another and (b) on the client side of a separate client ledger for each client (or other person, or trust). No other entries may be made in these records.**

22.1 Following the complaint made by Mr T (see allegation 1.2 above) Mr Miah reviewed the Respondent's files. The review showed that the Respondent did not always create electronic or paper files for each client. 20 files were identified, of which 13 did not have a ledger or electronic file and 7 had blank ledgers with no entries in relation to bills or receipts. Mr Miah also found 19 files where no bill had been raised despite the work on the file having been completed.

Ms E

22.2 The Respondent acted for Ms E in the preparation of her Will. In a statement dated 5 March 2016, Ms E explained that she was quoted £140 for the completion of the work; she paid that amount in cash. Whilst she received a receipt, she was not given an invoice.

22.3 In his interview with the FIO on 16 March 2016, the Respondent accepted that he had breached Rule 1.2(f) of the SAR. He was unable to provide an explanation as regards the missing paper and electronic files and the ledgers. He explained that the Firm was chaotic; there were a lot of work pressures and the lack of a legal cashier meant that the accounts were always behind resulting in ledgers not always being accurate.

22.4 The Respondent admitted allegation 1.3

22.5 The Tribunal found allegation 1.3 proved beyond reasonable doubt on the facts and the Respondent's admission.

Previous Disciplinary Matters

23. None

Mitigation

24. In his letter to the SRA dated 15 September 2016, the Respondent advanced the following in mitigation:-

24.1 He experienced great difficulty in working with Mr Miah. Once he became a consultant, the Respondent was encouraged to undertake litigation and other work which he had not conducted for a number of years. Whilst he tried to discuss problems that arose in various cases, he found Mr Miah to be unhelpful and further,

Mr Miah had taken steps to hold the Respondent financially responsible for shortfalls in costs that arose.

24.2 The accounting systems in place at the Firm were at all times inadequate.

24.3 He was often accompanied by his wife on home visits, who attended in case she was required to act as a witness to various documents. He accepted cash from clients on occasion but would usually provide them with a receipt.

24.4 Following the agreement with the Firm, the Respondent became depressed and demotivated for a number of personal and professional reasons. He accepted that his own accounting and administration was lacking, but maintained that the amounts of money involved were de minimis and should be viewed against the background of the far larger sums he was owed by the Firm in salary and commission. The Respondent accepted that this did not excuse his behaviour, and accepted that his conduct in that regard had lacked integrity.

Sanction

25. The Tribunal had regard to the Guidance Note on Sanctions (5th Edition-December 2016). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

26. The Tribunal considered that the Respondent's conduct had been motivated by his own financial gain. His actions were clearly planned; he had arranged surreptitious home visits and had attended with his wife, in order to conclude the matter and ask for cash payments. He had breached the trust placed in him by the Firm, who should have been able to trust that he would deal with client money in an appropriate and honest way. He was entirely culpable for his misconduct and was an experienced solicitor who knew the requirements in relation to client monies. His conduct fell well below the standards expected of a solicitor and had caused harm to the reputation of the profession, as well as financial losses for the Firm. The Respondent's actions were deliberate, calculated and repeated. Further he had tried to conceal his actions; he attended the home addresses of his clients, without the Firm having any knowledge of those visits. He had arranged for his wife to attend with him, which, the Tribunal determined, was to enable matters to be concluded such that the client would not need to attend the office, leaving the Firm unaware of any financial transactions. The Tribunal found that the Respondent knew that his conduct was in material breach of his obligation to protect the public and the reputation of the profession. In addition to the mitigation advanced in the letter dated 15 September 2016, the Tribunal noted that the Respondent had a previously unblemished record, and had shown insight into the admitted matters.

27. Given its finding of dishonesty, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "....Lapses from the required standard (of complete integrity, probity and trustworthiness)....may....be of varying degrees. The most serious involves proven dishonesty....In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

28. The Tribunal did not find any circumstances that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin. The Tribunal found that the seriousness of the Respondent's misconduct was at the highest level such that the protection of the public and the protection of the reputation of the profession required that he be struck off the Roll of Solicitors.

Costs

29. Mr Moran made an application for costs in the sum of £16,556.43. He submitted that the costs incurred in the investigation and prosecution of the matter were reasonable.

30. The Tribunal considered that there should be a reduction due to the shortened hearing time. The Tribunal also found that the investigation costs claimed were overly high and reduced the costs claimed to £14,000.00, which it considered to be reasonable and proportionate in the circumstances.

Statement of Full Order

31. The Tribunal Ordered that the Respondent, IAN BRILL, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,000.00.

Dated this 25th day of October 2017
On behalf of the Tribunal

A. Ghosh
Chairman

Judgment filed
with the Law Society
on 25 OCT 2017