

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11801-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ANDREW GEORGE DAVIES

Respondent

Before:

Mr S Tinkler (in the chair)

Mr J Evans

Ms J Rowe

Date of Hearing: 26 February 2021

Appearances

There were no appearances as the matter was dealt with on the papers.

JUDGMENT ON AN AGREED OUTCOME

***JUDGMENT NOT BE PUBLISHED OR DISCLOSED TO
NON-PARTIES WITHOUT LEAVE OF THE TRIBUNAL***

Allegations

1. The Allegations against the Respondent were that:
 - 1.1 Between 22 October 2009 and 24 April 2017, he made at least 227 improper withdrawals from client account resulting in a minimum cash shortage of £1,504,056.12. He misappropriated the monies for his own purposes. He therefore breached any or all of the following:
 - 1.1.1 Principles 2, 6 and 10 of the SRA Principles 2011. (“The 2011 Principles”)
 - 1.1.2 Rule 20.1 (a) of the SRA Accounts Rules 2011. (“The 2011 Accounts Rules”);
and in so far as the conduct preceded 6 October 2011:
 - 1.1.3 Rules 1.02, 1.04 and 1.06 of the Solicitors’ Code of Conduct 2007. (“the 2007 Code of Conduct”)
 - 1.1.4 Rule 22 (1) (a) of the Solicitors’ Accounts Rules 1998. (“The 1998 Accounts Rules”)
 - 1.2 From between in or around 2013 to 2016 he used client bank account as a banking facility for his own purpose, and thereby breached any or all of the following:
 - 1.2.1 Principles 6 and 7 of the 2011 Principles.
 - 1.2.2 Rule 14.5 of the 2011 Accounts Rules.

In addition, dishonesty was alleged as an aggravating factor with respect to Allegation 1.1.
2. The case proceeded under the Solicitors (Disciplinary Proceedings) Rules 2007.

Background

3. The Respondent was admitted as a solicitor on 1 November 1988. At all relevant times the Respondent had been a partner then member at Pitmans LLP (the Firm) of 47 Castle Street, Reading Berkshire RG1 7SR. He joined the firm in 1995. He became a partner in 1996 and an equity partner in 1997. The firm became an LLP in November 2011 when the Respondent became a Member. He was head of the Firm’s Commercial Property Team and specialised in acting for developers in the residential property sector. He was dismissed from the firm on 30 April 2017. At the time of the hearing the Respondent remained on the Roll of Solicitors but did not hold a current practising certificate. He was serving a sentence of imprisonment at the time of the hearing.

Application for the matter to be resolved by way of Agreed Outcome

4. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome (SAF) annexed to this

Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

5. In the SAF the Respondent admitted all the Allegations including the allegation of dishonesty. The proposed outcome was that the Respondent be struck-off the Roll and that he pay £17,000 towards the Applicant's costs.

Findings of Fact and Law

6. 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.
7. The Tribunal reviewed all the material before it and was satisfied that the Respondent's admissions were properly made.
8. The Tribunal considered the Guidance Note on Sanction (December 2020). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
9. The Respondent had made admissions to serious matters involving large sums of money and dishonesty. There were no exceptional circumstances advanced by the parties or apparent from the papers. The Tribunal therefore agreed that the appropriate and proportionate outcome was for the Respondent to be struck-off the Roll in order to protect the public and the reputation of the profession.

Costs

10. The Tribunal was content to order costs in the sum agreed between the parties.

Publication

11. The Respondent was serving a sentence following a conviction for matters which were related to the Allegations set out above. The Respondent's co-Defendant in those proceedings was still awaiting trial. The Respondent had applied for this Judgment not to be published until the conclusion of the co-Defendant's trial as there was a concern that publishing the details of these Allegations could prejudice those proceedings.
12. The Applicant did not oppose the application.
13. The Tribunal considered the need to maintain the principle of open justice and the need to ensure that publication of the Judgment did not in any way cause prejudice to ongoing criminal proceedings. The Tribunal noted that the substantive hearing of these matters had been adjourned on several occasions since 2018 due to the ongoing proceedings against the Respondent and the need to avoid prejudicing those proceedings. It was therefore logical that the principle was extended to ensure the integrity of the proceedings against his co-Defendant.

14. The Tribunal therefore directed that this Judgment not be published or disclosed to non-parties without leave of the Tribunal. It has further directed that the parties notify the Tribunal when the criminal proceedings against the Respondent's co-defendant were concluded in order that it may then publish the Judgment.

Statement of Full Order

15. The Tribunal Ordered that the Respondent, ANDREW GEORGE DAVIES, 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 £17,000.00.

Dated this 3rd day of March 2021

On behalf of the Tribunal



S Tinkler
Chair

JUDGMENT FILED WITH THE LAW SOCIETY

03 MAR 2021

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

ANDREW GEORGE DAVIES

Respondent

STATEMENT OF AGREED FACTS, ADMISSIONS AND OUTCOME

1. By its application dated 13 March 2018, and the statement made pursuant to Rule 5(2) of the Solicitors (Disciplinary proceedings) Rules 2007 which accompanied that application, the Solicitors Regulation Authority ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making two allegations of misconduct against Andrew George Davies. (The Respondent)

The allegations

2. The allegations against the Respondent, made by the SRA within that statement were that:

"1.1 Between 22 October 2009 and 24 April 2017, made at least 227 improper withdrawals from client account resulting in a minimum cash shortage of £1,504,056.12. He misappropriated the monies for his own purposes. He therefore breached any or all of the following:

1.1.1 Principles 2, 6 and 10 of the SRA Principles 2011. ("The 2011 Principles")

1.1.2 Rule 20.1 (a) of the SRA Accounts Rules 2011. ("The 2011 Accounts Rules"); and

In so far as the conduct preceded 6 October 2011:

- 1.1.3 Rules 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007. ("the 2007 Code of Conduct")
 - 1.1.4 Rule 22 (1) (a) of the Solicitors' Accounts Rules 1998. ("The 1998 Accounts Rules")
 - 1.2 From between in or around 2013 to 2016 he used client bank account as a banking facility for his own purpose, and thereby breached any or all of the following:
 - 1.2.1 Principles 6 and 7 of the 2011 Principles.
 - 1.2.2 Rule 14.5 of the 2011 Accounts Rules.
3. In addition, dishonesty was alleged as an aggravating factor with respect to allegation 1.1.
4. The test to be applied by the Tribunal, in considering the allegation of dishonesty, is the test as set out in *Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent)* [2017] UKSC 6. Lord Hughes set out the test for dishonesty at paragraph 74 of the Judgment as follows:
5. "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."
6. Essentially, there are two issues for the Tribunal to consider. Firstly, the actual state of mind of Mr Davies including his knowledge or belief as to the facts and secondly, whether his conduct was dishonest applying the objective standard of ordinary standards of ordinary decent people.

Admissions

7. The Respondent admits the allegations against him and also admits that his conduct in acting as alleged was dishonest with respect to allegation 1.1.
8. The SRA has considered the admissions made by the Respondent and has considered, in light of those admissions, whether the outcome proposed in this document is in the public interest having regard to the seriousness of the matters alleged. The SRA is satisfied that the admissions and outcome proposed are in the public interest and that it is a proportionate and appropriate way of resolving this matter. It is agreed that the necessary and proportionate sanction to protect the public interest and reputation of the profession is for the Respondent to be Struck Off the Roll of Solicitors

Agreed facts

9. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraphs 2 and 3 of this statement, are agreed between the SRA and the Respondent:
 - 9.1 The Respondent was born on 1962 and was admitted as a solicitor on 1 November 1988. At all relevant times, the Respondent was a partner then member at Pitmans LLP (the Firm) of 47 Castle Street, Reading Berkshire RG1 7SR. He joined the firm in 1995. He became a partner in 1996 and an equity partner in 1997. The firm became an LLP in November 2011 when the Respondent became a Member. He was head of the Firm's Commercial Property Team. He specialised in acting for developers in the residential property sector. He was dismissed from the firm on 30 April 2017.
 - 9.2 The Respondent remains on the Roll of Solicitors but does not hold a current practising certificate.
 - 9.3 The firm discovered in April 2017 that the Respondent had made improper withdrawals from client bank account. The totality of the improper withdrawals made by the Respondent was £2,273,902.20.
 - 9.4 The firm reported the Respondent's misconduct to the SRA in May 2017. A duly authorised officer of the Applicant (the FI Officer) commenced a Forensic

Investigation of the firm's books of account and other documents on 19 June 2017. The inspection culminated in a report dated 5 September 2017, with attachments to include transcripts of interviews with representatives of the firm and the Respondent.

9.5 It was not possible for the FI Officer to examine all of the matters identified by the firm. He reviewed 54 matters which established that the Respondent had made at least 227 improper withdrawals from client bank account between 22 October 2009 and 24 April 2017. These totalled £1,504,056.12.

9.6 The firm's insurer, QBE Insurance (Europe) Limited (QBE), paid a sum of £2,500,000.00 into the firm's client bank account to cover the improper withdrawals and any losses not identified at that time. (Any excess funds were to be returned to QBE).

Allegation 1.1 – Improper withdrawals from client account resulting in a minimum cash shortage of £1,504,056.12.

10. A list of liabilities as at the extraction date, 31 May 2017, showed total client liabilities as £28,565,367.57. The client cash available was £27,061,311.45 resulting in a minimum cash shortage of £1,504,056,12. This was caused by improper withdrawals from client bank account by the Respondent. The Respondent would submit self-authorized payment request forms, in his own hand writing, to withdraw the monies from client account for his own purpose. These would often use an abbreviation in the "payable to" box, to hide the true identity of the beneficiary. He would on occasions underpay stamp duty on client matters, providing inaccurate and untrue details on the Stamp Duty Land Tax return, to be able to use the surplus monies for his own purpose.

11. The monies were used to pay, for example, utility bills, contractors doing work on his property, American Express, Barclaycard, items for the house and payments to third parties, in particular "S P A".

12. S P A was a client of the firm who the Respondent dealt with using funds that had been improperly withdrawn from client account. The Respondent says that S P A was not aware that the funds had been improperly withdrawn. The Respondent had told S P A that he "needed to get money out" of the firm and that S P A said he had needed cash. The Respondent set up an arrangement where he would withdraw a sum from client

bank account and pay it to S P A, who would then “*drip feed*” this back to the Respondent. The Respondent said that S P A was a man that he could trust and that at the time S P A did not know it was client money.

13. On the 54 matters reviewed by the FI Officer, the Respondent had made at least 227 improper withdrawals from client bank account between 22 October 2009 and 24 April 2017. These totalled £1,504,056.12.

Allegation 1.2 - Provision of a banking facility

14. The Respondent made seven payments into the client ledger account of matter MEG00016/2, between 22 May 2015 to 11 March 2016, that together totalled £4,950.00. The narrative used for each receipt by the Respondent was “M”. Seven payments were then made from the account to “Party 1”, ranging in date from 22 May 2015 to 21 March 2016, that together totalled £4,950.00.
15. The Respondent also made 25 payments into the client ledger account of matter MEG123112/1, ranging in date from 20 May 2013 to 26 March 2015, that together totalled £19,600.00. The narrative for each receipt was again shown as “M”.
16. Twelve payments were made from the account to “Party 1”, ranging in date from 20 May 2013 to 26 March 2015, that together totalled £11,975.38. A further twelve payments were made out to “Party 2”, ranging in date from 22 July 2013 to 26 March 2014, that together totalled £6,600.00.
17. There was no underlying transaction relating to a service forming part of a solicitor’s normal regulated activities in the transactions that were taking place. The Respondent had used client account as a banking facility in making payments into client account and then out to third parties.
18. Further, the Respondent accepts that it is not a proper part of a solicitor’s everyday business or practice to operate a banking facility and that it is prohibited by Section 19 Financial Services and Markets Act 2000 and Regulation 5 (2) of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001.

Dishonesty

19. The Respondent admits that his conduct was dishonest in accordance with the test for dishonesty laid down in Ivey and he admits that he acted dishonestly according to the standards of ordinary decent people.

20. The Respondent knew that:

- the withdrawals were being made from moneys belonging to other people (clients)
- he was going to use it for his own purposes, such as to pay his bills and provide money to third parties unconnected to the client matter.
- he deliberately underpaid stamp duty on client matters, providing inaccurate and untrue details on the Stamp Duty Land Tax return, to be able to use the surplus monies for his own purpose.
- he completed and signed the payment request forms for the withdrawals himself thereby authorising the repayments. He did these in his own handwriting.
- he often used an abbreviation on the payment request in the 'payable to' box, to hide the identity of the beneficiary.
- taking money which belonged to other people without their permission is regarded as dishonest.

21. The Respondent's actions amount to a course of conduct over at least seven years. They were not momentary aberrations or isolated events.

Non-Agreed Mitigation

22. In mitigation (which is not agreed by the SRA) the following is put forward by the Respondent:

1. The Respondent made admissions at an early stage and has cooperated with the SRA.
2. The Respondent is sorry for his behaviour and acknowledges that he has let his family, the firm, and the profession down.

23. However, the Respondent does not contend that the mitigation set out above amounts to exceptional circumstances which would justify the Tribunal in making any order other than that he be struck off the Roll.

Penalty proposed

24. It is therefore proposed that the Respondent should be struck off the Roll of Solicitors.

25. With respect to costs, it is further agreed that the Respondent should pay the SRA's costs of this matter agreed in the sum of £ 17,000.00.

Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance

26. The Respondent has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (5th edition), at paragraph 47, states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)).*"

27. In Sharma [2010] EWHC 2022 (Admin) at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:

"(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...

(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...

(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others..."

28. The Respondent was a partner then member at the Firm at the time of the misconduct. He had shared responsibility for ensuring compliance with the 1998 and 2011 Accounts Rules and the 2007 Code of Conduct and the SRA Handbook. Notwithstanding this he misused clients' money for his own purpose for over seven years by making hundreds of improper withdrawals. These were serious acts of dishonesty. The Respondent's motivation for this was to assist him in paying personal bills, obtaining extra cash for himself and to make payments to third parties. His actions were planned. By using client money in this way he deprived his clients of significant sums of money. The Respondent acted in breach of a position of trust. The Respondent had nearly 30 years' experience as a solicitor. The Respondent caused harm to clients in using their money for his own personal use. The Respondent attempted to conceal the misconduct by false accounting. The harm caused was foreseeable. His level of culpability was correspondingly high.

29. The case plainly does not fall within the small residual category of cases where striking off would be a disproportionate sanction. Accordingly, the fair and proportionate penalty in this case is for the Respondent to be struck off the Roll of Solicitors.

30. In light of the misconduct identified and having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions, the SRA contends, and the Respondent accepts, that the proper penalty in this case is an Order that the Respondent be struck off the Roll of Solicitors.

Dated this day of 2021

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On behalf of the Applicant, the Solicitors Regulation Authority

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Andrew George Davies