SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11844-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

COLIN ROSS DOWNIE Respondent

Before:

Ms J. Devonish (in the chair)
Mr B. Forde
Mr S. Howe

Date of Hearing: 21 January 2019

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1 The Allegations against the Respondent, contained in the Rule 5 Statement dated 29 June 2018 were that he, whilst in practice as a Member at Adjust Law Group Limited (formerly MJP Justice Limited) ("the Firm"):

1.1 Between December 2008 and December 2013, sought investor funding for the Firm in the knowledge that:

1.1.1 Funds previously transferred to the Firm for the purpose of funding PPI cases had not been returned to the investors in accordance with the terms on which those funds were invested; and/or

1.1.2 The Firm's financial situation was worsening.

He thereby:

1.1.3 Insofar as such conduct took place during the period from on or around December 2008 up to and including 5 October 2011, breached Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007 ("SCC 2007");

Insofar as such conduct took place on or after 6 October 2011, acted in breach of Principles 2, 6 and 8 of the SRA Principles 2011 ("the Principles"); and/or

1.1.4 Insofar as such conduct took place on or after 6 October 2011, failed to achieve Outcome 11.1 of the SRA Code of Conduct 2011 ("the 2011 Code").

1.2 Between December 2008 and December 2013, he misused or directed the misuse of investor funds provided to the Firm.

He thereby:

1.2.1 Insofar as such conduct took place during the period from on or around December 2008 up to and including 5 October 2011, breached Rules 1.02, 1.06 and 10.01 of the SCC 2007;

1.2.2 Insofar as such conduct took place on or after 6 October 2011, acted in breach of Principles 2, 6 and 8 of the Principles; and/or

1.2.3 Insofar as such conduct took place on or after 6 October 2011, failed to achieve Outcome 11.1 of the 2011 Code.

1.3 Between October 2010 and January 2015, he knowingly misled other parties, including SH, RM and the administrators of the Firm in respect of the value of the Firm's work-in-progress.

He thereby:

1.3.1 Insofar as such conduct took place during the period from on or around December 2008 up to and including 5 October 2011, breached Rules 1.02 and 1.06 SCC 2007;

1.3.2 Insofar as such conduct took place on or after 6 October 2011, breached Principles 2 and 6 of the Principles; and/or

1.3.3 Insofar as such conduct took place on or after 6 October 2011, failed to achieve Outcome 11.1 of the 2011 Code.

1.4 Between January 2012 and December 2013, he failed to check for, and/or correct, the following inaccuracies set out in Appendix 4, schedule 1 in respect of the Firm within the Litigation Funding Scheme promotional brochure of Adjust Law Capital.

He thereby:

1.4.1 breached Principles 2 and 6 of the Principles; and/or

1.4.2 failed to achieve Outcome 8.1 of the 2011 Code.

1.5 The Respondent acted dishonestly in respect of the matters set out in Allegations 1.1, 1.2, and 1.3 above or any of them. Whilst dishonesty was alleged in respect of Allegations 1.1, 1.2, and 1.3 above, proof of dishonesty was not an essential ingredient to prove those Allegations.

Documents

2. The Tribunal considered all the documents placed before it, including the Rule 5 Statement and the Statement of Agreed Facts and Outcome.

Factual Background

3. The Respondent was born in March 1969 and was admitted to the Roll of Solicitors on 15 September 2000. At all relevant times he was a Director of the Firm, which operated from premises at 3c Dalton House, Dane Road, Sale, Cheshire, England, MM3 7AR. At the time of the hearing he held a Practising Certificate.

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

Findings of Fact and Law

5. 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.

6. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.

7. The Tribunal considered the Guidance Note on Sanction (December 2018). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. This was a very serious case of dishonesty involving large sums of money. This was a case where no lesser sanction than a strike off was appropriate, having regard to the need to protect the public and the reputation of the profession. There were no exceptional circumstances and so the Tribunal approved the proposed sanction.

Costs

8. The parties had agreed that the Respondent pay costs in the sum of £20,833.33. The Tribunal noted that this represented a significant reduction on the anticipated costs. However the Applicant had been provided with details of the Respondent's means and in those circumstances the Tribunal was prepared to agree to the proposed costs order.

Statement of Full Order

9. The Tribunal Ordered that the Respondent, COLIN ROSS DOWNIE, 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 £20,833.33 plus VAT.

Dated this 29th day of January 2019
On behalf of the Tribunal

Jacqueline Devonish

J. Devonish
Chairman

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No: 11844 - 2018**

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY

Applicant

-and-

COLIN ROSS DOWNIE

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME IN RESPECT OF THE RESPONDENT

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1. By a statement made by David Collins on behalf of the Solicitors Regulation Authority ("SRA") pursuant to Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007, dated 29 June 2018 ("the Rule 5 Statement"), the SRA brought proceedings before the Tribunal making allegations of misconduct against the Respondent. The Tribunal gave directions on 12 July 2018. The substantive hearing is listed for five days, commencing on 11 February 2019.

2. The Respondent is willing to make admissions to all the allegations against him in the Rule 5 Statement as set out at paragraph 4 below, and he accepts the factual basis of the admitted allegations as set out in this document. The Respondent also agrees to an Order that he be struck off the Roll of Solicitors.

3. The SRA has considered the admissions made and whether those admissions, and the outcome proposed in this document, meet the public interest having regard to the gravity of the matters alleged. In circumstances where the Respondent has admitted all of the allegations against him, including that he acted dishonestly, and accepted that, subject to the Tribunal's approval, a Striking Off Order is appropriate, the SRA is satisfied that the admissions and outcome satisfy the public interest.

Admissions

4. The Respondent admits the following allegations. That he, whilst in practice as a Member at Adjust Law Group Limited (formerly MJP Justice Limited) ("**the Firm**"):

1.1 Between December 2008 and December 2013, sought investor funding for the Firm in the knowledge that:

1.1.1 Funds previously transferred to the Firm for the purpose of funding PPI cases had not been returned to the investors in accordance with the terms on which those funds were invested; and/or

1.1.2 The Firm's financial situation was worsening.

He thereby:

1.1.3 Insofar as such conduct took place during the period from on or around December 2008 up to and including 5 October 2011, breached Rules 1.02 and 1.06 of the Solicitors' Code of Conduct 2007 ("SCC 2007");

1.1.4 Insofar as such conduct took place on or after 6 October 2011, acted in breach of Principles 2, 6 and 8 of the SRA Principles 2011 ("the Principles"); and/or

1.1.5 Insofar as such conduct took place on or after 6 October 2011, failed to achieve Outcome 11.1 of the SRA Code of Conduct 2011 ("the 2011 Code").

1.2 Between December 2008 and December 2013, he misused or directed the misuse of investor funds provided to the Firm.

He thereby:

1.2.1 Insofar as such conduct took place during the period from on or around December 2008 up to and including 5 October 2011, breached Rules 1.02, 1.06 and 10.01 of the SCC 2007;

1.2.2 Insofar as such conduct took place on or after 6 October 2011, acted in breach of Principles 2, 6 and 8 of the Principles; and/or

1.2.3 Insofar as such conduct took place on or after 6 October 2011, failed to achieve Outcome 11.1 of the 2011 Code.

1.3 Between October 2010 and January 2015, he knowingly misled other parties, including SH, RM and the administrators of the Firm in respect of the value of the Firm's work-in-progress.

He thereby:

1.3.1 Insofar as such conduct took place during the period from on or around December 2008 up to and including 5 October 2011, breached Rules 1.02 and 1.06 SCC 2007;

1.3.2 Insofar as such conduct took place on or after 6 October 2011, breached Principles 2 and 6 of the Principles; and/or

1.3.3 Insofar as such conduct took place on or after 6 October 2011, failed to achieve Outcome 11.1 of the 2011 Code.

1.4 Between January 2012 and December 2013, he failed to check for, and/or correct, the following inaccuracies set out in Appendix 4, schedule 1 in respect of the Firm within the Litigation Funding Scheme promotional brochure of Adjust Law Capital.

He thereby:

1.4.1 breached Principles 2 and 6 of the Principles; and/or

1.4.2 failed to achieve Outcome 8.1 of the 2011 Code.

1.5 The Respondent acted dishonestly in respect of the matters set out in allegations 1.1, 1.2, and 1.3 above.

Agreed facts

Professional Details

5 The Respondent (SRA: **445471**) was born in [redacted] 1969 and was admitted to the Roll of Solicitors on 15 September 2000. He holds a current Practicing Certificate.

6 At all relevant times he was a Director of the Firm, whose head office operated from premises at 3c Dalton House, Dane Road, Sale, Cheshire, England, M33 7AR.

Background

7 The conduct in this matter came to the attention of the SRA when MM, an investor, reported the Respondent to the SRA on 12 March 2014.

8 The alleged conduct occurred between approximately December 2008 and January 2015. In summary, the Respondent caused the Firm to obtain in excess of £5,600,000 through a number of litigation funding companies. When investor funds from one company ran out, the Respondent would seek to obtain funds through a new company.

A significant portion of investor funds were used for purposes other than those which had been agreed with the investors. The Respondent obtained funds despite the Firm being technically insolvent as per the company accounts filed in 2011, 2012 and 2013. The Firm did not repay any monies to any of its investors. The Firm went into Administration on 7 February 2014 and was placed into Compulsory Liquidation on 30 January 2015. The FIO report identifies breaches of Principle 2, 3, 6 and 8 of the Principles.

Allegation 1.1: Sought investor funding when previous investor monies not returned and the Firm's financial situation worsening

Name of the Firm

9 The Firm was formed on 24 May 2006 under the name MJP Justice Limited. On 2 June 2010, the Firm's name was changed to Adjust Law Capital Limited. Between its creation and 29 June 2018[1], the Firm has had six Directors, one of whom is the Respondent. Each of the other five Directors resigned on or before 6 February 2013. The Respondent was appointed as a director on 1 September 2006 and is the only remaining Director.

G Companies

10 In 2008, the Respondent became involved with the G group of companies, which were set up to fund the litigation of cases relating to mis-sold Payment Protection Insurance ("PPI cases").

11 There were four G companies:

- GA Ltd
- GAL Ltd
- GB Ltd
- GD Ltd

12 Each was incorporated in the Isle of Man as an Exempt Scheme under the Isle of Man Collective Investment Schemes Act 2008. The first G company to come into existence was GA Ltd in January 2008. GAL Ltd, GB Ltd and GD Ltd were created later, in October 2009.

13 GA Ltd, GAL Ltd and GB Ltd were created in order to identify PPI cases and conduct the pre-litigation action i.e. drafting letters before claim and liaising with the banks to reach settlement.

[1]Rule 5 Statement Dated 29 June 2018

14 The investment opportunity was marketed by a number of independent financial advisors ("IFA's"). One of those IFA's was RM, who was the Director of CIP (an FCA regulated entity) and CTTC (a tax and trust advisory company). RM was first introduced to the Respondent in 2009 when the Respondent spoke about PPI litigation funding at a meeting of IFAs.

15 Towards the end of 2009, the Respondent and the Directors of the G companies explained to RM that GA Ltd, GAL Ltd and GB Ltd had '*stalled due to a stay in the courts processing PPI cases*'. A new company was needed to obtain further investment to fund cases through litigation.

16 GD Ltd was created to obtain the further investment. The purpose of GD Ltd was therefore different to the previous G companies. GD Ltd was set up to fund solicitor's firms to take the cases held by GA Ltd, GAL Ltd and GB Ltd that had not settled in the pre-action stage forward through litigation. The Firm was one of two firms chosen to be funded by GD Ltd.

17 On 1 March 2010, the Firm entered into a Credit Facility Agreement ("CFA") with GD Ltd. Under the terms of the CFA, GD Ltd opened a revolving credit facility for the Firm under which the Firm could borrow funds on the agreement that it would apply all amounts borrowed under the facility, "*towards the fees, insurance premium, costs, commissions and disbursements… in relation to each Claim.*"

18 On 21 March 2010, the Firm and GD Ltd entered into a Debenture in the sum of £1,000,000 in favour of GD Ltd.

19 The Firm bank accounts show that from June 2009 to July 2010, the Firm received at least £1,285,602.80 from FTFS Ltd, a company providing accounting and administrative support to G companies.

20 The first repayment from the Firm to GD Ltd was due on 22 September 2010. On 23 August 2010, SH undertook an audit of the Firm. In summary, the report established that:

20.1.1 the Firm had previously provided a schedule of 295 cases in which the GD Ltd funding had been utilised. As at the date of the audit, none of those cases had been prosecuted;

20.1.2 the funding provided by GD Ltd had not been utilised for the purpose of funding the 920 cases in the case-listing schedules;

20.1.3 funding had not specifically been used by the Firm for issuing and allocating cases, but also for the acquisition, checking and processing of stage 1 claims;

20.1.4 the Firm had accumulated losses in 2010 of £646,000 and was identified to be operating on an insolvent basis;

20.1.5 in the absence of further funding, or timely settlement payments, the Firm would be unable to pay the GD Ltd loan repayment due on 22 September 2010.

21 In a letter dated 20 October 2010, the Respondent wrote to SH and the G companies to state that he has expected further funding and was unhappy that GD Ltd had received funding and provided it to another firm of solicitors. He stated that the Firm had taken on cases on the assurance that GD would fund them, and therefore GD owed the Firm £1,707,900.

22 SH and the G companies replied by letter dated 4 November 2010. The letter states that:

22.1.1 the G companies and FTFS did not agree to provide the Firm with any further funding;

22.1.2 the Respondent had failed to produce financial forecasts, a full set of annual accounts, management accounts and statistical data relating to cases in breach of the CFA between GD Ltd and the Firm;

22.1.3 the Firm was contractually bound to make payments to GD Ltd and payment was demanded.

23 From 2010 to 2012, there were negotiations between the Firm and GD Ltd in respect of repayment of funds.

24 In total the Firm received £3,107,725 from the G companies, of which:

24.1.1 £1,083,725,000 was paid by GA Ltd, GAL Ltd, and GB to cover vetting fees;

24.1.2 £ 1,840,000 was loaned by GD Ltd for WIP and disbursements on behalf of the Firm.

25 The Firm repaid £30,392 to GD Ltd in the period from 2010 to 2011:

25.1.1	2 July 2010:	£4,000
25.1.2	2 August 2010:	£4,000
25.1.3	6 September 2010:	£4,000
25.1.4	6 January 2011:	£18,392

26 In the same period, the Respondent started to work with RM of CW to develop a formal unregulated investment scheme to fund PPI litigation with a fund raising target of £100,000,000. An aim of the scheme was to fund PPI cases and to repay some of those who had invested in the G companies.

27 In the process of setting up that scheme, on 23 January 2012, the Respondent (on the Firm's behalf) and GD Ltd signed a Deed of Settlement in respect of the monies owed by the Firm to GD Ltd. The Deed of Settlement stated that the Firm agreed to repay GD Ltd the sum of £2,450,000 by 30 April 2012, with an advance of £100,000 to be paid by the Firm to the client account of GD's solicitors, HD. The payment would constitute full and final settlement of amounts owed under the CFA between the Firm and GD Ltd.

28 The Firm's Yorkshire Bank Account (account number 70949036) shows the following payments to GD Ltd's solicitors, HD:

28.1.1 £50,000 on 3 January 2012
28.1.2 £50,000 on 20 January 2012

29 The statement of monies owed by the Firm to GD Ltd shows the £100,000 as having been paid by the Firm to GD Ltd. However, as at the date of the statement, 18 February 2014, the balance of the amount due had not been paid.

30 On 18 July 2013, Administrators were appointed for the G companies by the Isle of Man Financial Supervision Commission. On 13 February 2014, the Administrators reported that the Directors of the G companies had failed to take effective recovery action from solicitors, including the Firm.

SB Companies

31 As part of the process, the Respondent provided RM of CW with a Business Overview and Explanation of Business Opportunity document for the Firm. The document sets out the details of SB and that the Firm had the ability to process 1,000 new cases per week and Guardian scheme investors were projected a repayment of £11,528,100. Within the pack were a number of financial projections which predicted that the Firm would have annual net cash inflows of £4million - £38 million, a net profit after tax of £3million - £24million and net assets of approximately £3 million - £24million.

32 Whilst steps were being taken to form the formal unregulated investment scheme, the Respondent approached RM and stated there was an interim opportunity to fund 1736 PPI cases. SB 1736 Ltd (a Belize registered company) was created to meet the

opportunity. A very short time later, the Respondent approached RM and stated there were further cases that required funding; SB II Ltd was created to fund those cases.

33 Investors were to purchase shares in SB 1736 Ltd. SB 1736 Ltd would then loan the funds to the Firm in accordance with the Credit Facility Agreements. The set up and structure of investments through SB 1736 Ltd and SB II Ltd were identical. The Agreements set out that:

33.1 SB 1736 Ltd and SB II Ltd would provide a revolving credit facility for the Firm;
33.2 the Firm would apply the sums provided to the fees, insurance premium, costs, commissions and disbursements of each case to the maximum amount of £1,210 in each claim;
33.3 funds were to be utilised by the Firm as set out in Schedule 1 of the Agreements;
33.4 the Firm would submit a Utilisation request to SB in respect of each claim (in which the firm would offer an ATE policy, confirm the prospects of success as greater than 55%, repay the scheme within 5 days of receipt of settled costs in successful claims and with insurers costs when received in failed claims);
33.5 the Firm would warrant that it was not insolvent and that financial information provided was accurate;
33.6 the Firm would confirm that the Information Package contained true and accurate information;
33.7 settlement monies received by the firm should be returned to the scheme.

34 The Agreements detailed how the £1,210 in each case should be utilised:

WIP Court Fees:	£300
WIP:	£360
Broker Fee:	£100
Administration Fees:	£300
Marketing Allowance:	£150
Total:	**£1,210**

35 Each Agreement also set out that if the Firm failed to repay amounts due, made misrepresentations or became insolvent then the Firm would be in default of the Agreement.

36 RM and others at CW marketed SB 1736 Ltd and SB II Ltd to investors on the basis of information given to them by the Respondent. One of those investors was MM. Investors were told they would receive a 60% priority return plus 10% share in the additional profits within 12 months of investing. When MM raised further queries about the scheme, CW obtained responses from the Respondent and forwarded them on.

37 Evidence obtained from RM shows that:

37.1 in respect of SB 1736 Ltd a total of 21 investors invested £1,885,000, of which £1,774,000 was paid out to, or as directed by, the Firm; and

37.2 in respect of SB II Ltd a total of 22 investors invested £2,000,000, of which £1,865,400 was paid out to, or as directed by, the Firm.

38 Between December 2010 and January 2012, the Firm's bank accounts record receipts from the SB companies of approximately £3,700,000.

39 Under the terms of investment, investors in the two SB companies should have started to receive returns in approximately March 2012. In an email from CW to investors including MM dated 31 May 2012, at that time it was stated by CW that none of the cases funded by SB 1736 or SB II could be settled until the GD Ltd debenture had been removed, otherwise income from settled cases may go to GD Ltd. The email went on to state that the Firm was now seeking investment from China and Japan, which when received could be used to clear the GD Ltd debenture and repay the SB 1736 and SB II investors.

40 The position remained unchanged and so a meeting of investors was called on 5 June 2013. RM attended the meeting together with a number of the investors in SB 1736 and SB II. It was agreed that a number of elected individuals would attend a meeting with the Respondent.

41 On 19 June 2013, the Respondent met with a number of investors, including MM and RM. The note of the meeting records that at that meeting, the Respondent stated that funds from SB 1736 and SB II had been used to purchase cases, however, due to a lack of further funding, the Firm did not have the funds to litigate those cases. The Respondent explained to investors that an Acknowledgment of Heads of Agreement document had been signed through which it was intended that the Firm would receive £5,400,000 from Japanese investors through a bond issue, and that those funds would enable repayment to the GD Ltd, SB 1736 Ltd and SB II Ltd investors.

42 Through the remainder of 2013, the Respondent corresponded with RM and MM in respect of the potential Japanese investment. In September 2013, the Respondent reported to RM that some monies had been received in respect of the Japanese investment.

43 A further meeting between the Respondent, RM and the elected shareholders was held on 14 October 2013. At the meeting, the Respondent stated that the actual amount received from Japanese investment up to that point had fallen far short of the

£5,400,000 expected, as the Firm had only received £300,000, however, further significant funds were expected by the end of 2013.

44 On 17 December 2013, a release to SB 1736 and SB II shareholders stated that whilst monies had been raised in Japan the broker was unwilling to release funds to ALC due to a loss of confidence in the Firm.

45 No monies were ever repaid by the Firm to the investors in SB 1736 Ltd and SB II Ltd.

ALC Ltd

46 ALC was a registered company in Dubai set up to receive investor funds. The Firm first became involved in ALC when a UK company, FC Limited put the scheme together and brokered the deal. The Scheme Administrator was based in the Seychelles.

47 Investors took out capital insured bonds, signed by the Respondent. The bonds were protected by a Financial Guarantee Insurance Policy registered in Gibraltar. The Respondent was the Company Secretary of ALC and signed numerous documents on behalf of the company.

48 The Head of Terms Agreement dated 18 June 2013 states that 30% of the net subscribed funds in ALC Ltd would be advanced to the Firm. The Agreement is signed by the Respondent for and on behalf of ALC Ltd.

49 The FIO obtained a number of documents relating to the ALC scheme from an investor in ALC Ltd. These included promotional material, an investor interest statement issued by the fund Administrator, his ALC capital bond and Financial Guarantee Insurance Policy documentation. Of note, the promotional material makes the following assertions:

49.1 ALC was a wholly owned and controlled subsidiary of the Firm;
49.2 the Firm's successful track record;
49.3 The bond holder was covered by way of a Financial Guarantee Insurance policy for any unsuccessful claims.
49.4 the recoverable value of each Bond would exceed amounts invested, there would be a net gain of £2,300 per claim win or lose;
49.5 that the Firm had managed over 12,000 claims to date of which 98% had been successful;
49.6 several million pounds had already been deployed by the Firm to previous funds/structures;

50 During the period September 2012 to October 2013, the Firm's account recorded receipts of approximately £600,000 from ALC Ltd. None of the monies were ever repaid.

51 In October 2013, GR, an investor, contacted ALC Ltd concerned with the Firm's apparent parallels to a Ponzi-scheme. ALC Ltd responded to GR denying the parallels and highlighting the protections afforded to clients.

52 The Firm's Administrator's progress report records that ALC and FC Ltd held Floating Charges over the Firm in the sums of £800,000 and £400,000 respectively.

53 ALC Ltd applied for the Firm's administration in January 2014. The documents were signed by the Respondent as Director of ALC Ltd.

Firm HMRC Filed Accounts

54 In 2010, the published accounts show that the Firm held Net assets of £25,491. Thereafter, the accounts show that each year, the Firm's losses/liabilities were greater than its profits/assets. Thus, the balance sheets show increasing net liabilities year on year in the following amounts:

2011: £463,109
2012: £1,156,308
2013: £2,149,667

Administration

55 The Firm presented a Winding Up petition to the High Court of Justice on 27 November 2013.

56 On 10 December 2013, the Directors of the Firm appointed ML and PW, of LA LLP (a firm of Accountants and Licensed Insolvency Practitioners) as Administrators.

57 On 29 January 2014, the Respondent, in his capacity as Director of ALC Ltd filed a Notice of intention to appoint an administrator by the holder of a qualifying floating charged.

58 On 7 February 2014, the Respondent, in his capacity as Director of ALC Ltd filed a Notice of appointment of an administrator by the holder of a qualifying floating charge. ML and PW were officially appointed as Administrators on 7 February 2014.

59 On the basis that the WIP had been revealed to be nil, the administrators made an application to be discharged. On 30 January 2015, the Administrators were discharged and the Firm was placed into Compulsory Liquidation.

Worsening Financial Situation

60 The test for insolvency is set out at section 122(1)(f) of the Insolvency Act 1986, which sets out that a company may be wound up if, "*the company is unable to pay its debts.*" The test is further qualified by the 'cash flow' test in section 123(1)(e) of the Act which sets out that a company is deemed unable to pay its debts, "*if it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.*"

61 As can be seen from the 2011, 2012 and 2013 company accounts the Firm's financial situation was worsening and, in addition, each year the Firm's net liabilities outweighed its net assets and therefore operating on a technically insolvent basis. Yet throughout that period, the Respondent nevertheless continued to seek funding for PPI cases through to late 2013/early 2014.

62 The Respondent accepts that his actions amounted to a failure to act with integrity, as recently considered in *Wingate v Solicitors Regulation Authority* [2018] EWCA Civ 366, where it was said that integrity connotes adherence to the higher ethical standards of one's own profession. The Respondent therefore acknowledges he breached 1.02 SCC 2007 and Principle 2 of the Principles.

63 The Respondent accepts that a solicitor acting with moral soundness, rectitude and steady adherence to an ethical code would have not have:

63.1 continued to seek investor funding having failed to repay previous investors and in circumstances where the Firm's financial situation was worsening;

63.2 given undertakings that the Firm was operating on a solvent basis but it had, in fact, operated on an insolvent basis between 2011 and 2014.

64 The Respondent accepts that his conduct amounted to a breach of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services would be likely to be undermined if the Public were to learn that a Firm had obtained funds from multiple private investors when the Firm did not hold the funds to repay those investors and the likelihood of repayment decreased each year. The Respondent therefore accepts that he breached Rule 1.06 SCC 2007 and Principle 6 of the Principles.

65 The net liabilities of the Firm increased each year from 2011 to 2013. The Respondent had to obtain funding from third parties to keep the Firm from entering into Insolvency. The Firm cannot therefore have been said to have been running effectively. The Respondent accepts that he should not have obtained funding from third parties when it became clear from the Accounts that the Firm was making losses and did not have sufficient funds to repay the investors. The Respondent therefore accepts that his conduct breached Principle 8 of the Principles.

66 The Respondent used the funds of third parties to keep the Firm running and took advantage of the information asymmetry in respect of the Firm's financial situation. But for the funds of the investors, the Firm would have needed to enter Administration/Liquidation at an earlier stage. The Respondent accepts that he took unfair advantage of investors by continuing to seek third party funding without ever having repaid the initial investors and in the circumstances where the likelihood of being able to repay every investor decreased each year. The Respondent therefore accepts that he failed to achieve Outcome 11.1 of the 2011 Code.

Allegation 1.2: Misuse of Funds

67 As set out above, the Firm entered into agreements to use the invested funds. The funds were to be used as follows:

67.1 GD Ltd: The Credit Facility Agreement between the Firm and GD Ltd sets out that the Firm would use invested funds "*towards the fees, insurance premium, costs, commissions and disbursements… in relation to each Claim.*"

67.2 SB 1736 Ltd and SB II Ltd: The Credit Facility Agreements between the Firm and SB 1736 Ltd dated 1 March 2011, and the Firm and SB II Ltd dated 29 March 2011, set out that the Firm would apply sums provided by the companies to, "*the fees, insurance premium, costs, commissions and disbursements of each case to the maximum amount of £1,210 in each claim*".

Receipt of funds

68 The only significant sums of money into the Firm accounts during that period are from ALC, G and SB companies. From June 2009 to January 2012, the Firm received at least:

68.1 £1,285,582.80 from the G companies;
68.2 £2,687,500 from the SB companies; and
68.3 £600,000 from ALC.

Payments out of invested funds

69 The total amount paid to the Respondent and his family from the firm's office bank accounts totalled £923,317.42, with the Respondent personally receiving £817,242.73.

70 The statements show that often, funds were used for purposes other than litigation funding, including:

70.1 the Respondent received £22,168.33 in respect of his salary and £29,571.68 in relation to his expenses;

70.2 the Respondent received £114,000 in *'consultancy fees'* (in addition to salary/expenses);

70.3 the Respondent's wife, received £13,000 in *'consultancy fees'* in addition to salary/expenses;

70.4 £36,500 was paid in respect of a Mercedes car;

70.5 £10,000 was repaid in respect of a loan made by the Respondent to the Firm;

70.6 £2,643.75 was spent on Manchester City football tickets.

71 In misusing, or directing the misuse of invested funds, the Respondent accepts that his actions amounted to a failure to act with integrity in breach of Rule 1.02 SCC 2007 and Principle 2 of the Principles, in accordance with the test for integrity set out at paragraph 62 above.

72 The Respondent accepts that he failed to act with moral soundness, rectitude and steady adherence to an ethical code in that:

72.1 he was the sole individual in charge of the Firm's interaction with the three investment schemes;

72.2 he was fully aware of the terms upon which the funds were provided to the Firm by each of the scheme and nevertheless utilised the funds for purposes which were not in accordance with those agreed with each of the investment schemes;

72.3 a solicitor acting with integrity would not have paid himself approximately £780,000 over the course of three years when the Firm had failed to repay investors and was in a declining financial situation;

72.4 a solicitor acting with integrity would have only used the funds for the purpose they were invested, namely, to purchase the right to litigate, and fund the litigation of, PPI cases.

73 The Respondent admits that the conduct alleged amounted to a breach of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services would be likely to be undermined if the public were to learn that a solicitor had obtained funds for the purpose of litigating cases, but had instead used those funds otherwise than agreed and then subsequently failed to repay investors. The Respondent acknowledges that Public confidence is likely to be particularly undermined by the fact that he received a large proportion of invested funds personally. The Respondent therefore accepts that he breached Rule 1.06 of the SCC 2007 and Principle 6 of the Principles.

74 The Respondent accepts that he represented to the third party investors that the Funds would be utilised to fund PPI cases, with a large return expected. The parties invested in reliance on the representations made by the Respondent. Those representations were untrue in that the funds invested were used for purposes other than those which the investors had been notified of. The Respondent therefore acknowledges that he failed to achieve Rule 10.01 of the SCC 2007 and Outcome 11.1 of the 2011 Code.

Allegation 1.3: Misleading statements in respect of the value of the Firm's WIP

75 The Respondent accepts that he made the following misleading statements in respect of the Firm's WIP:

SH

75.1 In August and October 2010, SH conducted audits of the Firm. Balance sheets were not present during the audit but WIP figures were requested and subsequently sent to SH by the Respondent.

75.2 The accounts provided detailed the purported financial position up to 30 April 2010. The accounts include a WIP figure of £1,224,450 based on 8,163 cases and £150 a case. At this stage, the Firm had only issued 437 cases.

RM

75.3 On 19 October 2011, the Respondent sent an email to RM in which he attached a valuation of the PPI cases and stated,

> *"These have been conservatively valued at £7500 per litigated case.*
> *The potential value of each case which goes to litigation is £15-20,000, see Muldoon Report.*

Our experience suggests £18,000 per case."

75.4 On 3 October 2012, the Respondent sent an email to RM in which he stated that the WIP of the PPI cases on the submission to the Firm's accountants was £1,782,000, however, the actual realisable value was between £32,400,000 and £60,750,000.

75.5 On 5 June 2013, a meeting was held between the Respondent and investors in SB 1736 Ltd and SB II Ltd. Prior to that meeting, the Respondent told RM that the Firm had 8000 cases and based on an average income of £1,210 per case, the WIP was over £9,500,000.

75.6 On 19 June 2013, at a meeting with MM, RM, the Respondent and other investors, the Respondent stated his estimation of the WIP of PPI cases held by the Firm was £60,000,000, however, a further £20,000,000 of investment was needed to realise that figure.

75.7 On 15 November 2013, the Respondent emailed RM. The email, in response to RM's request for current and future WIP, contained a table entitled WIP summary. Under the title 'PPI' the realisable value is stated to be £5,600,000.

75.8 The Respondent states he relied upon a M PPI Ltd report dated 2 October 2011 (based on 21 of the Firm's cases) and advice from Counsel to form the WIP estimates. The M PPI Ltd report is based on a very small number of cases, and Counsel's opinion concerns only one case and therefore of limited relevance.

Administrators

75.9 The Administrators, ML and PW were appointed on the basis that the Firm had realisable assets in excess of £3,000,000. The Respondent told the ML that the company was entering into administration because of cash flow problems.

75.10 The £3,000,000 was based on a number schedules ML received from the Respondent. The schedules set out the WIP of the Firm's cases in mortgages, rate swaps, PPI, PBA, Regulatory and RTA. The summary page of the document shows a total Firm WIP of £3,074,278.

75.11 From February 2014 to October 2014, the Administrators undertook investigations to establish the assets and liabilities of the Firm and recover any assets of the Firm from third parties.

75.12 The Administrator's Abstract of Receipts and Payments showed that following investigations, the true position of the Firm was that the WIP was 'nil'. The Administrators were unable to sell the WIP to three separate solicitors firms and following a review of the cases concluded that the Respondent had ascribed values to 'leads on cases' that did not reflect the amount of work that had been done. The Administrators were able to recover assets in the sum of £16,576.84 and net liabilities of the Firm were £4,774,966.97.

75.13 On 13 October 2014, the Administrator submitted a Progress Report to all known creditors of the Firm in which they stated that it had become apparent that the Firm's WIP would prove to be valueless.

75.14 On the basis that the WIP had been revealed to be 'nil', the administrators made an application to be discharged. On 30 January 2015, the Administrators were discharged and the Firm was placed into Compulsory Liquidation.

76 The Respondent's accepts that his actions amounted to a failure to act with integrity in breach of Rule 1.02 SCC 2007 and Principle 2 of the Principles, in accordance with the test for integrity set out at paragraph 62 above.

77 The Respondent acknowledges that he failed to act with integrity in that:

77.1 he was aware, as the Partner at the Firm in charge of the litigation funding, that the WIP figures being presented to SH, RM and the Administrators were grossly over inflated.

77.2 his misrepresentations occurred over a period of at least two years.

77.3 he had a self-interest in misrepresenting the WIP in that it allowed him to obtain further funding for the Firm and later, ensured that the investors did not take action against him or the Firm.

77.4 he accepts that solicitor acting with integrity would not have over inflated the WIP figures by:

77.4.1 attributing a figure to each case which assumed every case would be successful and would achieve a figure at the highest end of what would be possible;

77.4.2 attributing figures to cases which did not reflect the actual work carried out.

78 The Respondent accepts that his conduct amounted to a breach of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services would be likely to be undermined if the public were to learn that the Respondent misrepresented the WIP in order to obtain further funding, prevent RM or the investors from taking action against the Firm and frustrate the winding up of the Firm. The Respondent therefore accepts that he breached Rule 1.06 of the SCC 2007 and Principle 6 of the Principles.

79 SH, RM and the Administrators relied on the Respondent as a source of information in respect of the WIP of the Firm. The Respondent accepts that he unfairly used his position as Director of the Firm and took advantage of SH, RM and the Administrators by providing them with inaccurate WIP figures. The Respondent therefore accepts that he failed to achieve Outcome 11.1 of the 2011 Code.

Allegation 1.4: Failed to check for and/or correct inaccuracies within ALC Ltd Brochure

80 The Respondent accepts that he failed to check for and or/correct the inaccuracies within the ALC Ltd brochure in that:

80.1 ALC Ltd was a wholly owned and controlled subsidiary of the Firm, in which the Respondent was Director. As such the Respondent would be expected to have inspected the final ALC Ltd Brochure prior to publication.

80.2 The brochure was sent to potential investors to obtain funding. The following inaccurate statements are contained within the brochure:

80.2.1 each claim costs approximately GBP 1,200 to acquire and manage by ALC Ltd and yields them in the region of GBP 3,500 gross with a net gain of over GBP 2,300 per claim;
80.2.2 ALC Ltd have managed over 12,000 claim cases to date;
80.2.3 the number of cases that have been successful continues to exceed 98%;
80.2.4 this product is considered secure with minimal risk of loss which would require extreme circumstances;
80.2.5 consistent performance for over 2 years has yielded investors in excess of 11% p.a. from prior funding sources;

80.3 If those statements were accurate, the Firm bank accounts would show income in the region of £41,160,000 and the Respondent acknowledges that the Firm did not receive even a fraction of £41,160,000 from successful cases in the relevant

period. Further, the Respondent accepts that the Firm had not returned funds to investors in the G or SB companies; therefore the 11% p.a. return claim is wholly incorrect and the claim that the investment is one with minimal risk of loss is wholly without merit.

81 The Respondent admits that his actions amounted to a failure to act with integrity in breach of Principle 2 of the Principles, in accordance with the test for integrity set out at paragraph 62 above.

82 The Respondent admits that he failed to act with integrity in that a solicitor acting with integrity would, as principal at the Firm in charge of litigation funding, have ensured that representations made to investors in respect of the Firm were correct. Instead, the Respondent's acts or omissions resulted in material containing misrepresentations in respect of the Firm to be disseminated to investors.

83 The Respondent accepts that his conduct amounts to a breach of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services would be likely to be undermined if the public were to learn that the Respondent had failed to check that advertising material in respect of the Firm was correct. The Respondent therefore accepts that he breached Principle 6 SRA Principles 2011.

84 The Code requires that a solicitor ensure the accuracy of publicity in relation to his or her firm. As the sole individual in charge of PPI litigation funding, Director and CEO of the Firm, the Respondent accepts that it was his responsibility to ensure accurate information was disseminated to prospective investors. The Respondent therefore accepts that he failed to ensure the information contained within the ALC Ltd brochure was accurate and that he failed to achieve Outcome 8.1 of the 2011 Code.

Allegation 1.5: Dishonesty

85 The Respondent accepts that his actions were dishonest in accordance with the test for dishonesty stated by the Supreme Court in **Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67**, which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people.

Dishonesty in relation to allegation 1.1

86 In seeking further funding despite not having returned previous investor funds and in spite of the worsening financial situation of the Firm, the Respondent accepts that he acted dishonestly by the ordinary standards of reasonable and honest people, in that:

86.1 he gave undertakings that the Firm was operating on a solvent basis but it had, in fact, operated on an insolvent basis between 2011 and 2014;

86.2 he was aware that the Firm was operating on an insolvent basis between 2011 and 2014;

86.3 he went in search of further funding through the SB companies and later, through ALC Ltd, undertaking that the firm was solvent when it was not;

86.4 the funding benefitted him personally, in that without it he would not have personally received £817,242.73 from the Firm's office bank accounts.

Dishonesty in relation to Allegation 1.2

87 In misusing or directing the misuse of invested funds, the Respondent accepts that he acted dishonestly by the ordinary standards of reasonable and honest people, in that:

87.1 he was fully aware of the terms upon which the funds were provided to the Firm by each of the schemes but nevertheless utilised the funds for purposes which were not in accordance with what was agreed;

87.2 he was aware that funds were not being used in accordance with what was agreed with each of the investment schemes including on:

87.2.1 consultancy fees (in addition to salary/expenses);
87.2.2 payments for a Mercedes car;
87.2.3 re-payments of a personal loan to the Firm;
87.2.4 football tickets;

87.3 other than the repayments set out above at paragraphs 2 to 28, the Respondent did not make any attempt to repay investors of the SB or ALC Ltd companies.

Dishonesty in relation to Allegation 1.3

88 In misrepresenting the WIP to SH, RM and the Administrators, the Respondent accepts that he acted dishonestly by the ordinary standards of reasonable and honest people, in that:

88.1 he ascribed values to '*leads on cases*' that did not reflect the amount of work that had been done;

88.2 he was aware that work had not commenced on cases incorporated in the WIP calculations and thus no fees were applicable for the purposes of calculating the WIP;

88.3 he was aware that the figures he gave were not supported by any evidence other than M PPI Ltd report (which was based on only 21 cases) and Counsel's opinion (which related to one case), which was not adequate for the purposes of estimate the Firm's WIP figures;

88.4 he was aware that the WIP figures being presented to SH, RM and the Administrators were inflated;

88.5 he had a self-interest in misrepresenting the WIP in that it allowed him to obtain further funding for the Firm and later, ensured that the investors did not take action against him or the Firm.

Mitigation

89 In mitigation, the Respondent relies on the facts and matters set out below; however, the reference to such facts and matters in this document does not amount to adoption or endorsement of such points by the SRA:

89.1 the decision taken by the Respondent to undertaken and concentrate on PPI claims was based upon a genuine desire to represent the consumer in circumstances where banks had overcharged their customers;

89.2 the Firm acquired a rapid increase in claims requiring the Firm to expand too rapidly exposing the company to significant unforeseen overheads, set up costs and salaries;

89.3 the Respondent's decision to misuse investment funds to cover overheads was based on his genuine subjective belief that ultimately costs generated by the Firm would cover all overheads and payments owed to investors;

89.4 in providing undertakings and securing funds the Respondent acted on his genuine subjective belief that the Firm would be a success and would ultimately trade through its difficulties;

89.5 the Respondent's genuine intention at all times was to ensure that the Firm was a success and that all investors and creditors would be paid and all staff members paid and kept in employment;

89.6 the Respondent's continued to intend to repay creditors up until the Firm ceased to trade following the service of a winding up petition by HMRC;

89.7 the Respondent made admissions in interview on 5 September 2016 that:

89.7.1 funds were used for contrary to the Firm's agreement with investors;
89.7.2 WIP valuations were 'overly optimistic' and required cases to be successful for the WIP valuations to be correct;
89.7.3 his behaviour could be construed as reckless.

89.8 All sums paid to his family were for work undertaken by each member of the family for the benefit of the firm

89.9 The funds received personally by the Respondent reflected the market rates for Directors at firms with the projected revenues that the Respondent anticipated.

Agreed Outcome

90 The parties have considered the Tribunal's *Guidance Note on Sanction* dated December 2018.

91 Applying that guidance to the misconduct alleged and admitted, the following points are agreed in respect of seriousness, subject to the Tribunal's views.

Culpability

92 The Respondent accepts that he has a high level of culpability for the misconduct.

93 The Respondent was a Director of the Firm and as such had direct control and ultimate responsibility for the circumstances giving rise to the misconduct in which he personally gained. The Respondent was an experienced solicitor and acted from a position of trust in respect of the contents of the Firm's brochure, agreements and undertakings made to investors, and representations as to the Firm's WIP. The Respondent's actions occurred across five years and represented a planned pattern of behaviour.

Harm

94 The Respondent accepts that his conduct resulted in significant harm as a result of the significant financial loss to investors. In total the Firm received approximately

£4,000,000 from investors in G companies, SB companies and ALC. The Firms repayments to these investors totalled less than £150,000.

95 The Respondent actions represented a significant departure from the *'complete integrity, probity and trustworthiness'* expected of a solicitor causing harm to the legal profession's reputation. The Respondent's actions directly lead to the significant financial loss of investors.

Aggravating factors

96 The Respondent accepts that he acted dishonestly and that the misconduct both persisted and was repeated over a significant period of time. The Respondent knew and ought reasonably to have known that the misconduct was in material breach of his obligations to protect the public and the reputation of the legal profession.

Mitigating factors

97 The Respondent relies upon the matters set out in paragraph 89 above. The Respondent also pleads a degree of impecuniosity, which has been taken into account by the SRA in considering the appropriate level of costs. A copy of his financial information statement will be submitted to the Tribunal for private consideration

Striking Off Order

98 In all the circumstances, it is agreed that this case is too serious for any lesser sanction than a Striking Off Order.

99 Subject to the Tribunal's views, the seriousness of the misconduct is at the highest level, such that a lesser sanction is inappropriate and the protection of the public and the protection of the reputation of the legal profession warrant no less than the striking off of the Respondent's name from the Roll.

100 In the circumstances where the Respondent has acted dishonestly, the parties further agree that there are no exceptional circumstances that would warrant a lesser sanction than a Striking Off order.

Costs

101 The SRA's statement of costs filed at issue claimed a figure of £102,952.90 including a fixed fee of £48,500 VAT thereon and forensic investigation costs. However, this figure was intended to cover all work on the case, including a contested five day hearing. If

the Tribunal is minded in principle to approve this settlement, it is acknowledged that these costs will not be fully recoverable from the Respondent.

102 Following without prejudice negotiations on costs, during which the SRA carefully considered the Respondent's means and representations, the parties have agreed that the Respondent should pay the SRA's costs in the sum of **£20,833.33 (plus VAT).**

Signed:

[redacted]

David Collins 18/1/19
On behalf of the SRA

[redacted]

[Name]
[on behalf of the] Respondent

Dated: 18/01/2019

ACSL Solicitors
Suite 3.4c Exchange Court
1 Dale Street
Liverpool
L2 2PP

Inaccurate statements contained in ALC Brochure

Schedule 1

1. Each claim costs approximately GBP 1,200 to acquire and manage by Adjust Solicitors and yields them in the region of GBP 3,500 gross with a net gain of over GBP 2,300 per claim.

2. Adjust Solicitors have managed over 12,000 claim cases to date.

3. The number of cases that have been successful continues to exceed 98%.

4. This product is considered secure with minimal risk of loss which would require extreme circumstances.

5. Consistent performance for over 2 years has yielded investors in excess of 11% p.a. from prior funding sources.