

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12051-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MICHAEL THOMAS BARRY
RACHEL TAYLOR (unadmitted)

First Respondent
Second Respondent

Before:

Mr A. Ghosh (in the chair)
Mr R. Nicholas
Ms J. Rowe

Date of Hearing: 12-13 May 2020

Appearances

Andrew Bullock, barrister of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

Steve Roberts, solicitor of Richard Nelson LLP, Castle Court, 6 Cathedral Rd, Cardiff, CF11 9LJ for the First Respondent.

The Second Respondent represented herself.

JUDGMENT

This case proceeded under the Solicitors (Disciplinary Proceedings) Rules 2019. The hearing took place remotely.

Allegations

1. The Allegations, as amended, against the First Respondent were that, while in practice as the principal of Mallory & Barry (the Firm):-
 - 1.1 over the period 2 May 2017 to 31 January 2018, he failed to prevent improper transfers from the Firm's client account to a value of £305,461.00 in breach of all or any of Rules 20.1 and 20.9 of the SRA Accounts Rules 2011 (SAR 2011) and Principles 6 and 10 of the SRA Principles 2011 (the Principles);
 - 1.2 over the period 19 February 2018 to 30 June 2018, he continued to fail to prevent improper transfers from the Firm's client account, to a value of £181,333.64, in breach of all or any of Rules 20.1 and 20.9 of the SAR 2011 and Principles 2, 6 and 10 of the Principles;
 - 1.3 over the period 31 January 2017 to at least 19 February 2018, he failed to carry out reconciliations of the Firm's client bank account in breach of all or any of Rules 1.2(e) and 29.12 the SAR 2011 and Principles 6, 8 and 10 of the Principles;
 - 1.4 in his capacity as the COFA at the Firm he failed to ensure or take adequate steps to ensure compliance with the Firm's regulatory obligations under the SAR 2011, in breach of his obligations under Rule 8.5 of the SRA Authorisation Rules 2011 and Principle 7 of the Principles.
 - 1.5 Allegation 1.1 was advanced on the basis that the First Respondent's conduct was manifestly incompetent. Manifest incompetence was alleged as an aggravating feature of the First Respondent's misconduct but was not an essential ingredient in proving the Allegation.
 - 1.6 Allegation 1.2 was advanced on the basis that the First Respondent's conduct was reckless. Recklessness was alleged as an aggravating feature of the First Respondent's misconduct but was not an essential ingredient in proving the Allegation. In the alternative, it was alleged that the First Respondent's conduct was manifestly incompetent.
2. The Allegations, as amended, against the Second Respondent, who was not a solicitor, was that she had been guilty of conduct of such a nature that in the opinion of the SRA it would be undesirable for her to be involved in a legal practice in that she, while employed as the Firm's bookkeeper:
 - 2.1 over the period 2 May 2017 to 31 January 2018, made improper transfers from the Firm's client bank account to a value of £305,461.00 in breach of all or any of Rule 20.1 of the SAR 2011, and Principles 6 and 10 of the Principles;
 - 2.2 over the period 1 February 2018 to 30 June 2018, made improper transfers from the Firm's client bank account to a value of £181,333.64 in breach of all or any of Rule 20.1 of the SAR 2011, and Principles 2, 6 and 10 of the Principles.

Preliminary Matters

Application to amend the Rule 12 statement

3. Mr Bullock applied to amend the Rule 12 statement in respect of Allegations 1.1, 1.2, 2.1 and 2.2. The sums pleaded in the Rule 12 statement were the figures for the shortfall on the client account as a result of the transfers. The amended sums were the value of the transfers themselves.
4. The Respondents both confirmed they had no objection to the amendment and it did not alter their positions in relation to the Allegations.
5. The Tribunal granted the application to amend the Rule 12 statement.

Factual Background

6. The First Respondent was admitted to the Roll on 1 March 1985. At the relevant time he was the sole principal of the Firm, which was now closed. The First Respondent was, from 25 February 2015, the Firm's COLP and COFA. At the time of the hearing the First Respondent held a practising certificate for the 2019/2020 practice year, free from conditions.
7. The Second Respondent was not admitted to the Roll as a solicitor and was employed as a bookkeeper at the Firm from May 2014 to 24 July 2018. She had previously been employed as a Legal Cashier at Leo Abse & Cohen in Cardiff for twelve years and then as an Accounts Manager at Howells Solicitors in Cardiff for seven years.
8. The conduct in this matter came to the attention of the SRA when the Firm filed its Accountant's Report for the year ended 31 July 2017, delivered to the SRA on 28 February 2018 ("the Accountant's Report") This highlighted a cash shortage in the Firm's client account of £100,527.01 on 31 July 2017 and of £120,770.02 on 31 January 2018. It further highlighted a failure to undertake reconciliations of the Firm's client bank account in accordance with Rule 29.12 the SAR 2011 and the holding of "numerous balances" on the Firm's client account which had been held for more than 12 months and where the Firm could not demonstrate compliance with Rules 14.3 or 14.4 of the SAR 2011.
9. A Forensic Investigation Officer ("FIO") employed by the SRA commenced an investigation into the Firm on 25 July 2018. The Report of the FIO was dated 28 January 2019 ("the Report") and identified a further cash shortage of £67,168.74 on 30 June 2018.

Allegation 1.1

10. The Accountant's Report stated that the Second Respondent had:-

"made significant transfers from the client bank account to the office bank account that did not represent valid transfers of costs, and also made significant office payments from the client bank account".

11. Over the period 2 May 2017 to 31 July 2017, total payments of £122,040.43 were made by the Second Respondent in breach of Rule 20.1 of the SRA Accounts Rules 2011, creating an associated cash shortage of £100,527.01 as at 31 July 2017. The difference between the total payments and the cash shortage was due to historic errors of minus £5,258.79 and offsetting cost transfers in the cash book that had not been paid of £26,772.21. On 9 January 2018 the First Respondent made a capital repayment of £120,000 into the Firm's office account. The Second Respondent, on 31 January 2018, transferred £105,211.99 to the Firm's client account to repay the cash shortage.
12. Over the period 1 August 2017 to 31 January 2018, total payments of £183,420.57 were made by the Second Respondent in breach of Rule 20.1 of the SRA Accounts Rules 2011, creating an associated cash shortage of £120,770.02 as at 31 January 2018. The difference between the total payments and the cash shortage was due to offsetting cost transfers in the cash book that had not been paid of £41,388.57 and an overpayment of the shortage figure at 31 January 2018 of £21,261.98. The shortage was replaced by one payment of £121,359.95, paid into the Firm's client account by the First Respondent on 20 February 2018.
13. The Accountant's Report stated that these payments were due to the Firm's "financial difficulties" resulting from issues with its Legal Aid account.
14. This Allegation was admitted by the First Respondent.

Allegation 1.2

15. The First Respondent was made aware of the client shortage by no later than 19 February 2018, when he was informed of this by the Reporting Accountant. A breakdown of the minimum cash shortage identified on 30 June 2018 showed:-
 - Office payments made from client bank account and recorded in the cashbook and Miscellaneous Ledger totalling £10,120.54, and improper transfers from client bank account to office bank account transfers prior to June 2018 and recorded in the cashbook and Miscellaneous Ledger totalling £22,542.93;
 - Improper client bank account to office bank account transfers made in the month of June 2018 and not recorded in the books of account;
 - Improper withdrawals of staff salaries and/or expenses from the client bank account of £2,392.00;
 - Historic unreconciled lodgements of £1,838.60; and
 - An undetermined amount of £674.67.
16. In an interview with the First Respondent on 23 October 2018, the FIO asked the First Respondent what corrective action had been taken once the Reporting Accountants had made him aware, on 19 February 2018, of the inappropriate transfers from the client account undertaken by the Second Respondent over the period 2 May 2017 to 31 January 2018. The First Respondent had stated:-

“I obviously spoke to [the Second Respondent] and we had a meeting with her. She was extremely distressed about what had happened. Erm she said that it would never ever happen again and that erm if there were any erm difficulties or erm issues she would bring them to my attention”.

17. The First Respondent did not make any changes to the Firm’s processes or procedures or to the management or supervision of the Second Respondent.
18. During the same interview the FIO also asked the First Respondent how the Second Respondent had been allowed to continue to make inappropriate transfers from the client account. The First Respondent stated that “this revolves around [the Second Respondent’s] apparent integrity at the time, her knowledge and experience, and she convinced me that she had made mistakes and she would reform and do everything right. So, she, that’s what happened, it, it was a, she convinced me that, that, that it would not happen ever again, and I believed her, because I cannot, I could not conceive that [sic] anyone doing that again”.
19. He continued:

“I would say that she [the Second Respondent] is eminently suited to take on significant management responsibilities because of her 25 years in accounts and book keeping and, and alike. She is a very intelligent woman, there’s no doubt, you would be able to erm confirm and she is to use the vernacular very switched on. So, those, these are features of her personality that lead me to believe that she was trustworthy”.
20. This Allegation was admitted by the First Respondent.

Allegation 1.3

21. The Report identified that the First Respondent, after 31 January 2017, was only being provided with the reconciliation of the client cash book total to the account balances on the client ledger. As a result, the First Respondent was not aware of the improper payments and transfers that had been made by the Second Respondent.
22. In his interview with the FIO, the First Respondent agreed that he had not identified that the Firm’s client bank account reconciliations were not compliant with the SAR 2011 and stated that it was “doubtful” that he would have enough knowledge of the rules to question a client bank account reconciliation in any event.
23. This Allegation was admitted by the First Respondent.

Allegation 1.4

24. The First Respondent did not notify the SRA of the issues identified in the Accountant’s Report and had relied on the Accountant’s Report being filed with the SRA in the usual way and on the SRA identifying the issues arising. The First Respondent did not report the conduct of either himself or the Second Respondent to the SRA.

25. This Allegation was admitted by the First Respondent.

Allegation 1.5

26. The Applicant's case was that the First Respondent had been manifestly incompetent in relation to Allegation 1.1. This Allegation was admitted by the First Respondent.

Allegation 1.6

27. The Applicant's case was that the First Respondent had been reckless in relation to Allegation 1.2. This was denied by the First Respondent.

28. In the alternative the Applicant alleged that the First Respondent had been manifestly incompetent in relation to Allegation 1.2. This was admitted by the First Respondent.

Allegation 2.1

29. This Allegation corresponded to Allegation 1.1. The Applicant's case was that it was not desirable for the Second Respondent to be involved in legal practice having transferred these sums of money from the Firm's client account for the purposes of providing financial support to the Firm.

30. This Allegation was admitted by the Second Respondent.

Allegation 2.2

31. This Allegation corresponded to Allegation 1.2. The Applicant made the same submissions as to the suitability of the Second Respondent to be involved in a legal practice as it had made in relation to Allegation 2.1.

32. This Allegation was admitted by the Second Respondent.

Witnesses

33. The First Respondent

33.1 The First Respondent gave the Tribunal details of his professional background and the history of the Firm.

33.2 The First Respondent set out the details of what he described as a fraud that had been perpetrated by a former business partner in 2013. In the course of rectifying the problems caused by this, he had engaged the Second Respondent as a bookkeeper. She had come highly recommended and she had worked tirelessly at weekends and after hours to put matters right. The First Respondent told the Tribunal that he came to rely on her and trusted her completely.

33.3 In February 2018 the First Respondent had been informed by the Reporting Accountant, Mr Pooley, of the shortfall of approximately £120,000. The First Respondent had a meeting with the Second Respondent. She was extremely remorseful and was in tears. She accepted what she had done and promised it would

never ever happen again. The First Respondent trusted her assurances given her experience and what she had contributed to firm. He accepted that in hindsight he should have done more than that. The First Respondent had ascertained that Mr Pooley did not consider that there was any suggestion of dishonesty on the part of the Second Respondent.

- 33.4 On the day before the visit from the FIO the Second Respondent had told the First Respondent of another improper transfer and resigned. The First Respondent immediately transferred £30,000 to the client account that afternoon. The Second Respondent had worked with the FIO even after her resignation.
- 33.5 When they were working together, the First and Second Respondent held meetings once or twice a week. The First Respondent admitted that he was not always able to understand what the Second Respondent was presenting to him and he had relied on her. He accepted that he ought to have known how to do these things but he had found the reconciliations to be very complicated.
- 33.6 The First Respondent told the Tribunal that he was not currently involved in management and had no desire to return to it. He had always taken his role as a solicitor very seriously and no clients had lost out as a result of this incident
- 33.7 In cross-examination the First Respondent confirmed that on receiving the Accountant's report he had not challenged the contents of it. The First Respondent agreed that the following paragraphs from the Accountant's Report were an accurate account of the conversation he had with Mr Pooley:-

“Our work identified the material breaches of Rule 20.1 that had taken place to 31 July 2017 and up to 31 January 2018. We informed Michael Barry on 19 February 2018 of a £121,359.95 deficit on the client account at 31 January 2018 (subsequent work reduced the deficit to £120,770.02).

He was visibly shocked and said that he was not aware of this. He immediately arranged for £121,359.95 to be paid into the office account on 20 February 2018. Rachel Taylor transferred £121,359.95 from the office account to the client account on 20 February 2018, and the receipt into the client account is shown on the client account bank statement on Appendix 7.”

- 33.8 The First Respondent confirmed that he knew that this was money that was actually missing and not purely a paper shortage. He agreed with Mr Bullock that the missing money belonged to clients and was “sacrosanct”.
- 33.9 Mr Bullock put to the First Respondent that a cashier, in this case the Second Respondent, who lost £120,000 of client money could not be trusted with client money. The First Respondent told the Tribunal that it was not as simple as that. The Second Respondent had 25 years of experience and had worked at two reputable firms. She had a “spotless record, was extremely able” and had integrity. When he had confronted her she had “exceptionally remorseful” and had owned up to her mistakes. He accepted her word.

- 33.10 The First Respondent did not agree that he had been “grateful” to the Second Respondent for her help in the past, but agreed that to some extent the approach he had taken was coloured his view this. Mr Pooley had shared that view.
- 33.11 Mr Bullock put to the First Respondent that with benefit of hindsight he should have made changes after 19 February 2018 to ensure that there would be no repeat. The First Respondent agreed with this. He further agreed that it would not have been difficult to put those measures in place and that they could have been done with one phone call to the bank.
- 33.12 Mr Bullock asked the First Respondent if it had occurred to him that it might be sensible to put in safeguards when giving her the Second Respondent a further chance in case she lapsed. This could include checking the bank account from time to time. The First Respondent agreed, but explained that the Firm had been a busy High Street practice and the only way it would work was if there was trust between colleagues.
- 33.13 The Second Respondent put to the First Respondent that she had told him about the shortage on 29 November 2017. The First Respondent stated that he had no recollection of that date.

Findings of Fact and Law

34. The Applicant was required to prove the Allegations on the balance of probabilities. The Tribunal gave due weight to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondents’ rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
35. The Tribunal considered carefully all the documents and oral evidence presented. In addition it had regard to the submissions of all the parties.
36. **Allegations 1.1-1.5**
- 36.1 The First Respondent had admitted these Allegations in full. The Tribunal was satisfied that these admissions were properly made and supported by the evidence. The Tribunal found the Allegations proved in full on the balance of probabilities.
37. **Allegation 1.6**
- 37.1 The element of this Allegation that pleaded recklessness was denied.

Applicant’s Submissions on Recklessness

- 37.2 Mr Bullock referred the Tribunal to Brett v SRA [2014] EWHC 2074 in which the definition of recklessness was taken from R v G [2004] 1 AC 1034.
- 37.3 By no later than 19 February 2018, the First Respondent was made aware by the Firm’s Reporting Accountants that, over a nine month period, the Second Respondent had made the transfers set out in Allegation 1.1 and 2.1 and had failed to inform him

about these transfers or about the Firm's true financial position. He was also aware that he had been provided with reconciliations that did not comply with Rule 29.12 of the SAR 2011 and therefore did not disclose the shortfall accruing on the client account. Mr Bullock submitted that the First Respondent must have been aware that there was a risk that the Second Respondent would continue to make improper transfers unless restrictions were put in place.

- 37.4 However, he had allowed the Second Respondent to continue working as the Firm's bookkeeper with no additional controls or checks on her work, no restrictions on her access to the Firm's bank accounts and with no additional procedures or policies in place. As a result, the Second Respondent was able to repeat her previous behaviour and make further inappropriate transfers from the Firm's client account. Mr Bullock submitted that this was not reasonable given the sacrosanct nature of client monies.

First Respondent's Submissions

- 37.5 Mr Roberts told the Tribunal that the First Respondent accepted that he had been manifestly incompetent by not understanding the SAR but he denied being reckless. Mr Roberts referred the Tribunal to the evidence given by the First Respondent about the extent of his trust in the Second Respondent. She had not acted dishonestly and he had believed the assurances she had given him.
- 37.6 Mr Roberts referred the Tribunal to SRA v Louise Stevens Case No: 11424-2015, which was a decision of the Tribunal on facts similar to these but in fact more serious. The SRA had not alleged recklessness in that case and no such finding had been made. Although not binding on the Tribunal, it was a useful illustration of the fact that recklessness did not generally attach to allegations in these circumstances.

The Tribunal's Findings

- 37.7 The Tribunal applied the test set out in R v G [2003] UKHL 50 where Lord Bingham adopted the following definition:-
- “A person acts recklessly...with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur and it is, in the circumstances known to him, unreasonable to take that risk.”
- 37.8 The Tribunal was not assisted by Stephens. This was a non-binding decision of the Tribunal some years ago and recklessness had not been pleaded. There was therefore no analysis of the issue contained in that Judgment. There was no authority to suggest that it was improper to bring an allegation of recklessness in relation to breaches of the SAR.
- 37.9 The Tribunal considered whether the First Respondent had been aware of a risk that existed or would exist from 19 February 2018 onwards that the Second Respondent would continue to make improper transfers from the client account.

- 37.10 The Tribunal was satisfied that the First Respondent should have perceived there to be a risk based on the Accountant's Report. However the Tribunal had to be satisfied on the balance of probabilities that he actually perceived such a risk, not merely that he ought to have done.
- 37.11 The Respondent after receiving the Accountant's Report had discussed this issue with the Second Respondent. The Tribunal accepted that the Second Respondent had been very remorseful at that meeting and had given him assurances that there would be no repeat of the improper transfers. The Tribunal found that the First Respondent had accepted those assurances. In doing so he had acted foolishly and naively. He had wrongly placed too much weight on her previous experience and to the help that she had given to him and the Firm in the past. This view had been reinforced by the view of Mr Pooley. As a result, the First Respondent had made a serious error of judgement in trusting her. However, in placing that trust in her, the First Respondent had satisfied himself that there was no ongoing risk of further improper transfers on the part of the Second Respondent. The first stage of the test under G was therefore not met and the allegation of recklessness was not proved on the balance of probabilities.
- 37.12 The First Respondent had admitted the alternative Allegation of manifest incompetence. The Tribunal was satisfied that this was properly admitted and found that element of Allegation 1.6 proved on the balance of probabilities.

Previous Disciplinary Matters

38. There was no record of any previous disciplinary findings by the Tribunal in respect of either Respondent.

Mitigation

39. First Respondent

- 39.1 Mr Roberts told the Tribunal that a number of individuals had written positive character references about the First Respondent.
- 39.2 Mr Roberts submitted that the First Respondent's misconduct was by omission rather than commission and there had been no element of planning or dishonesty. There had been no breach of trust and the First Respondent had not misled the regulator, indeed he had co-operated with the investigation. Mr Roberts acknowledged that the First Respondent was experienced and had direct control and responsibility for the Firm.
- 39.3 There was relatively nominal harm to clients as the client account had been restored and so no client suffered an actual loss. However there was harm done to the reputation of the profession.
- 39.4 Mr Roberts submitted that there were no aggravating factors but there were a number of mitigating factors. The misconduct had arisen from the actions of a third party and the client account had been made good immediately upon discovery. The First Respondent had notified the SRA, albeit through the mechanism of the provision of the Accounting Report rather than a specific report.

- 39.5 The First Respondent had a previously unblemished career and had demonstrated genuine insight as reflected in his early admissions. The First Respondent recognised that these Allegations arose out of his failures as a manager and he brought someone else in to run the practice.
- 39.6 Mr Roberts submitted that these matters originated out of the problems caused by the former business partner. At no time had the First Respondent run away from his obligations and he had rectified matters out of his own funds and those of his family.
- 39.7 Mr Roberts submitted that the First Respondent had already suffered significant punishment and there was now no opportunity to repeat the misconduct. He invited the Tribunal to impose a fine or a restriction order. Any fine should have regard to his means and should take account of the sums already expended by the First Respondent and his family. The First Respondent had no intention of returning to management of a firm. The Tribunal was invited to consider wording the restrictions so that the First Respondent could deal with residual client balances with the permission of the SRA.

40. Second Respondent

- 40.1 The Second Respondent consented to the making of a s43 order. She apologised for her actions, which she had always admitted. The Second Respondent told the Tribunal that she was of very limited means.
- 40.2 She told the Tribunal that she had nothing further to add.

Sanction

41. The Tribunal had regard to the Guidance Note on Sanctions (November 2019). The Tribunal assessed the seriousness of the misconduct by considering the Respondents' culpability, the level of harm caused together with any aggravating or mitigating factors.
42. First Respondent
- 42.1 In assessing the First Respondent's culpability the Tribunal noted that the misconduct was principally a result of neglect and carelessness rather than any planned course of action. There was therefore no motivation on his part. However there was a clear breach of trust as he was responsible for the security of the client account. He was a highly experienced solicitor, having been qualified for almost 33 years at the material time. He had direct control and responsibility for the Firm's finances and had failed to exercise it. The First Respondent had not misled the regulator.
- 42.2 In relation to the harm caused, there was no direct harm as a result of the shortfall being replaced. However there was inevitably significant harm to the reputation of the profession given the large sums of money that had been improperly transferred out of the client account.
- 42.3 The misconduct was aggravated by the fact that the transfers were repeated and took place over a period of time. The First Respondent ought reasonably to have known that he was in material breach of his obligations.

- 42.4 The misconduct was mitigated by the fact that the transfers had been undertaken by the Second Respondent, latterly despite firm assurances that it would not happen. The loss had been made good and the First Respondent, who had a previously unblemished career, had shown genuine insight and made open and frank admissions to the Allegations. He had co-operated with the SRA.
- 42.5 The matters were too serious for there to be no order, a reprimand or a fine. The First Respondent had committed misconduct including manifest incompetence and a lack of integrity. There was a need to protect the public from future harm that would be caused if the First Respondent returned to management. It was necessary to prevent this happening and the appropriate sanction was therefore a restriction order. The Tribunal imposed restrictions to prevent the First Respondent being a manager or holding client money without the permission of the SRA.
43. Second Respondent
- 43.1 In assessing culpability the Tribunal noted that the Second Respondent's motivation was to keep the Firm afloat and not personal enrichment. The misconduct was planned, was a serious breach of trust and she had direct control and responsibility for her own actions. She was a highly experienced bookkeeper.
- 43.2 The harm caused was, again, principally to the reputation of the legal profession.
- 43.3 The Second Respondent's misconduct was aggravated by the fact that it was deliberate and repeated over period of time. She concealed her wrongdoing from the First Respondent and knew that she was in material breach of her obligations.
- 43.4 In mitigation the Tribunal noted that she had no previous matters recorded against her at the Tribunal. She had made full admissions and had co-operated with the SRA's investigation.
- 43.5 The Tribunal was satisfied that it would be undesirable for the Second Respondent to be employed by or in connection with a legal practice and duly made an order under s43.

Costs

44. Mr Bullock applied for costs in the sum of £24,260.60. He submitted that the costs were reasonable and confirmed, in reply to a query raised by Mr Roberts, that there had been no duplication of work. Mr Bullock had no representations on the apportionment of costs as between the two Respondents.
45. Mr Roberts submitted that the Applicant's legal costs appeared reasonable but that the investigation costs were excessive. The "information review" had taken 127.5 hours. At 154 pages, the FIR was not particularly long.
46. Mr Roberts referred the Tribunal to the First Respondent's statement of means. He submitted that the First Respondent was of limited means with very little income. He owed considerable sums to his family.

47. In relation to apportionment, Mr Roberts submitted that the First Respondent's share should be the lesser of the two, notwithstanding his role as the solicitor in these matters.
48. The Second Respondent made no further submissions, having already referred to her limited finances. She had also filed a statement of means.
49. The Tribunal assessed the costs and considered that the investigation costs were too high. The times spent were excessive on what were not overly complex matters. The Tribunal reduced the investigation costs by £6,426.10 on the basis the appropriate sum was £10,000. The remaining costs were reasonable and proportionate.
50. The Tribunal considered the apportionment of costs. The First Respondent was a very experienced solicitor had ultimate responsibility. It was largely down to his own manifest incompetence that matters had escalated the way they had. He could easily have taken control of the situation but had failed to do so. Taking into account his role and his culpability the Tribunal determined that he should pay 60% of the costs and the Second Respondent should pay 40%.
51. The Tribunal considered the finances of each Respondent. They both had low incomes but both had assets in the form of property as well. The SRA took a pragmatic approach to enforcement and this could include charging orders and/or payment by instalments. That was a matter between the SRA and the Respondents. The Tribunal saw no basis on which to reduce or defer the costs.

Statement of Full Order

52. First Respondent

1. The Tribunal Ordered that the Respondent, MICHAEL THOMAS BARRY, solicitor, be subject to the conditions set out in paragraph 2 below for an indefinite period and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £10,700.70.
2. The Respondent shall be subject to conditions imposed by the Tribunal as follows:
 - 2.1 the Respondent may not:
 - 2.1.1 practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body or as a freelance solicitor or as a solicitor in an unregulated organisation;
 - 2.1.2 be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;
 - 2.1.3 be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration;

2.1.4 hold client money other than with leave of the Solicitors Regulation Authority;
or

2.1.5 be a signatory on any client account other than with leave of the Solicitors Regulation Authority.

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

53. Second Respondent

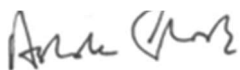
The Tribunal Ordered that as from 13 May 2020 except in accordance with Law Society permission:-

- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Rachel Taylor;
- (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Rachel Taylor;
- (iii) no recognised body shall employ or remunerate the said Rachel Taylor;
- (iv) no manager or employee of a recognised body shall employ or remunerate the said Rachel Taylor in connection with the business of that body;
- (v) no recognised body or manager or employee of such a body shall permit the said Rachel Taylor to be a manager of the body;
- (vi) no recognised body or manager or employee of such a body shall permit the said Rachel Taylor to have an interest in the body;

And the Tribunal further Ordered that the said Rachel Taylor do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,133.80.

Dated this 3rd day of June 2020

On behalf of the Tribunal



A. Ghosh
Chair

JUDGMENT FILED WITH THE LAW SOCIETY

03 JUNE 2020