

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12174-2021

## BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

TERENCE DONNELLAN

Respondent

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Before:

Mr R Nicholas (in the chair)

Mr B Forde

Ms L Hawkins

Date of Hearing: 1 February 2023

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## Appearances

Matthew Edwards, barrister of Capsticks LLP, for the Applicant.

The Respondent appeared and was unrepresented.

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**JUDGMENT ON AN AGREED OUTCOME**

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## **Allegations**

1. The allegations against the Respondent, made by the SRA, are that, while in sole practice in a firm known as The Walkers Partnership (the "Firm"):
  - 1.1 Between 8 October 2019 and 31 October 2019, he failed to notify the SRA in writing that the Firm had entered an Extended Policy Period, and in doing so he breached Rule 17.3(a) of the Solicitors Indemnity Insurance Rules 2013 and Principle 7 of the SRA Principles 2011.
  - 1.2 Between 9 November 2019 and 29 December 2019, he failed to properly notify the SRA in writing that the Firm had entered into a Cessation Period, and in so doing he breached Rule 17.3(b) of the Solicitors Indemnity Insurance Rules 2013 and Principle 7 of the SRA Principles 2011, insofar as the conduct predated 25 November 2019; and Rule 8.1(b) of the SRA Indemnity Insurance Rules 2019 and Rule 7.3 of the SRA Code of Conduct 2019, insofar as the conduct took place on or after 25 November 2019.
  - 1.3 Between 1 November 2019 and 29 December 2019, he caused or allowed the Firm to accept about 105 new matters despite being in the cessation period and in doing so he:
    - 1.3.1 breached Rule 5.2 of the Solicitors Indemnity Insurance Rules 2013, and breached Principles 4 and 6 of the SRA Principles 2011, in relation to about 48 new client matters accepted prior to 25 November 2019;
    - 1.3.2 breached Rule 4.2 of the SRA Indemnity Insurance Rules 2019, and in Principles 2 and 7 of the SRA Principles 2019, in relation to about 57 new client matters accepted on or after 25 November 2019.
  - 1.4 Between 1 November 2019 and 24 November 2019 the Respondent failed to effect an orderly closure of the Firm and in doing so breached Principles 4 and 6 of the SRA Principles 2011, and in between 25 November 2019 and 22 January 2020 the Respondent failed to effect an orderly closure of the Firm, and in doing so breached Rule 2.4 of the SRA Indemnity Insurance Rules, and Principles 2 and 7 of the SRA Principles 2019.

## **Documents**

2. The Tribunal had before it an agreed electronic hearing bundle.

## **Background**

3. The matter had been listed for a substantive hearing, which was due to commence on 1 February 2023 with a time estimate of two days.
4. At the commencement of the hearing, Mr Edwards and Mr Donnellan applied for leave to submit a proposed Agreed Outcome out of time. The basis of this application included discussion of Mr Donnellan's health. Mr Edwards therefore applied for the Tribunal to sit in private to hear the application, pursuant to Rule 35 of the SDPR 2019, on the basis that extreme harm and exceptional prejudice could occur if those matters were discussed in public.

5. The Tribunal had regard to Lu v SRA [2022] EWHC 1729 (Admin) at [138] which affirmed the principle of open justice. The Tribunal had read the medical report provided in these proceedings and was satisfied that it was in the interests of justice to hear this limited part of the application in private.
6. Mr Edwards explained to the Tribunal that due to various factors that were not the fault of Mr Donnellan, there had been difficulties maintaining contact with him consistently during the proceedings. Mr Donnellan had been fully engaged since the last Case Management Hearing on 19 January 2023. From that point, Mr Edwards explained, both parties had been working expeditiously to reach an agreed position. The proposed Agreed Outcome was drafted on 24 January 2023 and sent to Mr Donnellan on 30 January 2023. He had returned the document on 1 February 2023, with an indication that agreement could be reached.
7. Mr Donnellan told the Tribunal that he had not had an internet connection until 20 December 2022 and that there had been other factors that were outside of his control which had caused difficulties.

#### The Tribunal's Decision

8. The Tribunal noted that the application was made out of time and that deadlines were contained within directions for the important purpose of ensuring the efficient management of cases.
9. In this particular case, however, it was clear that Mr Donnellan's personal and medical circumstances had been the cause of his difficulty in engaging sooner with the SRA. When he had been in a position to engage, the SRA had responded promptly. Mr Donnellan had, in turn, confirmed his agreement to the draft of the proposed Agreed Outcome in a timely manner. In the circumstances of this case it was therefore appropriate to grant leave for the proposed Agreed Outcome to be submitted.

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

10. The parties invited the Tribunal to deal with the Allegations against Mr Donnellan 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**

11. The Applicant was required to prove the Allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Mr Donnellan'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.
12. Mr Donnellan made full admissions to all the Allegations. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that those admissions were properly made.

13. The Tribunal considered the Guidance Note on Sanction (10<sup>th</sup> Edition – June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
14. In assessing culpability, the Tribunal found that Mr Donnellan had run his business in a shambolic fashion, and the fact that he had opened over 100 new files while in the cessation period was a serious matter. The Tribunal found that the misconduct was spontaneous and reactive rather than planned. Mr Donnellan missed several opportunities to do the right thing. He had direct control and full responsibility for what had taken place and, as a solicitor with 30 years of experience, ought to have understood his professional obligations.
15. In relation to the harm caused by the misconduct, there was significant harm caused to public confidence in the profession. Although the SRA Compensation Fund had made payments, there would have been considerable stress caused to individuals awaiting that compensation. The potential for harm was real and foreseeable and reflected in the 28 complaints received from clients.
16. The misconduct was aggravated the fact that it had been repeated and had continued over a period of time, albeit months rather than years. Mr Donnellan ought to have known that he was acting in material breach of his obligations.
17. The misconduct was mitigated by the fact that Mr Donnellan had an unblemished regulatory history. He had made admissions and had co-operated with the SRA. The Tribunal accepted that Mr Donnellan had genuine insight and had shown remorse, which he had also expressed in the course of his submissions to the Tribunal during the hearing.
18. The misconduct was too serious for a reprimand or a fine to be a sufficient sanction, having regard to the number of files involved and the fact that Mr Donnellan had continued to take on new matters. The Tribunal considered that a period of suspension was required in order to maintain the confidence the public could place in the profession and to send a deterrent message to solicitors who found themselves in a similar predicament. The Tribunal acknowledge that there was no allegation of lack of integrity or dishonesty. Taking all the factors outlined above into account, the Tribunal considered that the misconduct justified a suspension for a period of six months.
19. The Tribunal did, however, take full account of the personal mitigation put forward, including the health issues that Mr Donnellan was experiencing. There was no doubt that the fall-out from the intervention and closure of the firm had hit him hard. Mr Donnellan continued to suffer the effects of that and the Tribunal considered that it was proportionate to take that into account when determining the length of the suspension. The Tribunal also had regard to the fact that it would be imposing conditions, discussed below, in conjunction with any period of suspension. Taken together, the Tribunal was satisfied that it was appropriate to reduce the period of suspension to three months, as proposed in the Agreed Outcome document.

20. The Tribunal considered whether the restrictions on practice that were proposed were necessary for the protection of the public. The Tribunal was entirely satisfied that they were, given the nature of the misconduct. The Tribunal concluded that the conditions should remain in place indefinitely, with liberty to apply in the usual way.
21. The Tribunal therefore approved the proposed Agreed Outcome in the terms submitted.

### **Costs**

22. The parties had agreed that there be no order for costs, having regard to Mr Donnellan's financial situation. The Tribunal agreed that this was the appropriate course of action.

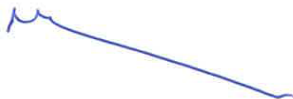
### **Amendment to the Notice of Application and Rule 12 statement**

23. Mr Edwards drew the Tribunal's attention to a typographical error in the spelling of Mr Donnellan's first name on the Notice of Application and the Rule 12 statement. The Tribunal treated this an application to amend those documents, which it duly granted.

### **24. Statement of Full Order**

1. The Tribunal Ordered that the Respondent, TERENCE DONNELLAN, Solicitor, be suspended from practice for the period of THREE MONTHS, to commence on the 1<sup>st</sup> day of February 2023 and it makes no order for costs.
2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall, for an indefinite period, be subject to conditions imposed by the Tribunal as follows:
  - 2.1 The Respondent may not:
    - 2.1.1 act as a manager or owner of an authorised body or authorised non-SRA firm.
    - 2.1.2 act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body, or head of legal practice (HOLP) or head of finance and administration (HOFA) for any authorised non-SRA firm.
  3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 8<sup>th</sup> day of February 2023  
On behalf of the Tribunal



R Nicholas  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**08 FEB 2023**

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

- and -

TERENCE DONNELLAN

Respondent

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STATEMENT OF AGREED FACTS AND OUTCOME

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**Introduction**

1. By an Application and statement made by Lyndsey Jayne Farrell, on behalf of the Applicant, the Solicitors Regulation Limited ("SRA"), pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 5 March 2021 the SRA brought proceedings before the Tribunal making allegations of misconduct against the Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement. The Tribunal made Standard Directions on 9 March 2021. There is a substantive hearing listed for 1 and 2 February 2023.

**Admission**

2. The Respondent, Mr Terence Donnellan, admits all of the Allegations and the facts set out in this statement and the parties have agreed a proposed outcome (the numbering of the Allegations are retained from the Rule 12 Statement).
3. The allegations against the Respondent, made by the SRA, are that, while in sole practice in a firm known as The Walkers Partnership (the "Firm"):

- 1.1. Between 8 October 2019 and 31 October 2019, he failed to notify the SRA in writing that the Firm had entered an Extended Policy Period, and in doing so he breached Rule 17.3(a) of the Solicitors Indemnity Insurance Rules 2013 and Principle 7 of the SRA Principles 2011.
  
- 1.2. Between 9 November 2019 and 29 December 2019, he failed to properly notify the SRA in writing that the Firm had entered into a Cessation Period, and in so doing he breached Rule 17.3(b) of the Solicitors Indemnity Insurance Rules 2013 and Principle 7 of the SRA Principles 2011, insofar as the conduct predated 25 November 2019; and Rule 8.1(b) of the SRA Indemnity Insurance Rules 2019 and Rule 7.3 of the SRA Code of Conduct 2019, insofar as the conduct took place on or after 25 November 2019.
  
- 1.3. Between 1 November 2019 and 29 December 2019, he caused or allowed the Firm to accept about 105 new matters despite being in the cessation period and in doing so he:
  - 1.3.1. breached Rule 5.2 of the Solicitors Indemnity Insurance Rules 2013, and breached Principles 4 and 6 of the SRA Principles 2011, in relation to about 48 new client matters accepted prior to 25 November 2019;
  - 1.3.2. breached Rule 4.2 of the SRA Indemnity Insurance Rules 2019, and in Principles 2 and 7 of the SRA Principles 2019, in relation to about 57 new client matters accepted on or after 25 November 2019.
  
- 1.4. Between 1 November 2019 and 24 November 2019 the Respondent failed to effect an orderly closure of the Firm and in doing so breached Principles 4 and 6 of the SRA Principles 2011, and in between 25 November 2019 and 22 January 2020 the Respondent failed to effect an orderly closure of the Firm, and in doing so breached Rule 2.4 of the SRA Indemnity Insurance Rules, and Principles 2 and 7 of the SRA Principles 2019.

### **Professional details**

9. The Firm is the recognised sole practice of the Respondent (Solicitor ID: 138520). It started trading in July 1987 and operated from one office at Fish Hill Chambers, 2/3 Fish Hill, Royston, Hertfordshire, SG8 9JY.
10. The Respondent was admitted to the roll of solicitors on 1 February 1988. He held the roles of COLP and COFA at the Firm.
11. The Firm employed one assistant solicitor, one legal executive, and three unadmitted members of staff.
12. The Firm mainly undertook work in private client (51%), and residential conveyancing (43%). In the 12 months to 31 August 2019, the Firm held an average of £1.6m in its client bank account.

### **The facts and matters relied upon in support of the allegations**

13. The Firm had a policy of professional indemnity insurance ("PII") for the 2018/2019 period (policy number VSOLI138518), arranged via Chancery PII. The policy was due to expire on 30 September 2019. Renewal terms were offered to, and accepted by, the Respondent for a new policy for the 2019/2020 indemnity period. However, the Respondent failed to pay the premium, so the policy could not be renewed.
14. If a firm fails to renew its PII policy by the end of its policy period, then it will enter the Extended Period Policy ("EPP"). The EPP is comprised of two phases. The Extended Indemnity Period ("EIP") is the first 30 days, during which a firm can continue to practise and try to obtain qualifying indemnity insurance. If no insurance is obtained, the firm will enter the Cessation Period ("CP"). The CP lasts for 60 days following the conclusion of the EIP. During this time, the firm can continue working on existing client matters but must not take on new client matters. The firm must close promptly and in any event by no later than the end of this period.
15. On 4 October 2019, the Firm's insurance broker chased the Respondent for payment of the premium. No response was received.



16. On 15 October 2019, the insurance broker again chased the Respondent for payment of the premium, expressing concern about the impending CP and the fact that under SRA rules entering the CP would require the orderly closure of the Respondent's practice. No response was received.
17. On 22 October 2019, the insurance broker again chased the Respondent for payment of the premium, saying that he had called but found the Respondent unavailable, and reminding him of the payment deadline of 30 October 2019. No response was received.
18. On 23 October 2019, the insurance broker again tried to call but found the Respondent unavailable. He provisionally booked an appointment to see the Respondent in person on 28 October 2019.
19. On 25 October 2019, the Respondent finally replied saying he had not been in contact because he had been endeavouring to secure funding, and welcoming any assistance that the broker was able to provide.
20. The broker responded the same day, providing contact details for a finance company, advising the Respondent to try to source alternative funding elsewhere given the shortage of time and the lack of guarantee that the finance company would provide a loan, and inviting the Respondent to contact him during office hours if needed. No response was received.
21. On 28 October 2019, the insurance broker said that he had contacted the finance company to check on the progress of the Respondent's application, but that the Respondent had not been in contact with them and had made no application. The broker asked for an update and to see whether there was anything he could do to help to expedite matters. No response was received.
22. On 29 October 2019, the insurance broker wrote to the Respondent saying that he had again contacted the finance company. The finance company had given the Respondent contact details and an explanation of what needed to be done to secure funding, but had received no response from the Respondent. The broker therefore advised that the EIP would expire the following day and that, if funding were not secured by then, the Respondent would enter the CP. The email signposted the Respondent to the relevant

guidance published by the Law Society, and included a link to that guidance. It extracted, in the body of the email, the relevant parts of the guidance:

*“What is the EIP and CP?*

*Firms that are unable to renew qualifying insurance will be given a 90-day policy extension from their previous insurer. This extension will be in the form of the extended indemnity period (EIP) and the cessation period (CP).*

*The EIP is a period of 30 days in which a firm can continue to practice and try to obtain qualifying insurance...If not, firms will enter a cessation period of 60 days*

*in which [a?] firm will be unable to accept new instructions and can only perform work in connection with existing instructions while they carry out orderly closure of their practice within those 60 days...*

*(Emphasis added)*

23. As from 25 November 2019, guidance has also been published on the SRA's website to the effect that firms must notify the SRA when they enter into the EIP and when they enter a CP. A dedicated email address is provided.
24. On 28 November 2019 the insurance broker wrote to an Indemnity Advisor at the SRA and stated that the Firm's policy of insurance for the year 2018/2019 had expired on 30 September 2019.
25. Notwithstanding the above, the Firm's "Matter Detail Report" appears to show that, between 31 October 2019 and 23 December 2019, the Firm nevertheless opened about 105 new client matters.
26. The CP came to an end on 29 December 2019. The Firm ought to have been closed by no later than that point. Instead, the Firm's matter list showed 345 matters held by the Firm and a client balance of £1,152,580.27. The Firm had no runoff insurance, it had not communicated to its clients that it was closing, and it had approximately 7,500 wills and 1,400 sets of deeds in storage.
27. On 6 January 2020, the insurance broker sent a further email to the SRA and advised that the CP had ended on 29 December 2019.

28. Between 2 January and 22 January 2020, the Respondent did not close the Firm but instead sought to salvage it, by securing an alternative PII quote and finance, or by selling or merging his business with an insured firm. He did not undertake any active legal work (at least in part because his staff prevented him from doing so).
29. On 6 January 2020, an Investigation Officer wrote to the Respondent to ask him to clarify his Firm's insurance position. The Respondent responded the same day to say that:
- a. He had been unable to obtain financing to pay the insurance premium. He believed this to be because he had recently been the victim of identity theft, which had affected his credit rating.
  - b. His premium had increased from £32,000 to £49,000. His insurance broker had been unhelpful and he had fallen out with him. He had held out hoping to get a better finance deal. This strategy had failed and he had not realised the difficulty of the position he was in.
  - c. He did not have insurance.
  - d. The Firm had not been open since 2 January 2020. It had taken on no new matters in the New Year. *"We do work in progress and at [sic] moment the staff are still in but they are sorting out files and keeping the clients informed that we are closed for the moment"*.
  - e. He wished to keep the Firm going if possible.
  - f. He had suffered from acute illness, hospitalisation and continuing treatment and management.
30. Contrary to the above:
- a. As to (a), the documentary evidence suggests that the Respondent did not make any finance application prior to 30 October 2019; and
  - b. As to (b), there is no evidence of a falling out between the Respondent and his insurance broker. On the contrary, the insurance broker appears to have sought to provide such help and advice as he was able.
  - c. The problem was not with the terms of the new PII policy for the 2019/2020 indemnity period, which the Respondent *accepted*. The problem was with financing, which the Respondent did not apply for in time.
31. On 8 January 2020, the Respondent posted a message on Facebook intimating that his Firm was to close, and seeking a six-month loan.

32. On 9 January 2020, an Investigation Officer visited the Respondent's offices. Her attendance note of the visit records, amongst other things, as follows:

- a. The Respondent appeared visibly emotional, very upset at times, very anxious, unable to focus, and tearful.
- b. The Respondent confirmed that he had no PII and had not carried out any work on the Firm's active matters since returning to the office in the New Year.
- c. His friend/landlord was willing to finance his PII premium, if he could obtain a new quote.
- d. He had opened around 20 new matters during the CP as he did not know that this was prohibited and not been advised by his insurer of the restrictions which applied during the EIP and CP. (As set out above at paragraph 25, the client matter list appears to suggest that he had in fact opened about 105 new matters during the CP).
- e. He repeated what he had said in his 6 January 2020 email about having no insurance, the reason he had no insurance, that he had taken no new clients in 2020, and that he suffered from stress and anxiety.

33. On 15 January 2020, the SRA served upon the Respondent a report recommending intervention into his practice. By way of a telephone call made on 16 January 2020, the Respondent made some representations about the report. The SRA's Investigation Officer telephone attendance note of that call records, amongst other things, as follows:

*"TD said that he was aware of the seriousness of the position and welcomes the SRA's involvement and said he wanted to work with us. He acknowledged that to the 'outside world' it looks serious. TD confirmed that the firm had live clients and no legal work was being done on those matters. He said it was an 'unusual case' and he believed (when he spoke to Natalie Garrard) that he would have had insurance, but he understands that Axis 'lost patience' with him, which he said was 'disappointing'.*

...

*TD wanted to assure us that he was committed to dealing with the matter and said that Natalie had misinterpreted him when she said he was considering 'running away. He said he was not going to run off but meant if 'all options fail' he will have to walk away from the business as he would be unable to afford run off...Again, he said that he wanted us to know that he was committed, and he was not a 'headless chicken'.*

...

*TD... was grateful for the opportunity to discuss the matter. He agreed he was 'very anxious' when Natalie was on site, however this was due to the fact that he had not had an SRA inspection and found it 'overwhelming'. He had now got his around the issues [sic].*

*TD acknowledged that the concern was the clients and he needed to speak to them. He did not want to waste time pursuing insurance if we would just close his firm. He said the firm was viable from a business and account perspective and wanted to continue."*

34. On 22 January 2020, an Adjudication Panel of the SRA made a decision to intervene into the Firm. The SRA intervened on 22 January 2021.
35. Twenty eight reports were made to the SRA during January 2020, arising out of the disorderly closure of the Firm.
36. Further, seven grants have been made out of the Compensation Fund, totalling £53,462.22. The grants were paid from the Fund on the basis that money was paid to the Firm and it was credited to client account and/or the Firm had not carried out any work and the money remained on account following intervention. There is no suggestion by the Applicant that these funds were misused.
37. On 6 August 2020, the SRA served upon the Respondent notice of a recommendation that his conduct should be referred to this Tribunal. The due date for a response was 1 September 2020 but none was received.
38. On 7 September 2020, the SRA sent a further letter regarding its referral recommendation, and extending the deadline for any response to 14 September 2020. No response was received.

### **Allegations**

**Allegation 1.1: Between 8 October 2019 and 31 October 2019, the Respondent failed to notify the SRA in writing that the Firm had entered an Extended Policy Period**

39. Rule 17.3(a) of the Solicitors Indemnity Insurance Rules 2013 provides as follows:

*Each firm shall notify the Society (or such person as the Society may notify to the firm from time to time) and its participating insurer in writing as soon as reasonably practicable and in no event later than five business days after the date on which:*  
*(a) the firm enters the extended indemnity period under its policy.*

40. The Respondent did not notify the SRA of the Firm's entry into the EIP as soon as reasonably practicable, within five business days, or at all.

41. Moreover, in failing to do so, the Respondent breached the requirement to comply with his regulatory obligations contrary to Principle 7 of the 2011 Principles.

**Allegation 1.2: Between 9 November 2019 and 29 December 2019, he failed to notify the SRA in writing that the Firm had entered into a Cessation Period, and in so doing he breached Rule 17.3(b) of the Solicitors Indemnity Insurance Rules 2013 and Principle 7 of the SRA Principles 2011, insofar as the conduct predated 24 November 2019; and Rule 8.1(b) of the SRA Indemnity Insurance Rules 2019 and Rule 7.3 of the SRA Code of Conduct 2019, insofar as the conduct took place on or after 24 November 2019.**

42. Rule 17.3(b) of the Solicitors Indemnity Insurance Rules 2013 provides as follows:

*Each firm shall notify the Society (or such person as the Society may notify to the firm from time to time) and its participating insurer in writing as soon as reasonably practicable and in no event later than five business days after the date on which:*  
*(b) the firm enters the cessation period under its policy.*

43. Rule 8.1(b) of the SRA Indemnity Insurance Rules is in materially identical terms.

44. The Respondent did not notify the SRA of the Firm's entry into the CP as soon as reasonably practicable, within five business days, or at all.

45. Moreover, in failing to do so, the Respondent breached the requirement to comply with his regulatory obligations contrary to Principle 7 of the 2011 Principles (insofar as the conduct

predated 25 November 2019) and Rule 7.3 of the SRA Code of Conduct 2019 (insofar as the conduct took place on or after 25 November 2019).

**Allegation 1.3: Between 1 November 2019 and 29 December 2019, he caused or allowed the Firm to accept about 105 new matters despite being in the cessation period and in doing so he: 1.3.1 breached Rule 5.2 of the Solicitors Indemnity Insurance Rules 2013, and Principles 4 and 6 of the SRA Principles 2011, in relation to about 48 new client matters accepted prior to 25 November 2019; 1.3.2: he breached Rule 4.2 of the SRA Indemnity Insurance Rules, and Principles 2 and 7 of the SRA Principles 2019, in relation to the 57 new client matters accepted on or after 25 November 2019**

46. Rule 5.2 of the Solicitors Indemnity Insurance Rules 2013 provides as follows:

*“Each firm that has been unable to obtain a policy of qualifying insuring prior to the expiration of the extended indemnity period, and any person who is a principal of such a firm, must ensure that the firm, and each principal or employee of such firm, undertakes no activities in connection with private legal practice and accepts no instructions in respect of any such activities during the cessation period save to the extent that the activity in connection with private legal practice is undertaken to discharge its obligations within the scope of the firm’s existing instructions or is necessary in connection with the discharge of such obligations.”*

47. Rule 4.2 of the SRA Indemnity Insurance Rules 2019 is in materially identical terms.

48. It is apparent from the Firm’s ‘Matter Detail Report – Printed on 09/01/20’, which amongst other things shows the date on which each matter was opened, that in breach of the above rule the Firm took on about 105 new client matters during the CP between 31 October 2019 and 29 December 2019.

49. Moreover, in taking on new client matters during the CP, the Respondent breached the following Principles:

1. Principles 4/7 (as applicable) (acting in the best interests of each client): The Respondent prioritised his own interests in continuing to trade over those of his clients by failing to arrange the orderly closure of his Firm. In the event, this left many clients

hanging; unable to obtain documents; with matters (some urgent) that could not be progressed; and distressed about the security of their funds held in client account. Further, it is unclear whether the 105 new clients taken on by the Respondent during the CP would be covered by the Respondent's PII in the event of needing to make a claim.

2. Principle 6/2 (as applicable) (maintaining public confidence in the profession): The public would expect the Respondent to comply with SRA rules. This would include the prompt and timely renewal of the Firm's indemnity insurance and, having failed to effect insurance, compliance with the requirements associated with entering the EPP. The public would be alarmed by a solicitor who put his own interests ahead of those of his clients by continuing to trade without proper insurance and risking a disorderly closure of the Firm and an intervention.

**Allegation 1.4: Between 1 November 2019 and 24 November 2019 the Respondent failed to effect an orderly closure of the Firm and in doing so breached Principles 4 and 6 of the SRA Principles 2011, and between 25 November 2019 and 22 January 2020 the Respondent failed to effect an orderly closure of the Firm, and in doing so breached Rule 2.4 of the SRA Indemnity Insurance Rules, and Principles 2 and 7 of the SRA Principles 2019.**

50. Rule 2.4 of the SRA Indemnity Insurance Rules provides:

*"If the authorised body has been unable to [obtain qualifying insurance prior to the expiry of the policy period], the authorised body must cease practice promptly, and by no later than the expiry of the cessation period, unless the authorised body obtains a policy of qualifying insurance during or prior to the expiry of the cessation period that provides cover incepting on and with effect from the expiry of the policy period."*

51. The Respondent did not cease practice promptly, or by the expiry of the CP, on 29 December 2019. Although he did not undertake any active legal work after the expiry of the CP (at least in part because he was prevented by his staff from doing so), he nevertheless continued to retain a number of live client matters, some of which required urgent steps to be taken, together with a substantial positive balance in client account. He did not effect an orderly closure of his Firm, and the SRA was ultimately required to intervene.



52. By failing to effect an orderly closure of the Firm, the Respondent breached Principles 2 and 7 of the 2019 Principles, for the same reasons as already given above in relation to Allegation 1.3.

### **Mitigation**

53. The points set out at Schedule 1 to this document, are advanced by way of mitigation on behalf of the Respondent but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA.

### **Agreed outcome**

54. The Respondent admits all of the above Allegations 1.1 to 1.4 and agrees:

- a. To a period of suspension from the Roll for a period of three months.
- b. That restrictions be imposed for an indefinite period upon the Respondent's practising certificate (with liberty to apply):
  - (i) The Respondent may not act as a manager or owner of an authorised body or authorised non-SRA firm.
  - (ii) The Respondent may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body, or head of legal practice (HOLP) or head of finance and administration (HOFA) for any authorised non-SRA firm.

55. Costs are not sought by the SRA in light of the Respondent's lack of financial means.

### **Explanation as to why such an order would be in accordance with the Tribunal's sanctioning guidance (10<sup>th</sup> edition)**

56. The parties consider and submit that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanction (10<sup>th</sup> edition).

57. The allegations arise out of the failure by the Respondent to obtain a qualifying professional indemnity policy of insurance following its expiry on 30 September 2019.

What subsequently flowed was a deliberate and serious breach of the SRA Indemnity Insurance Rules with regard to receiving new instructions during the CP. This exposed clients to a significant degree of risk.

58. The rationale behind the EIP and CP is to enable a firm to have a short period (90 days in total) to obtain PII after the end of the last period of insurance. During the 30-day EIP a firm can continue to practise as normal and take on new clients. In the 60-day CP the focus of the firm has to turn to closure of the practice if it is unable to find PII and it must close no later than the last day of the CP. The EIP and CP provides firms a period of time to make arrangements for live files to be moved before the practice must cease altogether. Notifying the SRA allows the regulator to monitor the firm to ensure that client money and client files are secure and that there is a plan in place to close no later than the end of the CP.
59. The Respondent's failure to notify the SRA that the Firm had entered either the EIP or CP, meant that he avoided the scrutiny of the SRA and was able to continue to practise without a professional indemnity policy of insurance being in place, which necessitated an intervention. The Respondent did not take steps to close the Firm during the CP and accepted over one hundred new clients during this period.
60. The Respondent should have been aware of the SRA Indemnity Insurance Rules given his level of seniority and positions he held within the Firm. In addition to this they were brought to the Respondent's attention by the insurance broker who copied and pasted the relevant Law Society guidance on this issue into an email sent to him on 29 October 2019. Despite this, the Respondent continued to accept new instructions and his explanation to the SRA for doing this was his ignorance of the relevant rules.
61. New and existing clients were put at considerable risk; many of these would have been oblivious to this fact and would presumably have been making decisions on the understanding that the Firm would have had a policy of qualifying insurance. The Respondent failed to inform them of this. The only rational explanation for his actions appear to have been that he was putting his own interests and the interests of the Firm above the interests of his client.
62. It is agreed that:

- a. The seriousness of the misconduct is such that neither a Reprimand nor a Fine is a sufficient sanction or in all the circumstances appropriate.
- b. There is a need to protect both the public and the reputation of the legal profession from future harm from the Respondent by removing their ability to practise, but
- c. Neither the protection of the public nor the protection of the reputation of the legal profession justifies striking off the Roll.
- d. Public confidence in the legal profession demands no lesser sanction.

63. In respect of the level of culpability of the Respondent:

- a. The Respondent's actions were deliberate with the aim of saving the Firm placed above the interests of his clients.
- b. The Respondent held the roles of COLP and COFA at the Firm during the relevant times and was therefore required to ensure compliance with the Solicitors Accounts Rules by the Firm.
- c. The Firm has been the recognised sole practice of the Respondent for a considerable number of years.

64. The harm caused by the Respondent was that:

- a. Twenty eight reports were made to the SRA during January 2020, arising out of the disorderly demise of the Firm.
- b. Further, seven grants have been made out of the SRA Compensation Fund, totalling £53,462.22. The grants were paid from the Fund on the basis that money was paid to the Firm and it was credited to client account and/or the Firm had not carried out any work and the money remained on account following intervention. There is no suggestion by the Applicant that these funds were misused.

#### Aggravating factors

65. The aggravating factors are that:

- a. The Respondent is an experienced solicitor with over 30 years of experience.
- b. The Respondent sought to blame the insurance broker for failing to obtain a qualifying policy of insurance.
- c. The Respondent knew or ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession. The relevant SRA Indemnity Insurance Rules were brought to his attention by the insurance broker.

- d. The Respondent has not engaged fully with the regulator and has not filed an Answer to the allegations set out in the Rule 12 statement.

Mitigating factors

66. The agreed mitigating factors are that:

- a.
- b. The Respondent has suffered severe financial hardship as a result of the intervention into his practice.
- c. The Respondent is in receipt of Housing Benefit and has been subjected to the landlord changing the locks to his room without his knowledge, removing all access to his personal belongings including phone, money, essential clothing, medication and glasses.
- d. Capsticks have been advised that the Respondent has been physically assaulted by members of the public during his stay in City Council Housing and has been deemed a vulnerable adult by Cambridge City Council.
- e. The Respondent is now being assisted by the Solicitors Charity to find him suitable long term accommodation. The Respondent remains homeless.

67. The parties consider that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter, which is in the public interest. The applicant is satisfied that the practising restrictions will adequately manage the ongoing risk the Respondent presents.

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Signed:

John Quentin

Head of Legal & Enforcement, SRA (Applicant)

Date: January 2023

Signed:

Terence Donnellan

Respondent

Date: January 2023

**Schedule 1**