

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12181-2021

## BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

SIMON SUI PING HSU

Respondent

---

Before:

Mrs C Evans (in the chair)

Mr P Jones

Mrs C Valentine

Date of Hearing: 3 August 2021

---

## Appearances

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

---

## JUDGMENT ON AN AGREED OUTCOME

---

## **Allegations**

1. The Allegations, as amended, were that the Respondent, while in practice as a solicitor at Swan and Dale LLP (“the firm”):
  - 1.1 Between 20 October 2016 and 16 January 2017:
    - 1.1.1. informed Ms W that £40,000 was required for payment of SDLT when this was not the case;
    - 1.1.2. transferred, or caused to be transferred, £18,199.00 of client money to WCS without Ms W’s knowledge and/or a proper reason for making said transfer;
    - 1.1.3. received £700.00 in client money from Ms W for the purposes of paying a deposit on legal fees and did not pay said money into the firm’s Client Account and/or record the dealings with the client money properly or at all;
    - 1.1.4. misappropriated, or caused to be misappropriated, or otherwise misused, or caused to be misused, sums which his client had paid to the firm and/or the Respondent in respect of the transaction;

and thereby breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 (“2011 Principles”) and/or Rules 14.1, 20.1, 29.1 and 29.2 of the SRA Accounts Rules 2011 (“the Accounts Rules”).
  - 1.2. Between January 2020 and 2 April 2020, the Respondent failed to cooperate with the SRA’s investigation in not providing full and accurate explanations to questions asked of him by the SRA and thereby breached any or all of paragraphs 7.3 and 7.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs (“the 2019 Code”).
  - 1.3. Between January 2020 and 12 March 2020, the Respondent misled the SRA as to his whereabouts and thereby breached Principle 5 of the SRA Principles 2019 and/or any or all of Rules 7.3 and 7.4 of the 2019 Code.
2. In addition, Allegations 1.1 and 1.3 were advanced on the basis that the Respondent’s conduct was dishonest in respect of each or any of them. Dishonesty was alleged as an aggravating feature of the Respondent’s misconduct but was not an essential ingredient in proving the allegations or any of them.

## **Documents**

3. The Tribunal had before it the documents contained in an electronic hearing bundle.

## **Background**

4. The Respondent was admitted to the Roll on 3 September 1990. At the time of the hearing he did not currently hold a practising certificate. At the relevant time the Respondent was a consultant at the firm predominantly dealing with conveyancing matters.

5. The Applicant had applied to make minor amendments to the wording of Allegations 1.1.2 and 1.1.4. This was consented to by the Respondent. The Tribunal granted this application as it did not change the nature of the Allegations and provided clarification as to their scope.

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

6. 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**

7. 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 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.
8. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.
9. The Tribunal considered the Guidance Note on Sanction (8<sup>th</sup> Edition/December 2020). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
10. The Tribunal found this to be a serious case of professional misconduct which was aggravated by two admissions of dishonesty. The Respondent had repeatedly used the claimed ill-health of his mother as a shield to try to deflect him from scrutiny by his regulator and the Tribunal considered this to be an aggravating factor in addition to those identified in the Statement of Agreed Facts and Outcome.
11. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off on the basis that a reprimand, fine or suspension were insufficient to reflect the harm caused to the public and to the reputation of the profession. The Tribunal had regard to Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin). The circumstances in which such a sanction was not imposed were exceptional, described in Sharma as "a small residual category where striking off will be a disproportionate sentence in all the circumstances...".
12. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis of which question of exceptional circumstances was assessed:

"First, although it is well-established that what may amount to exceptional circumstances is in no sense prescribed and depends upon the various factors and circumstances of each individual case, it is clear from the decisions in Sharma, Imran and Shaw, that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation is the nature

and extent of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty.”

13. The Tribunal considered whether the circumstances in this case were exceptional, noting that no exceptional circumstances had been put forward. The Tribunal found nothing in the material before it that could be considered exceptional circumstances. The appropriate sanction was that the Respondent be struck-off the Roll. The Tribunal therefore approved the Statement of Agreed Facts and Outcome and made an Order in those terms.

#### **Costs**

14. The parties had agreed that the Respondent would pay the Applicant’s costs in the sum of £35,171.72 and the Tribunal was content to make an Order for costs in those terms.

#### **Statement of Full Order**

15. The Tribunal Ordered that the Respondent, SIMON SUI PING HSU, Solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £35,171.72.

Dated this 26<sup>th</sup> day of August 2021

On behalf of the Tribunal



C Evans  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**26 AUG 2021**

**IN THE SOLICITORS DISCIPLINARY TRIBUNAL**

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

**AND IN THE MATTER OF:**

**SOLICITORS REGULATION AUTHORITY**

**Applicant**

**- and -**

**SIMON SUI PING HSU**

**Respondent**

---

**STATEMENT OF AGREED FACTS AND OUTCOME**

---

**Introduction**

1. By a statement made by Mark Lloyd Rogers on behalf of the Solicitors Regulation Authority (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 22 March 2021, the SRA brought proceedings before the Tribunal making allegations of professional misconduct against the Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement. The Tribunal made standard directions on 25 March 2021. There is a substantive hearing listed for 17-18 August 2021.
2. The Respondent is prepared to make admissions to all Allegations in the Rule 12 Statement, as set out in this document.

**Admissions**

3. The Respondent admits that, while in practice as a solicitor at Swan and Dale LLP ("the firm"):
  - 1.1. Between 20 October 2016 and 16 January 2017, the Respondent:

- 1.1.1. informed Ms W that £40,000 was required for payment of SDLT when this was not the case;
- 1.1.2. transferred, or caused to be transferred, £18,199.00 of client money to WCS without Ms W's knowledge and/or a proper reason for making said transfer;
- 1.1.3. received £700.00 in client money from Ms W for the purposes of paying a deposit on legal fees and did not pay said money into the firm's Client Account and/or record the dealings with the client money properly or at all;
- 1.1.4. misappropriated, or caused to be misappropriated, or otherwise misused, or caused to be misused, sums which his client had paid to the firm and/or the Respondent in respect of the transaction;

and thereby breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("2011 Principles") and/or Rules 14.1, 20.1, 29.1 and 29.2 of the SRA Accounts Rules 2011 ("the Accounts Rules").

- 1.2. Between January 2020 and 2 April 2020, the Respondent failed to cooperate with the SRA's investigation in not providing full and accurate explanations to questions asked of him by the SRA and thereby breached any or all of paragraphs 7.3 and 7.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs ("the 2019 Code").
- 1.3. Between January 2020 and 12 March 2020, the Respondent misled the SRA as to his whereabouts and thereby breached Principle 5 of the SRA Principles 2019 and/or any or all of Rules 7.3 and 7.4 of the 2019 Code.

### Dishonesty

2. In addition, Allegations 1.1 and 1.3 are advanced on the basis that the Respondent's conduct was dishonest in respect of each or any of them. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegations or any of them.

### Agreed Facts

4. The Respondent, who was born on [REDACTED] is a solicitor having been admitted to the Roll on 3 September 1990. He does not currently hold a practising certificate. At the relevant time the Respondent was a consultant at the firm predominantly dealing with conveyancing matters involving Chinese clients.

5. The firm at the time operated with two managers, PERSON A and PERSON B. PERSON A has stated that PERSON B was a Manager “in name only” and undertook no fee earning or supervisory role at the firm. PERSON B gave a similar account of her involvement with the firm: “she said she had no involvement in the running or supervision of the firm. She was a Manager in the technical sense”. PERSON A was responsible for the running of the firm.
6. PERSON A states that the Respondent was a consultant and had been with the firm for 6 or 7 years as of 8 January 2020. He was based at their Colindale offices. The last payment received by the Respondent for consultancy services provided to the firm was on 19 August 2019 and in the sum of £4,000.
7. PERSON A indicated to the SRA during their investigation that “the matters that you are concerned with related to [the Respondent’s] case files, and my scope and knowledge of the same are minimal, other than on a supervision basis, and his knowledge on the matters are far greater, especially in relation to the facts of each matter and the circumstances of each case”.

#### **Allegation 1.1 – Ms W**

8. The firm acted for Ms W and Mr Y in relation to the purchase of 3 W Road. The purchase price of the property was £625,000 and completed on 11 January 2017. The Respondent was the fee earner on the matter. This was also confirmed by Ms W.
9. During the transaction Ms W was provided, via email, with a completion statement by the Respondent. It records the stamp duty fees as £40,000. The completion statement held on Ms W’s client file is different to that which was provided to her. It records the stamp duty fees as £21,250 – “Stamp Duty Fees”. It also includes an agent commission fee of £18,199.00 – “Agent Commission”. There is no agent commission recorded on the completion statement provided to Ms W.
10. Ms W made two bank transfers to the firm’s client account. The first on 20 December 2016 in the sum of £62,500.00. This represented a 10% deposit of the purchase price of the property. A second and final balance was transferred on 9 January 2017 in the sum of £358,797.00.
11. The client ledger for the purchase of 3 W Road records a payment of £21,250.00 on 13 January 2017 in discharge of “Stamp Duty Fees H M Revenue & Customs”. Immediately underneath there is a record of payment of £18,999.00 on 13 January 2017 in discharge of “Estate Agents Fees CW”.

12. The firm's client account records a transfer of £21,250.00 to HMRC on 13 January 2017. The firm's client account records a transfer of £18,199.00 to CW on 16 January 2017. Also contained within the client file is an invoice from WCS dated 12 January 2017. The invoice is in the sum of £18,199.00 for services provided to "*seek and locate property at 3 [W Road] to include Feng Shui property advise and service*". The address identified for the company on the invoice is in Hong Kong.
13. Ms W states that as far as she was aware she was required to pay £40,000.00 for stamp duty as per the completion statement provided to her by the Respondent. The firm did not pay £40,000.00 in SDLT on behalf of Ms W. Ms W had never heard of WCS. They were not involved in the purchase of the property as far as she was aware nor was she ever provided with an invoice for services provided by them. Ms W states that she bought the house through an agent in the UK.
14. Ms W did not authorise the payment of £18,199.00 to WCS recorded in the completion statement held on file and transferred from the firm's client account on 16 January 2017. A call was made to Ms W asking that she inform the SRA if she had in fact authorised the payment to WCS. As is evident from Ms W's witness statement she has declined to do so.
15. At the outset of the matter the Respondent asked Ms W to pay him £700.00 in cash. Ms W understood this payment to be a deposit for legal costs to be incurred during the transaction. Ms W gave the Respondent the cash on 20 October 2016. The Respondent provided Ms W with a receipt for the cash payment. This payment is not recorded on the client ledger nor was it deposited into the client account.

**Allegation 1.2 - cooperation**

16. The SRA emailed **PERSON A** on 8 October 2019 making enquiries as to the Respondent's whereabouts specifically "*can you confirm that Ms Hsu remains employed at the firm? I anticipate meeting with Hsu during November and assume I should contact you to make the arrangements?*". **PERSON A** replied on 11 October 2019 stating that "*Mr Hsu is a consultant at the firm, he is not an employee. He does consult with the firm still but has been out of the country, in Hong Kong since mid-September on compassionate leave.*"
17. On 10 January 2020 the SRA emailed the Respondent directly seeking details of his return to the UK.
18. The Respondent replied to the SRA on 25 January 2020 stating:



*“Sorry for the late reply. I have not been able to access my emails due to connection issues. My 99 years old mother has been and is still in the intensive care unit with her condition being crucial. I am unable to derive my travel plan at this stage until my mother’s condition has improved and I am able to leave her side. I shall inform you of my return to the UK once I am able to confirm the same myself.”*

19. The Respondent sent a further email on 19 February 2020 stating that:

*“I apologies [sic] for the late reply as most of the foreign emails are screen [sic] by the government and hence the delay. I am afraid that my elderly mother’s situation has not been improved and she is still in intensive care unit. With the seriousness of the coronavirus and the lock down policy of the government, I am not allowed to leave the hospital. I am mindful to return to London as soon as the circumstances allowed in order to fully co-operate with your investigation. At the meantime, I am happy to respond to your queries to progress your investigation.”*

20. The SRA responded to this email on 19 February 2020 attaching a letter which required the Respondent’s response in order to progress the investigation. The Respondent was specifically asked to provide a telephone number to be contacted on while he was in China and to confirm whether he was available to communicate via Skype while in China. The Respondent was also asked to provide answers in relation to specific enquiries in relation to the purchase of 3 W Road, and general enquiries including questions about his travel to China.

21. The SRA received a reply in relation to these requests on 12 March 2020. The Respondent stated that *“Whilst my mother’s illness is still critical, I am mindful to fly back to London to assist your investigation. With the travel restrictions imposed by the government, I have managed to secure a flight back to London at the end of this month. I shall be able to arrange a meeting after the 14 days self-isolation finished.”*

22. The email did not provide a response to the specific questions raised nor did it provide a contact phone number or a manner in which the Respondent could be contacted by the SRA be it on Skype or otherwise.

23. On 12 March 2020 and 2 April 2020 further contact was made by the SRA with the Respondent via email. The Respondent was again asked to provide a telephone contact number. No further response was received from the Respondent.

### **Allegation 1.3 - whereabouts**

24. The Respondent in his emails to the SRA indicated that he was out of the jurisdiction caring for his critically ill mother. He stated that he had limited access to the internet due to governmental restrictions and as of 12 March 2020 he stated that “...*I am mindful to fly back to London to assist your investigation. With the travel restrictions imposed by the government, I have managed to secure a flight back to London at the end of this month. I shall be able to arrange a meeting after the 14 days self-isolation finished.*”
25. **PERSON A** was also of the opinion that the Respondent was out of the jurisdiction.
26. On 10 March 2020, the SRA served a notice on Mr Hsu’s bank, requiring the bank to provide copies of bank statements belonging to the Respondent. These were provided on 12 March 2020 and were in the sole name of the Respondent identifying him as the sole signatory.
27. A Land Registry search dated 22 March 2021 reveals that the Respondent has been the registered owner of a property in London since 1993. On reviewing the statements the SRA identified a number of payments in the area local to the Respondent’s home address. These were all at a time when the Respondent indicated he was out of the country.
28. A cash withdrawal of £1,000 was also identified as having been made on 21 February 2020 at a local branch of Mr Hsu’s bank. Further enquiries were made in relation to this withdrawal and a counter withdrawal document was provided by the bank. This document indicates that the amount had been withdrawn by the Respondent, bore his signature and stated that he produced his driving licence as a form of identity to authorise the withdrawal. An analysis of the serial number of the driving licence indicated that it belonged to the Respondent.
29. A number of paying in slips and cheque receipts purporting to be paid in by the Respondent at the same branch were also identified.
30. A Google maps search revealed that the Respondent’s home address is located a two minute walk away from the local branch of the bank.
31. The Respondent now admits that he was in London during the SRA’s investigation and not overseas as portrayed by him in his email communication.

## Mitigation

32. The following points 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:-
- 33.1. The Respondent has now retired from practice due to mental health issues and the ill health of his elderly mother.
  - 33.2. The Respondent says that he was suffering from anxiety due to his mother's ill health and this impacted his cooperation with the SRA during their investigation.
  - 33.3. The Respondent has fully complied with all Directions made by the Tribunal throughout these proceedings.
  - 33.4. The Respondent has agreed to pay the SRA costs without dispute.

## Agreed Outcome

33. The Respondent admits all of the above allegations and agrees:
- 34.1. to be struck off the Roll of Solicitors;
  - 34.2. to pay the SRA's costs in the agreed sum of £35,171.72.
34. 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 Sanctions 8<sup>th</sup> Edition.
35. In respect of the level of culpability:
- 36.1. The Respondent failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. In *Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366*, it was said that integrity connotes adherence to the ethical standards of one's own profession.
  - 36.2. The Respondent was instructed to act on Ms W and Mr Y's behalf in respect of their purchase of the property. The Respondent admits that providing a completion statement should accurately reflect that which occurred or is to occur, particularly in relation to client funds, during the course of the conveyancing transaction. Furthermore, the completion statement held on file

should be identical to that provided to the client. There is no reasonable basis upon which a difference should exist between the completion statement held on file and that provided to the client.

- 36.3. In informing the client that the stamp duty owing was £40,000.00 the Respondent knew or ought to have known that those monies transferred by the client were for that specific purpose and were not to be used for an unspecified purpose without the knowledge of the client. The Respondent accepts that client monies should only be used for authorised purposes.
  - 36.4. The Respondent has provided no explanation as why there are two different completion statements in existence, who WCS are and for what purpose they were used, if at all, in Ms W and Mr Y's transaction.
  - 36.5. A solicitor acting with integrity would have ensured that the completion statement accurately reflected that which occurred during the transaction. The amount to be paid in SDLT ought to have been accurately recorded on the statement such that it was clear, discernible and readily understood by the client. The Respondent did not do this. The Respondent detailed a sum much greater than that owing in SDLT on the completion statement provided to the client. The result of which was the client believed the SDLT owing and paid was £40,000.00 as opposed to the £21,250.00 in fact paid. Furthermore, the Respondent used the difference in amount to make a payment to WCS, an agency which, as far as the client is aware, had no involvement in the transaction.
  - 36.6. In addition, the Respondent took a sum of money in cash from Ms W. A solicitor acting with integrity would have ensured that the money was lodged into the client account and in turn appeared on the client ledger such that all monies provided were recorded and accounted for. The Respondent did not conduct himself in this manner. There is no record of the £700.00 within the client file, ledger or accounts.
37. In respect of the level of harm:
- 37.1. It was not in the best interests of Ms W and Mr Y, nor consistent with providing a proper standard of service to them, for the Respondent to provide an inaccurate completion statement, to use monies provided by the client for purposes other than those for which it was provided, to use monies provided by the client for services which the client was unaware of and/or were not in fact used during the course of the transaction, to fail to account for the purpose

for which the money was used; and/or to misappropriate or otherwise misuse the money.

- 37.2. By failing to provide the client with an accurate completion statement the Respondent did not ensure that the client understood, or indeed agreed to, what occurred with their monies during the course of the conveyancing transaction. The client provided £40,000.00 to the firm on the understanding that it was to discharge the SDLT owing on the property purchased. The client also provided £700.00 in cash on the understanding that it was a deposit in relation to legal fees for the transaction. The client's understanding is not reflected in the client file which contains different documentation to that provided to the client nor is it reflected in the actions taken by the Respondent. In so doing the Respondent was not acting in the best interests of the client, nor has he provided a proper standard of service to his client or protecting their money.
  - 37.3. The conduct alleged amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in solicitors and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by solicitors who act in the manner described and those who fail to ensure that the interests of their clients are protected.
  - 37.4. Paragraphs 7.3 and 7.4 of the 2019 Code require the Respondent to cooperate with the SRA when investigating concerns in relation to legal services provided. The rules require the Respondent to respond promptly providing full and accurate explanations, information and documents in response to any request or requirement. As a consequence of the Respondent's failure to provide an adequate reply to communications from his regulator and provide the information and responses requested, the SRA has been unable to confirm who and on what basis WCS' invoice appears in the 3 W Road file, nor has the Respondent given an explanation as to why there are two different completion statements for 3 W Road and the exact purpose for which the £18,199 was used. There is also no explanation as to the whereabouts of the £700.00 cash provided by the client. This, in turn, has impacted the SRA's ability to fulfil its statutory function to fully investigate the full scope of the concerns raised in this matter.
38. In respect of aggravating features:
- 38.1. On multiple and repeated occasions the SRA has asked that the Respondent provide a telephone contact number so that a conversation can be had in

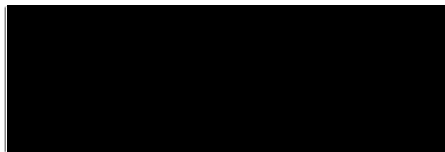
relation to the investigation and progressing matters. In addition to this the Respondent has not provided a response to any of the specific questions asked of him in the letter sent, via email, on 19 February 2020. In particular he has not provided: (1) an explanation for the £700.00 payment from the client; (2) an explanation for the differing versions of the completion statement for this transaction or (3) an explanation for the £18,199.00 payment made to WCS.

38.2. Paragraph 37.4 is repeated.

38.3. The SRA notes that the Respondent has failed to provide an explanation of his conduct when invited to do so and accordingly invites the Tribunal to infer that he is unable to provide a satisfactory explanation of his conduct. The Respondent admits that his conduct was dishonest.

39. In respect of mitigating features, the Respondent's mitigation is set out at paragraph 33 above. It is acknowledged by the SRA that notwithstanding the Respondent's non-cooperation in respect of the matters set out at paragraph 37.4 and 38.1, the Respondent has now admitted the allegations in full, including dishonesty, and agreed to the proposed sanction.

Signed:



.....  
(On behalf of the Solicitors Regulation Authority)

Date: 2 August 2021

Signed: .....

(SIMON HSU)

Date:

to provide an explanation of his conduct when invited to do so and accordingly invites the Tribunal to infer that he is unable to provide a satisfactory explanation of his conduct. The Respondent admits that his conduct was dishonest.

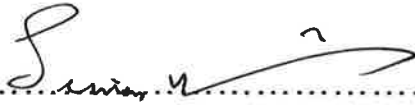
39. In respect of mitigating features, the Respondent's mitigation is set out at paragraph 33 above. It is acknowledged by the SRA that notwithstanding the Respondent's non-cooperation in respect of the matters set out at paragraph 37.4 and 38.1, the Respondent has now admitted the allegations in full, including dishonesty, and agreed to the proposed sanction.

Signed:

.....  
(On behalf of the Solicitors Regulation Authority)

Date:

Signed:



.....  
(SIMON HSU)

Date: 30/07/2021