SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12203-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LIMITED Applicant

and

SETH LOVIS Respondent

Before:

Mr J Evans (in the Chair)
Mr B Forde
Dr S Bown

Date of Hearing: 19 July 2021

Appearances

Ms Jennie Ferrario, barrister, of Capsticks LLP, 1 St George's Road, Wimbledon, SW19 4DR, for the Applicant.

Gary Christianson, solicitor, of FSL Legal Solicitors LLP, 1 Hagley Court South, The Waterfront, Brierly Hill, West Midlands, DY5 1XE, for the Respondent.

JUDGMENT

Allegations

The allegations faced by the Respondent were that, while in practice as a solicitor and a Director at Seth Lovis & Co Solicitors Limited (the Firm):

1. On various dates between April 2016 and March 2019 caused or allowed claims to be made by the Firm pursuant to agreements entered with two different litigation funders, Funder A and Funder B, where such claims were made to two different funders in relation to the same client matters, and where such claims as a result:

1.1 Were made in breach of express terms of the agreements with Funder A and Funder B to the effect that the making of claims in respect of the same client matters to more than one funder were prohibited; and/or

1.2 Were made in circumstances in which the claims gave rise to conflicting obligations to two different funders and in doing so breached one or more of Principles 2, 6 and 8 of the SRA Principles 2011.

2. On dates between September 2014 and March 2019 caused or allowed sums received by or payable to the Firm for unpaid professional disbursements to be:

2.1 Transferred from the Firm's Client Account to Office Account and then used for the Firm's purposes, and/or

2.2 Paid to a third party, Funder A in circumstances in which the Firm was not able to ensure that the sums were used to pay unpaid professional disbursements and in doing so breached one or more of Principles 2, 4, 6, 8 and 10 of the SRA Principles 2011 and Rules 14.1. 14.3, 17.1 and 18.2 of the SRA Accounts Rules 2011.

Documents

3. The Tribunal considered all of the documents in the case which included:

- Rule 12 Statement dated 26 May 2021 with Exhibit DWRP1.
- Applicant's Statement of Costs at Issue dated 26 May 2021.
- Answer to the Rule 12 Statement by way of email dated 24 June 2021.
- Respondent's Personal Financial Statement dated 20 May 2021.
- Applicant's Statement of Costs at Substantive Hearing dated 12 July 2021.

Factual Background

4. The Respondent was admitted to the Roll of Solicitors in October 1995. He was, at all material times, a director of the Firm and held a 61% shareholding. The Firm closed on 1 March 2019 and entered into administration on 11 March 2019.

5. The Firm specialised in claimant litigation work. In the normal course, a firm only received payment in respect of work undertaken on successful litigation after the conclusion of the matter (either at trial or through settlement). In order to assist with the obvious cashflow challenges that this litigation funding structure presented, the Firm entered into agreements with two litigation funders.

6. The Firm used Funder A to provide advance payments of profit costs and disbursements and used Funder B to provide advance payments of VAT and success fees, anticipated in relation to claimant litigation matters. The Firm agreed, with regards to both agreements, to assign its right to receive costs at the conclusion of the litigation to Funders A and B in exchange for advance payments on which interest was payable by the Firm.

7. The broad allegations complained of in the reports was that the Respondent (a) caused or allowed claims for payment to be made to more than one litigation funder in respect of the same client matters, where the contracts with funders precluded that from happening, and when it gave rise to a risk that the agreements were being made to remit the same funds, on receipt, to more than one funder and (b) allowed funds which were paid in settlement of unpaid professional disbursements to be paid over to litigation funders or to be used for purposes other than those for which they were paid to the Firm.

8. The Firm practised in this manner until late 2018. On 31 December 2018 the Respondent self-reported the Firm to the Applicant citing "financial difficulties". On or around 15 February 2019, the Applicant received a further report in respect of the Firm from a provider of ATE insurance.

Allegation 1: Duplicate Claims

Litigation Funding: Funder A

9. At the time of the Firm closing, it owed Funder A £3,119.209.67 in respect of advance payments claimed from and made by Funder A. The sums owed consisted of payments of £2,677,623.36 which were due against advances made in relation to 49 client matters, and £441,586.31 due against advances made in respect of disbursements.

10. The Firm entered into that agreement with Funder A in 2014. The effect of the agreement was that the Firm was able to propose to Funder A that they provide funding in relation to (a) costs (under a "costs receivables purchase facility") and (b) disbursements (under a "disbursements receivables purchase facility").

11. Relevant terms of the agreement were:

- It will, in respect of a costs disbursements facility, "use all reasonable endeavours to procure that no set-off or counterclaim or right to a deduction will be at any time allowed to arise" in relation to sums where rights have been granted to Funder A…"

- It will not "(i) create, or determine to create any encumbrance over any Payment purchased by Funder A/ATWE policy; or (ii) enter into, or determine to enter into, any arrangement for the sale, discounting, factoring, assignment or other disposal of any Rights/Payments purchased by [Funder A] under the facility…"

- It has "no obligations to a Claimant, Promisor, ATE Provider or other third party which could reduce of *(sic)* extinguish the value of a payment…"

12. It was plain from the agreement therefore that:

    - Where the Firm entered into an agreement with Funder A whereby the Firm would receive advance payment in relation to its own fees, the limit of its obligation to Funder A was to pay over sums received by the Firm in relation to its fees.

    - Where the Firm sought and received payments from Funder A in relation to its fees in a client matter, it could not do so if it had previously granted any other third party rights over any part of the sums due to the Firm in relation to its own fees, and could not, having sought or received payments, grant such rights.

Litigation Funding: Funder B

13. At the time of the Firm closing, it owed Funder B £1,132,765.27 in respect of advance payments claimed from and made by Funder B. The Firm entered into an agreement with Funder B in 2016.

14. Relevant terms of the agreement were:

    - The agreement describes "Receivables" as "any monetary claim on or obligation of an Obliger (including any applicable tax or duty) present, future or contingent together with all Related Rights and any entitlement of [the Firm] to be paid as the result of a settlement agreement, Tomlin Order or other court order for costs…"

    - The Firm will "hold all Remittances in its client account on trust for Funder B…"

    - Whenever the Firm notifies Funder B of a "Receivable" it was essentially confirming that they own the same and it was not subject to any security.

    - A warranty was given by the Firm to Funder B that any "Receivable" was not subject to any "Security" and was "freely assignable".

15. It was clear from the agreement therefore that:

    - Where the Firm entered into an agreement with Funder B whereby the Firm would receive advance payment in relation to its own fees, the limit of its obligation to Funder B was to pay over sums received by the Firm in relation to its fees.

    - Where the Firm sought and received payments from Funder B in relation to its fees in a client matter it could not do so if it had previously granted any other third party rights over any part of the sums due to the Firm in relation to its own fees, and could not, having sought or received such payments, grant such rights.

16. During the course of the Applicant's forensic investigation it was found that, contrary to the relevant provisions of the respective agreements, duplicate claims had been submitted to both Funder A and Funder B in respect of 21 client matters.

Allegation 2: Unpaid Professional Disbursements

17. The Applicant received a report from an ATE provider following the Firm ceasing trading. It was identified that the Firm had received payments intended to settle liabilities for unpaid professional disbursements (namely ATE insurance premiums) in circumstances where the Firm did not use those funds for that purpose. The forensic investigation revealed that with regards to four matter files:

- There were three matters in which payments were made to the Firm by representatives of Defendants in claims in which the Firm was acting for Claimants. In each matter, the payments included sums in settlement of liabilities of the Firm's clients to pay for ATE premiums. Part of the sums paid were therefore paid in respect of unpaid professional disbursements. However, in each matter, the Firm transferred part or all of the funds paid in respect of such disbursements from the Firm's Client Account to the Office Account and did not discharge the liability for ATE premiums.

- In respect of one matter, the entire amount agreed as due to the Firm was paid to Funder A and was therefore paid by way of partial settlement of the Firm's liability to Funder A but was not used for the purpose of discharging the liability to pay ATE premiums.

18. The Respondent, during the course of the Applicant's forensic investigation and during the Tribunal proceedings, accepted that he entered into the agreements on behalf of the Firm and that he was personally responsible for the submission of claims for payments from both Funders.

Witnesses

19. None.

Findings of Fact and Law

20. The Applicant was required by Rule 12 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (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.

21. The written evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents, received no oral evidence and made notes of the oral submissions made by the Parties. The absence of any reference to particular evidence and/or submission should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

22. **Allegation 1 - On various dates between April 2016 and March 2019 caused or allowed claims to be made by the Firm pursuant to agreements entered with two different litigation funders, Funder A and Funder B, where such claims were made to two different funders in relation to the same client matters, and where such claims as a result:**

    1.1 Were made in breach of express terms of the agreements with Funder A and Funder B to the effect that the making of claims in respect of the same client matters to more than one funder were prohibited; and/or

    1.2 Were made in circumstances in which the claims gave rise to conflicting obligations to two different funders

    and in doing so breached one or more of Principles 2, 6 and 8 of the SRA Principles 2011.

The Applicant's Case

22.1 Ms Ferrario submitted that, by virtue of his conduct, the Respondent breached Principle 2 of the SRA Principles 2011 which required him to act with integrity. It was or should have been obvious to the Respondent that he was submitting claims to two different Funders in respect of the same matters, in circumstances in which such claims (a) breached the terms of both agreements and (b) involved claims from more than one Funder in respect of the same costs, and receipt of litigation funding in excess of the anticipated receipts against which such sums were advanced. Ms Ferrario submitted that the Respondent failed to adhere to the ethical standards of the profession. A solicitor acting with integrity would not, she submitted, knowingly and systematically, over a prolonged period, make such claims. The Respondent was and must have been well aware of the prohibition on seeking "duplicate" litigation funding.

22.2 Ms Ferrario further submitted that, by virtue of his conduct, the Respondent breached Principle 6 of the SRA Principles 2011 which required him to behave in a way that maintained public trust in him and in the profession. Funders A and B, having obtained warranties or undertakings to the effect that duplicate claims would not be made, were entitled to rely upon the same. The result of the Firm's insolvency was that Funders' recovery of such funds was put at inevitable risk as a consequence of the duplicate claims that were made. Ms Ferrario contended that conduct on the part of the Respondent undermined public trust in the Respondent and the profession.

22.3 Ms Ferrario additionally submitted that, by virtue of his conduct, the Respondent breached Principle 8 of the SRA Principles 2011 which required him to run/carry out his role in the Firm effectively and in accordance with proper governance and sound financial and risk management principles.

The Respondent's Position

22.4 The Respondent admitted Allegation 1 in its entirety.

The Tribunal's Findings

22.5 The Tribunal determined that the admissions were properly made and accepted the same. The Tribunal therefore found Allegation 1, breach of Principles 2, 6 and 8 proved on a balance of probabilities.

23. **Allegation 2 - On dates between September 2014 and March 2019 caused or allowed sums received by or payable to the Firm for unpaid professional disbursements to be:**

2.1 Transferred from the Firm's Client Account to Office Account and then used for the Firm's purposes, and/or

2.2 Paid to a third party, Funder A in circumstances in which the Firm was not able to ensure that the sums were used to pay unpaid professional disbursements

and in doing so breached one or more of Principles 2, 4, 6, 8 and 10 of the SRA Principles 2011 and Rules 14.1. 14.3, 17.1 and 18.2 of the SRA Accounts Rules 2011.

The Applicant's Case

23.1 Ms Ferrario submitted that, by virtue of his conduct, the Respondent breached Principle 2 of the SRA Principles 2011 which required him to act with integrity. Allowing sums paid by way of professional disbursements, which were client monies and intended to discharge clients' liabilities, to be appropriated by the Firm and/or used to discharge the Firm's own liabilities amounted to a clear and serious breach of the ethical standards of the profession.

23.2 Ms Ferrario contended that, by virtue of his conduct, the Respondent breached Principle 4, which required him to act in the best interests of the client, and Principle 6, that required him to behave in a way that maintains public trust in him and in the profession, of the SRA Principles 2011. The Respondent breached both requirements through his failure to deploy client monies for the intended purposes of discharging client liabilities.

23.3 Ms Ferrario averred that, by virtue of his conduct, the Respondent breached Principle 8, which required him to run the Firm effectively and in accordance with proper governance, and Principle 10, which required him to protect client monies, of the SRA Principles 2011. The Respondent breached both requirements by his misappropriation of client monies to discharge the Firm's financial liabilities.

23.4 Ms Ferrario further submitted that, by virtue of his conduct, the Respondent breached the SRA Accounts Rules governing the management of client monies and the use of the client account detailed below.

Rule 14.1

23.5 Client money must without delay be paid into a client account, and must be held in a client account, except when the rules provide to the contrary.

Rule 14.3

23.6 Client money must be returned to the client (or other person on whose behalf the money is held) promptly as soon as there is no longer any proper reason to retain those funds. Payments received after you have already accounted to the client, for example by way of a refund, must be paid to the client promptly.

Rule 17.1

23.7 When you receive money paid in full or part settlement of your bill (or other notification of costs) you must follow one of the following five options:

a) determine the composition of the payment without delay, and deal with the money accordingly: (i) if the sum comprises office money and/or out-of-scope money only, it must be placed in an office account; (ii) if the sum comprises only client money, the entire sum must be placed in a client account; (iii) if the sum includes both office money and client money, or client money and out-of-scope money, or client money, out-of-scope money and office money, you must follow rule 18 (receipt of mixed payments); or

b) ascertain that the payment comprises only office money and/or out-of-scope money, and/or client money in the form of professional disbursements incurred but not yet paid, and deal with the payment as follows: (i) place the entire sum in an office account at a bank or building society branch (or head office) in England and Wales; and (ii) by the end of the second working day following receipt, either pay any unpaid professional disbursement, or transfer a sum for its settlement to a client account; or

c) pay the entire sum into a client account (regardless of its composition), and transfer any office money and/or out-of-scope money out of the client account within 14 days of receipt; or

d) on receipt of costs from the Legal Aid Agency, follow the option in rule 19.1(b); or

e) in relation to a cheque paid into a client account under rule 14.2(e), transfer the costs element out of the client account within 14 days of receipt.

Rule 18.2

23.8 A mixed payment must either: a) be split between a client account and office account as appropriate; or b) be placed without delay in a client account.

23.9 Ms Ferrario submitted that the Respondent's failure to hold client monies in the client account breached Rules 14.1, 17.1 and 18.2. Ms Ferrario further submitted that the failure to return client monies to the client account breached Rule 14.3.

The Respondent's Position

23.10 The Respondent admitted Allegation 2 in its entirety.

The Tribunal's Findings

23.11 The Tribunal determined that the admissions were properly made and accepted the same. The Tribunal therefore found Allegation 2, breach of Principles 2, 4, 6, 8 and 10, breach of Rules 14.1, 14.3, 17.1 and 18.2 of the Accounts Rules 2011 proved on a balance of probabilities.

Previous Disciplinary Matters

24. None.

Mitigation

25. Mr Christianson reminded the Tribunal that the Respondent had made admissions during the course of the forensic investigation, shortly thereafter in written correspondence with the Applicant and throughout the Tribunal proceedings all of which was to his credit. He submitted that the Respondent fully accepted the seriousness of the admitted misconduct and he felt mortified at the same in that he was a solicitor of significant experience who had built his Firm from the ground up only for it to have "crashed". Mr Christianson submitted that those matters as well as being before the Tribunal facing the matters that he did should be considered "part of the penalty" for the Respondent.

26. Mr Christianson submitted that the decision made by the Respondent regarding double funding was a "corporate" one as opposed to a deliberate decision to flout the SRA Accounts Rules. The Respondent viewed the "facilities from Funders A and B as essentially lines of credit and he treated them as such". Mr Christianson averred that the Respondent's "overriding view" was that the Firm had security, extensive systems in place regarding financial control all of which were complied with. The Respondent had a good relationship with Funders A and B and the "overall picture was that the system worked well and as it should".

27. Mr Christianson contended that the Firm received "occasional assistance with regards to financial management" which was when double funding was entered into on 21 matters. That should, Mr Christianson asserted, be viewed in the context of the Firm holding 4000 matter files, 1400 of which were active and 600 of which were consumer credit matters.

28. The Respondent was "commendably frank" in his interview and made plain that the 21 files complained of did not constitute a "core part of the Firm's conduct". Mr Christianson submitted that the Respondent "believed that what he was doing was allowed" and that the prohibition on double funding "just did not register" with him.

The Respondent "saw it as a way of managing short term cash flow as opposed to misappropriation" of client monies.

29. With regard to the unpaid professional disbursements, Mr Christianson submitted that the quantum relied upon by the Applicant was disputed but that the conduct complained of was admitted. It was a complex scenario in which the "indebtedness of the Firm was significantly lower and was currently being resolved" in the course of the Firm's administration.

30. Mr Christianson stated that the Respondent fully accepted that he was under a duty to devise, monitor and supervise client monies within the Firm. On occasions the Respondent fell short but as soon as he was made aware of that fact "his response was that of a good solicitor. He didn't duck, hide or run away. He set up systems to pay back the funds [at a rate of £10,000.00 per month] to address the issue whilst the final figures/the true position was established during the course of the administration".

31. Mr Christianson contended that the Respondent should be given credit for his candid approach with the ATE providers and his self-report to the Applicant that the Firm was "heading into trouble". The Respondent put the Firm into administration and accepted full responsibility for the failures. His insight into his failures was demonstrably shown during the course of his interview it was submitted.

32. Mr Christianson acknowledged that "personal loss was of limited value" to the Tribunal at the sanction stage of proceedings but advanced the fact that the Respondent had only just been discharged from bankruptcy, had lost his Firm, had not worked for over two years and was unemployable as relevant factors.

33. There was, Mr Christianson submitted, "nothing to suggest in evidence that [the Respondent] was not fit, proper or competent to run a file". A term of suspension with subsequent restrictions on his practice, namely preventing him from management of a Firm and/or handling client monies, would "adequately address the mischief" contained within the proven allegations.

Sanction

34. The Tribunal referred to its Guidance Note on Sanctions (8th Edition) when considering sanction. In broad terms, the Tribunal found it hard to accept that the Respondent was not aware at all material times of the fact that he could not make duplicate claims in respect of client matters and further that he was unaware that client monies should not be used to discharge the Firm's expenses.

Culpability

35. The Tribunal considered that the Respondent's misconduct was motivated by self interest namely to keep the Firm operating at all costs. His self interest was financial and his conduct was/had the potential to be detrimental to all; clients, Funders A and B, the ATE providers and ultimately to all that he employed particularly as his misconduct resulted in the Firm entering into administration. The Respondent's misconduct was planned in that it was a conscious decision that he made to manage the Firm's cashflow in this manner. His misconduct was also repeated over a protracted

period of time, at least from 2016 – 2018. The manner in which the Respondent handled client money and discharged the Firm's liabilities amounted to a flagrant breach of the SRA Accounts Rules 2011. On his own admission, the Respondent had direct control over the management of funds and the misconduct was entirely his responsibility.

36. As a solicitor of the Supreme Court of 26 years, the Tribunal considered him to be extremely experienced and further that he should have known better. His culpability for the misconduct was at the highest level.

Harm

37. The Firm employed around 65 members of staff at the material time all of whom lost their employment when the Firm collapsed and went into administration as a consequence of the Respondent's misconduct. There was an inherent risk to clients when the Firm ceased trading. Funders A and B were at risk of losing the funds that they had advanced to the Firm.

38. The Respondent's overt, deliberate and repeated misappropriation of client monies breached a fundamental tenet of the solicitors profession to safeguard the same. His conduct caused significant harm to the reputation of the profession. The Tribunal did not accept the submissions made on his behalf that the Respondent did not know that he was not entitled to use client monies in the manner that he did.

39. Overall the harm caused by the Respondent's misconduct was at the highest level.

Aggravating Features

40. The Respondent's misconduct was aggravated by the fact that his misconduct was (a) deliberate, (b) repeated, (c) occurred over a protracted period of time, (d) involved significant sums of money and (e) was plainly prohibited. The Tribunal found that the Respondent with his significant experience both as a solicitor and of running a firm ought reasonably to have known better.

41. The Tribunal, whilst noting the admissions made in interview and throughout the Tribunal proceedings, did not consider that the Respondent demonstrated genuine insight. The position advanced by and on behalf of the Respondent was ambiguous, vague and lacked precision particularly as the Respondent was the COFA of the Firm.

Mitigating Features

42. The Tribunal determined that whilst the Respondent attempted to make good by way of the £10,000.00 repayment scheme agreed with the ATE providers, only one payment was made before the Firm went into administration and the Respondent being made bankrupt. It was to the Respondent's credit that he made admissions, accepted responsibility for his misconduct and cooperated with both the Applicant's investigation and the Tribunal proceedings.

43. Weighing all of these factors in the balance the Tribunal found that the Respondent's misconduct and the lack of integrity displayed represented a gross departure from the standards expected of a solicitor. Consequently, no Order, a Reprimand or a Financial Penalty did not sufficiently meet the gravamen of the misconduct.

44. The Tribunal carefully considered the submissions made on the Respondent's behalf that a term of Suspension with a consecutive Restriction on Practice was sufficient. The Tribunal acknowledged whilst they would prevent the Respondent from misappropriating client funds during the currency of both Orders, they did not adequately reflect the seriousness of the harm caused by the Respondent to the reputation of the profession. The Tribunal had found that the Respondent undermined the sacrosanct nature of client monies in putting the needs of the Firm, the Funders and the ATE providers before the overriding duties to preserve and protect client money and assets. He did so deliberately and repeatedly.

45. The Tribunal therefore determined that the seriousness of the misconduct was at the highest level, such that a lesser sanction was inappropriate. Moreover, the protection of the public and/or the protection of the reputation of the legal profession required the Tribunal to strike the Respondent's name off the Roll.

Costs

46. The parties agreed costs in the sum of £35,000.00.

47. The Tribunal noted that the Applicant's Statement of Costs claimed £47,619.50 as at 12 July 2021. The Tribunal considered that sum to be excessive and disproportionate. The Tribunal found that the agreed costs in the sum of £35,000.00 was appropriate and awarded the same.

Statement of Full Order

48. The Tribunal Ordered that the Respondent, SETH LOVIS, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £35,000.00.

Dated this 9th day of August 2021
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
09 AUG 2021

J Evans
Chair