SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12224-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

SION TUDUR Respondent

Before:

Mr P. Lewis (in the chair)
Ms T. Cullen
Mrs L. McMahon-Hathway

Date of Hearing: 24 September 2021

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The Allegations made against the Respondent were set out in a Rule 12 Statement dated 16 July 2021 and were that while in practice as an Associate Solicitor at Capital Law Limited ("the Firm"):

1.1. Between 18 December 2013 and 21 November 2016 he caused or allowed payments into and out of the Firm's client account, any or all of which were other than in respect of an underlying legal transaction, and in doing so provided banking facilities through the Firm's client account in breach of any or all of:

1.1.1. in relation to the period from 21 November 2014 onwards only, Principle 2 of the SRA Principles 2011 ("the Principles");

1.1.2. in relation to the whole of the period between 18 December 2013 and 21 November 2016, Principle 6 of the Principles and Rule 14.5 of the SRA Accounts Rules 2011 ("the Rules").

1.2 He allowed client funds to remain in the Firm's client account when they should have been returned to the client as soon as there was no longer any proper reason to retain those funds. In doing so he breached any or all of:

1.2.1. Principle 6 of the Principles;

1.2.2. Rule 14.3 of the Rules.

1.3. Allegation 1.1 was advanced on the basis that the Respondent's conduct was reckless. Recklessness was alleged as an aggravating feature of the Respondent's misconduct but not as an essential ingredient in proving the allegations.

Admissions

2. The Respondent admitted the above allegations.

Documents

3. The Tribunal had before it the following documents:-

- The Application, Rule 12 Statement dated 16 July 2021 and exhibits;
- An application for an Agreed Outcome dated 22 September 2021;
- Statement of Agreed Facts and Proposed Outcome dated 24 September 2021.

Background

4. The Respondent was admitted to the Roll on 3 May 2005. At all material times he was an Associate Solicitor at the Firm's office in Cardiff where he practised in corporate law. He resigned from the Firm on 30 April 2017.

5. The Respondent is currently a principal at Loosemores in Cardiff and has a practising certificate, free from conditions, for the 2020/2021 practice year.

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 Proposed Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions (December 2020). The proposed sanction was that the Respondent pay a fine of £24,000 and that restrictions on his practice be imposed for an indefinite period.

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 the Respondent's rights to a fair trial and to respect for his private and family life under Article 6 and 8of 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 (December 2020). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

10. The detail of the Respondent's admitted misconduct over an extended period of almost two years, and involving 53 payments, is set out in detail in the attached Statement of Agreed Facts and is not repeated in this judgment. The Respondent was an experienced solicitor specialising in corporate transactional work and had had notice of the risks involved in allowing a banking facility to be provided. The Applicant had issued guidance to all solicitors on the improper use of client accounts as a banking facility. The harm caused by such conduct to the reputation of the profession was significant. The Respondent had full control over the relevant circumstances and should have realised his conduct was in breach of his obligations as a solicitor. The Tribunal considered that the misconduct, which included an admitted failure to act with integrity aggravated by recklessness, was very serious.

11. The Tribunal considered that the appropriate sanction in this matter was a financial penalty falling within Level 4 of its Indicative Fine Bands (suitable for conduct assessed as "very serious") coupled with indefinite restrictions preventing the Respondent having direct control of client money or acting in a compliance role in relation to legal practice or finance and administration. The Tribunal did not consider that a fine alone would adequately protect the public or the reputation of the profession and that restrictions were also required. The parties proposed a fine of £24,000 with the following conditions to be applied indefinitely, that the Respondent may not:

    - Act as Head of Legal Practice/Compliance Officer for Legal Practice or Head of Finance and Administration/Compliance Officer for Finance and Administration;

    - Hold client money other than with leave of the Solicitors Regulation Authority; or

- Act as a signatory on any client account other than with leave of the Solicitors Regulation Authority.

12. The Tribunal, having determined that the proposed sanction was appropriate and proportionate, granted the application for matters to be resolved by way of the Agreed Outcome.

Costs

13. The parties agreed that the Respondent should pay the Applicant's costs of these proceedings fixed in the sum of £22,000. The Tribunal considered the costs application to be appropriate and proportionate, and ordered that the Respondent pay the costs in the agreed amount.

Statement of Full Order

14.1 The Tribunal ORDERED that the Respondent, Sion Tudur, solicitor, do pay a fine of £24,000, such penalty to be forfeit to Her Majesty the Queen.

14.2 The Tribunal ORDERED that the Respondent be subject to conditions imposed by the Tribunal as follows:

15.1 The Respondent may not:

15.1.1 Act as Head of Legal Practice/Compliance Officer for Legal Practice or Head of Finance and Administration/Compliance Officer for Finance and Administration;

15.1.2 Hold client money other than with leave of the Solicitors Regulation Authority; or

15.1.3 Act as a signatory on any client account other than with leave of the Solicitors Regulation Authority.

15.2 There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2.1 above.

6. The Tribunal further Ordered that the Respondent do pay the costs of and incidental to this application and enquiry fixed in the sum of £22,000.

Dated this 22nd day of October 2021
On behalf of the Tribunal

P Lewis
Chair

Number: 12224-2021

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

SION TUDUR

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

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1. By its application dated 16 July 2021, and the statement made pursuant to Rule 12 (2) of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority Limited (the SRA) brought proceedings before the Solicitors Disciplinary Tribunal making two allegations of misconduct against Sion Tudur.

The allegations

2. The allegations against Mr Tudur, made by the SRA within that statement were that, while in practice as an Associate Solicitor at Capital Law Limited (the Firm):

   2.1. between 18 December 2013 and 21 November 2016 he caused or allowed payments into and out of the Firm's client account, any or all of which were other than in respect of an underlying legal transaction, and in doing so provided banking facilities through the Firm's client account in breach of any or all of:

      2.1.1. in relation to the period from 21 November 2014 onwards only, Principles 2 of the SRA Principles 2011 (the Principles)

2.1.2. in relation to the whole of the period between 18 December 2013 and 21 November 2016, Principle 6 of the Principles and Rule 14.5 of the SRA Accounts Rules 2011 (the Rules)

2.2. he allowed client funds to remain in the Firm's client account when they should have been returned to the client as soon as there was no longer any proper reason to retain those funds. In doing so he breached any or all of:

2.2.1. Principle 6 of the Principles

2.2.2. Rule 14.3 of the Rules

3. In addition, recklessness was alleged as an aggravating factor with respect of allegation 2.1.

4. Mr Tudur admits each of these allegations. He also admits that his conduct in acting as alleged was reckless.

5. The SRA applies to amend the dates in Allegation 2.1 from "18 December 2013 and 21 November 2016" to "19 December 2013 to 17 November 2015". This application is on the basis that, on further consideration of the Respondent's position, these amended dates reflect the period over which the offending transactions took place as opposed to the dates the Respondent acted for Mr E.

Agreed Facts

6. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraphs 2 and 3 of this statement, are agreed between the SRA and Mr Tudur:

6.1. He was admitted to the Roll on 3 May 2005 and is 43 years of age.

6.2. At all material times he was an Associate Solicitor at the Firm's office in Cardiff (Capital Building, Tyndall Street, Cardiff, CF10 4A) where he practised in corporate law. He resigned from the Firm on 30 April 2017.

6.3. He is currently a principal at Loosemores in Cardiff (Alliance House, 18-19 High Street, Cardiff, CF10 1PT).

6.4. He has a practising certificate, free from conditions, for the 2020/2021 practice year.

6.5. He had previously been employed by The Robert Davies Partnership (RDP) as a principal. During this period he had represented Mr E.

6.6. Mr E transferred his instructions to the Firm after Mr Tudur had joined it as an Associate Solicitor on 2 December 2013.

6.7. Mr Tudur acted for Mr E between 18 December 2013 and 21 November 2016 and was the point of contact for all of Mr E's matters.

6.8. Following the settlement of litigation conducted on behalf of Mr E by RDP, Mr E was due to receive payment of £2,000,000 (the Settlement Money). As Mr E had transferred his instructions to the Firm, Mr E instructed that the Settlement Money was to be paid to it. The Settlement Money was received by the Firm on 7 February 2014. On 10 February 2014 the Firm paid £234,438.17 to RDP.

6.9. Upon Mr Tudur joining the Firm, and prior to receipt of the Settlement Money, a client ledger was opened on behalf of Mr E with reference EDM0008.0001 and headed "Loan Agreement" (Ledger 1), having regard to anticipated instructions.

6.10. The Settlement Money was received by the Firm on 7 February 2014 and posted to Ledger 1. It was paid out by the Firm over a period of approximately nine months, the last payment being on 3rd November 2014.

6.11. Mr E also retained the Firm in relation to other matters between December 2013 and November 2016, including the financing of the building of three nursing homes through commercial loans. Over this period the Firm opened 24 client ledgers on behalf of Mr E and a further four ledgers for CSBL (a company of which Mr. E was both a director and a person with significant control), however funds

received were all posted to Ledger 1 which was used as a 'general commercial' central ledger for both Mr E's and CSBL's matters. Payments out would be posted to Ledger 1.

6.12. During the period December 2013 to November 2015, 53 payments totalling £1,069,059.79 were made from the Firm's client account and constituted:

6.12.1. 47 payments, totalling £969,809.79, made at the direction of Mr E, of which 27 (totalling £593,975.05) were made to an account registered in Mr E's wife's name; and

6.12.2. six payments, totalling £99,250.00, made on behalf of a Mr L (and on Mr L's instruction) to his associated companies.

6.13. It is the Applicant's position that these payments did not relate to an underlying legal transaction, either as the Respondent was not directly involved in the work, or the payments were made, on instruction, to a third party. The Respondent accepts that this is the position for all or any of the 53 payments.

6.14. On 19 November 2014, Mr B, the Firm's Finance Director, wrote to Mr M (to who Mr Tudur reported) noting that the Firm appeared to be providing banking facilities to Mr E without an underlying transaction. This email was subsequently provided to Mr Tudur. Mr. Tudur responded to the e-mail and no further action appears to have been taken by the Firm.

6.15. On 14 January 2015, Mr Tudur emailed the Firm's Accounts Team requesting payments in relation to Mr E totalling £327,250. Mr B emailed Mr Tudur querying why payments were being made to Mr E's creditors rather than the money being transferred to Mr E. Mr B asked whether the payments related to a transaction the Firm was engaged on. Mr Tudur responded saying that the payments related to the repayment of a loan, which Mr B acknowledged.

6.16. No later than January 2015, Mr Tudur was provided with a copy of the SRA's Warning Notice (dated 18 December 2014) on the improper use of client account as a banking facility.

6.17. In February 2015 Mr B emailed Mr Tudur, highlighting three payments that had been made in the last month and asking what the transactions were behind these. Mr B reminded Mr Tudur that the Firm could not provide general banking facilities.

6.18. There were 28 payments made after 19 November 2014, constituting:

6.18.1. 15 to the account either in Mrs E's name, or to a company owned and controlled by Mr. E;

6.18.2. nine in redemption of Mr. E's loans (five of which were paid to third-party companies or to Mr. L at Mr. L's direction);

6.18.3. three were made on Mr. E's instruction that they were in settlement of expenses incurred in his developments; and

6.18.4. one involved a payment for a car which was a personal expense of Mr. E.

Non-Agreed Mitigation

7. The following mitigation, which is not agreed by the SRA, is put forward by Mr Tudur

7.1. He considered the Firm's initial retainer with Mr E to encompass both the receipt of the Settlement Money and the discharge of Mr E's liabilities (including his personal ones) as instructed. As he had been instructed in relation to Mr E's personal loans to fund the litigation, he considered the discharge of those loans to form part of the Firm's retainer.

7.2. He had advised Mr E on raising finance in relation to the above three nursing homes and was involved in the negotiation and/or drafting of a number of the loans, so he considered the payments to third parties as relating to both the Firm's retainer and the underlying legal transaction.

7.3. The payments predominantly related to one of the following categories, a) the repayment of loans taken out by Mr. E, b) settlement of monies due to Mr. E's former solicitors in the litigation, c) payments on Mr. E's instruction that they were required to settle expenses he had incurred in his developments in respect of which the firm was instructed and d) payments on Mr. E's instruction for his benefit to be made to an account in Mrs. E's or CSBL's name. Additionally, a few of the payments were for personal expenses, for example, to a car dealer.

7.4. In respect of the payments for Mr. E, the Respondent states that he had some involvement in most of the loan transactions, for example, either the negotiation of the loan terms, or the drafting of loan agreements, but he now understands and accepts that it was unnecessary for the Firm to have received the funds direct and that there was not an underlying legal transaction.

7.5. In respect of the payments for Mr L, these were made on Mr L's instruction but typically involved payment to third party companies understood to be associated with Mr. L. The Respondent states that he negotiated and drafted each of these loan agreements, however also now understands and accepts that it was unnecessary for the Firm to have received the funds direct and that there was not an underlying legal transaction.

7.6. The Respondent accepts that in the case of each payment made a) in respect of those loans in which he did not have direct involvement, b) in settlement of Mr E's personal expenses, and c) to third parties, the payments were not connected to an underlying transaction that the Firm was undertaking.

7.7. In relation to the payments to companies associated with Mr L, he was satisfied that they were Mr L's companies, although relying on his longstanding relationship with Mr L, he had not carried out due diligence on them.

7.8. At the time when the Settlement Money was received, he did not understand Rule 14.5 of the Rules. He believed that it was permitted to make payments at the direction of a client as he was acting for the client generally and the management of Mr E's debts formed part of the retainer. He believed that all third-party payments made on behalf of Mr E were connected with the work that he was undertaking for him.

7.9. The Firm did not understand the application of Rule 14.5 of the Rules and did not direct him on its proper application.

7.10. In relation to the payments made to Mr E's wife, Mr E had led him to believe that he was, either solely or jointly, beneficially entitled to the proceeds in this account as he did not have an account registered in his own name.

7.11. The Respondent's conduct was not deliberate. The breaches were caused by both his, and his employer's failure to understand the application of the rules prohibiting the use of client account as a banking facility.

7.12. Working in a very busy corporate department all hours of the day, he understood that his employer would guide him on matters of compliance. Unfortunately, both the Respondent and his employer failed to understand the application of the rule prohibiting use of the client account as a banking facility.

7.13. By the time that it was drawn to the Respondent's attention that the firm ought to have returned the client's funds earlier, the funds had already been paid out on the client's instructions.

7.14. The Respondent believed that the Firm was permitted to make all of the payments from client account, which were all made on his client's instructions.

7.15. Nevertheless, an issue having been raised by the firm at one point mid-retainer, the Respondent accepts that he was, or should have been on notice of a risk, and therefore ought to have been even more careful thereafter before directing further payments to be made.

7.16. The Respondent believed his employer was satisfied that he was not acting in breach of the rules.

7.17. The Respondent reiterates his apology for his errors, and now understanding of the rule, will ensure that there is no risk of further contravention.

Penalty proposed

8. It is therefore proposed that Mr Tudur should be fined the sum of £24,000.00.

9. It is also proposed that restrictions be imposed that Mr Tudur may not:

9.1. be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration.

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

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

10. With respect to costs, it is further agreed that Mr Tudur should pay the SRA's costs of this matter agreed in the sum of £22,000.00.

Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance

11. At the material time Mr Tudur was a solicitor, specialising in corporate transactional work with between eight and eleven years of post-qualification experience. His misconduct took place over a period of just under two years and involved in the region of 53 separate payments. Mr Tudur was the point of contact for Mr E at the Firm and was responsible for each of the payments made. During his employment with the Firm, Mr Tudur was made aware of the risk posed by making payments/transfers which did not relate to an underlying legal transaction, yet continued to make the payments/transfers when it was

unreasonable for him to do so. This included being directly provided with a copy of the SRA's Warning Notice (dated 18 December 2014) on the improper use of client account as a banking facility. Upon being provided with this information Mr Tudur did not take steps to establish that the transactions that had taken place were not in breach of the Rules, nor did he change his approach or behaviour in relation to subsequent transactions. As a result of his level of experience, the level of direct control that he had over the relevant transactions, the period of time over which the transactions took place, the number of transactions and his reckless conduct, Mr Tudur's culpability for his actions was accordingly high.

12. As a result of Mr Tudur's actions the Firm received the Settlement Money in February 2014. This money, which should have then been paid to Mr E promptly, was paid out over approximately nine months typically to third parties, and thus in circumstances where there was not an underlying legal transaction.

13. The principle factors that aggravate the seriousness of Mr Tudur's misconduct are:

    13.1. the repeated nature of the misconduct;

    13.2. that the misconduct was sustained over a period of 23 months from 19 December 2013 to 17 November 2015;

    13.3. that Mr Tudur ought to have realised that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession;

    13.4. that the misconduct continued after a potential risk that he was in breach of the Rules was identified to him.

14. The principal factors that mitigate the seriousness of Mr Tudur's misconduct are:

    14.1. he has shown genuine insight into the actions causing the misconduct;

    14.2. he has made open and frank admissions at an early stage and co-operated with the SRA as the investigating body.

15. In the circumstances, the seriousness of Mr Tudur's misconduct is such that a Reprimand would not be a sufficient sanction but neither the protection of the public nor the protection of the reputation of the legal profession justifies a strike off or a suspension. It is therefore proportionate and in the public interest that Mr Tudur should be fined.

16. The other relevant factors to be considered in accordance with the decision in **Fuglers v SRA [2014] EWHC 179 (Admin) per Popplewell J at [35]** and the Tribunal's **Guidance Note on Sanction (6th edition)** are:

    16.1. *Whether the seriousness of the misconduct, and giving effect to the purpose of the sanction, puts the case at or near the top, middle or bottom of the category*

    A reprimand would not be an appropriate alternative sanction as Mr Tudur's culpability is high, the harm/risk of harm is more than negligible and the breaches were not minor. The seriousness of the breach (in particular taking into account the repeated nature, the period of the breach, Mr Tudur's experience and his recklessness) places the misconduct in the higher bands of a fine. However, a suspension would also not be an appropriate sanction as there is no need to remove Mr Tudur's ability to practise to protect the public or the reputation of the legal profession. In addition, a lesser sanction than suspension from practise will still maintain public confidence in the legal profession

16.2. *The size and standing of the solicitor or firm in question.*

Mr Tudur was an experienced solicitor who had previously been a principal in his former firm. Mr Tudur was employed as an Associate Solicitor and was conducting corporate transactional work both nationally and internationally.

16.3. *The means available to an individual or a firm:*

[redacted] **[The Applicant and the Respondent agree that this paragraph is to be redacted before publication]**

17. Taking account of these matters, together with the seriousness of the misconduct committed by Mr Tudur, the case should be regarded as falling into Level 4: Conduct assessed as very serious. The appropriate fine for conduct assessed as falling within Level 4 is £15,001.00 - £50,000.00.

18. In addition, it is necessary to ensure the protection of the public and the reputation of the legal profession from future harm by Mr Tudur by imposing the restrictions detailed in paragraph 9 above.

19. In all the circumstances of the case, it is therefore proportionate and in the public interest that Sion Tudur should be fined the sum of £24,000 and be subject to the restrictions detailed in paragraph 9.

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Simon Griffiths, Senior Legal Adviser upon behalf of the SRA

Mr Sion Tudur