

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12249-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

MICHAEL GAYE

Respondent

Before:

Mr P S L Housego (in the chair)

Mr W Ellerton

Mr R Slack

Date of Hearing: 8 March 2022

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent, Michael Gaye, made by the Solicitors Regulation Authority Limited (“SRA”) were that, while in practice as a Solicitor at Kitsons LLP (“the Firm”), he:
 - 1.1. on dates between or around 18 December 2007 and 15 April 2008, transferred, or caused or allowed the transfer of, approximately £40,000 from the Firm's Client Account to, or for the benefit of, Client C, in breach of an undertaking which he provided to Stephen Morgan & Co Solicitors on or about 17 December 2007, and in doing so he breached any or all of Rules 1.02, 1.06 and 10.05(1)(a) and 10.05(2) of the Solicitor's Code of Conduct 2007.

Documents

2. The Tribunal had before it documents including:-
 - Rule 12 Statement dated 13 September 2021 with exhibit HVL1
 - Respondent’s Answer dated 14 January 2022
 - Application for approval of Agreed Outcome dated 7 March 2022
 - Statement of Agreed Facts and Outcome

Factual Background

3. The Respondent Michael Gaye is a solicitor who was admitted to the Roll on 15 May 1975. At the date of the Tribunal’s consideration of the proposed Agreed Outcome Mr Gaye held a current practising certificate which was free from conditions. The Respondent is a conveyancing solicitor.
4. At the time of the alleged misconduct, Mr Gaye practised at Kitsons LLP (“the Firm”), Minerva House, Orchard Way, Torquay, Devon, TQ2 7FA. The Firm is a recognised body.
5. Mr Gaye currently works at SW Law Solicitors Ltd, Kingsley Close, East Way, Lee Mill, Ivybridge, Devon, PL21 9GD, which is a recognised body.
6. Mr Gaye admitted the allegation which followed on from a complaint made to the SRA by a former client in 2019.

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

7. The parties invited the Tribunal to deal with the Allegation 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.

Preliminary Issues

8. The application for approval of the proposed Agreed Outcome had been submitted on the basis that the Tribunal needed to be asked to give leave for the application to be

made. An application for leave is only needed under rule 25 of the Solicitors (Disciplinary Proceedings) Rules 2019 if the application is made within 28 days of the date fixed for the substantive hearing of the case. The substantive hearing had been scheduled to take place on 20 and 21 December 2021 but the date had to be vacated for reasons beyond the control of the Tribunal and the parties. This hearing had originally been scheduled as a Case Management Hearing (“CMH”) at which a new date would be fixed. The Tribunal determined that it was not necessary for an application for leave to be considered and went directly to consideration of the proposed Agreed Outcome.

9. The Tribunal noted that paragraph 28 of the proposed Agreed Outcome identified one of the properties involved in the case and also the identity of a witness. In accordance with its practice the Tribunal would anonymise both names in the version of the Agreed Outcome attached to this judgment.

Findings of Fact and Law

10. The Applicant was required to prove the allegations to the standard applicable in civil proceedings (the balance of probabilities). The Tribunal had due regard to the Respondent’s rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
11. The Tribunal reviewed all the material before it and was satisfied to the required standard that the Respondent’s admissions were properly made.
12. The Tribunal considered the Guidance Note on Sanctions (December 2021). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. In the proposed Agreed Outcome, the parties had set out their reasons for suggesting that the seriousness of Mr Gaye’s misconduct was moderate. The Tribunal spent some time analysing that aspect of the matter because reliance upon solicitor’s undertakings is a cornerstone of the legal system and breach of undertaking is potentially a very serious matter. There was a potentially complicating factor in this case in that Mr Gaye had a previous appearance before the Tribunal which was disclosed in the proposed Agreed Outcome. Mr Gaye had appeared before the Tribunal in Case No. 9954-2008 in which judgment had been given on 30 November 2009. The allegations in the earlier matter also included breach of undertakings. A substantial fine had been imposed upon Mr Gaye in those proceedings. The Tribunal noted that the events which gave rise to the allegation in this matter had occurred before Mr Gaye’s appearance before the earlier Tribunal and so it was not the case that he had committed a further breach of undertaking having already been disciplined for similar conduct. It could not be predicted what impact this additional misconduct might have had if it had been considered in the earlier proceedings. The Tribunal determined that it must consider the position as it is in 2022 rather than as it had been in 2009.
13. The Tribunal took into account that Mr Gaye had derived no personal benefit from his actions indeed they appeared to have led to him suffering a loss of at least £20,000, half of the money he had taken from his personal funds to repay the money which he had paid to his client in breach of the undertaking. He had only sought to recover money from his client in 2017. The Tribunal also noted that there was no allegation of

dishonesty. However it was fortuitous that Mr Gaye was able to make the payment and there was a serious risk to the funds involved before he did. Also the recipient of the undertaking was kept out of their money for some time.

14. The Tribunal noted that a considerable period of time had passed since this misconduct and there had apparently been no further regulatory issues. In all the circumstances the Tribunal considered that there was no risk of repetition of the misconduct as the SRA proposed to place very strict limitations upon Mr Gaye's future practice including that he would be limited to working in the firm where he was currently employed. The Tribunal considered that the restrictions would protect the public. The Tribunal noted the mitigation offered by Mr Gaye including that he had been thoroughly cooperative throughout the proceedings. The circumstances of this case were very particular and having weighed them for some time the Tribunal concluded that the misconduct has been accurately assessed as moderately serious and that the fine proposed was appropriate. It would therefore approve the proposed Agreed Outcome.

Costs

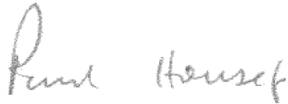
15. The parties had agreed costs in the amount of £7,500.00 taking into account Mr Gaye's financial means.

16. Statement of Full Order

1. The Tribunal Ordered that the Respondent, **Michael Gaye**, solicitor, do pay a fine of £6,000.00 such penalty to be forfeit to Her Majesty the Queen.
2. The Tribunal further Ordered that the Respondent be subject to conditions imposed by the Tribunal as follows:
 - 2.1 The Respondent may not:
 - 2.1.1 act as a sole practitioner or sole manager or sole owner of an authorised or recognised body;
 - 2.1.2 act as Compliance Officer for Legal Practice or Compliance Officer for Finance and Administration for any authorised or recognised body;
 - 2.1.3 hold client money;
 - 2.1.4 be a signatory on any client account;
 - 2.1.5 provide legal services as an employed or freelance and/or consultant solicitor offering reserved or unreserved services under regulations 10.2 (a) or (b) of the SRA Authorisation of Individuals Regulations aside from in connection with his engagement as a consultant with SW Law (SRA number 558154) without express prior approval of the SRA;
 - 2.1.6 give any solicitor undertakings to any third party.

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.
4. The Tribunal further Orders that the Respondent do pay the costs of and incidental to this application and enquiry fixed in the agreed sum of £7,500.00

Dated this 22ND day of March 2022
On behalf of the Tribunal



P S L Housego
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
22 MAR 2022

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

MICHAEL GAYE

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

By a statement made by Hannah Victoria Lane on behalf of the Solicitors Regulation Authority Limited (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 13 September 2021, the SRA brings 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.

Admissions

1. The Respondent admits that he:
 - 1.1. on dates between or around 18 December 2007 and 15 April 2008, transferred, or caused or allowed the transfer of, approximately £40,000 from the Firm's Client Account to, or for the benefit of, Client C, in breach of an undertaking which he provided to Stephen Morgan & Co Solicitors on or about 17 December 2007, and in doing so he breached any or all of Rules 1.02, 1.06 and 10.05(1)(a) and 10.05(2) of the Solicitor's Code of Conduct 2007.

Professional Details

2. The Respondent (SRA ID: 106047) is a solicitor who was admitted to the Roll on 15 May 1975. The Respondent holds a current practising certificate which is free from conditions. The Respondent is a conveyancing solicitor.
3. At the time of the alleged misconduct, the Respondent practised at Kitsons LLP ("the Firm"), Minerva House, Orchard Way, Torquay, Devon, TQ2 7FA. The Firm is a recognised body.

4. The Respondent currently works at SW Law Solicitors Ltd, Kingsley Close, East Way, Lee Mill, Ivybridge, Devon, PL21 9GD, which is a recognised body.

Agreed Facts

5. This matter first came to the attention of the SRA on receipt of a complaint from Client C dated 10 April 2019. In May 2007, the Respondent was instructed by Client C and her husband in the proposed sale of two properties:
 - 5.1. "Property S" (a commercial premises);
 - 5.2. "Property W" (a residential premises).
6. Person M was the proposed buyer in both transactions. Person M was the manager of the business operated at Property S, and operated it on Client C's behalf. Client C owned the lease of Property S.
7. Person M was represented by Stephen Morgan of Stephen Morgan & Co Solicitors. On 12 December 2007, Person M deposited £90,000.00 to the Firm's client account, which made up the deposit for the purchases.
8. The £90,000.00 from Person M was deposited into the client account and allocated to ledger CAR218/0002. The client for ledger CAR218/0002 is Person C's husband and the matter appears to relate to the sale of another business and does not appear to relate to either Property S or Property T.
9. On 13 December 2007 the Respondent wrote to Person M's solicitors, Stephen Morgan & Co stating "*I am holding £50,000 as stakeholder for the [Property W] matter until the landlords licence has been issued ... and £40,000 again as stakeholder in respect of the [Property S] matter*".
10. In addition to selling Property S and Property W, Client C intended to purchase "Property T", which were residential premises. Client C also instructed the Respondent in respect of this transaction. The purchase price was £245,000.00. The Respondent states that the terms of the purchase included the payment of a 10% deposit, totalling £24,500.00.
11. On 17 December 2007, following correspondence received from Stephen Morgan & Co, the Respondent confirmed "*I undertake on behalf of my firm not to part with any money received by Kitson Hutchings [the Firm] for your client [Person M] which relate to this property ("[Property S]") unless you have confirmed that is in order for me to do so or the sale to your client has been completed*".
12. On 18 December 2007, the Respondent transferred, or caused or allowed to be transferred, £40,025.07, held in the Firm's Client Account, from the client ledger relating to CAR218/2 to the client ledger for Person C relating to assignment of the lease for Property S (CAR269/1). The Respondent has subsequently stated "*this*

was an error my part [sic] as the sale of [Property S] had not and did not complete". The Respondent states he was informed at the end of January 2008 that the proposed sale would not proceed.

13. In March and April 2008, just over £40,000¹ was distributed from the Firm's Client Account for Client C's benefit contrary to the undertaking. The Firm describes the distribution of funds as follows:

Date	Sum	Description
4 March 2008	£24,500.00	Transfer to the client ledger relating to the Property T purchase file to be used as a deposit (CAR283/0001)
15 April 2008	£7,220.99	Transfer directly to Client C
14 & 15 April 2008	£6,277.25	Transfer to the Firm's office account in payment of costs
15 April 2008	£2,252.18	Transfer to the client ledger relating to the Property T purchase file in respect of the Firm's costs relating to the purchase (CAR283/0001)

14. The above descriptions reflect the entries in the ledger for the Property S matter (CAR269/0001) save that:

14.1. The figure of £6,277.25 appears to be comprised of two separate payments of £2,670.00 on 14 March 2008 (not 14 April 2008) and £3,607.25 on 15 April 2008. According to the Appendix to the Accountant's Report, the sum of £2,670 was transferred to the ledger for the Property T purchase;

14.2. The purported transfer of £2,252.18 on 15 April 2018 for the Firm's costs on the Property T matter, was in fact a transfer of £2,252.38 on 16 April 2018. The reference to CAR283/0001 accurately reflects the reference for the ledger for the Property T purchase.

15. On 4 March 2008, exchange and completion took place for the purchase of Property T. The client ledger for the Property T matter records that the deposit of £24,500.00 was transferred from the Property T ledger on 4 March 2008. On the same day, the mortgage advance of £220,500.00 was received, and the purchase monies of £245,000.00 were transferred to the seller's solicitors. It is noted that the sum of £2,670.00, transferred from the Property S ledger, may have been used to pay stamp duty land tax.

16. However, the sale of the lease of Property S did not complete. The purchase/sale of Property S fell through in September 2008.

¹ From the figures in the client ledger, the sum is calculated to be £40,250.62, not £40,025.07 as calculated by the Firm in its letter. The precise figure is immaterial and the sum of "approximately £40,000" has been used for ease.

17. On 18 August 2008, Stephen Morgan & Co wrote to the Respondent to request repayment of the £40,000.00 deposit money paid, and intended to be held by the Respondent, in relation to the Property S transaction.
18. On 10 December 2008, the Respondent wrote to Client C explaining that the £40,000.00 was legally payable and that he would lend her £40,000.00 and secure the debt by way of a legal charge against Property T. The Respondent advised Client C to seek independent legal advice regarding the legal charge, and her position generally.
19. The Respondent states that "*the loan was secured by way of a second legal charge dated 16 March 2009*". The charge was signed by Client C and witnessed by a solicitor, Mr Griffiths of Eveling Legal & Advisory Ltd on 16 March 2009 (however Client C states this date is incorrect and it was executed in February 2009).
20. On 17 March 2009 a client to client transfer of £40,000.00 was effected to the Property S matter from a ledger in the Respondent's name.
21. On 28 April 2009, Stephen Morgan & Co wrote to the Respondent again requesting that the funds would be returned without further delay.
22. The money remained on the Property S matter and correspondence ensued between the Respondent and Stephen Morgan & Co regarding the repayment of the £40,000.
23. The charge was registered on 6 May 2009. On 11 May 2009, the Respondent wrote to Client C confirming the charge had been registered with the Land Registry. The Respondent states no response or complaint was received from Client C at this stage, and it was not until September 2017 when Client C requested repayment of the sums due.
24. On 13 August 2010, Stephen Morgan & Co wrote to the Respondent again requesting that the funds would be returned without further delay. Further letters were sent on 13 October 2010 and 23 December 2010.
25. On 12 January 2011 the Firm repaid £40,000 to Stephen Morgan & Co from the firm's client account.

Admissions

26. The Respondent admits the allegation in the Applicant's Rule 12 statement.

Mitigation

27. It is recognised that the Respondent has made early admissions to the allegations of misconduct.

28. In mitigation, which is not agreed by the SRA, the Respondent relies on what is said in his Answer, dated 14 January 2022. Specifically, the Respondent notes the following:

28.1. The Respondent would never have allowed his breach of the undertaking to prejudice anyone but himself, and in fact, did not. After it became apparent that the sale of Property S would not proceed and that the funds would have to be repaid to Person M in accordance with the undertaking, he personally deposited £40,000 of his own money into his firm's client account, for that very purpose, having first disclosed and discussed his actions with the firm's then Managing Partner. It is to his credit that he did not seek to avoid responsibility for his actions, nor to put his firm in the position where it was required to repay the £40,000 itself.

28.2. Client C and Person M were of course fully aware that if the sale of Property S did not complete, the £40,000 would have to be paid back to Person M. When this event materialised, and after the Respondent had discussed matters with the Managing Partner, the Respondent and Client C reached an agreement whereby he would repay the £40,000 personally and effectively loan her that money, to be secured on Property T, the property she was desperate to purchase.

28.3. Client C was wholly agreeable to that course, the reality being that if he had not done so, she would have been unable to purchase the property at all, which she was desperate to do. This agreement was a fully consensual one and the Respondent ensured that she took independent legal advice before the charge was registered (see the witness statement of Mr X)

28.4. The **only** person who gained any benefit from the Respondent's breach of his professional obligations was Client C. Conversely the only person to suffer prejudice was the Respondent. Client C was able to purchase a property she

would not otherwise have been able to purchase, on the understanding that this was being done with the benefit of a loan from the Respondent, secured by way of a charge on the property.

28.5. Person M was repaid the £40,000 that had been subject to the undertaking from the money reimbursed by the Respondent. He and his solicitors were content to leave matters as they were.

Prior Proceedings

29. Relevant to the matter of sanction, and in particular the proposed restriction order, are the findings of the Solicitors Disciplinary Tribunal in proceedings heard on 21 May 2009².

30. The allegations and findings in those proceedings related to conduct whilst the Respondent was in practice as a partner at Ford Simey Solicitors. The allegations, which were found proved were:

30.1. He had acted where his own interests had conflicted with the interests of clients by lending monies to various clients and failing to ensure that they obtained independent legal advice;

30.2. He had acted in breach of the Solicitors Accounts Rules 1998 (Rules 1(a), 1(d), 22(1), 22(6) and 30(2) by placing payments received in respect of loans into client account and then transferring them into his own personal account;

30.3. He had failed to honour undertakings and/or professional obligations in relation to property transactions.

31. The allegations were admitted and found proved. The Tribunal ordered that the Respondent pay a fine of £15,000 and costs in the sum of £13,000. The Tribunal also recommended (but did not order) that the Respondent should only act as a solicitor in employment which was approved by the Law Society, which offered appropriate supervision, and where the Respondent was not, and was not held out to be a partner, office holder or shareholder, and should not be a training principal³.

32. It is considered relevant that the undertaking in question in the prior proceedings was given and breached in 2004, prior to the undertaking in question in these proceedings which was given in 2007. The undertaking in these proceedings was given in 2007 prior to the findings made against him by the Tribunal in 2009.

Penalties proposed

² Case No. 9954-2008, judgment being handed down on 30 November 2009.

³ See in particular paragraph 40 of the judgment.

33. The Respondent agrees:
- 33.1. To pay a financial penalty in the sum of £6,000;
 - 33.2. That the following restrictions be imposed. The Respondent may not:
 - 33.2.1. act as a sole practitioner or sole manager or sole owner of an authorised or recognised body;
 - 33.2.2. act as Compliance Officer for Legal Practice or Compliance Office for Finance and Administration for any authorised or recognised body;
 - 33.2.3. hold client money;
 - 33.2.4. be a signatory on any client account;
 - 33.2.5. provide legal services as an employed or freelance and/or consultant solicitor offering reserved or unreserved services under regulations 10.2 (a) or (b) of the SRA Authorisation of Individuals Regulations aside from in connection with his engagement as a consultant with SW Law (SRA number 558154) without express prior approval of the SRA;
 - 33.2.6. give any solicitor undertakings to any third party.
 - 33.2.7. To pay costs to the SRA agreed in the sum of £7,500 which takes into account the Respondent's means.
36. The sanctions outlined above are considered to be in accordance with the Tribunal's sanctioning guidance (9th edition) taking into account the guidance set out in Fuglers and Others v Solicitors Regulation Authority [2014] EWHC 179 (as per Popplewell J) and as set out in the guidance at paragraph 8. Reference is made to the points of mitigation raised by the Respondents above.
37. The misconduct giving rise to the allegations is moderately serious.
38. This assessment takes into account that the level of the Respondent's culpability in respect of the allegations above is moderate due to:
- a. The Respondent having direct control and responsibility for the circumstances giving rise to his conduct;
 - b. The Respondent's level of experience at the time of the relevant conduct, having more than 30 years of post-qualification experience at the commencement of the misconduct.
 - c. The conduct cannot properly be described as spontaneous and continued for a period of time between 18 December 2007 and 15 April 2008.
 - d. It is recognised that the Respondent's misconduct did not involve dishonesty
 - e. It is recognised that the Respondent has not sought to mislead the SRA and has made appropriate admissions.
39. As to the harm caused, it is acknowledged that the admitted misconduct by the Respondent did not cause financial loss, but that delay was caused in the return of funds. In addition, it is considered that there was harm or risk of harm to the reputation of the profession in the breach of an undertaking by a solicitor in these circumstances.

40. As to the principal factors which aggravate the seriousness of the misconduct, include:
- a. The absence of self-reporting by the Respondent;
 - b. The misconduct was deliberate;
 - 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;
 - d. That the breach of a solicitor's undertaking by the Respondent was not an isolated incident, given the findings in the prior proceedings as set out above;
41. The Tribunal is referred to the factors raised in mitigation by the Respondent above. Factors that mitigate the seriousness of the misconduct:
- a. Open admissions have been made by the Respondent in relation to the allegation;
 - b. The Respondent has engaged with the SRA.
42. The Respondent has provided evidence as to his personal financial means and the parties have agreed that it is appropriate to take these into account when reaching agreement as to sanction and in relation to costs.
43. 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. It is submitted that the proposed restriction order is both necessary and proportionate.

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Mark Rogers, Partner, Capsticks
Signed on behalf of the Solicitors Regulation Authority
7 March 2022

Michael Gaye ✓
Signed by the Respondent
02 day of ~~February~~ 2022
MARCH