

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12266-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

DAVID JOHNSON

Respondent

Before:

Mr P Lewis (in the chair)

Ms A E Banks

Mr R Slack

Date of Hearing: 23 December 2021

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, made by the SRA within its Rule 12 Statement dated 22 October 2021 were that (adopting the numbering in the Rule 12 statement):
 - 1.1 From in or around 2011 to 15 January 2018, having received payment for settled cases, failed to pay outstanding professional disbursements on said cases and instead caused or allowed the money to be used for the running of the Firm, and in doing so, he breached any or all of Rules 7.1 and 17(1)(b) of the SRA Accounts Rules 2011 and Principles 2, 6, 8 and 10 of the SRA Principles 2011;
 - 1.2 From in or around 2011 to 15 January 2018, having received payment for settled cases, failed to pay outstanding non-professional disbursements on said cases and instead caused or allowed the money to be used for the running of the Firm, and in doing so, he breached any or all of Principles 2, 6 and 8 of the SRA Principles 2011;
 - 1.3 Between 30 June 2017 and 15 January 2018, he failed to keep accurate accounting records and in doing so, he breached Rule 29.1 of the 2011 Accounts Rules and Principle 8 of the SRA Principles 2011;
 - 1.4 On 6 July 2017, gave an undertaking to repay a business loan by 8 May 2018, and failed to repay the loan, thereby breaching the undertaking, and in doing so he failed to achieve Outcome 11.2 of the SRA Code of Conduct 2011, and breached all or any of Principles 2 and 6 of the SRA Principles 2011.
2. In addition, dishonesty was alleged as an aggravating factor with respect to the allegations at paragraphs 1.1 and 1.2 above.

The Respondent admits each of these allegations. He also admits that his conduct in acting as alleged was dishonest.

Documents

3. The Tribunal had before it the following documents:-
 - Form of Application dated 22 October 2021
 - Rule 12 Statement dated 22 October 2021
 - Statement of Agreed Facts and Proposed Outcome dated 22 December 2021

Factual Background

4. The Respondent is a solicitor, having been admitted to the Roll on 2 January 2002. He became the sole director of Johnson Law Ltd (“the Firm”) from 2009 and was the Compliance Officer for Legal Practice (“COLP”) and Money Laundering Reporting Officer (“MLRO”) from 2013.
5. LR, an unadmitted individual, was the Compliance Officer for Finance and Administration (“COFA”). The Firm's accounts could be operated by both the Respondent and LR.

6. The Firm had a head office based at 29-31 Knowsley Street, Bolton and a branch office in Wigan. The Firm closed on 9 January 2018 and went into Administration on 15 January 2018. The SRA were notified of the anticipated administration by the Administrators on 18 December 2017.
7. The Respondent was made bankrupt on 30 April 2018. His practising certificate was suspended as a result of the bankruptcy.
8. On 29 May 2018, the Administrators reported their concerns to the SRA that the Firm had failed to pay a significant amount in third party disbursements.
9. The SRA commissioned a forensic investigation, which commenced on 14 January 2020. A report was produced by Forensic Investigation Officer (“FIO”) on 10 July 2020 who identified the matters set out in the allegations and the Agreed Facts.
10. On 23 September 2020, an Adjudication Panel resolved to intervene into the Firm.

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

11. 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.
12. The proposed sanction was for the Respondent to be struck off the Roll of Solicitors from the date of the order of the Tribunal, and that the Respondent would pay the SRA's costs of this matter agreed in the sum of £7,500.00.

Findings of Fact and Law

13. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
14. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent’s admissions were properly made.
15. The Tribunal considered the Guidance Note on Sanction (8th Edition December 2020). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
16. The Respondent’s admitted conduct included lack of integrity and dishonesty.
17. In Sharma [2010] EWHC 2022 (Admin) at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:

“(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty ... (b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ... (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others ...”

18. It is accepted by the Respondent that there were no exceptional circumstances present in his case.
19. The Respondent was an experienced solicitor and the Firm's sole director, COLP and MLRO. He was fully aware of the duties to protect client money and pay third party creditors. The payment for third party professional and non- professional disbursements remains outstanding.
20. The Respondent knew that failure to pay creditors and the use of money allocated to those creditors to otherwise support the running of the Firm was dishonest.
21. Public confidence in the profession and the reputation of the profession required no lesser sanction than that the Respondent be removed from the Roll. The Tribunal found that the proposed sanction of striking the Respondent from the Roll was appropriate and proportionate in all the circumstances.

Costs

22. The parties agreed that the Respondent should pay costs in the sum of £7,500. The Tribunal determined that the agreed amount was reasonable and appropriate. Accordingly, the Tribunal ordered that the Respondent pay costs in the agreed sum.

Statement of Full Order

23. The Tribunal Ordered that the Respondent, DAVID JOHNSON 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 £7,500.00.

Dated this 20th day of January 2022

On behalf of the Tribunal



P Lewis
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
20 JAN 2022

**BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
BETWEEN:**

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

DAVID JOHNSON

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 22 October 2021, and the statement made pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making allegations of misconduct against Mr David Johnson ("the Respondent").

The allegations

2. The allegations against the Respondent, made by the SRA within that statement were that (adopting the numbering in the Rule 12 statement):
 - 1.1. From in or around 2011 to 15 January 2018, having received payment for settled cases, failed to pay outstanding professional disbursements on said cases and instead caused or allowed the money to be used for the running of the Firm, and in doing so, he breached any or all of Rules 7.1 and 17(1)(b) of the SRA Accounts Rules 2011 and Principles 2, 6, 8 and 10 of the SRA Principles 2011;
 - 1.2. From in or around 2011 to 15 January 2018, having received payment for settled cases, failed to pay outstanding non-professional disbursements on said cases and instead caused or allowed the money to be used for the running of the Firm, and in doing so, he breached any or all of Principles 2, 6 and 8 of the SRA Principles 2011;
 - 1.3. Between 30 June 2017 and 15 January 2018, he failed to keep accurate accounting records and in doing so, he breached Rule 29.1 of the 2011 Accounts Rules and Principle 8 of the SRA Principles 2011;

- 1.4. On 6 July 2017, gave an undertaking to repay a business loan by 8 May 2018, and failed to repay the loan, thereby breaching the undertaking, and in doing so he failed to achieve Outcome 11.2 of the SRA Code of Conduct 2011, and breached all or any of Principles 2 and 6 of the SRA Principles 2011.
2. In addition, dishonesty was alleged as an aggravating factor with respect to the allegations at paragraphs 1.1 and 1.2 above.
3. The Respondent admits each of these allegations. He also admits that his conduct in acting as alleged was dishonest.

Agreed Facts

4. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraph 2 and 3 of this statement, are agreed between the SRA and the Respondent.

Background and Respondent's details

- 4.1. The Respondent is a solicitor, having been admitted to the Roll on 2 January 2002. He became the sole director of the Firm from 2009 and was the Compliance Officer for Legal Practice ("COLP") and Money Laundering Reporting Officer ("MLRO") from 2013. LR, an unadmitted individual, was the Compliance Officer for Finance and Administration ("COFA"). The Firm's accounts could be operated by both the Respondent and LR.
- 4.2. The Firm had a head office based at 29-31 Knowsley Street, Bolton and a branch office in Wigan. Prior to the Administration set out below, the Firm employed twelve staff, eleven of which were unadmitted and one (excluding the Respondent) admitted. Approximately 85% of the Firm's work was personal injury, with the remaining 15% non-litigation matters.
- 4.3. The Firm closed on 9 January 2018 and went into Administration on 15 January 2018.
- 4.4. The SRA were notified of the anticipated administration by the Administrators on 18 December 2017.
- 4.5. The Respondent was made bankrupt on 30 April 2018. His practising certificate was suspended as a result of the bankruptcy.
- 4.6. On 29 May 2018, the Administrators reported their concerns to the SRA that the Firm had failed to pay a significant amount in third party disbursements.
- 4.7. The SRA commissioned a forensic investigation, which commenced on 14 January 2020. A report was produced by Forensic Investigation Officer ("FIO") on 10 July 2020.
- 4.8. On 23 September 2020, an Adjudication Panel resolved to intervene into the Firm.

Allegations 1.1, 1.2, and 1.3 - Failure to pay outstanding disbursements and failure to keep accounts

- 4.9. The FIO identified that no full comparisons of the Firm's liabilities to clients versus client cash available was traced for the period from 30 June 2017 to the date of administration.
- 4.10. The FIO was able to review the Firm's historic client accounting documentation and a sample of client files, which established that there were outstanding third-party creditors in relation to professional and non-professional disbursements. Information made available during the course of the FIO's investigation disclosed that the total outstanding sum due to third party creditors was a minimum of £46,490.77; but was potentially over £790,000.
- 4.11. The available balance on the client account as at 30 June 2017, the last reconciliation date for which documentation was available, was £19,687.03; which was insufficient to satisfy the outstanding disbursements due to third party creditors.
- 4.12. There was no evidence available that prior to the date of administration, the SRA had been notified by the Firm of any financial difficulties it had in paying third party disbursements.
- 4.13. On commencing her investigation, the FIO was advised by the Administrators that the Firms' books, records and closed client files were being held in two separate storage facilities. They further advised that the Firm's records had not been maintained up to the date of administration. As part of her investigation, the FIO attended the two storage facilities and reviewed the records and a sample of client files. It transpired that the last client reconciliation for which documentation was available was as at 30 June 2017. That reconciliation showed a list of liabilities totalling £19,687.03.
- 4.14. Due to the absence of up-to-date accounting records, the FIO was unable to calculate the total liabilities due to third party creditors without considering every settled case file held in storage. Therefore, a sample of ten files was considered which revealed outstanding amounts due to third party providers, with a total value of £46,490.77, despite the fact that the files showed that the Firm had received settled funds on each of the cases. The FIO concluded, "*A total shortage of funds in respect of many more client matters and third-party disbursement providers was likely to exist but which it was not possible to calculate*".
- 4.15. As a result of the Respondent's failure to keep accurate accounting records, including an absence of full comparisons of liabilities to clients to clients cash available, for the six month period prior to Administration, the FIO was unable to establish the full extent of the Respondent's liabilities.
- 4.16. The FIO considered two client files in detail:

Client CT

- 4.16.1. On analysing the client file of CT, the FIO noted that the Firm acted on behalf of CT, a minor, in respect of a claim for damages following a road traffic accident on 8 August 2014. The Respondent was the supervising solicitor for the case.
- 4.16.2. The Firm commissioned a medical report of CT from Medical Reports Limited, which was provided on 6 October 2014.
- 4.16.3. The claim was settled on 30 January 2015. The Firm's bill of costs showed that £288 was owed to Medical Reports Limited for the provision of the medical report.
- 4.16.4. There was no evidence on the file that such a sum was paid to Medical Reports Limited, despite the insurer settling the claim, including the costs.
- 4.16.5. Whilst there is an absence of accurate accounting records to show how monies were disbursed, it is accepted by the Respondent that monies due to third party creditors were not paid when due or at all. Furthermore, Medical Reports Limited has confirmed that the monies remain outstanding.

Client BL

- 4.16.6. On analysing the client file of BL, the FIO noted that the Firm acted on behalf of BL in respect of a claim for personal injury and associated losses, following a fall at work on 26 October 2011. The Respondent was the supervising solicitor.
 - 4.16.7. On 22 December 2014, the Firm accepted the defendant's offer to settle the case for £40,000. That sum was paid to the client on 4 February 2015.
 - 4.16.8. The Firm's costs were assessed at £20,000, which was paid by third party solicitors on 5 March 2015. The costs included counsel's fees of £3,216.00 including VAT and the fees of ATE insurer, Keystone Legal of £5,835.30.
 - 4.16.9. There was no evidence on the client file that the professional disbursement provided by Counsel, nor the non-professional disbursement provided by Keystone Legal had been paid. As in the matter of CT, due to the absence of accounting records, it may not be possible to trace how the monies were disbursed but, as set out below, the FIO was able to confirm with the creditors that they did not receive payment for disbursements provided and the Respondent appears to admit the same.
- 4.17. The FIO corresponded directly with four of the third-party creditors (Medical Reports Limited, Keystone Legal, Deans Court Chambers and AmTrust Europe). They confirmed that payments due for disbursements provided to the Firm were outstanding. In respect of the medical reports and chambers fees, they were professional disbursements. Payments owed to the After the Event Insurers,

Keystone Legal and AmTrust Europe, were in relation to non-professional disbursements.

- 4.18. Those providers stated that further outstanding monies were due to them for disbursements provided to the Firm. The FIO identified that there *“was a minimum sum of £399,180.87 due in respect of disbursements received by the firm prior to 30 June 2017 but which has not subsequently been paid to the providers, nor is it maintained on client bank account”*.
- 4.19. Prior to the SRA commissioning the FIR, the Administrators had reported to the SRA that they had concerns that following the settlement of cases, the Firm had not paid its disbursements creditors. The Administrators had not carried out a detailed review of the records of the Firm, but they suggested that the total sum due to third-party creditors could be in the region of £720,000.
- 4.20. In February 2018, LR provided the Administrators with a schedule setting out over ninety parties to whom sums were due on settled matters but where those sums had not been paid. That schedule was provided to the FIO by the Administrators. The total figure owing according to that schedule was £791,336.32. LR was contacted during the course of the FIO’s investigation. However, save for answering general questions about the Firm, LR failed to respond to any further queries.
- 4.21. As at 9 January 2020, the Client Call Account held at Lloyds Bank PLC, had a balance of £18,916.39, thus leaving a shortfall in respect of outstanding third party liabilities.

Allegation 1.4 - Breach of an undertaking

- 4.22. On 7 May 2015, the Respondent signed a “Promissory Note”, whereby he undertook to repay a loan of £50,000 from MDH and MM, “The Lenders”, along with three interim interest payments, by the 8 May 2016.
- 4.23. On an unknown date in August 2016, the Respondent signed a further “Promissory Note”, whereby he undertook to repay a further loan of £50,000 from The Lenders, along with three interim interest payments, by 8 May 2017.
- 4.24. On 6 July 2017, the Respondent signed a third and final “Promissory Note”, whereby he undertook to repay a loan of £25,000 from The Lenders, along with three interim interest payments, by 8 May 2018.
- 4.25. On 15 February 2018, Stripes Solicitors wrote to the SRA and advised that they acted for The Lenders and had received instructions to pursue the Firm for an outstanding amount due under a Promissory Note dated 6 July 2017. The letter alleged that, *“as a consequence of the entities failure to discharge its liabilities, David Johnson has breached the undertaking provided. We have no response (sic) to enquiries made of David Johnson and our clients would be grateful if this letter can be accepted as a formal complaint against David Johnson for breach of solicitors undertaking.”*

- 4.26. The SRA received a handwritten letter from the Respondent on 27 February 2019, in which he accepted underwriting loans for the Firm. He had not contacted either MDH or MM in respect of outstanding sums due because he had been made bankrupt on 30 April 2018 and the Insolvency Practitioners, LC Advisors, wrote to all of his creditors, including Stripes solicitors. Stripes confirmed to LC Advisors that they were not pursuing the Respondent personally for the debt.
- 4.27. In further correspondence from the Respondent dated 23 April 2019, he stated that *“the complainants had entered into an earlier Promissory Note for £50,000 some 12 months earlier and all of the repayment terms had been met without default and the complainants requested repayment of £25,000 only and entered into a second loan agreement on 6 July 2017 for the remaining £25,000. The agreed sum of £25,000 was re-paid immediately to the complainants”*. The Respondent said that he signed the Promissory Note dated 6 July 2017 *“in good faith”*.

Non-Agreed Mitigation

5. The following mitigation, which is not agreed by the SRA, is put forward by the Respondent:
- 5.1. *Whilst I have admitted the breaches, I ask the Tribunal to bear in mind the following:-*
- 5.2. *Technically, there was a breach of the Solicitor’s undertaking to repay the business loan but this was not possible to discharge for in May 2018 I had been made bankrupt having underwritten a significant proportion of the firm’s debt and therefore not in a position to repay the business loan in any event. When I entered into the loan agreement, I did not foresee that the law firm would subsequently fall into Administration.*
- 5.3. *I did make attempts to address the monies owed to the firm’s creditors as witnessed in the SRA’s supporting documentation but unfortunately these attempts failed. It was clearly never my intention to permanently deprive the creditors payments of monies due to them by the law firm.*
- 5.4. *I would ask the Tribunal to take into account my previous unblemished record and that I have fully co-operated with all of the SRA’s investigations into this matter.*
6. However, the Respondent does not contend that the mitigation set out above amounts to exceptional circumstances which would justify the Tribunal in making any order other than that he be struck off the Roll.

Penalty proposed

7. The Respondent agrees to be struck from the Roll of Solicitors from the date of the order of the Tribunal, and with respect to costs, it is further agreed that the Respondent will pay the SRA's costs of this matter agreed in the sum of £7,500.00. The proposed payment of costs has been reduced to take into account the Respondent's means.

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

8. The Respondent has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanctions" (8th edition), at paragraph 47, states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see **Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)**).*"

9. In **Sharma [2010] EWHC 2022 (Admin)** at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:

"(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...

(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...

(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others..."

10. The Applicant has considered the relevant factors, including the nature, scope and extent of the dishonesty itself, whether it was momentary or over a lengthy period of time, whether it was a benefit to the solicitor and whether it had an adverse effect on others. In this regard it is submitted that:

- 10.1. Taking or using someone else's money without their knowledge or agreement is an example of dishonesty, even if the solicitor did not intend to permanently deprive the other person of their money (*Bultitude v Law Society [2004] EWCA Civ 1853*). This would apply where, as appears to be the case, the Respondent was using money due to third parties for disbursements they provided, to support the cash flow of the business.

- 10.2. The Respondent was an experienced solicitor and the Firm's sole director, COLP and MLRO. He was fully aware of the duties to protect client money and pay third

party creditors. The evidence from the FIO and the admissions made by the Respondent, show that as at the date of administration a significant sum was due to a number of third-party creditors and the available amount held by the Firm was hugely insufficient to pay these outstanding sums. The absence of accurate accounting records for the six months prior to Administration means that the Applicant is unable to demonstrate where the monies have been disbursed. However, it is apparent from the FIR, the creditors themselves and the admissions of the Respondent, that that payment for third party professional and non-professional disbursements remains outstanding. The Respondent knew that failure to pay creditors and the use of money allocated to those creditors to otherwise support the running of the Firm was dishonest.

- 10.3. Ordinary decent people would consider the Respondent's conduct to be dishonest.
11. The Respondent admits that his conduct was dishonest and does not assert that exceptional circumstances which might justify a departure from the inevitable consequence of striking off arise in this case.
12. The Applicant considers that, in the context of the admitted misconduct, an immediate strike-off is the only appropriate sanction and will have an appropriate effect on public confidence in the legal profession and adequately reflects serious misconduct. 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. These were serious acts of dishonesty and the case plainly does not fall within the small residual category where striking off would be a disproportionate outcome. Accordingly, the fair and proportionate outcome in this case is for the Respondent to be struck off the Roll of Solicitors.

Signed: David Johnson
Name: David Johnson
Date: 22nd December 2021

Signed: -
Mark Rogers (Partner, Capsticks Solicitors LLP)
For and on behalf of the Solicitors Regulation Authority Limited
Date: 22 December 2021