SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12271-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

PHILIP ASHLEY BROWELL Respondent

Before:

Ms A E Banks (in the chair)
Mr P Lewis
Mr P Hurley

Date of Hearing: 20 January 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 Mr Browell made by the Solicitors Regulation Authority Ltd ("SRA") were that, while in practice as a Solicitor and Director of Browell Smith & Co Solicitors Ltd ("the Firm"):

1.1 On or around 9 February 2018, 26 July 2018 and 9 August 2018, he caused or allowed one or more improper client to office account transfers ("the 2018 Transfers") and he thereby breached any or all of Principles 2, 4, 6, and 10 of the SRA Principles 2011 ("the Principles") and Rule 20.1 of the SRA Accounts Rules 2011 ("the Accounts Rules").

1.2 Between January 2018 and July 2019, he caused or allowed the Firm to retain residual client balances that were contrary to Rules 14.3 and/or 14.4 of the Accounts Rules and in doing so he breached all or any of Principles 4, 6, and 8.

Documents

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

- Rule 12 Statement and Exhibit LJF1 dated 3 November 2021
- Mr Browell's Answer dated 6 December 2021
- Statement of Agreed Facts and Proposed Outcome dated 14 January 2022

Background

3. Mr Browell was a solicitor having been admitted to the Roll in December 1981. He was the sole owner, manager, COLP and MLRO of the Firm. Between 1 February 2018 and 23 August 2019, Mr Browell assumed the responsibilities of the Firm's COFA following Colleague A's resignation from the Firm.

4. Mr Browell held a current practising certificate, which was subject to the following conditions:

- With effect from 28 days of notification of the decision, [the Respondent] is not the sole English or Welsh lawyer manager of any authorised body, authorised non-SRA firm or legal services body.

- He may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any SRA authorised body, or Head of Legal Practice (HOLP) or head of finance and administration (HOFA) in any authorised non-SRA firm.

- He may not act as a sole signatory to any client or office account, or have the power to solely authorise transfers from any client or office account.

- He may not practice under regulation 10.2(a) or 10.2(b) of the SRA Authorisation of Individual Regulations.

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

5. 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.

Findings of Fact and Law

6. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Mr Browell'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.

7. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Mr Browell's admissions were properly made.

8. The Tribunal considered the Guidance Note on Sanction (9th Edition). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal noted that Mr Browell had self-reported following advice from his accountant. It was also noted that the improperly withdrawn monies had been replaced in a short space of time, and that the misconduct had occurred over a short space of time.

9. The Tribunal found Mr Browell to be wholly culpable for his misconduct. He was an experienced solicitor who understood the sacrosanct nature of client monies, and who knew, at the time the transfers were made, that the transfers were in breach of the Accounts Rules. In using client monies as he did, he had caused harm to the reputation of the profession.

10. The Tribunal considered that Mr Browell's conduct was serious such that a sanction of no order or a reprimand were not proportionate. The Tribunal did not consider that this misconduct together with the remedial action taken were such that the need to protect the public and the reputation of the profession required that his ability to practise should be removed. The Tribunal determined that a financial penalty adequately reflected the seriousness of his misconduct. The Tribunal assessed Mr Browell's misconduct as very serious such that it fell within its Indicative Fine Band 4. The Tribunal considered that the proposed sanction of a fine in the sum of £20,000 adequately reflected the seriousness of the misconduct.

11. The Tribunal determined that given the nature of Mr Browell's misconduct, it was also necessary to impose restrictions on his practise in order to protect the public and the reputation of the profession from future harm by him. The Tribunal determined that the restrictions agreed by the parties adequately protected the public and the reputation of the profession. Accordingly, the Tribunal approved the proposed Agreed Outcome.

Costs

12. The parties agreed that Mr Browell should pay costs in the sum of £25,000. The Tribunal considered that the agreed sum was reasonable and proportionate. Accordingly, the Tribunal ordered that Mr Browell pay costs as agreed.

13. **Statement of Full Order**

1. The Tribunal Ordered that the Respondent, PHILIP ASHLEY BROWELL, solicitor, do pay a fine of £20,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £25,000.00.

2. The Respondent shall be subject to conditions imposed by the Tribunal as follows:

2.1 The Respondent may not:

2.1.1 practise as a sole practitioner or be the sole authorised person that is a manager of an authorised or recognised body;

2.1.2 be a Compliance Officer for Legal Practice (COLP) or Compliance Officer for Finance and Administration (COFA) for any SRA authorised body, or Head of Legal Practice (HOLP) or Head of Finance and Administration (HOFA) in any authorised non-SRA firm;

2.1.3 act as a sole signatory to any client or office account, or have the power to solely authorise transfers from any client or office account;

2.1.4 practise under regulation 10.2(a) or 10.2(b) of the SRA Authorisation of Individual Regulations.

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 2nd day of February 2022
On behalf of the Tribunal

A E Banks
Chair

Case Number: 12271-2021

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

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

PHILIP ASHLEY BROWELL (SRA ID: 123788)

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

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1. By its application dated 3 November 2021, and the statement made pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPRs") which accompanied that application, the Solicitors Regulation Authority Limited ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making allegations of misconduct against the Respondent.

2. The Agreed Outcomes set out in this document have been arrived at following careful consideration by the SRA.

Admissions

3. The Respondent admits **all** of the allegations pleaded at paragraph 1 of the Rule 12 statement namely that, while in practice as a Solicitor and Director of Browell Smith & Co Solicitors Ltd ('the Firm'):

   3.1. On or around 9 February 2018, 26 July 2018 and 9 August 2018, he caused or allowed one or more improper client to office account transfers ("the 2018 Transfers") and he thereby breached any or all of Principles 2, 4, 6, and 10 of

the SRA Principles 2011 ('the Principles') and Rule 20.1 of the SRA Accounts Rules 2011 ('the Accounts Rules').

3.2. Between January 2018 and July 2019, he caused or allowed the Firm to retain residual client balances that were contrary to Rules 14.3 and/or 14.4 of the SRA Accounts Rules 2011 and in doing so he breached all or any of Principles 4, 6, and 8.

Agreed Facts

Professional details

4. The Respondent was admitted to the Roll of Solicitors on 15 December 1981. He was the sole owner, manager, COLP and MLRO of the Firm. He holds a current practising certificate, which is subject to the following conditions:

4.1. With effect from 28 days of notification of the decision, the Respondent is not the sole English or Welsh lawyer manager of any authorised body, authorised non-SRA firm or legal services body.

4.2. He may not act as a Compliance Officer for Legal Practice (COLP) or Compliance Officer for Finance and Administration (COFA) for any SRA authorised body, or Head of Legal Practice (HOLP) or Head of Finance and Administration (HOFA) in any authorised non-SRA firm.

4.3. He may not act as a sole signatory to any client or office account, or have the power to solely authorise transfers from any client or office account.

4.4. He may not practise under regulation 10.2(a) or 10.2(b) of the SRA Authorisation of Individual Regulations.

Background

5. The Respondent and Colleague A were both signatories to the Firm's client account and office account. Both could authorise payments from it.

6. Between 2017 and 2019, the Firm had sought authorisation from the SRA to transfer residual client balances totalling £9.625.85 to charity. Notwithstanding this request, the Respondent admits that the following transfers of residual client balances, totalling approximately £140,000, were made from client to office account in 2018. The amounts in each of the 2018 Transfers were replaced in full on each occasion by subsequent transfers from office to client account.

Transfer	Transfer date	Value (£)	Replacement funds transferred
First transfer	09.02.18	46,161.53	13.03.18
Second transfer	26.07.18	46,791.15	30.07.18
Third transfer	09.08.18	46,791.25	05.09.18

7. In respect of the first transfer dated 9 February 2018, the Respondent confirms that there was discussion regarding an imminent VAT bill, an agreement to use the residual balance to cover the liability and that they were aware that the transfer constituted a breach of the SRA Accounts Rules. As a result of the Respondent's authorisation of the payments, Colleague A instructed the accounts staff to make the transfer from client to office account. The Respondent informed the FIO during interview that he had considered introducing capital from his own reserve as an alternative but that there was insufficient time to raise monies from his offset mortgage before the VAT bill was due. The client account held a cash shortage for 32 days.

8. In respect of the second transfer, dated 26 July 2018, the Respondent confirmed that the funds were used to pay salaries, whilst the third transfer, dated 9 August 2018, was used to pay a further VAT liability. The Respondent informed the FIO during interview that alternative funding could have been arranged with *'earlier notification"*. The client account held a cash shortage for 4 and 27 days in respect of the second and third transfers respectively prior to the Respondent arranging private funds for the cash shortage to be rectified.

9. The SRA was not informed of the transfers until the Firm was prompted to report the matter in December 2018 by the Firm's accountants.

10. At the date of extraction by the FIO on 30 June 2019, the client ledger recorded approximately £46,000, with residual balances ranging from 1p to £1,677.63 and dating from 21 July 2004 to 10 July 2019.[1] The larger residual balances arose from settlements awards to miners but who had refused to accept the monies.

11. The Respondent admits that he caused or allowed the 2018 transfers by expressly authorising the first transfer and permitting Colleague A to make similar transfers from the client to office account. The Respondent admits that these transfers were in breach of the SRA Accounts Rules.

12. The Respondent admits that he caused or allowed the Firm to retain residual client balances and that clients had not been annually informed of these funds. The Respondent admits that the residual balances had been held in breach of the SRA Accounts Rules.

[1] The Respondent stated that the Firm's residual balances pre-dated 21 July 2014, as some of the entries were transfers from earlier computer systems, and went back to the formation of the Firm in 1995

13. The Respondent has accepted that in so acting, he has failed to act in his client's best interests, has failed to protect client money and acted in a manner likely to undermine public confidence in him and in the delivery of legal services. He further accepts that in so acting he failed to act with integrity.

14. The parties consider that, in light of the admissions set out above, the proposed outcome represents a proportionate resolution of the matter which is in the public interest.

MITIGATION

15. The following points are advanced by way of mitigation on behalf of the Respondent. Their inclusion in the Agreed Outcome does not amount to adoption of such points by the SRA but the SRA accepts that account can properly be taken of the following points in assessing whether the proposed outcomes represent a proportionate resolution of the matter.

    15.1. The Respondent has never previously been sanctioned by the SRA or SDT;

    15.2. Colleague A was a trusted and experienced member of staff. At the time of the first transfer, Colleague A (who was the Firm's COFA) had approached the Respondent in a state of panic explaining the Firm's VAT payment was due to HMRC immediately and there was insufficient cashflow to make the payment. As a result of the immediacy of the request, the Respondent was unable to arrange a personal injection of funds (as he had arranged on numerous other occasions, nor was he able to make arrangements with HMRC to defer the payment). Colleague A suggested that the only way to make the payments was to use monies from the residual client account balances. The Respondent authorised the transfer which was actioned by the Firm's accounts staff. The Respondent knew that he had access to personal funds to cover the shortage (although it took time to arrange their draw down).

    15.3. The shortages were all repaid from personal funds of the Respondent as soon as practicable;

    15.4. The Respondent ultimately self-reported the shortages to the SRA;

    15.5. The Respondent admitted the misconduct at an early stage;

    15.6. At the material time, the Respondent had passed many financial controls over to Colleague A because he had been engaged in secondary litigation arising from Miners' claims which had taken up much of his time. As a result of the various issues described within the Agreed

Outcome, the Respondent took back much of the financial control of the business which has gone from strength to strength under his stewardship;

15.7. The Respondent has placed appropriate controls in place to ensure that the situation cannot arise again where monies can be transferred from client account improperly;

15.8. The Respondent has complied with the SRA investigation throughout;

15.9. In making admissions at an early stage, the Respondent has demonstrated insight into the seriousness of the misconduct.

15.10. The Firms books of account were examined by the SRA Forensic Investigator and save for the incidents described within the AO, were in full order. They have since been audited by the Firms Accountants and clear reports have been submitted;

15.11. The Respondent and his Firm continue to actively engage with the SRA in respect of the residual balances and it is hoped they will be cleared by the end of January 2022 once final approval has been granted by the SRA for their payment to charity.

AGREED OUTCOME

16. In agreeing these sanctions, account has been taken of the Solicitors Disciplinary Tribunal Guidance Note on Sanctions 8th Edition ("the Guidance Note").

17. The Respondent has admitted the allegations as set out above and, given the seriousness of the admitted conduct, a reprimand is not a sufficient sanction.

18. The parties agree that the seriousness of the matters admitted by the Respondent, including the admitted allegation of acting without integrity in the handling of client monies, necessitate that the Respondent should be **fined** the sum of £20,000. It is further agreed that, in addition to a fine, there shall be an indefinite **Restriction Order** imposing the following conditions on the Respondent's practice, until further order from the Tribunal:

18.1. He may not practise as a sole practitioner or be the sole authorised person that is a manager of an authorised or recognised body.

18.2. He may not act as a Compliance Officer for Legal Practice (COLP) or Compliance Officer for Finance and Administration (COFA) for any SRA authorised body, or Head of Legal Practice (HOLP) or Head of Finance and Administration (HOFA) in any authorised non-SRA firm.

18.3. He may not act as a sole signatory to any client or office account, or have the power to solely authorise transfers from any client or office account.

18.4. He may not practise under regulation 10.2(a) or 10.2(b) of the SRA Authorisation of Individual Regulations.

19. In reaching this agreement, the parties have carefully considered and had regard to the Guidance Note. In particular, it is agreed that:

19.1. The sanction outlined above is considered to be in accordance with the Tribunal's sanctioning guidance.

19.2. The level of culpability in respect of the allegations above is **high** due to the following:

19.2.1. The Respondent was an experienced solicitor, in a position of trust and authority, including in relation to the safekeeping of client monies.

19.2.2. The conduct was repeated on two further occasions following the first transfer and the SRA was not informed until December 2018; four months after the last (third) transfer.

19.2.3. The Respondent admitted that at the time he authorised the transfers, he knew that he was in breach of the Solicitors Accounts Rules

19.3. The admitted allegations in the Rule 12 Statement involves the misuse of client monies. It was incumbent on the Respondent to ensure that client monies entrusted to him were handled in strict compliance with his regulatory obligations, and that such monies were treated as sacrosanct.

20. The level of harm caused was significant:

20.1. Client monies must be treated as sacrosanct. The clients in the matter giving rise to the allegation entrusted the Respondent to protect their money and were entitled to trust that the Respondent would not appropriate, for his own purposes, those monies and mix them with the Firm's funds. The failure to comply with this fundamental principle is a matter of the utmost seriousness, particularly where the misappropriation of client monies may not have been readily discoverable by clients. The harm to clients and to public confidence arising from such conduct is of the utmost seriousness.

21. The Parties consider that, in light of the admissions set out above, the proposed outcome represents a proportionate resolution of the matter which is in the public interest.

22. The Respondent agrees to meet the SRA's costs in the sum of £25,000 inclusive of VAT.

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Partner, Capsticks Solicitors LLP
On behalf of the SRA

Date: 2 February 2022

Philip Browell

Date: 2/2/2022