

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12282-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

CHRISTOPHER ATTWOOD MESSENGER

Respondent

Before:

Mr A N Spooner (in the chair)

Mr E Nally

Dr A Richards

Date of Hearing: 28 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 made against Mr Messenger by the Solicitors Regulation Authority Ltd (“SRA”) were that whilst practising as the sole principal of Messenger & Co (“the Firm”):
 - 1.1 Between 31 December 2015 and 9 May 2017, a shortage of £5,063.95 existed on the Client Account of the Firm. By reason of the existence of that shortage he breached any or all of:
 - 1.1.1 Principle 6 SRA Principles 2011 (“the Principles”)
 - 1.1.2 Principle 7 of the Principles
 - 1.1.3 Principle 10 the Principles
 - 1.1.4 Rule 7.1 SRA Accounts Rules 2011 (“the Accounts Rules”)
 - 1.1.5 Rule 20.9 of the Accounts Rules.
 - 1.2 Between 12 May 2015 and 18 May 2017, he provided a banking facility to Client A and/or Company B through the Client Account of the Firm. He thereby breached any or all of:
 - 1.2.1 Principle 6 of the Principles
 - 1.2.2 Principle 7 of the Principles
 - 1.2.3 Rule 14.5 the Accounts Rules.
 - 1.3 From April 2015 onwards he failed to complete client account reconciliations as required by the SRA Accounts Rules. He thereby breached any or all of:
 - 1.3.1 Principle 6 of the Principles
 - 1.3.2 Principle 7 of the Principles
 - 1.3.3 Rule 29.12 of the Accounts Rules.
 - 1.4 As at 18 July 2018 he retained residual balances on 38 client matter ledgers to a total value of £19,921.29. The relevant clients had not been notified every 12 months that balances continued to be held on client account in respect of their completed matters. He thereby breached any or all of:
 - 1.4.1. Principle 6 of the Principles
 - 1.4.2. Principle 7 of the Principles
 - 1.4.3. Rule 14.3 of the Accounts Rules

1.4.4. Rule 14.4 of the Accounts Rules.

2. Mr Messenger admitted the allegations set out in paragraphs 1.1.1 to 1.1.3, 1.2 (insofar as it related to Company B only, 1.3 and 1.4). The SRA applied to withdraw allegations set out at 1.1.4 and 1.2 (insofar as it related to Client A only). Given the admissions made, the SRA did not consider that it was proportionate or in the public interest to pursue the denied matters.
3. The Tribunal agreed that it was neither proportionate nor in the public interest to pursue the denied matters. Accordingly, the Tribunal granted permission to withdraw the matters as detailed above.

Documents

4. The Tribunal had before it the following documents:-
 - Rule 12 Statement and Exhibit AJB1 dated 16 December 2021
 - Mr Messenger's Answer dated 27 January 2022
 - Statement of Agreed Facts and Proposed Outcome

Background

5. Mr Messenger was admitted to the Roll in March 1974. He was a sole practitioner from admission until December 2015. He held a current unconditional Practising Certificate.

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

6. The parties invited the Tribunal to deal with the Allegations against Mr Messenger 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

7. 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 Mr Messenger'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.
8. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Mr Messenger's admissions were properly made.
9. The Tribunal considered the Guidance Note on Sanction (9th Edition/December 2021). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal found that Mr Messenger was solely and directly responsible for his misconduct. The Tribunal accepted that the misconduct was a result of Mr Messenger's carelessness and was not deliberate. It was noted that Mr Messenger made full and frank admissions and had co-operated fully with the investigation. The Tribunal determined that sanctions such as no order or a

reprimand did not adequately reflect the seriousness of the misconduct. The Tribunal assessed the misconduct as falling within its Indicative Fine Band Level 2, having determined that the misconduct was moderately serious. The Tribunal considered that a fine in the sum of £5,000 (as proposed) adequately reflected the seriousness of the misconduct. Accordingly, the Tribunal approved the proposed sanction.

Costs

10. The parties agreed costs in the sum of £7,500. The Tribunal considered that the agreed costs were reasonable and proportionate. Accordingly, the Tribunal ordered costs be paid in the agreed amount.

11. Statement of Full Order

1. The Tribunal Ordered that the Respondent, CHRISTOPHER ATTWOOD MESSENGER solicitor, do pay a fine of £5,000.00, 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 £7,500.00.
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 sole manager or sole owner of an authorised or recognised body;
 - 2.1.2 Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;
 - 2.1.3 Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;
 3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 30th day of March 2022

On behalf of the Tribunal



A N Spooner
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
30 MAR 2022

Number:12282-2021

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

CHRISTOPHER ATTWOOD MESSENGER

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 16 December 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 ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making four allegations of misconduct against Christopher Attwood Messenger.

The allegations

2. The allegations against Mr. Messenger, made by the SRA within that statement were that whilst practising as the sole principal of Messenger & Co ("the Firm"): -
 - 2.1. Between 31 December 2015 and 9 May 2017, a shortage of £5,063.95 existed on the Client Account of the Firm. By reason of the existence of that shortage he breached any or all of:
 - 2.1.1. Principle 6 SRA Principles 2011
 - 2.1.2. Principle 7 SRA Principles 2011
 - 2.1.3. Principle 10 SRA Principles 2011
 - 2.1.4. Rule 7.1 SRA Accounts Rules 2011

2.1.5. Rule 20.9 SRA

2.2. Between 12 May 2015 and 18 May 2017, he provided a banking facility to Client A and / or Company B through the Client Account of the Firm. He thereby breached any or all of:

2.2.1. Principle 6 SRA Principles 2011

2.2.2. Principle 7 SRA Principles 2011

2.2.3. Rule 14.5 SRA Accounts Rules 2011

2.3. From April 2015 onwards he failed to complete client account reconciliations as required by the SRA Accounts Rules. He thereby breached any or all of:

2.3.1. Principle 6 of the SRA Principles 2011

2.3.2. Principle 7 of the SRA Principles 2011

2.3.3. Rule 29.12 SRA Accounts Rules 2011

2.4. As at 18 July 2018 he retained residual balances on 38 client matter ledgers to a total value of £19,921.29. The relevant clients had not been notified every 12 months that balances continued to be held on client account in respect of their completed matters. He thereby breached any or all of:

2.4.1. Principle 6 of the SRA Principles 2011

2.4.2. Principle 7 of the SRA Principles 2011

2.4.3. Rule 14.3 SRA Accounts Rules 2011

2.4.4. Rule 14.4 SRA Accounts Rules 2011

2 Mr. Messenger admits the allegations set out in paragraphs 2.1.1 to 2.1.3, 2.2 (insofar as it relates to Company B only), 2.3 and 2.4 above. The SRA applies to withdraw the allegations further set out in paragraphs 2.1.4 and 2.2 (insofar as it relates to Client A only) on the basis that in light of the admissions made by Mr. Messenger it is not proportionate and in the public interest to pursue those allegations. The SRA does not

consider that those allegations would add to the penalty imposed upon Mr. Messenger by the Tribunal if proved.

Agreed Facts

- 3 The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraphs 2 of this statement, are agreed between the SRA and Mr. Messenger:
 - 3.1 Mr. Messenger, who was born June 1947, is a solicitor having been admitted to the Roll on 15 March 1974. From that date until 29 December 2015, he practised as a sole practitioner under the style of "Messenger & Co" from offices in Henley on Thames. According to SRA records, he practised predominantly in the fields of residential property and wills and probate.
 - 3.2 Mr. Messenger holds a practising certificate for the current practising year which is free of conditions.
 - 3.3 The Firm closed on 29 December 2015.
 - 3.4 On 6 July 2017, following closure of the Firm, a duly authorised Investigation Officer employed by the SRA, commenced an inspection of the books of account and other documents. That inspection culminated in a Report dated 22 June 2018 ("The Report").
 - 3.5 The Report confirmed the following facts and matters:
 - 3.5.1 A shortage existed on the client account of the Firm in the sum of £5,063.95 as at 31 December 2015. The causes of that shortage were as follows:
 - 3.5.1.1 The existence of 10 debit balances on the client ledger ranging in value from £1.82 (the least) to £2,485.80 (the most).

3.5.1.2 Client monies in the sum of £538 being held upon office account.

The credit balances on the office account referred to in paragraph 34.1.1 (above) had been remedied by 3 April 2017 and the shortage was rectified in full by 9 May 2017.

3.5.2 Between 16 March 2015 and 18 May 2017 Mr. Messenger made a series of payments out of the client account of the Firm to third parties on behalf of Company B which were not referable to an underlying legal transaction. The details of those payments, are as follows:

3.5.2.1 Nine debit items in relation to payments made to "DJ Brewer" between 16 March 2015 and 15 February 2016 ranging in value between £20,000 and £50,000 and amounting to a total sum of £323,000. Mr. Messenger confirmed to Ms. Sutton that DJ Brewer was the main contractor conducting work on the development properties.

3.5.2.2 A single payment of £20,000 on 23 June 2015 in the sum of £20,000 as repayment of a loan from a director.

3.5.2.3 A single payment to HMRC made on 24 June 2015 in the sum of £12,176.60 made in respect of corporation tax.

3.5.2.4 Two payments made on 21 July 2015 and 1 September 2015, each in the sum of £5,000 and amounting to a total of £10,000 relating to the repayment of a loan.

3.5.3 Mr. Messenger had, on his own admission, not completed reconciliations on time since April 2015. It was not possible to verify whether reconciliations had been completed on time prior to April 2015 because the reconciliation statements were neither signed nor dated and, for the same reason, it was not possible to confirm the length of the delay in preparing reconciliation statements after April 2015.

3.5.4 The client ledgers of the Firm included 38 ledgers which recorded a balance on the client account which had been retained after the substantial conclusion of the matter. The residual balances in question had, on 18 July 2017, been retained for a period of between 61 days and 990 days and ranged in value from £6.00 to £4,646.92 amounting to a total of £19,921.29. On 26 of those ledgers, funds had been retained on client account for a period of over twelve months. The residual balances

falling into this category had been retained for a period of between 456 days and 990 days and ranged in value from £6.00 to £3,000.38 amounting to a total of £9,264.02

3.6 In a letter to the SRA dated 12 November 2018, David Barton, acting on behalf of Mr. Messenger stated that the shortage on client account arose because of book keeping errors when writing up the ledgers and therefore denied that there were insufficient funds in the client account to cover the liabilities to clients. Subject to this, he admitted each of the matters set out above and further admitted that they constituted a breach of the SRA Accounts Rules 2011.

3.7 In particular, Mr. Messenger admitted that he was unaware of the provisions of either Rule 14.4 or Rule 14.5 of those Rules.

Non-Agreed Mitigation

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

Messenger:

- 4.1 He has a clean regulatory history extending over 41 years in practice.
- 4.2 Mr Messenger cooperated fully with his regulator during the SRA's investigation of this matter by complying with all requests for information and documents in a timely manner. In April 2019 he made admissions which are broadly the same as those he has now made in this Application as outlined in paragraph 2 above.
- 4.3 A period of over four and a half years has passed since the SRA commenced its investigation in July 2017 and the allegations themselves date back to 2015.
- 4.4 During the course of the investigation, in July 2019, Mr. Messenger's wife was diagnosed with a serious illness from which she subsequently died in September 2020. Mr Messenger informed the SRA of her illness in July 2019 as he was carrying the burden of that in conjunction with the investigation. A significant proportion of the SRA's allegations made during the course of the investigation and addressed in April 2019 were never pursued.
- 4.5 Mr Messenger has found the period from July 2017 to date very difficult both professionally and personally.

- 4.6 The Firm has now closed and Mr. Messenger is no longer practising as a solicitor.
- 4.7 The notional shortage on the Client Account was rectified in full by 9 July 2017 when the book-keeping errors which had given rise to it were rectified in full. The rectification revealed that no client money was missing.
- 4.8 Mr. Messenger was a Secretary and 50% shareholder of Company B and conducting the transaction as he did enabled him to closely monitor everything at a glance and exercise control. Mr Messenger knew and understood exactly what each transaction was for.
- 4.9 Reconciliations had been completed retrospectively because his former accountant had left his position in December 2014 and he had then got behind with his book-keeping.
- 4.10 Many of the residual balances identified by the Investigation Officer were historic and Mr. Messenger had no practical way of contacting the clients concerned.

Penalty proposed

- 5 It is therefore proposed that Mr. Messenger should be fined the sum of £5,000 and made subject to a Restriction Order in the following terms

5.1 Mr. Messenger may not:

5.1.1 practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body.

5.1.2 be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body.

5.1.3 be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration.

5.2 There be liberty to either party to vary those conditions.

- 6 With respect to costs, it is further agreed that Mr. Messenger should pay the SRA's costs of this matter agreed in the sum of £7,500.

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

- 7 Mr. Messenger, who was a senior solicitor with over 40 years' experience in practice, was the sole principal of the Firm and was therefore directly responsible for the circumstances which gave rise to the misconduct. However, that misconduct was the result of either oversight or ignorance of the rules. His culpability falls to be assessed on the basis that he was careless.
- 8 Mr. Messenger's misconduct caused loss to clients to the extent that the residual balances were not returned to clients. In addition, the duty upon solicitors to comply strictly with Accounts Rules is an onerous one and the public would be concerned that he had breached their provisions for an extended period of time. Some harm would have been caused to the reputation of the profession by his actions.
- 9 The principle factors that aggravate the seriousness of Mr. Messenger's misconduct are the period of time for which it continued (three years in the case of the failure to undertake reconciliations, whilst the residual balances had accrued over a period in excess of two years) and the fact that he should reasonably have known that he was committing breaches of the Accounts Rules.
- 10 The principle factors that mitigate the seriousness of Mr. Messenger's misconduct are the open and frank admissions made by Mr. Messenger and his co-operation with the SRA as his regulator during the course of its investigation.

11 In the circumstances, the seriousness of Mr. Messenger'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. Messenger should be fined.

12 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:

12.1 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

The conduct was of a seriousness such that neither a reprimand nor a suspension would have been an appropriate alternative sanction. It nevertheless fell towards the lower end of the category of misconduct for which a financial penalty is an appropriate sanction.

12.2 The size and standing of the solicitor or firm in question. Mr. Messenger was a sole practitioner in Henley-on-Thames. His clients were all individuals who were well-known to him.

12.3 The means available to an individual or a firm: Mr. Messenger has provided no information as to his means.

12.4 The loss to clients: Loss has been caused to clients to extent that residual balances held upon client account have not been returned to them.

13 Taking account of these matters, together with the seriousness of the misconduct committed by Mr. Messenger, the case should be regarded as falling into Level Two:

Conduct assessed as moderately serious. The appropriate fine for conduct assessed as falling within Level Two is £2,001 to £7,500.

- 14 In all the circumstances of the case, it is therefore proportionate and in the public interest that Mr. Messenger should be fined the sum of £5,000.
- 15 In addition, the nature and extent of the Accounts Rules breaches committed by Mr. Messenger, coupled with his admissions to ignorance of various of their provisions, mean that it is necessary for the protection of the public and the reputation of the legal profession from future harm for him to be made subject to a Restriction Order. The restrictions which are proposed are necessary and appropriate having regard to the misconduct which Mr. Messenger has admitted.

ANDREW BULLOCK, Senior Legal Adviser upon behalf of the SRA

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SIGNED ON BEHALF OF THE RESPONDENT CHRISTOPHER ATTWOOD MESSENGER
BY HIS SOLICITOR DAVID BARTON