SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12308-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

JOHN IAONNOU Respondent

Before:

Mr P Lewis (in the chair)
Mr E Nally
Mrs C Valentine

Date of Hearing:
7 June 2022

Appearances

Robin Horton, solicitor in the employ of the Solicitors Regulation Authority Limited of 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegation and Executive Summary

1. The single allegation against Mr Ioannou, was that:

1.1 From November 2015 until July 2016, he used his firm's client account as a banking facility, by receiving and making payments totalling £195,000 on behalf of a client, when there was no underlying legal transaction for receipt of the monies or the payments. In doing so, he beached Principles 6 and 8 of the SRA Principles 2011, and Rule 14.5 of the SRA Accounts Rules 2011.

2. Mr Ioannou admitted all aspects of the allegation and stated that his error had been inadvertent and an oversight on his part. The Tribunal found the allegation proved on the balance of probabilities and Mr Ioannou's admission to have been properly made.

3. Given the Tribunal's findings, it determined that the proportionate and appropriate sanction was to fine Mr Ioannou £2,500.00. He was ordered to pay costs of £2,655.00.

4. The facts can be found here.

The Applicant's case can be found here
Mr Ioannou's case can be found here
The Tribunal's findings can be found here
Mr Ioannou's admission and mitigation can be found here
The Tribunal's decision on sanction can be found here

Documents

5. The Tribunal considered all the documents in the case which were contained in an agreed electronic bundle.

Factual Background

6. Mr Ioannou was born on 9 August 1958. He was admitted to the Roll on 2 November 1987. He held a current practising certificate without conditions.

7. From 12 October 2005 to 15 June 2019, he was the sole partner of Devereaux Solicitors ("the Firm"). On the latter date, the Firm closed. From 2012 until the Firm's closure, he was the Firm's COLP, COFA, and AML officer. After the Firm closed, Mr Ioannou joined Smithfield Partners Limited, but left on 31 March 2020. He was not currently employed.

Findings of Fact and Law

8. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (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 Ioannou'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.

9. **Allegation 1.1 - From November 2015 until July 2016, he used his firm's client account as a banking facility, by receiving and making payments totalling £195,000 on behalf of a client, when there was no underlying legal transaction for receipt of the monies or the payments. In doing so, he beached Principles 6 and 8 of the SRA Principles 2011, and Rule 14.5 of the SRA Accounts Rules 2011.**

The Applicant's Case

9.1 The alleged conduct occurred between approximately November 2015 and July 2016 and related to matters involving the C family and its companies.

9.2 On 2 June 2015, Q Premier, one of the C family companies, instructed the Firm to act on a "police matter".

9.3 Mr Ioannou did not work on any of the C family matters until November 2015. However, as COLP, COFA, and Partner, he was responsible for management of the Firm's accounts.

9.4 On 28 August 2015, a Restraint Order was served on members of the C family. This was because of suspicions of VAT fraud within the C family companies (in essence, filing accounts which understated the income of the firm).

9.5 In September 2015, the Firm (acting on behalf of Q Premier) applied to force Barclays Bank, the bankers for the C family companies, to operate the C family companies accounts, which Barclays had been refusing to do. Barclays consented to the application, and the Court approved a Tomlin Order, under which Barclays sent the money it held to the Firm's client account. The parties agreed to use the Firm's client account because the companies owned by C family had not yet been able to set up new accounts with different banks. The Court confirmed the arrangement by approving the order.

9.6 On 23 September 2015, because of the Court order, Barclays paid a total of £6,355,321.51. from C family company accounts to the Firm's client account.

9.7 On 14 October 2015, the Firm paid two of its bills (totalling £57,000) out of the Q Premier client account.

9.8 On 22 October 2015, the solicitor acting on the C family matters left the Firm to work at EP Solicitors. The C family continued to instruct the solicitor at EP.

9.9 On 2 November 2015, Q Premier went into liquidation and on 3 November 2015, the Firm paid £2,538.721.30, held on Q Premier's behalf, from its client account to EP. The Firm did not know about Q Premier's liquidation as the solicitors for the liquidators, did not serve the order on the Firm until 4 November 2015.

9.10 On 17 November 2015, the C family started to instruct the Firm once more. The Respondent acted on C matters and took instructions from person GC. The Firm continued to hold sums on behalf of some of the C companies in its client account including the remainder of the sums sent from Barclays on 23 September 2015.

9.11 On 26 November 2015, on GC's instructions and at the Respondent's direction, the Firm made two payments totalling £70,000 from the client account of another of the companies (Q Care) to a third-party company, JBL. The Firm retained the balance to GC's own client account.

9.12 Mr Ioannou later told the Applicant that he made the payments to JBL because GC wanted to invest in JBL.

9.13 GC was the sole director, and shareholder, of Q Care. He directed the Firm to pay the money out according to his wishes and as sole director and shareholder, he was ostensibly entitled to direct these payments.

9.14 On 23 December 2015, Mr Ioannou paid £35,000 from the GC client account to a third-party company, SCS, on GC's instructions. There was no underlying legal transaction for this payment.

9.15 On 18 April 2016, Q Care went into liquidation.

9.16 In 2016, the Firm received payments totalling £90,000 from another company, 365, a company which specialised in recruitment services, which it paid into GC's client account. Mr Ioannou used some of this money for payment of the Firm's bills, however, he could not remember why he received the money. At least one of the GC companies performed services for recruitment companies like 365. There was no underlying legal transaction for these payments.

Allegation: using the client account as a bank account

9.17 The Applicant relied upon the following facts and matters.

9.18 Rule 14.5 of the SRA Accounts Rules 2011 provides *"You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities."*

9.19 The Firm was entitled to accept money from the Court in accordance with a Court order. It could however only use that money in accordance with valid instructions and where there was an underlying legal transaction. As COFA and partner, Mr Ioannou was responsible for, and approved, client account transactions.

9.20 Mr Horton, for the Applicant, submitted that the proper approach would have been for Mr Ioannou to have paid the money out to the clients to whom the money related, or to use it for matters on which there was an underlying legal transaction, and in fact, Mr Ioannou had previously authorised such permitted payments as these in many cases. However, there were some payments into, and out of, client account, which had nothing to do with any legal matters on which he was instructed, and these payments amounted to a total of £195,000.

9.21 With respect to those payments, there was no underlying legal transaction to support the Firm making the payments. Mr Ioannou could not remember why the Firm made these payments, beyond them perhaps being investments.

9.22 It was accepted by Mr Horton that there were relatively few such transactions and Mr Horton said they may have been an element of 'inadvertence' on Mr Ioannou's part. However, the companies involved in the payments were companies with which the Firm had no relationship. They appeared to have been recruitment companies or cafes in respect of which there was no underlying legal transaction being handled by the Firm. Payments to those companies were therefore pure investments or business expenses, and so it was not appropriate for the Firm to use its client account in relation to them. In respect of the services provided to the C family, payments of what seemed to be business expenses or investments were not ancillary to or a necessary constituent element of the legal services provided to the client.

9.23 The services provided by Mr Ioannou and the Firm in making the payments were not in respect of instructions relating to an underlying transaction and were therefore not part of Mr Ioannou's normal regulated activities.

Breach of Principle 6 of the Principles

9.24 It was said that Mr Ioannou agreed to and did receive and transfer funds in circumstances amounting to a breach of Rule 14.5 of the Solicitors Accounts Rules 2011 and these all appeared to be either investments or payments of business expenses. They did not relate to any legal work which the Firm was doing and Mr Ioannou was doing and in facilitating transactions of this nature, Mr Ioannou did not behave in a manner that maintains public trust in him and the provision of legal services as required by Principle 6 of the Principles.

9.25 Mr Horton submitted that there are clear and well-established reasons why solicitors are not permitted to provide banking facilities through their client accounts. These reasons are articulated at paragraph 39 of Fuglers and others v Solicitors Regulation Authority [2014] EWHC 179 (Admin):

> *"If a solicitor is providing banking activities which are not linked to an underlying transaction, he is engaged in carrying out or facilitating day to day commercial trading in the same way as a banker. This is objectionable because solicitors are qualified and regulated in relation to their activities as solicitors, and are held out by the profession as being regulated in relation to such activities. They are not qualified to act as bankers and are not regulated as bankers. If a solicitor could operate a banking facility for clients which was divorced from any legal work being undertaken for them, he would in effect be trading on the trust and reputation which he acquired through his status as a solicitor in circumstances where such trust would not be justified by the regulatory regimen."*

9.26 Further, the Applicant had issued warnings against the use of client accounts as bank accounts. For example, the SRA's warning notice against the use of a client account as a banking facility, issued on 18 December 2014, in force at the material time, states that:

> *"A breach of rule 14.5 is a serious matter…it is objectionable in itself for a solicitor to be carrying out or facilitating banking activities because he is to that extent not acting as a solicitor…[it] carries with it the obvious risk that the account may be used unscrupulously by the client for money laundering…the third strand arises in the particular context of insolvency or risk of insolvency.*
>
> *In such context, to allow a client account to be used as a banking facility is objectionable for several reasons."*

9.27 The Warning notice also identified that there must be a reasonable connection between the underlying legal transaction and the payments:

> *"Whether there is a reasonable connection is likely to depend on the fact of each case....the fact that you have a retainer with a client does not give you licence to process funds freely through client account on the clients behalf.....throughout a retainer, you should question why you are being asked to receive funds and for what purpose.....you should only hold funds where it is necessary for the purpose of carrying out your client's instructions in connection with an underlying legal transaction or a service forming part of your normal regulated activities...you should always ask why the client cannot make the payment him or herself....the clients convenience is not the paramount concern."*

9.28 It was the Applicant's position that the public would expect a solicitor to act in compliance with the SRA Accounts Rules 2011. A solicitor acting in compliance with Principle 6 of the SRA Principles 2011 would have declined to transfer funds into and out of client account in circumstances where there was no underlying transaction.

Breach of Principle 8 of the Principles

9.29 Principle 8 requires solicitors to run their business or carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles.

9.30 As a Partner of the Firm, holding important compliance roles as the COLP, COFA and AML officer Mr Ioannou should have had been alive to the issues of using his client bank account as a banking facility and, should have been aware that the payments did not relate to instructions connected to an underlying legal transaction that the Firm was carrying out for the clients.

9.31 However, he authorised the relevant payments outlined above over approximately an 8-month period and in choosing to use the Firm's client account to make payments on behalf of the C family that had nothing to do with the Firm's underlying instructions, the Respondent used the client account to provide a banking facility, thereby breaching Principle 8.

9.32 A solicitor acting in compliance with Principle 8 would have paid money out to the client directly rather than to pay client expenses.

The Respondent's Case

9.33 Mr Ioannou informed the Tribunal that he accepted all that had been said by Mr Horton in terms of the factual background of the case and he admitted without demur that his conduct had been a breach of Principles 6 and 8 of the Principles, and of Rule 14.5 of the SRA Accounts Rules 2011.

The Tribunal's Findings

9.34 The Tribunal found the allegation proved in full to the requisite standard, namely on the balance of probabilities, and it was satisfied to the same standard that Mr Ioannou's admissions were properly made.

9.35 The Tribunal therefore found proved breaches of:

- Principle 6 of the Principles;
- Principle 8 of the Principles; and
- Rule 14.5 of the SRA Accounts Rules 2011

Previous Disciplinary Matters

10. There were no previous findings.

Mitigation

11. Mr Ioannou stated that he apologised unreservedly to the Tribunal and the Applicant for his short comings, mistakes and failings which caused the allegation raised against him by the Applicant.

12. Mr Ioannou said that he had been familiar with the underlying transaction guidelines and Principles, and he had not set out to deliberately break them. The breaches had not been systematic or pre-planned as a means of obtaining any personal financial advantage or gain, rather the breaches, of which complaint had been made by the Applicant, had been caused inadvertently and by simple error: there had been no dishonest intention or lack of integrity on his part, and it was of note that the Applicant had not levelled those allegations against him.

13. Mr Ioannou said that he should have more rigorously investigated the transactions he had been asked to make to satisfy himself that they complied with his professional obligations.

14. In an otherwise unblemished career spanning over 35 years this had been Mr Ioannou's first reference to the Tribunal, and he said that he had accepted the errors on his part from the start of the investigation and he had assisted the Applicant throughout this process.

15. Mr Ioannou said that the period in question represented a short space of time (8 months), and his conduct should be looked at within the overall circumstances and not in isolation. He would not repeat this error again and he had taken active steps to refresh

his knowledge with respect the guidelines on underlying transactions and he had kept himself alert to any changes or updates in this area of activity.

16. The events which formed the substance of the allegations had taken place over 6 years ago and the investigation had been 'hanging over' him since 2018. Mr Ioannou said that he was presently unemployed as he had wanted to wait until the proceedings had concluded before seeking new employment within the profession as he wished to be open and frank with a new employer and be able to inform them of the outcome. Consequently, his financial resources were now depleted.

Sanction

17. The Tribunal had regard to the Guidance Note on Sanctions (9th Edition December 2021). The Tribunal assessed the seriousness of the misconduct by considering Mr Ioannou's culpability, the level of harm caused together with any aggravating or mitigating factors.

18. In assessing culpability, the Tribunal found that there had been no overt motivation, rather there had been an absence of critical thought and analysis which he should have been applied to the offending transactions. The breaches had not been planned or spontaneous.

19. Due to their nature, there was some element of breach of trust as this had been client money. Client money is in a very real sense 'trust money' and the public expect solicitors to protect their money for the purpose for which it was entrusted to the solicitor.

20. Mr Ioannou had had direct control of the factors giving rise to the misconduct and sufficient experience to understand and follow the Solicitors Accounts Rules, but he had failed to do so. That said, the Tribunal accepted the transactions were few when compared to the many transactions Mr Ioannou had made which had been in accordance with the Solicitors Accounts Rules.

21. The Tribunal did not find that Mr Ioannou had misled the Regulator or that he had failed to co-operate in a meaningful way: quite the contrary, the Respondent had been open and frank in his dealings with the Regulator and the Tribunal.

22. The Tribunal found Mr Ioannou to be fully culpable, however, the Tribunal accepted that, in essence, his errors had been inadvertent.

23. The Tribunal next considered the issue of harm. Whilst it was noted no client money was lost (albeit there may have been some loss of tax monies to the Revenue) this did not diminish the opprobrium in not respecting the sanctity of the client account for which the Solicitors Accounts Rules was there to protect and to ensure the proper stewardship of client funds.

24. However, with respect to the facts of the case the Tribunal did not find that Mr Ioannou's conduct represented a *significant* departure from the *complete integrity, probity and trustworthiness* expected of a solicitor and whilst the potential for harm to the public and the damage to the reputation of the profession was potentially high and

entirely foreseeable, the actual harm had been limited in nature and the Tribunal assessed the harm caused as low.

25. The Tribunal next considered aggravating factors. The Tribunal acknowledged that there had been no allegations of dishonesty or lack of integrity and there was no evidence of any sort which indicated that the misconduct had involved the commission of a criminal offence. His actions had not been deliberate and calculated in the sense that they had been thought out and reasoned.

26. The Tribunal also found that Mr Ioannou had not taken advantage of a vulnerable person; he had concealed nothing, nor had he not sought to blame others.

27. The Tribunal found there were mitigating factors and noted that the Respondent had no previous disciplinary findings recorded against him and that that this was to be rightly viewed as a single set of circumstances in a long and unblemished career.

28. The Tribunal found that he had made open and frank admissions and that there had been no deception on his part. The willingness of Mr Ioannou to take responsibility for his actions and his acceptance with hindsight of his failings demonstrated his genuine insight to the Tribunal.

29. The matter had been pending for some years and this had had an impact on his career and finances, however, to his credit, Mr Ioannou had ceased to work in the profession until the case had been determined.

30. Whilst any breach of the Principles is not to be treated lightly the Tribunal found that in the circumstances of this case the level of seriousness of the misconduct was low.

31. The Tribunal next considered the appropriate sanction and in doing so it adopted a *'bottom up'* approach to find one which would neither be unfair nor disproportionate.

32. Given the admissions to a breach of Principles 6 and 8 of the Principles the Tribunal found that to make no order or to impose a Reprimand would not be appropriate, because, whilst the likelihood of future misconduct was low this had not been a minor breach and the public were entitled to trust a solicitor to treat client money in accordance with the Rules and in this regard Mr Ioannou had, unfortunately, fallen short.

33. With respect to all the factors in this case the Tribunal determined that a sanction greater than a fine would be too severe and that a fine towards the lower end of Level 2 of the Indicative Fine Bands *for conduct assessed assessed as moderately serious* would be a fair and proportionate sanction.

34. The Tribunal therefore imposed upon Mr Ioannou a fine of £2,500.00.

Costs

35. Mr Horton said the quantum of costs claimed by the Applicant was in the sum of £3,900.00

36. The proceedings had been correctly brought by Applicant and it was right that it should recover its costs in doing so. The hours claimed by the Applicant were not excessive and were reasonable and proportionate in the circumstances of the case.

37. Mr Ioannou said he accepted the principle that the Applicant was entitled to its costs, however, he asked the Tribunal to make no order for costs, notwithstanding his admissions to the allegations.

38. This had been a matter which the Applicant had held over him since at least 2018, even though he had admitted his errors at a very early stage of the investigation, and it had taken 4 years to bring it to a conclusion. In that time, he had removed himself from the profession, put his career on hold and suffered financially as a result.

39. Mr Ioannou said that if the Tribunal was minded to grant the application for costs then he asked that it also assess the costs claimed with a view to reducing them.

40. He accepted that the claimed hourly rate of £130.00 was not excessive and that the amounts claimed for communication with him, and the Tribunal, were not unreasonable. However, he could see no justification for him to pay for 'Attendance on Others' at £390.00 or why the matter had required 16.5 hours of 'Attendance on Documents' at £2,145.00 when the facts had been very straightforward given that he had accepted fault at a very early opportunity.

41. That said, Mr Ioannou thanked Mr Horton for 'taking hold' of the case and bringing it to an end.

42. Mr Horton said with respect to the 'Attendance on Documents' this had consisted of mainly pruning documents down from the volume which the Applicant had obtained during its investigation. As for 'Attendance on Others' this had consisted of internal meetings and discussions, and he would not object to this being reduced.

<u>The Tribunal's Decision on Costs</u>

43. Having listened with care to the submissions made by Mr Horton and Mr Ioannou with respect to costs the Tribunal considered that it was able to summarily assess costs to determine whether they were reasonable and proportionate in all the circumstances of this case.

44. The Tribunal noted the following factors:

- The substantive hearing had taken less time than anticipated: half a day instead of a full day.
- There had been no dispute of fact between the parties.
- Mr Ioannou had made full admissions and admitted matters at an early stage.
- There had been no witnesses.

45 The Tribunal found the case had been properly brought by the Applicant as it had raised serious issues involving the use of client money and the public would expect the Applicant to have prepared its case with requisite thoroughness and, in this regard, it had properly discharged its duty to the public and the Tribunal.

46. In accordance with the concessions made by Horton and the observations made above the Tribunal found that, whilst it was appropriate for the Applicant to recover a proportion of its costs, it was reasonable and proportionate for there to be some reduction. Therefore, 'Attendance on Documents' would be reduced to 10 hours; Attendance on Others' reduced to 2 hours and 'Attendance at Hearing' reduced to 4 hours each at £130.00 per hour.

47. The Tribunal therefore assessed costs to be paid by Mr Ioannou in the sum of £2,665.00.

Statement of Full Order

48. The Tribunal Ordered that the Respondent, JOHN IOANNOU solicitor, do pay a fine of £2,500.00, 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 £2,655.00.

Dated this 25th day of July 2022
On behalf of the Tribunal

P Lewis
Chair