SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12312-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

STEPHEN DAVID JONES Respondent

Before:

Mr E Nally (in the chair)
Mr R Nicholas
Mr A Lyon

Date of Consideration: 2 December 2022

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent, Stephen David Jones (SRA ID: 133022), made by the SRA, are that, having been admitted as a Solicitor of the Senior Courts:

(I) - Contempt of Court

1.1. On dates between approximately 15 March 2019 and 3 April 2019, he acted in contempt of court, in that he:

1.1.1. breached an undertaking recorded at Recital 1 of an Order of Mr Justice Nugee ("Nugee J") dated 15 March 2019 ("the Order of 15 March 2019"), to procure that the sum of US$9.3 million (or the sterling equivalent) and any interest thereon, be paid into Court;

1.1.2. breached an undertaking recorded at Recital 2 of the Order of 15 March 2019 to procure repayment of the full outstanding balance under a loan facility referred to as the "Dragonfly Facility, including any costs and charges associated with repayment;

(together, "the Payment Breaches");

1.1.3. failed to comply with an undertaking recorded at Recital 6(v) of the Order of 15 March 2019 and an order recorded at paragraph 10A(1)(iv) of a further Order of Nugee J, dated 18 March 2019 (the "Order of 18 March 2019"), to provide to the best of his ability details as to what had happened to monies drawn down under the Dragonfly Facility since the date of their drawdown on 12 February 2019;

1.1.4. failed to comply with an undertaking recorded at Recital 6(iii) of the Order of 15 March 2019 and an order recorded at paragraph 10A(1)(iii) of the Order of 18 March 2019 to explain to the best of his ability how funds referred to as "the Surplus Funds" had been dealt with since 6 December 2018;

1.2. He breached, by reason of his contempt of court described at 1.1 above, his professional obligations under all or any of:

1.2.1. Outcomes 5.1, 5.2, 5.3, 5.4 and 11.2 under the SRA Code of Conduct 2011 ("the 2011 Code");

1.2.2. Principles 1, 2, 4, 6, 7 and 10 of the SRA Principles 2011 ("the 2011 Principles").

(II) Conflict(s) of interest

1.3. On dates between approximately 11 April 2018 and 13 March 2019 he acted for Discovery Land Company LLC ("Discovery Land") in circumstances giving rise to an own interest conflict and/or to a client conflict (or, at the least, to a serious risk of either such conflict); and he therefore breached his professional obligations under all or any of:

1.3.1. Outcomes 3.4 and 3.5 under the 2011 Code;
1.3.2. Principles 3, 4, 5, 6, 7 and 8 of the 2011 Principles.

Aggravating Features

2. Dishonesty is alleged in relation to Allegation (I) above but proof of dishonesty is not required to establish that allegation or any of its particulars. Dishonesty if proved would be an aggravating feature of the misconduct.

3. Alternatively, recklessness is alleged in relation to Allegation (I) above but proof of recklessness is not required to establish that allegation or any of its particulars. Recklessness if proved would be an aggravating feature of the misconduct.

Documents

4. The Tribunal had before it documents contained in an electronic bundle which included:

- Rule 12 Statement dated 7 March 2018 and Exhibit RTM1.
- Joint Statement of Agreed Facts and Proposed Outcome.

Background

5. Mr Jones was admitted to the Roll of Solicitors in February 1986. At all material times he practised at, controlled and/or owned the following SRA regulated entities: (i) Jirehouse, (ii) Jirehouse Partners LLP and (iii) Jirehouse Trustees Limited.

6. In April 2018, Mr Jones was instructed by a US property development company to purchase Taymouth Castle in Scotland. He sought and obtained funds in excess of £10 million from a group of US investors.

7. Additionally, Mr Jones persistently and repeatedly breached undertakings to pay the fraudulently obtained money into court.

8. On 30 November 2022, Mr Jones was sentenced to a total of 12 years imprisonment by His Honour Judge Griffith at Southwark Crown Court.

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

9. 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.

Findings of Fact and Law

10. 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 Respondent'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.

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

12. The Tribunal considered the Guidance Note on Sanction (Tenth Edition: June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors as set out in the Statement of Agreed Facts and Outcome.

13. Given the admitted dishonesty and the absence of exceptional circumstances, it was plain to the Tribunal that no sanction less than an Order Striking Mr Jones from the Roll of solicitors was required to protect the public interest.

Costs

14. The Tribunal noted that the Applicant did not seek costs from Mr Jones. The Tribunal paid significant regard to the fact that Mr Jones was (a) bankrupt, (b) serving a 12 year custodial sentence and (c) subject to the maximum director's disqualification. The Tribunal paid further regard to the fact that confiscation orders had been made against him, and that the Applicant had intervened into each of the Jirehouse entities. Given the factors set out above, the Tribunal endorsed the joint position advanced that there be No Order as to Costs.

Statement of Full Order

15. The Tribunal ORDERED that the Respondent, STEPHEN DAVID JONES, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that there be NO ORDER as to costs.

Dated this 13th day of December 2022
On behalf of the Tribunal

E Nally
Chair

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No: 12312-2022**

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

STEPHEN DAVID JONES

Respondent

AGREED OUTCOME PROPOSAL

A Introduction

1. By a Statement made by Rory Thomas Mulchrone on behalf of the Applicant (the **"SRA"**) pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 7 March 2022 (the **"Rule 12 Statement"**), the SRA brought proceedings before the Tribunal making allegations of misconduct against the Respondent, including allegations of dishonesty (the **"Tribunal Proceedings"**).

2. The Respondent's Answer to the Rule 12 Statement was served on 7 June 2022. It contained substantial admissions but denied, *inter alia*, the aggravating feature of dishonesty alleged. On 21 June 2022 the SRA served a Reply confirming its position on that and the other matters remaining in dispute (which were summarised at paragraphs 3-4 of that document).

3. The matter was most recently listed for substantive hearing on 24-28 October 2022; however, on 21 October 2022, it was vacated and postponed to a date to be confirmed at a case management hearing, subsequently listed for 14 December 2022. As at the date of this document, the substantive hearing has not yet been relisted.

4. The postponement was granted on the Respondent's application, insofar as not opposed by the SRA, in view of his solicitors' stated need to prepare him for what was, by that stage, an imminent criminal trial in the Crown Court (the **"Criminal Proceedings"**). These concerned alleged offences, namely three counts of fraud by abuse of position, arising from the same retainer as the allegations made by the SRA in the Tribunal Proceedings.

5. On 16 November 2022 the Respondent informed the SRA's solicitors that he had entered guilty pleas to Counts 1 and 2 on the Indictment (a copy of which is attached at 'Schedule 1') and that Count 3 was to lie "*on file*". The Respondent indicated that he is to be sentenced on 29 November 2022 and expressed a wish to conclude the Tribunal Proceedings before that date.

6. The SRA does not yet have certificates of conviction for Counts 1 and 2 or confirmation from the prosecutor of the Criminal Proceedings as to the position in relation to Count 3. Ordinarily the SRA would wish to obtain these, together with transcripts of any opening submissions and sentencing remarks, and to consider whether to bring further allegations, based on the convictions, by way of a Rule 14 Statement.

7. However, having reviewed his position as set out in his Answer, the Respondent is now prepared to make **full admissions** to the allegations and facts pleaded in the Rule 12 Statement, including to the aggravating feature of dishonesty. Subject to the Tribunal's approval, the Respondent is also prepared to submit to a **striking-off order**. In those circumstances, a Rule 14 Statement is unlikely to make a material difference to sanction.

8. That said, the SRA reserves the right to obtain and rely on the certificates of convictions and any relevant transcripts from the Criminal Proceedings (including any opening submissions or sentencing remarks), in the event that:

   8.1. the Tribunal declines to approve this Agreed Outcome Proposal; or

   8.2. having been struck off (by way of Agreed Outcome or otherwise) the Respondent ever seeks readmission to the Roll at a future date.

9. Having investigated and considered the Respondent's financial position, and subject to agreement and approval of this Agreed Outcome Proposal, the SRA makes no application for costs.

10. The Respondent understands that, under Rule 25(3), "*If the Tribunal approves the Agreed Outcome Proposal in the terms proposed it must make an Order in those terms. The case must be called into an open hearing and the Tribunal must announce its decision*". For the avoidance of doubt, the Respondent does not object to:

    10.1. the Tribunal announcing any Order in open court as required by Rule 25(3);

    10.2. publication of such Order by the SRA in the ordinary way, in line with the open justice principle;[1]

    10.3. publication of any Judgment of the Tribunal approving and annexing this document in the ordinary way, in line with the open justice principle.

11. The SRA has considered the admissions being made and whether those admissions, and the outcomes proposed in this document, meet the public interest having regard to the gravity of the matters alleged. For the reasons explained in more detail below, and subject to the Tribunal's approval, the SRA is satisfied that the admissions and outcome do satisfy the public interest.

[1] See: SRA v Spector [2016] EWHC 37 (Admin); and Lu v SRA [2022] EWHC 1729 (Admin)

B Admissions

12. The Respondent **admits <u>all</u> of the allegations** made against him at paragraph 1 of the Rule 12 Statement, namely that, having been admitted as a Solicitor of the Senior Courts:

> *"**(I) Contempt of Court***
>
> *"1.1. On dates between approximately 15 March 2019 and 3 April 2019, he acted in contempt of court, in that he:*
>
> *1.1.1. breached an undertaking recorded at Recital 1 of an Order of Mr Justice Nugee (**"Nugee J"**) dated 15 March 2019 (**"the Order of 15 March 2019"**), to procure that the sum of US$9.3 million (or the sterling equivalent) and any interest thereon, be paid into Court;*
>
> *1.1.2. breached an undertaking recorded at Recital 2 of the Order of 15 March 2019 to procure repayment of the full outstanding balance under a loan facility referred to as the "Dragonfly Facility", including any costs and charges associated with repayment;*
>
> *(together, **"the Payment Breaches"**);*
>
> *1.1.3. failed to comply with an undertaking recorded at Recital 6(v) of the Order of 15 March 2019 and an order recorded at paragraph 10A(1)(iv) of a further Order of Nugee J, dated 18 March 2019 (the **"Order of 18 March 2019"**), to provide to the best of his ability details as to what had happened to monies drawn down under the Dragonfly Facility since the date of their drawdown on 12 February 2019;*
>
> *1.1.4. failed to comply with an undertaking recorded at Recital 6(iii) of the Order of 15 March 2019 and an order recorded at paragraph 10A(1)(iii) of the Order of 18 March 2019 to explain to the best of his ability how funds referred to as "the Surplus Funds" had been dealt with since 6 December 2018;*
>
> *(together, the **"Disclosure Breaches"**).*
>
> *1.2. He breached, by reason of his contempt of court described at 1.1 above, his professional obligations under all or any of:*
>
> *1.2.1. Outcomes 5.1, 5.2, 5.3, 5.4 and 11.2 under the SRA Code of Conduct 2011 (**"the 2011 Code"**);*
>
> *1.2.2. Principles 1, 2, 4, 6, 7 and 10 of the SRA Principles 2011 (**"the 2011 Principles"**).*
>
> ...

"(II) Conflict(s) of interest

*1.3. On dates between approximately 11 April 2018 and 13 March 2019 he acted for Discovery Land Company LLC (**"Discovery Land"**) in circumstances giving rise to an own interest conflict and/or to a client conflict (or, at the least, to a serious risk of either such conflict); and he therefore breached his professional obligations under all or any of:*

1.3.1. Outcomes 3.4 and 3.5 under the 2011 Code;

1.3.2. Principles 3, 4, 5, 6, 7 and 8 of the 2011 Principles".

13. In addition, the Respondent now accepts that his conduct in relation to Allegation (I) – i.e. his contempt of court – was aggravated by dishonesty. Previously, in his Answer, the Respondent had only admitted to recklessness in this regard, and only in respect of the Payment Breaches.

C Agreed facts

Professional details

14. The Respondent was born on 4 September 1959 and admitted to the Roll of Solicitors on 15 February 1986. At all material times he practised at, controlled and/or owned the following SRA regulated entities: (i) Jirehouse (a body corporate) (SRA ID: 425964); (ii) Jirehouse Partners LLP (SRA ID: 592501); and (iii) Jirehouse Trustees Limited (SRA ID: 425967) (collectively **"Jirehouse"**, the **"Jirehouse Group"** or the **"Jirehouse Entities"**).

15. On 1 May 2019 an Adjudication Panel convened by the SRA resolved to exercise its statutory powers of intervention into the Respondent's practice and into each of the Jirehouse Entities, including on the grounds that there was reason to suspect dishonesty by the Respondent (the **"Intervention"**). Exceptionally, the Intervention decision was taken without notice to the Respondent, including on the grounds that there was a *"risk of dissipation of client assets and/or harm to the interests of clients"*. In consequence of the Intervention, the Respondent's practising certificate was automatically suspended. He does not hold a current Practising Certificate but nonetheless remains on the Roll of Solicitors.

Background

The Gibson Dunn report

16. On or about 18 March 2019, the SRA received a report from Gibson, Dunn & Crutcher UK LLP (**"Gibson Dunn"**), raising a number of grave concerns about the conduct of the Respondent. In broad summary, it was alleged that:

16.1. Gibson Dunn acted for Discovery Land in relation to a potential dispute with the Respondent and the Jirehouse Entities.[2]

16.2. Jirehouse Partners was a law firm founded by the Respondent, with offices in London, Nevis and Switzerland. It claimed particular expertise in tax and litigation strategies, corporate finance and restructuring transactions, estate planning and asset protection.

16.3. Discovery Land had retained Jirehouse Partners to represent it in relation to a complex real estate transaction involving the purchase of Taymouth Castle in Scotland (the **"Transaction"**).

16.4. A retainer letter from Jirehouse Partners dated 24 May 2018 recorded that that Transaction was to proceed "*via our special purpose vehicle incorporated in respect of this matter for you ... to which rights would be assigned from Esquiline Asset Managers Limited*" (**"EAML"**) "*(which will secure sub-sale development transfer tax relief)*".

16.5. The end purchaser of Taymouth Castle was to be The River Tay Castle LLP, an entity beneficially owned by Discovery Land and an individual, John Paul DeJoria (**"Mr DeJoria"**), an entrepreneur and US national.

16.6. The Transaction had completed on 7 December 2018, at which point Jirehouse Trustees or related entities held the sum of $9.3 million, which was not needed in order to complete the Transaction and which was to be returned to Discovery Land (the **"Unused Funds"**).[3] As at the date of the report, over three months after completion of the Transaction, the Unused Funds had still not been returned. A series of explanations and excuses had been offered as to the why the monies could not yet be returned.

16.7. Gibson Dunn had been instructed in January 2019 to advise on recovery of the Unused Funds from Jirehouse/ EAML.

16.8. On 13 March 2019, on the instructions of Discovery Land, Gibson Dunn had appeared with counsel before Nugee J in the Chancery Division of the High Court, seeking an urgent *ex parte* disclosure order and freezing injunction on behalf of Discovery Land against the Jirehouse Entities and EAML.

16.9. That *ex parte* application had resulted in the Court making, on 13 March:

16.9.1. a disclosure order against the Jirehouse Entities requiring, amongst other things, that they provide Gibson Dunn with details of the bank account which held the sum of $9.3 million and evidence that that account did in fact hold at least $9.3 million;

16.9.2. a freezing injunction against EAML in respect of EAML's assets up to a value of $9.45 million (and disclosure orders against EAML).

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[2] In fact, a claim had already been issued against the latter and sealed on 13 March 2019. The Respondent was subsequently added to the claim as its seventh defendant.

[3] It subsequently transpired in the litigation that followed that these funds were no longer held by Jirehouse at this date, having been paid away by the Respondent or at his direction.

16.10. The ex parte application had been supported by the First Affidavit of Sasha Harber-Kelly MBE, a Gibson Dunn partner (the **"First Affidavit"**). The First Affidavit set out in some detail the background to the Transaction and subsequent events.

16.11. In particular, on 6 March 2019, more than two months after completion of the Transaction, Discovery Land had discovered that a charge (the **"Charge"**) had been registered against the property the subject of the Transaction on the instructions of the Respondent. The Charge had been registered without Discovery Land's knowledge or consent. It secured a loan facility known as the "*Dragonfly Facility*". Discovery Land had since learned that a loan in the sum of approximately £5 million had been drawn down under the Dragonfly Facility – again, without the knowledge or consent of Discovery Land.

16.12. The facts gave rise to a number of professional conduct concerns including:

16.12.1. the Respondent acting despite a conflict of interest between two clients, Discovery Land and EAML, who were lender and borrower in the same finance transaction and whose interests were not aligned;

16.12.2. own interest conflict arising from:

(i) the Respondent's connection with EAML (a company introduced by him which had its address at the Jirehouse office);

(ii) release of an undertaking pursuant to a novation agreement;

16.12.3. failing to act in the best interests of Discovery Land;

16.12.4. non-compliance with undertakings given to the Court.

16.13. Events had begun to move quickly. On the instructions of Discovery Land, Gibson Dunn had attended a hearing before Nugee J on Friday 15 March 2019, seeking a freezing injunction against the three Jirehouse Entities and also an entity called Jirehouse Secretaries Limited, in respect of assets to the value of approximately £12 million, together with additional disclosure orders. The Respondent was present at that hearing and the Jirehouse defendants were represented by leading counsel. The Respondent and Jirehouse gave undertakings to the Court to pay the sum of $9.3 million into court by 4:00 p.m. on Tuesday 19 March 2019 and to procure repayment of the outstanding balance under the Dragonfly Facility (and to release the Charge and any other related security) as soon as practicable and in any event by no later than 4:00 p.m. on Friday 22 March 2019.

16.14. On the morning of the Gibson Dunn report to the SRA, counsel for Jirehouse had contacted counsel for Discovery Land, advising that the Respondent was now unable to comply with the undertakings given in court on the previous Friday, and expressing willingness by the Jirehouse Defendants to submit to a freezing injunction in the terms sought by Discovery Land.

16.15. Discovery Land risked or had suffered substantial loss as a result of its involvement with the Respondent, the Jirehouse Entities and EAML. In particular: (a) $9.3 million representing the

unused funds which had not been returned; (b) approximately £5 million representing the sums drawn down on the Dragonfly Facility secured by the Charge over the property the subject of the Transaction; and (c) interest and costs.

Events of 18 March 2019

17. By an email to the Court and parties dated 18 March 2019 at 11:04 the Respondent apologised "*profusely*" on behalf of himself and the Jirehouse Entities for his inability to perform what he described as an undertaking "*offered ... in terms which were to be finalised over the weekend*". In fact, is clear from the transcript of the hearing before Nugeee J that the relevant undertakings were in fact "*given*", rather than merely "*offered*", at the 15 March 2019 hearing, albeit they needed to be recorded in an appropriate form (as they subsequently were in the Order of 15 March 2019). The Respondent nonetheless purported to explain why he could no longer perform the undertakings and he agreed to submit to a freezing order.

18. Later on 18 March 2019, Nugee J made a freezing injunction in favour of Discovery Land, i.e. the Order of 18 March 2019.

Self-report

19. On 19 March 2019 at 22:52, the SRA received a self-report from the Respondent purporting to set out his perspective on the recent hearings and indicating that he was unable to comply with the undertakings given as the relevant funds had been committed to a long term investment of which he was unaware at the time he undertook to procure their repayment.

Application to commit the Respondent to prison for contempt of court

20. Thereafter, the Respondent did not perform all of the undertakings given by him to the Court on 15 March 2019 and recorded in the Order of 15 March 2019, or comply with all of his obligations under the Order of 18 March 2019. On or about 3 April 2019, Gibson Dunn therefore made an application on behalf of Discovery Land to commit the Respondent to prison for contempt of court, by reason of his failure to comply with his obligations under those orders. The evidence in support of the application included two further affidavits made by Sacha Harber-Kelly MBE, dated 15 March 2019 and 8 April 2019 respectively.

Interim Forensic Investigation Report and Production Notice

21. The SRA commenced a forensic investigation of the Jirehouse Entities on 20 March 2019 but was unable to access a number of bank accounts.

22. On 28 March 2019, the Respondent notified the SRA of his intention to close Jirehouse with effect from 8 May 2019.

23. On 16 April 2019, an interim report was produced by Sarah Taylor (the **"FIO"**) with supporting appendices. This identified concerns over the Respondent's involvement in the purchase of the castle and failure by the Jirehouse Entities to account to its client. The FIO produced a final report with supporting appendices on 4 December 2019.

24. On 17 April 2019, the SRA served a production notice on the Respondent. It required information on the whereabouts of the US$9.3 million and an explanation of why his undertaking of 6 December 2018 had not been complied with to remit that money to Discovery Land and of what had happened to the Dragonfly money. A reply was required by 12.00hrs on 23 April 2019. The Respondent stated he was in the US without access to relevant material and asked for an extension of time. He was granted one until 24 April 2019. In a partial reply, the Respondent failed to provide any evidence as to the whereabouts of Discovery Land's money or the whereabouts of the Dragonfly money. Furthermore, his answers, which were vague, suggested that the money had been dissipated.

The Intervention

25. The Intervention decision followed on 1 May 2019.

Committal hearing

26. The committal application came before Mr Justice Zacaroli (**"Zacaroli J"**) who heard the matter over three days on 13, 14 and 15 August 2019. The Respondent was represented by Ms Felix of counsel and the Jirehouse Entities were separately represented by leading counsel, Mr Halpern QC. The Respondent had served a number of affidavits but he declined to be cross-examined on these, even though he had been expressly warned (including by a decision of Mr Justice Henry Carr dated 7 June 2019) that adverse inferences might be drawn against him as a result.

The first Zacaroli judgment

27. In a judgment dated 16 August 2019 (the **"First Zacaroli Judgment"**),[4] the judge found contempt of court to have been proved against the Respondent to the criminal standard, i.e. beyond reasonable doubt. In particular, the learned judge found, at paragraphs 141-155:

"*Ground A1*"

[4] [2019] EWHC 2249 (Ch)

27.1. "*that Mr Jones breached the undertaking to procure that the sum of US$9.3 million (or the sterling equivalent) and any interest thereon, be paid into Court*";

27.2. "*that he intended the undertaking to be understood as relating to the funds which he had told the Court (through Counsel) on 15 March 2019 were held for the benefit of EAML in an account at Hambros Private Bank*";

27.3. "*that he knew that it was impossible for him to comply with the undertaking understood in that sense*";

27.4. "*that if and to the extent that he hoped that either another client of Jirehouse with funds at Hambros Private Bank would make those funds available to EAML, or that Mr Brown would do so, that does not excuse his non-compliance with the undertaking*";

27.5. "*Accordingly ... that this ground of contempt is established*".

"*Ground A2*"

27.6. "*that Mr Jones breached the undertaking to procure repayment of the full outstanding balance under the Dragonfly Facility, including any costs and charges associated with repayment*";

27.7. "*that he intended the undertaking to be understood as relating to the funds which he had told the Court (through Counsel) on 15 March 2019 were held in a separate account at Hambros Private Bank*";

27.8. "*that he knew that it was impossible for him to comply with the undertaking understood in that sense*";

27.9. "*that if and to the extent that he hoped that either another client of Jirehouse with funds at Hambros Private Bank would make those funds available to EAML, or that Mr Brown would do so, that does not excuse his non-compliance with the undertaking*";

27.10. "*Accordingly ... that this ground of contempt is established*".

"*Grounds B3 and B4*"

27.11. "*that Mr Jones failed to comply with the undertaking at Recital 6(v) of Order of 15 March 2019 and the order at paragraph 10A(1)(iv) of the Order of 18 March 2019 to provide to the best of his ability details as to what had happened to the monies drawn down under the Dragonfly Facility since the date of their drawdown on 12 February 2019*";

27.12. "*that Mr Jones failed to comply with the undertaking at Recital 6(iii) of the Order of 15 March 2019 and the order at paragraph 10A(1)(iii) of the Order of 18 March 2019 to explain to the best of his ability how the Surplus Funds had been dealt with since 6 December 2018*";

27.13. "*In relation to each of Grounds B3 and B4 ... that the breach was deliberate, in that Mr Jones was aware of further information falling within the requirements of each undertaking and order,*

and that such information was required to be provided under their terms, both (1) following the service of his second affidavit; and (2) following the service of his third affidavit";

27.14. "*that he is in continuing deliberate breach of both undertakings/orders*";

27.15. "*Accordingly ... that these grounds of contempt are established.*"

The second Zacaroli judgment

28. In a further judgment dated 16 August 2019 (the **"Second Zacaroli Judgment"**),[5] the judge sentenced the Respondent to a total of 14 months' imprisonment for his contempt of court. In considering the appropriate sentence, the learned judge commented, *inter alia*:

28.1. "*... the position I am in today is that there has been serious and deliberate failure to give information to the best of his ability and that this is contempt which is continuing*";

28.2. "*... the failure to comply with undertakings, as I have noted, is exacerbated when it comes from an officer of the court. The court places great store in being able to trust and expect the highest standards of conduct from an officer of the court*".

29. It will be noted that the Respondent's own counsel, Ms Felix, is recorded as having made a submission on his behalf to the effect that it was "*inevitable*" that the inclusion of the Respondent's "*name on the Roll of Solicitors*" would be "*at an end*".

Status of the Zacaroli judgments

30. Under Rule 32(2) of the Solicitors (Disciplinary Proceedings) Rules 2019 (**"the Rules"**), each of the Zacaroli judgments is "*admissible as proof but not conclusive proof*" of the facts on which the judgment was based. In other words, they each constitute *prima facie* evidence (i.e. evidence disclosing a case to answer) in support of the facts on which each judgment is based.

31. While not binding and focused on a predecessor rule, the Tribunal's judgment in SRA v Advani 10865-2011 considers relevant authorities from the Court of Appeal and the Divisional Court and provides a persuasive indication as to how the current rule is to be applied:[6]

[5] [2019] EWHC 2264 (Ch)

[6] The Tribunal's decision in Advani was very recently considered by Lang J in Hetherington v SRA [2022] EWHC 2722 (Admin) at [76]-[80], where one of the Grounds of Appeal was that the Tribunal had failed properly to apply Rule 32 of the 2019 Rules to the findings of fact (favourable to the appellants) made by a circuit judge in the County Court. In dismissing the appeal, Lang J did not suggest that Advani had been wrongly decided but distinguished it from the case before her on the facts, noting that "*Unlike the case of Advani, the burden of proof did not shift; it rested on the* [SRA] *in respect of all issues*" (emphasis added); and the SRA had discharged its burden.

"58.31 Mr Cunningham [QC] *submitted that five principles and guidelines could be extracted from Choudry*[7] *and Constantinides.*[8]

> *(1) That Rule 30 and, a fortiori, its successor Rule 15 (4), provides that prior judgments can stand as evidence, or proof, of their findings;*
>
> *(2) A prior judgment can be given determinative weight by the Tribunal, as happened with the Court of Appeal's approval in Choudry;*
>
> *(3) Whether it is appropriate to give determinative weight to a prior judgment will depend on the "particular circumstances" of the given Tribunal case, per Moses LJ in Constantinides;*
>
> *(4) Factors which should incline the Tribunal to give determinative weight to a prior judgment include:*
>
> > *(a) whether the respondent solicitor "played a full part at the hearing that gave rise to the [prior] judgment", as per Choudry; and*
> >
> > *(b) whether the factual allegations made in the proceedings leading to the prior judgment were sufficiently similar to those faced by the respondent solicitor in the Tribunal; per Moses LJ in Constantinides;*
>
> *(5) Where a prior judgment is admitted under the rules, the probative burden shifts to the respondent solicitor, per Lord Phillips that it is for the solicitor "... to discharge the burden upon him showing that the [prior] judgment was not correct" ...*

"58.84 The Tribunal was satisfied that the prior judgments of Hamblen J and Sir Raymond Jack stood as evidence and proof of the Honourable Judges' findings. The Tribunal had had regard to Rule 15 (4) of the Solicitors (Disciplinary Proceedings) Rules 2007 and the preceding Rule 30 of the 1994 Rules and the authorities cited of Choudry and Constantinides; it accepted that a prior judgment could be given determinative weight subject to the "particular circumstances" of the given case.

"58.85 In the particular circumstances of this case and this Respondent, the Tribunal found that it could give determinative weight to the two prior judgments. Firstly, since the Respondent had played a full part at both of the hearings which gave rise to the two prior judgments; at the first hearing her evidence was put to witnesses in cross-examination and she had been represented by leading counsel and in the second hearing, she had given evidence in person, which had not been accepted by Sir Raymond. Secondly, that the factual allegations made in the proceedings leading to the two prior judgments were sufficiently similar to those now faced by the Respondent before the Tribunal.

"58.86 The Tribunal found that the burden had shifted to the Respondent to show that both of the prior judgments were wrong and she had failed to discharge that burden."

32. In short, the Tribunal is not bound by the findings and conclusions of Zacaroli J but can afford them considerable weight and due deference in circumstances where the learned judge applied the criminal

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[7] Choudry v Law Society [2001] EWCA Civ 1665
[8] Constantinides v Law Society [2006] EWHC 725 (Admin)

standard of proof (whereas the Tribunal applies the civil standard). There is a rebuttable presumption that the learned judge's findings and conclusions were correct, including his (implicit) findings of dishonesty, addressed further below. Theoretically, it would be open to the Respondent to seek to rebut that presumption; however, in order to do so, he would have to give evidence and submit to cross-examination (see SRA v Sheikh [2020] EWHC 3062 (Admin) per Davis LJ at [62]).

33. While ultimately for the Tribunal to determine, it is agreed that, by entering into this Agreed Outcome Proposal and making the admissions herein, the Respondent is accepting not only that the SRA has raised a *prima facie* case in respect of the facts and matters set out in the Rule 12 Statement but that its case has been fully established.

Allegation (I) – contempt of court

34. In contempt of court, the Respondent failed to comply with his obligations under the Order of 15 March 2019 and the Order of 18 March 2019. He therefore failed to achieve the following mandatory 'Outcomes' under the 2011 Code:

    34.1. "*O(5.3) you comply with court orders which place obligations on you*";

    34.2. "*O(5.4) you do not place yourself in contempt of court*";

    34.3. "*O(11.2) you perform all undertakings given by you within an agreed timescale or within a reasonable amount of time*".

35. When the Respondent gave his undertakings to the Court through leading counsel on 15 March 2019, he knew that it would be impossible for him to comply with them (if understood in the sense that he had intended them to be understood). The Respondent therefore additionally failed to achieve Outcome 5.1 ("*you do not attempt to deceive or knowingly or recklessly mislead the court*") and Outcome 5.2 ("*you are not complicit in another person deceiving or misleading the court*").[9]

36. The Respondent's deliberate contempt of court amounted to a serious failure to uphold the proper administration of justice, contrary to Principle 1. It also constituted a failure to act with integrity (as defined in Wingate v Solicitors Regulation Authority [2018] EWCA Civ 366). A solicitor acting with integrity would not have given undertakings he knew he was unable to perform, would have scrupulously performed any undertakings given and would have punctiliously complied with orders of the Court. He would not have misled the Court (including by omission) either through unwitting counsel or in sworn affidavits.

37. The Respondent's behaviour (i.e. his contempt) was not in the best interests of Discovery Land (on the contrary). He therefore breached Principle 4. As to Principle 6 ("*you must ... behave in a way that maintains the trust the public places in you and in the provision of legal services*"), the Respondent's conduct would plainly cause huge damage to public trust in himself and the provision of legal services. Members of the public do not expect solicitors to dissipate their clients' assets and then fail to comply

[9] For the avoidance of doubt, there is no suggestion whatsoever that leading counsel was in any way complicit in or responsible for the Respondent's misleading of the court.

with formal undertakings accepted and court orders granted to trace such funds. As officers of the court, solicitors are rightly expected to adhere to high standards of probity and trustworthiness: Bolton v Law Society [1994] 1 WLR 512.

38. The Respondent's contempt of court as described above was a clear breach of Principle 7 ("*you must ... comply with your legal and regulatory obligations*"). Because the effect of the contempt was such as to delay and hinder tracing of client monies including the Unused/ Surplus Funds it was also a breach of Principle 10 ("*you must ... protect client money and assets*").

Dishonesty in relation to allegation (I)

39. It is agreed that the test for dishonesty is the objective test confirmed by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67 at [62] and [74].

40. Zacaroli J ascertained and closely analysed the Respondent's state of mind both before and after giving the undertakings recorded in the Order of 15 March 2019, including by drawing adverse inferences from his failure to make himself available for cross-examination (despite having been warned that adverse inferences might be drawn against him in consequence).

41. The judge did not directly use the word "*dishonest*" in relation to the Respondent; but he did make several findings – to the criminal standard of proof – which are clearly tantamount to findings of dishonesty. For example, at paragraph 138, the judge records the Respondent having made a representation to the Court to the effect "*that the Surplus Funds were held in the Hambros (or some other) account for the benefit of EAML (something he admitted on the following Monday was not true)*". He went on to find that "*Had* [the Respondent] *revealed the truth (that the funds had been paid away to EFL and loaned to borrowers 1 and 2 long ago then his excuses for the delay in payment over the preceding months would have been revealed as lies, and there would have been no possible way of avoiding a freezing injunction.*"

42. It is clear from *inter alia* paragraphs 16-27, 30-31, 40-42, 50, 64, 65-82, 90-95 and 125-140 of the First Zacaroli Judgment, that the Respondent had deliberately and repeatedly given false and misleading information (or deliberately failed to provide information that he knew he was obliged to provide), both to those acting for Discovery Land and to the Court, including by way of sworn affidavit. These are quite exceptionally serious findings against a solicitor and an officer of the Court. While the Tribunal is not bound by them, there is a rebuttable presumption that the judge's implicit findings of dishonesty made to the criminal standard are correct and indeed the Respondent no longer seeks to rebut that presumption.

43. Should the Tribunal accept that the Respondent's admissions to dishonesty are properly made, strictly the Tribunal will not need to go on to consider the SRA's alternative case of recklessness, as pleaded in paragraphs 3 and 37-39 of the Rule 12 Statement. That said, and for completeness, it will be noted that the judge did make express findings of recklessness against the Respondent, which go hand in hand with his implied findings of dishonesty:

> "*[140] I... accept that Mr Jones hoped that he could persuade either the other client or Mr Brown to provide the necessary funds. That, however, provides no defence to a claim to enforce the*

undertakings by contempt proceedings. It is recklessness of a greater amount than that of Mr Thompson in the Citadel case. Paraphrasing the words of Judge LJ, Mr Jones should not expect to be excused from the consequences of non-compliance if he deliberately elected to conceal that the performance of the undertaking or the orders was dependent on whether one or other third party would be willing to provide funding."

Allegation (II) – conflict of interest

44. The allegation that the Respondent had acted for Discovery Land in circumstances giving rise to one or more conflicts of interest was initially raised by Gibson Dunn in open correspondence and was developed in more detail in the affidavits of Sacha Harber-Kelly MBE. The key points are as follows:

    44.1. The Respondent had advised Discovery Land that Taymouth Castle should be purchased through EAML. This was ostensibly in order to protect the identity of the buyer, Mr DeJoria, who had been involved in previous, unsuccessful attempts to buy the castle at a much higher price.

    44.2. EAML was a subsidiary of the Esquiline Group of UK companies and ultimately controlled by part of the Jirehouse Private Foundation which was beneficially owned by the Respondent and two close relatives.

    44.3. EAML was controlled by the Respondent at all material times and he was its agent. Discovery Land did not own or control EAML, which was not regulated by the SRA.

    44.4. The proposed transaction was structured so that EAML would borrow money from Discovery Land (i.e. Discovery Land was lending money to EAML) and then EAML would be the counterparty to the contract to purchase the property. Then, EAML would sub-sell the castle to The River Tay Castle LLP (to all intents and purposes a Discovery Land entity). Crucially, EAML was the entity to enter the contract and then complete the transaction. EAML was not a Discovery Land company; it was the Respondent's vehicle.

    44.5. That presented both a client conflict as between the interests of Discovery Land (as lender) and EAML (as borrower) and an own interest conflict, in that the Respondent had an interest in EAML. An own interest conflict is of course incapable of being waived – the prohibition is absolute. While a client conflict may be waived provided that the conditions in either Outcomes 3.6 or 3.7 are present, here they were not. The nature of the resulting conflict was vividly captured by Mr Levey of counsel in submissions made on behalf of Discovery Land before Nugee J on 13 March 2019 in this way:

        "*So* [the Respondent's] *telling us that EAML is effectively our vehicle. And your Lordship will have seen this, it's upfront in our skeleton argument because it seems to me to be quite a striking feature. If that's really what was meant to be going on here, we're now in litigation with our own SPV [special purpose vehicle] ... And that was all set up by Mr Jones. He set this structure up, so he set us up into a position where we now find ourselves in conflict with our own SPV*".

44.6. The inherent conflicts are also strikingly illustrated by a deed of partial novation, assignment and transfer dated 31 December 2018, whereby Jirehouse purported to release itself from its own undertaking to return the Unused/ Surplus Funds.

45. Acting in the face of such conflicts constituted a clear and serious failure to achieve both of Outcomes 3.4 ("*you do not act if there is an own interest conflict or a significant risk of an own interest conflict*") and 3.5 ("*you do not act if there is a client conflict, or a significant risk of a client conflict, unless the circumstances set out in Outcomes 3.6 or 3.7 apply*"). The Respondent therefore breached Principle 7.

46. In so acting, the Respondent compromised his independence contrary to Principle 3, in that he could not and did not discharge his fiduciary duties to act with 'undivided loyalty' towards Discovery Land. This was neither in the best interests of nor a proper standard of service to Discovery Land. The Respondent therefore breached Principle 4 and Principle 5.

47. He also undermined public trust in himself and the provision of legal services, contrary to Principle 6. Members of the public rightly expect solicitors not to act in the face of client conflict (or a serious risk thereof), save as exceptionally permitted by the Code. They do not expect solicitors to act in the face of an own interest conflict (or serious risk thereof) under any circumstances. To do so is wholly inconsistent with solicitors' paramount duties of probity and trustworthiness, as described in Bolton.

48. By acting in the face of such conflicts of interest as described above, the Respondent failed to run his business effectively and in accordance with proper governance and sound financial and risk management principles. He therefore breached Principle 8.

D Non-agreed mitigation

49. The Respondent advances the following points by way of mitigation but their inclusion in this document does not amount to acceptance or endorsement of such points by the SRA:

49.1. "*The Respondent accepts that the circumstances leading up to and including the sorrowful events of March 2019, and the primary subject-matter of the SRA's case and Discovery Land's case against him, were primarily down to his own serious errors of professional judgement. He allowed Discovery Land, at the very outset, a client who was not known to the practice and with whom he had not directly confirmed instructions, to send funds to the Jirehouse client account without, in advance, anti-money laundering compliance checks having been signed off internally and instructions being confirmed in writing by Discovery Land. Rather he took instructions from a third-party property broker, Mr Anderson, an existing client of Jirehouse, who at the time had no confirmed authority to act for Discovery Land or any other person on the transaction. The Respondent fully accepts, absence these instructions in writing, the funds should have been returned to source pending conclusion of the compliance issues but, instead, under extreme pressure from Mr Anderson to not lose the deal, he allowed funds to be moved to the account of EAML, the special purchase vehicle agreed with Mr Anderson to acquire the castle, by way of loan pending the purchase of the castle and then invested pending purchase in order to keep EAML arm's length from Discovery Land in entities to which he was connected or affiliated in some way.*

49.2. *"The real and apparent conflicts arising from this arrangement should have been made clear to Discovery Land directly and approved by them in writing, absent Mr Anderson, so duties of undivided loyalty were not transgressed. The Respondent fully accepts responsibility for this and everything that then ensued when the EAML loan investments did not materialise when they should have done and improper risks taken. At any time, AML concerns aside, the Respondent could have come clean with Discovery Land as to the problems arising on the EAML loan investments and clarified his actions, rather than hoping that he could otherwise resolve the problems. As Zacaroli J remarked this was reckless and for which the Respondent did not seek to blame anyone other than himself. The Respondent accepts he tried to fix a problem that could not be immediately fixed culminating in, whatever the reasons, his conduct being very far from that which was expected of him under the SRA rules.*

49.3. *"Prior to the catastrophic events of 2018 and 2019, the Jirehouse practices were well-managed, had impeccable professional and regulatory records, had strong balance sheets regularly audited by BDO, the international accountancy practice, and insurance covers well in excess of the SRA regulatory minimum, of £10 million per claim and against which there had not been any prior claims by the practices. The divisions between the legal and non-legal businesses also complied with the SRA Rules and were known to insurers. The Respondent recognises and accepts that the internal controls, however, were not robust and vigorous enough to prevent the calamities of the Discovery Land transaction happening, especially where he was connected or affiliated in some way to the non-legal businesses.*

49.4. *"The consequences of the Respondent's serious errors are chilling: the intervention into the practices, staff of many years being made redundant, the fall-out affecting many clients financially and reputationally, personal bankruptcy, imprisonment for contempt and now a further term of imprisonment for fraud as well as a maximum director's disqualification order and confiscation orders. It could get no worse. The Respondent's only wish is that his acknowledgements and disciplinary sanctions will be a lesson and rebuke to others in the profession to ensure legal and non-legal business interests never conflict, that funds are never accepted by a practice unless the client is fully onboarded and instructions are in writing, permissible conflicts waived and where there is a problem to own up to it as quickly as one can. He also hopes by recognition of his serious errors that this will lead to closure for Discovery Land and routes opened to recovery of their funds.*

49.5. *"Lastly, the Respondent is now in his 60s and rather than a golden twilight to his long and impressive legal career it will be a chilling purgatory with little or no prospect of future employment, let alone service in a profession he has served faithfully and uprightly for many years."*

E Proposed sanction including explanation of why such order would be in accordance with the Tribunal's Guidance Note on Sanction

50. Subject to the Tribunal's approval, it is agreed that the Respondent should be struck off the Roll of Solicitors. Absent exceptional circumstances, this is the "*normal and necessary penalty in cases of*

dishonesty": SRA v Sharma [2010] EWHC 2022 (Admin), per Coulson J at [13]. There are no exceptional circumstances here.

F Publication of this Agreed Outcome Proposal and any judgment approving it

51. As already noted above, the Respondent understands that under Rule 25(3), "*If the Tribunal approves the Agreed Outcome Proposal in the terms proposed it must make an Order in those terms. The case must be called into an open hearing and the Tribunal must announce its decision*". Again, for the avoidance of doubt, the Respondent does not seek to object to the ordinary application of Rule 25(3) or to the publication (in the ordinary way and in line with the open justice principle) of:

    51.1. any Order made by the Tribunal;

    51.2. any Judgment of the Tribunal approving and annexing this Agreed Outcome Proposal.

G Costs

52. Subject to the Respondent's agreement to and the Tribunal's approval of this Agreed Outcome Proposal, it is agreed that there shall be no order as to costs. The SRA has carefully considered the Respondent's financial position and is satisfied that no order for costs is fair, just and reasonable in all the circumstances of this case.

Signed: Mark Rogers 28.11.22 ..... Stephen David Jones 2022.11.26 16:54:41 .....

On behalf of the SRA Stephen David Jones

Dated:

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No: 12312-2022**

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

STEPHEN DAVID JONES

Respondent

SCHEDULE 1

No. T20210408

INDICTMENT

IN THE CROWN COURT AT SOUTHWARK

DISCOVERY LAND COMPANY - v - STEPHEN JONES

STEPHEN JONES is charged as follows:

Count 1

STATEMENT OF OFFENCE

FRAUD, contrary to s.4 of the Fraud Act 2006.

PARTICULARS OF OFFENCE

STEPHEN JONES on or after the 13th day of April 2018 dishonestly and intending thereby to make a gain for himself or another, abused his position as solicitor to Discovery Land Company LLC (DLC), in which he was expected to safeguard or not to act against the financial interests of DLC, by rendering unavailable to DLC $14,050,000 transferred on its behalf by Taymouth Castle DLC LLP to the Jirehouse Solicitors Client Account for the purchase of Taymouth Castle, in breach of s.4 of the Fraud Act 2006.

Count 2

STATEMENT OF OFFENCE

FRAUD, contrary to s.4 of the Fraud Act 2006.

PARTICULARS OF OFFENCE

STEPHEN JONES on or after the 13th day of November 2018 dishonestly and intending thereby to make a gain for himself or another, abused his position as solicitor to Discovery Land Company LLC (DLC), in which he was expected to safeguard or not to act against the financial interests of DLC, by rendering unavailable to DLC $2,000,000 transferred by Taymouth Castle DLC LLP and John Paul DeJoria to the Jirehouse Solicitors Client Account for the purchase of Taymouth Castle, in breach of s.4 of the Fraud Act 2006.

Count 3

STATEMENT OF OFFENCE

FRAUD, contrary to s.4 of the Fraud Act 2006.

PARTICULARS OF OFFENCE

STEPHEN JONES on or about the 14th day of February 2019 dishonestly and intending thereby to make a gain for himself or another, abused his position as solicitor to Discovery Land Company LLC (DLC), in which he was expected to safeguard or not to act against the financial interests of DLC, caused a charge to be registered over Taymouth Castle in favour of Dragonfly Property Finance in a sum of approximately £5,000,000 without DLC's knowledge or consent in breach of s.4 of the Fraud Act 2006.

Officer of the Court