SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12329-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

PAUL JEROME FITTON Respondent

Before:

Mr P Jones (in the chair)
Ms A E Banks
Dr S Bown

Date of Hearing: 20 June 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 the Respondent were that whilst in practice as a solicitor at McHale & Co ("the Firm"):

1.1 On 14 June 2019, he caused or allowed a defence to be filed with the Central London County Court, which he ought to have known was factually incorrect and misleading, in that it stated that the lay client had liability for the sums claimed when this was not the case, and in doing so he thereby breached any or all of Principles 1 and 6 of the SRA Principles 2011 ("the Principles"); and

1.2 Between 14 June 2019 and 17 November 2019, having been notified that the defence was factually incorrect and misleading, he failed to notify the Court of the same and/or otherwise failed to apply to withdraw or amend the defence, and in doing so he thereby breached any or all of Principles 1 and 6 of the Principles and failed to achieve Outcome 5.6 of the SRA Code of Conduct 2011.

The relevant Principles and Outcome

2. *Principle 1: You must uphold the rule of law and the proper administration of justice;*

Principle 6 You must behave in a way that maintains the trust the public places in you and in the provision of legal services;

Outcome 5.6 You comply with your duties to the court.

Admissions

3. The Respondent admitted the above allegations.

Documents

4. The Tribunal considered all the documents contained within an electronic bundle prepared and agreed by the parties.

Background

5. The Respondent was admitted to the Roll in May 2013. At the date of the misconduct, he held a practising certificate free from conditions and continues to do so. He is employed as a solicitor at McHale & Co Solicitors.

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

6. 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.

7. The proposed sanction was that the Respondent pay a fine of £7,501.

Findings of Fact and Law

8. The SRA 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.

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

10. The Tribunal considered the Guidance Note on Sanction (10th Edition/June 2022) ("the Sanctions Guidance"). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

11. The admitted conduct was serious misconduct. The Respondent had misled the Court when he should have been very clear that the firm, rather than the client, was liable for Counsel's fees. The Respondent failed to remedy the position when the matter was raised with him and had involved a trainee solicitor with the matter. The conduct undermined trust in the profession. In mitigation, there was no allegation that the Respondent acted with a lack of integrity or dishonestly, and he had made full admissions.

12. The Tribunal considered that the appropriate sanction in this matter was a financial penalty falling within Level 3 of the Indicative Fine Bands set out in the Sanctions Guidance. The parties proposed a fine in the sum of £7,501. The Tribunal, having determined that the proposed sanction was appropriate and proportionate, granted the application for matters to be resolved by way of the Agreed Outcome.

Costs

13. The parties agreed that the Respondent should pay costs in the sum of £10,000. The Tribunal determined that the agreed amount was reasonable and proportionate. Accordingly, the Tribunal ordered that the Respondent pay costs in the agreed sum.

Statement of Full Order

14. The Tribunal ORDERED that the Respondent, Paul Jerome Fitton, solicitor, do pay a fine of £7,501, 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 £10,000.

Dated this 29th day of June 2022
On behalf of the Tribunal

P Jones
Chair

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

Case No: 12329-2022

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

B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

PAUL JEROME FITTON

Respondent

AGREED STATEMENT OF FACTS AND OUTCOME

Introduction

By a statement made by Hannah Pilkington on behalf of the Applicant, the Solicitors Regulation Authority Limited ("the SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 29 April 2022, the SRA brings proceedings before the Tribunal making allegations of misconduct against the Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement.

Admissions

The Respondent admits that, while in practice as a Solicitor at McHale & Co ("the Firm"):

1. On 14 June 2019, he caused or allowed a defence to be filed with the Central London County Court, which he ought to have known was factually incorrect and misleading, in that it stated that the lay client had liability for the sums claimed when this was not the case, and in doing so he thereby breached any or all of Principles 1 and 6 of the SRA Principles 2011.

2. Between 14 June 2019 and 17 November 2019, having been notified that the defence was factually incorrect and misleading, he failed to notify the Court of the same and/or otherwise failed to apply to withdraw or amend the defence, and in doing so he thereby breached any or all of Principles 1 and 6 of the SRA Principles 2011 and failed to achieve any or all of Outcome 5.6 of the SRA Code of Conduct 2011.

Professional Details

3. The Respondent is a solicitor, having been admitted to the Roll on 15 May 2013.

4. At the date of the alleged misconduct the Respondent held a practising certificate free from conditions and continues to do so. He is employed as a solicitor at McHale & Co Solicitors ("the Firm").

Agreed Facts

5. The alleged misconduct came to the attention of the SRA on 10 November 2019, when Counsel, CS, made a complaint to the SRA. The complaint related to the filing and service of a defence by the Firm in civil proceedings brought by CS against the Firm in respect of unpaid fees..

6. The relevant statements in the served defence were,

   "*1. The Defendant denies it is indebted to the Claimant.*

   2. The Defendant avers that the sum claimed by the Claimant is owed to the Claimant by the Defendant's client, namely [DESL]."

7. The background to the civil proceedings was that the Firm had instructed CS to act in a matter in May 2018. The contact at the Firm for the matter was the Respondent

8. On 27 April 2018 and 15 May 2018 the Respondent agreed to the fee quotes provided. On 15 May 2018, the Respondent emailed CS's clerks and agreed to CS's fee and to chambers' terms of business which had been attached to an email from chambers clerks, received by the Respondent earlier that day.

9. The terms of business included the following in respect of "*Billing, Payment and Interest*",

   12.4 The Authorised Person must pay the Invoice within 30 days of delivery, time being of the essence, whether or not the Authorised Person has been put in funds by the Lay Client. The Invoice must be paid without any set-off (whether by reason

of a complaint made or dispute with the Barrister or otherwise), and without any deduction or withholding on account of any taxes or other charges."

10. Upon receipt of invoices in respect of the work undertaken by CS on 7, 16, 22 and 29 May 2018 (totalling £2,160 including VAT), the Firm failed to settle the invoice within the agreed timescale and ultimately did not settle it at all, resulting in a letter before action being sent to the Firm on 3 April 2019.

11. The Respondent was aware of the issue of non-payment, as he was in correspondence with CS's chambers regarding the outstanding fee.

12. On 15 May 2019, CS issued a claim in the County Court for non-payment of his fees. The Defendant was the Firm

13. . The Respondent admits that he caused or allowed a defence to be filed with the court which he ought to have known was factually incorrect and misleading and accepts that he should have notified the court of the position prior to the filing of his witness statement dated 18 November 2019. It is this which forms the basis of the admitted misconduct.

14. Ultimately, the defence was not withdrawn or amended and CS's application to strike it out was heard on 22 November 2019. It is noted that by email dated 26 June 2019 the Respondent had stated to CS's solicitor that the application to strike out the defence would not be contested, but that the position on costs would be contested. *The Respondent further refers to this email in his representations in mitigation and explanation set out at paragraphs X below. ."*The Respondent represented the Firm at that hearing, at which HHJ Roberts remarked:

    "*How disgraceful, then, that you, as an officer of the court, file a defence when there is no defence*."

15. The defence was struck out and the Firm was ordered to pay the sum claimed and the full costs sought.

<u>Allegation 1.1 – filing a defence that contained incorrect and misleading statements</u>

16. On 14 June 2019 at 8:04, following CS's claim having been issued in the County Court, the Respondent emailed CS directly and stated:

    "*I note our Defence in respect of your claim for unpaid fees is due today.*

I have chased the client for payment and I anticipate payment will be made soon. In the circumstances, could you kindly agree to extending the time to file our Defence by 28 days pursuant to CPR 15.5(1)?"

17. CS responded at 10:02, stating that he was "*wholly unsure why you have attempted to contact me in relation to this claim*" as he was legally represented and had provided different contact details on the claim form.

18. In the circumstances, at 10:45 on the same day, the Respondent renewed his request for an extension of time in which to serve the defence with AA of Firm A, the solicitor acting for CS.

19. Having not received a response from Firm AA, the defence was filed with the County Court by email timed at 13:57. The email was sent by trainee solicitor VH, with the Respondent cc'd in.

20. The Respondent then emailed a copy on AA by way of service at 13:58. The defence stated the following:

"*1. The Defendant denies it is indebted to the Claimant.*

2. The Defendant avers that the sum claimed by the Claimant is owed to the Claimant by the Defendant's client, namely [DESL].

3. The Defendant has chased payment from [DESL]. However, the same has not been forthcoming.

4. The Defendant intends to make a Part 20 Application to include its client, [DESL], as a Part 20 Claimant."

21. The defence was signed by trainee solicitor, VH and had the usual statement of truth.

22. In his representations to the Notice Recommending Referral to the Tribunal ("the Notice") dated 30 March 2021, the Respondent stated that *"[VH] prepared the defence upon his instruction. [VH] is not at fault."*

23. VH has confirmed that the Respondent instructed her to draft the defence. She recalls that this was an oral instruction and that she was briefly informed as to the basis of the defence.

24. Paragraphs 1. and 2. of the defence are inconsistent with paragraph 12.4 of the terms of business, that the Respondent agreed to with CS's clerks. In particular,

and as set out above at paragraph 9, paragraph 12.4 sets out that *"The Authorised Person must pay the Invoice within 30 days of delivery, time being of the essence, whether or not the Authorised Person has been put in funds by the Lay Client"* such that liability of payment rested with the Firm and not the lay client, and was not avoided by any failure of the lay client to place the Firm in funds. The Authorised Person is defined in the terms of business (paragraph 1.2) as being "the person who is an authorised person for the purposes of s. 18(1)(a) of the Legal Services Act 2007 and whose approved regulator under that Act is the Law Society and/or the SRA, and all successors and assignees". In this case the Authorised Person was the Firm, who became Defendant to the claim. The terms and conditions are therefore inconsistent with the assertions in the defence that the Firm was not indebted to the Claimant, and that the sum claimed by CS was owed to him by the Firm's lay client.

25. Having served the defence on AA, the Respondent followed up with a further email saying that he "*anticipated the client paying.. shortly*" and asking whether AA would "*therefore take instructions on bearing with me, until next week, I would be very grateful*."

26. At 16:29 on 14 June 2019, AA responded to the Respondent's emails and made it clear that his view was that the defence, "*potentially amounts to misleading the court and a breach of the SRA code of conduct*" because the contract was between CS and the Respondent's firm. AA asked the Respondent to alert the senior partner of the firm, MH, because he considered there to be serious conduct issues in relation to the defence. Finally, AA enquired as to whether the Respondent wished to withdraw the defence or whether it had already been served.

27. If not before, then by 16:29 noon 14 June 2019, only a matter of hours after the defence was filed, the Respondent was made aware of the inaccurate and misleading nature of the defence.

28. The Respondent was the solicitor with conduct of the matter and the defence was prepared upon his instruction. He ought to have known at the time of service that it contained inaccurate and misleading statements.

29. The Respondent responded to the email from AA less than twenty minutes later, confirming that the defence "*has been filed*" and that "*your client is therefore not at liberty to enter default judgment*". He stated that he was "*naturally, very concerned by the issues which you have raised.*" He advised that he would discuss the matter with MH and revert as soon as possible, which he anticipated being the following Monday and finally enquired as to whether payment by 21 June 2019 would be agreeable.

30. The Respondent did not revert by the following Monday and on 21 June 2019, was chased by AA for a lack of response and lack of payment. The Respondent was at a funeral on that day.

31. On 24 June 2019, the Respondent emailed AA and acknowledged in terms,

    "*Having reviewed our Defence, we accept that the Defence is inaccurate, insofar as it states that we are not indebted to your client. We did not intend to mislead the Court and, if the matter proceeded, a simple application to amend this would have addressed the point."*

32. "By email dated 26 June 2019, the Respondent wrote to CS's solicitors and said, amongst other things, in paragraph 13 of the email, *"If your client does not accept this offer, we will not contest your client's application, but will file a witness statement to deal with the above to avoid the Court making any cost order against us. We will ask the Court makes an order for costs against your client or your firm."* Such confirms the procedural position adopted by the Respondent, at that time, that he was not contesting the defence, but pursuing the position on costs.

33. Despite the acknowledgment on 24 June 2019 as set out at paragraph 31 above, the defence was not withdrawn, or amended and that conduct forms the basis of allegation 1.2.

<u>Allegation 1.2 – failed to notify the Court and/or seek to withdraw or amend the defence</u>

34. The Respondent acknowledged in an email to AA on 24 June that the defence was inaccurate. Furthermore, it had been made plain to him by AA that he considered the defence to be misleading and potentially a breach of the SRA code of conduct.

35. Despite having been advised of the misleading nature of the defence and having admitted to the same, the Respondent did not notify the Court of the same. Nor did he seek to withdraw the defence or amend it. There appears to be no evidence on the client matter file disclosed by the Firm that he was instructed by the Firm not to do so.

36. The hearing of the Claimant's application to strike out was heard on 22 November 2019. Between June and November 2019, the Respondent failed to correct the defence that had been filed, that he knew at that stage was factually incorrect and misleading, or the court record until the filing of his witness statement dated 18 November 2019 as addressed below.

37. On 18 November 2019, the Respondent filed a witness statement in preparation for the hearing. Within the witness statement, the Respondent stated at paragraph 11,

"*The purpose of filing and serving the Defence was to avoid judgment being entered against the Defendant. If judgment was entered against the Defendant, it would have had a very negative effect upon the Defendant's credit rating which, in turn may have resulted in the Defendant's bank facilities being affected which could have resulted, or contributed to the loss of jobs. In hindsight, I should have entered an admission*."

38. The statement was filed three days before the substantive hearing. HHJ Roberts made comment on the "*disgraceful*" conduct of the Respondent in filing the defence when in fact there was no defence at all and went on to Order full costs against the Respondent.

Mitigation

39. It is recognised that the Respondent has fully engaged with the Applicant and its investigation, and has made admissions.

40. The following mitigation is put forward by the Respondent but is not endorsed by the SRA:

41. 1 The Respondent offers his genuine and sincere apology for that which occurred

41.2 The Respondent was admitted as a solicitor on 15 May 2013 and other than matters the subject of these proceedings, has an exemplary and unblemished disciplinary and regulatory history.

41.3 Nothing adverse is known to the Respondent's detriment since the facts giving rise to these proceedings, that is to say, the filing of the defence of 14 June 2019, nearly 3 years ago.

42. *By way of explanation and mitigation rather than excuse, the Respondent did inform CS's solicitors by email dated 26 June 2019 that the application to strike out the Defence would not be contested, thereby admitting and acknowledging the inaccuracy of the document.* The Respondent misunderstood the procedural position. The Respondent had made the position of not contesting the defence clear to CS's solicitors on 26 June 2019 and the Court in advance.

43. *He accepts that he failed to notify the Court until the filing of his witness statement dated 18 November 2019 on the basis he did not, at the time, recognise the need to inform the Court in advance of the hearing, having informed CS's solicitors that he would not be contesting the defence by email dated 26th June 2019. The Respondent accepts, informed with the benefit of hindsight and reflection that his failure to inform the Court in a more timely manner was incorrect, which he very much regrets and for which he offers his sincere apology*

44. Factors mitigating the seriousness of the identified breach include, but are not limited:
    - There is no allegation of dishonesty,
    - There is no allegation of acting with a lack of integrity,
    - The Respondent has co-operated with the SRA investigation to include making admissions prior to the decision to refer his conduct to the SDT.
    - Genuine insight into his failings, to include open and frank admissions within the SDT proceedings as set out in this document.
    - Remorse and acceptance as to the errors he made for which the Respondent offers his sincere and genuine apology.

Penalties proposed

45. The Respondent agrees:
    45.1. To pay a financial penalty in the sum of £7,501.00 ; and
    45.2. To pay costs to the SRA agreed in the sum of £10,000.00.

46. The sanctions outlined above are considered to be in accordance with the Tribunal's sanctioning guidance (9th edition) taking into account the guidance set out in Fuglers and Others v Solicitors Regulation Authority [2014] EWHC 179 (as per Popplewell J) and as set out in the guidance at paragraph 8. Reference is made to the points of mitigation raised by the Respondent above.

47. The misconduct giving rise to the allegations is more serious.

48. This assessment takes into account that the level of the Respondent's culpability in respect of the allegations above is more serious. The Respondent was in direct control and had responsibility for the matter and was an experienced solicitor. It appears at the time of settling the defence the Respondent was under time pressures, and as such the misconduct does not appear to have been planned. The Respondent did not act in breach of a position of trust and did not deliberately or otherwise mislead his regulator.

49. As to the harm caused, the admitted failures and breaches of the Code and Principles delayed the Claimant from obtaining judgment and risked misleading the Court. His actions led to judicial criticism and therefore was likely to cause harm to the reputation of the profession.

50. As to the principal factors which aggravate the seriousness of the misconduct:
    50.1. The misconduct in relation to allegation 1.2 did take place over a period of time;
    50.2. The Respondent ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

51. The Tribunal is referred to the factors raised in mitigation by the Respondent above. Factors that mitigate the seriousness of the misconduct are acknowledged to include
    51.1. The Respondent has made open and frank admissions, indicated genuine insight, and has cooperated fully with the SRA;
    51.2. There is no allegation of the Respondent acting with a lack of integrity or dishonesty.

52. The Parties consider that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter which is in the public interest.

Signed: PF

Paul Fitton

Dated:

Signed:

Hannah Pilkington, Capsticks Solicitors LLP

On behalf of the Solicitors Regulation Authority Limited

Dated: 16 June 2022