SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12500-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

SAMANTHA ANNE LEE First Respondent

HENRY CHARLES ADRIAN SYMS Second Respondent

Before:

Ms T Cullen (in the chair)
Ms L Murphy
Ms J Rowe

Date of Hearing: 28 September 2023

Appearances

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

JUDGMENT ON AN AGREED OUTCOME IN RELATION TO THE SECOND RESPONDENT

Allegations

1. The allegations against the Second Respondent, Mr Syms, made by the Solicitors Regulation Authority Ltd (“SRA”) were that while in practice as a director of Lee Syms Ltd (“the firm”)

1.1 Between 10 September 2015 and 25 November 2019, upon receiving a Statutory Monthly Payment ('SMP") from the Legal Aid Agency ('LAA') on settled cases, he failed to ensure that unpaid professional disbursements were paid, or the equivalent sum transferred to client account within 28 days and instead allowed the monies to be used for the running of the firm, thereby creating a minimum cash shortage of £263,508.45. In doing so he breached any or all of Rules 6.1 and 19.2 of the SRA Accounts Rules 2011(“the SAR”), Rule 8.5 (e) of the SRA Authorisation Rules 2011 and Principles 2, 6, 8 and 10 of the SRA Principles 2011 (“the 2011 Principles”).

1.2 Between 2015 and 2019 he failed to remedy breaches of the SAR’s as identified in Qualified Accountant's Reports. In doing so he breached any or all of Rules 6.1, 7.1 and 7.2 of the SAR, Rule 8.5 (e) of the SRA Authorisation Rules 2011 and Principles 8 and 10 of the 2011 Principles.

1.3 Between 25 November 2019 and 27 November 2020 upon receiving an SMP from the Legal Aid Agency on settled cases, he failed to ensure that unpaid professional disbursements were paid and instead allowed the monies received to be used for the running of the Firm. In doing so he breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019 (“the 2019 Principles”).

2. Dishonesty was alleged as an aggravating feature in respect of Mr Sym's conduct in relation to allegation 1.1. In the alternative to dishonesty, recklessness was alleged. Neither dishonesty nor recklessness were essential ingredients in proving allegation 1.1

3. Dishonesty was also alleged in respect of allegation 1.3 as a breach of Principle 4 of the 2019 Principles 2019. In the alternative to dishonesty, recklessness was alleged in respect of allegation 1.3.

4. Mr Syms admitted allegations 1.1, 1.2 and 1.3 and admitted that he was reckless in respect of allegations 1.1 and 1.3. Mr Syms accepted that he should be struck off the roll of solicitors.

5. In light of the proposed sanction, the Applicant submitted that it was not proportionate to proceed with its primary case that Mr Syms’ conduct was dishonest in respect of allegations 1.1 and 1.3.

Documents

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

- Rule 12 Statement and Exhibit IJ1 dated 14 September 2023
- Statement of Agreed Facts and Proposed Outcome in respect of Mr Syms dated 18 September 2023.

Background

7. Mr Syms was a solicitor having been admitted to the Roll in October 1996. At all material times, Mr Syms (together with the First Respondent Ms Lee) was a director and owner of Lee Syms Limited ("the firm").

8. The firm was authorised as a recognised body by the Applicant on 10 September 2015. The firm derived from an existing practice, Swain & Co Solicitors LLP, where Mr Syms had been a director together with other solicitors. The firm continued to trade under the style of Swain & Co.

9. The firm went into administration on 27 November 2020 and was bought by Young & Co in a pre-pack sale on the same date. Mr Syms was subsequently employed by Young & Co. Mr Syms was currently unemployed.

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

10. The parties invited the Tribunal to deal with the Allegations against Mr Syms in accordance with the Statement of Agreed Facts and Proposed Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

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

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

13. The Tribunal considered its Guidance Note on Sanction (10th Edition/June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. Mr Syms knew, by 2021 at the latest, that the way the firm had dealt with disbursements was improper and was a striking off issue. He had seen the unpaid disbursements reports at regular intervals and was aware that in excess of £600,000 was owed. Mr Syms had used client money to fund the firm and to make payments to himself. Accordingly, Mr Syms had improperly used client money for his own benefit as well as that of the firm. Despite knowing that such conduct was in breach of the SAR, Mr Syms took no action to remedy the breaches.

14. Mr Syms had caused significant harm to both the reputation of the profession and to the third-party suppliers. At the date of the firm's administration the third-party suppliers were owed over £647,000. The Tribunal determined that his conduct had been reckless in the extreme. The conduct had continued over a five year period and had led to shortages on the client account. The Tribunal determined that the use of client monies by Mr Syms was in material breach of his obligations as a solicitor.

15. Mr Syms' conduct was aggravated by his admitted reckless conduct, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

> "34. There is harm to the public every time that a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

16. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

17. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved the improper use of a significant amount of client money, the only appropriate and proportionate sanction was to strike Mr Syms off the Roll of Solicitors. Accordingly, the Tribunal agreed the sanction proposed by the parties; namely to strike Mr Syms off the Roll.

18. The Tribunal determined that given Mr Syms admissions and the proposed sanction, it was neither proportionate nor in the interests of justice for the allegations of dishonesty to be pursued. Accordingly, the Tribunal approved the withdrawal of those allegations.

Costs

19. The parties agreed costs in the sum of £6,582.88. The Tribunal found the agreed sum to be both reasonable and proportionate in the circumstances. Accordingly, the Tribunal ordered Mr Syms to pay costs in the agreed sum.

Statement of Full Order

20. The Tribunal Ordered that the Respondent, HENRY CHARLES ADRIAN SYMS, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,582.88.

Dated this 18TH day of October 2023
On behalf of the Tribunal

T Cullen

JUDGMENT FILED WITH THE LAW SOCIETY
18 OCT 2023

T Cullen
Chair

IN THE MATTER OF THE SOLICITORS ACT 1974 **Case No: 12500-2023**

And

IN THE MATTER OF SAMANTHA ANNE LEE

And

IN THE MATTER OF HENRY CHARLES ADRIAN SYMS

BETWEEN:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

And

SAMANTHA ANNE LEE

First Respondent

And

HENRY CHARLES ADRIAN SYMS

Second Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME IN RESPECT OF THE SECOND RESPONDENT

1. By its application dated 14 September 2023 which included a statement pursuant to Rule 12 Solicitors (Disciplinary Proceedings) Rules 2019, the Solicitors Regulation Authority Limited ("SRA") brought proceedings before the SDT against the First and Second Respondents.

ALLEGATIONS

2. The allegations against the Second Respondent are:

   1.1 Between 10 September 2015 and 25 November 2019, upon receiving a Statutory Monthly Payment ('SMP') from the Legal Aid Agency ('LAA') on settled cases, he failed to ensure that unpaid professional disbursements were paid, or the equivalent sum transferred to client account within 28 days and instead allowed the monies to be used for the running of the firm, thereby creating a minimum cash shortage of £263,508.45. In doing so he breached any or all of Rules 6.1 and 19.2 of the SRA Accounts Rules 2011and Principles 2, 6, 8 and 10 of the SRA Principles 2011.

1.2 Between 2015 and 2019 he failed to remedy breaches of the SRA Accounts Rules 2011 as identified in Qualified Accountant's Reports.
In doing so he breached any or all of Rules 6.1, 7.1 and 7.2 of the SRA Accounts Rules 2011 and Principles 8 and 10 of the SRA Principles 2011.

1.3 Between 25 November 2019 and 27 November 2020 upon receiving an SMP from the Legal Aid Agency on settled cases, he failed to ensure that unpaid professional disbursements were paid and instead allowed the monies received to be used for the running of the Firm.

In doing so he breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019.

3. Dishonesty is alleged as an aggravating feature in respect of the Second Respondent's conduct in relation to allegation 1.1. In the alternative to dishonesty, recklessness is alleged. Neither dishonesty nor recklessness is an essential ingredient in proving allegation 1.1

4. Dishonesty is also alleged in respect of allegation 1.3 as a breach of Principle 4 of the SRA Principles 2019. In the alternative to dishonesty, recklessness is alleged in respect of allegation 1.3.

5. A separate application for an agreed outcome has been made in respect of the First Respondent.

ADMISSIONS & SANCTION

6. The Second Respondent admits allegation 1.1, 1.2 and 1.3 and admits that he was reckless in respect of allegation 1.1 and 1.3. The Second Respondent accepts that he should be struck off the roll of solicitors.

7. In light of the proposed sanction, the Applicant submits that it is not proportionate to proceed with its primary case that the Second Respondent's conduct was dishonest in respect of allegations 1.1 and 1.3.

BACKGROUND

8. The Second Respondent was admitted to the Roll of Solicitors on the 15 October 1996.

9. At all relevant times to this application the Second Respondent, together with the First Respondent were directors and owners of Lee Syms Limited ("the firm").

10. The firm was authorised as a recognised body by the Applicant on 10 September 2015. The firm derived from an existing practice, Swain & Co Solicitors LLP, where he had been

a director together with other solicitors. The firm continued to trade under the style of Swain & Co.

11. The firm went into administration on 27 November 2020 and was bought by Young & Co in a pre-pack sale on the same date. The Second Respondent was subsequently employed by Young & Co until recently and is currently unemployed. .

<u>The facts and matters relied upon in support of the allegations</u>

<u>Background</u>

12. The firm went into administration on 27 November 2020 owing 38 company creditors a total of £1,149,423.02. This sum did not include £647,952.07 of disbursement money that the firm had received from the LAA and not paid to third party suppliers, such as experts and counsel.

13. The company creditors included Barclays Bank plc who the firm owed £403,659.66 and HMRC who the firm owed £500,213,00.

14. An insolvency practitioner, Sean Bucknell, together with others at Quantuma Advisory Limited were appointed as the firm's Joint Administrators. In their Notice of proposals dated 1 December 2020, the following was included by way of background to the company:

"The company had historically been profit making. Net profit for the year ending September 2019 was £133,813 with retained earnings of £108,200. However, the Company's management accounts for 9 months to 30 June 2020 reflect a new loss for the period of £62,000. This is directly correlated to sales being £260,000 below forecast….as a result of Covid 19, the Company has seen a downturn in trading."

15. One of the events leading to the Administration, as set out in the Joint Administrator's proposal was described as the following:

"*3.4 In addition, management has indicated that there appear to be a number of legacy issues from the acquisition from the previous owner. These relate to disbursements on Legal Aid files where disbursements appear to have been recovered but not paid to disbursement providers. This could represent a breach of the Solicitors Accounts Rules ("SAR")."*

16. The Joint Administrators appointed Samantha Palmer of Pinsent Masons LLP to advise on legal matters relating to the administration of the firm.

Complaints by third party suppliers

17. In January and February 2021, the Applicant received separate complaints from three medical experts instructed by the firm in respect of the non-payment of their invoices for publicly funded work done under the firm's legal aid contract.

18. The medical experts complained that the firm had received monies from the LAA for invoices they had submitted but had failed to pay them. Two of the medical experts had contacted Young & Co, who declined to pay them for invoices where they had been billed and paid to the firm prior to the firm going into administration. The medical experts were not informed that the firm was entering into administration and discovered that fact after the event. Some of the medical experts had experienced delays in receiving payment for work undertaken and had previously complained to the firm about the delays.

19. The unpaid invoices of the medical experts were dated between September 2018 and September 2020 and totalled £279,092.70. Of the total amount owed to the three medical experts, £247,437,24 was owed to one expert, who following a settlement with the firm's insurers is now owed £113, 937.24.

Report by Samantha Palmer of Pinsent Masons

20. On 1 April 2021, the Applicant sent a notice of investigation to the Respondents.

21. On 7 April 2021, Samantha Palmer of Pinsent Masons sent a report to the Applicant following a meeting that she had with the Respondents on 6 April 2021. The meeting was arranged following the receipt by the Respondents of the letters from the Forensic Investigation Officer ('FIO'). The report was made pursuant to the reporting obligations on Ms Palmer and Pinsent Masons. The report referred to a conference call with the Respondents on 6 April 2021 and set out the following:

- "*During the call we were advised of serious historical breaches of the SRA Accounts Rules 2011 and SRA accounts Rules 2019 that occurred at the Firm prior to the Administration.*
- *The serious breaches relate to the way in which the former directors have used mixed LAA monies over a period in excess of 10 years…..*
- *In summary, we understand that the LAA statutory monthly payment ("SMP") which comprised mixed monies was received each month from 2009 onwards direct into the Firm's office account. Ms Lee and Mr Syms advised us that the entire SMP was then treated by the Firm as though it were office monies and available for use to fund office costs, including staff salaries, directors' remuneration and office overheads. In fact we understand the SMP also*

comprised substantial client monies, including the medical expert fees and counsels' fees which the LAA had funded as approved disbursements.

- *However, the Regulator will note that we were advised during the call with the former directors yesterday that the client monies included within the SMP were also used as office monies and this practice had continued from 2009 until the Firm entered into administration in November 2020.*
- *Ms Lee and Mr Syms made it clear that there had been systematic breaches of the SRA Accounts Rules which had continued over a period in excess of 10 years.*
- *The Regulator will note that we were advised by the former directors during our call yesterday that although the Firm's reporting accountant had qualified the Firm's SRA Accounts reports demonstrating these accounts breaches, a self-report has never been submitted by the Firm, nor have the breaches been rectified and/or client monies repatriated. We are therefore unaware of the total figure of the client account shortage, however, Mr Syms suggested on the call yesterday that it could be in the range of between GPB 600,000,00 to GBP £4,000,000.00."*

22. An attendance note of the conference call was disclosed to the Applicant with the consent of the Respondents. The following exchange between the First Respondent (who is denoted SL) and Samantha Palmer (denoted as SP) is recorded in the attendance note:

"*SP asked if it was possibly complaining creditors or clients that had started the SRA investigation or if SL knew of the reason why the SRA would be investigating? SL then started to explain that they breached the accounts rules by not transferring LAA monies to client account within the required 2 days under the 2011 rules.*

SL then went on to explain that their Accountants Reports had all been qualified on an annual basis and that LAA monies had been used for office account to keep them within the firms overdraft.

SP asked if this was a regular occurrence or had been remedied, SL said that it was a regular occurrence and had been ongoing for some time and not remedied for as long as she'd been a partner.

SL acknowledged that they had used mixed monies (including experts fees and counsels fees which had been paid by the LAA as disbursements as office monies and she would likely be struck off for this serious breach. She said she thought this was a technical Accounts Rules point but now understood they had used client monies to keep the firm going……."

Forensic Investigation

23. Following notification to the Respondents on 1 April 2021, the Applicant began a forensic investigation into the firm on 9 April 2021. Sarah Taylor, the FIO, carried out the investigation and as part of that investigation interviewed the Respondents. Ms Maskell, Forensic Investigation Manager also attended the firm.

24. On conclusion of the investigation the FIO prepared a forensic investigation report (FIR) dated 25 November 2021.

Forensic Investigation Report

25. The FIR identifies that the firm had contracts with the LAA for various areas of work and received regular payments in the form of SMPs. As of 27 November 2020, the firm had received £647,952.07 from the LAA in respect of disbursements for third party suppliers but had failed to pay their invoices.

Breakdown of receipt of disbursements totalling £647,952.07 and cash shortage

26. The disbursements received from the LAA fell between the SRA Accounts Rules 2011 and 2019.

27. As of 25 November 2019, the firm had received £263,508.25 from the LAA in the form of disbursements. This amount represented a client account shortage because the LAA disbursement money was being incorrectly retained in the firm's office account and was not paid or transferred to the firm's client account as required by the SRA Accounts Rules 2011.

28. Appended to the FIR is a schedule called '*Aged Payables Detail.'* The schedule details third party suppliers who had invoiced the firm for work done on closed matters and the payment that had been received from the LAA by the firm, as of 25 November 2019.

29. The schedule identified that as of 25 November 2019, the firm had received £263,508.45 in disbursements from the LAA on closed matters. The disbursements received by the firm relates to invoices as early as 1 February 2019 and related to over 100 third party suppliers

30. The cash shortage of £263, 508.25 had not been replaced by the Respondents at the date of the FIR. Both Respondents stated in their interviews with the FIO that they were not able to replace the cash shortage.

31. £384,443.62 was received from the LAA after the 25 November 2019 and by the date of the administration. Again, this money was retained in office account and the invoices of third-party suppliers were not paid. This, however, did not comprise a client account

shortage under the SRA Accounts Rules 2019 because there is no equivalent rule to treat LAA monies for disbursements as client money.

32. The full extent of the firm's unpaid disbursement creditors at the date of administration is identified by the 'Aged Payables Detail' report as of 27 November 2020. The report shows that the full extent of the firm's unpaid disbursement creditors as of 27 November 2020 was £647,952.07. The report also shows that there were 141 third-party suppliers that had outstanding invoices which had been billed by the firm. Billed invoices are monies that had been received from the LAA and the invoice not paid.

33. The entirety of the disbursement creditors of £647,952.07 were excluded from the administration process by the administrators and were therefore not identified by the administrators as liabilities of the firm. However, it does appear that some disbursement creditors subsequently claimed within the liquidation.

Accountant's Reports

34. The accountant's reports for the firm from 2015 onwards were all qualified because of breaches by the firm of the SRA Accounts Rules 2011.

35. The relevant accountant's reports since the firm was authorised are:

- the report for the period ending September 2016;
- the report for the period ending September 2017;
- the report for the period ending September 2018 and
- the report for the period ending 2019.

36. The firm's accountants had declared within the reports for the period ending 2016 and 2017 that they had found material breaches of the Accounts Rules and/or significant weaknesses in the firm's systems and controls for compliance with the Accounts Rules.

37. In the report for the period ending 2018, they had declared that they had found material breaches of the Accounts Rules and/or significant weakness in the firm's systems and controls for compliance with the accounts rules. The report for the period ending 2019 contained a similar declaration but instead of 'for compliance with the Accounts Rules', the declaration included 'which put client money at risk'.

38. Each accountant's report included a schedule setting out the details of the material or significant breaches of the Accounts Rules. In each schedule to the reports, the following breach was included:

"*Rule 19.2 C (i) & (ii)…..within 28 days of submitting a report to the Legal Services Commission , notifying completion of the matter or stages reached, the regular payment*

sum for unpaid professional disbursements have not been paid or moved to client account…."

The reports then indicated how many files (usually out of a sample of 10) the breach was found on and reference was made to the firm having inadequate processes in respect of the rule.

39. The First Respondent was named as COFA in all the accountant's reports.

40. The FIO asked the Second Respondent about the accountant's reports in an interview with him.

41. The FIR contains details of the discussion that took place in the interview between the FIO and the Second Respondent about the accountant's reports and the duty to remedy breaches. Below is a summary of the Second Respondent's position in respect of the accountant's reports:

- The accountant had said there was a technical breach of the rules but the second Respondent felt it was a trivial thing as he wasn't advising that the business had to be wound up.
- He couldn't recall looking at the accountant's reports.
- He didn't understand that the breaches were required to be remedied and that the business had always operated in this way and that nobody had said it was totally 'unacceptable'.

Bella Ansell witness statement

42. Bella Ansell, the firm's bookkeeper, who had been at the firm for 12 years provided the FIO with a witness statement dated 9 November 2021. Ms Ansell explained how the LAA payments worked and how the firm dealt with disbursement money received from the LAA in respect of invoices form third party suppliers. In her witness statement. Ms Ansell states:

- At the month end she would provide the office and client account reconciliation to the COFA, Ms Lee. This would also include the reports showing all disbursements outstanding and filtered billed or unbilled disbursements.
- She explained to both Ms Lee and Mr Syms that this was a breach of the SRA Accounts Rules 2011 up until 25 November 2019.
- She had discussed the accountant's reports submitted to the SRA about the continued breaches with Ms Lee and Mr Syms.

Respondent's remuneration

43. The FIO asked Samantha Palmer to obtain details of the Respondents remuneration in the 3 years preceding the administration of the firm. Sean Bucknell provided the following information to Samantha Palmer:

"*The company's records indicate that Samantha Lee and Adrian Syms were each paid £50k per annum. In the y/e 2018, the company's filed accounts indicate that a dividend of £194,800 was paid to shareholders (Samantha Lee and Adrian Syms) and for the y/e 2019 a further dividend of £74,000. As both directors are 50% shareholders it is assumed there was a 50% split between each party"*

Interviews of the second Respondent by the FIO

44. The FIR contains explanations and comments provided by the Second Respondent to the FIO in the interview. Below is a summary of relevant explanations and matters in respect of their conduct, lifted from the FIR and the interview transcripts.

Interview with Second Respondent

- He was aware of difficulties with paying disbursements when they fell due.
- He didn't realise it was a breach of the rules as that was the way the business was run.
- He discovered that was not the right way of dealing with disbursements when he spoke to Samantha Palmer in April 2021. She explained the way the firm traded was fundamentally wrong and was striking off issue.
- He didn't understand what they were doing was fundamentally wrong, he thought way they were dealing with payments from the LAA appropriately.
- They were in financial difficulties at times and would speak to the experts and explain to them the difficulties that they we were in and that's how they managed things.
- In response to a question from the FIO, that the Second Respondent didn't realise that the firm was operating in breach of the accounts rules, he said: "*So, our accountant has said that there was technical, we, we'd reported these things on our accounts annually that we, that we weren't following that particular thing, but I remember Graeme mentioning it because they, they audit the accounts, you know, and he said oh and we've had to qualify the account on, on that point, but it, it , it didn't, he was, it was almost like it was a trivial thing, that that, that…..*
- In response to a question about his understanding of qualified accountants report, he said "*Yes, so the accounts were ok, but that had to be mentioned. That was my understanding of it. Whether that means they are qualified or not, I , I don't know the technical sort of accounting language for it…*"

- Agreed that he was told that a breach had to be reported in respect of the disbursements but that he wasn't told that the breaches were so fundamental that the business had to be wound up.
- He didn't realise how significant or serious the breach of the rules was and admitted that he didn't ask for any more information about the breach or look into what the reported breach might mean.
- He accepted that there were complaints from suppliers.
- He wasn't aware of the obligation to remedy breaches until Samantha Palmer told him.
- He accepted that he saw the billed unpaid disbursement reports at regular intervals;
- In response to a question from the FIO about the reports showing a client account shortage of £610, 621.07 at February 2019, the Respondent said " *I knew we had a big problem with, with actually trying to make the business run because again we had difficulties with our revenues, particularly generated by the problems in 2018 as I've explained, so yes, that, that, it, it, I'm not saying, I'm not denying that, you know, I wasn't kept aware or informed about what was going on, it's incredibly difficult to suddenly generate £600,000 worth of cash to just discharge disbursements like that".*
- He admitted using disbursement money received from the LAA to run the office.
- He admits that they should have paid the disbursements when they fell due but they were not able to because of financial difficulties experienced by the business;
- In respect of a shortfall in monies to achieve parity with disbursements, he admitted that he knew they had a problem and that they worked really hard with their accountant to make sure that the balance was paid off.
- He admitted that looking back at the problem there was a breach clearly, but he didn't think of it that way at the time.

ALLEGATION 1.1

45. For the purposes of the SAR11, *"professional disbursement"* means the fees of counsel or other lawyers, or of a professional or other agent or expert instructed.

46. Money held or received for unpaid professional disbursements is categorised as client money according to Rule 12.2 of the SAR11.

47. In accordance with Rule 19.2 (c) of the SAR 2011 (which governs the receipt of SMPs from the LAA), within 28 days of making a report to the LAA notifying completion of a matter, the professional disbursement element of the SMP must be paid or an amount equivalent to the unpaid disbursement should be transferred to a client account.

48. In accordance with Rule 6 of the SAR11, all principals in a practice must ensure compliance with the rules by the principals themselves and by everyone employed in the practice.

49. A practice existed at the firm for several years whereby LAA monies in the form of SMP's (which contained both office and client monies in the form of professional disbursements) were retained in office account and the professional disbursement element was not paid or transferred to client account within the required 28 days.

50. Instead, the professional disbursements were retained in office account and used as office money to pay office costs, including staff salaries, directors' remuneration and office overheads. The professional disbursements were used to assist the firm's cash flow problems and kept the firm within its overdraft limit.

51. The firm received a substantial amount of client monies over the years from the LAA in the form of SMPs, which was mainly for payment of the fees of medical experts or counsel. The retention in the office account of these monies and/or the use of the monies for the running of the firm caused a shortage of funds in the client account. That shortage varied over the years, and on 5 February 2019, stood at £610,621.07. As of the 25 November 2019, the shortage totalled £263,508.45.

52. The Second Respondent delayed in paying third party suppliers, some of whom did not receive payment of their invoices for months and in some cases years, despite the firm having received the money from the LAA for payment of their invoices. Some third-party suppliers did not receive payment of the invoices at all, as the firm went into administration in November 2020 owing disbursement creditors a total of £647,952.07.

53. The Second Respondent failed to ensure that professional disbursements received in the form of SMPs were paid or transferred to client account within 28 days so breached Rule 19.2 9(c) SAR11. He allowed client money in the form of professional disbursements to remain in office account and used as office monies

54. The Second Respondent was aware of the practice of using the professional disbursement element of SMPs as office money and allowed it to continue despite knowing that it was in breach of the accounts rules. He permitted the improper use of client money for their own and for the firm's benefit. He was aware that third party suppliers were not being paid despite the firm receiving payment from the LAA for their invoices. He knew the practice was wrong. Accordingly, the Second Respondent lacked integrity[1].

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[1] It is well established that the word integrity connotes moral soundness, rectitude and a steady adherence to an ethical code., See, for example, *Hoodless & Blackwell v FSA* [2003] FSMT 007. Lack of integrity is capable of being identified as present or not by an informed tribunal by reference to the facts of a particular case,. see *Newell*

55. The Second Respondent permitted the improper practice to continue for some 4 years knowing that it was in breach of the accounts rules and that third-party suppliers were not being paid.

56. The public would expect solicitors to exercise proper stewardship over client money and as the Second Respondent failed to do so, public confidence in the Second Respondent would be undermined in breach of Principle 6 of the SRA Principles 2011.

57. The Second Respondent, by failing to ensure that professional disbursements were dealt with correctly and allowing the firm to use client money for purposes other than for which it was intended, failed to protect client money. Third party suppliers suffered a detriment because they have not been paid for their services.

58. The Second Respondent failed to run his business effectively and in accordance with proper governance and sound financial and risk management principles. He failed to ensure that He and others complied with the SAR11 and allowed the improper use of client money to take place which resulted in the firm accumulating significant debts to disbursement creditors at a time when the firm were going into administration.

Recklessness in relation to allegation 1.1

59. In allowing a practice to continue at the firm which involved the misuse of client money and allowing a huge debt to build up to disbursement creditors, the Second Respondent acted recklessly.

60. The Second Respondent's actions were reckless in accordance with the test for recklessness originally provided in **R v G [2004] 1 AC 1034** and accepted in **Brett v SRA [2014] EWHC 2974 (Admin)** and adopted by Wilkie J at [78]:

"I remind myself that the word "recklessly", in criminal statutes, is now settled as being satisfied:

"with respect to (i) a circumstance when he is aware of a risk that it exists or will exist and (ii) a result when he is aware that a risk will occur and it is, in circumstances known to him, unreasonable for him to take the risk" (See R v G [2004] 1AC 1034 Archbold para 11-51.)

I adopt that as the working definition of recklessness for the purpose of this appeal

61. The Second Respondent acted recklessly by:

Austin v SRA [2017] EWHC 411 (Admin). Lack of integrity and dishonesty are not synonymous. A person may lack integrity even though not established as being dishonest. In Wingate & Evans v SRA v Malins (2018] EWCA Civ 366, [2018] P.N.L.R. 22) the Court of Appeal held that *"integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty."*

- Failing to carry out any enquiries into the material breach of Rule 19.2 (c) ii of the SAR11 as identified in the qualified accountants reports.
- Allowing a practice at the firm involving the failure to pay professional disbursements or transfer an equivalent amount to client account to continue for 4 years in the knowledge that it was a breach of Rule 19.2 (c) ii.
- Failing to check the SAR11 in respect of the treatment of unpaid professional disbursements.
- Failing to seek regulatory advice as to whether the practice that existed at the firm was compliant with the SRA accounts rules.
- Allowing the firm to build up a debt, which as of November 2019 stood at £263,508.45, to disbursement creditors whist the firm were in financial difficulty.

62. No reasonable solicitor in the Second Respondent's position and of the same experience would have acted as he did. The significance of the SAR11 breach should have been obvious to her in light of the fact that it was recorded by the firm's accountant as a material/significant breach in the accountant's reports and bough to her attention by the firm's bookkeeper. He should have consulted the solicitors accounts rules and/or obtained advice from a regulatory specialist before deciding to continue with the practice that was in place at the firm.

63. Further no reasonable solicitor in the Second Respondent's position and of the same experience would have allowed their practice to build up such level of debt in light of the financial difficulties that the firm were in and the risk of administration. The risks of engaging in this course of action must have been obvious to the Second Respondent, having taken advice from an insolvency firm in May 2019. In particular, it must have been within his contemplation that he would potentially be unable to repay the huge debt and that the professionals concerned would suffer loss if it transpired that they were unable to repay the sums concerned.

ALLEGATION 1.2

64. In accordance with Rule 7.1 and 7.2 of the SRA11, the Second Respondent was under an obligation to rectify accounts rules breaches promptly on discovery, including the replacement of money improperly withheld or withdrawn from a client account. The duty extends to replacing client money from a principal's own resources.

65. The Second Respondent was made aware of a breach of rule 19.2(c)ii in all the qualified accountants reports that their firm received from 2016 onwards. He was aware that there was a breach of that rule because regular payments for unpaid professional

disbursements (received from the LAA as SMPs) were not being paid or moved to client account in accordance with rule 19.2(c)ii.

66. The qualified accountant's reports referred to the breaches of the rules as material or significant. Despite this, and the fact that Bela Ansell discussed the accountants reports with him and the breach of the rules, the Second Respondent did not take any action to remedy the breach of rule 19.2 (c) ii.

67. The Second Respondent did not take any action to replace the shortage in client account during any period when money was improperly retained in office account and/or used as office monies. The Second Respondent confirmed to the IO in interview that they were not able to replace the shortage in client account.

68. The Second Respondent breached Rule 7.1 and 7.2 of the SRA11 by failing to remedy the breach of Rule 19.2 (c) ii. . The Second Respondent took no action to remedy the breaches identified in the qualified accountant's reports and accordingly failed to carry out his role in the business effectively and in accordance with proper governance and sound financial risk management principles.

69. He should have been aware that there was a risk to client money but failed to take any action to rectify the breach or take any action in respect of the weaknesses in the firm's systems and controls for compliance with the accounts rules. This resulted in the improper use of client money by the firm and consequently the second Respondent failed to protect client money.

ALLEGATION 1.3

70. During the period between 25 November 2019 and 27 November 2020 the firm continued the practice of using monies received from the LAA in the form of SMPs to run the firm and continued to delay payments to third-party suppliers. Although professional disbursements were no longer defined as client money under the SRA accounts Rules 2019, that did not permit the second Respondent to treat the money as belonging to the firm and to use it for his benefit and that of the firm.

71. The Second Respondent knew that the unpaid professional disbursements were paid by the LAA for the invoices of third-party suppliers. However, he allowed the firm to misuse these funds to the detriment of third-party suppliers and for the benefit of the firm. The second Respondent allowed the firm to continue to accumulate significant debts knowing that the firm were in a precarious financial position and were looking to go into administration.

72. The Second Respondent did not notify the third-party suppliers of the imminent administration.

73. At the date of the firm's administration, it had received £647,952.07 from the LAA for the payment of disbursements on closed cases which it had failed to pay. £384,442.62 had been received between 25 November 2019 and the date the firm went into administration.

74. The Second Respondents failed to act with integrity as he continued to allow the practice of misusing LAA money for the benefit of the firm and as a consequence accruing further debts to third-party suppliers at a time when the firm was in financial difficulty and considering administration. The Second Respondent's actions damaged public trust and confidence in the legal profession. Members of the public would expect solicitors to exercise proper stewardship over public funds, something that the Second Respondent failed to do.

Recklessness in relation to allegation 1.3

75. In allowing a practice to continue at the firm which involved the misuse of public money and allowing a huge debt to build up to disbursement creditors, the Second Respondent was reckless.

76. The Second Respondent acted recklessly by:

- Treating all money received as SMPs from the LAA as money belonging to the firm.
- Receiving £384,442.62 from the LAA after 25 November 2019 and up until 27 November 2020 for the payment of third-party invoices which were instead used for the benefit of the Respondents and their firm.
- Allowing the firm to build up a debt of £647,952.07 to disbursement creditors whist the firm was in financial difficulty.

77. No reasonable solicitor in the Second Respondent's position and of the same experience would have acted as he did. He should have appreciated that public monies from the LAA for unpaid professional disbursements should have been paid to third-party suppliers and not used as money belonging to the firm.

78. Further no reasonable solicitor in the Second Respondent's position and of the same experience would have allowed their practice to build up such level of debt in light of the risk of administration. The risks of engaging in this course of action must have been obvious to the Second Respondent, having taken advice from an Insolvency firm in May 2019. In particular, it must have been within his contemplation that he would potentially be

unable to repay the huge debt and that the professionals concerned would suffer loss if it transpired that they were unable to repay the sums concerned.

MITIGATION

79. The following mitigation is advanced by the Second Respondent. It is not endorsed by the SRA:

- His understanding of how the firm dealt with the arrangements with experts and SMP monies was informed by the historical practices which the previous owner had developed. He therefore genuinely believed that this was acceptable.
- Whilst he accepts that the accountant's reports were qualified, at no time did they inform him that the arrangements in place to manage experts fees was wrong, inappropriate or a significant breach of the SRA Accounts rules. The gravity of the problem was never expressed in terms of any breach being so fundamental that the firm should cease trading or his honesty would be called into question.
- He was unaware that there was an obligation under the accounts rules to remedy breaches promptly and only discovered that when he spoke to Sam Palmer.
- He co-operated with the SRA investigation and made admissions to the allegations;

PROPOSED SANCTION

80. The proposed sanction is that the Second Respondent be struck off from the roll and that she pay a contribution to the SRA costs in the fixed sum of £6,582.88.

Explanation as to why the sanction is in accordance with the SDT's guidance note on sanction

81. The Second Respondent is highly culpable for the admitted breaches of the rules and principles. He was the joint director and owner and of the firm and was responsible for the proper management of the firm. The Second Respondent is a very experienced solicitor who at the start of the retention of the professional disbursements at her firm was some 20 years qualified.

82. Although he may have inherited an improper way of handling unpaid professional disbursements form a predecessor firm, he had a clear motivation to continue the process because of financial difficulties at his firm which included cash flow issues at which lasted many years. He had direct control over the circumstances that gave rise to the continuation of the retention of professional disbursements in office account and the improper use of the same because of her position at the firm.

83. The Second Respondent's conduct involved a breach of trust placed in him by the third-party suppliers regarding payment for their services.

84. The Second Respondent was aware or should have been aware that the practice at the firm was a serious breach of the accounts rules which required remedying. However, he failed to take any steps to investigate the breaches identified in the accountant's reports.

85. Harm was caused to the third-party suppliers who at the date of the firm's administration were owed over £647,000. This Respondent used client and public money that third-party suppliers were due for the benefit of his firm and himself. The Second Respondent should have been aware of the risk that the third-party suppliers would not receive money that they were due in the event that the firm went into administration in light of the large debts owed by the firm to the company creditors including to Barclays bank and HMRC. A total of £900,000 was owed to Barclays and HMRC as at the date of administration.

86. The following aggravating features are relevant:

- The Second Respondent's acted recklessly;
- The Second Respondent and his firm benefited from the use of client and public money;
- The misconduct continued over a period of some 5 years;
- The conduct was deliberate;
- The conduct led to a client account shortage of varying amounts and on 5 February 2019 stood at £610,621.07. The client account shortage of £263,508.45 has not been replaced.
- The Second Respondent ought reasonably to have known that unpaid professional disbursements received as part of SMPs from the LAA was client money and that to use it in the manner he did was a material breach of his obligations under the SRA Accounts Rules 2011 and the SRA Principles 2011.

87. Mitigating features of the Second Respondent's conduct includes that he co-operated with the SRA investigation and made early admissions.

88. The appropriate sanction is strike off from the roll. The Second Respondent's conduct involves an extremely serious breach of Principle 2 of the SRA Principles 2011, that is the requirement to act with integrity. Maintaining public confidence in the reputation of the profession warrants a strike off. The sanction is proportionate to the totality of the admitted acts of misconduct

Dated this 18 September 2023

Henry Charles Adrian Syms

Second Respondent

INDERJIT S JOHAL
Senior Legal Adviser
For and on behalf of the Solicitors Regulation Authority
The Cube
199 Wharfside Street
Birmingham
B1 1RN