

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12586-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

DAVID DURKIN-FINCH

Respondent

Before:

Ms A Banks (in the chair)

Mr R Nicholas

Mr B Walsh

Date of Hearing: 3 October 2024

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

The allegations against the Respondent, made by the SRA are that while in practice as a solicitor, director, COLP and COFA at EMEA Law Ltd trading as Cleverson Solicitors (“the Firm”):

Allegation 1

1. Between July 2021 and 18 October 2021 caused or allowed conveyancing transactions to be completed unsupervised by the Second Respondent, an unadmitted individual (Mr W) meaning solicitor’s undertakings were given by the unadmitted person during the course of the conveyancing transactions, when he was not authorised to do so. By doing so, the Respondent breached any or all of:

Principles 2, 5, and 7 of the SRA Principles and Paragraphs 2.1, 2.3, 4.3, 9.1 and 9.2 of the Code of Conduct for Firms (“the Code of Conduct”).

Allegation 2

2. He permitted or allowed the unadmitted person to effectively run the Firm in an unsupervised capacity. By doing so, the First Respondent breached any or all of:

Principles 2, 5, and 7 of the SRA Principles and Paragraphs 9.1 and 9.2 of the Code of Conduct

Allegation 3

3. That between 19 March 2021 and 9 January 2022 the Respondent caused or allowed significant delays to occur in registering 13 properties with HM Land Registry (“HMLR”). By doing so, he breached any or all of:

Principles 2 and 7 of the SRA Principles.

Allegation 4

4. Between 10 February 2020 and October 2021:
 - 4.1 caused or allowed a cash shortage totalling £12,912.68 to occur on the Firm’s client bank account;
 - 4.2 did not ensure month end client account reconciliations were being undertaken; and
 - 4.3 failed to submit an Accountant’s Report covering the period 31 October 2019 to 31 October 2020. By doing so, he breached any or all of:

Principles 2 and 7 of the SRA Principles and Rules 5.1, 5.2, 5.3, 6.1, 8.1(b), 8.1(c), 8.3, 12.1 of the SRA Accounts Rules (“SARs”).

Allegation 5

5. Did not set aside sufficient or any funds to meet the Firm's VAT liabilities of at least £83,803.79 which caused the Firm to become insolvent. By doing so, he breached any or all of:

Principles 2 and 7 of the SRA Principles and Paragraphs 2.1, 2.3, 2.5, 9.1 and 9.2 of the Code of Conduct.

Recklessness

6. In addition, recklessness was alleged as an aggravating feature in each of the allegations.
7. The Respondent made admissions to all the allegations including recklessness.

Documents

8. The Tribunal had before it the following documents:-
- The Form of Application dated 2 April 2024
 - Rule 12 Statement dated 2 April 2024
 - Statement of Agreed Facts and Proposed Outcome dated 2 October 2024

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.
10. The Respondent admits Allegations 1.1 to 1.4 and all associated breaches of the Principles and Code of Conduct and Rules.
11. The SRA was satisfied that the admissions and outcome do satisfy the public interest.

Factual Background

12. The facts are as set out in paragraphs 3 to 10 of the Agreed Outcome document.

Findings of Fact and Law

13. The Applicant was required to prove the allegation on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
14. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.

15. The Tribunal considered the 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.
16. The matters to which the Respondent had made admissions were evidently very serious and persisted for a long time.
17. The sale and purchase of a home is for many people an anxious and difficult time and by permitting an unadmitted person to run his firm, the Respondent had placed his clients at a significant and unnecessary extra risk. It was perhaps more by luck than judgment that no client was said to have suffered harm. The Respondent had been right to accept that his conduct had been reckless.
18. The Tribunal would have considered a much more substantial penalty were it not for the level of insight the Respondent had demonstrated upon his poor conduct and the remedial steps he had taken in removing the unadmitted person and closing the firm in an orderly way.
19. The Tribunal was therefore prepared to accept the proposed sanction as one commensurate to the circumstances and seriousness of the case and it agreed the Respondent should be suspended for 2 years and then be subject to restrictions on his practise, indefinitely, as set out below:

Costs

20. The parties agreed that the Respondent should pay costs in the sum of £6,000. The Tribunal determined that the agreed amount was reasonable and appropriate. Accordingly, the Tribunal ordered that the Respondent pay costs in the agreed sum.

21. Statement of Full Order

1. The Tribunal ORDERED that the Respondent, DAVID DURKIN-FINCH, solicitor, be suspended from practice as a solicitor for the period of 2 years to commence on the 3rd day of October 2024 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,000.00.
2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall be subject to conditions imposed by the Tribunal, indefinitely, as follows:
 - 2.1 The Respondent may not:
 - 2.1.1 Practise as a sole practitioner or sole manager or sole owner of any authorised body or recognised firm.
 - 2.1.2 Be a partner or member of a Limited Liability Partnership (LLP); Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body.

2.1.3 Be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration.

2.1.4 Work as a solicitor other than in employment approved by the SRA Ltd.

Dated this 25th day of October 2024.

On behalf of the Tribunal

A Banks

Ms A Banks

Chair

JUDGMENT FILED WITH THE LAW SOCIETY

25 OCTOBER 2024

Case Number: 12586-2024

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY LTD

Applicant

DAVID DURKIN-FINCH

First Respondent

and

MATTHEW WATERFIELD (UNADMITTED)

Second Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME FOR
DAVID DURKIN-FINCH

By its application dated 2 April 2024 and the statement made pursuant to Rule 12 (2) of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority Ltd ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making five allegations of misconduct against Mr Durkin-Finch.

The allegations

1. The allegations against Mr Durkin-Finch made by the SRA within that statement were that while in practice as a solicitor, director, COLP and COFA at EMEA Law Ltd trading as Cleveson Solicitors ("the Firm"):

Allegation one

Between July 2021 and 18 October 2021, he caused or allowed conveyancing transactions to be completed unsupervised by Mr Waterfield, an unadmitted individual meaning solicitor's undertakings were given by Mr Waterfield during the course of the conveyancing transactions, when he was not authorised to do so.

By doing so, Mr Durkin-Finch breached any or all of: Principles 2, 5, and 7 of the SRA Principles and Paragraphs 2.1, 2.3, 4.3, 9.1 and 9.2 of the Code of Conduct for Firms ("the Code of Conduct").

Allegation two

He permitted or allowed Mr Waterfield to effectively run the Firm in an unsupervised capacity.

By doing so, Mr Durkin-Finch breached any or all of: Principles 2, 5, and 7 of the SRA Principles and Paragraphs 9.1 and 9.2 of the Code of Conduct.

Allegation three

Between 19 March 2021 and 9 January 2022, he caused or allowed significant delays to occur in registering 13 properties with HM Land Registry ("HMLR").

By doing so, Mr Durkin-Finch breached any or all of: Principles 2 and 7 of the SRA Principles.

Allegation four

Between 10 February 2020 and October 2021 he:

- 4.1 caused or allowed a cash shortage totalling £12,912.68 to occur on the Firm's client bank account;
- 4.2 did not ensure month end client account reconciliations were being undertaken;
- and
- 4.3 failed to submit an Accountant's Report covering the period 31 October 2019 to 31 October 2020.

By doing so, he breached any or all of: Principles 2 and 7 of the SRA Principles and Rules 5.1, 5.2, 5.3, 6.1, 8.1(b), 8.1(c), 8.3, 12.1 of the SRA Accounts Rules ("SARs").

Allegation five

Did not set aside sufficient or any funds to meet the Firm's VAT liabilities of at least £83,803.79 which caused the Firm to become insolvent.

By doing so, Mr Durkin-Finch breached any or all of: Principles 2 and 7 of the SRA Principles and Paragraphs 2.1, 2.3, 2.5, 9.1 and 9.2 of the Code of Conduct.

Recklessness

2. In addition, recklessness was alleged as an aggravating factor with respect to each of these allegations.

Agreed Facts

3. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraph 1 of this statement, are agreed between the SRA and Mr Durkin-Finch.

4. The conduct in this matter came to the attention of the SRA on 20 September 2021 when the Mr Durkin-Finch informed the SRA that he had concerns about Tomini Legal Consultancy ("TLC"), which provided consultant fee earners to the Firm. In summary he stated that:
 - 4.1 He was introduced to TLC by the Second Respondent, Mr Matthew Waterfield, a person he had known for several years who had previously operated his own firm.
 - 4.2 Mr Waterfield was not a solicitor but was an SRA approved manager and he had agreed to provide some of the start-up capital for the business.
 - 4.3 TLC had provided two consultants to the Firm, Ms Jacqueline Tanner (a director of TLC and Mr Waterfield's mother) and Mr Waterfield

- 4.4 On 10 September 2021, Mr Durkin-Finch received a telephone call from Mr Waterfield who advised that the Firm's bank accounts had been suspended. Mr Waterfield stated that he had attended Metro Bank and was informed that three conveyancing transactions appeared to be suspicious and as a result the bank account had been suspended.
- 4.5 Mr Durkin-Finch requested access to the case management system, but Mr Waterfield refused to provide it.
- 4.6 Mr Durkin-Finch terminated his agreement with TLC and requested that all the client files were returned to him by 3pm on 21 September 2021.
5. Following the report, a forensic investigation was carried out by the SRA commencing on 14 October 2021 at the Firm's branch office. The Forensic Investigation Officer ("FIO") reviewed a selection of conveyancing files and identified a number of issues. On 20 October 2021, the FIO conducted a recorded interview with Mr Durkin-Finch. On 24 February 2022 the FIO conducted an interview with Mr Waterfield. The FIO prepared a Forensic Investigation Report ("FIR") dated 6 April 2022.

The set up of the Firm

6. Prior to the Firm's setup, Mr Waterfield was the sole director and shareholder of Centenary Law. Centenary Law went into administration in October 2019 with debts of in the sum of approximately £724,585.31. Mr Waterfield stated that, after the closure of Centenary Law, there were 200-300 active client files, which included £1.5m worth of work in progress. Mr Durkin-Finch and Mr Waterfield were acquaintances, having met when Mr Durkin-Finch attended a job interview for Centenary Law. Although he was unsuccessful, they stayed in contact.

7. Mr Waterfield's mother, Ms Tanner, was the sole director of TLC. She appointed Mr Durkin-Finch to facilitate the purchase of the Firm for £7,500. Mr Durkin-Finch was a nominee shareholder and was appointed nominee director. The shares were held on trust by Mr Durkin-Finch for Ms Tanner. Mr Waterfield was appointed to run and manage the Firm, which was a recognised body and began trading in October 2019.
8. Mr Durkin-Finch told the FIO that the initial set up of the business was that he would be the regulated individual and undertake the roles of COLP and COFA. The Firm would then become an ABS which Mr Waterfield would run. Mr Durkin-Finch was not remunerated by the Firm but stated that his recompense was assistance with website development and use of existing marketing platforms to develop the marketing of his own firm, 'Encore Legal.' Mr Waterfield set up another company, 'My Legal Consultancy' and was the sole director. It was incorporated on 24 August 2020. All profits from the Firm went to TLC and My Legal Consultancy. Mr Waterfield was responsible for the day to day running of the Firm and was a consultant along with Ms Tanner. From April 2021 the Firm undertook residential conveyancing work. Sophie Ruthven-Murray was employed as a conveyancer from Spring 2021 to July 2021. Following her departure, Mr Waterfield became the fee earner dealing with the conveyancing matters.
9. On 29 September 2021, the directorship and shareholding of the Firm were changed from Mr Durkin-Finch to Mr Waterfield. Ms Tanner and Mrs Chimwemwe Ntata were also appointed as directors. Mr Durkin-Finch stated that he signed a share sale and purchase agreement on 29 September 2021 that enabled Mr Waterfield to take control of the business. It was undated and not to be submitted to Companies House until the Firm became an ABS. He only realised it had been submitted when the investigation commenced. The SRA was not informed of the Firm's change in structure which would have impacted its authorisation, meaning it would have lost it if Mr Durkin-Finch was not reinstated in 90 days. Companies House records confirmed on 3 December 2021 that the

three directorships had been terminated leaving Mr Durkin-Finch-as the sole director once more.

10. The Firm closed on 10 January 2022. Mr Durkin-Finch completed the closure notification form stating that the reason for closure was that the business was no longer viable due to issues with a consultant. The Firm entered voluntary liquidation on 18 March 2022.

Allegation 1.1 – caused or allowed conveyancing transactions to be completed unsupervised meaning undertakings were given without permission

11. Mr Durkin-Finch informed the FIO during his interview that the Firm started to undertake conveyancing work in April 2021. The Firm employed Ms Ruthven-Murray between 6 April 2021 and 30 July 2021. When she left, a conveyancer was not employed to take over the work and Mr Waterfield became the fee earner on the conveyancing matters. Mr Durkin-Finch believed there were approximately 50 live conveyancing matters.
12. Mr Waterfield stated in his interview that there were around 120 live conveyancing files and he was not given any assistance. When asked about his conveyancing experience, he stated that he had done approximately 30-40 conveyancing transactions while he was at Centenary Law, which was a mixture of purchase and sale transactions on residential matters.
13. Mr Waterfield was completing the TA13 'Completion information and undertakings (3rd edition)' forms on the conveyancing matters. Mr Durkin-Finch stated at interview "*Again, it would have been him [Mr Waterfield]. I believe he didn't sign many apart from your, your standard TA13 form.*"
14. Mr Durkin-Finch identified twelve matters that had been type signed and stated 'Cleversons Solicitors' and one TA13 that had been signed by Mr Waterfield on 17 June 2021.

15. The FIO asked Mr Waterfield why he was signing documents off as the 'seller's solicitor.' Mr Waterfield stated: *"So now I know I shouldn't have possibly signed an undertaking of that nature. However, David was fully aware that I was dealing with conveyancing. There was absolutely no way he would not have known I was dealing with these TA13s. And in fact, on transactions where he was acting on the other side as, as for the lender, he would have certainly seen that I was doing this."*

Allegation 1.2 – Allowed Mr Waterfield effectively to run the Firm in an unsupervised capacity

16. In interview when discussing the setup of the Firm, Mr Durkin-Finch told the FIO: *"Matthew was dealing with a lot of the day to day or most of the day-to-day running of the business, the running the files, he's dealt with the employment matters and all that kind of thing."* He concedes that he did not adequately monitor how the Firm was operating: *"I certainly should of taken more of a role in respect of the COLP and COFA and things like that and I completely accept that I should have been carrying out files reviews like I did before with, with everything that, that went on I can, I can only apologise.."*
17. It is clear from the FIR that Mr Waterfield was essentially running the Firm unrestricted and unsupervised. Invoices were provided to the FIO which were submitted from TLC to the Firm covering the period October 2019 to October 2021. Mr Durkin-Finch had not seen the invoices until he requested them from Mr Waterfield after his interview. The invoices did not show a breakdown of how much each consultant was being paid. Nine of the invoices in just the name of Mr Waterfield showed his fees as £37,550. Mr Durkin-Finch told the FIO that Ms Tanner did some 'light' fee earning. When asked who would have authorised payments to TLC, Mr Durkin-Finch stated: *"It would have been Matthew."*
18. The Firm moved offices to, the Town House, 114-116 Fore Street, Hertford, SG14 1AJ as it was closer to Mr Waterfield's home address. My Legal Consultancy paid the rent for the office.
19. Regarding the agreement with TLC and what remuneration he received Mr Waterfield stated: *"I don't know what the actual split was, but I think it was 90% or something like that. I think all the expenses and everything apart from the business expenses. So apart from EMEA Law's Limited expenses, it would all be – the split would be, the rest would be mine."* TLC invoiced the Firm £246,453.94 for the period October 2019 to October 2021. This included 'consultancy fees for Mr Waterfield.

20. On 15 September 2021, Ms Tanner sent a letter before action to Mr Durkin-Finch regarding the 'Nominee Shareholder and Directorship in EMEA Law Ltd.' The letter outlined the setup of the Firm. It stated that Mr Durkin-Finch purchased the Firm with funds provided by TLC with the purpose of converting it to an ABS. His shares were purchased as nominee shareholder on her behalf and he was appointed nominee director by her and Mr Waterfield with the purpose of fulfilling the SRA requirement to have a solicitor as the director and COLP and COFA. The letter stated: *"You have no financial interest in the company and have not partaken in the running of the same in anyway unless directed by Mr Matthew Waterfield. You have taken no control of the finances of the company and both Matthew Waterfield and I are sole signatories on all company bank accounts with unfettered access to all. You have undertaken not [sic]work through the company or earnt any fees contributing to the finances of the company."*
21. Mr Durkin-Finch was asked to immediately resign as director and transfer his shares to Mr Waterfield. TLC was the holding company for Mr Waterfield's website domains. He stated that Ms Tanner was the shareholder, but she was holding his website domains on trust for him.
22. Mr Waterfield had signed himself off as 'partner' in communications with Metro Bank. Mr Durkin-Finch stated: *"Matthew asked to change his signature on his emails to partner, I agreed to this on the basis that as a Limited company the business does not have partners so this would not reflect his standing within the business it was merely a job role to make him more comfortable."*
23. Mr Durkin-Finch told the FIO that he did not initially have access to the Firm's case management system and was only granted it upon insistence. Before Covid-19 he did go to the office but did not review the Firm's accounts stating *"it was mainly file reviews."*
24. Mr Durkin-Finch stated he did not check month end client account reconciliations were being completed stating: *'I, I didn't feel I needed to because I thought he was experienced and knowledgeable enough to having run his own practice though the ABS and that kind of thing that I thought that's what he would be doing anyway.'*
25. When asked if he had let the firm be run by an unregulated person, he stated: *"Unfortunately, yes, again I can...it was meant to be an ABS from the beginning so that,*

that was largely the way...obviously if I'd remained, remained on as COLP and COFA obviously I still should have been keeping an eye on the accounts and things like that so, you know, I have to sort of hold my hands up to that largely. The, the...I...I, I should have been keeping an eye on that, I, I do accept that and as I said, I just want to do everything I can to, to make sure I put it right."

Allegation 3.1 (allowed delays to occur in registering properties)

26. The FIR identifies that, on 13 matters that completed between 19 March 2021 and 18 October 2021, the Firm delayed in registering mortgage lenders interest at HMLR. The longest delay in registering a conveyancing matter was approximately ten months, and several took nearly six months to register.
27. Encore Legal, acted for the mortgage lenders on the 13 matters. All the mortgage funds were transferred from Encore Legal's client bank account to the Firm's client bank account.
28. On 27 January 2022, Mr Durkin-Finch told the FIO that he had agreed with Mr Waterfield that it was the Firm's responsibility to register the mortgage lenders' interest. There was no written agreement, but Mr Waterfield was to confirm with him once the registrations were complete.
29. Mr Waterfield was asked who was registering the titles at HMLR and he said he may have done a 'couple' after Ms Ruthven-Murray had left but that was the extent of it. He sought to blame Mr Durkin-Finch stating that it was solely his responsibility as he acted for the lender.
30. The FIO identified issues with the purchase of 10 Bramley Hedge, Tower Street, Dover, Kent, CT17 0XN, a buy to let property purchased by Mr Waterfield, in which he also conducted the conveyancing. Encore Legal acted for the lender, Mortgage Works.
31. The FIO noted that the matter completed on 19 March 2021 but there were insufficient funds to pay the SDLT of £5,900. Mr Durkin-Finch stated that Mr Waterfield had failed to provide a signed mortgage deed which was preventing him from registering the lender's interest at HMLR. Mr Waterfield stated he emailed it to him but did not provide evidence of this to the FIO.

32. On 5 April 2022, Mr Durkin-Finch provided to the FIO an 'Application Enquiry' from HMLR which stated that the application process had been received. The lender's interest was protected and awaiting to be processed. Mr Waterfield stated that the stamp duty had not been paid as; *"I haven't got chance to yet"*

Allegation 3.2 (cash shortage on the client account, did not undertake account reconciliations and failed to submit an Accountant's Report)

33. The FIR shows a list of liabilities to clients as of 30 September 2021 was produced which, after adjustment, totalled £196,994.03. However, the client cash available was £184,081.35 and therefore a shortfall of £12,912.68 existed on the client account.

34. This cash shortage was later replaced on various dates in October 2021.

35. Mr Durkin-Finch provided a breakdown of how the client debit balances had arisen, which indicated that payments were made when there were insufficient client funds, overpayments were made to clients, or more costs were taken than what were owed by the clients.

36. The FIO requested the client account reconciliations for the period of September 2021. Mr Waterfield produced a document that was called 'client ledgers' and stated it was a list of client liabilities. There were a large amount of debit balances and no balance to complete a three-way client account reconciliation. Mr Waterfield could not provide a cashbook, stating that he did not know what a cashbook was, and confirmed one was not being maintained. He also stated that he did not know how to carry out three-way reconciliations.

37. Mr Durkin-Finch stated that the Firm used a case management system and accounts system called Lawstyst and Zero and he had access to the system when he attended the office. In March 2020 when Covid-19 started and people were forced to work from home, he stated he could not access them from home.

38. Mr Durkin-Finch said he had never reviewed any month-end client account reconciliations or looked at the bank statements and did not check if Mr Waterfield was completing month end client account reconciliations. He stated: *"I didn't feel I needed to because I thought*

he was experienced and knowledgeable enough to having run his own practice though the ABS and that kind of thing that I thought that's what he would be doing anyway."

39. An Accountant's Report should have been completed by 30 April 2021 for the period 31 October 2019 to 31 October 2020. Mr Durkin-Finch informed the FIO that he thought the Firm could trade for a year before one had to be submitted. Mr Waterfield who was essentially running the Firm did not submit an Accountant's Report.

Allegation 3.4- Did not set aside sufficient funds to pay VAT liabilities

40. The Firm charged clients VAT on their matters; invoices show the VAT element was distinct from the other costs.

41. The Firm did not register with HMRC for VAT until 21 October 2021. Mr Durkin-Finch stated he believed that Mr Waterfield had registered the Firm. Mr Waterfield stated it was Mr Durkin-Finch's responsibility as it was his business.

42. Mr Durkin-Finch stated he was unaware the Firm was charging VAT before it was registered and had not checked the client care letters that stipulated that VAT was chargeable.

43. Mr Waterfield stated that he drafted the client care letter using the same one from Centenary Law. He stated Mr Durkin-Finch would have seen that VAT was being charged to clients.

44. On 20 December 2021, Mr Durkin-Finch provided the FIO with a breakdown of the VAT due for the period 31 January 2020 to 31 October 2021. It showed that £83,803.79 was due to HMRC. Funds had not been set aside to pay HMRC and the Firm became insolvent.¹

¹ In his Answer dated 3 May 2025 Mr Durkin-Finch states the Firm did not become insolvent because it owed money to HMRC, he states there was sufficient work in progress to pay the VAT and he could have asked HMRC for time to pay but he decided it was not viable to continue trading due to the issues with Mr Waterfield.

45. The bank statements show that, on 18 October 2021, the office account balance for account number 35680667 was £25,252.72. On 14 October 2021, £19,500 was transferred to My Legal Consultancy with the description 'consultancy fees'. This left a balance of £386.71.

46. Mr Waterfield stated he transferred £19,500 to his company despite there being money being owed to HMRC. He stated that he thought there would have been sufficient funds on other matters to cover the outstanding VAT. He said he knew he would not get paid a 'single penny' and he still needed to pay his bills and was not thinking about the VAT element.

Recklessness

47. The allegations are advanced on the basis that Mr Durkin-Finch's conduct was reckless. He was aware that Mr Waterfield was an unadmitted individual and his previous firm Centenary Law had gone into administration.

48. Mr Durkin-Finch was the Firm's solicitor, sole director, COLP and COFA so had responsibilities to ensure it adhered to its regulatory requirements. Despite knowing there may be issues with Mr Waterfield's ability to run a regulated firm (by virtue of the fact his firm had gone into administration owing creditors approximately £724,585.31) he permitted him to run the Firm unrestricted. No reasonable solicitor in Mr Durkin-Finch's position and of his experience would have acted as he did.

49. Mr Durkin-Finch admits that his conduct was reckless in relation to all of the allegations.

Non-Agreed Mitigation

50. The following mitigation, which is not agreed by the SRA, is put forward by Mr Durkin-Finch he states:

50.1 *"It is with considerable regret that I find myself in this position, I have always wanted to be a Solicitor since I was a small child. I have made serious errors of judgment in trusting the Mr Waterfield, whom I thought of as a mentor and trusted*

friend, to manage affairs until the ABS was set up, and in my failing to have ensured that the firm was being properly run.

50.2 *I know it does not excuse my behaviour but at the time when the firm was set up I was supporting my brother and his family through the serious illness and life-threatening heart surgeries for his newborn daughter, a cancer diagnosis and ultimately the loss of his wife, and his two daughter's mother, shortly after. Together with the onset of the Coronavirus pandemic I did not give the formation of the firm and its running the care and attention it needed and its clients deserved and for that I will for the rest of my life be sorry.*

50.3 *I have learnt through this whole process how serious and important these matters are and how important it is to not rely on others with matters as important as these no matter who they are or what I might be going through myself.*

50.4 *When I first became aware of a serious issue, namely my access to the firm's records being blocked by Mr Waterfield I took a number of prompt actions, mostly noted by the SRA below, including but not limited to:*

50.4.1 *Reporting the issue to the SRA.*

50.4.2 *Fully cooperating with the SRA in its investigation. I am certain that the Forensic Investigation Officer would vouch for that.*

50.4.3 *Demonstrating real insight both in disclosing to the SRA candidly the issues and my failures, and in the actions I took to rectify matters. You will note that during my interview with the Forensic Investigation Officer I said I would do all that I could to rectify the matter and my actions as stated above account for the truth of my words with my actions.*

50.4.4 *Making amends as far as possible in removing Mr Waterfield and closing the firm down in an orderly fashion while maintaining good communication with the SRA and the firm's clients. I personally ensured that the client account was finally reconciled to a zero balance with no losses to anyone.*

50.4.5 *Replacing the shortfall as soon as I became aware of it.*

50.4.6 *I apologised immediately for my conduct and have never sought to hide or diminish my actions.*

51. *Save in respect of the loss incurred by HMRC I do not believe that anyone has suffered a loss as a result of the issues arising in this matter.*

52. *No Client suffered any losses as a result of this matter.*

53. *I never received any remuneration from the firm, as noted by the SRA, Mr Waterfield withdrew all of its funds.*

54. *I spent a lot of my time and money to remedy the situation as best I could and I am glad I did as it was the right thing to do.*

55. *It is now coming on for 3 years since these events and I have continued to display my competence as a practitioner of law without a single complaint. I am focussed on providing good outcomes for all of my clients.*

56. *I have learnt and continue to learn from these events every day as I am actively attending training on management skills together with CPD."*

Penalty proposed

57. It is therefore proposed that Mr Durkin-Finch should be suspended from practice for a period of two years commencing from the date of the order.

58. Following the termination of the suspension, he should be subject to a Restriction Order for an indefinite period(see paragraph 65 below).

59. With respect to costs, it is further agreed that Mr Durkin-Finch should pay the SRA's costs of this matter agreed in the sum of £6,000.

Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance 10th Edition ("the Guidance")

60. In the circumstances, the seriousness of Mr Durkin-Finch's admitted misconduct is such that neither a Restriction Order, Reprimand nor a Fine is a sufficient sanction or in all the circumstances appropriate. There is a need to protect the public and the reputation of the legal profession from the future risk of Mr Durkin-Finch but a Strike off Order is not justified. A suspension from practice for a period of two years is the appropriate sanction to protect the public, and proportionate to the seriousness of the admitted misconduct.

61. Mr Durkin-Finch's level of culpability is high as he is an experienced solicitor who, at the time of the misconduct, had been qualified for some 7 years. He was the COLP and COFA so was responsible for compliance with any regulatory arrangements and obligations imposed upon the Firm and its staff. As a result of him neglecting his regulatory obligations, the Firm was effectively run by an unadmitted individual which resulted in problems arising on conveyancing transactions, there were Accounts Rules breaches, VAT liabilities in the sum of at least £83,803.79. The Firm ultimately became insolvent.

62. The principal factors that aggravate the seriousness of Mr Durkin-Finch's misconduct are:

62.1 the misconduct occurred over a number of years and therefore continued over an extended period of time;

62.2 his action were reckless as he ought to have reasonably known that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the legal profession.

63. The principle factors that mitigate the seriousness of Mr Durkin-Finch's misconduct are:

63.1 Mr Waterfield was effectively running the Firm and the issues surrounding the conveyancing transactions were primarily as a result of his actions. It was Mr Durkin-Finch's inaction rather than his actions that resulted in the misconduct.;

63.2 Mr Durkin-Finch notified the SRA of his concerns with Mr Waterfield's conduct;

63.3 Mr Durkin-Finch has shown genuine insight into his behaviour;

63.4 Mr Durkin-Finch has been open and frank from the outset and throughout the SRA's investigation.

64. The appropriate sanction is suspension from practice for a period of two years commencing from the date of the order. The Respondent's conduct involves breaches of the SRA Principles including integrity, aggravated by recklessness, the Code of Conduct for Firms and the SRA Account Rules. The sanction is proportionate to the totality of the admitted acts of misconduct.

65. Following the termination of the two-year suspension, Mr Durkin-Finch will be subject to a Restriction Order in the following terms for an indefinite period.

That Mr Durkin-Finch may not:

65.1 practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;

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

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

65.4 work as a solicitor other than in employment approved by the SRA Ltd.

Dated this 2 day of October 2024

~~Alastair Willcox~~, Case Manager upon behalf of the SRA

ALASTAIR HJ WILLCOX

Dated this 1st day of October 2024

David Durkin-Finch

