

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12502-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

GUY ANDREW ADAMS

Respondent

Before:

Mr B Forde (in the Chair)

Mr E Nally

Ms L Fox

Date of Hearing: 17 June 2024

Appearances

Mr Michael Collis, barrister of Capsticks Solicitors LLP of 1 St George's Road, Wimbledon, London SW19 4DR, for the Applicant.

Mr David Barton, solicitor of Flagstones LLP, of High Halden Road, Biddenden, Kent TN27 8JG, for the First Respondent.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent, made by the SRA are that, while in practice as Equity Partners at Pardoes Solicitors LLP (“the Firm”):

Pension Contributions

- 1.1. Between April 2019 and July 2020, the Respondent caused or allowed the Firm to allocate employee and Firm pension contributions to the office account, to be used for the general running of the Firm, instead of paying the contributions to the Firm’s pension provider.
 - 1.1.1 In doing so, the Respondent thereby breached any or all of the following,
 - i. Prior to 25 November 2019, Principles 2 and 6 of the SRA Principles 2011.
 - ii. On or after 25 November 2019, Principles 2 and 5 of the SRA Principles.
 - 1.1.2 The Respondent further breached Principle 4 of the SRA Principles so far as the conduct occurred on or after 25 November 2019.
- 1.2. In his capacity as Manager and Compliance Officer for Finance and Administration (“COFA”), the Respondent failed to inform the SRA of either or both, the Firm’s financial situation that resulted in the decision not to pay the pension contributions to the pension provider and/or of the non-payment of pension contributions to the pension provider and in doing so, he thereby breached any or all of the following,
 - i. Prior to 25 November 2019, Outcome 10.3 of the Code of Conduct 2011 and Principle 7 of the SRA Principles 2011.
 - ii. On or after 25 November 2019, Paragraphs 3.6 (a), 3.10 and 9.2 (c) of the Code of Conduct for Firms.

Legal Aid Payments

- 1.3. Between September 2018 and July 2019, the Respondent caused or allowed client money in the form of professional disbursements from the Legal Aid Agency (“LAA”) to be retained in the Firm’s office account beyond 14 days of receipt, resulting in a shortfall of £7,737.02 on the client account. In doing so, any or all of the Respondents’, thereby breached any or all of the following:
 - i. Rules 6.1, 7.1 and 19.1 (b) of the SRA Accounts Rules 2011; and/or failed to achieve either or both,
 - ii. Outcomes 7.2 and 7.4 of the SRA Code of Conduct 2011.
2. In addition, so far as the conduct predates 25 November 2019, allegation 1.1 is advanced against the Respondent on the basis that his conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent’s misconduct but is not an essential ingredient in proving the allegation.

Documents

3. The Tribunal had before it the following documents:
- Rule 12 Statement and Exhibit HV11 dated 21 September 2023
 - Respondent's Answer, dated 13 November 2023
 - Rule 12 Statement and Exhibit HV11 dated 21 September 2023
 - Respondent's Answer, dated 13 November 2023
 - Ms Hogarty's Answer dated 13 November 2023
 - Ms Vickery's Answer dated 13 November 2023
 - Applicant's Reply to Ms Vickery's Answer dated 27 November 2023 and SRA response to consultation: Account Rules dated 1 June 2017
 - Witness Statement of Sara Houchen, dated 25 July 2023
 - Witness Statement of Leanne Routledge, dated 22 August 2023
 - Witness Statement of Catherine Murton, dated 29 August 2023
 - Witness Statement of Isobel Lisa Holden, dated 19 September 2023
 - Witness Statement of Donna McCarthy, dated 19 September 2023
 - Witness Statement of Paul Sykes, dated 7 October 2023
 - Witness Statement of Zlatina Brusarska, dated 23 February 2024, and Exhibits
 - Witness Statement of Sasha Loveridge, dated 16 April 2024
 - Witness Statement of Laura Paton, dated 18 April 2024, and Exhibits
 - Witness Statement of Guy Andrew Adams, dated 7 May 2024
 - Witness Statement of Julie Innis, dated 7 May 2024
 - Witness Statement of Bhavani Hogarty, dated 7 May 2024 and Exhibit BH1 BH4
 - Witness Statement of Maeve Vickery, dated 7 May 2024, and Exhibit MV1
 - Witness Statement of Mike Miller, dated 7 May 2024, and Exhibits MM1 MM10
 - Witness Statement of Samantha Backler, dated 9 June 2024

- Applicant's Schedule of Costs dated 21 September 2023 and Final Schedule of Costs dated 7 June 2024 and FIO Costs dated 7 June 2024
- Statement of Agreed Facts and Outcome between the Applicant and the First Respondent, Mr Adams, dated 12 June 2024.

Background

4. The Respondent is a solicitor, having been admitted to the Roll of Solicitors on 16 October 1989. He was one of the three equity partners in the Firm based in Somerset. The Respondent was based in the Firm's Bridgewater office, which was the Firm's largest office and base for finance and administration. The Respondent became a partner of the Firm on 2 September 2013 and Managing Partner in 2016. He was the Firm's Compliance Officer for Finance and Administration ("COFA") at the time of the alleged misconduct.
5. The Respondent does not currently hold a practising certificate, having retired from practice.
6. Between 8 December 2020 and 6 April 2021, the SRA received four reports from former and current employees of the Firm, which all concerned the Firm's alleged failure to pay pension contributions on behalf of its staff to the Firm's pension provider.
7. As a result of the complaints received by the SRA, it commissioned a Forensic Investigation Report ("FIR"). Following notice having been given to the Firm, the investigation commenced on 14 June 2021 at the Firm's office in Bridgewater.
8. The details of the SRA's investigation and other relevant facts are set out in the Statement of Agreed Facts and Outcome annexed to this Judgment.

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

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

Findings of Fact and Law

10. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
11. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.
12. The Tribunal considered the Guidance Note on Sanction (10th Edition/June 2022). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, the Tribunal's role was to assess the seriousness of the proven misconduct and to impose a

sanction that was fair and proportionate in all the circumstances. In determining the seriousness of the misconduct, the Tribunal was to consider the Respondent's culpability and harm identified together with the aggravating and mitigating factors that existed.

13. The Tribunal found that the Respondent was entirely culpable for his misconduct, assessing that culpability as high. The Tribunal was satisfied that the Respondent had been motivated by financial gain, namely, to misappropriate the Firm's pension contributions to the running of the Firm due to the Firm's cash flow problems. As the Firm's COFA, the Respondent had the sole and direct control of the decision to direct the Firm's finance team not to pay the Firm's pension contributions to the pension funds of its staff.
14. Moreover, the Tribunal accepted that the Respondent's misconduct has been aggravated by the facts that the Respondent had been dishonest (as he admitted), and his misconduct had been planned and deliberate and had been repeated over a prolonged period of time.
15. In addition, the Tribunal found that the Respondent's dishonest misconduct had caused serious harm to 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. Moreover, the Tribunal considered that the harm caused by the Respondent's misconduct was aggravated by the fact that the Respondent's conduct had been deliberate, repeated and dishonest.
17. By admitting the alleged misconduct, the Respondent had shown some level of genuine insight, but the full admission had been made at very late stage of the proceedings, a few days before the Hearing. The Tribunal concluded that there were no mitigating factors to be taken into account in determining the sanction.
18. The Tribunal noted that the Sanctions Guidance states that:

"The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see, Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin))."

19. In Sharma [2010] EWHC 2022 (Admin) at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:

"(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty..."

(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...

(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others... ”

20. The Tribunal was satisfied that the Respondent’s admission that there were no exceptional circumstances in this case had been properly made. The Tribunal determined that, given the serious and repeated nature of the Respondent’s dishonest misconduct, the only appropriate and proportionate sanction was to strike him off the Roll of Solicitors. Accordingly, the Tribunal approved the sanction proposed by the SRA and the Respondent.

Costs

21. The Applicant and the Respondent agreed costs in the sum of £5000 plus VAT. The Tribunal noted that the Respondent had not provided a statement of financial means but he had explained his financial situation in his witness statement, dated 7 May 2024.
22. The Tribunal determined that the agreed costs were reasonable and proportionate in light of the Respondent’s limited financial means. Accordingly, the Tribunal ordered the Respondent, Mr Adams to pay costs in the agreed sum of £6000, inclusive of the VAT.

Statement of Full Order

23. The Tribunal ORDERED that the Respondent, GUY ANDREW ADAMS, 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 £6,000.00.

Dated this 16th day of July 2024
On behalf of the Tribunal

B Forde

B Forde
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
17 JULY 2024

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

v

GUY ANDREW ADAMS

First Respondent

and

BHAVANI RAJAYA LAXMI HOGARTY

Second Respondent

and

MAEVE TERESA VICKERY

Third Respondent

**STATEMENT OF AGREED FACTS AND OUTCOME
IN RELATION TO THE FIRST RESPONDENT**

Introduction

1. By statement made by Hannah Lane on behalf of the Solicitors Regulation Authority Limited (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019, dated 21 September 2023, the SRA brought proceedings before the Tribunal making allegations of professional misconduct against the Respondents.
2. Having reviewed the position set out in his Answer and taken advice, the First Respondent is now prepared to make full admissions to the allegations against him, including the aggravating feature of dishonesty, as set out herein.

3. In accordance with usual practice, a copy of this document is being served on the Second and Third Respondents. The SRA and First Respondent do not consider that approval of this Agreed Outcome proposal would unfairly prejudice the Second and Third Respondents, but will of course be pleased to consider any submissions to the contrary made within 7 days in line with the Practice Direction.

Admissions

4. The First Respondent **admits** all of the allegations made against him in the Rule 12 statement:

The allegations against the First Respondent, Guy Andrew Adams, made by the SRA is that, while in practice as an Equity Partner solicitor at Pardoes Solicitors LLP ("the Firm"):

- 4.1 *Between April 2019 and July 2020, the First, Second and Third Respondents caused or allowed the Firm to allocate employee and Firm pension contributions to the office account, to be used for the general running of the Firm, instead of paying the contributions to the Firm's pension provider.*

- 4.1.1 *In doing so, any or all of the First, Second and Third Respondents thereby breached any or all of the following,*

- i. Prior to 25 November 2019, Principles 2 and 6 of the SRA Principles 2011.*
- ii. On or after 25 November 2019, Principles 2 and 5 of the SRA Principles.*

- 4.1.2 *In respect of the First Respondent alone, he further breached Principle 4 of the SRA Principles so far as the conduct occurred on or after 25 November 2019.*

- 4.2 *In his capacity as Manager and Compliance Officer for Finance and Administration ("COFA"), the First Respondent failed to inform the SRA of either or both, the Firm's financial situation that resulted in the decision not to pay the pension contributions to the pension provider and/or of the non-payment of pension contributions to the pension provider and in doing so, he thereby breached any or all of the following:*

- 4.2.1 *Prior to 25 November 2019, Outcome 10.3 of the Code of Conduct 2011 and Principle 7 of the SRA Principles 2011.*

- 4.2.2 *On or after 25 November 2019, Paragraphs 3.6 (a), 3.10 and 9.2 (c) of the Code of Conduct for Firms.*

- 4.3 *Between September 2018 and July 2019, the First, Second and Third Respondents caused or allowed client money in the form of professional disbursements from the Legal Aid Agency ("LAA") to be retained in the Firm's*

office account beyond 14 days of receipt, resulting in a shortfall of £7,737.02 on the client account. In doing so, any or all of the Respondents', thereby breached any or all of the following:

4.3.1 Rules 6.1, 7.1 and 19.1 (b) of the SRA Accounts Rules 2011; and/or failed to achieve either or both

4.3.2 Outcomes 7.2 and 7.4 of the SRA Code of Conduct 2011.

4.4 In addition, so far as the conduct pre-dates 25 November 2019, allegation 1.1 is advanced against the First Respondent alone on the basis that his conduct was dishonest. Dishonesty is alleged as an aggravating feature of the First Respondent's misconduct but is not an essential ingredient in proving the allegation.

Agreed Facts

5. The Respondent is a solicitor who was admitted to the Roll on 16 October 1989. He had been a Partner with the Firm since 2 September 2013 and became Managing Partner in 2015. He was the Firm's COFA at the time of the alleged misconduct. He is not currently practising.

Allegation 1.1: Pensions payments

6. Between 8 December 2020 and 6 April 2021, the SRA received four reports from former and current employees of the Firm, which all concerned the Firm's alleged failure to pay pension contributions on behalf of its staff to the Firm's pension provider.

7. As a result of the complaints received by the SRA, it commissioned a forensic investigation, which commenced on 14 June 2021 at the Firm's office in Bridgwater, Somerset. As part of the forensic investigation, all three Respondents were interviewed by the Forensic Investigation Officer ("the FIO") on 22 February 2022. The investigation identified the following:

7.1 "Between August 2019 and July 2020, the Firm had collected pension contributions from staff but had not paid the monies to the pension provider. The monies were taken to the Firm's office account and used to fund general office expenses. As at July 2020 the total owed in pension arrears was £57,078.22.

7.2 The Firm engaged in a repayment plan with the pension provider and arrears began to be paid from July 2020. By September 2021, the pension payments were up to date.

7.3 The reason given by the Firm for the delay in the payment of pensions was that the firm was experiencing cash-flow issues.

- 7.4 *As at 28 May 2021, the Firm had a client account shortage of £7,737.02. This was due to monies received by the Firm from the Legal Aid Agency but not paid to suppliers for professional disbursements prior to 25 November 2019 (the introduction of the new Standards and Regulations). The funds had been paid into the Firm's office account. The shortage was rectified between 1 June 2021 and 15 June 2021 when the disbursements were paid."*
8. Pursuant to section 3 the Pensions Act 2008, every employer must auto-enrol their eligible staff into a workplace pension and pay into it. Section 2(1) of the Pension Act 2008 sets out the duty of an employer not to take any steps (or make any omission) by which the "jobholder" (who has been auto-enrolled) stops being an active member, or the scheme stops counting as a qualifying scheme for auto-enrolment purposes. Workplace pensions are regulated by the Pensions Regulator ("TPR"), whose role it is to ensure that employers fulfil their duties to members of their pension scheme.
 9. The Firm's pension provider was Scottish Widows. Those staff enrolled with the scheme made contributions to their pension, which were deducted from their monthly salary. The Firm also made a contribution, which was paid to Scottish Widows along with the staff contribution.
 10. The Firm provided the FIO with a spreadsheet showing pensions arrears for pension contributions between September 2019 and January 2022. In summary, it showed that between September 2019 and July 2020, the Firm failed to make any payments to Scottish Widows. The Firm commenced repayment in July 2020, by which time it owed a total of £57,078.22 in arrears. This sum was made up of £35,513.22 in employees' contributions and £21,565.00 in Firm contributions. The Firm commenced re payment in July 2020, and all outstanding pension contributions were brought up to date by September 2021. The repayments which commenced in July 2020 were part of an agreed payment plan with Scottish Widows.
 11. However, during her review of the office account bank statements, the FIO also noticed additional payments being made to Scottish Widows which could not be reconciled with the spreadsheet. When asked about this, the First Respondent advised by email dated 20 April 2022, that those payments related to arrears dating back as far as April 2019, and included payments made in order to bring the contributions up to date of employees that had left the Firm.
 12. Despite arrears in fact dating back to April 2019, the First Respondent told the FIO on 14 June 2021, at the start of the investigation, that the issues with the pensions had commenced in around August 2019. He stated that due to staffing difficulties the fee income in the conveyancing team had reduced which had affected cash flow and as a result pension contributions were not paid over to the provider. COVID-19 then struck which exacerbated the problem. He said there was no Firm wide decision not to pay the provider as such, it was just an issue of cash flow. The First

Respondent advised the FIO that the monies had been used for general expenses and had not been ring fenced.

13. In interview with the FIO, the First Respondent clarified that the decision was made by the Finance Team "*under my supervision*" and that this decision was not initially taken in consultation with the Second and Third Respondents.
14. The Second and Third Respondents both told the FIO that they were advised of the non-payment of the pension contributions in September 2019.
15. The First Respondent did not advise the staff, either in advance or at the time, of the decision not to pay the pension contributions. He told the FIO that from around October 2019, individual meetings with affected staff members were held. However, there were no records of any such meetings.
16. On the documentation provided to the SRA during its investigation, staff were formally advised of the pensions issue by way of email dated 16 October 2020 (shortly after the Heads of Department meeting), from the First Respondent, in which he stated that: '*As you may be aware, the firm has some pension arrears which we are in the process of bringing up to date. We are in regular contact with both the Pensions Regulator and Scottish Widows and are working closely together to resolve this. We are currently part way through a repayment plan and will be continuing with this to bring the pension payments completely up to date*'. This email was sent over a year after the issue was known to all three Respondents and did not provide any details of why the issue had occurred.
17. The Firm was in communication with TPR from April 2020 onwards, when TPR emailed the Firm to advise Scottish Widows had been in contact with them in relation to the Firm's late pension contributions from the period August 2019 to January 2020. TPR put the Firm on notice that the Firm had failed to pay relevant contributions. TPR issued the Firm with a formal Unpaid Contribution Notice ("UCN") in August 2020, directing payment of any outstanding contributions by September 2020.
18. On 3 September 2020, the Firm replied to the Notice but further information was required by TPR and on 23 September 2020, it issued a Notice to Produce Documents or Information directing the Firm to provide it with evidence that monies had been paid over to Scottish Widows.
19. A further UCN was issued on the Firm dated 2 December 2020, with a direction that further re-payments be made by 25 February 2021.
20. On the basis of information provided to it by the Firm by March 2021, TPR closed the enquiry with no further action. It reminded the Firm that "*failure to pay contributions is a breach of the legislation. On this basis, a record will be retained of this enquiry and may be taken into consideration if there are further issues.*"
21. The pensions issue was not reported to the SRA by any of the Respondents.

22. All pension arrears were up to date by September 2021.
23. The First Respondent admits that his conduct was dishonest, in accordance with the test set out in *Ivey v Genting Casinos [2017] UKSC 67*. The First Respondent knew that cash flow at the Firm was in difficulty. He admits that he authorised the decision to delay payment of pension contributions (both staff and Firm) to Scottish Widows but instead to utilise the monies for the running of the Firm. The First Respondent did not consult with his Equity Partners when making this decision. Neither did he advise his staff, consult with Scottish Widows, TPR or the SRA. He would also have known that he was likely in breach of the relevant pensions' legislation. The First Respondent may have intended to pay the monies back and put a plan in place with the pension provider, but he cannot have been certain at the time whether the firm would ever be in the position to do so.
24. In the case of *Bullitude v The Law Society [2004] EWCA Civ 1853*, the Court held that an intention to permanently deprive (in that matter, client money) was not determinative of dishonesty. It was clear to the solicitor at the time of his actions that he was "*guilty of conscious impropriety amounting to dishonesty in endorsing what had been done*" (paragraph 36). Although the test to be applied in respect of dishonesty is now enshrined in *Ivey* (as above), the principle in respect of there being no requirement for an intention to permanently deprive, remains sound. In those circumstances, the First Respondent was dishonest by the standards of ordinary decent people. The Respondent agrees that ordinary, decent people would consider the conduct dishonest. So far as the conduct occurred on or after 25 November 2019, the Respondent admits that he breached Principle 4 of the SRA Principles 2019.

Allegation 1.2: Not advising the SRA of either or both the Firm's financial difficulty and/or the non-payment of pension contributions

25. The First Respondent told the FIO on 14 June 2021 that he authorised the decision not to make the pension contribution payments to Scottish Widows because the Firm was experiencing cash flow difficulties pre pandemic, as a result of the income in the conveyancing department reducing. He stated that COVID-19 then caused the team to be furloughed and "*the catch up with paying the pensions slowed*". He confirmed that monies that should have been paid to Scottish Widows were kept in the office account.
26. On the same date, the First Respondent told the FIO that the monies which ought to have been paid to Scottish Widows were utilised for "*general office expenses*" and that due to the financial situation they found themselves in, they could not afford to make the payments.

27. When asked why he did not report the issue with non-payment of the pension contributions to the SRA, the First Respondent stated that he was provided with legal advice from Jonathan Greensmith that he did not need to do this.
28. In interview with the FIO, the First Respondent confirmed that there was a “flux in our income” that led to the decision not to make the pension contribution payments. He further stated that he advised TPR and that he believed that to be sufficient in terms of reporting. He had read online that TPR and the SRA had a “bi-lateral agreement” in any event. He repeated that he had been advised that he did not need to tell the SRA. Jonathan Greensmith represented the First Respondent at that interview. The First Respondent also stated that he did not consider that the Firm was in serious financial difficulty to the extent that he was required to report the problems to the SRA.
29. In his representations to the Notice, the First Respondent re-stated that he did not consider the Firm to be in serious financial difficulty and that he took legal advice which “confirmed that the test of “serious financial difficulty” was not met and certainly not met in the climate that then existed nationally.” He further stated that he was advised that there was no requirement or obligation to tell the SRA of the non-payment issue. He advised TPR and they took no further action and closed their file.

Allegation 1.3: legal aid payments

30. Rule 19.1 (b) of the SRA Accounts Rules provides that monies received into the office account from the LAA which includes payment for professional disbursements must be paid to the provider within 14 days or transferred to the client account.
31. At the extraction date of 28 May 2021, the FIO found that the Firm’s office account held funds received from the LAA for professional disbursement’s totalling £7,737.02, which had been received prior to 25 November 2019 (when the 2011 Accounts Rules were in force). Those funds had neither been paid to the provider within 14 days nor transferred to the client and therefore Rule 19.1 (b) had been breached. As a result of which there resulted a shortage on the client account of £7,737.02.
32. The shortage was rectified between 1 June and 15 June 2021 when the disbursements were paid. Five of the seven payments were made before the FIO attended on site at the Firm, one on the day of the visit (14 June 2021) and one the following day.
33. The FI report summarises the client matters, the suppliers, the total amounts due, the date the funds were received and the date the suppliers were paid, and shows that in six cases the monies were held in the client account for over 2 years and in one case, for 1 year and 11 months.

34. The client matter of RB is exemplified in the FI report. In summary, the Firm acted for RB, during which a medical report was obtained. The LAA paid £1,871.93 to the Firm in respect of this disbursement, as part of a larger payment of £3,982.48 which was paid into the office account on 17 September 2018. The ledger records that the payment to the supplier was made on 1 June 2021, as part of a larger payment of £3,082.86 which encompassed monies due on another client matter as well.
35. In interview with the FIO, the First Respondent said that he was unaware of the breach of the 2011 Accounts Rules until the FIO alerted him to it. The Firm's accountants had not raised it with him and he was not aware that it caused a shortage on the client account. He could not explain why the payments had not been made or transferred back to the client account, however, he said that he rectified the issue as soon as he was aware of it. In his representations to the Notice, the First Respondent stated that he signed off daily client account reconciliations and they did not show any deficit. The Firm had auditors and accountants, neither of which raised any issues.

Mitigation

36. The following points are advanced by way of mitigation on behalf of the Respondent but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:
- 36.1 The First Respondent joined the Firm on 1 September 1994 and became an equity partner in 1996. In 2015 he became the Managing Partner and COFA.
- 36.2 Between 2013 and 2015 several partners retired or transferred to other firms leaving the Respondents to these proceedings as the sole remaining owners of the Firm. The management of the firm was divided between the three Respondents.
- 36.3 When the First Respondent took over as Managing Partner the Firm had lost its clinical negligence department which had generated very significant fee income, and the Firm experienced other financial pressures as a result of Covid-19. It had nonetheless to meet all its overheads, and the role of Managing Partner became one of daily financial planning and forecasting to ensure it met all its liabilities for loans and salaries. The First Respondent had the considerable burden of this for a long period of time. There were occasions when he did not take his drawings from the Firm. Everyone else was paid.
- 36.4 The First Respondent has admitted the conduct in relation to pension payments. He always intended that the Firm would make good any deficiency and indeed through hard work he succeeded in doing so. No one has lost financially. He regularly kept in touch with the Pensions Regulator and put a plan in place to ensure that the delayed pension payments were brought up to date. He also took professional advice on which he relied. However, he accepts there were occasions as specified in these proceedings when money

was retained in office account, which should have been paid to the pension provider, pension payments were thereby delayed and instead monies in office account were used towards other overheads. He makes clear that the money used in this way was not transferred into office account from any other location; it was always in office account.

36.5 The First Respondent regrets this happened and apologises to all concerned.

36.6 He has retired from practice.

Agreed Outcome proposal

37. The First Respondent agrees to be struck-off the Roll and to pay costs to the SRA in the sum of £5000.00 plus VAT, which has been reduced due to the First Respondent's means.

38. The SRA is satisfied the admissions and proposed outcome satisfies the public interest.

39. In accordance with usual practice, a copy of this document is being served on the Second and Third Respondents. The SRA and First Respondent do not consider that approval of this Agreed Outcome Proposal would unfairly prejudice the Second and Third Respondents, but will of course be pleased to consider any submissions to the contrary made within 7 days in line with the Practice Direction.

40. In light of the admission to dishonesty, the First Respondent and the SRA agree that the proposed outcome represents the appropriate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanctions 10th Edition ("The Guidance Note").

41. Paragraph 17 of the Guidance Note states that:

"The Tribunal will assess the seriousness of the misconduct in order to determine which sanction to impose. Seriousness is determined by a combination of factors, including:

- the respondent's level of culpability for their misconduct.*
- the harm caused by the respondent's misconduct.*
- the existence of any aggravating factors.*
- the existence of any mitigating factors."*

42. The First Respondent's culpability in this matter is high, for the following reasons:

42.1 He was motivated by financial gain, i.e. to prop up the Firm when it was experiencing cash flow difficulties.

42.2 The misconduct was deliberate and planned, as the First Respondent was the Firm's COFA and partner responsible for the Firm's finances. The First Respondent was the decision-maker who determined that the Firm would not

pay its pensions contributions to its staff and directed the Firm's finance team accordingly.

42.3 He acted in breach of the trust placed in him by the Firm and its employees. Firm employees who subscribe to a pension plan should expect that a Firm makes its pensions contributions, as required by law.

42.4 He was directly responsible for the misconduct.

43. The First Respondent's misconduct is aggravated by the following facts:

43.1 He admits that his misconduct was dishonest.

43.2 The misconduct was deliberate and repeated.

43.3 The misconduct occurred over a prolonged period.

44. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (10th edition), at paragraph 51, states that:

"Some of the most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see *Solicitors Regulation Authority v Sharma* [2010] EWHC 2022 (Admin))."

45. In *Sharma* at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:

"(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...

(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...

(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others..."

46. This case does not fall within the small residual category where striking off would be a disproportionate sentence. It is agreed between the parties that exceptional circumstances do not exist in this case. Accordingly, the fair and proportionate penalty in this case is for the Respondent to be struck off the Roll of Solicitors.

47. The Respondent's misconduct is at the highest level. Protection of the public and public confidence in the provision of legal services requires the Respondent to be struck off the roll. The parties invite the SDT to impose the sanction proposed as it meets the seriousness of the admitted misconduct and is proportionate to the misconduct in all the circumstances.

48. As noted above, subject to the approval of this Agreed Outcome Proposal, it is agreed that the First Respondent shall pay £5000.00 plus VAT, which has been reduced due to the First Respondent's means, towards the SRA's costs of the Application and Enquiry. The SRA is satisfied that this is a reasonable and proportionate contribution by the First Respondent in all the circumstances (including his means) and will deduct this amount from any claim for costs made against the Second and Third Respondents.

49. In the circumstances, it is submitted that the proposed outcome of a strike-off is the appropriate outcome in this case.

Signed by the parties:

Guy Andrew Adams, the First Respondent

Date: 12th JUNE 2024

For and on behalf of the Applicant

Date:

12 June 2024
