SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12626-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

MARK WILLIAMS Respondent

Before:
Mr P Housego (Chair)
Ms H Hasan
Mr G Gracey

Date of Hearing: 28 January 2025

Appearances

Mr Montu Miah, counsel of the Solicitors Regulation Authority Ltd, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent, Mark Ian Williams, made by the SRA are that, while in practice as a Solicitor at Frame Smith & Co ("the firm"):

1.1 Between July 2020 and June 2021 he held client money in his personal bank account and in doing so he breached any or all of Principles 2 and 5 of the SRA Principles ("the Principles"), paragraph 4.3 of the SRA Code of Conduct for Solicitors, RELs and RFLs ("the Code for Solicitors") and Rule 2.3 of the SRA Accounts Rules ("the SAR").

PROVED

1.2 In relation to the client monies which are the subject of Allegation 1.1, he failed to return the balance of the monies to the client after there was no longer any proper reason for him to hold those funds. In doing so, he breached any or all of Principles 2 and 5 of the Principles and Rule 2.5 of the SAR.

PROVED

1.3 Between November 2018 and September 2020, he acted on behalf of Client B and Client A in criminal proceedings in circumstances where he was not authorised to do so and, in doing so:

1.3.1 insofar as such conduct took place on or after 6 October 2011 but before 25 November 2019, acted in breach of Principle 6 of the SRA Principles 2011 ("the 2011 Principles") and/or Rule 1.1 of the SRA Practice Framework Rules 2011 ("the PFRs").

PROVED

1.3.2 insofar as such conduct took place on or after 25 November 2019, acted in breach of Principle 2 of the Principles and/or Regulation 10.2(b) of the SRA Authorisation of Individuals Regulations ("the AIRs").

PROVED

Executive Summary

2. The Respondent admitted to holding client money in his personal account, failing to return it promptly and using it inappropriately and to undertaking legal work outside his firm without the necessary authorisation. He characterised his actions as mistakes but with the intention of providing genuine help and support to his clients. The detail of the allegations is set out below.

3. Despite commendable aspects of his work the Tribunal found his lack of professional objectivity had led him into serious error which damaged the reputation of the profession. The Tribunal emphasised the maxim that client money is sacrosanct, and it is placed at risk by a solicitor who acts outside regulations designed to protect client money. The Respondent's conduct was so serious that it necessitated a period of 6 months' suspension. It was hoped that in this time the Respondent would reflect upon and re-evaluate his approach, separating professional from counselling work.

Sanction

4. The Respondent was suspended from practice as a solicitor for the period of 6 months to commence on the 28 January 2025. The Tribunal's sanction can be found [here]

Documents

5. The Tribunal considered all the documents in the case which were contained in the electronic bundle.

Preliminary Matters

6. The Tribunal acceded to the Applicant's application for anonymity to apply to the clients named in the Rule 12 Statement and it so ordered.

Factual Background

7. The Respondent was admitted to the Roll on 1st July 1992. At the time of the alleged conduct, he was working as a solicitor for Frame Smith, solicitors ("the Firm") under a consultancy arrangement.

8. The Respondent had previously practised as a solicitor through his sole practice of MWA Solicitors until November 2014 when that firm was closed. He had been an employee of Bernard Chill & Axtell until June 2016 and has worked as a consultant to Evan Moore Solicitors Limited from August 2021 before joining the Firm.

9. The Respondent's practising certificate for the practice year 2023 to 2024 had been subject to a condition precluding him from acting as a manager or owner of any authorised body. That condition was first imposed on the Respondent's 2016 to 2017 practising certificate to mitigate risks relating to him running a firm in accordance with proper governance and sound risk management principles and his ability to comply with the SRA Accounts Rules.

Findings of Fact and Law

10. The Applicant was required to prove the allegations beyond 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 right to a fair trial and to respect his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

11. The Tribunal had due regard to the following and applied the various tests in its fact-finding exercise:

Integrity

The matters set at paragraphs 97 to 107 of Wingate v SRA [2018] EWCA Civ 366,
NOTE: While all the evidence was carefully considered the Tribunal does not refer to each and every piece of the evidence or submissions in its judgment and findings.

The Applicant's Case

Rule 12 Statement – Click Here

The Respondent's Case

The Respondent admitted all the allegations including the pleaded breaches of the SRA Principles (2011 and 2019), Codes of Conduct and SARs.

The Tribunal's Findings

12. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made. In conclusion, the Tribunal found the following proved on the balance of probabilities:

Allegation 1.1 [proved in full]

- Breaches of Principles 2 and 5 of the SRA Principles 2019 (respectively failure to maintain public trust and confidence, and lack of integrity).
- Paragraph 4.3 of the SRA Code of Conduct ("the Code for Solicitors")
- Rule 2.3 of the SAR.

Allegation 1.2 [proved in full]

- Breaches of Principles 2 and 5 of the SRA Principles 2019
- Rule 2.5 of the SAR.

Allegation 1.3.1 [proved in full]

- Breaches of Principle 6 of the SRA Principles 2011 (failure to maintain public trust and confidence)
- Rule 1.1 of the PFRs.

Allegation 1.3.2 [proved in full]

- Breaches of Principle 2 of the SRA Principles 2019
- Regulation 10.2(b) of the AIRs.

Previous Disciplinary Matters

13. The Respondent had one previous matter. On 22 August 2015 the Tribunal approved an Agreed Outcome in which the Respondent was fined £3,000 for allegations relating to failure to pay professional disbursements, delay in sending a client file to the Criminal Cases Review Commission and failure to deliver an accountant's report.

Mitigation

14. The Respondent gave evidence on oath. There was an acceptance on the Respondent's part that while providing valuable personal support to his clients he blurred the lines between his regulated legal work and his private practice activities, leading to the admitted breaches of solicitor's account rules and the regulations around providing regulated legal services other than through the Firm. The Respondent admitted to the mistakes and errors he had made and highlighted steps he had taken to prevent similar events from taking place again, e.g. the introduction of a "protocol document" to ensure more transparency with his professional and mentoring work going forward.

15. There was no dishonesty, and he apologised to client HB for the inconvenience caused by the delay in returning the balance of the money paid to him by that client. He apologised generally for his conduct, which had occurred by giving little or no thought to the regulations, which he accepted he should have done, in pursuit of what he believed was best for his client at the time.

16. The Respondent presented to the Tribunal 41character references from former clients, legal professionals and others.

17. The Respondent acknowledged that he had a previous finding but stated that the circumstances between that case and the present one were markedly different as in the earlier matter the failures had stemmed from financial difficulties, arising from being misled by someone who had agreed to take over his firm and pay him a sum of money to do so, but who did not do so. This person later became bankrupt and was later convicted of criminal offences, and the Respondent never received the money to which he had been entitled..

18. In cross-examination he was questioned as to whether he had the capacity to change. He said that he did, and he would think more deeply about his actions in the future.

Applicant's application to be heard on sanction

19. This was refused by the Tribunal. This had not been a long or difficult case. It raised no novel issues and/or points of law. The issue of the most appropriate sanction was well with the Tribunal's capabilities as an expert and experienced Tribunal.

Sanction

20. The Tribunal considered the Guidance Note on Sanction (10th Edition June 2022) ("the Sanctions Guidance") and the proper approach to sanctions as set out in Fuglers and others v SRA [2014] EWHC 179. In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

21. Weighing up the factors set out in the guidance, the Tribunal nonetheless considered that these had not been minor breaches of a minor nature. The Tribunal found the Respondent's culpability to be total and the level of harm high. This was serious misconduct for which a sanction was appropriate.

22. As to sanction, the Tribunal adopted a *'bottom up'* approach. The misconduct was too serious for no order, a reprimand, conditions of practice or a fine. The fairest and most proportional sanction, even when factoring in evidence relating to the Respondent's character evidence attesting to his personal and professional qualities, was a period of suspension for 6 months.

23. The Tribunal carefully considered whether to suspend the suspension order; however, it decided the matters were too serious for this. The Tribunal decided that the Respondent required a period during which to reflect upon and re-analyse the differing roles of solicitor and of mentor / counsellor.

Reasons for the sanction

24. The Respondent is a solicitor with many years' experience advising clients facing criminal charges. He has a keen interest in helping those accused of sexual offences to address their behaviour. He has devised and runs a course which aims to assist people to move away from the urges that lead to such offending.

25. After the closure of his practice in 2018 he became a consultant to other firms. Latterly he was retained to attend police stations and had a fee sharing arrangement for other work he undertook for clients through the firm.

26. He undertook counselling and mentoring work, including for clients of the firm, which he did in a private capacity. He charged a monthly retainer to some of those clients, paid to him personally.

27. The Firm did not know of this, and in June 2021 ended the consultancy arrangement immediately they found out about this and about the two matters referred to in the charges.

28. Those matters admitted and found proved arose from work he did that he now accepted was legal work for two such clients. He instructed Counsel in one case. In mitigation, the Counsel instructed was a friend of the client and Counsel did not charge. However, he charged the client for his own attendance at that conference.

29. In the other he received money from the client and obtained an expert report which was used in the defense of the client's criminal proceedings. The client paid him £7,200 being the anticipated cost of the expert's report. He paid this into his personal bank account. Another expert was used at lesser expense, and the Respondent retained the balance of the money for about 9 months after the conclusion of the criminal case, during that time deducting his own fees. He stated that this retention was an oversight, and the Tribunal accepted this was the case. It was, however, a serious oversight.

30. There is, plainly, damage to the reputation of the solicitors' profession in legal work being conducted by an individual who is without all regulation and who is uninsured.

31. The matters found proved adversely affected the reputation of the profession. The public expect client money to be as safe as if in a bank, not in a personal account, where it is at risk. The public expects solicitors to practice only in a fully regulated environment. When this does not occur, it tarnishes the reputation of all solicitors. The

Tribunal found that the Respondent did not appreciate this important point as in his view his view of his client's interests took precedence. The Respondent's absence of insight into these issues was concerning to the Tribunal and the Tribunal was concerned about the possibility of the Respondent's future conduct when acting for such clients.

32. While the Respondent was subject to an earlier Agreed Outcome, the extenuating circumstances at that time meant that the Tribunal did not consider this to be a substantial factor in its decision on the present matter.

33. It was clear to the Tribunal that the Respondent is a deeply caring individual, whose vocation is to try to help those who wish to leave sexual offending in their past. This is a very worthy vocation. Unfortunately, this caring vocation was an impediment to his professional objectivity which was diminished. This would never change unless the Respondent re-evaluated everything he did professionally, and in his vocation, to ensure that each was in appropriate balance with the other. It was obvious that the way in which the Respondent had practiced his profession as a solicitor inevitably blurred the professional boundaries required between solicitor and client.

Costs

34. Mr Miah submitted that as a matter of principle the Applicant was entitled to its proper costs. It had proved its case to the requisite standard albeit that the Respondent had made admissions which were accepted by the Tribunal as being properly made. The Applicant had pursued its case in a reasonable and proportionate way and followed all directions.

35. The quantum of costs claimed by the Applicant was set out in its itemised statement of costs dated 27 January 2025 in the total sum of £11,079.20. Mr Miah submitted that this was a reasonable and proportionate sum given a case of this nature, though the Applicant was prepared to reduce its costs £10,153.60 because the hearing had taken one day only, not the three days originally scheduled, nor the two days to which it had later been reduced.

36. The Respondent accepted that the Applicant's costs were reasonable and proportionate. He provided the Tribunal with copies of his bank statements and a statement of his means, which were very limited.

<u>Tribunal's Decision on Costs</u>

37. The Tribunal noted that under Rule 43 (1) of The Solicitors (Disciplinary Proceedings) Rules 2019 it has the power to make such order as to costs as it thinks fit, including the payment by any party of costs or a contribution towards costs of such amount (if any) as the Tribunal may consider reasonable. Such costs are those arising from or ancillary to proceedings before the Tribunal.

38. It noted that neither party had applied for the Tribunal to make a direction for the costs to be subject to detailed assessment by a taxing Master of the Senior Courts, therefore it remained open to the Tribunal to make a summary assessment of the costs.

39. By Rule 43(4), the Tribunal must first decide *whether* to make an order for costs and when deciding whether to make an order, against which party, and for what amount, the Tribunal must consider all relevant matters such as:

- The parties' conduct.
- Were directions/ deadlines complied with?
- Was the time spent proportionate and reasonable?
- Are the rates and disbursements proportionate and reasonable?
- The paying party's means.

40. The Tribunal found the case had been properly brought by the Applicant and that both parties had complied with the directions and deadlines set. Each had conducted themselves appropriately. The Tribunal also noted the following factors:

- The Substantive Hearing had taken one day and not two days;
- This had not been a case of legal complexity, and the matters had been straightforward;
- The Respondent had made sensible concessions and admissions and agreed the factual matrix of the case;
- The rates at which the Applicant claimed its costs appeared proportionate and reasonable.

41. As usual in dealing with costs applications the Tribunal adopted a 'broad brush' approach to the costs and looked at matters in the round.

42. The Tribunal found that the costs claimed by the Applicant were reasonable, as accepted by the Respondent. However, the Tribunal accepted that the Respondent had few assets, not even owning a car.

43. He had a small pension fund of about £10,000. The suspension order would remove his ability to earn, but his state pension would be paid from November 2026. The Respondent lived in a house owned by his sister.

44. The Tribunal noted that the Respondent paid the previous costs order in the Agreed Outcome. It was not right that the profession paid all the costs of this hearing. However, the Tribunal noted and considered relevant that the Respondent's failings were not the result of any intentional wrongdoing, and that his means are very limited.

Statement of Full Order

45. The Tribunal ORDERED that the Respondent, MARK IAN WILLIAMS, Solicitor, be SUSPENDED from practice as a Solicitor for the period of 6 months to commence on the 28th day of January 2025 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £5,000.00.

Dated this 12th day of February 2025
On behalf of the Tribunal

P. Housego

P. Housego
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
12 FEBRURY 2025