

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12142-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ANDREW ROMAN PENA

Respondent

Before:

Ms A E Banks (in the chair)

Mr W Ellerton

Mrs S Gordon

Date of Hearing: 19 February 2021

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority (“SRA”) were that while in practice as a Director at Cubism Limited (“the Firm”):
 - 1.1 Between 19 January 2017 and 31 March 2019 he created or caused to be created invoices that did not reflect work done and costs properly due on the relevant matters. In doing so he breached any or all of Principles 2 and 6 of the SRA Principles 2011 (“the Principles”)
 - 1.2 Between 19 January 2017 and 1 April 2019 he improperly transferred or caused to be transferred client funds from the client accounts of the Firm, to a minimum value of £265, 128.60. In doing so he breached any or all of:
 - 1.2.1 Principle 2 of the Principles
 - 1.2.2 Principle 4 of the Principles
 - 1.2.3 Principle 6 of the Principles
 - 1.2.4 Principle 10 of the Principles
 - 1.2.5 Rule 1.2(a) of the SRA Accounts Rules 2011 (“the Accounts Rules”)
 - 1.2.6 Rule 20.1 of the Accounts Rules 1.2.7 Rule 7 of the Accounts Rules
 - 1.2.7 Rule 7 of the Accounts Rules.
 - 1.3 On 14 April 2019 he obtained a £100,000 loan from a private individual, Mrs C, without fully informing her of the financial events at his firm and/or without ensuring that she first obtained independent advice. In doing so he breached or failed to achieve any or all of:
 - 1.3.1 Outcome 11.1 of the SRA Code of Conduct 2011
 - 1.3.2 Principle 2 of the Principles
 - 1.3.3 Principle 6 of the Principles 2.
2. In addition, dishonesty was also alleged in respect of allegations 1.1 and 1.2.

Documents

3. The Tribunal had before it the following documents:-
 - Rule 12 Application and Exhibit JRL1 dated 18 November 2020
 - Respondent’s Answer dated 18 January 2021
 - Applicant’s Reply to the Respondent’s Answer dated 28 January 2021
 - Statement of Agreed Facts and Proposed Outcome dated 17 February 2021

Background

4. The Respondent was admitted to the Roll of Solicitors in November 1992. At all material times he was a director and major shareholder in the Firm, which was initially authorised in 2005 with the Respondent as the sole director. The Firm expanded considerably over the years, including a move to larger offices in 2015 and the recruitment of a large commercial litigation team in 2017. The cost base increased significantly. During the SRA investigation, the Respondent stated that the Firm was “probably under-funded in terms of capital” from 2015, and that by April-June 2018 the Firm was financially “in trouble”, with a growing proportion of the Firm’s profit being made up of Work in Progress on CFA litigation matters.
5. The Respondent made, or caused to be made, improper transfers of client money to the Firm’s office account, to help meet ongoing expenses of the Firm. He also created purported invoices relating to those transfers which did not in fact reflect work done or costs properly due on the matters.

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

6. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and 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

7. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent’s rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
8. The Respondent admitted all the allegations he faced, including that his conduct had been dishonest. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent’s admissions were properly made.
9. The Tribunal considered the Guidance Note on Sanction (8th Edition December 2020). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
10. The Tribunal considered the seriousness of the Respondent’s misconduct. The Respondent admitted that he had dishonestly created invoices for work that had not been undertaken, and had dishonestly transferred a substantial sum from the Firm’s client account. The Respondent, it was found, had committed conduct of the utmost seriousness for which he was culpable. Given the seriousness of the admitted misconduct, the Tribunal determined that the only appropriate sanction was to strike the Respondent from the Roll of Solicitors. The Tribunal did not find, and indeed it was not submitted, that there were any exceptional circumstances such that striking the Respondent from the Roll would not be an appropriate sanction. Accordingly, as the

parties proposed that the Respondent be struck from the Roll, the Tribunal approved the Agreed Outcome.

Costs

11. The parties agreed costs in the sum of £10,000. The Tribunal found the agreed sum was appropriate and proportionate. Accordingly, the Tribunal ordered that the Respondent pay costs in the agreed sum

Statement of Full Order

12. The Tribunal Ordered that the Respondent, ANDREW ROMAN PENA, 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 £10,000.00.

Dated this 12th day of March 2021
On behalf of the Tribunal



JUDGMENT FILED WITH THE LAW SOCIETY
12 MAR 2021

A E Banks
Chair

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

ANDREW ROMAN PENA

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

Through an application and a statement dated 18 November 2020, made pursuant to Rule 12 (2) of the Solicitors (Disciplinary Proceedings) Rules 2019 ("the statement"), the Solicitors Regulation Authority ("SRA") brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of Andrew Roman Pena.

The allegations

1. The allegations against the Respondent, Andrew Roman Pena, made by the SRA are that, while in practice as a Director at Cubism Limited ("the Firm"):
 - 1.1 Between 19 January 2017 and 31 March 2019 he created or caused to be created invoices that did not reflect work done and costs properly due on the relevant matters. In doing so he breached any or all of Principles 2 and 6 of the SRA Principles 2011 ("the Principles")
 - 1.2 Between 19 January 2017 and 1 April 2019 he improperly transferred or caused to be transferred client funds from the client accounts of the Firm, to a minimum value of £265,128.60. In doing so he breached any or all of:
 - 1.2.1 Principle 2 of the Principles
 - 1.2.2 Principle 4 of the Principles
 - 1.2.3 Principle 6 of the Principles
 - 1.2.4 Principle 10 of the Principles
 - 1.2.5 Rule 1.2(a) of the SRA Accounts Rules 2011 ("the Accounts Rules")
 - 1.2.6 Rule 20.1 of the Accounts Rules
 - 1.2.7 Rule 7 of the Accounts Rules

1.3 On 14 April 2019 he obtained a £100,000 loan from a private individual, Mrs C, without fully informing her of the financial events at his firm and/or without ensuring that she first obtained independent advice. In doing so he breached or failed to achieve any or all of:

1.3.1 Outcome 11.1 of the SRA Code of Conduct 2011

1.3.2 Principle 2 of the Principles

1.3.3 Principle 6 of the Principles

2. In addition, dishonesty was also alleged in respect of allegations 1.1 and 1.2.

Admissions

3. Mr Pena admits the allegations made against him in Allegations 1.1 and 1.2 of the statement, and as set out above, in full. Mr Pena also admits that his conduct was dishonest in relation to those allegations.
4. Mr Pena admits allegation 1.3 and the breaches alleged. The factual basis of his admissions is that he did not inform Mrs C of the client account issues and events set out in allegations 1.1 and 1.2, and he did not ensure that she obtained independent advice. Mr Pena admits that this constituted a breach of the allegations set out.

Agreed Facts

5. The following facts and matters, which are relied upon by the SRA in support of the allegations set out above, are agreed between the SRA and Mr Pena:
 - 5.1 Mr Pena was admitted to the Roll of Solicitors on 16 November 1992. At all material times he was a director and major shareholder in the Firm, which was initially authorised in 2005 with Mr Pena as the sole director.
 - 5.2 The firm expanded considerably over the years, including a move to larger offices in 2015 and the recruitment of a large commercial litigation team in 2017. The cost base increased significantly.
 - 5.3 During the SRA investigation, Mr Pena stated that the firm was “probably under-funded in terms of capital” from 2015, and that by April – June 2018 the firm was financially “in trouble”, with a growing proportion of the firm’s profit being made up of Work in Progress on CFA litigation matters.
 - 5.4 Mr Pena made, or caused to be made, improper transfers of client money to the firm’s office account, to help meet ongoing expenses of the firm. He also created purported invoices relating to those transfers which did not in fact reflect work done or costs properly due on the matters.
 - 5.5 There were two client matters involved, a smaller file of an individual client (Ms A) and a larger file relating to a group of connected clients (the B Group).

Ms A file

- 5.6 In relation to Ms A's file, £15,459.72 was held on the file from 24 February 2015. Ms A lived abroad and did not contact Mr Pena in relation to the return of her funds. Despite no further substantive work being recorded on the file, further invoices were raised against Ms A's file as follows:
- i. 19 January 2017: £3,950 (transfer shown on ledger on 20 January 2017)
 - ii. 9 July 2018: £5,000 (transfer shown on ledger 10 July 2018)
 - iii. 24 July 2018: £5,750 (transfer shown on 24 July 2018)
- 5.7 During the course of investigations, Mr Pena stated that these invoices were not based on or reflective of actual work, that he generated the invoices and "*would have just come up with the figure*", and the invoices were not sent to his client.
- 5.8 Mr Pena told the SRA Investigator that he had intended to repay the sums improperly transferred but that "*this was obviously going to wait until she came back and resurfaced*".

The B Group file

- 5.9 The B Group file was a much larger litigation matter. Mr Pena was representing over 40 claimant entities in a high value dispute.
- 5.10 The firm received very large sums of money into a designated deposit account on 5 April 2018, 30 May 2018 and 2 November 2018, with the funds being then mostly transferred to the various client entities in agreed percentage shares.
- 5.11 Mr Pena created, or caused to be created, multiple purported invoices that were improper and did not relate to genuine time spent on the matter. Transfers from client account were made in relation to these invoices and they can be summarised as follows:

Date of invoice and transfer (according to ledger)	Transfer (£)
21 June 2018	£12,060.60
8 October 2018	£27,756.00
21 November 2018	£35,316.00
5 December 2018 ¹	£11,016.00
22 March 2019	£40,980.00
31 March 2019 (bank transfer on 1 April 2019)	£138,000.00
Total:	£265,128.60

¹ Bank statements show this £11,016 as being transferred later, on 21 January 2019, in conjunction with £13,740 understood to be legitimately due (a total transfer of £24,756)

- 5.12 During investigations, Mr Pena confirmed that he had entered the inaccurate descriptions of work on the invoices, they did not relate to time spent and none of the invoices were sent to the clients, who did not know about or consent to them.
- 5.13 Mr Pena confirmed to the SRA Investigator that he knew he was breaching the SRA Accounts Rules.

Loan from Mrs C

- 5.14 On 14 April 2019, the Respondent met with a close, family friend, Mrs C. As well as being a close family friend, in 2018 Mr Pena had also been providing Mrs C with advice on business matters.
- 5.15 Mr Pena explained to Mrs C that he needed a short-term investment in his firm to bridge a cash flow shortfall.
- 5.16 Following the meeting, a loan of £100,000 was made by Mrs C to the Respondent on the same day. Mrs C states that it was made on the basis that she would need it back but could help in the short term with the cash-flow shortfall that she understood Mr Pena's firm to be experiencing.
- 5.17 The meeting took place two weeks after Mr Pena had made the final, improper transfer of £138,000 from the B Group file. Mrs C was not repaid by Mr Pena.
- 5.18 Mr Pena did not suggest or ensure that Mrs C sought independent legal advice, and did not inform her of his previous improper transfers from client accounts.

Reporting of Matters

- 5.19 The firm's financial position reached a critical point in 2019. On or around 17 June 2019 Pinsent Masons LLP were appointed to assist the firm with regulatory guidance and support. The firm entered the process of seeking an orderly and managed wind down, transferring live files and, where applicable, returning client money.
- 5.20 By the middle of July 2019 it was likely the Firm would be shortly entering Administration (the Administration did then begin on 24 July 2019).
- 5.21 With the conclusion and return of funds on the files of Ms A and the B Group still to be resolved, on 17 July 2019 Mr Pena made a report of his misconduct regarding misuse of the funds of those clients to the Firm's COLP. After an urgent meeting with Mr Pena and others, including the proposed Administrator, on 18 July 2019 Pinsent Masons reported the matters to the SRA on behalf of the firm.

- 5.22 After deciding to report the matters to the Firm, Mr Pena was open about his actions and stated that no-one else at the firm had been aware of his actions. He stated at an early stage that he was “*deeply sorry for what he had done*” and felt “*very ashamed*”.
- 5.23 Mr Pena explained his misconduct on the files, and by 22 July 2019 the misused client money had been replaced in full by the firm and from the personal resources of other Directors of the firm.
- 5.24 On 23 July 2019, Mrs C separately reported matters regarding her loss of £100,000 as lent to Mr Pena.
- 5.25 The SRA subsequently carried out a Forensic Investigation based on the reports provided by Pinsent Masons and Mr Pena. Mr Pena always maintained his admissions to the improper actions in relation to the files of Ms A and the B Group.

Non-agreed Mitigation

6. Mr Pena has set out his mitigation, remorse and background information in a statement dated 17 February 2020, a copy of which is appended to this document. Mr Pena’s statement is his own and is not endorsed by the SRA.
7. Mr Pena does not contend that the mitigation set out in his statement amounts to exceptional circumstances which would justify the Tribunal in making any order other than that he be struck off the Roll.

Proposed Penalty

8. Mr Pena and the SRA agree that the seriousness of his misconduct is such that the Tribunal should order that he be struck off the Roll of Solicitors, with any lesser sanction being inappropriate.
9. With respect to costs, Mr Pena agrees to pay the SRA’s costs of the application fixed in the sum of £10,000.

Explanation as to why such an order would be in accordance with the Tribunal’s sanctions guidance

10. Mr Pena has admitted dishonesty. The Solicitors Disciplinary Tribunal’s “Guidance Note on Sanction (8th Edition)” (“the Guidance Note”), at paragraph 51, 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))*”.

11. 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...”

12. Mr Pena created a number of (purported) invoices which did not reflect work done and costs properly due on the relevant matters. He also improperly transferred funds out of the firm’s client account supposedly pursuant to those invoices, to a minimum sum of £265,128.60. Within this process, he held a position of trust to both the Firm and his clients, but misled or failed to provide them with the information when he knew he was breaching the Accounts Rules and making improper transfers of client funds.

13. Mr Pena had control over all relevant matters and the misconduct relating to client money took place over a minimum period of nine months. Given the nature of his conduct, Mr Pena agrees that his circumstances do not fall within those that would exceptionally mean that striking off would be a disproportionate sentence.

14. Accordingly, having regard to Mr Pena’s admissions to the misconduct, the SRA and Mr Pena invite the Tribunal to make an order that Mr Andrew Roman Pena be struck off the Roll of Solicitors and pay the costs of the SRA’s application fixed in the agreed sum £10,000.

Dated this 17th day of February 2021

.....

Jonathan Leigh on behalf of the SRA

.....

Mr Andrew Roman Pena

SRA Mitigation Statement – Andrew Roman Pena

Acceptance and Remorse

I accept my part in my (and the firm's) undoing and that what I did was shameful, dishonest and inexcusable.

The collapse of something which I created, was proud of, believed in and built over the course of 12 or so years of my life was a deeply humbling and cathartic experience. But those feelings are little to my remorse for the actions that are the subject of these disciplinary proceedings which will lead, quite rightly, to my being struck off the roll.

As well as offering a full apology, I would like to provide some form of context and explanation for what happened. I hope this will help the Tribunal to understand why a previously unblemished career in the law has ended up with these proceedings.

The Genesis of Cubism

In 2000, and as I was working towards becoming a Partner in Field Fisher Waterhouse, I began an initiative to bring in work from Spanish clients. One day a man arrived at our office in Vine Street. He had read some of my articles on the UK being a good place for Spanish companies to expand into new territories. The man was setting up a UK subsidiary which, as it turned out, was part of a very large conglomerate of companies operating worldwide.

I became one of the conglomerate's "go-to" lawyers in the UK and, as part of that, was allowed an opportunity to examine their business from close quarters. What I saw and found inspired and amazed me. Its story was one of triumph over adversity and of the human power to build something extraordinary using a co-operative centred model. I remember my first visit to its base in a small town in the Basque country. As you entered into the working campus, all around was a hive of human activity filled with working hubs of many co-centred companies that delivered training (through their university), innovation (through their technology hubs), advice (through their professional services firms) and finance (through their banks and financial institutions), each feeding, serving and supporting a large conglomerate of companies.

I was ushered into a large room where the story of the conglomerate was humbly told. The town itself had been a place of misery and famine, struggling to recover from the effects of the Spanish Civil War. One day, a Catholic Priest arrived hoping to effect positive change through igniting a deepening spirituality. He was not well received, a one eyed stumbling orator that left his congregation far more flat than inspired. He was on his way out when he struck on an idea - education, rather than the church, was the answer. He began a school and then found jobs in various industrial businesses for his first few graduates. Some years later, three graduates returned and the co-operative was born as a business venture producing clay ovens.

As I walked around the campus, the story filled me with hope and joy. There was something sacred in this place and people that I had never really encountered in my life. I resolved to make the most of my career, focus on becoming a Partner and then in time set up my own firm founded on this co-operative ideal; a true partnership without the politics. A model that I hoped would evolve co-operatively from a law firm to a full professional services model, which would help individuals and companies on each step of their journey.

Cubism

Ideals and realities are not good bedfellows. The human condition is wrought with self-centeredness with the "I" often overshadowing the "we". There was always something of that tension within Cubism.

The consultant-based business model (upon which Cubism was built) encouraged each lawyer to plough his or her own furrow and focus more on that than my hoped for co-operative ideal. Over time, the initial beauty of what I was hoping to create became diluted so that, as a fellow director described it, Cubism became "a carapace with no life of its own". In hindsight, it now feels that from strong beginnings the business evolved into some strange Cubist nightmare for me - uncomfortably jagged, incongruous and inhuman.

In many ways, and for many years, the firm was functioning well with generally happy lawyers working hard and building practices - sometimes alone and sometimes within inner groups or (in the non-technical sense) partnerships. Good lawyers building good practices and achieving returns sometimes many times over the figures at which they had embarked on their Cubism journey. There was, it seemed, a growing sense of a collective.

At the same time, there was a pipeline of young lawyers often ostracised by the law in that neverland of the eternal paralegal. I had always struggled to understand, at least from the perspective of the earnest student, why the business of education had become so overfilled with places of hope that often led to disappointment through lack of opportunity. We engaged with a good number of these hopeful lawyers, taking them on the journey from paralegal to trainee to solicitor and eventually to pastures new. Many of these began their Cubism life with goals which sometimes seemed to ask too much or stretch too far. But, in many cases, especially in the early days when I had more time to work with them individually, they achieved their goals, indeed at times well beyond them, through sheer grit and determination and a little dose of hope.

It was 2015 and we were well ensconced in simple offices on Chancery Lane, sandwiched between the Law Society and a strange (but perhaps appropriately named) alleyway - St Andrew's Crosse. We were steady and profitable but I wanted more and the chance came to relocate to far better appointed offices in Plough Place. The look, feel and location was great - fitting my growing ambitions for myself and the firm - but they came at a considerable extra cost.

The Plough Place Plan

I saw the move to Plough Place as my opportunity to build a more cohesive and co-operative style model orientated on two key objective being the idea of:

1. Career Adventuring - growing a new breed of Cubism lawyers as they embarked on a journey from paralegal to trainee to associate and from there building a sustainable practice.
2. One Firm Focused - moving beyond the fee split through:
 - a. generating asset value within each practice so that they could be sold internally on retirement to deliver extra returns for the exiting consultant and growth for the acquirer.
 - b. building asset value in the business so that top performing consultants could become part owners of a successful and growing firm and derive far greater value for their One Firm efforts.

But, for this to work, the firm needed to build far stronger foundations and the consultants had to be persuaded to shift their perspectives from short term income to longer term objectives.

But, as we grew, it was hard to hold on to those objectives. The nature and complexity of the firm began to take a life of its own. Simplicity was overtaken by a more unmanageable dynamic. We began to secure larger work and clients, but with this came problems that had lain dormant and unseen but slowly began to surface. Different deals for different lawyers that often were not performance led but more focused on investing in and encouraging the growth of each practice. The hopes of the original ideal, and my two key objectives, were displaced by some unprofitable deals and a growing concern as overheads began to mount. But with that, came opportunities. Cash was tight but more feast than famine and we had a growing pipeline of substantial CFA work.

The End of Cubism

I thought it might be helpful to explain to the Tribunal the dynamics during the last year of the firm and how that affected my state of mind.

There were many encouraging factors. We were on various paths to obtain sizeable cash injections to stabilise and fund the growth of the business. We were nearing outcomes in various big ticket litigation cases that would bring £2-3 million of fees into the business in the near future. We had £8 million or so of accumulated WIP valued internally at around £1.2 million (i.e. 20-25% of the estimated recovery of £5-6 million based on our historical performance). And, we were gaining traction on recruitment with a growing pipeline of lawyers in various stages of negotiations. So, there were many positive factors, and reasons to be encouraged, if the firm traded through its difficulties.

But, cash was running low, consultants were not to be paid all their fees on time and the CFA cases were starting to drag on. I had much to lose if Cubism went down as I had drawn most of my income over the previous two years via a director's loan and had personally guaranteed the firm's banking facilities. I had also, perhaps foolishly, already invested everything in the success of Cubism including selling our family home to fund the business. I had everything on the line.

As we approached the Autumn of 2018, the business really began to suffer. I was recovering from a hip replacement operation so unable to give my full attention to the various issues around me. At the same time, the Consultants, who were generally supportive, were starting to become concerned.

I began to focus on the CFA cases (which we had invested many hundreds of thousands of pounds in pursuing). The majority of these were being managed by a large team of lawyers. However, the financial pressures on the firm were affecting their morale. To make matters worse, the Team's lead Consultant was also struggling with the pressure. He became increasingly erratic and then abusive and suddenly he began to be absent. The Team were soldiering on but the Consultant's behaviour was spooking the Team and his clients.

I was trying to hold the tension. I knew that, without further investment (which always seemed a few weeks away) and without the CFA fees (some of which were due to crystallise very shortly since cases had been won or settled), the firm was probably doomed.

All these issues – financial and relational – began to mingle and feed off each other. Surface tensions became deep divisions. The Consultants began to circle and I found myself at the centre of a civil war with 5 or 6 factions emerging. The management team wanted the Lead Consultant and his Team out, the Team wanted the Lead Consultant out and the Lead Consultant wanted the management team out. Meanwhile, the Consultants were totally split, some supporting the business, some wanting to explore a rescue deal, some looking for the exit door and some totally undecided.

In the meantime, the cash position was worsening. Although some very large CFA fees (well over £1 million) were now due to be paid, various Consultants had stopped billing to preserve their WIP in case the firm failed. Others had stopped working all together to focus on finding a new home.

So, this was the dynamic – each day and every day and in between nights of disturbed sleep and 3 am waking. Shifting sands – hopes on one side and an abyss on the other. I began to find myself in this unbearable limbo, struggling to come to terms with the situation and walking the streets and in churchyards in search of some relief.

A melting pot of fears, wrapped in dark thoughts, that would never go away. I wanted it to end and would do almost anything to bring relief even if it was just some temporary escape from the constant and endless daily pressure. In hindsight, do anything for some respite irrespective of the future consequences.

The Allegations

I cannot and do not dispute the facts. I cannot say that anyone was complicit in my actions. I can only say that, at the time of most of my wrongdoings, I was under this growing and excruciating pressure and that under that pressure I totally cracked.

All I can do is answer the allegations as truthfully and accurately as I can:

1. It is correct that I moved money out of the client account when I should not have done so. I did this in order to try to keep the firm alive, at a time when its continued existence appeared to depend on (1) one of the many negotiations for a large investment into Cubism crystallising and/or (2) being paid under various conditional fee agreements relating to large pieces of litigation. What I did was completely unacceptable. It was a desperate measure and I always intended to replace the relevant monies.
2. It is correct that I created invoices to try to justify the money movements referred to above. Again, this was a desperate measure and was completely unacceptable. The invoices were never sent to any of the relevant clients, since I intended to correct the situation as soon as one of the investments or large CFAs materialised.
3. I find it impossible to give any sensible explanation in respect of Client A. She had come to me because her previous lawyers had applied charges to her client account of around £9-10,000 due to her failure over many years to provide bank account details for the transfer of money. I settled that matter but then found myself in the same difficulties as her previous lawyers, in that Client A was very hard to contact and would not provide me with an account to which I could transfer the money. She stopped answering emails and, in effect, disappeared.

4. As regards Group B, this began at a time when the firm was starting to find itself in serious financial difficulties and I was going through hip replacement surgery. I loved my Group B clients, who were good and straightforward business people mostly made up of generational family businesses. I pulled out all the stops to help them achieve a quick and very substantial settlement to support their businesses through a difficult trading patch that was not of their making. In many ways, the case was one of my finest hours as a solicitor; but it equally exposed my deepest flaws as a man operating under extreme financial pressure. All the monies which I wrongly moved from the client account have been refunded by the other directors of Cubism who subsequently were partly refunded by Cubism's insurers. I could only make a very small contribution to the repayment since I had sold our family home years earlier to fund the firm and all that I had left by 2019, or subsequently borrowed, was sunk back into Cubism in the mistaken belief it would survive and then thrive. The invoices which I prepared were never sent to the clients and were prepared by me in a desperate attempt to keep my actions from the other Cubism directors, until I could make good the withdrawals through the income streams I mentioned above.
5. I borrowed money from Ms C. She was a very dear and close friend whom I had helped and supported through some legal difficulties. She subsequently approached me offering a personal loan to support the business through its financial difficulties. Initially, I declined as I wrestled with my conscience. But, a little later, I decided to take up her kind offer to tide the firm over at a point when I felt I had agreed terms for a £500,000 investment into the firm. I was not candid about the client account issues and did not suggest that she take independent advice. I thought the loan was safe but, for various reasons out of my control, I became increasingly uneasy about the source and terms of the £500,000 investment, so eventually pulled out of the deal. I was obviously wrong to take the loan and should never have involved Mrs C in any way. The fact that I was borrowing money from her, a very close and treasured family friend, shows just how awful things had become.

When all is said and done, I personally lost rather than gained from the various transactions since the money (plus some additional loans I guaranteed or borrowed) was almost exclusively used to fund the business rather than to pay me any salary or dividends. Further, and to the extent that I did take any drawings by way of salary and/or dividends and/or a director's loan during the last year of the business, this would, I believe, have been repaid in full as part of a £23,000 repayment towards my director's loan using money which I had borrowed from two regulated lenders.

Reflections after Cubism

My last 18 months or so have been spent searching in the shadows of my life. Sometimes alone during dark nights of the soul, sometimes in psychotherapy, sometimes with family and friends and sometimes simply looking inwards to search for some remnants of meaning and purpose to my life. Asking questions I should have asked many years ago, so that I can learn from my mistakes and ensure that I never fall into the same errors again.

18 months in my wilderness. A time spent in in trying to better understand what happened and why it happened and grounding myself in a simpler way of life. Time seeking solace amongst my local Quakers, helping here and helping there, and absorbing their values of Truth, Simplicity, Peace and Equality. Time spent on an Ignatian Retreat embracing the Spiritual Exercises and then starting a course on the Art of Spiritual Direction. Months reflecting and writing an Examen of my life trying to understand myself more deeply.

And, as I have reflected and looked back, searching for the roots of my wrong actions, I have come to six understandings:

1. Firstly, my career was built on process rather than passion; swaying between a dynamic of boredom and restlessness.
2. Secondly, the privilege of being a solicitor had, perhaps, come unwanted and far too easily for me. But now, as my professional career as a solicitor comes to an end, I have come to realise that being a solicitor is something I should have valued far more highly rather than taken for granted.
3. Thirdly, there was an aspect of my character that was a risk-taker. It may be that elements of this characteristic exists in anyone who sets up a new firm or business.
4. Fourthly, as the saying goes, "*Character is revealed when pressure is applied*". Rules and principles are easy to follow when things are going well.

5. Fifthly, my hopes for the firm, and what the consultants wanted, were wholly at odds and not reconcilable. At heart, we were probably people of many different tribes.
6. Sixthly, if you put your heart and soul into a project (which I probably did with Cubism), it can leave you terribly warped and exposed as you become increasingly desperate to hold onto what should be let go.

But, despite those reflections and understandings, it would not be wholly accurate to categorise my actions, and the decisions I took that led to where I am now, as the whole balance sheet. I accept that it is an important, and probably final, part of my life as a solicitor, but it is not the full measure of the man.

I was, in various ways, a skilled practitioner and compassionate lawyer leading a professional life for 27 or so years without one client or colleague complaint against me.

And for all my wrongdoings, there were many rights and I do feel that I did help and make a meaningful difference to most of my clients along the way. Clients that had faith in me; trusting me to deliver for them positive outcomes in many situations and, at times, on critical issues in their lives or businesses. I do not say this to balance the equation, nor to remedy or excuse the breach of trust in respect of those I failed, but as context for my many years as a practising solicitor.

I also hope that I left at least some of my colleagues at Cubism (as well as the two firms I worked at before) in some measure better off for the experience of knowing and working with me.

That said, I know that there will be some clients and colleagues and friends that will be left with a lasting and dark impression that rests far more within the bad than good. I cannot change what happened no matter how much I might wish I could turn back the clock. I do, however, want to offer each my sincere and full apologies and for each to know that I deeply regret my actions and am remorseful for what I did and how that may have impacted and affected them.

Conclusion

I hope that I have used my time since the collapse of Cubism wisely and productively in my efforts to become a better, more centered and integrated person. I know that time has only allowed for a little water to pass under the bridge and that this journey has just begun. But I believe that I have made progress and am hopeful where this might lead me.

I have found forgiveness to be an elusive enigma. It can be searched, hoped and fought for but, in the end, it is a gift of grace that can be asked for but never fully earned; only freely offered, freely given and, perhaps only then, felt and finally accepted. In living through my many errors, I have also discovered a personal truth - you cannot change yourself but you can lose and find yourself. I hope never again to lose myself as I then did nor to become as desperate as I then was. Even if I did, I hope my learnings will lead me to respond more honestly and with far greater integrity.

I should conclude by saying that, as someone with no prior experience of proceedings such as this, I do not know whether the Tribunal is accustomed to reading statements of this kind. This statement is a very important document to me personally as I have sought to express myself openly and with full conviction. I hope that the Tribunal will understand why I wanted (and needed) to express myself in this way.

Andrew Pena
17 February 2021