

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11924-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MICHAEL DAVID COLLIER

Respondent

Before:

Mr R. Nicholas (in the chair)

Mr G. Sydenham

Dr S. Bown

Date of Hearing: 9 May 2019

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, Michael David Collier, made by the SRA were that, while in practice as a sole practitioner at Collier Law Solicitors (“the Firm”):
 - 1.1 Between around July 2010 and May 2018, he made improper transfers from the Firm’s client account to the office account in respect of any or all of client matters 1-8 and improperly used those monies for his own business and/or personal purposes, and in doing so he thereby breached:
 - 1.1.1 insofar as such conduct took place during the period from on or around July 2010 to and including 5 October 2011, Rules 1.02, 1.04 and 1.06 of the Solicitors’ Code of Conduct 2007 (“the 2007 Code”);
 - 1.1.2 insofar as such conduct took place on or after 6 October 2011, Principles 2, 4, 6 and 10 of the SRA Principles 2011 (“the SRA Principles”);
 - 1.1.3 insofar as such conduct took place during the period from on or around July 2010 to and including 5 October 2011, Rules 1(b), 1(d), 19.2 and 22.1 of the Solicitors Accounts Rules 1998 (“the 1998 Accounts Rules”);
 - 1.1.4 insofar as such conduct took place on or after 6 October 2011, Rules 1.2(a), 1.2(c), 17.2 and 20.1 of the SRA Accounts Rules 2011 (“the 2011 Accounts Rules”).
 - 1.2 Between around July 2010 and May 2018, he sought to disguise the improper transfers of client monies by creating and/or providing false Estate Accounts to clients and/or beneficiaries for any or all of client matters 1, 2, 4, 5 and 6 and in doing so he thereby breached:
 - 1.2.1 insofar as such conduct took place during the period from on or around July 2010 to and including 5 October 2011, Rules 1.02 and 1.06 of the 2007 Code;
 - 1.2.2 insofar as such conduct took place on or after 6 October 2011, Principles 2 and 6 of the SRA Principles.
 - 1.3 He made false representation/s to the SRA:
 - 1.3.1 on 27 February 2018 in that he stated words to the effect that:
 - 1.3.1.1 the repayment of a loan of £40,000.00 to his Firm from the client account was repaid following a tax refund, when in fact the loan from the client account was repaid following a third party loan;
 - 1.3.1.2 he had brought the Firm’s finances “*onto an even keel*”, when in fact that there was a minimum cash shortage of over £200,000.00 which the Respondent was unable to pay;

1.3.2 on 27 June 2018 in that he stated words to the effect that that he was not aware of any misuse of client funds when he was aware that he had misused client funds;

and in doing so he thereby breached Principles 2, 6 and 7 of the SRA Principles.

2. By reasons of the facts and matters set out at any or all of paragraphs 1.1, 1.2 and 1.3 above, he acted dishonestly but dishonesty was not an essential ingredient for proving those allegations.

Documents

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

- Statement of Agreed Facts and Outcome dated 8 May 2019

Factual Background

4. The Respondent was admitted to the Roll on 15 August 1994.
5. From 11 April 2005, the Respondent operated as a sole practitioner at Collier Law Solicitors ("the firm"), York, until the Applicant intervened into the firm on 24 August 2018. The firm dealt with wills and probate matters.
6. The conduct in this matter came to the attention of the Applicant upon receipt of the Firm's Accountants' Annual Report in around November 2017.

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

7. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions. The Tribunal dealt with the application under Standard Direction 2 notwithstanding that the application was made within the period of 28 days before the substantive hearing of the matter which was listed for 24 May 2019 with a time estimate of half a day.

Findings of Fact and Law

8. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
9. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.
10. The Tribunal had regard to the Guidance Note on Sanctions (December 2018). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Guidance Note set out 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)). No exceptional circumstances were advanced in this case. The Tribunal considered that the proposed agreed outcome of striking off was proportionate to the misconduct which had occurred and was necessary for the protection of the public and the reputation of the profession.

Costs

11. The parties had agreed the Applicant's costs in the sum of £19,219.25.

Statement of Full Order

12. The Tribunal Ordered that the Respondent, MICHAEL DAVID COLLIER, 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 £19,219.25.

Dated this 17th day of May 2019
On behalf of the Tribunal



R. Nicholas
Chairman

Judgment filed
with the Law Society
on 17 MAY 2019

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MICHAEL DAVID COLLIER

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

1. By a Statement made by Mark Lloyd Rogers on behalf of the Solicitors Regulation Authority (SRA) pursuant to Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007 dated 7 February 2019 the Solicitors Regulation Authority brought proceedings before the Tribunal making allegations of misconduct against the Respondents. The Tribunal gave directions on 13 February 2019. The substantive hearing is listed for a half day on 24 May 2019.
2. The Respondent is prepared to make admissions to the allegations in the Rule 5 Statement as set out in this document.
3. The allegations arise out of concerns about the Respondent's use of client money. It is alleged against, and admitted by, the Respondent that:
 - 3.1. he made improper transfers from the Firm's client account to the office account and improperly used those monies for his own business and/or personal purposes;
 - 3.2. he sought to disguise the improper transfers of client monies by creating and/or providing false Estate Accounts to clients and/or beneficiaries;
 - 3.3. he made false representations to the SRA; and
 - 3.4. he acted dishonestly in respect of the matters listed above.
4. The SRA is satisfied that the admissions and outcome satisfy the public interest having regard to the gravity of the matters alleged.

Admissions

5. The Respondent will make the following admissions:

5.1. Between around July 2010 and May 2018, the Respondent made improper transfers from the Firm's client account to the office account in respect of any or all of eight client matters and improperly used those monies for his own business and/or personal purposes. In doing so, the Respondent:

5.1.1. insofar as such conduct took place during the period from on or around July 2010 to and including 5 October 2011, Rules 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007 ("the 2007 Code");

5.1.2. insofar as such conduct took place on or after 6 October 2011, Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the SRA Principles");

5.1.3. insofar as such conduct took place during the period from on or around July 2010 to and including 5 October 2011, Rules 1(b), 1(d), 19.2 and 22.1 of the Solicitors Accounts Rules 1998 ("the 1998 Accounts Rules");

5.1.4. insofar as such conduct took place on or after 6 October 2011, Rules 1.2(a), 1.2(c), 17.2 and 20.1 of the SRA Accounts Rules 2011 ("the 2011 Accounts Rules").

5.2. Between around July 2010 and May 2018, the Respondent sought to disguise the improper transfers of client monies by creating and/or providing false Estate Accounts to clients and/or beneficiaries for any or all of five client matters. In doing so, the Respondent thereby breached:

5.2.1. insofar as such conduct took place during the period from on or around July 2010 to and including 5 October 2011, Rules 1.02 and 1.06 of the 2007 Code;

5.2.2. insofar as such conduct took place on or after 6 October 2011, Principles 2 and 6 of the SRA Principles.

5.3. The Respondent made false representation/s to the SRA:

5.3.1. on 27 February 2018 in that he stated words to the effect that:

5.3.1.1. the repayment of a loan of £40,000.00 to his Firm from the client account was repaid following a tax refund, when in fact the loan from the client account was repaid following a third party loan;

5.3.1.2. he had brought the Firm's finances "*onto an even keel*", when in fact that there was a minimum cash shortage of over £200,000.00 which the Respondent was unable to pay;

5.3.2. on 27 June 2018 in that he stated words to the effect that that he was not aware of any misuse of client funds when he was aware that he had misused client funds;

and in doing so he thereby breached Principles 2, 6 and 7 of the SRA Principles.

5.4. By reasons of the facts and matters set out at any or all of paragraphs 5.1, 5.2 and 5.3 above, the Respondent acted dishonestly.

Agreed Facts

Receipt of Accountant's Annual Report

6. The conduct in this matter came to the attention of the SRA upon receipt of the Firm's Accountants' Annual Report in around November 2017. The Firm had acted in the administration of the estate of the late KP and the Respondent was also the sole executor of the Estate. The Accountants identified that, on 29 June 2016, the Firm transferred £40,000 from the client account into its office account and the transfer was marked as a loan. The funds were returned, with interest, on 5 September 2017.

Initial investigation and first EWW

4. The SRA carried out initial investigations and identified with the Respondent that he had made a personal loan from the Estate of KP to himself which he had repaid with interest. The SRA sent an Explanation with Warning ("EWW") letter to the Respondent on 18 April 2018. The SRA alleged that, by withdrawing £40,000 from the client account as a personal loan without authority, he had acted in breach of the SRA Principles and the SRA Accounts Rules. The SRA also alleged that the Respondent had acted dishonestly.
5. On 11 May 2018, the Respondent (via his solicitor) accepted the allegation, save that he denied that he had acted dishonestly. He stated that he had put a formal agreement in place between himself and the Estate, been completely transparent in documenting the transaction and had paid the loan back in full with interest.

Forensic Investigation

6. The SRA subsequently commissioned a Forensic Investigation which commenced on 27 June 2018. The Forensic Investigation Officer ("FIO") asked the Respondent whether he was aware of any misuse of client funds and whether there were any other matters which he wished to bring to the FIO's attention. The Respondent answered in the negative.
7. However, during an interview on 25 July 2018 with the FIO, the Respondent admitted making improper withdrawals from the client account on other probate matters.
8. The FIO produced a report dated 9 August 2018 and concluded that:
 - 8.1. there was an improper payment of £40,000 from the client account in June 2016 which was returned in September 2017 (i.e. the "loan" from the Estate of KP);
 - 8.2. the Respondent raised interim bills on probate files and transferred the sums to the office account to alleviate his own financial difficulties. The bills had not been delivered to clients. In some cases, the clients had never been told of the transfers and in some cases the Respondent had manipulated the Estates Accounts in order to disguise the transfers;
 - 8.3. these transfers occurred between 6 July 2010 and the investigation date and as a consequence a minimum cash shortage of £232,555 existed on the client account;
 - 8.4. the Respondent was unable to replace the cash shortage.

Improper transfers of client monies

9. The improper transfers of client monies for the eight client matters can be summarised in the following table:

Client matter	Total Improper Transfers	Date/s	Sums replaced
1 (AF)	£39,765.00	06/07/10 – 02/11/11	
2 (BB)	£102,420.00	25/05/12 – 14/11/14	
3 (VP)	£14,400.00	11/02/13	
4 (IP)	£46,800.00	12/11/13 – 16/05/14	
5 (JA)	£19,800.00	30/04/15 – 10/11/15	£19,100.00 (plus £720 for additional fees)
6 (RL)	£15,000.00	09/07/15	
7 (KB)	£13,470.00	21/07/17 – 31/05/18	
8 (KP)	£40,000.00	29/06/16	£40,000.00 (plus interest)
<i>Total</i>	£291,655.00		£59,100
<i>Minimum cash shortage</i>	£232,555.00		

10. It is alleged, and the Respondent admits, that:

- 10.1. the Respondent transferred monies from the client account to the office account purportedly in respect of payment for costs or fees incurred in carrying out the probate work (i.e. Profit Costs);
- 10.2. however, the Respondent did not send invoices or written notification of costs to clients;
- 10.3. this was because the Respondent had not in fact carried out the legal work which the entries in the client ledger purported to represent;
- 10.4. instead, the Respondent improperly transferred the monies from the client account to the office account for his own business or personal purposes.

11. By way of an example for one client (BB):

- 11.1. The client ledger demonstrates that between 16 September 2011 and 21 May 2012, there were multiple deposits into the client account as the estate's assets were gathered. On 21 May 2012, the balance on the client ledger stood at over £1.2m.
- 11.2. The Respondent did not have a client care letter but believed he verbally agreed fees of around £42,000.00.

- 11.3. On 3 August and 6 August 2018, the Respondent provided schedules to the FIO which set out the invoices which were not shown to the clients. In respect of this client, the schedule set out twelve transfers from the client account to the office account between 25 May 2012 and 14 November 2014 which came to a total of £102,420.00. The client ledgers demonstrate that the entries in respect of these transfers were (save for the entry of 25 May 2012) in respect of "Profit Costs".
- 11.4. By way of an example of the use of the client money, a transfer was made on 1 July 2014 of £12,000.00 from the client account to the office account. The office account was overdrawn by £1,750.17 prior to this transfer. On the same day, £3,500.00 was transferred to the Respondent's second business.

Disguising the improper transfers of client money by creating and/or providing false Estate Accounts

12. In interview with the FIO, the Respondent also explained that in some cases the improper transfers were, after the event, disclosed to the clients in the Estate Accounts. However, in other cases inaccurate Estate Accounts were delivered to the executors in order to disguise the improper transfers in respect of costs. For example, the Respondent explained that in some client matters he delivered Estate Accounts to the beneficiaries which showed the true costs but delivered Estate Accounts to the executor clients which were "*changed or altered.....to show that less was in the estate.*"
13. By way of an example for the same client (BB):
- 13.1. As noted in paragraph 11 above, the Respondent made improper transfers from the client account into the office account of £102,420.00.
- 13.2. One version of the Estate Accounts dated (and last modified electronically) 21 November 2014 (stamped draft for approval) indicated fees of £41,876.00 (£34,896.66 plus VAT) and therefore did not reflect the improper transfers made.
- 13.3. However, another version of the Estate Accounts on the file dated 24 November 2014 (and last modified 27 March 2015) indicated fees of £106,020.00 (£88,350.00 plus VAT).
- 13.4. It was not clear to the FIO from the file which set of Estates Accounts was sent to the clients. However the FIO noted that, during the interview on 25 July 2018, the Respondent stated that those sent to the clients had been manipulated so as not to disclose the true costs taken.

False representation to the SRA on 27 February 2018

14. As noted above, the SRA was first alerted to the Respondent's conduct in respect of a loan from the estate of KP to the Firm. The SRA made enquiries with the Respondent.
15. On 27 February 2018, the Respondent sent an email to the SRA in which he stated: *"As to the repayment of the monies due to the estate, an HMRC matter was subsequently resolved by my accountants. It transpired that the correct figure due to them was £11,000 and therefore I was due a refund of £9,000 as they had required me to pay £20,000. Also I had gradually got the firms' finances onto an even keel following the difficulties I had faced following an acrimonious divorce."*
16. In fact, the Respondent was able to repay the loan from the estate of Client 8 (KP) because he had received another loan from a third party. The representation he made to the SRA about the means by which he could repay the loan was therefore false.
17. Furthermore, the Firm's finances were not on "an even keel". There was a minimum cash shortage on the client account of over £200,000.00 which the Respondent has confirmed that he is unable to repay.

False representation to the SRA on 27 June 2018

18. On 27 June 2018, at the commencement of the Forensic Investigation, the FIO conducted an initial interview with the Respondent. In accordance with a standard series of questions, the FIO asked the Respondent *"Whether he was aware of any misuse of client funds?"*. The Respondent informed the FIO that he was not, and the FIO marked "N" (i.e. "No") on the form accordingly.
19. The FIO also asked the Respondent if there were any other matters that he would like to bring to the FIO's attention at that stage. The Respondent replied that there were not.
20. In fact, the Respondent had made a series of improper transfers from the client account. The transfers were made in order to affect the running of the Firm, the Respondent's second business and the Respondent's own use. This would undoubtedly constitute a misuse of client funds.
21. Furthermore, the Respondent was also fully aware of the position. The Respondent had made a number of improper payments from 6 July 2010 to 31

May 2018. The Respondent knew about the payments because, for example, he used the money to pay the Firm's liabilities. The last payment was made after the SRA began investigating this matter and approximately four weeks before the Forensic Inspection.

22. During interview on 25 July 2018, the Respondent informed the FIOs that he *"was stupid and um, um took money from client account."* When questioned by the FIOs in the same interview why he did not mention the *"wider picture"* to the FIO sooner, the Respondent stated *"Because I'm scared. Um I'm ashamed. Um and you know, just didn't want it to come to this, but there we are."*

Dishonesty

23. The Respondent was an experienced solicitor and knew that client monies must be kept in a separate client account. He also knew that client monies should be used for that client's purpose only. Furthermore, the Respondent knew that it was wholly improper to use client monies for his own purposes, whether that was in his personal life or to facilitate the running of his businesses. The Respondent accepts this and acknowledges that his conduct was "stupid".
24. The Respondent produced false Estate Accounts. He knew that the purpose of his actions was to mislead anyone reviewing these documents and to hide the fact that he had used client monies improperly.
25. The Respondent's false representations to the SRA were purposeful in order to hide his actions. The Respondent was ashamed of his actions and would have known the inevitable consequences of admitting his actions.
26. It is alleged, and the Respondent admits, that he acted dishonestly by the standards of ordinary decent people because, in all the circumstances of the case, he:
- 26.1. made improper transfers of client monies to the office account to use for the running of the Firm and his second business, and for his own purposes;
 - 26.2. disguised the improper transfers of client monies by creating and/or providing false Estate Accounts;
 - 26.3. made false representations to the SRA.

Mitigation

27. 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.
28. The Respondent states that:
- 28.1. he is profoundly sorry for what he has done and accepts full responsibility for his actions;
 - 28.2. he was under immense personal and financial pressure for a number of years as the result of a distressing divorce and business difficulties;
 - 28.3. he only ever intended to shore up his firm's office account temporarily by transferring money from the client account, but events overtook him and he was never able to make the correcting transfers;
 - 28.4. he never intended for clients of the firm, or others, to lose money as a result of his actions;
 - 28.5. he was not motivated by personal gain but rather by a desire to keep the firm in business so that he could continue to provide a service (and, later, in the hope that he could put right what he had done wrong);
 - 28.6. he disclosed a loan he took from the client account to his Accountant and permitted his Accountant to provide the Accountant's Report to the SRA. Whilst he initially made false representations to the SRA (as set out at allegation 1.3 of the Rule 5 statement, which he admits), he subsequently cooperated with the FIO and directed the FIO to the relevant files, and has cooperated with the SRA thereafter;
 - 28.7. he has been made bankrupt and has lost everything including his livelihood and reputation;
 - 28.8. however, he remains committed to repaying the sums owing to beneficiaries even though he has no means to do so at present, and to cooperating with the SRA in respect of any outstanding issues;
 - 28.9. he is deeply sorry for his actions and ashamed of what has happened. He apologises unreservedly to the SRA and will do anything he can to put things right.

Agreed Outcome

29. The Respondent agrees:

29.1. to be struck off the Roll of Solicitors;

29.2. to pay costs to the SRA of £19,219.25.

30. The Parties submit that in the light of the admissions set out above, the proposed outcome represents a proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanctions 5th Edition. The Respondent's misconduct is at the highest level as it involves dishonestly misusing clients' monies over the course of a number of years, concealing that misuse by misleading clients and beneficiaries and making false representations to his regulator about his actions. The protection of the public and public confidence in the provision of legal services requires the Respondent to be struck off the roll. There are no exceptional circumstances that warrant a departure from that sanction.

Signed:

.....
MARK LLOYD ROGERS

On behalf of the Solicitors Regulation Authority

Dated..... 8 May 2019

.....
MICHAEL DAVID COLLIER

Dated..... 8.5.19