

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11882-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JEFFREY ALLAN JACKSON

Respondent

Before:

Mrs J. Martineau (in the Chair)

Mr J. Evans

Mrs L. Barnett

Date of Hearing: 13 February 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 made by the Solicitors Regulation Authority (SRA) were that he:
 - 1.1 Failed to make any provision for the safe storage or disposal of archived files when his firm, Paul Fallon & Co closed on the 2 November 2016 leading to an intervention by the SRA into his firm in breach of all or alternatively any of the Principles 4, 6, 8 and 10 of the SRA Principles 2011 (the Principles).
 - 1.2 From around May 2014 he failed to carry out proper reconciliations in breach of all or alternatively any of Rules 29.12, 29.13 and 6 of the SRA Accounts Rules 2011 (SAR).
 - 1.3 From around May 2014, he failed to keep proper accounting records to show accurately the position with regard to the money held for each client and trust in breach of all or alternatively any of Rules 1.2 (e), 1.2 (f), 29.1, 29.2 and 20.6 of the SAR.
 - 1.4 From around May 2014 he used a suspense account without any proper justification in breach of Rule 29.15 SAR.
 - 1.5 By virtue of the above SRA AR11 breaches, the Respondent acted in breach of all or alternatively any of Principles 6, 8 and 10 of the Principles.
- 1.6 On the 8 December 2015 he made or caused a payment of £45,000 from the client account in the client matter of BM deceased which resulted in the client ledger being overdrawn by £32,260, which he did not rectify until 7 July 2016, in breach of all or alternatively any of the following:
 - 1.6.1 Rules 7.1 and 20.6 of the SAR.
 - 1.6.2 Principles 6 and 10 of the Principles.

Documents

2. The Tribunal had before it the following documents:-
 - Rule 5 Statement dated 22 October 2018
 - Respondent's Answer to the Rule 5 Statement (undated)
 - Respondent's Personal Financial Statement and supporting documentation dated 31 January 2019
 - Statement of Agreed Facts and Proposed Outcome dated 7 February 2019 signed by the Applicant and the Respondent

Factual Background

3. The Respondent was born in 1960 and was admitted to the Roll of Solicitors in March 1987. He practised as a recognised sole practitioner at Jeffrey Allan Jackson solicitors until 2 November 2016 when he closed his practice. The Respondent was

the Compliance Officer for Legal Practice (COLP), Compliance Officer for Finance and Administration (COFA) and Money Laundering Regulations Officer (MLRO).

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

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

5. 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
6. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.
7. The Tribunal considered 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 Tribunal noted that the Respondent had contacted the Applicant in relation to his financial difficulties. He had displayed genuine insight into his misconduct and had rectified the shortage in client account.
8. The Tribunal considered the Personal Financial Statement and supporting documents submitted by the Respondent. It determined that the reduction in the fine and costs, given his circumstances was appropriate and proportionate.
9. Having determined that the proposed sanction was appropriate and proportionate, the Tribunal granted the application for matters to be resolved by way of the Agreed Outcome.

Costs

10. The parties agreed that the Respondent should make a contribution to costs in the sum of £3,000 (reduced from £6,000 on account of the Respondent's means). The Tribunal considered the costs application to be appropriate and proportionate, and ordered that the Respondent pay a contribution to the costs in the agreed amount.
11. **Statement of Full Order**
 1. The Tribunal Ordered that the Respondent, JEFFREY ALLAN JACKSON, solicitor, do pay a fine of £3,750.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the agreed sum of £3,000.00.

2. The Tribunal further Ordered that the Respondent shall be subject to conditions imposed by the Tribunal as follows:
 - 2.1 The Respondent may not:
 - 2.1.1 Practise as a solicitor on his own account;
 - 2.1.2 Be a manager or owner of an authorised body;
 - 2.1.3 be a COLP or COFA of any authorised body;
 - 2.1.4 That he shall immediately inform any prospective employer of these restrictions and the reason for their imposition:
3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 21st day of February 2019

On behalf of the Tribunal

J. Martineau

J. Martineau
Chair

Judgment filed
with the Law Society
on 22 FEB 2019

THE MATTER OF THE SOLICITORS ACT 1974

And

IN THE MATTER OF JEFFREY ALLAN JACKSON

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

And

JEFFREY ALLAN JACKSON

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED SANCTION

1. By its application dated 22 October 2018 which included a statement pursuant to Rule 5(2) Solicitors (Disciplinary Proceedings) Rules 2007, the Solicitors Regulation Authority ("SRA") brought proceedings before the SDT against the Respondent.
2. The allegations against the Respondent in the proceedings are the following:

ALLEGATIONS

3. **1.1** failed to make any provision for the safe storage or disposal of archived files when his firm, Paul Fallon & Co closed on the 2 November 2016 leading to an intervention by the SRA into his firm in breach of all or alternatively any of the Principles 4,6, 8 and 10 of the SRA Principles 2011 (the SRA P11).
- 1.2** From around May 2014 he failed to carry out proper reconciliations in breach of all or alternatively any of Rules 29.12, 29.13 and 6 of the SRA Accounts Rules 2011 (SRA AR11).
- 1.3** From around May 2014, he failed to keep proper accounting records to show accurately the position with regard to the money held for each client and trust in breach of all or alternatively any of Rules 1.2 (e), 1.2 (f), 29.1, 29.2 and 20.6 of the SRA AR11.
- 1.4** From around May 2014 he used a suspense account without any proper justification in breach of Rule 29.15 SRA AR11.

1.5 by virtue of the above SRA AR11 breaches, the Respondent acted in breach of all or alternatively any of Principles 6, 8 and 10 of the SRA P11.

1.6 On the 8 December 2015 he made or caused a payment of £45,000 from the client account in the client matter of BM deceased which resulted in the client ledger being overdrawn by £32,260, which he did not rectify until 7 July 2016, in breach of all or alternatively any of the following:

1.6.1 Rules 7.1 and 20.6 of the SRA AR 11.

1.6.2 Principles 6 and 10 of the SRA P11.

ADMISSIONS

4. The Respondent admits all the allegations against him in.
5. The SRA has considered the admissions made by the Respondent and has considered, in the light of those admissions, whether the outcome proposed in this document is in the public interest having regard to the seriousness of the matters alleged. The SRA is satisfied that the admissions and outcome proposed is in the public interest and that it is a proportionate and appropriate way of resolving this matter.

BACKGROUND

6. The Respondent, Mr Jackson, whose date of birth is 1960 was admitted to the Roll of Solicitors on the 2 March 1987.
7. The Respondent practised as a recognised sole practitioner at Jeffrey Allan Jackson solicitors ("the firm") until the 2 November 2016 when he closed his practice. The Respondent was the COLP, COFA and MLRO of the firm.
8. The Respondent's firm was intervened into by the SRA on the 23 November 2016.

AGREED FACTS

ALLEGATION 1.1

9. The Respondent contacted the SRA in October and November 2016 explaining that he was he was in financial difficulties. He had personal debts of £150,000 and intended to petition for his own bankruptcy. His lease to his office premises had expired in mid-October 2016 and his landlord had imposed dilapidation provisions which he could not finance.
10. The Respondent brought to the attention of the SRA the distinct likelihood that the landlord would take possession of his office premises imminently. The Respondent held thousands of archived files which were stored in the basement of his office premises.

11. He informed the SRA in a telephone conversation on the 28 October 2016 that he estimated that he had 2000 archived files. However, he later informed the SRA Forensic Investigator on 1 November 2016 that he had approximately 4000 archived files. He also had some 300 deeds and 400 hundred wills stored at the premises.
12. On the 2 November 2018 the Respondent closed his practice although he had come to an agreement with the Landlord to remain in the premises until the end of November 2016.
13. The Respondent informed the SRA that he could not afford the safe collection, storage or disposal of the archived files at his firm. Due to the risk of client files being accessed or destroyed by the landlord or others, the SRA intervened into the Respondent's practice on the 23 November 2016 in order to secure the safety of the files.

Breaches of the SRA P11

14. The Respondent held thousands of client files at his firm which contained personal information relating to his clients. He also held valuable deeds and wills. The Respondent should have arranged for the destruction of client files that he was no longer obliged to keep and arranged for the safe removal and storage of other client files, deeds and wills when he closed his practice. He should not have left them in his former office premises and abnegate his responsibility for their safeguard to his regulator.
15. It was not in his clients' best interests and a breach of Principle 4 SRA P11 for those files, deeds and wills to be left at his former premises whereby they could be accessed by others.
16. The Respondent was required under Principle 10 SRA P11 to protect the assets of clients and he failed to do so.
17. The public would not expect solicitors to leave their files, wills and deeds in their former premises on closure of their firm. The public would expect solicitors to have made proper arrangements for the safeguard of files and documents which contained confidential information, and which may be required by the clients in the future. The Respondent acted in breach of Principle 6 as his conduct undermined public confidence in him and in the delivery of legal services.
18. The Respondent as a sole practitioner was solely responsible for making arrangements in respect of his files, wills and deeds on the closure of his practice. He should have made financial provision for the safeguard and or disposal of files when he made the decision to wind down or close his practice. His failure to do so was a breach of Principle 8 SPR 11 as he failed to run his business and carry out his role in that business effectively and with proper governance and sound financial and risk management principles.

ALLEGATIONS 1.2 to 1.5

Reconciliations

19. A Qualified Accounts Report (QAR) for the firm which covered the reporting period May 2014 to April 2015 recorded that there was no evidence that client money had been reconciled every 5 weeks. The FIO discovered that the most recent reconciliation was from the 31 August 2016 and that did not comply with the SAR AR11 as it was only a cash reconciliation and did not take into account liabilities to clients.
20. The firm's bookkeeper, Jay Mistry, informed the FIO that he had started maintaining the books of account at the firm since the end of 2013 and that he reconciled client account monthly. He did that by comparing the cash account balance with the bank statements. He did not however take into account the liabilities to clients when carrying out reconciliations.
21. Mr Mistry was aware that under the SRA AR 11 he was required to consider the liabilities to clients, in addition to the balances on the bank statements and client cash account when undertaking reconciliations. However, he informed the FIO that did not have time to do that and that the software package that the firm used, 'Sage', did not allow for a reconciliation statement to be produced showing a three- way comparison.

Books of account

22. The QAR also identified the following deficiencies in the firm's books of account:
 - The firm used the software package 'Sage' to maintain its books of account and therefore the ledger accounts for clients did not show both client and office transactions on the one ledger;
 - Entries on ledger accounts were not in chronological order and a balance was not shown after each transaction was entered;
 - More than half of the ledger accounts did not show matter details;
 - The firm maintained a general and suspense ledger on which there had been no activity for some years and there was no name, matter of explanation for the accounts.
 - Debit balances existed at various dates throughout the year.
23. The Forensic Investigation Report (FIR) which was produced after an investigation into the firm sets out a number of similar concerns regarding the format and state of the books of account, including the following:

- The firm maintained its books of account in 'Sage' which is not an accounting software package specifically designed by solicitors, an example is the ledger accounts for BM deceased.
- The firm maintained an 'Allocation' Ledger account in which transfers from the client account to office account were recorded where the amounts transferred could not be allocated to any particular client matter. It was noted that the credit balance on the office side of the ledger account was £4,256.69. This was a result of 2 transfers made from client to office on the 22 January 2014 and 2 April 2015.
- The firm maintained a suspense and general client ledger with balances of £3,774.58 and £258.66.
- There existed 175 office credit balances totalling £138,709.60 as at 31 May 2016 however the firm's records showed only one office credit of £38 as at 31 October 2016.

Breaches of the SAR AR11 and SRA P11

24. The Respondent failed to carry out reconciliations every 5 weeks and where he did he failed to carry out three-way reconciliations in breach of Rules 29.12 and 29.13.
25. His failed to maintain proper books of accounts as his client and office ledgers were kept separately, the entries on those ledgers were not in date order, the ledgers did not record the name of the specific matters and the ledgers did not show the balances after each transaction in breach of Rules 1.2 (e), 1.2 (f), 29.1 and 29.2 of the SRA AR11.
26. The Respondent's use of an 'allocation' ledger which recorded unallocated transfers from client to office account and his use of a general ledger was in breach of Rules 29.1 of the SRA AR11.
27. The Respondent, the sole principal in the firm, failed to ensure that his bookkeeper complied with SRA AR11 in breach of Rule 6 of the SRA AR11.
28. The Respondent's use of a suspense ledger without explanation or justification is in breach of Rule 29.15.
29. The accounts rules breaches existed from at least May 2014 if not earlier as the Respondent's bookkeeper confirmed to the FIO that he had not carried out proper reconciliations and had been maintaining the firm's books of accounts since the end of 2013. Further, the first transfer in the allocation ledger is dated January 2014 and the QAR records that the general ledger had been in operation since 2012 and the suspense ledger since 2013.

30. Members of the public would expect solicitors to maintain proper accounts records in compliance with the accounts rules and further that they would ensure that their staff complied with the accounts rules as they exist to safeguard client money. The Respondent's widescale breaches of the rules and his failure to ensure that his bookkeeper complied with them would undermine public confidence in him and in the delivery of legal services in breach of Principle 6 of the SRA P11.
31. The Respondent's widescale failure to comply with the SAR AR11 over a number of years is also a breach of Principle 8 of the SRA P11 as he failed to run his business or carry out his role in the business in accordance with proper governance and risk management principles. He was the sole principal of the firm and should have ensured that he had a proper accounting software and that his bookkeeper complied with the rules.
32. The Respondent also acted in breach of Principle 10 of the SR P11 as he failed to protect client money. There is existed a shortage in the client account from 22 January 2014 of £1,437.12 and from the 2 April 2015 of a further £2,819.57. These were the unallocated transfers from client to office account which the Respondent accepted represented a shortage. This shortage was not rectified until the 18 July 2016 when the Respondent transferred £4,256.65 from the firm's office account to the client account.

ALLEGATION 1.6

33. The Respondent was the sole executor of the estate of BM, who had died on the 9 September 2014.
34. On the 8 December 2015, the Respondent made or caused a payment from the client account of BM of £45,000. This led to the account being overdrawn by £32,260.46 as there was insufficient monies in that account when the transfer was affected.
35. The firm's accounts show that as at 31 May 2016 the BM ledger was overdrawn by £34,278.86.
36. The Respondent agreed that there was a shortage on the client account of BM and rectified it on the 7 July 2016 when he transferred £34,276.86 from the firm's office account to the client account.

Breaches of the SRA AR11 and SRA P11

37. The Respondent caused the client account of BM to become overdrawn in breach of Rule 20.6 of the SRA AR11. He failed to remedy promptly the shortage in the account of BM as he did not rectify matters until 7 July 2016 when according to his bookkeeper he was made

aware of the shortage in April or May. The Respondent failed to rectify the shortage promptly in breach of Rule 7.1.

38. By causing the BM client account to become overdrawn the Respondent allowed a shortage to exist on client account and failing to remedy it promptly, the Respondent failed to protect client money in breach of Principle 10 and undermined public confidence in him in breach of Principle 6.

MITIGATION

39. The following mitigation is put forward by the Respondent but is not endorsed by the SRA:
40. The Respondent was unable to afford the safe storage of files due to his dire financial position, which ultimately led to his bankruptcy in May 2017. He was unable to extend the lease on his office premises as he could simply not afford to do so.
41. His actions were not premediated, were beyond his control and something that he desperately wanted to avoid. He informed the SRA of his difficulties as soon as he determined the situation was unavoidable and liaised with them throughout the process.
42. Reconciliations were carried out but not in the proper format. This was partly due to employing a book keeper who did not have the necessary qualifications and experience to prepare proper books of account.
43. The suspense account was reconciled in mid-2016.
44. The withdrawal of £45,000 from the account of BM was a result of having incorrectly paid into that account on advice from his bookkeeper. The shortage in the account was subsequently identified and rectified by borrowing money from family and restoring the deficiency in client account. The small shortages caused by unallocated transfers were rectified in July 2016.
45. Due to a confluence of circumstances, failed marriage, depression and financial difficulty, the Respondent simply could not manage his sole practice in the way expected and he increasingly lost the energy and drive to rectify matters.
46. Additionally, the main fee earner was struggling with cancer and he could not turn to her for assistance. With this background and with increasingly failing health, the Respondent determined that he had no choice but to call the SRA and request assistance with the closure of his practice.
47. The Respondent has been a solicitor for 30 years and a sole practitioner since 1992. It hurts him greatly to know that he has let himself and the profession down. It was uppermost in his mind to avoid unnecessary stress, anxiety to his clients and the SRA. He

has kept in contact with the SRA to assist it as and when queries have been raised by his former clients.

PROPOSED SANCTION

48. The proposed sanction is a fine of **£7500** on the basis that the misconduct falls within the upper range of level 2 of the indicative fine band in the SDT's Guidance notes on sanctions. The overall assessment of the misconduct is that it falls within the moderately serious category.
49. The SDT is invited to reduce the fine to **£3750** on account of the Respondent's means. The Respondent was made bankrupt in May 2017 and was discharged a year later. He has no assets, savings of approximately £1000 and a net income of £1400 a month as a self-employed consultant in a non-legal business. He has a surplus of £35 after payment of rent and other expenses. The Respondent has liabilities of some £2000. A copy of the Respondent's financial questionnaire is attached to this statement. The Respondent does not have a current practising certificate and has not practised since his firm was intervened into.
50. It is also proposed that the following **restriction orders** be imposed:
- That the Respondent not practise as a solicitor on his own account;
 - That he may not be a manager or owner of an authorised body;
 - That he may not be a COLP or COFA of any authorised body;
 - That he shall immediately inform any prospective employer of these restrictions and the reason for their imposition
51. The Respondent agrees to pay SRA costs of **£6000**. This is to be reduced on account of the Respondent's means to **£3000**.

Explanation as to why the sanction is in accordance with the SDT's guidance note on sanction

52. The Respondent is highly culpable for his actions as he was a very experienced solicitor, a sole practitioner, COLP and COFA and therefore solely responsible for the safe storage of files when he closed his firm. He was also solely responsible for the widescale accounts rules breaches that occurred and the shortages in his client account.
53. The Respondent's failure to safeguard client files were not planned but was in the main due to his poor financial position and his inability to pay for storage costs and an extension of the lease on his office premises. The SRA-intervention prompted by the Respondent secured the safety of the client files but at the expense of the profession. There was

potential harm to clients by the Respondent's failure to store his clients' files, wills and deeds, however that harm did not materialise due to the intervention.

54. The various accounts rule breaches were mostly rectified and importantly the shortages in client account were replaced.
55. There are no aggravating features present other than the accounts rules breaches continuing over a period of some 2 years.
56. The following mitigating features are present:
 - The Respondent contacted the SRA and informed them of his financial difficulties and his inability to safely secure client files;
 - The Respondent rectified the shortage in client account;
 - The Respondent has shown genuine insight into his behaviour;
 - The Respondent made early admissions to the allegations;
 - The Respondent has co-operated with the SRA investigation.
57. 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.

Dated this 7 February 2019

INDERJIT S JOHAL
Senior Legal Adviser
For and on behalf of the Solicitors Regulation Authority
The Cube
199 Wharfside Street
Birmingham
B1 1RN

Jeffrey Allan Jackson
Respondent