

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No: 12586-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

MATTHEW WATERFIELD (Unadmitted) Respondent

Before:

Ms T Cullen (in the Chair)

Mr J Abramson

Ms K Wright

Date of Hearing: 28 October 2024

Appearances

Andrew Bullock, Barrister in the employ of the Solicitors Regulation Authority Ltd of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent did not appear and did not participate in the proceedings.

JUDGMENT

Allegations

1. The allegations made against the Respondent, who is not a solicitor, is that he has been guilty of conduct of such a nature that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice in that while employed as a consultant at the Firm:
 - 1.1 Between July 2021 and 18 October 2021, he gave solicitor's undertakings in conveyancing transactions on behalf of the Firm when he was not authorised to do so. By doing so, he breached any or all of: Principles 5 and 7 of the SRA Principles;
 - 1.2 In September 2021 he submitted information regarding the Firm's financial position to Companies House which he knew or ought to have known was misleading and inaccurate. By doing so, he breached any or all of: Principles 4 and 5 of the SRA Principles;
 - 2.1 That between 19 March 2021 and 9 January 2022 he caused or allowed significant delays to occur in registering 13 properties with HM Land Registry ("HMLR"). By doing so, he breached any or all of: Principles 2 and 7 of the SRA Principles.
 - 2.2 Between 10 February 2020 and October 2021 he:
 - 2.2.1 caused or allowed a cash shortage totalling £12,912.68 to occur on the Firm's client bank account;
 - 2.2.2 did not ensure month end client account reconciliations were being undertaken; and
 - 2.2.3 failed to submit an Accountant's Report covering the period 31 October 2019 to 31 October 2020.

By doing so, he breached any or all of: Principles 2 and 7 of the SRA Principles and Rules 5.1, 5.2, 5.3, 6.1, 8.1(b), 8.1(c), 8.3, 12.1 of the SRA Accounts Rules ("SARs").
 - 2.3 He did not set aside sufficient or any funds to meet the Firm's VAT liabilities of at least £83,803.79 which caused the Firm to become insolvent. By doing so, he breached any or all of: Principles 2 and 7 of the SRA Principles.

Executive Summary

3. Mr Waterfield and another person set up EMEA Law Ltd, trading as Cleverson Solicitors ("the Firm"). The other person, who was a solicitor, undertook the roles of COLP and COFA. Mr Waterfield, an unadmitted person, was involved in legal practice with the Firm as a consultant and ran its day-to-day affairs.
4. A number of allegations were levelled against Mr Waterfield in respect of his conduct whilst running the affairs of the Firm, before the Firm became insolvent and eventually closed down.

5. The allegations levelled against Mr Waterfield were that: he gave undertakings without authorisation; provided misleading and inaccurate information to Companies House; caused delays in registering the legal interests of lenders with HMLR; caused shortages to occur in the Firm's client account and failed to ensure that monthly reconciliations took place on the Firm's client account.
6. In addition, it was alleged that Mr Waterfield failed to submit an accountant's report covering the period of 31 October 2019 to 30 October 2020; and did not set aside enough funds to meet the Firm's VAT liabilities, thereby causing the Firm to become insolvent.
7. Mr Waterfield did not engage with the proceedings and did not attend the hearing. He was not represented.
8. An application to proceed in Mr Waterfield's absence was granted by the Tribunal on the basis that his absence was voluntary. The Tribunal found all of the allegations proved to the requisite standard and further found the breaches of Principles and the breaches of the SRA Accounts Rules proved.

Sanction

9. The Tribunal ordered that that as from 28 October 2024, except in accordance with Law Society permission: -
 - (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor Matthew Waterfield.
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Matthew Waterfield;
 - (iii) no recognised body shall employ or remunerate the said Matthew Waterfield;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Matthew Waterfield in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said Matthew Waterfield to be a manager of the body;
 - (vi) no recognised body or manager or employee of such a body shall permit the said Matthew Waterfield to have an interest in the body;
10. The Tribunal Ordered that he pay the costs of and incidental to this application and enquiry fixed in the sum of £12,616.00.

Documents

11. The Tribunal considered all of the documents in the case which included:
 - The SRA's Rule 12 Statement and Exhibits dated 2 April 2024.

- The SRA's statement of Costs dated 21 October 2024.

Preliminary Matters

12. Agreed Outcome in Respect of Another Respondent

12.1 Mr Bullock informed the Tribunal that there was another individual involved in the proceedings, Mr David Durkin-Finch. He further informed the Tribunal that the allegations against Mr Durkin-Finch had been dealt with by way of an Agreed Outcome on 3 October 2024.

13. Application to Proceed in Absence

13.1 Mr Bullock applied to proceed in Mr Waterfield's absence.

13.2 In dealing with the issue of service, Mr Bullock referred to the Direction of the Tribunal dated 21 June 2024. The Direction of the Tribunal had been to accept that the SRA, in serving the proceedings on Mr Waterfield's last known email address, had complied with serving Mr Waterfield in accordance with the Tribunal Rules.

13.3 Mr Bullock informed the Tribunal that there had been no communication from Mr Waterfield since the start of the proceedings and no application from him to adjourn or vacate the hearing. He referred the Tribunal to the relevant caselaw on proceeding in absence. Mr Bullock submitted that, if the Tribunal accepted that Mr Waterfield had been correctly served, and was therefore on notice of the substantive hearing, it would not be unreasonable for discretion to be exercised in favour of the SRA. This is because firstly, for the need for a decision to be reached in this case and secondly, any adjournment is not likely to result in the attendance of Mr Waterfield who was reported to now be in Thailand.

The Tribunal's Decision

13.4 The Tribunal was aware that it should exercise the uttermost care and caution in determining whether it was appropriate to proceed in Mr Waterfield's absence.

13.5 In considering the matter, the Tribunal was mindful of the following principles set out by the Court of Appeal in *R v Hayward, R v Jones, R v Purvis* [2001] EWCA Crim 168 at [22] Paras 3-5:

3 "The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives.

4 That discretion must be exercised with great care, and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.

5 In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:

- (i) *the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;*
- (ii) *whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings;*
- (iii) *the likely length of such an adjournment;*
- (iv) *whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation.*
- (v) *whether an absent defendant's legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence;*
- (vi) *the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;*
- (vii) *the risk of the jury reaching an improper conclusion about the absence of the defendant;*
- (viii) *the seriousness of the offence, which affects defendant, victim and public;*
- (ix) *the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;*
- (x) *the effect of delay on the memories of witnesses;*
- (xi) *where there is more than one defendant and not all have absconded, the undesirability of separate trials, and the prospects of a fair trial for the defendants who are present."*

13.6 The Tribunal also had regard to the Court of Appeal's judgment in *GMC v Adeogba* [2016] EXCA Civ 162 at [17-20], which established how the principles set out in *R v Hayward* apply in the context of professional disciplinary proceedings:

"... the principles set out in Hayward ..., provide a useful starting ... however, it is important to bear in mind that there is a difference between continuing a criminal trial in the absence of the defendant and the decision ... to continue a disciplinary hearing. ... it is important that the analogy between criminal prosecution and regulatory proceedings is not taken too far. Steps can be taken to enforce attendance by a defendant; he can be arrested and brought to court. No such remedy is available to a regulator. ... Thus, the first question which

must be addressed in any case such as these is whether all reasonable efforts have been taken to serve the practitioner with notice. That must be considered against the background of the requirement on the part of the practitioner to provide an address for the purposes of registration along with the methods used by the practitioner to communicate with the [regulator] and the relevant tribunal during the investigative and interlocutory phases of the case. Assuming that the Panel is satisfied about notice, discretion whether or not to proceed must then be exercised having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the [regulator] and the interests of the public also taken into account; the criteria for criminal cases must be considered in the context of the different circumstances and different responsibilities of both the [regulator] and the practitioner.”

- 13.7 The Tribunal noted that Mr Waterfield had not engaged at any stage after the proceedings had commenced.
- 13.8 In accordance with the factors set out above, and in all the circumstances of the case, the Tribunal determined that Mr Waterfield was on notice of hearing and had been under a duty to engage with the regulator both before and after the commencement of the proceedings. The Tribunal concluded that Mr Waterfield had voluntarily absented himself from the proceedings.
- 13.9 Given the stance taken by Mr Waterfield, the Tribunal decided that an adjournment of any length would not achieve the objective of securing Mr Waterfield’s participation in the proceedings. It was, therefore, appropriate to proceed with the substantive hearing in his absence.

Factual Background

The Respondent

14. The Respondent, Mr Waterfield, was born in November 1976 and is an unadmitted individual. He was a consultant at the Firm and was responsible for running the day-to-day business.
15. Mr Waterfield was remunerated by the Firm, which was a recognised body. He was therefore involved in a legal practice in accordance with Section 43(1A) of the Solicitors Act 1974 (as amended).

The Report and Investigation

16. The conduct in this matter came to the attention of the SRA on 20 September 2021 when Mr Durkin-Finch informed the SRA that he had concerns about Tomini Legal Consultancy (“TLC”) which provided consultant fee earners to the Firm. In summary he informed the SRA that:
- 16.1 He was introduced to TLC by Mr Waterfield, a person he had known for several years who had previously operated his own firm;

- 16.2 Mr Waterfield was not a solicitor but was an SRA approved manager and had agreed to provide some of the start-up capital for the Firm;
- 16.3 TLC had provided two consultants to the Firm, Jacqueline Tanner (a director of TLC and Mr Waterfield's mother) and Mr Waterfield.
- 16.4 On 10 September 2021, Mr Durkin-Finch received a phone call from Mr Waterfield who advised that the Firm's bank account had been suspended. Mr Waterfield stated that he had attended at Metro Bank and was informed that three payments to be made in conveyancing transactions appeared to be suspicious and as a result the bank account had been suspended.
- 16.5 Mr Durkin-Finch requested access to the case management system, but Mr Waterfield refused to provide it.
- 16.6 Mr Durkin-Finch immediately sought to terminate his agreement with TLC and requested that all the client files were returned to him by 3pm on 21 September 2021.
17. Following the report, a forensic investigation was carried out by the SRA commencing on 14 October 2021 at the Firm's branch office. Sarah Taylor, the Forensic Investigation Officer ("FIO") reviewed a selection of conveyancing files and identified a number of issues. On 24 February 2022, the FIO conducted an interview with Mr Waterfield and subsequently prepared a Forensic Investigation Report ("FIR") dated 6 April 2022.

The Set up of the Firm

18. Prior to the Firm's setup, Mr Waterfield was the sole director and shareholder of another firm, Centenary Law. Centenary Law went into administration in October 2019 with debts in the sum of approximately £724,585.31.
19. Both Mr Durkin-Finch and Mr Waterfield were acquaintances having met when Mr Durkin-Finch attended a job interview for Centenary Law. Although Mr Durkin-Finch had been unsuccessful, they stayed in contact.
20. Mr Waterfield's mother, Ms Tanner, was the sole director of TLC. She appointed Mr Durkin-Finch to facilitate the purchase of the Firm for £7,500, as a nominee shareholder and nominee director. The shares in the Firm were held on trust by Mr Durkin-Finch for Ms Tanner. Mr Waterfield was appointed to run and manage the Firm, which was a recognised body and began trading in October 2019.
21. Mr Durkin-Finch told the FIO that the initial set up of the business was that he would be the regulated individual and undertake the roles of COLP and COFA. The Firm would then become an alternative business structure which Mr Waterfield would run.
22. Mr Durkin-Finch was not remunerated by the Firm but stated that his recompense was assistance with website development and use of existing marketing platforms to develop the marketing of his own firm, "Encore Legal." Mr Waterford set up another company, 'My Legal Consultancy' ("MLC") of which he became the sole director. The company was incorporated on 24 August 2020.

23. All profits from the Firm went to TLC and MLC.
24. From April 2021, the Firm undertook residential conveyancing work. An assistant solicitor was employed as a conveyancer between April 2021 and July 2021. Following her departure, Mr Waterfield became the fee earner dealing with the conveyancing matters.
25. The Firm closed on 10 January 2022. Mr Durkin-Finch completed the closure notification form stating the reason for closure was that the business was no longer viable due to issues with a consultant. The Firm entered voluntary liquidation on 18 March 2022.

Witnesses

26. There was no live witness evidence.

Findings of Fact and Law

27. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
28. **Allegation 1.1 - Between July 2021 and 18 October 2021, the Respondent gave solicitor's undertakings in conveyancing transactions on behalf of the Firm when he was not authorised to do so.**

The Applicant's Case

- 28.1 Mr Bullock stated that after the commencement of the SRA investigation, it had been revealed by Mr Durkin-Finch that after a review of files following the departure of the Firm's conveyancer, twelve matters were identified where Mr Waterfield had signed TA13 forms as 'Cleversons Solicitors'. However, one TA13 was signed by Mr Waterfield. When questioned as to why he signed documents as the 'seller's solicitor,' Mr Waterfield replied:

"So now I know I shouldn't have possibly signed an undertaking of that nature. However, David was fully aware that I was dealing with conveyancing. There was absolutely no way he would not have known I was dealing with these TA13s. And in fact, on transactions where he was acting on the other side as, as for the lender, he would have certainly seen that I was doing this."

- 28.2 Mr Waterfield signed off conveyancing transactions as the 'seller's solicitor' when he was an unadmitted individual. He did not have the requisite authority to give undertakings on behalf of the Firm.

Breach of the Principles

Alleged Breach of Principle 5 (Integrity)

- 28.3 Principle 5 requires solicitors as well as those involved in a legal practice to act with integrity. Mr Bullock relied upon the test set out in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, where it was stated that integrity connotes adherence to the ethical standards of one's own profession.
- 28.4 Mr Bullock submitted that an unadmitted person acting with integrity would not sign undertakings on TA13 documentation as the 'seller's solicitor' knowing that such undertakings were potentially unenforceable.
- 28.5 It was therefore submitted that Mr Waterfield was in breach of Principle 5 of the Principles.

Alleged Breach of Principle 7 (Acting in the Best Interests of Clients)

- 28.6 Mr Waterfield, by giving undertakings in conveyancing transactions when not authorised to do so, could not be said to be acting in the best interest of clients of the firm, as the undertakings would potentially be unenforceable causing risks to the conveyancing transactions.
- 28.7 It was submitted that the Respondent had, therefore, breached Principle 7 of the Principles.

The Respondent's Case

- 28.8 Mr Waterfield's position on this allegation was not known given that he had not engaged, and he had not provided an Answer to the Rule 12 Statement.

The Tribunals Findings

- 28.9 The Tribunal noted that during the SRA investigation, Mr Waterfield accepted that he had signed undertakings on behalf of the Firm in conveyancing transactions. His explanation at the time was that Mr Durkin-Finch was aware of this activity. His further explanation that he was 'firefighting' after the departure of the assistant solicitor was also noted. However, the Tribunal found on the balance of probabilities that Mr Waterfield's explanation was not a reasonable or credible excuse for his conduct.
- 28.10 The Tribunal found on the balance of probabilities that Mr Waterfield had, as an unadmitted person, given undertakings without the requisite or express authority of the Firm.
- 28.11 Having found the factual matrix of Allegation 1.1 proved to the requisite standard, the Tribunal went to consider the alleged breaches of the Principles.

Principle Breaches*Alleged Breach of Principle 5 (Integrity)*

- 28.12 The Tribunal found on the balance of probabilities that Mr Waterfield would have known that he was not authorised to give undertakings as he did not have the Mr Durkin-Finch's authority to sign off the documents as the 'seller's solicitor', yet he did so anyway.
- 28.13 An individual acting with integrity would not have behaved in this manner. Mr Waterfield had therefore breached Principle 5 of the Principles.
- 28.14 The Tribunal considered Wingate v SRA [2018] EWCA Civ 366, where Jackson LJ stated:

[97] ... the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members ... The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards ... [100] Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty.

- 28.15 Although not a qualified solicitor, Mr Waterfield was bound by the higher standards expected within the profession of a person involved in a legal practice and remunerated by a firm which was a recognised body.
- 28.16 The Tribunal therefore found on the balance of probabilities that Mr Waterfield breached Principle 5 of the Principles.

Alleged Breach of Principle 7 (Acting in the Best Interests of Clients)

- 28.17 The Tribunal found that by signing undertakings which Mr Waterfield was not authorised to sign, there was a clear risk that the undertakings would be unenforceable with risk to conveyancing transactions. The Tribunal found on the balance of probabilities that, by signing undertakings as the seller's solicitor, Mr Waterfield had therefore not acted in the best interests of the Firm's clients and had breached Principle 7 of the Principles.

- 29. Allegation 1.2 - In September 2021 the Respondent submitted information regarding the Firm's financial position to Companies House which he knew or ought to have known was misleading and inaccurate. By doing so, he breached any or all of: Principles 4 and 5 of the SRA Principles.**

The Applicant's Case

- 29.1 The Firm's accounts were submitted to Companies House for the period up to 30 June 2020. The accounts showed that the Firm's capital and reserves were in debit by £37,407. They were approved by the 'Board' and signed by Mr Durkin-Finch on 10 September 2021.
- 29.2 Mr Waterfield stated to the FIO in interview that he had submitted the accounts to Companies House with the authority of Mr Durkin-Finch. However, he could not be sure if he had shown them to Mr Durkin-Finch before they were submitted.

- 29.3 In explaining his conduct, Mr Waterfield said that the accounts had to be submitted as the Firm was in danger of being ‘struck off’ if they were not filed. Clients of the firm had seen the notice at Companies House and started to make online complaints about the firm impacting on the reputation of the business.
- 29.4 Mr Waterfield conceded during the interview that he knew that the information provided to the Companies House was inaccurate. When asked if the figures were something that he had ‘just put together’ he stated: “*Yeah...I knew, I knew the data wasn’t correct.*”
- 29.5 Mr Bullock submitted that Mr Waterfield, by his own admission, had admitted that he had presented misleading information to Companies House, knowing that the information was false.

Breach of the Principles

Alleged Breach of Principle 4 (Honesty)

- 29.6 Principle 4 requires solicitors and those involved in legal practice to act honestly. Mr Bullock relied upon the test set out in Ivey v Genting Casinos [2017] UKSC 67 as follows:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

- 29.7 Mr Bullock submitted that, at the time when the accounts were submitted, Mr Waterfield knew that he was submitting inaccurate accounts to a body that would expect accurate accounts to be submitted on behalf of the Firm. Mr Waterfield’s conduct in submitting the inaccurate accounts would be deemed to be dishonest by the standards of ordinary decent persons.

Alleged Breach of Principle 5 (Integrity)

- 29.8 Mr Bullock, in reliance on the test set out in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, asserted that a solicitor or person involved in legal practice with integrity would not knowingly submit misleading or inaccurate information to a public body such as Companies House.

29.9 In submitting misleading information about the Firm which he knew to be inaccurate or false, Mr Waterfield lacked integrity and was in breach of Principle 5 of the Principles.

The Respondent's Case

29.10 Mr Waterfield's position upon this allegation was not known given that he had not engaged, and he had not provided an Answer to the Rule 12 Statement.

The Tribunal's Findings

29.11 The Tribunal found that, on the balance of probabilities, Mr Waterfield had submitted misleading information to Companies House by submitting the Firm's accounts for the period ending in June 2020 when he knew the information he had submitted to be misleading. This was found based on the evidence of the Mr Waterfield's own admissions made during the interview with the FIO.

29.12 Having found the factual matrix of Allegation 1.2 proved to the requisite standard, the Tribunal went to consider the alleged breaches of the Principles.

Principle Breaches

Alleged Breach of Principle 4 (Honesty)

29.13 Applying the test set out in Ivey v Genting Casinos [2017] UKSC 67, the Tribunal found on the balance of probabilities that Mr Waterfield had been dishonest. He, at the time when he filed the financial information, knew and believed the information filed to be inaccurate and misleading.

29.14 The Tribunal also found on the balance of probabilities that ordinary decent and honest persons would have found Mr Waterfield's conduct to be dishonest.

29.15 Therefore, Mr Waterfield was in breach of Principle 4 of the Principles.

Alleged Breach of Principle 5 (Integrity)

29.16 The Tribunal found on the balance of probabilities that Mr Waterfield, by submitting inaccurate and misleading information to Companies House, purporting that it was a true reflection of the Firm's accounts, had failed to act with integrity.

29.17 By integrity, the Tribunal meant moral soundness, rectitude and steady adherence to an ethical code which was absent in Mr Waterfield's conduct.

29.18 The Tribunal noted the case of Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, where it was stated that integrity connotes adherence to the ethical standards of one's own profession. In submitting data to Companies House that which he knew was 'not correct,' Mr Waterfield had failed to adhere to the high ethical standards of the legal profession.

29.19 Mr Waterfield therefore breached Principle 5 of the Principles.

30. Allegation 2.1 - That between 19 March 2021 and 9 January 2022 the Respondent caused or allowed significant delays to occur in registering 13 properties with HM Land Registry (“HMLR”). By doing so, they breached any or all of: Principles 2 and 7 of the SRA Principles.

The Applicant’s Case

- 30.1 The FIO identified 13 matters completed between 19 March 2021 and 18 October 2021 where the Firm delayed in registering mortgage lenders’ interest at HMLR. The longest delay in registration was approximately ten months, and several took nearly six months to register.
- 30.2 Encore Legal, Mr Durkin-Finch’s other Firm, acted for the mortgage lenders on all of the 13 matters. All the mortgage funds were transferred from Encore Legal’s client bank account to the Firm’s client bank account.
- 30.3 Mr Durkin-Finch, during the investigation, told the FIO that he had agreed with Mr Waterfield that it was the Firm’s responsibility to register the mortgage lenders’ interest.
- 30.4 There was no written agreement, but it was understood that Mr Waterfield was to confirm with Mr Durkin-Finch once the registrations were complete. In addition to this, Mr Durkin-Finch informed the FIO that he had asked Mr Waterfield to provide all the active conveyancing files to him on 14 October 2021. Mr Durkin-Finch confirmed that this request was not complied with in respect of the thirteen matters that had outstanding registrations.
- 30.5 The FIO had identified issues with the purchase of a buy to let property purchased by Mr Waterfield himself, in which he also conducted the conveyancing. Encore Legal acted for the lender.
- 30.6 Although the matter was completed on 19 March 2021, Mr Durkin-Finch revealed that Mr Waterfield had failed to provide a signed mortgage deed which was preventing him from registering the lender’s interest at HMLR. This had led to the lender chasing the Firm to register their interests in respect of that conveyancing transaction.
- 30.7 When Mr Waterfield was asked in interview by the FIO as to who was registering the title at HMLR on the purchase conveyancing files, he responded that he may have done a *‘couple’* after the assistant solicitor had left, *‘but that was all’*. In response to the question as to whose responsibility it was to register the title of the purchasers at HMLR, Mr Waterfield maintained that it was “100%” Mr Durkin-Finch’s responsibility as he had acted on behalf of the mortgage lenders at his own firm, Encore Legal.
- 30.8 On 8 March 2022, the FIO emailed Mr Waterfield seeking evidence that he had provided the mortgage deed to Mr Durkin-Finch. The FIO’s report stated that no response had been received to her request.

30.9 It was not until 4 April 2024 that it was confirmed by Mr Durkin-Finch, after enquiries were made of HMLR, that the application process had been received. The mortgage lender's interest had now been protected.

Breach of Principles

Alleged Breach of Principle 2 (Public Trust)

30.10 Mr Bullock submitted that the public would expect conveyancing transactions to be completed fully when instructing a firm of solicitors. The public would not expect unnecessary delays to occur when registering a lender's interest at HMLR.

30.11 Mr Waterfield in failing to register the lender's interest in the conveyancing transactions completed between 19 March 2021 and 18 October 2021 therefore breached Principle 2 of the Principles.

Alleged Breach of Principle 7 (Acting in the Best interests of each Client)

30.12 By virtue of the fact the lender's interest was not registered at HMLR, the clients' interests were not properly protected. Mr Bullock asserted that failing to complete the post completion procedural steps on the conveyancing matters could not be said to be acting in the clients' best interests.

30.13 Mr Waterfield therefore breached Principle 7 of the Principles.

The Respondent's Case

30.14 Mr Waterfield's explanation on this issue was set out during the interview with the FIO. However, given that he had not engaged with the proceedings, he had not provided an Answer to the Rule 12 Statement or attended the hearing to provide oral evidence to support his explanation

The Tribunal's Findings

30.15 The Tribunal found on the balance of probabilities that Mr Waterfield was responsible for ensuring that the legal interests of mortgage lenders should have been registered with HMLR in the 13 conveyancing transactions completed between 19 March 2021 and 18 October 2021.

30.16 In addition, the Tribunal found on the same standard that Mr Waterfield had delayed in registering the legal interest of mortgage lenders in those conveyancing transactions. The Tribunal accepted the contents of the written report of the FIO, which established that Mr Waterfield had failed to provide Mr Durkin-Finch with the information needed to register the lender's legal interests in relation to the thirteen properties in which the Firm had acted.

30.17 Having found the factual matrix of Allegation 2.1 proved to the requisite standard, the Tribunal went to consider the alleged breaches of the Principles.

Alleged Breach of Principle 2 (Public Trust)

30.18 The Tribunal found on the balance of probabilities that in failing to register the interests of lenders with HMLR, Mr Waterfield had not acted in a way that upholds the public trust in the profession and in legal services provide by authorised persons.

30.19 Therefore, Mr Waterfield was in breach of Principle 2 of the Principles.

Alleged Breach of Principle 7 (Acting in the Best interests of each Client)

30.20 The Tribunal found that on the balance of probabilities Mr Waterfield had not acted in the best interests of each of the 12 clients on whose conveyancing transactions there were substantial delays in registering the legal interests of the lenders at HMLR. The longest of delays in registration was noted by the Tribunal to be almost six months, a delay which it found to be considerable as well as unacceptable.

30.21 As a result of such unacceptable delay in registering the interests of the lenders, the Tribunal found Mr Waterfield to be in breach of Principle 7 of the Principles.

31. Allegation 2.2 - Between 10 February 2020 and October 2021:

2.2.1 caused or allowed a cash shortage totalling £12,912.68 to occur on the Firm's client bank account:

2.2.2 did not ensure month end client account reconciliations were being undertaken; and

2.2.3 failed to submit an Accountant's Report covering the period 31 October 2019 to 31 October 2020

By doing so, they breached any or all of: Principles 2 and 7 of the SRA Principles and Rules 5.1, 5.2, 5.3, 6.1, 8.1(b), 8.1(c), 8.3, 12.1 of the SRA Accounts Rules ("SARs").

The Applicant's CaseCash Shortages

31.1 The FIR showed a list of liabilities to clients, as of 30 September 2021, totalling £196,994.03. However, the client cash available was £184,081.35. Therefore, there was a shortfall of £12,912.68 that existed on the client account.

31.2 A breakdown of the how the client debit balances arose as shown below:

Client	Date Client Ledger became Overdrawn	Amount	Reason
CAT	16 August 2021	£302.36	Costs taken when there were insufficient funds
CAJ	8 September 2021	£1.05	Insufficient funds to pay for search fees

Client	Date Client Ledger became Overdrawn	Amount	Reason
CBH	11 August 2021	£40.00	Searches undertaken although client had not paid money on account
CCG	16 September 2021	£104.46	Insufficient funds to pay search fees
CCN	13 July 2021	£60.00	Incorrect calculation of fees
CCH	8 September 2021	£11.70	Insufficient funds to pay search fees
CDH	16 August 2021	£310.57	Overpayment to lender
CGW	8 September 2021	£7.80	Insufficient funds to pay search fees
CIH	20 September 2021	£240.36	Final balance from client calculated incorrectly causing a shortfall
CJT	10 February 2021	£1,105.50	Insufficient funds to pay costs
CMT	8 September 2021	£580.01	Overpayment to client
CMB	10 February 2020	£1,710.00	Costs taken twice
CNT	8 September 2021	£7.80	Insufficient funds to pay search fees
CLH	5 March 2020	£500.00	Costs taken twice
CDJ	26 February 2020	£0.10	Error on bill
CONE	26 January 2021	£449.92	Over calculation of costs
CSF	8 September 2021	£520.01	Overpayment to client
CSY	30 July 2021	£2,149.97	Overpayment to client
Suspense Ledger		£4,511.00	
CTP	4 June 2021	£300.07	Insufficient funds to pay search fees
Total		£12,912.68	

31.3 The cash shortage of £12,912.68 was later replaced in full by office to client account by way of bank transfers on various dates in October 2021.

- 31.4 When the FIO asked Mr Waterfield if he was aware that there was a client account shortage of £12,912.68. he stated:

“I think possibly but I wouldn’t have necessarily realised that they were such a huge issue because there was always money in the account that we know is not taken out for fees and things like that, we’d always cover any swings...”

Client Account Reconciliations

- 31.5 Mr Durkin-Finch told the FIO that he felt that he did not have to ask Mr Waterfield if he was completing the month end client account reconciliations also stating:

“I, I didn’t feel needed to (sic) because I thought he was experienced and knowledgeable enough to having run his own practice through the ABS and that kind of thing that I thought that’s what he would be doing anyway.”

- 31.6 During the investigation, Mr Waterfield, in response to a request by the FIO for account reconciliations for the period of September 2021, produced a document called ‘client ledgers’ and stated that it was a list of client liabilities.

- 31.7 There was a significant amount of debit balances, and no balance to complete a three-way client account reconciliation.

- 31.8 When the FIO asked for a copy of the Firm’s cashbook, Mr Waterfield could not produce this.

- 31.9 In addition, the FIO asked who was undertaking the client account reconciliations. Mr Waterfield stated:

“I thought David [Mr Durkin-Finch] was doing that for the first two or three months. I realised he wasn’t and then I started trying to, but I didn’t, I couldn’t get the firm’s case management and accounts system (“Lawsyst”) to work, so I was doing it manually on, on the spreadsheets...”

Failure to Submit Accountant’s Report

- 31.10 An Accountant’s Report should have been completed by 30 April 2021 for the period 31 October 2019 to 31 October 2020. Mr Waterfield who was essentially running the Firm did not obtain or submit an Accountant’s Report on behalf of the Firm to the SRA.

Breach of Principles

Alleged Breach of Principle 2 (Upholding Public Trust)

- 31.11 Mr Bullock submitted that the public would expect any person involved in legal practice and effectively running a solicitor’s firm to take all necessary steps to safeguard client money, including ensuring proper systems and controls were in place for handling client money. As a result of:

- (a) causing or allowing a shortfall to occur on the Firm’s client account;

- (b) not ensuring month end client account reconciliations were being undertaken;
- (c) failing to submit an Accountants Report covering the period to 31 October 2020 to 31 October 2020.

Mr Waterfield did not act in a way that upholds public trust and confidence in the profession. The Respondent therefore breached Principle 2 of the Principles.

Alleged Breach of Principle 7 (Acting in the Best Interest of each Client)

31.12 Mr Bullock submitted that Mr Waterfield did not ensure client money was properly protected and a shortfall had occurred on the client account. Month end reconciliations were not undertaken, and an Accountant's Report was not submitted for the period 31 October 2019 to 31 October 2020.

31.13 Mr Waterfield therefore breached Principle 7 of the SRA Principles.

Alleged Breach of Rules 5.1, 5.2, 5.3, 6.1, 8.1(b), 8.1(c), 8.3, 12.1 - SARs

31.14 Between 10 February 2020 and October 2021 payments were made from the client account by Mr Waterfield in circumstances where there were insufficient funds available. Errors occurred in that where clients overpaid, fees were not calculated correctly or charged twice.

31.15 Client money was not being withdrawn from the client account in accordance with Rule 5.1 of SARs. Mr Waterfield therefore breached Rule 5.1 of SARs.

31.16 Mr Bullock submitted further that withdrawals from the client account were not suitably authorised or supervised given that money was withdrawn when there were insufficient funds in the client account. Mr Waterfield therefore breached Rules 5.2 and 5.3 of SARs.

31.17 Mr Bullock drew attention to the fact that the shortage on the client account began on 10 February 2020 and was rectified only on various dates in October 2021. In contravention of the SARs the sums were not replaced immediately. Mr Waterfield therefore breached Rule 6.1 of SARs.

31.18 Accurate, contemporaneous, and chronological records of the Firm's client accounts were not maintained by Mr Waterfield. A list of all the balances shown by the client ledger accounts of the liabilities with a running total of the balances and a cash book showing a running total of all transactions through the Firm's client account were not maintained. Mr Waterfield therefore breached Rules 8.1(b) and 8.1(c) of SARs.

31.19 Mr Waterfield did not provide an Accountant's Report within six months of the 12-month period ending 31 October 2020. If a report had been obtained it would have been qualified because it should have identified material breaches of SARs. Mr Waterfield therefore breached Rule 12.1 of SARs.

The Respondent's Case

31.20 Mr Waterfield's position on this allegation had only been provided in the FIO's report as he had not engaged with the proceedings and had not provided an Answer to Rule 12 Statement.

The Tribunal's Findings

31.21 The Tribunal found on the balance of probabilities that Mr Waterfield caused or allowed a cash shortage totalling £12,912.68 to occur on the Firm's client bank account between 10 February 2020 and October 2021. It noted that Mr Waterfield admitted to these shortages and accepted responsibility for them. His acceptance was however qualified by his belief that that "*it was not a huge issue.*"

31.22 The Tribunal further found on balance of probabilities that between 10 February 2020 and October 2021 Mr Waterfield did not ensure month end client account reconciliations were being undertaken.

31.23 The Tribunal found on the balance of probabilities that between 10 February 2020 and October 2021, Mr Waterfield failed to submit an Accountant's Report covering the period 31 October 2019 to 31 October 2020.

31.24 Having found the factual matrix of allegation 2.2 proved, the Tribunal proceeded to deal with the alleged Principle breaches.

Alleged Breach of Principle 2 (Upholding Public Trust)

31.25 The Tribunal found on the balance of probabilities that between 10 February 2020 and October 2021, Mr Waterfield had not acted in a way that upholds public trust in the legal profession in:

- (a) causing or allowing a shortfall to occur on the Firm's client account;
- (b) not ensuring month end client account reconciliations were being undertaken;
- (c) failing to submit an Accountants Report covering the period to 31 October 2020 to 31 October 2020.

31.26 It noted as significant that Mr Waterfield, in his role as a consultant, assumed and accepted responsibility for running the business of the Firm. Therefore, the Tribunal and found him to be culpable for the relevant failures and omissions.

31.27 The Respondent therefore breached Principle 2 of the Principles.

Alleged Breach of Principle 7 (Acting in the Best Interest of each Client)

31.28 The Tribunal found on the balance of probabilities that between 10 February 2020 and October 2021, Mr Waterfield had not acted in the best interests of clients, given that there was a significant shortfall to the Firm's client account during this period.

31.29 The significant shortfall could have been identified if month end reconciliations had been completed. In addition, an Accountant's Report which should have been obtained and submitted for the period covering 31 October 2020 to 31 October 2020 would have specified material breaches of the Accounts Rules and or any significant weaknesses in the firm's systems and controls.

31.30 Mr Waterfield therefore breached Principle 7 of the Principles.

Alleged Breach of Rules 5.1, 5.2, 5.3, 6.1, 8.1(b), 8.1(c), 8.3, 12.1 - SRA Accounts Rules 2019

31.31 The Tribunal found on the balance of probabilities that Mr Waterfield was responsible for various breaches of the SARs in the period between 10 February 2020 and October 2021:

31.32.1 In particular, the Tribunal found on the balance of probabilities that between the relevant period:

- (a) Mr Waterfield allowed client money to be withdrawn from the client account for reasons impermissible as specified within Rule 5.1 of SARs.

Mr Waterfield therefore breached Rule 5.1 of SARs;

- (b) various withdrawals by Mr Waterfield from the client account were not suitably authorised or supervised given that money was withdrawn in clear cases where there were insufficient funds in the client account.

Mr Waterfield therefore breached Rules 5.2 and 5.3 of SARs;

- (c) the shortage on the client account which began on 10 February 2020 was only rectified over a year and a half later. In contravention of the SARs, the sums were not replaced immediately once Mr Waterfield became aware.

Mr Waterfield therefore breached Rule 6.1 of SARs;

- (d) accurate, contemporaneous, and chronological records of the Firm's client accounts were not maintained by Mr Waterfield. A list of all the balances shown by the client ledger accounts of the liabilities with a running total of the balances and a cash book showing a running total of all transactions through the Firm's client account were not maintained.

Mr Waterfield therefore breached Rules 8.1(b) and 8.1(c) of SARs;

- (e) Mr Waterfield did not provide an Accountant's Report within six months of the 12-month period ending 31 October 2020.

Therefore, Mr Waterfield breached Rule 12 of SARs.

32. Allegation 2.3 - That the Respondent did not set aside sufficient or any funds to meet the Firm's VAT liabilities of at least £83,803.79 which caused the Firm to become insolvent. By doing so, breached any or all of: Principles 2 and 7 of the SRA Principles.

The Applicant's Case

- 32.1 The FIO noted during the investigation that the Firm's client care letters which Mr Waterfield confirmed that he had authored, charged VAT. The Firm's invoices showed the VAT element was distinct from other costs.
- 32.2 The firm had not registered for VAT until 21 October 2021.
- 32.3 Mr Waterfield said at the interview that it was Mr Durkin-Finch's responsibility to register for VAT as it was his business.
- 32.4 On 20 December 2021, Mr Durkin-Finch provided a breakdown of VAT due covering the period 31 January 2020 to 31 October 2021. The breakdown detailed that £83,803.79 was due to His Majesty's Revenue and Customs ("HMRC").
- 32.5 The Firm had not put aside funds to pay HMRC the sum owed, which subsequently caused the firm to become insolvent.
- 32.6 On 14 October 2021, (the start date of the FIO investigation) £19,500.00 was transferred from the client to office account in respect of fees. On the same date an office payment was made to `My Legal Consultancy` (MLC - consultancy firm of Mr Waterfield) for £19,500.00 leaving a balance of £386.71 in the firm's office bank account.
- 32.7 In response to the question as to why he had transferred the full amount of £19,500.00 to MLC, his company, and not taken the VAT element into account, Mr Waterfield explained that he thought that after he had transferred the sum there would have been sufficient monies on other matters to cover the outstanding VAT. In addition, he stated that he knew that after he had transferred the £19,500.00, he would not get paid a 'single penny' and "*he still needed to pay his bills as well.*"

Principle Breaches

Alleged Breach of Principle 2 (Upholding Public Trust)

- 32.8 Mr Bullock submitted that the public would expect a solicitor's firm to be run to a sufficiently high standard ensuring it had the capacity to meet its financial liabilities.
- 32.9 The Firm charged clients VAT when it was not VAT registered. Mr Waterfield was aware that the firm was charging VAT as he drafted the client care letter and given his position running the firm, knew that the firm was not registered.
- 32.10 Mr Waterfield failed to set aside sufficient or any funds to meet the VAT liabilities of at least £83,803.79 which was owed to HMRC. As a result, the firm became insolvent.

In addition, Mr Waterfield transferred funds from the client account, despite monies being owed for the unpaid VAT.

32.11 Mr Waterfield was therefore in breach of Principle 2 of the Principles.

Alleged Breach of Principle 7 (Acting in the best interest of each Client)

32.12 Mr Bullock pointed out that the Firm's clients were being charged VAT on their matters, but the VAT charged was not being used to pay HMRC. Failing to set aside sufficient funds to pay the VAT was not acting in the clients' best interests given that ultimately as a result the Firm was unable to continue trading and became insolvent. Mr Waterfield therefore breached Principle 7 of the Principles.

The Respondent's Case

32.13 Mr Waterfield's position in relation to the allegation was contained in the FIO's report but was not provided in response to the Rule 12 Statement or in oral evidence at the hearing as he had not engaged with the proceedings

The Tribunals Findings

32.14 The Tribunal found on the balance of probabilities that Mr Waterfield, in running the business, failed to set aside sufficient or any funds to meet the Firm's VAT liabilities of at least £83,803.79. It was further found that the Firm became insolvent as a result of Mr Waterfield's failure.

32.15 Having found the factual matrix of the allegation proved, the Tribunal proceeded to deal with the alleged Principle breaches.

Alleged Breach of Principle 2 (Upholding Public Trust)

32.16 The Tribunal found on the balance of probabilities that Mr Waterfield did not uphold public trust in the legal profession by failing to ensure in his role of running the firm that the firm was registered for VAT until the 14 October 2021 yet was charging clients for VAT before that date.

32.17 The Tribunal additionally found on the balance of probabilities that Mr Waterfield knew that VAT was being charged by the firm given his admission during the investigation that he was the author of the Firm's client care letter.

32.18 The Tribunal also found, to the same standard, that Mr Waterfield had further failed to ensure that funds were set aside to meet the Firm's VAT obligations, thus resulting in the Firm becoming insolvent.

32.19 As a result, Mr Waterfield had Breached Principle 2.

Alleged Breach of Principle 7 (Acting in the Best interests of Clients)

32.20 The Tribunal found on the balance of probabilities that by failing to ensure that sufficient funds were set aside to meet the Firm's VAT obligations and therefore

allowing the firm to become insolvent, Mr Waterfield had not acted in the best interests of the Firm's clients.

32.21 The Tribunal noted from the evidence of the FIR that Mr Waterfield had transferred the sum of £19,500.00 from the client to office account and then paid his own consultancy that sum in fees, in circumstances where monies were owed to HMRC. The Tribunal found that this did not represent the conduct of a legal professional who acted in the best interests of the Firm's clients.

32.22 Therefore, Mr Waterfield had accordingly breached Principle 7.

Previous Disciplinary Matters

33. There were no previous disciplinary matters against Mr Waterfield.

Mitigation

34. No mitigation was considered on behalf of Mr Waterfield. He had not engaged with the proceedings.

Sanction

35. The Tribunal referred to its Guidance Note on Sanctions (Guidance Note on Sanction (10th Ed) when considering sanction and the proper approach to sanctions as set out in Fuglers and others v SRA [2014] EWHC 179.

36. The Tribunal assessed the seriousness of the conduct of Mr Waterfield to be high bearing in mind the following:

- Mr Waterfield was an experienced legal professional who had been the sole director of a previous company, Centenary Law which had gone into administration in 2019 with debts in the sum of approximately £724,585.31;
- Mr Waterfield's poor administration of the Firm and numerous breaches of the SARs ultimately led to it becoming insolvent with direct impact on the Firm's clients.

37. The Tribunal then considered the key aggravating feature of dishonesty in Mr Waterfield's conduct. Mr Waterfield had been dishonest in submitting misleading and inaccurate information regarding the Firm's financial position to Companies House. It noted the importance of the duty that arises under the Companies Act to file accurate information which is held in the public domain and meant to be relied upon by members of the public, including creditors.

38. The Tribunal, keeping in mind the purpose of imposing sanctions, considered that the public interest needed to be adequately protected by the imposition of a section 43 order on Mr Waterfield. The order was to be for an indefinite duration as it was undesirable that Mr Waterfield be allowed involvement in a legal practice.

Costs

39. The amount sought by the Applicant was £12,616. This represented a reduced figure from the sum of £14,241.00 originally claimed given that the duration of the hearing had been reduced from two days to half of a day. The Tribunal believed the reduction to be reasonable and proportionate.
40. Accordingly, the Tribunal ordered the Mr Waterfield to pay the costs of £12,616.00.

Statement of Full Order

41. The Tribunal ORDERS that as from **28 October 2024** except in accordance with Law Society permission:-
- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor MATTHEW WATERFIELD;
 - (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Matthew Waterfield;
 - (iii) no recognised body shall employ or remunerate the said Matthew Waterfield;
 - (iv) no manager or employee of a recognised body shall employ or remunerate the said Matthew Waterfield in connection with the business of that body;
 - (v) no recognised body or manager or employee of such a body shall permit the said Matthew Waterfield to be a manager of the body;
 - (vi) no recognised body or manager or employee of such a body shall permit the said Matthew Waterfield to have an interest in the body.

Dated this 20th day of December 2024

On behalf of the Tribunal

T. Cullen

T. Cullen
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
20 DECEMBER 2024