

Nicola Phillips Solicitors LLP
1 Black Horse Way, Horsham, West
Sussex , RH12 1NU
Licenced body
570169

Agreement Date: 12 January 2022

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 12 January 2022

Published date: 17 January 2022

Firm details

No detail provided:

Outcome details

This outcome was reached by agreement.

Decision details

Agreed outcome

Nicola Phillips Solicitors LLP (the Firm), a licensed body, agrees to the following outcome to the investigation of its conduct by the Solicitors Regulation Authority (SRA):

- it is fined £4,000
- to the publication of this agreement
- it will pay the costs of the investigation of £1,350.

Reasons/basis

Summary of Facts

On 30 September 2020, the Firm submitted a qualified accountants' report. The report identified that it had failed to comply with the accounts rules.

The SRA carried out an inspection and identified that between April 2019 and October 2020, the Firm failed to properly maintain its books of account.

The SRA identified that a client account cash shortage of £31,253.88 had arisen because the Firm failed to accurately maintain several client ledgers.

This led to it making duplicate payments on behalf of clients.

- The shortage was fully replaced by 22 December 2020.
- The Firm also failed to complete client account reconciliations at least every five weeks.
- The Firm's accounting systems and internal controls failed to ensure compliance with the accounts rules for approximately 18 months.

Since January 2021 the Firm has demonstrated that it is now properly maintaining its books of account and that it is carrying out client account reconciliations at least every five weeks.

Admissions

The Firm makes the following admissions which the SRA accepts:

by failing to accurately maintain client ledgers it breached Rules 1.2(e), 1.2(f) and 29.1 of the SRA Accounts Rules 2011 (the 2011 Rules) and Rule 8.1 of the SRA Accounts Rules 2019 (the 2019 Rules)

by making duplicate payments which led to a client account cash shortage arising it breached Rules 20.1 and 20.6 of the 2011 Rules and Rules 5.1(a) and 5.3 of the 2019 Rules

by failing to carry out client account reconciliations at least every five weeks it breached Rule 29.12 of the 2011 Rules and Rule 8.3 of the 2019 Rules.

Why a fine is an appropriate outcome

The SRA's Enforcement Strategy sets out its approach to the use of its enforcement powers where there has been a failure to meet its standards or requirements.

When considering the appropriate sanctions and controls in this matter, the SRA has taken into account the admissions made by the Firm and the following mitigation:

- no client suffered any loss
- the client account shortage was replaced in full and the breaches have now been remedied
- the Firm has co-operated with the SRA's investigation
- the Firm has taken steps to ensure future compliance with the SRA Accounts Rules.

The SRA considers that a fine is the appropriate outcome because:



- the misconduct had the potential to cause significant harm
- the Firm had control over and an obligation to ensure its compliance with the 2011 Rules and the 2019 Rules and therefore it was directly culpable for the misconduct
- the Firm was reckless because it disregarded the risk of the harm and its regulatory obligations
- while the Firm remedied the breaches, the misconduct continued for longer than reasonable
- in 2016 the SRA rebuked the Firm and directed it to pay a financial penalty of £1,000 as it had failed to comply with the 2011 Rules.

A fine is appropriate to maintain professional standards and uphold public confidence in the solicitors' profession and in legal services provided by authorised persons, because it reflects the seriousness of the misconduct and provides a credible deterrent to the Firm and others. A financial penalty therefore meets the requirements of rule 4.1 of the Regulatory and Disciplinary Rules.

Amount of the fine

The amount of the fine has been calculated in line with the SRA's published guidance on its approach to setting an appropriate financial penalty (the Guidance).

Having regard to the Guidance, the SRA and the Firm agree that the nature of the misconduct was high because the conduct arose as a result of recklessness, and it forms a pattern of misconduct. The Guidance gives this type of misconduct a score of three.

The SRA considers that the impact of the misconduct was low because no clients suffered a loss, and it was minimal. The Guidance gives this level of impact a score of two.

For the purposes of the guidance, the Firm is not a firm of greater means.

The nature and impact scores add up to five. The Guidance indicates a broad penalty bracket of £1,001 to £5,000 is appropriate.

In deciding the level of fine within this bracket, the SRA has considered the mitigation at paragraph 4.2 above.

The SRA considers a basic penalty of £5,000, which is at the top of the bracket, is appropriate as the Firm was directly culpable for a significant client account cash shortage. Additionally, the Firm has previously been found to have breached the accounts rules, which shows a pattern of misconduct. Therefore, a penalty at the top of the bracket is necessary to achieve a credible deterrence.

The SRA considers that the basic penalty should be reduced to £4,000 to account for the fact that the Firm replaced the cash shortage promptly and has demonstrated that it is now compliant with the SRA Accounts Rules.

The Firm does not appear to have made any financial gain or received any other benefit as a result of its conduct. Therefore, no adjustment is necessary to remove this and the amount of the fine is £4,000.

Publication

The SRA will publish this decision. This is a requirement of the Legal Services Board's rules. We must publish information on enforcement action or sanctions imposed against a licensed body or manager or employee of a licensed body. There is no discretion in the rules for us not to do this.

Acting in a way which is inconsistent with this agreement

The Firm agrees that it will not deny the admissions made in this agreement or act in any way which is inconsistent with it.

If the Firm denies the admissions or acts in a way which is inconsistent with this agreement, the conduct which is subject to this agreement may be considered further by the SRA. That may result in a disciplinary outcome or a referral to the Solicitors Disciplinary Tribunal on the original facts and allegations.

Acting in a way which is inconsistent with this agreement may also constitute a separate breach of principles 2 and 5 of the Principles and paragraph 3.2 of the Code of Conduct for Firms.

Costs

The Firm agrees to pay the costs of the SRA's investigation in the sum of £1,350. Such costs are due within 28 days of a statement of costs due being issued by the SRA.

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