

# Darren Fazackerley

## Solicitor

### 355556

*Agreement Date: 23 April 2021*

#### *Decision - Agreement*

Outcome: Regulatory settlement agreement

Outcome date: 23 April 2021

Published date: 23 June 2021

#### *Firm details*

##### **Firm or organisation at time of matters giving rise to outcome**

Name: Mayland Porter Limited

Address(es): 53 Deardengate Haslingden, Rossendale BB4 5QN

Firm ID: 633868

#### *Outcome details*

This outcome was reached by agreement.

##### *Reasons/basis*

###### *1. Agreed Outcome*

1.1. Darren Fazackerley ("First Respondent") manager of Mayland Porter Limited ("the Firm"), agrees to the following outcome to the investigation of his professional conduct by the Solicitors Regulation Authority (SRA):

1.1.1. he is fined £10,000;

1.1.2. to the publication of this agreement;

1.1.3. he will pay the costs of the investigation of £4,625.

1.2. Meenal Goyal ("Second Respondent"), manager of the Firm, agrees to the following outcome to the investigation of her professional conduct by the SRA:

1.2.1. She is fined £5,001;

1.2.2. To the publication of this agreement;

1.2.3. She will pay the costs of the investigation of £4,625.

## *2. Summary of Facts*

2.1. The First Respondent was admitted as a solicitor on 18 April 2006. He became a sole practitioner at Mayland Porter & Co in December 2015. In January 2016, Person A became an employee. The Firm was incorporated on 2 February 2016 with company number 09981572. Initially, Person A was the sole director. The First Respondent was appointed as a director on 1 October 2016. The Second Respondent was admitted as a solicitor on 15 July 2009. She was appointed as a director on 25 April 2017 but remained a salaried partner.

2.2. The Firm became a licensed body on 1 February 2017. The First Respondent was authorised as an Approved Manager from that date; Person A was authorised as an Approved Manager from 26 April 2017. The Second Respondent was authorised as an Approved Manager from 2 May 2017.

### *The Firm's offices*

2.3. The Firm initially operated only from an office in Ipswich, where Person A and the First Respondent worked. In June 2016, a second office was opened, in Haslingden, in Lancashire. Person A remained in the Ipswich office, and the First Respondent divided his time between the two offices.

2.4. In June 2017, Person A acquired a London office on behalf of the Firm, although it is the Respondents' case that they were not aware of this until after Person A had acquired the office. The office was authorised by the SRA on 16 June 2017.

### *The Firm's staff*

2.5. At or around the time of opening the London office, Person A notified the Respondents that he had recruited a solicitor, Person B, to work in the London office on conveyancing matters. Although there is a solicitor with the same name as that given for Person B, Person B was not in fact the solicitor authorised by the SRA with that name. The solicitor with the name used by Person B has provided a statement to the SRA confirming that she has never worked at the Firm.

2.6. Neither the First nor Second Respondent met the person claiming to be Person B during the period when they were working at the Firm.

### *Property transactions in the Firm's London office*

2.7. Prior to the opening of the London office, the firm banked with HSBC, and separate office and client accounts were held for each of the Ipswich and Haslingden offices. The First Respondent was a signatory to all of the accounts, and Person A was a co-signatory to the accounts of the Ipswich office.



2.8. On the opening of the London office, Person A opened separate bank accounts for the London office, with Metro Bank (a separate bank to the bank providing services to the remainder of the firm). Person A was the sole signatory of those accounts though the Second Respondent signed forms in order to open the account. The First Respondent did not have access to those accounts despite holding the position of COLP and COFA in the Firm.

2.9. The SRA produced a Forensic Investigation Report which detailed a number of transactions which were investigated, and which set out details of the payments made to third parties made from the Firm's accounts over which Person A was the sole signatory.

*Example transaction: misappropriation of proceeds: sale of Property 1*

2.10. The Forensic Investigation Officer's report details a transaction handled by the firm in which the London office, and the person identifying themselves using the name of Person B, were acting for a purported buyer, Person C, in respect of the purchase of Property 1. The report records that during the course of that transaction, the Firm corresponded with LF Solicitors, acting for a lender who was providing bridging finance to Person C, and BC Solicitors, acting for one of the two sellers (Person D).

2.11. In summary, during the course of acting on the proposed transaction:

2.11.1. the Firm sent to LF Solicitors a letter purporting to be sent by SD Solicitors, which set out that SD Solicitors were acting for one of the sellers (Person E). In fact, SD Solicitors were not so acting, and the letter sent by the Firm to LF Solicitors had not been created by SD Solicitors. However they had acted on another matter also involving the Firm's London office (and so staff in the Firm's London office had access to their letterhead);

2.11.2. LF Solicitors raised concerns with the Firm about the authenticity of a signature by the borrower (the Firm's purported client). The person using Person B's name assured LF Solicitors as to the authenticity of the signature;

2.11.3. Undertakings were given by the Firm to forward documents relating to the sale of the property to the lender on receipt, and that their client would attend the lenders' offices on his return to the United Kingdom in September 2017;

2.11.4. On 25 August 2017, the Firm received, into the Metro Bank client account of the London office, a payment from the lenders of £1,399,491.

2.11.5. On the same day, three payments out were made (of £707,128.85, £272,979.15 and £418,500) to third parties apparently unrelated to the transaction or the sellers;



2.11.6. Also on 25 August 2017 the person using Person B's name sent an email to LF Solicitors confirming completion of the sale of Property 1. Subsequent attempts to contact the Firm's London office were unsuccessful.

2.11.7. The loan was subsequently identified as having been fraudulent; the sale of Property 1 did not proceed and Person C could not be identified or located.

2.11.8. A loss was therefore occasioned to the lender of at least £1,399,491.

*Example transaction: misappropriation of proceeds: sale of Property 2*

2.12. The Forensic Investigation Officer's report further details a transaction handled by the firm in which the London office, and the person identifying themselves using the name of Person B, were acting for a purported buyer, Person F, in respect of the purchase of Property 2.

2.13. During the course of acting on that transaction, the Firm received loan funds in the sum of £887,580. On the following day, two payments out, of £621,307.52 and £265,641.48 to two recipients, who were also recipients of funds paid out in respect of Property 1, and who had no apparent connection to either transaction. However, on that same day, the Firm sent an email to the solicitor acting for the lender confirming that the funds were being held "to your strict order".

2.14. These transfers were therefore made 15 days prior to those in relation to the Property 1 transaction.

2.15. It is clear, from the matters set out above and other matters particularised in the Forensic Investigation Officer's report, that a review of the files and accounts of the London office could have identified indicators of fraudulent activity, including:

2.15.1. The use of forged correspondence;

2.15.2. False statements to contract counterparties, including as to the status of funds transferred;

2.15.3. Payments out, and patterns of payments out across multiple transactions, of loan funds intended for property purchases, to third parties apparently unrelated to the transactions in respect of which such sums were sent;

2.15.4. Failures to respond to enquiries following the dispersal of such funds.

2.16. These issues were not identified by the First or Second Respondents until raised with them by third parties and they were alerted to the fraud.



The total shortfall as a result of the frauds was £3.3 million.

*Oversight of conduct of matters in the Firm's London office*

2.17. The Respondents did not exercise oversight or supervision of work undertaken in the London office, or review any payments or handling of client monies relating to the London office.

*The Firm's financial record-keeping*

2.18. The Firm did not maintain reconciliations, client account ledgers, cashbook information or a list of matters on which client funds were held in respect of matters handled at the Firm's Ipswich or London offices.

*Closure of the Firm*

2.19. In late August 2017, following contact from third parties including solicitors acting on the other side of transactions being handled in London office, the Respondents identified concerns about the probity of transactions involving client monies in the London office and made a report to the SRA and Action Fraud. Concerns were identified that:

2.19.1. Sum received by way of sale proceeds were paid out to third parties rather than their owners or the intended recipients;

2.19.2. Sums held for the purpose of, and due to be paid by way of, Stamp Duty Land Tax payments were not used for this purpose but were transferred out to third parties.

2.19.3. Following the identification of these concerns, the First Respondent raised the concerns with Person A. Person A did not respond, but absconded. The person using the name of Person B has not been located.

*Transfers of files*

2.20. Following the identification of the fraudulent transactions the Respondents decided to wind down the Firm. At this point, the Ipswich office was handling approximately 25 matters and the Haslingden office about 15 matters.

2.21. Preliminary arrangements were made by the firm to transfer any files from the Ipswich office which were not concluded on 30 October 2017, when the firm would close, to another unrelated firm of solicitors. The Firm sent letters to clients notifying them of the Firm's intention to close on a certain date. However, prior to the expiry of the period notified to clients, the First Respondent caused all of the Ipswich office files to be delivered to the new solicitors offices. The new solicitors identified that several of the files had been provided to them without client consent and raised concerns with the SRA and with the First Respondent, who subsequently arranged for the files to be collected from the new solicitors.

*Accountants' reports*

2.22. The Firm did not file an accountants' report for the period ending 1 May 2017.

*Undertakings given by First Respondent*

2.23. The First Respondent signed numerous undertakings pertaining to discharging charges. The First Respondent admits a breach of one undertaking relating to the failure to send a signed Form TR1 to the purchaser of Property A.

*3. Admissions*

3.1. The First Respondent makes the following admissions which the SRA accepts:

3.1.1. He failed to exercise adequate oversight of the Firm's operations and bank accounts to prevent the Firm becoming involved in transactions which bore the hallmarks of fraud, and in doing so breached Principles 6 and 8 of the SRA Principles 2011; furthermore such conduct was reckless;

3.1.2. He failed to establish and maintain proper accounting systems and internal controls over accounting systems in breach of Rule 1.2(c) of the SRA Accounts Rules 2011 ("SARs");

3.1.3. He failed to ensure that all dealings with client money were appropriately recorded in breach of Rule 1.2(f), 29.1 and 29.2 of the SARs;

3.1.4. He failed to conduct client account reconciliations at least once every five weeks in breach of Rule 29.11 of the SARs;

and by reason of such failures breached Principles 6, 8 and 10 of the SRA Principles 2011.

3.2. He failed to make proper enquiry or cause proper enquiry to be made into the identity and qualifications of staff working at the Firm's London office, and by reason of such failure breached Principles 6 and 8 of the SRA Principles 2011;

3.3. He failed to arrange for an accountant's report to be obtained or delivered to the SRA in respect of the accounting period ending 1 May 2017 by 1 November 2017 and in doing so breached one or both of Rules 1.2(i) and 32A.1 of the SARs and Principle 8 of the Principles;

3.4. In transferring client files to other firms without the consent of the clients concerned, breached client confidentiality and thereby breached Principles 5 and 6 of the SRA Principles 2011 and failed to achieve Outcome O(4.1) of the SRA Code of Conduct 2011;

3.5. Failed to comply with undertakings given to other solicitors in the course of acting on behalf of clients and in doing so breached Principle 6 of

the SRA Principles 2011 and Outcome O(11.2) of the SRA Code of Conduct 2011;

3.6. By reason of the facts and matters set out at [] to [] above or any of them, failed to comply with his obligations:

3.6.1. under Rules 8.5(c) of the SRA Authorisation Rules 2011 as the Firm's COLP;

3.6.2. under Rules 8.5(e) of the SRA Authorisation Rules 2011 as the Firm's COFA.

3.7. The Second Respondent makes the following admissions which the SRA accepts:

3.7.1. She failed to exercise adequate oversight of the Firm's operations and bank accounts to prevent the Firm becoming involved in transactions which bore the hallmarks of fraud, and in doing so breached Principles 6 and 8 of the Principles.

3.7.2. She failed to:

3.7.2.1. establish and maintain proper accounting systems and internal controls over accounting systems in breach of Rule 1.2(c) of the SRA Accounts Rules 2011 ("SARs");

3.7.2.2. ensure that all dealings with client money were appropriately recorded in breach of Rule 1.2(f), 29.1 and 29.2 of the SARs;

3.7.2.3. conduct client account reconciliations at least once every five weeks in breach of Rule 29.11 of the SARs;

and by reason of such failures or any of them breached Principles 6, 8 and 10 of the SRA Principles 2011;

3.7.3. Failed to make proper enquiry or cause proper enquiry to be made into the identity and qualifications of staff working at the Firm's London office, and by reason of such failure breached Principles 6 and 8 of the Principles;

3.7.4. Failed to arrange for an accountant's report to be obtained or delivered to the SRA in respect of the accounting period ending 1 May 2017 by 1 November 2017 and in doing so breached Rules 1.2(i) and 32A.1 of the SARs and Principle 8 of the Principles.

#### *4. Why a fine is an appropriate outcome*

4.1. 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.

4.2. When considering the appropriate sanctions and controls in this matter, the SRA has taken into account the admissions made by the First and Second Respondents and the following mitigation which has been put forward:

4.2.1. That they had no personal involvement in the frauds that took place in the Firm;

4.2.2. They acted in good faith and self-reported the conduct promptly to the SRA upon discovery of the fraudulent behaviour of the third parties;

4.2.3. They made early admissions in relation to breaches and have cooperated with the SRA;

4.2.4. They made efforts to remedy and rectify any breaches and where they could not do so they assert it was due to matters beyond their control.

4.3. The SRA considers that a fine is the appropriate outcome because whilst the financial loss was high, the misconduct was caused by third parties and the First and Second Respondent were unaware of the frauds being carried out. Once they became aware they reported the conduct to the SRA, kept the SRA updated and made attempts to rectify matters. They did however have responsibilities as managers and in acting as they did breached the professional standards expected of solicitors, breaches they readily admit.

4.4. A fine is therefore appropriate in order to maintain professional standards and uphold public confidence in the solicitors' profession and in legal services provided by authorised persons because neither Respondent was complicit in the fraud but admit breaches of the conduct rules. A financial penalty therefore meets the requirements of rule 4.1 of the Regulatory and Disciplinary Procedure Rules.

#### *5. Amount of the fine*

5.1. 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).

5.2. Having regard to the Guidance, the SRA and Respondents agree that the nature of the misconduct was medium because the Respondents cooperated with the investigation, they had no personal involvement in the fraud and it did not continue after it would found to be improper. The SRA accepts that the culpability of the Second Respondent was lower than that of the First Respondent for the reasons set out at 5.6 and 5.7 and this is reflected in the agreed sanctions.

5.3. The SRA considers that the impact of the misconduct was high because a significant financial shortfall arose on the client account at the Firm.



5.4. The Guidance indicates a broad penalty bracket of £5,001 to £25,000 is appropriate.

5.5. In deciding the level of fine within this bracket, the SRA has considered the mitigation at paragraph [4.2] above which the First and Second Respondent have put forward.

5.6. The SRA considers a penalty of £10,000 to be appropriate for the First Respondent and this is in the middle/low bracket of Band C, because we appreciate he was not involved in the fraud and immediately notified the SRA when it was discovered but we consider some of his behaviour to be reckless, in that he may have missed some "red flags". Furthermore had he both carried out additional due diligence the loss may have been reduced and he was the Firm's COLP and COFA. We do appreciate he was not directly responsible for the harm caused the remedial action taken has meant we have classed this in the middle of Band C.

5.7. The SRA considers a penalty of £5,001 ought to be given to the Second Respondent, which is at the bottom of the Band C to be appropriate. This is because the SRA considers that the Second Respondent to be culpable for the breaches but took into account the fact she was not a COLP or COFA and was not responsible for setting up or approving new offices nor recruiting new solicitors. In addition she had carried out a law society search on one of the purported fraudsters and believed her to be the solicitor she purported to be. She was not directly responsible for the harm caused and the remedial action taken indicate a fine at the lower end of Band C.

5.8. The First or Second Respondent have not made any financial gain or received any other benefit as a result of their conduct.

## *6. Publication*

6.1. The SRA considers it appropriate that this agreement is published in the interests of transparency in the regulatory and disciplinary process. The First and Second Respondents agree to the publication of this agreement.

## *7. Acting in a way which is inconsistent with this agreement*

7.1. The First and Second Respondents agree that they will not deny the admissions made in this agreement or act in any way which is inconsistent with it.

7.2. If either Respondent 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.

7.3. Denying the admissions made or 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 7.3 of the Code of Conduct for Solicitors, RELs and RFLs.

#### 8. Costs

8.1. The total costs are £9,250 and these have been apportioned 50/50 to the First and Second Respondent so that each pays half the costs and are individually liable for these.

8.2. The First Respondent therefore agrees to pay the costs of the SRA's investigation of £4,625. This will be paid by instalments of £150 on the first day of each month until the debt is paid starting on the first day of the month following receipt of a statement of costs due issued by the SRA. If any monthly instalment is not paid on the due date, the full sum of costs will fall due.

8.3. The Second Respondent agrees to pay the costs of the SRA's investigation of £4,625. This will be paid by instalments of £250 on the first day of each month following receipt of a statement of costs due issued by the SRA. If any monthly instalment is not paid on the due date the full sum of costs will fall due.

8.4. By entering into this Agreement the SRA confirms that the decision to refer the First Respondent's conduct to the Solicitors Disciplinary Tribunal dated 18 April 2019 is overturned.

8.5. By entering into this Agreement, the SRA confirms that the decision to refer the Second Respondent's conduct to the Solicitors Disciplinary Tribunal dated 18 April 2019 is overturned.

#### *Other information*

Meenal Goyal - 472981 [<https://www.sra.org.uk/consumers/solicitor-check/472981/>]

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