

Brendan Martin Casey

Solicitor

184654

Agreement Date: 24 February 2022

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 24 February 2022

Published date: 11 March 2022

Firm details

Firm or organisation at time of matters giving rise to outcome

Name: BMC Law Ltd

Address(es): Unit 36, Campus Road, Listerhills Science Park, Bradford
BD7 1HR

Firm ID: 607831

Outcome details

This outcome was reached by agreement.

Decision details

1. Brendan Casey, agrees to the following outcome of the investigation into his professional conduct under reference CDT/1227779-2018.

Background

2. Brendan Casey was admitted to the Roll on 15 November 2001. Mr Casey was Manager and Director of BMC Law Ltd ("the Firm") at all material times. He was the Firm's COLP and COFA between 30 April 2014 and 18 June 2016, and again between 7 July 2017 and 1 June 2018.

3. On 25 January 2018, Mr Casey reported to the SRA that he had concerns about the conduct of an unadmitted fee-earner at the Firm, Mr L. The report to the SRA stated that a "routine check of settled files" had revealed that monies due to the Firm's accounts had, instead, been paid to Mr L's private bank account by means of internet transfer. In each instance, the paying party had confirmed the details of the transfers.

3.1 On 10 February 2018, Mr Casey provided a further report to the SRA. He detailed six matters in which a total of £24,475.19 of clients' monies had

been misappropriated. He stated that Mr L was responsible for this and that in each instance the details of the transaction had been confirmed by the paying party. Mr Casey also reported that Mr L had misappropriated £7,190.00 of office money. Again, the paying parties had confirmed the details of the transfers. Mr Casey provided details of steps he had taken to address matters, including repaying the sums concerned, instructing compliance consultants and reporting the matter to the Police.

3.2 Subsequent to Mr Casey's notification to the Police and the SRA, a Forensic Report dated 21 May 2019 (the "FI Report") prepared by the SRA identified breaches of regulatory requirements at the Firm. A seventh instance of misappropriation of client funds by Mr. L in the sum of £1,250.00 was identified by the SRA's Forensic Investigation Officer (FIO). A summary of the background to the breaches, including the findings of the FI report is set out in the paragraphs below.

3.3 The FI Report identified that Mr L had misappropriated client monies by diverting payments that were intended to settle clients' personal injury claims to his own bank account, rather than the Firm's client and office accounts. However, the Firm did not ensure settlement sums had cleared into the Firm's accounts before paying the sums to clients from monies held in the general client account. This gave rise to shortages of client funds. Between August 2017 and March 2018 payments were made from the client account to the sum of about £25,365.19 when the funds were not present due to Mr L's misappropriation of the client monies paid by third parties (insurers).

3.4 After arranging for the shortfall to be calculated, the Firm replaced the sum of £18,000.00 in respect of five clients before the date of the forensic investigation. However, monies relating to two clients and totalling £7,365.19 remained outstanding at the conclusion of the investigation as these had not been identified. The monies were replaced once the Firm's new manager, Mr M, took over from Mr Casey and instructed different bookkeepers. The shortages on the client account existed for between 54 and 231 days.

3.5 The investigation also found that the Firm's accounts were not up to date. The Firm's external bookkeeper provided an explanation to the FIO that she had been retained by the Firm in September 2017 to bring the books of account up to date. She explained that the previous bookkeeper, had left the firm in June 2017 and the books had not been maintained in their entirety since that time. Mr Casey had since assumed responsibility for physical banking and payments. She stated that she had discovered the misappropriations by Mr L in the course of bringing the books of account up to date by identifying payments out of the Firm's client account where no monies had been received.



3.6 The failures of the Firm to produce up to date accounts in the period that Mr Casey was COFA, meant that the Firm could not ensure that the settlement monies had been received from third parties before making payment of the funds from the general client account. As a result, when Mr L provided his own bank details to third parties, rather than those pertaining to the Firm in order for settlement monies to be paid, Mr Casey was unable to ascertain that the funds had been diverted.

Admissions

4. Mr Casey makes, and the SRA accepts, the following admissions:

4.1. Between approximately June 2017 and April 2018, he failed to keep up to date accounts for the Firm and thereby breached all or any of:

- a. Principles 8 and 10 of the SRA Principles 2011 (“the Principles”);
- b. Rule 29.1 of the SRA Accounts Rules 2011 (“the Accounts Rules”).

4.2. Between approximately August 2017 and March 2018, he made payments from the Firm’s client account which exceeded the funds held for the underlying client matters and thereby breached all or any of:

- a. Principles 4, 6, 8 and 10 of the Principles;
- b. Rule 20.1 and/or Rule 20.6 of the Accounts Rules.

5. The above allegations do not involve allegations of dishonesty or lack of integrity.

Responsibility for professional conduct

6. Mr Casey has accepted the above breaches.

7. Mr Casey has agreed:

- a. to pay a financial penalty in the sum of £2000;
- b. that his practising certificate is subject to the following conditions:
 - i. he does not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body, or head of legal practice (HOLP) or head of finance and administration (HOFA) in any authorised non-SRA firm;
 - ii. he does not act as a sole practitioner;
 - iii. he does not hold, receive or have access to client money, or act as a signatory to any client or office account, or have the



power to authorise electronic transfers from any client or office account.

In these conditions the definitions are as defined in the SRA Glossary.

- i. to pay a contribution towards the SRA's costs in the sum of £600.
- ii. in respect of (a) the financial penalty and (c) the contribution to SRA's costs, to pay instalments of £50 per month, with the first payments due 28 days from the date of this agreement and then all following payments to be paid on a monthly basis until the balance is cleared in full. Should Mr Casey default on the payment plan, the full sum of £2,600 will become immediately due less any payments already made.

Mitigation

8. Mr Casey has advanced the following points by way of mitigation. These are not adopted or necessarily accepted by the SRA:

- a. Mr L used a degree of sophistication to steal money and cover his tracks but was ultimately discovered as a result of Mr Casey instructing an external book keeper.
- b. Although the Firm's internal systems were defective there was an effective day to day banking and payments system in place which had served the practice well for the previous three years prior to the thefts of Mr L and which had resulted in three unqualified accountants reports.
- c. Certain anomalies were uncovered around Christmas time 2017 and it was initially thought these were down to mis-postings or other data entry errors. Eventually in January 2018, after contacting the paying parties, it was realised that funds had been stolen and Mr Casey set about safe guarding clients and replacing the stolen funds.
- d. The diversions of client settlement monies to another account other than the firm client account could not have been prevented once Mr L had determined his course of action.
- e. Mr Casey did not neglect the situation he found himself in and acted promptly, reporting the situation immediately to both the SRA and the Police in January 2018 and immediately providing a personal guarantee in order to replace client funds at his own expense.



- f. Funds were never withdrawn from client account for any reason other than to pay client damages, satisfy disbursements and make other payments on behalf of the clients.

Regulatory Outcomes

9. Mr Casey is fined and has the conditions (as set out above) imposed on his practising certificate in respect of the breaches identified.

10. When considering the appropriate sanction in this matter, the SRA has taken into account the admissions made by Mr Casey and the following mitigation which he has put forward:

- a. The failure to keep the accounts up to date exposed the Firm to Mr L's conduct
- b. Mr L was a trusted employee who was dishonest
- c. The failure to keep the accounts up to date led to the Respondent making payments from the client account when the relevant funds were not present
- d. The Respondent notified the SRA and the Police. He engaged a bookkeeper and compliance consultants at some cost to investigate the issues
- e. The sum involved £25k and the monies were properly repaid by the Respondent. Client monies have not been lost

11. The SRA considers that the regulatory outcome at paragraph 7 above is appropriate and proportionate outcome in the public interest

12. Mr Casey agrees that this outcome will be published by the SRA and that it may also be disclosed to any person upon request or otherwise.

13. Mr Casey agrees that he will immediately inform any actual or prospective employer or organisation if employed within legal services or the legal profession, of his practising certificate conditions and the reasons for their imposition. For the avoidance of doubt this agreement does not apply to any other employer / employee relationship Mr Casey may enter into.

14. Mr Casey agrees to pay a contribution to the costs of the investigation, including the SRA's legal costs, in the sum of £600.00 inclusive of VAT and disbursements by way of monthly instalments as set out in paragraph 7, sub paragraph c the payments to commence 28 days after the date of this agreement.

15. Mr Casey agrees he will not act in any way inconsistent with this agreement by, for example, denying the misconduct admitted above.

16. Mr Casey understands and accepts that if any terms of this agreement are not complied with within the time limits agreed, or if he acts in any way inconsistent with this agreement, then his conduct will be referred to the Solicitors Disciplinary Tribunal on the original facts and allegations and also on the basis that he failed to comply with this Regulatory Settlement Agreement which will itself constitute a breach of Principles 2 and 5 of the SRA Principles 2019 and paragraph 7.3 of the SRA Code of Conduct for Solicitors, RELs and RFLs.

17. By entering into this agreement, the SRA confirms that the decision to refer Brendan Casey's conduct to the Solicitors Disciplinary Tribunal dated 21 May 2020 is overturned.

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