

Aberdein Considine & Company (Aberdein Considine & Company)

5-9 Bon Accord Crescent,
ABERDEEN , AB11 6DN
Recognised body
628245

Sanction Date: 9 January 2023

Decision - Sanction

Outcome: Rebuke

Outcome date: 9 January 2023

Published date: 11 January 2023

Firm details

Firm or organisation at date of publication

Name: Aberdein Considine & Company

Address(es): 30 Cloth Market, Newcastle upon Tyne

Firm ID: 628245

Outcome details

This outcome was reached by SRA decision.

Decision details

1. Agreed outcome

1.1 Aberdein Considine & Company ("the Firm"), a recognised body, agrees to the following outcome to the investigation of its conduct by the Solicitors Regulation Authority ("SRA"):

- a. it is rebuked
- b. to the publication of this agreement
- c. it will pay the costs of the investigation of £1,350.

2. Summary of Facts

2.1 The Firm is dual authorised by both the SRA and by the Law Society of Scotland. It was initially authorised in Scotland and has been authorised in England and Wales since 6 May 2016, following its acquisition of a firm in Newcastle. The Firm's head office is based in Aberdeen. The Firm operated separate client accounts to hold money on behalf of clients instructing the Firm to provide legal services in either Scotland or England & Wales. The client bank account for the Newcastle branch office was held with an Aberdeen branch of a bank whose head office is in Edinburgh.

2.2 The SRA Account Rules state that a client account must only be held at a head office or branch of a bank or building society in England and Wales.

2.3 In March 2021, the SRA received an Accountant's Report in relation to the Firm's practice in England & Wales for the period ending 31 October 2019. This report identified various breaches of the SRA Accounts Rules 2011, including that the Firm had failed to carry out client account reconciliations in accordance with the rules. It also identified weaknesses in the Firms' systems and controls, including relating to its investigation of residual balances and dormant client ledgers.

2.4 During our investigation, we identified a shortfall of £265,422.40 in the Firm's England & Wales client account as at 31 May 2021.

2.5 The cause of the shortfall was made up of a combination of posting errors between the firms two client accounts, due to money which was to be held on behalf of clients in the England & Wales being accidentally paid into the Firm's Scottish client account. This arose in April 2018. Due to the Firm's failure to carry out three-way client account reconciliations in accordance with the SRA Account Rules, this shortage was not identified until our investigation. The shortfall was rectified in full by 11 June 2021. No loss to any client or third parties was identified.

2.6 During our investigation we identified that many of the historic residual balances were in fact dormant ledgers where the firm held a zero balance on account for the client. These were dealt with by a bulk closure exercise.

3. Admissions

3.1 Aberdeen Considine & Company make the following admissions which the SRA accepts:

- a. that by failing to carry out three-way client account reconciliations and identify and correct errors and differences in the books of account between March 2018 and July 2021, it allowed a cash shortage to occur, breaching Rules 29.1, 29.12 and 29.13 of the SRA Accounts Rules 2011 (for the period to 25 September 2019) and Rule 8.3 of the SRA Accounts Rules 2019 (for the period from 25 September 2019).



- b. that by failing to return monies promptly to clients and allowing a number of residual client account balances to occur, it breached Rule 14.3 and 14.4 of the SRA Accounts Rules 2011 (for the period to 25 September 2019) and Rule 2.5 of the SRA Accounts Rules 2019 (for the period from 25 September 2019).
- c. that by failing to maintain a client bank account in England and Wales it breached Rule 13.4 of the SRA Accounts Rules 2011 (for the period to 25 September 2019) and Rule 3.1 of the SRA Accounts Rules 2019 (for the period from 25 September 2019).

4. Why a written rebuke 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 Firm and the following mitigation which it has put forward:

- a. the Firm had applied practices applicable to the Scottish Account's Rules when dealing with client money held in its England & Wales client account.
- b. the breaches of the Accounts Rules were legacy issues following an acquisition by the firm in England, the firm having previously only operated in Scotland.
- c. the firm had put faith in completed annual audits received in 2018 and 2019 which disclosed no reportable breaches. A change of auditor resulted in reportable breaches of the SRA Accounts Rules and the firm took immediate steps to address the breaches.

4.3 The SRA considers that a written rebuke is the appropriate outcome because:

- a. the amount of money involved was significant however there was no loss or lasting harm to clients
- b. the Firm have co-operated with our investigation.
- c. the risk of repetition is low, given the steps taken by the firm to resolve the issues and the procedures being put into place to avoid this happening again
- d. some sanction is required to uphold public confidence in the delivery of legal services.

5. *Publication*

5.1 The SRA considers it appropriate that this agreement is published in the interests of transparency in the regulatory and disciplinary process.

Aberdein Considine & Company agrees to the publication of this agreement.

6. Acting in a way which is inconsistent with this agreement

7. Aberdein Considine & Company agrees that it will not deny the admissions made in this agreement or act in any way which is inconsistent with it.

7.1 If Aberdein Considine & Company 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.

7.2 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.

8. *Costs*

8.1 Aberdein Considine & Company 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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