SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11497-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DAVID GRANT Respondent

Before:

Mr J. A. Astle (in the chair)
Miss H. Dobson
Mr S. Marquez

Date of Hearing: 17 March 2020

Appearances

There were no appearances on behalf of the parties as they had submitted a Statement of Agreed Facts and Proposed Outcome which was considered by the Tribunal in private.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent were that:

1.1 The Respondent failed to report the firm's serious financial difficulties to the SRA in breach of Principle 8 of the SRA Principles 2011 and Outcome 10.3 of the Solicitors Code of Conduct 2011.

1.2 The Respondent breached Rule 24.2(b) of the SRA Authorisation Rules 2011 by failing to make appropriate applications and arrangements to become a recognised Sole Practitioner when the firm's salaried partner left the firm.

1.3 On 4 October 2014, the Respondent made an improper withdrawal out of the firm's client account to a Mr C, in breach of Rule 20.1 of the SRA Accounts Rules 2011, and Principle 6 of the SRA Principles 2011.

1.4 The Respondent acted where there was, or was a significant risk of, an own interest conflict by accepting a loan from a client without that client taking independent legal advice, in breach of Principles 4 and 6 of the SRA Principles 2011.

1.5 The Respondent failed to effectively manage and supervise staff, namely the firm's bookkeepers, when providing instructions relating to residual balances on client account in breach of Principle 8 of the SRA Principles 2011.

1.6 The Respondent failed to send bills to clients in relation to residual balances in breach of Rule 17.2 of the SRA Accounts Rules 2011, and Principle 10 of the SRA Principles 2011.

1.7 The Respondent caused or permitted unauthorised transfers of money totalling £8,783.67 into the firm's office account in breach of Rule 20.1 of the SRA Accounts Rules 2011, and Principles 6 and 10 of the SRA Principles 2011.

1.8 The Respondent failed to pay client money into client account, resulting in a client's monies being unavailable to him, in breach of Rule 14.1 of the SRA Accounts Rules 2011, and Principles 2, 6 and 10 of the SRA Principles 2011.

The additional Allegations made against the Respondent in a Supplementary Rule 7 Statement were that:

1.9 On 6 December 2019 the Respondent was convicted of one count of Theft and two counts of Money Laundering and thereby failed to act:

1.9.1 In a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons in breach of Principle 2 of the SRA Principles 2019 ("RAP19") and/or

1.9.2 With integrity in breach of Principle 5 of the SRAP19.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

   - The Applicant's Rule 5 Statement dated 5 April 2016
   - The Applicant's Rule 7 Supplementary Statement dated 29 January 2020
   - Statement of Agreed Facts and Proposed Outcome dated 12 February 2020

Preliminary Matters – Agreed Outcome Procedure

3. On 10 March 2020 the Applicant submitted an application on behalf of both parties for the Tribunal to approve an Agreed Outcome to the proceedings. In accordance with paragraph 2.2 of the Tribunal's standard directions, the matter was listed for consideration by a division of the Tribunal, in private, on 17 March 2020. For the reasons set out below, the Tribunal was satisfied that the Agreed Outcome should be approved without requiring any further submissions from the parties. The Tribunal's decision was announced in open court, and an Order setting out the Tribunal's Order was filed with the Law Society on 17 March 2020. This Judgment sets out the circumstances of the matter and the Tribunal's reasons for its decision. The Statement of Agreed Facts and Proposed Outcome is attached to this Judgment.

Agreed Factual Background

4. The Respondent, born in 1949, was admitted as a solicitor on 16 December 1974.

5. At all relevant times the Respondent was an equity Partner and Compliance Officer for Finance and Administration at Tracey Barlow Fumiss & Co of 68 Bridge Street, Worksop, Nottinghamshire, S80 1JE ("the Firm"). From 29 May 2014, the Respondent was the sole partner and manager of the Firm, which closed on 31 August 2014.

Findings of Fact and Law

6. The Tribunal had carefully considered all the documents provided. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

7. The Respondent had admitted all the allegations, save Allegations 1.4 and 1.8, made against him, as set out in the Statement of Agreed Facts and Proposed Outcome. Allegation 1.9 was based on convictions for theft and money laundering. The Tribunal was satisfied that it was not necessary or proportionate for the SRA to pursue Allegations 1.4 and 1.8 to a full hearing in light of the admissions that had been made. The Tribunal noted that the Respondent was legally represented. In light of this the Tribunal was satisfied on the basis of the admissions and the agreed facts presented, that the admitted allegations had been proved to the requisite standard. The Tribunal

found Allegations 1.1, 1.2, 1.3, 1.5, 1.6, 1.7 and 1.9 proved on the Respondent's admissions.

Previous Disciplinary Matters

8. None.

Sanction

9. The Respondent's mitigation was contained in the Statement of Agreed Facts and Proposed Outcome, a copy of which is attached to this Judgment.

10. The parties both submitted the appropriate penalty in this case was for the Respondent to be Struck Off the Roll of Solicitors and that he pay the SRA costs in the fixed amount of £14,073.75.

11. The Tribunal considered its Guidance Note on Sanctions. In doing so, the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal agreed with the analysis of the outcome set out in the Agreed Outcome.

12. In considering the matter, the Tribunal noted in particular that the Respondent had admitted all the allegations, save Allegations 1.4 and 1.8. The Tribunal had to consider whether, in light of the admitted facts and allegations, the proposed Outcome was just and proportionate. The Tribunal noted that if it was satisfied with the proposed sanction it could proceed to make the necessary Order.

13. The Tribunal considered the Statement of Agreed Facts and Proposed Outcome carefully. The Respondent had been convicted of one count of theft and two counts of money laundering in December 2019. The conviction for theft was on the basis that the Respondent had stolen over £95,000 belonging to two clients after he had received these funds following the sale of the clients' company. He had also entered into a money laundering arrangement with another client which had led to the Respondent depriving a deceased's estate of £6,000. He had also failed to carry out customer due diligence on other clients. The Respondent was sentenced to a total of two years imprisonment for his convictions.

14. In addition the Respondent had failed to notify his regulator that his Firm was in financial difficulty or make an application to practise as a recognised sole practitioner, and he had made a payment from client account to an unrelated third party where there was no underlying legal transaction. On the closure of his Firm the Respondent had failed to properly or effectively manage his staff or provide proper instructions in relation to residual client balances, he failed to ensure bills were sent to clients before transferring client balances to office account and he failed to ensure client money had been returned to clients where appropriate.

15. The Respondent's breaches had taken place over a period of more than a year. He was a very experienced solicitor, having been admitted in 1974. He had been the Firm's Compliance Officer for Finance and Administration ("COFA") which gave him the additional responsibility of managing the Firm's financial accounts and he had also

been the sole manager of the practice when his partner left. His actions had been planned and his motivation in taking client funds was to use those monies to meet his own financial liabilities. He had acted in breach of the trust placed in him by clients who quite properly expected their monies could be safely entrusted to a solicitor. He had direct control over his actions. The Respondent knew or suspected that the money he had received from one client was criminal property. He, however, received the money and then used it to pay his office and personal costs. The Tribunal concluded the Respondent's level of culpability was high.

16. The Tribunal also concluded that the Respondent had caused a high degree of harm to clients who had lost funds, and to the reputation of the profession. Not only had he stolen huge sums of client monies but he had also deprived a deceased's estate of the sum of £6,000 as a result of the money laundering arrangement for which he was convicted. He ought reasonably to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession.

17. The Tribunal took into account the mitigation advanced by the Respondent. He stated he had thought that the funds raised from the sale of his own property and his business would be sufficient to repay his liabilities. He also stated that he had been in negotiation with another solicitor to join his firm as a partner. He stated that he had relied too heavily on his office manager and accepted that he had failed in his duties.

18. The Tribunal identified the following aggravating factors:

- The Respondent had been convicted of dishonesty offences.
- His conduct was deliberate, calculated and repeated.
- He had taken advantage of long standing clients who had placed their trust in him. He had used the sum of £6,000 taken from the estate of a deceased person for his own personal matters. He had failed to return thousands of pounds of residual balances held in client account to clients and he had stolen funds from other clients over a nine month period.
- The Respondent had tried to conceal his theft by persuading two clients to give false and misleading information to his regulator.

19. The mitigating factors identified by the Tribunal were that the Respondent had a previously unblemished record. His admissions to the allegations indicated a degree of insight.

20. The Tribunal determined that the Respondent's misconduct was extremely serious. As well as numerous breaches of the SRA Principles 2011 and 2019 he had been convicted of dishonesty offences. As such, No Order or a Reprimand would not address the level of seriousness. The Tribunal considered whether a Fine and/or a Restriction Order would be sufficient but concluded these would not be enough to protect the public or the reputation of the legal profession. Nor were they sufficient to mark the seriousness of the misconduct. Clients had suffered huge financial losses as a result of the Respondent's conduct.

21. The Tribunal concluded the Respondent's conduct was so serious that there was a need to protect the public and the reputation of the profession by removing the Respondent's ability to practise. A Suspension would not be sufficient as it would not maintain public confidence in the profession and nor would it protect the reputation of the legal profession. The Respondent's misconduct was at the highest level. He could not be trusted with client funds and the public needed to be protected from him. The appropriate sanction in this case was to Strike the Respondent off the Roll of Solicitors.

22. The Tribunal determined that the case could be concluded on the basis of the Statement of Agreed Facts and Proposed Outcome. The Tribunal Ordered the Respondent be Struck Off the Roll of the Solicitors.

Costs

23. As part of the proposed Agreed Outcome, it was further proposed that the Respondent should pay £14,073.75 for the Applicant's costs.

24. Based on the agreement between the parties, the Tribunal was satisfied that the agreed costs in the sum of £14,073.75 were reasonable and proportionate, particularly as a full trial had not been necessary in this case. Accordingly the Tribunal Ordered the Respondent to pay the Applicant's costs in the agreed sum of £14,073.75.

Statement of Full Order

25. The Tribunal Ordered that the Respondent, DAVID GRANT, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,073.75.

Dated this 7th day of April 2020
On behalf of the Tribunal

J. A. Astle
Chair

IN THE MATTER OF THE SOLICITORS ACT 1974

And

IN THE MATTER OF DAVID GRANT

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

And

DAVID GRANT

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUCTOME

1. By its application dated 5 April 2016 which included a statement pursuant to Rule 5(2) Solicitors (Disciplinary Proceedings) Rules 2007 ("the rule 5 statement), the Solicitors Regulation Authority ("SRA") brought proceedings before the SDT against the Respondent.

2. On the 29 January 2020, the SRA lodged a supplemental statement pursuant to Rule 7(1) Solicitors (Disciplinary Proceedings) Rules 2007 ("the rule 7 statement") in which further allegations were made against the Respondent.

ALLEGATIONS

3. The allegations against the respondent arising out of the Rule 5 statement are:

4. **1.1** Failed to report the firm's serious financial difficulties to the SRA in breach of Principle 8 of the SRA Principles 2011 and Outcome 10.3 of the Solicitors Code of conduct 2011.

   1.2 Breached Rule 24.2 (b) of the SRA Authorisation Rules 2011 by failing to make appropriate applications and arrangements to become a recognised Sole Practitioner when the firm's salaried partner left the firm.

   1.3 On the 4 October 2014, made an improper withdrawal out of the firm's client account to a Mr C, in breach of Rule 20.1 of the SRA Accounts Rules 2011, and Principle 6 of the SRA Principles 2011.

1.4 Acted where there was an, or was a significant risk of an own interest conflict by accepting a loan from a client without that client taking independent legal advice, in breach of Principles 4 and 6 of the SRA Principles 2011.

1.5 Failed to effectively manage and supervise staff, namely the firm's bookkeepers, when providing instructions relating to residual balances on client account in breach of Principle 8 of the SRA Principles 2011.

1.6 He failed to send bills to clients in relation to residual balances in breach of Rule 17.2 of the SRA Accounts Rules 2011, and Principle 10 of the SRA Principles 2011.

1.7 He caused or permitted unauthorised transfers of money totalling £8,783.67 into the firm's office account in breach of Rule 20.1 of the SRA Accounts Rules 2011, and Principles 6 and 10 of the SRA Principles 2011.

1.8 Failed to pay client money into client account, resulting in a client's monies being unavailable to him, in breach of Rule 14.1 of the SRA Accounts Rules 2011, and Principles 2, 6 and 10 of the SRA Principles 2011.

5. The allegations against the Respondent arising out of the Rule 7 statement are:

1.9 On the 6 December 2019 was convicted of one count of Theft and two counts of Money Laundering and thereby failed to act:

1.9.1 In a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons in breach of Principle 2 of the SRA Principles 2019 ("SRAP19") and/or;

1.9.2 With integrity in breach of Principle 5 of the SRAP19.

ADMISSIONS

6. The Respondent admits all the allegations against him other than allegations **1.4** and **1.8**.

7. The SRA apply to withdraw allegations **1.4 and 1.8**.

8. Allegation **1.4** is based upon the Respondent accepting a loan from his clients C-SB and J S-B, without advising them to take independent legal advice. The Respondent's clients did not in fact agree to loan any money to the Respondent and his conviction for theft on the 6 December 2019 was on the basis that he had stolen the money from his clients. The Respondent has admitted the allegation relating to his conviction for theft.

9. The facts underlying allegation **1.8** were similar to the facts underlying a charge of theft that the Respondent also faced at his criminal trial in November and

December 2019. The Respondent was acquitted of that theft charge. In the circumstances and in light of the admitted allegations, it is not proportionate to proceed with allegation 1.8.

BACKGROUND

10. The Respondent was born on 1949 and was admitted to the Roll of Solicitors on the 16 December 1974.

11. The Respondent was an equity Partner and Compliance Officer for Finance and Administration at Tracey Barlow Furniss & Co. From 29 May 2014, the Respondent was the sole partner and manager of the firm.

12. Tracey Barlow Furniss & Co ("the Firm") closed on 31 August 2014.

13. The Respondent entered into an IVA on 19 January 2015.

14. On the 6 December 2019, at the Crown Court at Leicester, the Respondent was convicted, after trial of 1 count of theft and two counts of money laundering. He was sentenced to a total of 2 years imprisonment[1].

15. The Respondent is currently detained at HMP Leicester.

16. The admitted allegations arise out the Respondent's practise as a solicitor whilst at the firm.

17. The allegations arising out of the rule 5 statement are based upon forensic investigation reports dated 18 August 2014 ("FIR1") and 27 July 2015 ("FIR2"). The allegations arising from the rule 7 statement relate to the Respondent's conviction.

FIR1 & FIR2

18. On the 30 April 2014, a duly Authorised Officer of the Applicant (the "FI Officer") commenced an inspection of the books of account and other documents of the Firm. The Respondent was interviewed by the FI Officer on the 22 May 2014.

19. The FIR confirmed that a minimum cash shortage existed in the client bank account of the Firm in the sum of £18,500.00 from 31 July 2013 until it was rectified on 12 August 2013.

20. The shortage was caused by the transfer of monies from the client account after a cheque, which subsequently failed to clear at the bank, had been posted to client account. The firm's bookkeeper, Ms M has provided a handwritten statement

[1] He received 2 years imprisonment for Theft, 12 month imprisonment for entering into or becoming concerned with a money laundering arrangement and 3 month imprisonment for failing to comply with a requirement of the money laundering regulations 7 and 45 of the Money Laundering Regulations 2007.

confirming she was not listening properly to the Respondent's instructions and had paid the cheque into client account by mistake. The shortage was rectified within 12 days of it arising.

21. Following receipt of a report from a former client, a second inspection of the books of account and other documents of the firm took place on 2 June 2015. The Respondent and the firm's bookkeepers were interviewed by the FI Officer on 10 and 9 June 2015. The inspection and the interview culminated in the FIR2 dated 27 July 2015.

22. FIR 2 identifies a number of further issues relating to the firm's management and use of client account.

AGREED FACTS

ALLEGATION 1.1

23. The Respondent failed to report the following matters to the Applicant as required by Principle 8 of the SRA Principles 2011 and Outcome 10.3 of the Solicitors Code of Conduct 2011.

- The firm was in arrears with HMRC in the sum of £20,817.30 as at the date of FIR1 and was repaying £7,000 per month for the arrears and current liability (a total liability of £94,000).
- The firm had two loans from Bank of Scotland totalling £380,814.98 (as at 28 May 2014). As a result of non-payment, the Bank of Scotland issued a Statutory Demand and Receivers were appointed on 16 August 2013. The Receivers served notice on the Respondent (by letter dated 27 March 2014) stating their intention to close the firm's office accounts on 27 May 2014.

24. The above financial issues constituted a material risk to the firm however the Applicant was not notified of these matters prior to the FI Officer's inspection.

ALLEGATION 1.2

25. The Respondent admits that the firm's salaried partner, Mr JR confirmed his intention to leave the firm in early April 2014. Despite that, when he did in fact leave the firm on 30 May 2014, the firm had only one remaining partner but no application to become a recognised sole practitioner had been made, in breach of Rule 24.2(b) of the SRA Authorisation Rules 2011 and Principle 7 of the SRA Principles 2011.

26. The Respondent failed to inform the Applicant or make the requisite application in advance of the change in partnership. A formal application was made on 3 June 2014 however the proposed partner subsequently withdrew her application and at the time of the firm's closure it remained in breach of the SRA Authorisation Rules 2011.

ALLEGATION 1.3

27. On 4 October 2014, £50,000 was received into the firm's client account from McKinnells Solicitors and posted to the ledger of Mrs Grant, the Respondent's wife. The money was paid out, on the same day, to a Mr MC, an unrelated third party. The FI officer found no file in relation to this matter and there was no separate client ledger.

28. McKinnells Solicitor's file relating to the £50,000 payment revealed that they were acting for Mr N McD and Mr J W in registering a Legal Charge for £50,000 on a property at 20 Walnut Place, Lincoln. The Respondent was acting for Mr M A-S and Mr A A-S, the registered proprietors of that property. The file contained a Legal Charge, signed by the parties. On 4 October 2013, McKinnells Solicitors wrote to the Respondent confirming the charge had been registered and the sum of £50,000 had been sent to the firm's bank account.

29. There was nothing on McKinnells' file to indicate why the £50,000 payment in respect of the Legal Charge was subsequently transferred to Mr MC.

30. The Respondent, by making the payment out of client account to Mr MC, an unrelated third party in circumstances where there was no underlying legal transaction, breached Rule 20.1 of the SRA Accounts Rules 2011, and Principle 6 of the SRA Principles 2011.

ALLEGATIONS 1.5 – 1.7

31. On closure of the firm, the Respondent's client account continued to contain a number of residual client balances. The Respondent failed to properly or effectively manage his staff and provide correct instructions to the firm's bookkeepers regarding the proper way to deal with residual balances on client account.

32. The Respondent failed to ensure that his bookkeepers sent bills to clients before transferring client money to office account and failed to ensure that only proper transfers of monies was made from client to office account. This led to a breach of the SRA accounts rules as particularised below.

33. The FI Officer identified improper withdrawals from the firm's client to office accounts totalling £24,395.41 in respect of 117 matters where bills had been raised but not sent to clients.

34. The firm's bookkeepers, Ms B and Ms M were interviewed on 9 June 2015 in respect of these matters. They stated that they felt under pressure from the Respondent and the SRA to achieve a nil balance on client account on closure of the firm and had billed each remaining client file to reduce the balance to nil based on the client account ledgers. The individual client files had not been reviewed and bills were not sent to clients.

35. During interview the firm's bookkeepers accepted that some of the monies transferred to office account should potentially have been returned to clients.

36. Payments from client account were sent to two charities. Those payments totalled £1,303.48. The firm's bookkeepers stated they had been advised by the Respondent to keep payments to charity to a minimum and had therefore paid any client balances under £50 to charity. No attempts were made to locate the clients the funds belonged to.

37. In relation to allegation 1.7, the FI Officer noted 43 matters where the firm had transferred historic client balances to office account and described those as disbursements.

ALLEGATIONS 1.9 - 1.9.2

Particulars and basis of the charges Respondent was convicted of

Money Laundering offences

Entering into or becoming concerned in a money laundering arrangement, contrary to section 328(1) of the Proceeds of Crime Act 2002.

38. Between the 14 May 2013 and 30 May 2013, the Respondent entered into or became concerned in an arrangement, namely a receipt into a Yorkshire Bank account, named "*D and Z Grant*" of £6,000 knowing or suspecting that the arrangement would facilitate the acquisition, retention, use or control of criminal property.

39. The Respondent acted for a client, Mr MC, who had been charged with fraud and money laundering[2]. MC had made a fraudulent Court of Protection application to be the Deputy of his grandmother's estate, ET. On the same day that MC was

[2] MC's prosecution was linked to the prosecution of the Respondent.

granted Deputyship of the estate he received £36,000 from his grandmother's bank account into his Barclays bank account.

40. On the 9 May 2013, MC was arrested on charges of conspiracy to launder money and he was represented by the Respondent. The Respondent, in his capacity as solicitor for MC was aware of the details of his alleged fraud and money laundering.

41. On the 14 and 30 May 2013 MC transferred a total of £45,000 from his Barclays bank account to the Respondent's Yorkshire bank account. The Respondent subsequently transferred the money to his firm's client account and used it to settle various personal and professional costs associated with running his firm.

42. Of the £45,000 transferred to the Respondent, £6,000 derived from the fraud on the ET estate. The Respondent had entered into an arrangement with MC for the retention of this criminal property. On the 10 May 2013, the day after MC was arrested on money laundering charges, the Respondent had drawn up an agreement between him and MC for the purposes of MC investing/buying shares in the Respondent's firm.

Failing to comply with a requirement of the money laundering regulations contrary to Regulations 7 and 45 of the Money Laundering Regulations 2007.

43. Between the 1 September 2013 and 4 October 2013 being a relevant person, failed to apply customer due diligence in accordance with Regulation 7(1) of the Money Laundering Regulations 2007 in respect of a loan secured on 20 Walnut Place, Lincoln in contravention of Regulation 45 of the Money Laundering Regulations 2007.

44. The Respondent failed to apply customer due diligence on legal advice provided to his clients Mr M A-S and Mr A A-S, who owned 20 Walnut Place on which a loan of £50,000 was secured.

45. Clients NM and JPW agreed to loan M A-S and A A-S £50,000 which was to be secured on 20 Walnut Place. Mckinnells solicitors represented NM and JPW. The Respondent drafted the legal charge document and it was executed at McKinnells solicitors. McKinnells subsequently sent £50,000 to the Respondent's client bank account. On the same day, the Respondent transferred £50,000 from his firm's client account to MC's personal bank account, although the monies should have been paid to M A-S and A A-S as they were the parties to the loan agreement.

46. The Respondent was unable to produce any documents or files in respect of the loan and legal charge over the 20 Walnut Place. Further, he had no documents in

respect of the legal advice on the loan documents or the handling of the loan monies that went through his client account. The Respondent had not applied any customer due diligence measures, neither customer identity nor verification.

Theft

47. **Theft- contrary to Section 1(1) of the Theft Act 1968.**

48. Between 9 December 2013 and 1 September 2014, the Respondent stole £95, 740.15 belonging to S Limited.

49. The Respondent acted for clients C S-B and J S-B in the sale of their company, S Limited in December 2013. Clients C S-B and J S-B had known the Respondent for 20 years and had used his services for some 11 years.

50. S Limited was sold for £2million and on the 20 December 2013 the Respondent received the sale proceeds of £2million into his client account. After a transfer of £1.4million to S Limited's business account and payments of outstanding hire purchase liabilities there was a balance remaining of £95,740.15 in the Respondent's client account. The Respondent used the remaining monies in his firm's client account for his own purposes without the agreement or consent of his clients.

51. The Respondent persuaded his clients to mislead an SRA investigator by telling her that that they had agreed to loan monies to him, when in fact that was not true. Due to their longstanding friendship, his clients told the SRA investigator that they had loaned monies to the Respondent. However, after the Respondent failed to return their money, the clients informed the SRA of the correct position, that they had not in fact loaned monies to the Respondent.

Judge's sentencing remarks

52. In the sentencing remarks, the Judge comments as follows *" You were admitted as a solicitor I think it was 1975, certainly in the mid-1970s. You built up a good practice. I have read these four references which are outstanding references speaking to your success as a solicitor in your profession. It is also plain to me having listened to the evidence in this case that you struggled to run your office as you should have done as a sole practitioner and you showed a disregard for the money laundering regulations and the way you conducted your practice. You had several trusted and wealthy clients and you developed friendships with those clients. That friendship led to an informal approach on your part to your business dealings with them and ultimately to dishonesty on your part."*

Breaches of the SRAP 19

53. Principle 2 requires solicitors to uphold public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. This trust depends upon the reputation of the solicitors' profession as one in which every member *'may be trusted to the ends of the earth'*. The conviction of a solicitor for criminal offences, in this matter involving dishonesty and money laundering committed whilst practising as a solicitor, clearly undermines the trust and confidence that the public has in the solicitors' profession and in legal services provided by authorised persons, in breach of Principle 2.

54. Principle 5 requires a solicitor to act with integrity. A solicitor acting with integrity would not be convicted of a criminal offence of theft whereby he dishonesty steals large amounts of his clients' monies. Further, a solicitor acting with integrity would not be convicted of a criminal offence of money laundering involving him receiving criminal proceeds. A solicitor convicted of such offences may properly be said to lack moral soundness, rectitude and steady adherence to an ethical code so as to lack integrity in breach of Principle 5.

55. Further, the Respondent has failed to adhere to the principles of integrity set out by Lord Justice Jackson in the case of *Wingate & Evans v SRA v Malins [2018] EWCA Civ 366* in that he has failed to live up to his own professional standards, which come from the privileged and trusted role he has in society as a solicitor.

MITIGATION

56. The following mitigation is put forward by the Respondent but is not endorsed by the SRA.

57. The Respondent accepts that he should have reported the financial position of the firm as it was in distress.

58. The Respondent felt that the proceeds from the sale of his own property and that of his office would have been sufficient to cover the outstanding liabilities.

59. He accepts that he placed too much reliance on his office manager to deal with the HMRC debt and that he should have been more proactive. He had reported a previous statutory demand issued by the HMRC, but the regulator did not take any action.

60. He accepts that he should have immediately sought authorisation to become a recognised sole practitioner when his partner left. He was in negotiation with another solicitor to join the practice but that fell through.

61. He was under considerable pressure to wind down the accounts of the firm when closing his firm. He accepts that he failed to properly supervise his accounts staff. He should have been more proactive to ensure that there was an orderly transfer of balances.

PROPOSED SANCTION

62. The proposed sanction is that the Respondent be struck off the roll of solicitors and that he does pay the SRA costs in the fixed amount of £14,073.75.

Explanation as to why the sanction is in accordance with the SDT's guidance note on sanction

63. The Respondent is a very experienced solicitor having practised for almost 46 years. He is highly culpable for the admitted breaches. He was the sole equity partner, COFA for the firm and the sole manager of the practice on the departure of the salaried partner. The Respondent should have sought authorisation as a sole practitioner, informed the SRA as to the financial position of the firm and ensured that he properly supervised his accounts staff.

64. The Respondent motivation in stealing his clients'[3] monies was to help alleviate his financial difficulties. His actions were planned, and he was directly responsible for his actions. He had known his clients for many years, and they regarded him as a friend. His breach of trust was monumental. He tried to conceal his actions by misleading an SRA investigator into believing that his clients had loaned him monies and went to the extent of persuading his clients to mislead the SRA investigator.

65. The Respondent knew or suspected that the money he had received from Mr MC was criminal property. He however received the money and used it to pay his office and personal costs. The arrangement that he had entered into with his client was planned.

66. The Respondent's actions resulted in harm to his clients and the public trust in the profession. He failed to return thousands of pounds to clients from the residual balances that he held had in his accounts. He stole over £95,000 from his clients C S-B and J S-B over a period of some 9 months. His actions in entering into a money laundering arrangement with Mr MC led to the loss of £6000 to the estate of ET.

[3] C S-B and J S-B.

67. There are a number of aggravating features of the Respondent's actions. They include:

- Dishonest appropriation of C S-B and J S-B's monies;
- Conduct amounted to theft and money laundering offences;
- In relation to the convictions, his actions were deliberate, calculated and repeated and the misconduct continued over a period of time;
- He tried to conceal the theft;
- He clearly ought to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

68. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (5th edition), at paragraph 47, states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see* ***Solicitors Regulation Authority v Sharma*** *[2010] EWHC 2022 (Admin)).*"

In **Sharma [2010] EWHC 2022 (Admin) at [13]** Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows: *"(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll … That is the normal and necessary penalty in cases of dishonesty…*

(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances …

(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary … or over a lengthy period of time … whether it was a benefit to the solicitor … and whether it had an adverse effect on others…"

69. The Respondent stole £95,740.15 from C S-B and J S-B over a period of some 9 months. The money was stolen for his own benefit and to the detriment of his

clients. The Respondent's actions led to a criminal conviction for theft and subsequent imprisonment for 2 years.

70. This case plainly does not fall within the small residual category where striking off would be a disproportionate sentence. Accordingly, the fair and proportionate penalty in this case is for the Respondent to be struck off the Roll of Solicitors.

71. The Respondent's misconduct is at the highest level. Protection of the public and public confidence in the provision of legal services requires the Respondent to be struck off the roll.

72. The parties invite the SDT to impose the sanction proposed as it meets the seriousness of the admitted misconduct and is proportionate to the misconduct in all the circumstances.

Dated this 12 February 2020

Signed……

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Signed ……..

David Grant

Respondent