SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11533-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANDREW JOHN MARCH Respondent

Before:

Miss N. Lucking (in the chair)
Miss H Dobson
Mrs L. McMahon-Hathway

Date of Hearing: 4 July 2017

Appearances

Nimi Bruce, Counsel of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London, SW19 4DR for the Applicant.

The Respondent did not attend however was represented by Mr Edward Levey, Counsel of Fountain Court Chambers, Fountain Court, Temple, London, EC4Y 9DH.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1. On dates between December 2014 and October 2015, the Respondent caused or allowed the transfer of sums from the Firm's Client Account to the Firm's Office Account in respect of fees otherwise than in accordance with Rules 17.2, 20.1 and/or 20.2 of the SRA Accounts Rules 2011 ("SARs"), in that:

1.1.1. sums transferred were not properly required in payment of the Firm's fees; and/or

1.1.2. the Respondent had not taken any or adequate steps to satisfy himself that the sums transferred were properly required in respect of the Firm's fees; and/or

1.1.3. a bill of costs or other written notification of the costs incurred had not been given or sent where required;

and in doing so breached Principles 2, 4, 6, 7, 8 and 10 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly.

1.2. The Respondent failed promptly to remedy breaches of the SARs on discovery, in that the Respondent failed promptly to remedy the facts and matters set out at 1.1 above, and in doing so breached SAR 7.1 and Principles 4, 6, 7, 8 and 10 of the SRA Principles 2011.

1.3. During 2014, the Respondent failed to report the serious financial difficulty of the Firm to the SRA, and in doing so breached Principle 7 of the SRA Principles 2011 and/or failed to achieve Outcome 10.3 of the Solicitors' Code of Conduct 2011.

1.4. The Respondent caused or allowed his own money and/or money intended for the use of the Firm to be placed into and withdrawn from the Firm's Client Account, contrary to SAR 14.2.

1.5. In his capacity as the Firm's Compliance Officer for Finance and Administration (COFA), the Respondent failed to ensure compliance with the Firm's obligations under the SARs and failed to record or report to the SRA material breaches contrary to Rule 8.5 of the SRA Authorisation Rules 2011.

Documents

2. The Tribunal reviewed the documents submitted by the parties which included:

Applicant:

- Application dated 11 July 2016 together with attached Rule 5 Statement and all exhibits

- Statement of Agreed Facts and Outcome in relation to the Respondent ("Statement of Agreed Facts and Outcome") dated 4 July 2017

- Applicant's Statement of Costs dated 11 July 2016
- Applicant's Schedule of Costs dated 27 June 2017

Respondent:

- Letter dated 19 June 2017 from Dr Marwah
- Letter dated 30 June 2017 from Davies Blunden & Evans Solicitors
- Email dated 2 June 2017 from the Respondent's wife to the Tribunal
- Bundle of Documents from the Respondent

Application for Tribunal to Reconsider Statement of Agreed Facts and Outcome

The Respondent's Submissions

3. This matter was due to be dealt with by way of a substantive hearing on 4 July 2017. At the beginning of that hearing Mr Levey, on behalf of the Respondent, made an application for the Tribunal to reconsider the Statement of Agreed Facts and Outcome which had been agreed between the parties. He made it clear at the outset of his application that his submissions would not prejudice the Tribunal from dealing with the substantive hearing should his application be refused. He confirmed that the Respondent did not seek to resile from any of the admissions he had made in the Statement of Agreed Facts and Outcome and those admissions would stand regardless of the Tribunal's decision.

4. Mr Levey stated there had been long and protracted without prejudice discussions between the parties which had resulted in an agreed outcome. This had been presented to the Tribunal on 23 May 2017 and again on 1 June 2017. On both occasions the agreed outcome had been rejected by the Tribunal. On previous occasions the Respondent had agreed to apply for voluntary removal from the Roll of Solicitors within 21 days of conclusion of the proceedings and agreed he would never seek restoration to the Roll of Solicitors. The main change now was that the Respondent accepted he should be Struck Off the Roll of Solicitors, rather than removing himself voluntarily.

5. Mr Levey submitted the previous divisions of the Tribunal had erred in rejecting the Statement of Agreed Facts and Outcome and had proceeded on a false basis. Mr Levey submitted there was a general public policy of promoting finality, compromising and settling matters. He submitted the basis of without prejudice discussions was to do this, although he accepted that the regulatory context was rather different from general litigation. However, Mr Levey submitted parties should agree outcomes, as this would reduce the costs incurred by the Respondent, the profession and would take less of the Tribunal's time. Mr Levey submitted Agreed Outcomes should be encouraged not discouraged. In the field of solicitors' disciplinary proceedings, such outcomes required the consent of the Tribunal and Mr Levey accepted this was different from private litigation when parties could settle claims themselves.

6. Mr Levey submitted that the Applicant had to quite properly consider the evidential test and whether a prosecution would be successful. The Applicant also had to consider the public interest which included proportionality. Mr Levey accepted that it may be necessary to send a message to society and the profession and this was part of the public interest element. In this case the parties had explored whether settlement could be achieved and whether it was appropriate and proportionate to do so. The issue was whether it was necessary to pursue dishonesty where admissions had been made to other allegations including acting with a lack of integrity.

7. On 1 March 2017, this matter had come before the Tribunal for a Case Management Hearing and on that occasion the Tribunal had been informed that there may be a resolution between the parties. That division of the Tribunal indicated it did not wish to obstruct discussion between the parties. The matter then came before another division of the Tribunal on 4 April 2017 when the Tribunal was informed that the parties were exploring the possibility of an Agreed Outcome. That division of the Tribunal, having noted the Respondent had admitted the allegations made against him, save for dishonesty, positively encouraged the parties to resolve the matter by way of an Agreed Outcome, subject to the Tribunal's approval.

8. Mr Levey reminded the Tribunal that the Respondent had previously been instructing a solicitor, who had been heavily involved in the negotiations but who had sadly passed away on 10 May 2017. The parties did reach an Agreed Outcome which they both considered to be appropriate in these circumstances. This was considered by a Tribunal on 23 May 2017 but refused because:

> "…. These allegations were extremely serious and the Applicant had not provided any convincing reason as to why its application for the withdrawal of its allegation of dishonesty should be granted."

9. Mr Levey submitted this decision had been in error because the Tribunal was indicating that where there were serious allegations, an Agreed Outcome was not appropriate. Mr Levey submitted that as a matter of principle, this had a chilling effect on the parties' ability to agree an Outcome. He reminded the Tribunal that the SRA may be of the view that an allegation of dishonesty had a 50/50 chance of succeeding for whatever reason and may not be confident of its case. However, the SRA could not be expected to inform the Tribunal of this as it could prejudice its position. Such an approach was not appropriate. Mr Levey submitted that in this particular case the SRA had chosen to reach an agreement either on the evidential test or on the public interest test.

10. Mr Levey could not explain why the Agreed Outcome came before another division of the Tribunal on 1 June 2017, but assumed it was because medical evidence in support was provided. However, that division of the Tribunal took a similar view in refusing to approve the Statement of Agreed Facts and Outcome stating:

> "The Tribunal noted the Rule 5 Statement had contained very serious allegations. The Respondent was alleged to have lacked integrity and acted dishonestly……. The Tribunal was not satisfied that the explanation contained in the Agreed Outcome amounted to a proper basis for withdrawing the dishonesty allegation…..

> ..... In view of the seriousness of the allegations and for the reasons set out above, the Tribunal was not satisfied that it was in the interests of justice for the matter to be dealt with in accordance with the Agreed Outcome. The matter should be the subject of a hearing at which the allegations and the circumstances giving rise to them could be fully aired."

11. Mr Levey submitted that the Tribunal's decision indicated it required a full explanation and in the absence of this, dishonesty allegations could not be withdrawn. The effect of this was that the SRA could not settle any case of dishonesty without explaining its position in full which was not appropriate in disciplinary proceedings. Mr Levey submitted that it appeared the Tribunal sitting on 1 June 2017 had not properly considered the medical evidence, which had been at the forefront of the SRA's mind when considering the matter.

12. Mr Levey stated the Respondent had admitted all the allegations against him, save dishonesty, and these included acting with a lack of integrity which was very serious in itself, and could in some cases lead to a Strike Off. The SRA was content with the Respondent's admissions and his agreement to voluntarily come off the Roll of Solicitors. Mr Levey stated the Respondent now accepted that this sanction may not be sufficient and that he should be Struck Off the Roll. This sanction was agreed by both parties and would lead to the saving of some costs and time. More importantly, it would alleviate the real concern that the Tribunal was stifling the parties' ability to negotiate an Agreed Outcome. Mr Levey submitted the SRA would not entertain any Agreed Outcome in the future if it believed that the Outcome would simply be rejected by the Tribunal whenever dishonesty was alleged. Mr Levey submitted the Tribunal could reconsider the Statement of Agreed Facts and Outcome and take into account the fact that the Respondent now agreed to be Struck Off the Roll of Solicitors.

13. If the Tribunal was not minded to reconsider the Statement of Agreed Facts and Outcome, then Mr Levey indicated he may need to apply for an adjournment in order to make an application for judicial review on the basis that the Tribunal had erred in principle. This would not preclude this division of the Tribunal from hearing the case in due course. Mr Levey submitted the Tribunal should consider whether the Statement of Agreed Facts and Outcome met the regulatory objective, which both parties submitted it did. Mr Levey submitted there had been a material change in that the Respondent now agreed to be Struck Off the Roll of Solicitors.

The Submissions of the Applicant

14. Ms Bruce, on behalf of the Applicant, accepted the Tribunal had the discretion to refuse an Agreed Outcome but it also had the discretion to reconsider it. She stated the Applicant was neutral on the Respondent's application. A case to answer had been certified and the matter was now with the Tribunal who was best placed to decide on how to proceed.

15. Ms Bruce reminded the Tribunal that the catalyst for the Applicant considering entering into the Agreed Outcome was because the Tribunal had encouraged it to do so at earlier Case Management hearings. She did not intend to reveal any of the privileged discussions that had taken place in relation to the test to be applied but it

was clear on the face of the Agreed Outcome documents that the Respondent's health had been an issue. She stated there had been a real concern that the Respondent would never be well enough to deal with this hearing and that matters could be left to hang indefinitely. The SRA was very concerned about the public interest and the regulatory objective and had those very much in mind when considering carefully the Agreed Outcome.

16. Ms Bruce stated the Applicant had wanted to ensure the Tribunal had medical evidence available in order to inform its decision, particularly as the Respondent's previous solicitor was no longer available to assist. The Applicant was seeking to be fair and proportionate during discussions with the Respondent's wife and had reached a decision based on the medical evidence.

17. Ms Bruce stated that the Applicant did not seek to go behind what had been agreed in the Statement of Agreed Facts and Outcome but left the matter to the Tribunal's discretion as the Tribunal was now seized of the case. She confirmed however that the Applicant did not oppose the application.

The Tribunal's Decision on the Respondent's Application

18. The Tribunal considered very carefully the submissions of both parties. It scrutinised the Agreed Outcome document, and also considered the other documents provided together with the Tribunal's Guidance Note on Sanctions. The Tribunal also considered carefully the decisions of the previous divisions of the Tribunal.

19. At the hearing on 23 May 2017, medical evidence had not been put before the Tribunal and it was perfectly entitled to take the view that it had. On that occasion the Tribunal had stated:

> "The Tribunal noted the references to the Respondent's ill-health but had not been provided with any medical evidence to support these assertions."

20. At the hearing on 1 June 2017, the Tribunal clearly did have the medical evidence in mind as it stated:

> "The Tribunal saw no clear causal link in the medical evidence between the Respondent's actions as alleged in the Rule 5 Statement, which took place in 2015 and his medical condition as set out in the documents dated September 2016."

21. Moreover, none of the previous divisions of the Tribunal had stated that in cases involving dishonesty, an Agreed Outcome would not be approved. There was a consistent theme in the Tribunal's decisions on 1 March 2017 and 4 April 2017 that the Tribunal would consider such a document from the parties with an explanation as to why it was appropriate.

22. It appeared that the divisions of the Tribunal who had considered the Statement of Agreed Facts and Outcome previously were not satisfied with the proposed sanction at that time, which was that the Respondent would voluntarily remove himself from the Roll and undertake not to seek restoration at any time in the future. This was

likely to be insufficient when considering the range of appropriate sanctions contained in the Tribunal's Guidance Note on Sanctions for allegations of this nature. Indeed the Tribunal on 23 May 2017 had clearly stated:

> "Quite apart from the allegation of dishonesty, the Tribunal did not consider that voluntary removal from the roll was appropriate even in the case of the allegation of lack of integrity, in view of the obvious gravity of the offence."

23. The Tribunal did not accept Mr Levey's submission that the SRA should not have to explain why an allegation of dishonesty was no longer pursued should it decide to apply to withdraw it. Such an allegation was of the utmost seriousness and should not be pursued lightly. If the SRA subsequently wished to withdraw such an allegation then it was quite right that it should explain the reasons for doing so to a Tribunal, when the case had already been certified as a case to answer. The Tribunal was entitled to know the basis upon which the SRA case had changed its position and would not be acting in the public interest if it failed to scrutinise such a change in the prosecution properly.

24. An Agreed Outcome would only be acceptable to the Tribunal if it was fair and proportionate, protected the public from harm, protected the reputation of the profession and maintained public confidence in the profession. The Tribunal was satisfied that in this case as there had been a material change in the proposed Agreed Outcome, in that the Respondent had now agreed he should be Struck Off the Roll of Solicitors, it was appropriate for the Agreed Outcome to be reconsidered by the Tribunal.

Agreed Outcome Procedure

25. The Application in this matter was certified by the Tribunal as showing a case to answer on 13 July 2016 and directions were issued. The matter was listed for a substantive hearing on 4 July 2017.

26. For the reasons set out below, the Tribunal was satisfied that the Statement of Agreed Facts and Outcome should be approved on the basis of the documents provided 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 prepared. This Judgment sets out the circumstances of the matter and the Tribunal's reasons for its decision.

Statement of Agreed Facts and Outcome
(with minor editorial amendments where appropriate)

27. By a Statement made by Daniel Purcell on behalf of the Solicitors Regulation Authority ("SRA") pursuant to Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007 dated 11 July 2016 ("the Rule 5 Statement"), the SRA brought proceedings before the Tribunal making allegations of misconduct against the Respondents (Andrew John March who was the First Respondent, and Simon Lee Rosenthall who was the Second Respondent).

28. A Case Management Hearing was held on 13 September 2016, at which the Second Respondent made an application for his case to be separated from the case against the First Respondent. The Tribunal determined that a further Case Management Hearing should be held to consider whether the Respondents' cases should be severed. At a Case Management Hearing held on 2 November 2016, the Tribunal held that the Respondents' cases should be severed and gave directions for the preparation of the case in relation to the Second Respondent for a substantive hearing before the Tribunal for one day on 24 January 2017.

29. The First Respondent, through his solicitor, is prepared to make admissions to allegations set out in the Rule 5 Statement, and to accept the factual basis of the admitted allegations as set out in this document.

30. The allegations arise out of a Forensic Investigation which was commenced regarding Ward Legal (UK) Limited of Wyke Chambers, 7 Silver Street, Hull, HU1 1HT ("the Firm") on 26 October 2015, following the receipt by the SRA of a notification on 9 October 2015 from Pepperells, a firm of solicitors consulted by the Second Respondent. The Respondents were both Directors of the Firm.

31. In brief, it is alleged against, and admitted by, the First Respondent that, on dates between December 2014 and October 2015, the Firm raised invoices totalling £112,442.53, as set out in paragraph 3 of the Forensic Investigation report dated 23 November 2015 (paragraph 11 of the Rule 5 Statement refers to the sum of £109,211.20, which was the aggregate value of the invoices up to investigation date of 30 September 2015). The invoices were not properly required in payment of the Firm's fees. The Firm authorised the transfer of sums from the Firm's Client Account to the Firm's Office Account to clear historic ledger balances on files, and this practice was allowed to continue despite concerns having been raised by the Firm's cashier. It is the SRA's case, and it is accepted by the First Respondent, that his actions constituted a failure to act with integrity.

32. The Rule 5 Statement included an allegation that the First Respondent's actions amounted to dishonesty. However, the First Respondent's solicitor made representations at the Case Management Hearing which was held on 2 November 2016 to the effect that the First Respondent's ill-health was preventing him from engaging with the proceedings, and that the First Respondent would admit all of the allegations, including a failure to act with integrity, with the exception of the allegation of dishonesty. Following these representations, and at the request of the Tribunal's Chair, the SRA reconsidered its position in respect of the allegation of dishonesty.

33. Most recently, at Case Management Hearings on 1 March 2017 and 4 April 2017, the First Respondent's solicitor restated that the First Respondent admitted all of the allegations, except dishonesty, and that "there was no timescale as to when he might be fit enough to participate in the proceedings". The Tribunal gave directions for a substantive hearing to be held on 4 July 2017.

34. The SRA has considered the First Respondent's admissions, and has considered whether those admissions, and the outcome proposed in this document, meets the public interest having regard to the gravity of the matters alleged. In particular, the

SRA is mindful that it is not in the public interest for these proceedings to be open-ended. The SRA is satisfied that the admissions and outcome satisfy the public interest.

Admissions

35. The First Respondent will admit that he:

35.1 On dates between December 2014 and October 2015, caused or allowed the transfer of sums from the Firm's Client Account to the Firm's Office Account in respect of fees otherwise than in accordance with Rules 17.2, 20.1 and/or 20.2 of the SRA Accounts Rules 2011 ("SARs"), in that:

35.1.1 sums transferred were not properly required in payment of the Firm's fees; and/or

35.1.2 he had not taken any or adequate steps to satisfy himself that the sums transferred were properly required in respect of the Firm's fees; and/or

35.1.3 a bill of costs or other written notification of the costs incurred had not been given or sent where required;

and in doing so, he breached Principles 2, 4, 6, 7, 8 and 10 of the SRA Principles 2011.

35.2 Failed promptly to remedy breaches of the SARs on discovery, in that he failed promptly to remedy the facts and matters set out at 35.1 above, and in doing so breached SAR 7.1 and Principles 4, 6, 7, 8 and 10 of the SRA Principles 2011.

35.3 During 2014, failed to report the serious financial difficulty of the Firm to the SRA, and in doing so breached Principle 7 of the SRA Principles 2011 and/or failed to achieve Outcome 10.3 of the Solicitors' Code of Conduct 2011.

35.4 Caused or allowed his own money and/or money intended for the use of the Firm to be placed into and withdrawn from the Firm's Client Account, contrary to SAR 14.2.

35.5 In his capacity as the Firm's Compliance Officer for Finance and Administration (COFA), failed to ensure compliance with the Firm's obligations under the SARs and failed to record or report to the SRA material breaches contrary to Rule 8.5 of the SRA Authorisation Rules 2011.

35.6 Failed to act with integrity contrary to Principle 2 of the SRA Principles 2011.

Agreed Facts

36. The First Respondent agrees the following facts:

36.1 In around December 2014, under the First Respondent's instruction, the Firm began reviewing historic ledger balances on files and, with his knowledge, raising invoices to authorise the transfer of funds from the Firm's Client Account to the Firm's Office

Account. However, the First Respondent had not satisfied himself, prior to the invoices being raised and the sums being transferred pursuant to them, that the sums were properly due in payment of the Firm's fees. The First Respondent caused or allowed the creation of pro forma records purporting to record the existence of "evidence" to support billing, when no such evidence had been identified. Examples of this practice are recited at paragraphs 10 to 18 of the Rule 5 Statement and are admitted by the First Respondent. The funds were Client Monies applying the definition set out in the relevant accounting rules.

36.2 In late 2014/ January 2015, the Firm's cashier, Ms C, raised concerns with the First Respondent as to the legitimacy of the transfers being made from the Firm's Client Account to the Firm's Office Account. The First Respondent was the Firm's COFA at this time. The First Respondent allowed transfers of sums from Client Account to Office Account after concerns had been expressed as to the probity of such transfers.

36.3 On 18 December 2014, the First Respondent sent an email to the Second Respondent concerning transfers of client monies from Client Account to Office Account, in which he stated that "*I took a view, we needed the monies*" (as set out in paragraph 42.4 of the Rule 5 Statement). The First Respondent had not taken any or adequate steps to establish that sums were properly due to the Firm from clients before causing or allowing the transfers to be made.

36.4 The First Respondent accepted when interviewed by the SRA on 12 November 2015 that the Firm had not been able to identify whether in every case:

36.4.1 work had been carried out which would justify invoices being raised and sums transferred from Client Account to Office Account;

36.4.2 the invoice raised and sum transferred was consistent with information provided to clients at the inception of or during the matter.

36.5 Furthermore, in many cases, the Firm did not have an address or other contact details for the clients on the matters in respect of which invoices were raised, and so invoices could not be sent to clients, or clients otherwise notified of the proposed transfers, prior to the transfers being made from Client Account to Office Account. In other cases, the Firm held documents which would have enabled the Respondents to establish that the sums billed were not properly due.

36.6 In respect of the invoices, the First Respondent therefore:

36.6.1 caused or allowed transfers of sums in respect of fees from the Firm's Client Account to Office Account in circumstances where he had not satisfied himself that the sums were properly required;

36.6.2 caused or allowed transfers of sums in respect of fees where a bill or other written notification had not been given or sent, including:

36.6.3 Client Matter H - an invoice in the sum of £9,066.36 plus VAT was raised by the Firm on 22 April 2015.

36.6.4 Client Matter L - an invoice in the sum of £8,305.46 plus VAT was raised by the Firm on 22 April 2015.

36.6.5 Client Matter W - an invoice in the sum of £2,447.82 plus VAT was raised by the Firm on 30 January 2015.

36.6.6 Client Matter B - an invoice in the sum of £2,460.06 plus VAT was raised by the Firm on 6 February 2015.

36.7 The First Respondent did not arrange for funds to be returned to the Firm's Client Account in order to remedy the breaches of the SARs and reverse the improper payments.

36.8 The First Respondent failed to report the Firm's serious financial difficulty to the SRA in 2014 or at all.

36.9 The First Respondent knowingly made two individual payments of personal funds into the Client Account of £10,000 each, followed by payments out to staff, on 1 and 2 September 2015 for the purpose of meeting office expenses in breach of the SARs.

36.10 The First Respondent, as the Firm's COFA, failed to report the Firm's breaches of the SARs to the SRA, as required under Rule 8.5 of the SRA Authorisation Rules 2011.

Mitigation

37. The following points are advanced by way of mitigation on behalf of the First Respondent, but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA.

38. The First Respondent claims to have been suffering from ill health during the relevant period and has provided medical evidence to this effect. He has been unable to engage with these proceedings due to his health.

39. The First Respondent accepted liability for breaches of the SARs during the interview with the SRA's Forensic Investigation Officer on 12 November 2015.

40. The First Respondent accepts that he failed to report the Firm's serious financial difficulty to the SRA and that objectively speaking his actions (as described at paragraph 36 above) failed to demonstrate integrity. However, save for these failings the First Respondent holds, and has always held, an unconditional Practising Certificate and has no adverse disciplinary or regulatory history.

41. The First Respondent has not practised since the SRA's intervention into the Firm on 11 December 2015 (as far as the SRA is aware) and has agreed to be Struck Off the Roll of Solicitors.

42. The First Respondent has an Individual Voluntary Arrangement ("IVA") in place in respect of repaying his creditors, including the SRA. The First Respondent's IVA includes an allowance of up to a maximum of £250,000 in respect of the SRA's intervention costs (which are £174,445.92), any compensation fund liability

(£10,633.73 as at 4 April 2017, although this may be subject to change) and the SRA's cost of bringing these proceedings.

Agreed Outcomes

43. The First Respondent agrees to:

(a) Be Struck Off the Roll of Solicitors;

(b) Pay costs to the SRA in respect of bringing these proceedings in the sum of £26,936.76.

Findings of Fact and Law

44. 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 to 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.

45. The Respondent had admitted the allegations made against him, save the allegation of dishonesty, as set out in the Statement of Agreed Facts and Outcome. The Tribunal was satisfied that based on the admissions and the agreed facts presented, the allegations, save for the allegation of dishonesty, had been proved to the requisite standard.

Previous Disciplinary Matters

46. There were no previous disciplinary matters recorded against the Respondent.

Sanction

47. The Tribunal considered carefully the facts of the case and the submissions of the parties. The Tribunal also referred to its Guidance Note on Sanctions when considering sanction.

48. The Outcome proposed by the parties was that the Respondent should be Struck Off the Roll of Solicitors which was the ultimate sanction that could be imposed by the Tribunal.

49. In considering the matter, the Tribunal took into account the fact that the Respondent had made admissions. There was accordingly no need for a trial on the facts and admitted allegations. The Tribunal had to consider whether, in the 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 an Order in those terms.

50. The Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Respondent had been culpable. He was the COFA of the firm, he was an experienced solicitor having qualified in

2009 and it had been his duty to ensure client funds were dealt with in accordance with the rules. He had failed to do so. His conduct had caused harm to the reputation of the legal profession.

51. The Respondent's conduct had taken place over a long period of time and had been repeated. 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. These were aggravating factors. However, he had made admissions both during the course of the forensic investigation and during these proceedings, and he had a previously unblemished record. These were mitigating factors.

52. Taking into account the seriousness of the conduct, the degree of culpability, the harm caused and the aggravating/mitigating factors, the Tribunal concluded that neither a Reprimand nor a Fine would be a sufficient sanction in this case. Nor would it be appropriate to impose conditions on the Respondent's practising certificate as it would be difficult to formulate appropriate workable conditions that would adequately address the Respondent's actions whilst also reflecting the serious nature of his misconduct.

53. The Tribunal also concluded that a suspension order would not be sufficient to protect the public or the reputation of the profession in circumstances where the very serious misconduct related to a solicitor acting with a lack of integrity in transferring client funds without sending notification to clients because in his view the Firm needed the monies. He had acted notwithstanding the concerns raised by the firm's cashier. He had admitted that there were instances when the Firm could not identify whether work had been carried out which justified the invoices being raised and sums transferred. The Respondent had compounded the situation by not taking steps to return those funds to client account or reverse the improper payments. He had been the Firm's COFA and had also failed in his responsibility to report the Firm's breaches and the Firm's financial difficulties to the SRA.

54. The Tribunal was satisfied that the proposed sanction of striking the Respondent off the Roll of Solicitors was both reasonable and proportionate. It would not only reflect the seriousness of the misconduct, protect the public and the reputation of the profession but it would also maintain public confidence in the profession. A Strike Off was also the ultimate sanction which could be imposed by the Tribunal. The Tribunal did not require any further submissions from the parties and determined the case could be concluded on the basis of the Statement of Agreed Facts and Outcome. Accordingly, the Tribunal Ordered the Respondent be Struck Off the Roll of Solicitors.

Costs

55. As part of the proposed Statement of Agreed Facts and Outcome, the parties had agreed that the Respondent should pay the Applicant's costs in the sum of £26,936.76.

56. The Tribunal noted the Costs Schedule dated 27 June 2017 indicated the Applicant's total costs were in the sum of £27,628.69. The Tribunal was satisfied that the agreed costs of £26,936.76 were reasonable and proportionate to the nature of the case and the work carried out. The fact that this matter was resolved by the use of the

Tribunal's procedure for Agreed Outcomes had enabled costs to be reduced as the costs of a full substantive hearing had not been incurred.

57. The Tribunal noted there was no Statement of Means from the Respondent and nor had there been any submissions regarding enforcement of the costs order. The Statement of Agreed Facts and Outcome indicated the Respondent had an Individual Voluntary Arrangement in place and this allowed an allowance for the SRA's costs.

58. Accordingly, the Tribunal made an Order that the Respondent pay the Applicant's costs in the sum of £26,936.76.

Statement of Full Order

59. The Tribunal ORDERED that the Respondent, ANDREW JOHN MARCH, 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 £26,936.76.

Dated this 21st day of July 2017
On behalf of the Tribunal

N. Lucking
Chairman