

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11539-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

DAVID CHRISTOPHER JAMES BARR

Respondent

Before:

Mrs J. Martineau (in the chair)

Mr J.C. Chesterton

Dr S. Bown

Date of Hearing: 11 April 2017

Appearances

There were no appearances as the matter was determined under the Tribunal's procedure for Agreed Outcomes.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent, Mr David Christopher James Barr, in a Rule 5 Statement dated 29 July 2016 were that:
 - 1.1 On 16 May 2014 he dishonestly withdrew £40,000 from client account debiting the ledger in the name of Mr Fr Deceased and paid it to Mr and Mrs H to compensate them for an error he had made when acting for them on a property matter. In so doing he breached Principles 2, 3, 4, 6, and 10 of the SRA Principles 2011 (“the Principles”).
 - 1.2 On 19 September 2014 he dishonestly withdrew £60,000 from client account debiting the same ledger as in allegation 1.1 above and paid it to his brother Mr GB to settle a personal liability. In so doing he breached Principles 2, 3, 4, 6, and 10 of the Principles.
 - 1.3 On 11 October 2011 he dishonestly transferred £120,000 of client money from the ledger in the name of Mrs S Deceased to the ledger in the name of Mr and Mrs F and utilised it in connection with a purchase of 13 H Road, Wallasey which he completed on the 17 October 2011. In so doing he breached Principles 2, 3, 4, 6, and 10 of the Principles.
 - 1.4 Between 2 and 9 August 2013 he dishonestly utilised client money totalling £29,265.34 in connection with his purchase of 4a P House and in so doing he breached Principles 2, 3, 4, 6, and 10 of the Principles.
 - 1.5 On 4 and 24 September 2013 he dishonestly utilised client money totalling £57,043.39 in connection with his purchase of 1 A Street and in so doing he breached Principles 2, 3, 4, 6, and 10 of the Principles.
 - 1.6 Between 9 May 2013 and the 8 April 2015 he dishonestly withdrew money from client account totalling £120,043.39 in breach of Rule 20.1 of the SRA Accounts Rules 2011 (“AR 2011”).
 - 1.7 From 16 October 2007 until the 5 October 2011 in breach of note (ix) of the Solicitors Accounts Rules 1998 (“SAR 1998”) and thereafter until the 11 November 2011 in breach of Rule 14.5 of the AR 2011 he permitted money to pass into and out of client account when not accompanied by the conduct of an underlying transaction in which his firm had been instructed.
 - 1.8 On 21 May 2008 as trustee of the estate of Mrs Q deceased in breach of Rules 1.04 and 3 of the Solicitors Code of Conduct 2007 (“the 2007 Code”) he made a loan of £70,000 from the trust for the purchase of 8 V Grove where he:
 - 1.8.1 failed to take independent legal advice as to whether it was proper to make the loan; and/or
 - 1.8.2 failed to draw up a loan agreement; and/or
 - 1.8.3 failed to periodically review the loan

and thereby breached Rule 1.04 of the 2007 Code.

He also acted where there was a conflict between his interests and those of the estate in breach of Rule 3 of the 2007 Code.

- 1.9 On 21 October 2014 he dishonestly made a loan to his business partner Mr F of £31,000 from the estate of Mr Fr deceased for the purchase of a property from which he benefitted on subsequent sale in January 2015. In so doing he breached Principles 2, 3, 4, 6, and 10 of the Principles.
- 1.10 He failed to follow the letter of wishes from his client Mr F deceased and to administer the trust in a timely manner, and he overcharged the estates of Mr F and Mrs S. He thereby breached Principles 4 and 5 of the Principles.

Documents

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

Applicant: -

- Application and Rule 5 Statement dated 29 July 2016
- Schedule of costs as at 29 July 2016
- Statement of Agreed Facts and Admissions dated 4 April 2017
- Application for Agreed Outcome dated 4 April 2017

Respondent: -

- Applications to adjourn Case Management Hearings (“CMHs”) listed for 16 September and 2 December 2016.
- Answer to Rule 5 Statement dated 25 January 2017

Other: -

- Memorandum of CMH on 7 December 2016

Preliminary Matter – Agreed Outcome Procedure

3. The Tribunal has a procedure whereby the parties can make an application for approval of an Agreed Outcome at any stage of the proceedings up to, but no later than, 28 days before the date fixed for the substantive hearing. This procedure can be seen in the standard directions, which are available on the Tribunal’s website.
4. The parties can submit a joint application, signed by the relevant parties, setting out the facts that are agreed between the parties, the proposed penalty and an explanation as to why such an order would be in accordance with the Tribunal’s sanctions guidance. The Tribunal will then publish the name of the case in the first convenient daily cause list. A division of the Tribunal sitting on that date will consider in private whether the joint application can be dealt with on the papers, without attendance by or on behalf of the parties, in order to save costs. Where the Tribunal agrees to make findings and an order in the terms of the agreement between the parties, it will

proceed to do so immediately. The case is then called, in open court, and the Tribunal's decision is announced. If the Tribunal wishes to hear from the parties before making a decision, it will direct a further hearing and give directions for submissions and attendance by the parties.

5. In deciding whether to make findings and an order as proposed by the parties, the Tribunal exercises its discretion as to whether it considers, in all the circumstances, that (a) the proposed agreed sanction meets its own sanctions guidance and is an appropriate order; and (b) whether the agreed sanction is unfair to any other respondent who is not a party to the agreement.
6. On this occasion, as set out below, the Tribunal agreed that the proposed outcome was appropriate in the circumstances. The substantive hearing in the case, which had been listed to take place on 27 April 2017 was therefore vacated.

Factual Background – Based on the Joint Statement of Agreed Facts dated 4 April 2017 (with minor editorial amendments where appropriate)

Introduction and Background Facts

7. The Respondent was born in 1951 and was admitted as a solicitor in 1975. He was a partner in Brighouses Solicitors (the Firm) until he resigned on the 31 May 2015 and had not practised as a solicitor since.
8. On 1 December 2014 the Applicant received a complaint from the Respondent's brother about the way in which he had dealt with their late father's estate. As a consequence of the complaint the Firm reviewed a number of matters that he had conducted. The Applicant subsequently commenced a formal investigation on 19 April 2015 when an Investigation Officer (the Officer) attended the Firm's offices to inspect books of account and other documents. During the course of the investigation the Respondent was interviewed, and the Officer delivered a report on the 11 December 2015 ("the Report"). It raised a number of serious issues about the Respondent's conduct of a number of probate matters, and in particular the use to which client money had been put.
9. The Respondent was sent a copy of the Report on 19 January 2016 and he was asked to explain the matters of concern. He wrote to the Applicant on 15 February 2016. On 29 March 2016 the Applicant decided that his conduct should be referred to the Tribunal.
10. An application was subsequently made on 29 July 2016. It contained the above allegations set out in paragraph 1 above, which the Respondent subsequently admitted in full, including an admission that he acted dishonestly. He admitted that he acted dishonestly by the ordinary standards of reasonable and honest people and that he realised by those standards he was acting dishonestly. In making those admissions the Respondent had had the benefit of legal advice.

The Facts and Matters relied upon in support of the Allegations

Allegation 1.1

11. Mr Fr died on 27 September 2012 and probate of his Will was granted on 28 November 2012. The Respondent was both his Executor and Trustee.
12. In 2012 the Respondent acted for Mr and Mrs H in connection with their purchase of 22 D Road. He made an error in the course of the conveyancing, so that when Mr and Mrs H sold the property on 21 February 2014 they had to reduce the selling price by £40,000. They informed the Respondent of the loss.
13. On 16 May 2014 the Respondent instructed the Firm's accounts department to draw a cheque for £40,000 in favour of Mr and Mrs H. It was drawn on the Estate of Mr Fr Deceased. The Respondent completed the cheque requisition slip stating that the payment was a legacy from Mr Fr's estate. This was untrue; it was a compensation payment to Mr and Mrs H, with no connection to the Estate. The cheque requisition slip was therefore false and misleading and the Respondent knew this.
14. In January 2015 the Respondent's then partners questioned the payment with him. He produced to them a note stating that Mr Fr had created a secret trust and that the payment to Mr and Mrs H was a legacy. The note was an untrue explanation and an attempt to disguise his actions. At the start of the investigation the Officer asked the Firm to obtain information from its bank to determine exactly where the payment had been sent and this revealed it had been sent to Mr and Mrs H. The Respondent was asked by the Firm to explain why Mr and Mrs H had been sent £40,000, and he was not able to offer any explanation. He did however agree to pay the money back to the estate with interest.
15. On 7 May 2015 the Officer spoke with the Respondent, who said that the Mr and Mrs H named in the secret trust were different from those to whom he had paid the £40,000 but offered no further explanation. This was a further false explanation. The so called secret trust never existed. Although he denied putting this explanation forward to disguise the payment, the Respondent subsequently accepted that he did so. The Officer spoke with Mrs H by telephone who confirmed that she and her husband had received the payment from the Respondent and that it had been in respect of the conveyancing error. The Officer then attempted to speak with the Respondent again. He had by then left the Firm and he did not reply to an email asking for an explanation. The Respondent was subsequently signed off sick.
16. The Officer examined the matter file and was able to establish that a letter on it dated 16 May 2014 from the Respondent to Mr and Mrs H had been produced on a version of the Firm's notepaper that only came into existence 6 months after that date. This document purported to describe the payment to Mr and Mrs H as a legacy from the estate whereas it was not. The backdated letter sought to obscure the true nature of the payment.
17. The Officer formally interviewed the Respondent on 16 September 2015 and asked him to explain the payment. He said he was sorry and could give no rational explanation. He said it just seemed to happen but did confirm that the payment to

Mr and Mrs H was a compensation payment for his error. He accepted it was an improper payment that had created a client account shortage for 11 months.

18. The payment of £40,000 to Mr and Mrs H from the estate of Mr Fr Deceased was improper and dishonest because:
- a. the Respondent drew a cheque requisition that was misleading because the payment made was not a legacy but a compensation payment to Mr and Mrs H;
 - b. He knew it was wrong to have paid Mr and Mrs H using money belonging to a different client;
 - c. When asked by his partners for an explanation for the payment he produced a note describing a secret trust, seeking to mislead and to disguise his conduct knowing that he had paid the money to Mr and Mrs H as compensation;
 - d. He created the back dated letter referred to at paragraph 16 above;

Allegation 1.2

19. On 19 September 2014 the Respondent instructed the Firm's accounts department to draw a cheque to Mr GB, his brother. The cheque requisition slip stated that the payment was a legacy. It was not a legacy and this was a false and misleading description.
20. On 16 September 2015, in interview, the Respondent confirmed the payment settled a personal liability to his brother and that it was an improper payment from client account.
21. The Officer asked the Respondent why he had not paid from his own money. The Respondent replied that he was under pressure and just wanted to get rid of his brother's claim. On 25 November 2014 the Respondent credited the estate ledger with a payment of £61,000, being the £60,000 he had utilised plus interest. The money was transferred from a ledger in the name of Mr F after a sale of a property, 1 A Street. The Respondent had purchased that property in Mr F's name by improperly using money from the estate of Mrs S Deceased. The improper use of that money had enabled the Respondent to purchase a property and make a profit on its sale.
22. The payment to his brother using money belonging to the estate of Mr Fr deceased was plainly improper and was a breach of the stated Principles. The Respondent had used his position as a solicitor and trustee to take advantage for himself and he was dishonest in doing so. He had created a cheque requisition that was materially false and misleading, describing the payment as a legacy when it was not. This was designed to obscure the payment from others and was part of a dishonest course of conduct.

Allegation 1.3

23. The Respondent was both Trustee and Executor of the Will of Mrs S deceased, who died on 20 May 2009. Probate was granted on 10 July 2009.
24. On 11 October 2011 the Respondent transferred £120,000 from the estate ledger to a ledger in the name of Mr and Mrs F. In interview on the 16 September 2016 the Respondent said that Mr F had been his business partner and that they had invested in properties together.
25. The said sum was credited to Mr and Mrs F on 14 October 2011 using the narrative "tfr from 15682/6 to 13359/5 re purchase."
26. The money was used to purchase 13 H Road and the Respondent dealt with the conveyancing himself. The purchase price was £120,000. Whilst the purchase was conducted through Mr F's ledger the property was actually purchased in the Respondent's own name. He told the Officer he did this in order to protect the trust money. He adopted the same method of working in connection with the purchase of two other properties (which are dealt with below). When asked by the Officer why he purchased using a ledger in the name of another person for those properties he said: "I suppose it's easier to put, open an account in his name, rather than, in my name". When asked why, he replied "I mean I'm sorry, I'm not quite sure why I did it like that."
27. The Respondent sold 13 H Road on 27 September 2012 for £280,000 and again dealt with the conveyancing himself. The ledger was again in the name of Mr F. The sum of £120,000 was not repaid to Mrs S but placed in the Firm's general client deposit account.
28. The transfer and utilisation of the sum of £120,000 was clearly improper and a breach of the stated Principles. There was no credible reason for the purchase or sale to have been conducted through ledgers other than in the Respondent's name and it was a mechanism to disguise his involvement. The Respondent derived a significant personal benefit from the transaction having been able to use his position as a solicitor to take advantage for himself and others. The profit derived from the purchase and sale was £160,000. There was a clear conflict of interests, having used client money for personal gain. The Respondent's conduct was dishonest.

Allegation 1.4

29. A table within the case papers showed the level of funds held in general client deposit account as at 2 April 2013 that belonged to Mrs S's estate. They totalled £120,043.39, being the original £120,000 and interest. The money was deposited on completion of the sale of 13 H Road after distribution of the remainder of the sale proceeds.
30. The money belonged to Mrs S's estate.
31. The Respondent used some of this money to purchase another property, namely 4a P House on 2 August 2013. He conducted the purchase through a ledger in the name of Mr F. Money totalling £29,265.34 was used to cover the purchase price and

disbursements. When interviewed about this the Respondent said, “When I put the money into [P House] I thought it was my money...and I’m sorry, I just got it wrong on that”.

32. The Respondent subsequently sold the property, using a ledger in the name of Mr F. It showed the sale proceeds were £65,150 of which £19,770.45 was sent to Mrs Barr, the Respondent’s wife.
33. The use of the estate money in this way was a clear breach of the stated Principles and was dishonest in the same way as allegation 1.3. As with that allegation, the Respondent used his position as a solicitor to improperly take an advantage for himself and for others. He used client money for personal gain and there was a clear conflict of interest. He was asked why the £120,000 had not been repaid to the estate and he said, “it was just a horrendous oversight”. He was asked if he had acted dishonestly he said, “No I did not intentionally do that...I did not realise I’d done what I’d done.”
34. The Respondent subsequently admitted that he did know what he had done and that it was dishonest.

Allegation 1.5

35. A table in the case papers showed the level of funds held in general client account deposit account as at 2 April 2013 which belonged to Mrs S’s estate. This showed how further sums of client money were used to fund the purchase of another property, namely 1 Street on 24 September 2013. They totalled £57,043.39. The purchase price was £58,000. Again, the Respondent conducted the conveyancing himself through a ledger in the name of Mr F.
36. The property was sold on 24 November 2014 and the sale proceeds received were £123,695.00. The ledger showed that on 25 November 2014 the sum of £61,000 was transferred to a ledger to repay the funds taken by the Respondent from the estate of Mrs S to pay to his brother.
37. Mrs Barr also received a payment of £56,519.02 on the same day. The Respondent’s benefit from this sale thus totalled £117,519.02. The Officer addressed this with him in interview. He had no explanation to offer.
38. This was a dishonest use of client money for the same reasons as noted in relation to allegations 1.3 and 1.4 above.
39. The Respondent repaid £139,843.83 into client account in 5 instalments between 27 January 2015 and 5 February 2015, but had had the benefit of the use of client money since August and November 2013.

Allegation 1.6

40. The table referred to above contained the details of a number of payments from client account that were improper and in breach of Rule 20.1 of the AR 2011. The Respondent agreed in his interview that each one was improper and created a shortage on client account.
41. The money identified in the table belonged to the estate of Mrs S. The payments were as follows:
- 9 May 2013 - £15,000 to Mrs F, the wife of the Respondent's business partner and co-investor Mr F;
 - June 2013 - £13,000 to Mrs F;
 - 2 August 2013 - £2,500 to Respondent for his purchase of 4a P House;
 - 8 August 2013 - £40 to HM Land Registry in connection with his purchase of 4a P House;
 - 8 August 2013 – £120 in connection with his purchase of 4a P House;
 - 8 August 2013 – £60 in connection with his purchase of 4a P House;
 - 9 August 2013 – £91.58 in connection with his purchase of 4a P House;
 - 4 September 2013 – £91.58 in connection with his purchase of 1 A Street;
 - 24 September 2013 – £56,951.81 in connection with his purchase of 1 Street;
 - 3 October 2013 - £300 in respect of conveyancing costs;
 - 15 October 2013 – £4.75 for a disbursement;
 - 8 April 2015 - £2900.51 to Mr F;
 - 8 April 2015 – £29.40 transfer to office account in respect of a bill.

The payments totalled £120,043.39 and the Respondent admitted to the Officer that each one was improper.

42. Each payment was a deliberate and dishonest misuse of client money. The money had originally been taken from Mrs S's estate to fund the purchase of 13 H Road but was not replaced on its sale. It was thereafter used to make the payments specified above over a period of nearly two years. It became a fund that was used at will for his benefit and others, and was dishonest for the same reasons as allegations 1.3, 1.4 and 1.5.

Allegation 1.7

43. The Respondent used the Firm's client account to deal with his late father's estate and finances.
44. The Firm had not been instructed on any legal aspect of the estate or on any legal transaction and during the period 16 October 2007 to 1 November 2012 sums totalling £243,107.58 were received into and paid out of client account. This was a misuse of client account.

Allegation 1.8

45. The Respondent was the sole trustee and executor of the Will of Mrs Q deceased who died 12 February 2004. He extracted a grant of probate on 14 May 2004.
46. Clause 4 of the Will required Mrs Q's Trustees to pay her debts, tax and expenses and to give the residue to such charity or charities as they thought fit.
47. The Officer reported that at the date of the Report the Firm was dealing with the distribution of the trust fund and winding up the trust; that was eleven and a half years after the Respondent obtained Probate.
48. On 21 May 2008 the Respondent made a loan of £70,000 from the trust to FTA Limited. The borrower was a client of the Firm and the loan was made to help it purchase 8 V Road. The Respondent did not obtain legal advice before making the loan. He acted for FTA Limited in its purchase of the property for £75,000, but the property was purchased in his name jointly with a Mr S. The Respondent did not prepare any loan agreement or documentation. The loan was repaid on 24 July 2015 after the Firm requested the Respondent to call it in. It had been outstanding for over 6 years, with little review.
49. The Respondent failed to act in the best interests of the trust because he did not take independent legal advice, did not draw up a loan agreement to protect it and acted where there was a conflict of interests. The Will asked the trustee to pay the residuary estate to charity but the Respondent made a loan of approximately 25% of the estate to enable a property to be purchased in his name with another.

Allegation 1.9

50. On 21 October 2014 the Respondent made a loan of £31,000 to his business partner Mr F to enable 62a G Road to be purchased. The purchase price was £30,000 and so the loan covered this as well as expenses. A charge in favour of the Respondent was registered against the title to the property.
51. The property was sold on 6 January 2015 for £52,500 and from the sale proceeds Mrs Barr was paid £11,396.40. The Respondent derived a personal benefit from the loan; he accepted this in his interview with the Officer.

52. The Respondent received a share of the sale proceeds, had not charged Mr F for the costs of the conveyancing and had not told him that the money was coming from a client trust fund. He was asked if he had made Mr F aware that the money was not coming from him and he could not remember. In acting as he did he breached each of the stated Principles, again using client money improperly for personal gain, using his position as a solicitor to gain an advantage for himself and where there existed a clear conflict of interests between him and those of his client.
53. The Respondent's conduct was dishonest and he knew it to be so.

Allegation 1.10

54. Mr Fr had left a letter of wishes stating that he wanted the residue of his estate to be divided between four charities, and a review of the file showed that it could have been completed in 2012 following a sale of the properties. This had not happened.
55. The Respondent admitted to the Officer that he had not distributed the funds in accordance with Mr Fr's wishes.
56. He admitted that had he distributed the estate as instructed he would not have been able to make the loans to his business partner from which he derived benefit or to make the payment of £40,000 to Mr and Mrs H and £60,000 to his brother.
57. He failed to act in the best interests of the estate and this was aggravated by the personal benefit he derived from this.
58. The Respondent accepted he had not kept proper time recording records and that the estate had been overcharged by £16,453. He benefitted from that as partner in the Firm.
59. The same applied to the estate of Mrs S deceased where it was overcharged by £22,300.
60. The Firm repaid sums totalling £46,155.75.

Witnesses

61. There were no witnesses as the matter proceeded on the basis of the proposed Agreed Outcome and the Respondent's admission of the facts and matters set out above.

Findings of Fact and Law

62. 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.
63. Having read the papers and the Statement of Agreed Facts, the Tribunal was satisfied to the required standard that the allegations had been proved, as pleaded.

Previous Disciplinary Matters

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

Mitigation

65. The Statement of Agreed Facts set out the following matters by way of mitigation:

65.1 The Respondent suffered from a crippling arthritic condition in 1984 called Stills disease.

65.2 He had been in hospital for about six weeks before the disease was diagnosed and he was thereafter prescribed numerous drugs, which he took for a period of at least five years. They brought about behavioural changes.

65.3 Some of the symptoms returned in about 2011, and the Respondent was unwell for the years following. He had persistent problems coping with stress and his workload. He found it difficult to make decisions, and found it difficult to remember fully the actions that he carried out. He made catastrophic errors of judgement for which he is had sought mental health treatment.

65.4 When the Respondent made each withdrawal from client account he intended to make a repayment with interest. He had lost sight of what a solicitor can and cannot do.

Submissions on the Appropriate Sanction

66. The parties submitted that the appropriate outcome was for the Respondent to be struck from the Roll of Solicitors.

67. The Applicant's letter of 4 April 2017 in which the application for the Agreed Outcome was made set out a number of comments on the appropriate sanction, by reference to the seriousness of the misconduct and the factors noted in the Tribunal's Guidance Note on Sanction.

68. With regard to culpability, it was submitted that the Respondent's culpability with regard to the eight allegations of dishonesty was very high. Allegations 1.1 and 1.2 were clear examples of the dishonest misappropriation of client money to discharge liabilities. One such liability was that of his Firm, and the other was a personal one. The money concerned was taken from the estate identified, and constituted the most serious breaches of trust.

69. Whilst the purpose of the other six withdrawals was different, the culpability was nonetheless very high. The Respondent had stewardship of the money held on behalf of the estates and used client account as a lending facility when the opportunity arose for the purchase of property for development and onward sale at a profit.

70. Allegation 1.8 concerned a loan from client account to another person for the purchase of a domestic property. The absence of a loan agreement, of periodic review and the failure to take independent advice as to whether it was appropriate to make such a loan meant the Respondent's culpability was high. The borrower was

the Respondent's business partner and a builder. Allegation 1.7 concerned the Respondent's use of client account in connection with the administration of his father's estate. The Firm was not instructed to act. The Respondent was a senior, long-standing solicitor and should have known that client account could not be used as an alternative to an external bank account. The breach was therefore serious.

71. It was submitted that there were aggravating factors present in relation to the allegations.
72. Allegation 1.1 was aggravated by the attempt to obscure the payment, by describing it as a "legacy" in the payment requisition slip sent to the cashier and by the representation the Respondent made to his then partners, when questioned, that the deceased had created a "secret trust" of which a Mr and Mrs H were beneficiaries. The Respondent produced an untrue note to the partners, describing the "secret trust". Further, in May 2015, when the Applicant's investigation officer spoke with him about the payment, the Respondent perpetuated the untruth by stating that the Mr and Mrs H named in the "secret trust" were different from those to whom he had paid the £40,000.
73. The conduct was further aggravated by the creation by the Respondent of the fictitious letter, supposedly dated 16 May 2014, which purported to describe the payment to Mr and Mrs H as a legacy from the estate, when it was not. Further, this payment was made to cover up the Respondent's own mistake, in relation to the conveyancing matter.
74. With regard to the payment of £60,000, it was an aggravating feature that the Respondent described this payment as a legacy on the cheque requisition slip, when it was not.
75. The remaining dishonesty allegations involved actions taken over a lengthy period of time, where client money was used and from which the Respondent and others derived personal benefit. This was so notwithstanding the repayment of the money to client account with interest. The Respondent was able to misuse his position as a solicitor to gain an advantage for himself and others.
76. The Respondent's conduct had caused serious harm to the reputation of the solicitors' profession. It had also caused harm to his former partners, who had to deal with the investigation into the shortage on client account.
77. A mitigating factor was that the Respondent repaid the money, with interest. There was some personal mitigation, noted at paragraph 65 above, but this did not mitigate the seriousness of the misconduct.
78. It was submitted, as part of the application, that the eight allegations of dishonesty involved misconduct of the most serious kind. It constituted repetitive misappropriation or misuse of client money. There were no exceptional circumstances which suggested that any sanction other than striking off would be appropriate. The remaining two allegations, which did not involve dishonesty, neither added nor detracted from the overall seriousness and the appropriateness of the suggested sanction.

Sanction

79. The Tribunal had regard to its Guidance Note on Sanction (December 2016), to all of the facts of the case and the submissions of the parties.
80. Whilst noting the matters put forward in mitigation, the Tribunal was satisfied that the Respondent was wholly culpable for his improper actions over the period from about 2008 to 2015. This was a long period and there had been numerous improper transactions in which the Respondent had loaned money between clients, and for his own benefit, without any knowledge, let alone consent, on the part of the relevant parties. Whilst the Respondent had repaid the money improperly used, with interest, he had clearly made a profit from misusing clients' money for his benefit and that of his wife. Further, the Respondent had created documents to make it appear that the transactions were proper, in particular in relation to the so-called "secret trust" which was initially used to justify a payment to Mr and Mrs H. The Respondent had failed to administer estates properly, including the estate of his own father which had prompted the complaint by the Respondent's brother.
81. There could be no doubt that the Respondent's repeated actions were dishonest. He had shown no real insight into his misconduct, save that he had made admissions in the course of these proceedings.
82. The Tribunal noted and accepted the submissions made by the parties and set out at paragraphs 68 to 78 above.
83. The case law was very clear; where there was a finding of dishonesty, the normal and appropriate sanction was to strike the solicitor off the Roll save where there were exceptional circumstances. No exceptional circumstances had been advanced by the Respondent, and none were noted by the Tribunal. No sanction other than striking off could be appropriate on the facts of this case.

Costs

84. As part of the proposed Agreed Outcome, it was submitted that the Respondent should pay the Applicant's costs in the sum of £32,659.
85. The Tribunal noted that the costs in this case at the time the proceedings were brought to the Tribunal were £26,935 including forensic investigation costs of £19,519.
86. Given the detail which it had been necessary to gather, in the investigation, and review in these proceedings, together with the need to deal with issues raised in the proceedings (for example, in relation to medical evidence obtained by the Respondent) the costs sought by the Applicant and agreed by the Respondent appeared reasonable and proportionate. The Tribunal was content to approve the costs order which had been agreed by the parties.

Statement of Full Order

87. The Tribunal Ordered that the Respondent, DAVID CHRISTOPHER JAMES BARR, 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 agreed sum of £32,659.00.

Dated this 20th day of April 2017
On behalf of the Tribunal

Jane Martineau

J. Martineau
Chairman

Judgment filed
with the Law Society
on 21 APR 2017

