SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11619-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

VERNON JAMES BURKE — Respondent

Before:

Mrs J. Martineau (in the chair)
Miss H. Dobson
Mr S. Howe

Date of Hearing: 25 - 26 July 2017

Appearances

Andrew Bullock counsel of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

Gary Christianson, solicitor of Malt House, Stretford, Craven Arms, Shropshire, SY7 8DE, for the Respondent

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JUDGMENT

Allegations

1. The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement dated 1 March 2017. The allegations were that:-

1.1 Between 3 May 2012 and 31 March 2015 he improperly withdrew the sum of £47,205.32 from the client account of Bridge Burke Solicitors, a firm of which he was the sole principal, in breach of Rules 1.2(c), 20.1, 20.3(b), 20.6 and 20.9 of the SRA Accounts Rules 2011 ("SAR").

1.2 On 1 August 2013 he cleared off residual balances on client accounts to a total value of £3,826.90 by issuing bills of costs and paying them from client funds when there was no proper justification to do so and without first sending those bills or other written notifications of the costs to the relevant clients, in breach of Rules 17.2, 20.1 and 20.3(b) of the SAR and Principles 2, 4 and 6 of the SRA Principles 2011 ("the Principles").

1.3 Between 1 October 2014 and 30 November 2015 he failed to carry out reconciliations as provided for within Rule 29.12 of the SAR, in breach of that Rule.

1.4 Between 23 April 2012 and 22 March 2016 he operated two suspense ledgers accounts otherwise than in the circumstances provided for by Rule 29.25 of the SAR in breach of that Rule.

2. Dishonesty was alleged with respect to the allegation at paragraph 1.2. Proof of dishonesty was not an essential ingredient for proof of any of the allegations

Documents

3. The Tribunal considered all the documents in the case which included:

Applicant

- Application and Rule 5(2) Statement dated 1 March 2017 with exhibit 'PL1'
- Forensic Investigation Report of Natalie Garrard dated 22 March 2016 and appendices
- Applicant's letter to the Respondent requesting an explanation for his conduct dated 14 July 2016
- Applicant's Statements of Costs dated 1 March 2017 and 17 July 2017

Respondent

- The Respondent's Answer dated 4 April 2017
- Mr Christianson's response to the Applicant's letter to the Respondent dated 10 August 2016
- Witness Statement of the Respondent dated 3 July 2017 with exhibit

Factual Background

4. The Respondent was born in July 1960 and admitted to the Roll of Solicitors in February 1992. At the date of the hearing his name remained on the Roll and he held a current practising certificate free of conditions.

5. From 9 September 2005, the Respondent had practised as a solicitor on his own account under the style of "Bridge Burke Solicitors" from offices in Kingston-upon-Thames, Surrey. The Respondent was the Compliance Officer for Legal Practice, the Compliance Officer for Finance and Administration and the Money Laundering Reporting Officer at Bridge Burke Solicitors ("the Firm"). Only the Respondent, as sole principal of the Firm, could operate the Firm's client and office bank accounts.

6. On 14 May 2015 the SRA received information that a qualified Accountants Report dated 23 December 2014 had been received in relation to the Firm as client account debit balances had been identified.

7. On 30 July 2015 a duly authorised officer of the SRA, a Forensic Investigation Officer ("FIO") commenced an inspection of the books of account and other documents of the Firm, which culminated in a report dated 22 March 2016 ("the FIR"). An initial interview with the Respondent was completed on 19 August 2015. On 8 January 2016, the Respondent was interviewed in relation to the issues outlined in the FIR.

8. On 14 July 2016 a Regulatory Supervisor in the employment of the SRA wrote to the Respondent setting out the allegations made in the Rule 5 Statement and requesting an explanation for his conduct. On 10 August 2016 Gary Christianson replied to that letter on behalf of the Respondent.

9. On 3 October 2016 an Authorised Officer of the SRA considered the FIR together with the letters from the Regulatory Supervisor and Gary Christianson and decided to refer the Respondent's conduct to the Tribunal.

Witnesses

10. The following witnesses gave written and oral evidence:

    - Natalie Garrard – FIO
    - The Respondent

11. The Tribunal did not find the Respondent to be a credible witness. In his oral testimony the Respondent was evasive and frequently did not answer the question he had been asked. There were stark inconsistencies in the Respondent's evidence and the Tribunal found that the Respondent's evidence was wholly unconvincing. . The Respondent gave differing explanations at differing times; this was particularly evident in his explanations of matters prior to providing his witness statement and the explanations set out in his witness statement. His oral evidence and witness statement were also not entirely consistent despite the witness statement being relatively recent.

12. The Tribunal found Ms Garrard to be a credible witness. She was very fair, careful and considered in the oral evidence that she gave to the Tribunal. Ms Garrard was clear as to the remit of her role and what she could and could not do. Where there was a conflict of evidence between the Respondent and the FIO the Tribunal preferred the evidence of the FIO.

13. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

14. 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.

15. **Allegation 1.1 - Between 3 May 2012 and 31 March 2015 the Respondent improperly withdrew the sum of £47,205.32 from the client account of the Firm, of which he was the sole principal, in breach of Rules 1.2(c), 20.1, 20.3(b), 20.6 and 20.9 of the SAR.**

The Applicant's Case

15.1 The FIO identified a client account shortage of £47,205.32 in the Firm's accounts which was caused by client debit balances of £29,153.86 caused by client to office transfers being made by the Firm in excess of funds held for the client; and office credit balances of £18,051.46 caused by client to office transfers in excess of costs billed or where no bill had been issued by the Firm. In relation to all the transfers of funds from client to office account, the Respondent, as sole principal of the Firm, stated that he would arrange and authorise all of these transactions.

£29,153.86 of the shortage - client debit balances

15.2 During the investigation, the FIO identified forty occasions where the client account ledgers were showing debit balances due to over transfers. These forty occasions occurred between 28 May 2012 and 31 March 2015, with sums ranging in value between £2.00 (the least) and £4,000.00 (the greatest), and amounted to a total of £29,153.86. The debit balances were caused by client to office transfers when there were either insufficient or no funds held on account for that client.

15.3 Of the client account shortage of £29,153.86, £7,762.57 had been rectified prior to the SRA's inspection on 30 July 2015 and the remaining £21,391.29 was rectified on 30 September 2015. The cash shortage of £21,391.29 was evidenced by the Firm's bank statements for the office and client account.

15.4 The FIO prepared a spreadsheet (referred to as "spreadsheet two" in the FIR) as a summary of the debit balances which were rectified prior to the start of the investigation on 30 July 2015. The Rule 5 Statement exemplified the matter of Mrs LH.

15.5 The Firm acted for Mrs LH in connection with her post-nuptial agreement. On 27 August 2013, a transfer of £500.00 was made from client to office account. At that time, the client had a nil balance on client account and no bills had been issued. This transfer therefore caused a client debit balance of £500.00 and an office credit balance of £500.00. On 25 October 2013, the client made a payment into her account of £500.00 which rectified the client debit balance. On 14 November 2013, a bill was issued which also rectified the office credit balance.

15.6 On 14 November 2013, a second transfer of £500.00 was made from client to office account. At that time, the client had a nil balance on client account and a £245.60 debit balance in office account. The transfer caused a client debit balance of £500.00 and an office credit balance of £254.40. The debit balance on client account and credit balance on office account reduced but were not rectified in full until 3 October 2014, over three hundred days later, when an office to client account transfer of £126.40 was made.

15.7 The FIO also prepared a spreadsheet (referred to as "spreadsheet one" in the FIR) that provides a summary of all debit balances which were not rectified until 30 September 2015. The Rule 5 Statement exemplified the matter of Mrs MB.

15.8 The Firm acted for Mrs MB in relation to her divorce from her husband. A settlement was agreed on 5 August 2013. On 13 August 2013, the Firm issued a client account cheque to pay the agreed settlement of £28,000.00 to Mrs MB's ex-partner. There was a credit balance of £24,000.00 on Mrs MB's client ledger account. A cheque in the sum of £28,000 was debited from client account on 23 August 2013 causing a debit balance and shortage on client account of £4,000.00.

15.9 On 6 January 2015, the Respondent sent a letter to Mrs MB stating that she had not paid the full amount of the settlement monies of £28,000.00 and that there was a shortfall of £4,000.00. Mrs MB responded on 9 January 2015 and confirmed that she did only pay £24,000.00 into the client account as she had paid the remaining £4,000.00 direct to her ex-partner. There was no further correspondence or action taken until 30 September 2015, when an office to client account transfer was made to rectify the shortage. The client ledger therefore had an overdrawn balance for over seven hundred days. Mrs MB's debit balance was discussed in the interview with the FIO on 8 January 2016. It was put to the Respondent that by him making the overpayment, he had in fact used other clients' money. He replied, "Regrettably I have to concede, that does appear to be what happened, but I didn't know at the time".

15.10 The Firm's SRA Accountants Report for 2014 dated 23 December 2014 was qualified due to identified shortages at both comparison dates of 31 December 2013 and 31 March 2014. It also detailed a number of client debit balances and commented on the fact that these debit balances had not been rectified promptly. When discussing the debit balances on client account in the interview with the FIO on 8 January 2016, the Respondent stated that he relied on the Firm's cashier to tell him what funds to

transfer and where. He confirmed that he would check the client's balance before making a transfer from client to office account.

15.11 During the interview with the FIO on 8 January 2016, the Respondent was asked about the length of time some of the client debit balances had been overdrawn. In response he stated, "Yeah. Um we, we, we ought to have done a bit better I would say that. But I would also emphasis there's no loss to any client".

£18,051.46 of the shortage - office credit balances

15.12 During the investigation, the FIO identified fifty one occasions on which the office account was showing credit balances on thirty four individual client ledgers. These fifty one occasions occurred between 3 May 2012 and 9 February 2015, with sums ranging in value between £0.40 (the least) and £3,800.00 (the most), and amounted to a total of £18,051.46. Twenty one of the fifty one office credit balances were posting errors and did not result in the physical transfer of funds.

15.13 Nineteen of the fifty-one office credit balances, totalling £11,816.01, were rectified prior to the start of the FIO's investigation on 30 July 2015. These consisted of the following:

- Eight of these were caused by the amount transferred from client to office account for costs being in excess of the amount billed.
- Seven were caused by transfers from client to office account when no bill had been issued or disbursements paid.
- Three of the remaining credit office balances were caused by funds being paid by the client directly into the office account in excess of the amount billed.
- The last credit office balance occurred where funds were paid directly into the office account before any bill had been issued. These funds were not transferred to client account and the office credit balance remained.

15.14 A further eleven of the fifty-one office credit balances, totalling £6,235.45 were rectified after the start of the investigation by an office to client transfer by the Firm on 1 October 2015. Seven of the eleven office credit balances were caused by the amount transferred from client to office account for costs being in excess of the amount billed. The other four office credit balances were caused by transfers from client to office account when no bill had been issued or disbursements paid. The Rule 5 Statement exemplified the matter of Mrs EH.

15.15 The Firm acted for Mrs EH in providing financial advice. On 1 April 2012, the ledger for Mrs EH was opened on the Firm's new software system with an office debit balance of £2,163.00, relating to work previously billed on the Firm's old accounts system. The client was paying off this balance at £200.00 per month which was paid into client account by way of a standing order on a monthly basis. Upon receipt the funds were transferred from client to office account reducing the outstanding balance owed. On 13 March 2013, the amount of the Firm's bill left owing was £163.00. On that day upon receipt of the £200.00 monthly payment from the client, a client to

office transfer of £200.00 was made resulting in an office credit balance of £37.00. This credit balance was rectified by an office to client transfer by the Firm on 31 July 2013.

15.16 Mrs EH continued paying the Firm another twenty three monthly payments of £200.00 into the client account totalling £4,600.00. Out of the twenty three payments, eighteen were transferred into the Firm's office account causing a credit balance of £3,800.00. This credit balance remained for over nine hundred days until rectified by an office to client transfer of £3,800.00 on 1 October 2015. A cheque was sent to Mrs EH for £3,800.00 on 8 October 2015 in relation to the over payment.

15.17 The office credit balance on Mrs EH's ledger was discussed in the FIO's interview on 8 January 2016. The Respondent accepted that once the bill had been paid, the funds from the client should not have continued being transferred from client to office account and that, "I, I, I think that I would have assumed that she still owed the money". The Respondent also accepted in the interview with the FIO that it was, "a fair point" that funds owed to clients in relation to the office credit balances had not been returned to clients promptly.

15.18 None of the various client to office transfers identified in the FIR were permitted by sub-paragraphs (a) – (k) of Rule 20.1 of the SAR and none were properly required for payment of the Firm's costs in breach of Rule 20.3(b) of the SAR 2011. In relation to client to office transfers where no bills had been posted or funds in excess of that held on client account were transferred, the Respondent did not use the client's money for that client matter only, in breach of Rule 1.2(c) of the SAR. Where client to office transfers occurred in excess of the funds held on client account, this resulted in the client account being overdrawn in breach of Rules 20.6 and 20.9 of the SAR.

The Respondent's Case

15.19 The Respondent admitted that between 3 May 2012 and 31 March 2015 he improperly withdrew the sum of £47,205.32 from the client account of the Firm in breach of the provisions of the SAR as alleged. The Respondent stressed that no client suffered any loss as a result of the breaches set out and that the only actual loss that was suffered was by the Respondent as a result of an overpayment of £4,000 on the matter of Mrs MB, which had never been refunded to the Respondent by either the client or the other party.

The Tribunal's Findings

15.20 Allegation 1.1 was admitted. The Respondent did not dispute the factual basis underpinning the allegation.

15.21 Rule 1.2 (c) of the SAR stated that a solicitor must use each client's money for that client's matters only. The Respondent had paid out £4,000.00 more than he held on the Ms MB matter. That payment was made from client account and he had therefore used £4,000 of other clients' money. Rule 20.6 stated that money withdrawn in relation to a particular client or trust from a general client account must not exceed the money held on behalf of that client or trust in all the Firm's general client accounts.

However the Respondent had paid out more money than he held for Ms MB in breach of this Rule.

15.22 Rule 20.1 of the SAR required that client money may only be withdrawn from a client account in the circumstances specified within subparagraphs (a) – (k) of that Rule. The Tribunal considered whether or not the withdrawals from client account fell within subparagraphs (a) – (k) and determined that they did not. The Respondent had not complied with this Rule.

15.23 Rule 20.3 (b) stated that office money may only be withdrawn from a client account when it was properly required for payment of costs under Rules 17.2 and 17.3. The Tribunal considered the facts of the case and the provisions in Rules 17.2 and 17.3 and determined that money had been withdrawn from client account when it was not properly required for payment of costs.

15.24 Rule 20.9 stipulated that a client account must not be overdrawn except in two specific circumstances that did not apply in this case. There was clear forensic evidence that the Respondent's client account had been overdrawn in breach of this Rule.

15.25 Allegation 1.1 was proved beyond reasonable doubt.

16. **Allegation 1.2 - On 1 August 2013 the Respondent cleared off residual balances on client accounts to a total value of £3,826.90 by issuing bills of costs and paying them from client funds when there was no proper justification to do so and without first sending those bills or other written notifications of the costs to the relevant clients, in breach of Rules 17.2, 20.1 and 20.3(b) of the SAR and Principles 2, 4 and 6 of the Principles.**

The Applicant's Case

16.1 In addition to the client account shortage of £47,205.32 set out above, the FIO identified a further client account shortage of £3,826.90 in the Firm's accounts which was caused by a bulk client to office transfer dated 1 August 2013 allegedly on account of costs where such costs did not appear to be properly justified.

16.2 The Respondent gave written instructions on 1 August 2013 to transfer £13,161.78 from client to office account. This transfer related to thirty four bills of costs all dated 31 July 2013 on thirty four separate client matters. The transfer document set out the thirty four client ledger account references and the amount to be transferred from client to office account. During the interview with the FIO on 8 January 2016, the Respondent was asked about the bulk transfer which took place on 1 August 2013. The Respondent requested, authorised and filled out the paperwork relating to the transfer.

16.3 The £3,826.90 shortage to clients was part of the client to office transfer of £13,161.78 on 1 August 2013 and concerned seventeen of the thirty four bills. These seventeen bills related to seventeen separate client matters which held historic residual balances on the client account.

16.4 The bills were raised for the exact residual amount remaining on the client ledger accounts and the funds transferred to the office account. The FIO produced a spreadsheet (referred to within the FIR as "spreadsheet eight") detailing the seventeen individual client matters and a summary of what was identified from the file and ledger reviews. The seventeen bills ranged in value from £58.58 to £612.83.

16.5 Of the seventeen matters described in spreadsheet eight on only seven of these matters was the client file available for inspection. Further, on the FIO examining the client files and/or ledger accounts, the dates of the final bills or last activity on the files ranged from December 2007 to November 2012. The FIO reviewed the relevant client matter files, where available, in relation to the seventeen bills, and there was no correspondence relating to these bills or letters sent to the clients enclosing the bills held on file.

16.6 The specific matters were:

16.6.1 Ms TW – the file was not available to view. There was no evidence on the ledger of unbilled disbursements and no bills since July 2010. The balance of £245.00 had been on the account for two years and four months. The bill did not contain an address or detailed information as to what work the bill related to. The bill was for the exact amount of the credit balance. The bill was reversed on 25 January 2016 and a cheque for £245.00 issued to the client.

16.6.2 Mr NB – the matter concluded in February 2012. Four bills were issued and paid in full by the client. Due to a billing error a credit balance of £187.05 arose and remained on the account for one year and five months. There was no evidence of further work completed on the file or ledger. The bill did not contain an address or specific information as to what work the bill related to. The bill was for the exact amount of the credit balance. The bill was reversed on 8 February 2016 and a cheque for £187.05 issued to the client.

16.6.3 Mr TE - the file was not available to view. The client had paid more than the amount that had been billed resulting in a credit balance of £322.13. The last payment had been in November 2010. The bill raised on 31 July 2017 did not record an address or provide any information relating to the time period or work it related to. The bill was for the exact amount of the credit balance. The bill was reversed on 25 January 2016 and a cheque for £322.13 issued to the client.

16.6.4 Ms LJR – the matter concluded in October 2010. There had been a number of billing errors which ultimately resulted in a credit balance of £58.58. The bill raised did not contain an address or information as to what work the bill related to. There was a handwritten telephone message dated 1 April 2010 which dealt with the client's request for the additional money on account to be returned but no evidence that the funds were returned. A letter of 8 April 2010 confirmed closure of the file but made no reference to a credit balance. This was the last correspondence on the file. The bill was for the exact amount of the credit balance. The bill was reversed on 25 January 2016 and a cheque for £58.58 issued to the client.

16.6.5 Ms MM - the file was not available to view. The matter was opened in January 2007 and a final bill raised in September 2008. The ledger showed that the client paid more than the amount billed resulting in a credit balance of £80.70. The bill did not contain an address or information as to what work the bill related to. The bill was for the exact amount of the credit balance. The bill was reversed on 4 February 2016 and a cheque for £80.70 issued to the client.

16.6.6 Mr EM - the file was not available to view and the bill did not contain an address or information as to what work the bill related to. A final bill had been issued in January 2012. The client paid more than the amount billed resulting in a credit balance of £64.40. The bill was for the exact amount of the credit balance. The bill was reversed on 25 January 2016 and a cheque for £64.40 issued to the client.

16.6.7 Ms AM – the matter was opened in March 2010. The last correspondence on the file was December 2010. A credit balance of £125.18 arose and had been on the account for three years until billed on 31 July 2013. That bill did not provide any details as to what it related to and neither did it include the client's address. The bill was for the exact amount of the credit balance. The bill was reversed on 25 January 2016 and a cheque for £125.18 issued to the client.

16.6.8 Ms EL – the file was not available to view. The matter was opened in November 2012 and £500.00 was paid on account by the client. There was no activity on the ledger until the 31 July 2013 bill was raised. That bill did not provide any details as to what it related to and neither did it include the client's address. The bill was for the exact amount of the credit balance. The bill was reversed on 25 January 2016 and a cheque for £500.00 issued to the client.

16.6.9 Ms KK - the file was not available to view. The matter was opened in March 2006. The client paid more than the amount billed leaving a client credit balance of £345.27. This credit balance remained on the client account for just under five years. There were no entries on the ledger after February 2008 which suggested the matter was complete. That bill did not provide any details as to what it related to and neither did it include the client's address. The bill was for the exact amount of the credit balance. The bill was reversed on 25 January 2016 and a cheque for £345.27 issued to the client.

16.6.10 Ms DK - the file was not available to view and the bill dated 31 July 2013 did not provide any details as to what it related to and neither did it include the client's address. The matter had been opened in September 2006. The client had paid more than was billed leaving a credit of £495.00. The ledger showed a disbursement of £300 which was unbilled and outstanding. No bills were issued after March 2007 and the office balance was paid in full on 30 March 2010. There was no further activity until the bill was raised on 31 July 2013. The bill was for the exact amount of the credit balance. The bill was reversed on 25 January 2016 and a cheque for £195.00 issued to the

client (as £300.00 belonged to the Firm in relation to the unpaid disbursement).

16.6.11 Ms GH - the file was not available to view and the bill dated 31 July 2013 did not provide any details as to what it related to and neither did it include the client's address. The matter was opened in May 2009. There was one bill which again the client overpaid leaving a credit balance of £63.27. The ledger did not detail any outstanding disbursement or time not billed. Three years four months after the last transaction on the account the bill was raised, again for the exact amount of the credit balance. The bill was reversed on 28 January 2016 and a cheque for £63.27 issued to the client.

16.6.12 Ms GA - the file was not available to view and the bill dated 31 July 2013 did not provide any details as to what it related to. It did include the client's address. The bill was for the exact amount of the credit balance. The matter had been opened in June 2012. One previous bill was issued for a fixed fee amount, the client had paid in more than the amount billed resulting in a credit balance of £300.00 which remained on account from January 2013 to July 2013. The bill was reversed on 25 January 2016 and a cheque for £300.00 issued to the client.

16.6.13 Ms AA – when the file was opened in February 2011 the client paid £100.00 on account. The client was seen by the Respondent for half an hour on 11 February 2011 and there was a small disbursement incurred and a further six minutes work. No bill was issued until 31 July 2013. The bill raised was for £100.00 exactly and did not contain the client's address or information as to what the work related to or the time period it covered. The Respondent offered an initial free thirty minutes with the client so it was not clear what the bill related to. The bill was for the exact amount of the credit balance. The bill was reversed and two cheques totalling £58.40 issued to the client.

16.6.14 Ms MA - the bill dated 31 July 2013 did not provide any details as to what it related to and neither did it include the client's address. The matter was opened in February 2010 and there were three previous bills, the last of which was sent to the client on 15 September 2011 and was described as the final bill. There was no correspondence or activity on the account after 20 September 2011 until the bill of 31 July 2013 was raised. The bill was for the exact amount of the credit balance, namely £479.09. The bill was reversed on 25 January 2016 and a cheque for £479.09 issued to the client.

16.6.15 Mr KB- the file was not available to view and the bill dated 31 July 2013 did not provide any details as to what it related to. It did not include the client's address. The matter was opened in May 2007. One bill was raised that month but the client paid in funds in excess of the bill resulting in a credit balance of £612.83. There was no further activity on the ledger and the credit balance remained from December 2007 to July 2013. The bill was for the exact amount of the credit balance. The bill was reversed on 25 January 2016 and a cheque for £612.83 issued to the client.

16.6.16 Ms GB- the matter was opened in January 2008. Again the client paid more than the amount billed resulting in a credit balance of £50.00. This remained from December 2011 to July 2013. The bill dated 31 July 2013 did not provide any details as to what it related to and neither did it include the client's address. The bill was for the exact amount of the credit balance. The bill was reversed on 25 January 2016 and a cheque for £50.00 issued to the client.

16.6.17 Ms PSW – the matter was opened in April 2012 with a credit balance of £300.00 on account. The client was seen once on 30 November 2012 for an hour, half of which would have been free. At most the costs and disbursements incurred amounted to £174.50, however the bill was for the exact amount of the credit balance. The bill contained no address for the client or details of what work or time period the bill related to. The bill was reversed on 25 January 2016 and a cheque for £140.00 issued to the client.

16.7 The FIO identified the following differences in each of the thirty four bills dated 31 July 2013 in comparison to other bills she had seen on files issued by the Firm:

- The narrative on each of the bills dated 31 July 2013 was vague with the fees and VAT amounts being handwritten. The bills contained minimal detail in relation to what work had been undertaken, including what specific tasks had been taken and/or advice given.

- None of the bills dated 31 July 2013 had any information entered in the 'Period' column.

- Only seven of the thirty four bills detailed the clients' addresses. One bill stated an email address and the remaining twenty six bills stated the client's name, but included no postal or email address.

16.8 During the interview with the FIO on 8 January 2016, the Respondent was asked if the bills had been sent to the clients due to the fact that a number of them did not have addresses. He confirmed that in relation those bills that included an address, they would have been sent, and in relation to those without an address, they might have been sent by email. The Respondent was asked by the FIO by email on 26 and 27 January 2016 to provide evidence of the service of these bills, but such evidence was not produced by the Respondent and still had not been produced at the date of the hearing. Mr Bullock stated that the Respondent must have had addresses for the seventeen clients as he sent them refunds by way of cheques at the beginning of 2016.

16.9 As stated above, the seventeen bills were subsequently reversed by the Firm. The cash shortage of £3,826.90 relating to these seventeen bills was rectified in office to client transfers made on 26 and 28 January 2016 and 4 and 7 February 2016. The Rule 5 Statement exemplified the matter of Mrs MA.

16.10 The Firm acted for Mrs MA in connection with her divorce. A bill was raised for the exact residual amount. The matter was opened in February 2010. A final bill was issued by the Firm on 15 September 2011 and sent to the client with a letter confirming it was the final bill. The client paid a total of £2,080.52 on account which

left a client credit balance of £479.09. There was no correspondence on the client matter file or activity on the client ledger account after 20 September 2011 until 31 July 2013 when a bill was issued by the Firm for the exact amount of the credit balance, £479.09. This amount was subsequently transferred from client to office account on 1 August 2013. The bill dated 31 July 2013 did not include a postal or email address for the client or information regarding the nature of the work or time period it related to. A credit note for the bill was issued on 25 January 2016 and £479.09 was returned to Mrs MA by cheque on 2 February 2016.

16.11 During the interview with the FIO on 8 January 2016, the Respondent confirmed that "...my billing is largely decided by me as to when they need a bill ..." and that "I authorise the bill" and "I have to approve it and send it off". In the interview with the FIO, the Respondent was asked about the bulk transfer which took place on 1 August 2013. The Respondent said that, "....I would have been reliant on my cashier for her to tell, tell me. ..... He continued, ".... Cashier' exercise to tidy up the files. ..... it appears to be an attempt to um tidy up the, the ledgers a little bit" and "So it does appear to be an attempt to tidy up um and to, to clear off balances from old matters".

16.12 The Respondent was asked in the interview, in relation to the transfer on 1 August 2013, whether he sat down and had any kind of conversation with the cashier about what this money was actually for, and his response was, "I can't remember. It was over two years ago, but I was keen to get um, um the, the matters cleared down and obviously, I, I wanted to close some of these". The Respondent clarified that he knew these funds belonged to him because the cashier told him and stated that he would not have personally looked at all of the files.

16.13 In his letter of 10 August 2016 on behalf of the Respondent, Mr Christianson, stated that the bills that gave rise to the problem were not drawn by the Respondent but were approved by him on the basis that he believed the monies held were due to the Firm as he had been advised by the then cashier. The Respondent accepted that he should have carried out more thorough checks before sanctioning the transfers.

16.14 The Applicant's case was that there was no justification in the Respondent raising the seventeen bills of costs of 31 July 2013 in respect of the residual balances on client account as the client money was not properly required for payment of the Firm's costs and the payment of such costs by a client to office transfer on 1 August 2013 amounted to an improper withdrawal, in breach of Rules 20.1 and 20.3(b) of the SAR. Further, in the absence of any documentary evidence showing service of the bills, the Applicant submitted that there was no prior notification to clients before costs were transferred and consequently the Respondent breached Rule 17.2 of the SAR.

16.15 The FIO confirmed in evidence that she had examined the full client files where they were available to her and she had also examined the client ledgers available to her. The information summarised in the "circumstances" column of spreadsheet eight was her summary of the information available to her. In reviewing the files that had been available to her during the inspection the FIO had not found any material to explain why the bills were raised on 31 July 2013 nor why the transfers were made on 1 August 2013.

16.16 The Respondent and the cashier at the time of the inspection, Ms SJ, had co-operated fully with the FIO. The FIO acknowledged that steps had been taken to rectify the position with the accounts before the start of the inspection. When the FIO had arrived for her first visit the Respondent had just returned from holiday and had not opened the letter informing him of the inspection and her visit was re-arranged.

16.17 The FIO had not seen any correspondence with the bank. This was not something she looked into at the time of the inspection. The FIO recalled seeing a file for the Ms MA matter but could not recall whether this was in effect two files in one.

16.18 Questioned on matters raised at the hearing concerning the Respondent's decision to transfer monies back, the FIO acknowledged that there had been a meeting in the "fish bowl" as the Respondent described. However, she disputed the Respondent's assertion that she had told him to transfer the monies back. This was not her role. Once she had raised the issue with the Respondent and Ms SJ it was for them to decide what should be done. Although people would on occasions ask the FIO what they should do, she could not tell them what they should do but would say that any steps that they did take to rectify matters would be recorded as a positive in the FIR.

16.19 The Respondent said in evidence that he did not usually sign the bills. He accepted that the covering letter should be placed on the client file and that if the covering letter had been sent out the FIO should have seen it when she looked at the files. Mr Bullock suggested to the Respondent that his failure to produce the documents meant that there were no covering letters on the files. The Respondent said that he did not know how to answer that, it appeared that there were not.

16.20 The Applicant alleged that in relation to raising these bills and making the improper withdrawal, the Respondent failed to act with integrity in breach of Principle 2 of the Principles and failed to act in the best interest of his clients contrary to Principle 4. It also alleged that he behaved in a way likely to diminish the trust the public placed in him and in the provision of legal services in breach of Principle 6. The Applicant stated that there was no evidence from the relevant client ledgers and client matter files examined by the FIO to show any activity or work undertaken on the seventeen client matters from December 2007 to November 2012 and the Respondent's assertion that he considered that costs were properly due on account of work being undertaken by the Firm was not accepted as a tenable explanation by the Respondent. Further, there was no evidence that these bills were sent to the clients.

16.21 According to the Applicant, the Respondent should have acted in his clients' best interest and returned client money to his clients. A solicitor of integrity treats the money which they hold for others in their client account as sacrosanct. Consequently, they would be careful to ensure that it was only ever either paid out to clients or used to make payments on their behalf. In this case the Respondent authorised the production of seventeen invoices and the transfer of client funds to office account for the exact amount of the residual sums that had been held in client account for some considerable period of time. The Respondent failed to exercise the proper stewardship of clients' money which was a fundamental duty of a solicitor.

16.22 In terms of the legal framework in relation to integrity Mr Bullock invited the Tribunal to adopt the approach to integrity as set out in Hoodless and Blackwell v FSA [2003] UKFTT FSM007 (3 October 2003) and Solicitors Regulation Authority v Chan and Ors [2015] EWHC 2659 (Admin), which was followed in Scott v Solicitors Regulation Authority [2016] EWHC 21256 (Admin) and Newell-Austin v Solicitors Regulation Authority [2017] EWHC 411 (Admin).

16.23 In the case of Hoodless it stated:

> "In our view 'integrity' connotes moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards. (This presupposes, of course, circumstances where ordinary standards are clear. Where there are genuinely grey areas, a finding of lack of integrity would not be appropriate.)"

16.24 In Chan [2015] EWHC 2659 (Admin) Davis LJ, with whom Ouseley J agreed, said:

> "As to want of integrity, there have been a number of decisions commenting on the import this word as used in various regulations. In my view, it serves no purpose to expatiate on its meaning. Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case."

16.25 Mr Bullock submitted that the decision in Malins v Solicitors Regulation Authority [2017] EWHC 835 (Admin) had been doubted and was not a decision that it had been open to Mostyn J to make given the previous authorities that were binding on him, including Bolton v The Law Society [1993] EWCA Civ 32. Mr Bullock submitted that lack of integrity and dishonesty were not synonymous. The correct approach for the Tribunal to take would be the approach set out in Hoodless or Chan.

The Respondent's Case

16.26 The Respondent denied the allegation. He admitted that on 1 August 2013 he authorised the issuing of bills of costs to the value of £3,826.90 and the paying of them from monies held in the client account of the Firm but denied that by doing so he acted in breach of either the SAR or the Principles as alleged.

16.27 In his witness statement the Respondent explained that he honestly and reasonably believed that the sums billed were properly due to his Firm in respect of work carried out for the clients and indeed in some instances represented a lesser figure than was properly due to him.

16.28 As to the events leading up to the issuing of the bills of costs on 1 August 2013 the Respondent recalled that he had shortly before that date been given a list of files with credit balances on client account by his then cashier. These were matters on which as far as the then cashier could see nothing had happened for a while and which therefore he felt could be billed. The Respondent reviewed the list that he was provided with. Given the size of the Firm and the personal nature of the service he

provided all of the matters listed were ones known to him personally. The Respondent did not recall specifically checking each file, given his knowledge of the matters that would not have seemed necessary.

16.29 In the letter from Mr Christianson sent on 10 August 2016 it stated:

> "The bills themselves that gave rise to the problem identified above were not drawn by my client but were approved by him on the basis that he believed the monies held were due to the firm as he had been advised by the then cashier. He accepts that he should have carried out more thorough checks as that being correct before sanctioning the transfers, but again this is an instance of him being too trusting of others and ultimately paying for it. The cashier had clearly noted the various aged balances and an assumption was made as to the firm being entitled to them on the basis that work had been done or disbursements incurred. That the firm's records were not able to ultimately substantiate this does not of itself establish that in all instances there wasn't such entitlement."

16.30 In his witness statement the Respondent commented on each of the seventeen bills that had been raised. The matter of Ms TW was a divorce file followed by a financial application where as he recalled the client was quite "needy". She rang for advice after the final bill had been delivered on a number of matters, in particular the Respondent recalled that she sought advice as to changing the surname of her children and also as various issues around remarrying. The Respondent did not record these queries on the file but the Respondent felt that the work to justify the bill raised had clearly been done and as such he was justified in raising the same.

16.31 The matter of Mr NB concluded in 2012 but after that the Respondent recalled that Mr NB had contacted him to discuss some of the points in the order which he sought clarification upon. The Respondent answered those queries and when authorising the bill felt that in fact work in excess of that billed had been done, notwithstanding that the Respondent had not recorded the work actually done by him, but limited the bill to the amount on the file.

16.32 On the matter of Mr TE the Respondent explained that again this was a file where after the conclusion of the matter he was contacted by the client to discuss various points. The Respondent clearly recalled one instance when Mr TE popped in for a quick chat which turned into an hour long meeting to deal with issues that had arisen around his children changing schools and his concerns about that. The Respondent had left the file open as there was a strong possibility that further issues would arise. The Respondent had not recorded the work done but nevertheless could confirm that it had been done to at least the value billed.

16.33 In respect of Ms LJR, this was a file the Respondent had left open after the last bill had been sent as the client was often in touch given the worries she had as to her safety. Again work was done in relation to the issues raised after the last bill but the Respondent did not put notes on the file to record it. The Respondent had a limited client base and stated that he carried too much in his head. When authorising the bill on 1 August 2013 he felt it was properly due.

16.34 On the matter of Ms MM the Respondent recalled that after the final bill had been submitted he was contacted again by the client seeking advice as to what affect her taking up employment in Saudi Arabia would have. Again the Respondent left the file open as he believed it would require further work and only billed it after a long period as he was satisfied it was not going to come back to life. Again he was sure that he had carried out work in excess of the sum he had billed.

16.35 Mr EM was a divorce client. After the divorce was finalised and billed the Respondent was consulted by him on a variety of matters, in particular there were queries about his child and a rather odd situation that arose as someone was murdered in the house where he lived. It was nothing to do with him but the Respondent explained he felt the need to seek his advice. Again the Respondent stated that he did not record these instances but they had happened and as such the Respondent felt the bill he raised was justified.

16.36 Ms AM worked in Africa and moved around a lot. She consulted the Respondent over various matters as she felt necessary and again the Respondent did not record the various chats he had with her but felt the bill he raised was justified by the work done but not recorded.

16.37 In respect of the bill for Ms EL the Respondent believed that this was an error and in fact related to another client, Ms EB. The clients shared the same first name.

16.38 The Respondent explained that Ms KK had asked him to keep her file open after the matter was concluded as there were disputes over various chattels which she spoke to the Respondent about but resolved herself with the former spouse based upon his advice. Again the Respondent believed the work done exceeded the amount billed

16.39 The case of Ms DK was a pre-nuptial agreement matter. The client was going to live abroad with her new husband and her parents were anxious to have an agreement to protect her inheritance from them in this country in due course. According to the Respondent, the work done and charged in the 1 August 2013 bill had not previously been billed and related to explaining to both the client and her parents in numerous telephone conversations various aspects of the agreement.

16.40 After the final bill was delivered for the pre-nuptial agreement for Ms GH the Respondent stated that the client would often call in to discuss matters as there was the possibility of a divorce. This did not come to pass but it was often discussed. The work to justify the further bill had certainly been done. The Respondent had left the file open for a long time given what he had been consulted about.

16.41 Ms GA was another case relating to a pre-nuptial agreement. The original bill covered the costs of advising on the agreement as drafted by the husband's solicitors. Thereafter the Respondent had drafted amendments to it and this was the work covered by the further bill.

16.42 In respect of Ms AA, the free thirty minute consultation had already taken place before the file was opened and as such was not recorded on the file. The Respondent's position was that the bill was therefore properly drawn when that was taken into account.

16.43 There were two files for Ms MA, one for the divorce and one for the ancillary relief claim. The Respondent explained that the bill was for the work done on the ancillary relief file and should have been raised on that. The monies on account were held on the divorce file so that was where the cashier billed it.

16.44 Mr KB was another case where there were two files, one for the divorce and another as to contact issues as well as financial matters. The Respondent stated that the bill should have been on the other file as that was the work it related to.

16.45 On the Ms GB matter after the divorce had been billed the Respondent recalled that the client contacted him, over several telephone calls, to discuss issues around a pre-nuptial agreement given she was going to buy a property with a new partner. The work billed related to that advice.

16.46 As to Ms PSW, the Respondent's position was that the free consultation had taken place in April 2012. The file had been properly billed.

16.47 The Respondent appreciated that he should have put forward the above information when originally interviewed by the FIO. His witness statement explained that at the time his wife was extremely ill and at the time of the interview was due to undergo lifesaving surgery the following day which was not certain to be successful. Thankfully it was. The Respondent provided a copy letter from his wife's doctor confirming her admission and the treatment received.

16.48 According to the Respondent, the actual drawing of the bills, was done by the cashier, although the Respondent said in his witness statement that he did then sign them. The Respondent accepted that he should have made sure that the wording more fully reflected what had been done and made it clear that they should be sent out. The Respondent did not and he just assumed it would be done. He could but apologise for this.

16.49 Whilst Mr Christianson was clear that no suggestion of impropriety was made against the FIO the Respondent's position was that she had told him to pay these monies back during a meeting in the "fish bowl". The "fish bowl" was a glass office at the Respondent's Firm where he had met with the FIO and Ms SJ. It was where all the important meetings were held. In evidence, the Respondent clarified that he could not remember whether it was Ms SJ or the FIO that told him he had to repay monies but he remembered that he was told to repay about £26,000. He remembered both Ms SJ and the FIO looking at him in a manner which he took to mean that they wanted some action now. The Respondent acted and remembered doing the transfer. He did not question why the transfer had to be made he just assumed it had to be done. He said that if his cashier told him to do something then he did it. The Firm was correcting the accounts at the time.

16.50 In cross-examination the Respondent acknowledged that there had been a transfer of £21,391.29 on 30 September 2015 to rectify the client account shortage and that this was very possibly the transfer that he was talking about. He could not be sure that there had been a separate conversation about the transfer of just over £3,800 with the FIO. He remembered Ms SJ and the FIO in front of him, they did not say anything but gave him a look that made their expectations clear. In response to a question from

Mr Bullock, the Respondent acknowledged that he thought that he had made a number of transfers. The Respondent denied that this was something that he had made up at the hearing, despite there being no mention of it previously.

16.51 The Respondent maintained in his evidence that the invoices raised on 31 July 2013 had been sent to the clients. It was his normal process to send the bills out when they had been raised. Normally they were sent out by post but also by email. He accepted that he had not provided the FIO with any evidence that the bills had been sent out. The bills were normally sent out with a covering letter.

16.52 Mr Bullock asked the Respondent what steps he had taken to cost the files before he billed them on 31 July 2013 in order that he could have a reasonable and honest belief that the sums were due to him. The Respondent replied that he knew the files, he had personal knowledge as they were his files and clients. He had a reasonable understanding of what should be billed. A lot was in his head, not necessarily on attendance notes. Some should have been on attendance notes. The Respondent said that he would have costed the file before he billed it. The Respondent recorded time manually, usually on the file. The Respondent would often have more than one file for each client covering different aspects of work. On the matter of Ms GA the Respondent made reference to further work on amending an agreement. He accepted that if he had made amendments there should be a record on the file. In respect of the bill that had been sent by email the Respondent did not believe that he had been able to locate a copy of that email.

16.53 Mr Bullock asked the Respondent to explain the inconsistency between this answer and the fact that he had said in his witness statement that he did not specifically recall checking each of the files because given his knowledge of the matters that would not have seemed necessary. The Respondent said that the clients were his personal clients, he had limited clients and knew the files well. He knew what work he had done on the file. He could not say that he had specifically checked each of the thirty four files before raising the bill. The Respondent was clear that he had earned the money and it needed to go from client to office account. This was part of the process of getting the accounts in order.

16.54 The Respondent's evidence was that the Firm experienced pinch points financially. When the Firm had been close to its overdraft limit previously the Respondent had asked the bank to extend it and this had not been an issue. On occasions it had been increased to £25,000 and on occasions to £30,000. He did not accept the Applicant's emphasis on the importance of the overdraft limit of £20,000 and the fact that he could not have made the payments out unless monies had been paid in. If the overdraft had not been extended then the VAT payment would have been delayed.

16.55 In evidence the Respondent said that he did not recall asking the cashier to prepare a list of residual balances that could be used to get the Firm past the pinch point. He had just got back from holiday. He would have asked the cashier to provide him with client balances so that he could see what needed to be billed and what did not need to be billed. The Firm did review old balances from time to time as it was important to make sure that the accounts were as clean as possible. The Respondent did not accept that the Firm was under financial pressure.

16.56 In evidence the Respondent said that often his clients would contact him after their matters had concluded, sometimes this turned into quite a lot of work. He did not send new client care letters at this point but the clients had received these previously and would expect to pay him for the advice that they were requesting, even if they had previously received what was described as a final bill. Whilst it might have been good practice to send a further client care letter the Respondent did not accept that he needed to open a new file for the additional advice and set out the new retainer if he wished to be paid for what he described as ad hoc advice and assistance. When he raised the bills on 31 July 2013 he believed that he was absolutely entitled to do so.

16.57 Mr Bullock asked the Respondent why he did not tell the FIO in interview that the clients owed him money because he had done work since the final bill. The Respondent said that he had answered as best he could, his wife had been in hospital and he had not been "one hundred percent in the room". He had not known whether or not his wife was going to make it and did not accept that whilst she had had an unpleasant, painful medical condition it was not one that was life threatening. He had not thought to ask for the interview to be postponed despite his wife being in hospital.

16.58 Although the Respondent had been able to recall the details in respect of the seventeen clients to include in his witness statement his mind had been elsewhere at the time of the interview. He was not focussed on the interview with the FIO, he accepted that it could have been a good answer to say that the client kept ringing him up from time to time but he did not answer that way at the time. He was doing the best he could at the time. He knew before the investigation that his accounts were in a mess. He had said in interview that they were all regular clients and would not have paid him unless he had done the work. He had not asked for the interview to be postponed as he wanted to co-operate and had nothing to hide. The Firm were getting the accounts into shape and he wanted to get it over and done with.

16.59 The Respondent accepted that reference to further work had not been made in the letter sent on his behalf on 10 August 2016. All he could say was that the work had been done and he was entitled to the money. It had been quite a shock to find himself facing disciplinary proceedings and very scary. He had not been sure what to do.

16.60 Mr Christianson confirmed to the Tribunal that he agreed with Mr Bullock as to the test that should be applied when considering lack of integrity. The burden of proof was on the Applicant. The accounts side of the Firm had not been well run and had gradually got into a mess. The Respondent had recognised this and engaged the services of a good cashier who was sorting matters out. The Respondent had co-operated fully with the SRA. It was a matter for the Tribunal as to whether the Respondent's actions had gone from mere carelessness to something attracting professional censure. Mr Christianson submitted that the Respondent had not lacked integrity, the situation had arisen because of the mess with the accounts which the Respondent was trying to put right.

The Tribunal's Findings

16.61 The requirements of Rule 20.1 and 20.3 (b) were set out under allegation 1.1 above. Rule 17.2 stated that if a solicitor properly required payments of their fees from money held for a client or trust in client account, the solicitor must first give or send a

bill of costs, or other written notification of the costs incurred, to the client or the paying party.

16.62 Principle 2 required a solicitor to act with integrity. Principle 4 required a solicitor to act in the best interests of each client and Principle 6 required a solicitor to behave in a way that maintains the trust the public placed in the solicitor and in the provision of legal services.

16.63 As a matter of fact the Respondent had cleared off residual client balances on client accounts to a total value of £3,826.90. The Respondent had admitted that he had cleared off the residual balances and that the invoices had been paid from client funds. However he denied that there was no proper justification for him to do this and he denied that he had not first sent those bills or other written notification to the clients.

16.64 The invoices were not consistent with other invoices that the Firm had raised and the FIO had seen. These seventeen bills appeared to the Tribunal to be pro-forma bills. Some of the amounts were handwritten. The majority of the bills did not contain an address. None of them contained reference to the monies held on account, they all referred to an amount due being the exact amount held on the client account. The Respondent had said that his normal practice was to send a covering letter with the invoice. He had not been able to produce any covering letters or emails enclosing the bills. There was no evidence that any of the seventeen bills had been sent to the clients. Some of the bills were sent a number of years after the last activity recorded on the file (where available) and/or the client ledger. If the invoices had been sent to the clients in the Tribunal's view the invoices would have been accompanied by a covering letter. No such letters were available although the FIO had asked for them. Nor was there any evidence produced by the Respondent that showed a client acknowledging the bill or thanking him for his assistance.

16.65 The bills had all been raised on 31 July 2013 and subsequently marked as paid on 1 August 2013. Given the Respondent's assertion that the invoices related to work that he had done, albeit in some cases the work was some time ago, if the invoices had been sent in the Tribunal's view any reasonable solicitor would have allowed the recipients an opportunity to respond and raise any queries before transferring the money from client account. However, the Respondent transferred the monies the next day. If the invoices had been posted it was unlikely they would have reached the clients that quickly. Everything pointed to the raising of the invoices being a paper exercise.

16.66 Whilst the burden of proof was on the Applicant to show that the bills had not been sent it was for the Respondent to rebut this assertion if he was able to do so. The Applicant had examined the Respondent's files and found no evidence that the bills had been sent. The Respondent had been prompted on more than one occasion to produce evidence of the bills having been sent. No evidence had been produced. The Tribunal found the Respondent's evidence in respect if this issue wholly unconvincing and evasive.

16.67 The Tribunal found that the Respondent had not sent the bills of costs to the seventeen clients. It followed that the Tribunal found that the Respondent had not complied with Rule 17.2. Flowing from this the Tribunal found that the Respondent had not

complied with Rule 201.1, money had been withdrawn from client account in circumstances which were not permitted. The money was not properly required to pay the Respondent's bill of costs as no bill or other written notification had been delivered and the Respondent had also not complied with Rule 20.3(b).

16.68 The Tribunal then considered the alleged breaches of Principles 2, 4 and 6. The Tribunal considered that the drafting of allegation 1.2 could have been refined to make it somewhat clearer. As a matter of fact the Tribunal had found that the bills and written notifications had not been sent. The Respondent accepted that he had cleared off the residual balances so the Tribunal then had to consider whether there was any proper justification for paying them from client funds.

16.69 There was no evidence that the Respondent had reviewed each of the files. He did not state that he had. There was no evidence on the files that had been available to the FIO of work done to justify the bills raised. The Respondent had raised bills for the exact amount of the residual balances. He had not made a note on the files of his decision making process and why the charges in that amount were justified. The bills did not contain specific detail as to the work done. In his witness statement the Respondent stated that he did not recall specifically checking each file and that given his knowledge of the matters that would not have seemed necessary. A number of the matters went back over several years. It was inconceivable that the Respondent could accurately remember the work done for each and every client over a period of a number of years.

16.70 The Respondent had produced no evidence of the work he had done. He had not produced a copy of the draft amendments he said he had made to the agreement in the case of Ms GA. There was nothing to substantiate his assertion that the work had been done and the bills were justified. Only seven of the seventeen files had been available to the FIO. The Respondent had only provided detail, as to the work done for the seventeen clients, in his witness statement made in July 2017, albeit he had briefly mentioned some further work in his interview with the FIO in January 2016. In the letter sent on his behalf in August 2016 there was no reference to further work but there was reference to the Respondent being told by the then cashier that the monies were due to the Firm. The Tribunal concluded that there was no proper justification to issue the bills or pay them from client funds.

16.71 Having made adverse findings of fact on all of the constituent elements of allegation 1.2 the Tribunal considered whether or not the Respondent had breached the various Principles as alleged. Principle 4 required the Respondent to act in the best interests of each client. In transferring the clients' residual balances from client to office account with no proper justification for doing so and without sending the client a bill first so that they could challenge the charges the Respondent clearly had not acted in the best interests of any of the seventeen clients and had not complied with Principle 4. The public would expect a solicitor to safeguard his clients' money, however small the amount. The public would not expect a solicitor to clear off residual balances without proper justification and nor would the public expect a solicitor to transfer client money without delivering a bill of costs. The Respondent's actions were the precise opposite of what the public would expect of a solicitor. He had failed to behave in a way that maintained the trust that the public placed in him and in the provision of legal services in breach of Principle 6.

16.72 The Respondent's actions had shown a lack of moral soundness, a lack of rectitude and no adherence to an ethical code. A solicitor of integrity did not clear off residual balances, however small, without first taking steps to be absolutely certain that he was entitled to the money. If there was no evidence on the files or the files were not available a solicitor of integrity would not simply rely on his memory as to the work he thought he had done for each client. The fact that the Respondent had billed Ms EL instead of Ms EB demonstrated the unreliability and inherent difficulty with that approach. Further a solicitor acting with integrity who had assured himself that he was entitled to raise a bill would send those bills to the clients and give the clients an opportunity to challenge the bill before transferring the monies from client to office account. He would not raise the bills one day and transfer the money the next. The Respondent had failed to act with integrity in breach of Principle 2.

16.73 Allegation 1.2 was found proved beyond reasonable doubt.

17. **Allegation 1.3 - Between 1 October 2014 and 30 November 2015 the Respondent failed to carry out reconciliations as provided for within Rule 29.12 of the SAR, in breach of that Rule.**

The Applicant's Case

17.1 In order to comply with Rule 29.12 SAR, a solicitor must, at least once every five weeks, compare the balances on the client cash account with the balances shown on the statements and pass books of all client bank accounts, and at the same time prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients and compare the total of those balances with the balance on the client cash account. They must then prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons.

17.2 The Respondent's client account was not reconciled at least once every five weeks. When the FIO attended the Firm in August 2015, the most recent client account reconciliation completed was for the month ending September 2014. Due to this and the Firm's postings also being behind, it was not possible to obtain an accurate and up to date picture of the liabilities held for each client or by the Firm as a whole. When the FIO returned to the Firm on 30 September 2015, the client account was reconciled to March 2015. It was not until the FIO re-visited the Firm on 30 November 2015 that the client account was properly reconciled. The Respondent accepted in the interview with the FIO on 8 January 2016 that the client account was only reconciled to September 2014. Consequently, the Respondent failed to reconcile the client account at least once every five weeks and thereby breached Rule 29.12 of the SAR.

The Respondent's Case

17.3 The Respondent admitted that between 1 October 2014 and 30 November 2015 he failed to carry out reconciliations as provided for within Rule 29.12 of the SAR as alleged. This was due to not being able to find a suitably qualified individual at the time.

The Tribunal's Findings

17.4 Rule 29.12 required certain steps to be taken at least once every five weeks. This included the preparation of a reconciliation statement. In August 2015 the most recent client account reconciliation was for the month ending September 2014, which was more than ten months previously. The Respondent had not complied with this Rule and the allegation was admitted and proved beyond reasonable doubt.

18. **Allegation 1.4 - Between 23 April 2012 and 22 March 2016 the Respondent operated two suspense ledgers accounts otherwise than in the circumstances provided for by Rule 29.25 of the SAR in breach of that Rule.**

The Applicant's Case

18.1 The Applicant alleged that there was an improper use of suspense ledger accounts at the Firm. These ledger accounts were being used improperly for the posting of bills and receipt of costs for "one off" clients to avoid opening files. During the investigation, the FIO identified two suspense ledger accounts, one referenced M00022-0001 and the other referenced M00018-0001 and both entitled "Miscellaneous".

18.2 The suspense ledger account M00022-0001 was opened in August 2012 with a client to office transfer of £4,153.60. These funds remained on the suspense ledger unallocated until January 2013, some five months later. There were four occasions on 7 February 2013, 24 September 2013, 30 January 2014 and 26 April 2014 on which bills of costs had been posted to the suspense ledger (instead of opening individual client ledger accounts) and funds transferred from client account to pay the balance. Excluding posting adjustments, there was no activity on the suspense ledger after July 2014 and at the date of the FIR, this ledger account had a current client credit balance of £156.00 and office debit balance of £996.84.

18.3 The suspense ledger account M00018-0001 was opened in April 2012 and showed two bills posted to the account on 8 October 2012 and 1 April 2014 and transfers made from client to office account to pay those bills. This ledger account had not had any activity since April 2014 and had a nil client and nil office balance at the date of the FIR.

18.4 In interview with the FIO, the Respondent was asked about suspense accounts and he stated, "I did use it once upon a time for when I had advice and assistance things and didn't know whether they were gonna come into anything and just popped it into Miscellaneous… um but I do know that it's not, it's against the Solicitors Accounts Rules to do it, so I haven't done it for a few years". It was the Applicant's case that the suspense client ledger accounts were not properly used in accordance with Rule 29.25 of the SAR.

The Respondent's Case

18.5 The Respondent admitted that between 23 April 2012 and 22 March 2016 he operated two suspense ledgers accounts in circumstances that were in breach of Rule 29.25 of

the SAR as alleged. The Respondent stressed that no loss was occasioned to any client as a result of this breach.

The Tribunal's Findings

18.6 Rule 29.25 stipulated that suspense ledger accounts may be used only when the solicitor could justify their use, for instance, for temporary use or receipt of an unidentified payment, if time was needed to establish the nature of the payment or the identity of the client. The Firm had operated two suspense ledgers not in accordance with the Rule. The allegation was admitted and proved beyond reasonable doubt.

19. **Allegation 2 - Dishonesty was alleged with respect to the allegation at paragraph 1.2. Proof of dishonesty was not an essential ingredient for proof of any of the allegations.**

The Applicant's Case

19.1 According to the Applicant, the Respondent's actions were dishonest in accordance with the test for dishonesty accepted in Bultitude v Law Society [2004] EWCA Civ 1853 as applying in the context of solicitors disciplinary proceedings the combined test laid down in Twinsectra Ltd v Yardley and Others [2002] UKHL 12. That test was that the person had acted dishonestly by the ordinary standards of reasonable and honest people (the objective limb) and realised that by those standards he or she was acting dishonestly (the subjective limb).

19.2 The SRA alleged that the Respondent's actions in authorising the production of seventeen invoices and/or the transfer of client funds to office account for the exact amount of the residual sums that had been held in client account for some time were dishonest by the ordinary standards of reasonable and honest people within the meaning set out in Twinsectra. Reasonable and honest people would not regard it as honest to clear off residual balances in this manner when there was no proper justification to do so.

19.3 The Applicant submitted that not only was the Respondent's conduct dishonest by the ordinary standards of reasonable and honest people, but that he must also have been aware that it was dishonest by those standards for a number of reasons. Firstly, the Respondent as the sole principal of the Firm authorised the production of the seventeen bills dated 31 July 2013 totalling £3,826.90 and the bulk transfer from client to office account on 1 August 2013 of £13,161.78. In the interview with the FIO on 8 January 2016, the Respondent confirmed that he authorised the transfer on 1 August 2013 and that he decided when clients were billed.

19.4 Further, the Respondent stated in the interview with the FIO that "....it does appear to be an attempt to tidy up um and to, to clear off balances from old matters". The Respondent was asked in the interview, in relation to the transfer on 1 August 2013, whether he sat down and had any kind of conversation with the cashier about what this money was actually for, and his response was, "I can't remember. It was over two years ago, but I was keen to get um, um the, the matters cleared down and obviously, I, I wanted to close some of these". The Respondent's explanation demonstrated that he took a deliberate decision to authorise the payment of the residual sums on client

ledger accounts to office account. It was the Applicant's case that these residual sums on client account were selected for payment to office account as the relevant clients were unlikely to question the transfer of their funds from client account for two reasons namely (a) they were not sent any notification of the bill or other notification of the costs; and (b) the residual balances had been on client account for some considerable period of time before the bills were issued on 31 July 2013.

19.5 According to the Applicant, the Respondent's actions of clearing off client residual balances were not isolated acts, but constituted a course of conduct, occurring on seventeen separate client ledger accounts. The residual balances were transferred at a time when the funds in office account were required to pay HM Revenue & Customs. The FIO noted that the transfer on 1 August 2013 was made when the office account would have exceeded the overdraft limit had the relevant transfer not been made. On 31 July 2013 an office to client transfer in the sum of £11,366.56 had occurred rectifying office credit balances before the start of the FIO's investigation. This caused the office account balance to be overdrawn to the sum of £13,679.88. The Firm's overdraft limit with the bank was £20,000.00. On 5 August 2013, a payment of £6,317.53 was made to HM Revenue & Customs in relation to VAT due and £990.00 to Reachlocal UK Ltd. Without the client to office transfer being made on 1 August 2013 in the sum of £13,161.78, these payments would not have been made as the Firm would have gone over its overdraft limit by £987.41. The Applicant submitted that there was an inference that client money of £3,826.90 was being taken by the Respondent to pay the Firm's creditors.

19.6 The Respondent had ample opportunity to reflect upon the propriety of his actions. He had an opportunity to rectify the shortage after the bills were raised on 31 July 2013 and the transfer from client to office account on 1 August 2013, but instead these matters only came to light following the FIO's inspection of the Firm's books of account. It was only when the FIO chased for evidence of service of these bills that the bills were reversed and the client money was remitted to the clients in January and February 2016.

19.7 Mr Bullock submitted that the only reason that the Respondent reversed the invoices and refunded the monies to the seventeen clients was because he knew that the money should not have been taken on 1 August 2013. If he had genuinely believed that he was due the monies billed why did he pay the money back? Mr Bullock submitted that that was the piece of evidence that told the Tribunal that he knew he was not entitled to the money. However, he took it anyway. If the money had been properly taken the Respondent could have sent the bills with a letter of apology to the clients for the bills not being sent earlier and retained the monies.

19.8 Mr Bullock summarised the Applicant's case in respect of the subjective limb of dishonesty in four main points. Firstly, whatever the cashier's involvement in the matter it was the Respondent and the Respondent alone who had direct responsibility for authorising the transfer from client account to office account. The Respondent did not dispute this and he was the only person who could operate the bank accounts. The Respondent had made a conscious decision to transfer the money having, in the Applicant's submission, directed his mind to the question of whether the transfer should be made. He had not done what he should have done to satisfy himself that the money was properly due to him.

19.9 Secondly, Mr Bullock re-iterated the point he made in respect of allegation 1.2, that the Firm could not pay its VAT bill and remain within its overdraft limit. The bills had been raised and the transfer made so that the Firm could make sure it could pay this bill. There was an absence of any other explanation and Mr Bullock asked the Tribunal to note the timing. The residual balances were being cleared out three days before the VAT bill was due to be paid.

19.10 Thirdly, a number of the bills were raised in respect of fairly old matters. The amounts were relatively small. The largest sum being £612.50. There was no evidence that notification of the bills had been sent to the clients. Mr Bullock submitted that the inference was that the money was being misappropriated on matters where the money being taken was not going to be missed. It was inconceivable that the Respondent did not recognise the dishonesty inherent in what he was doing.

19.11 Fourthly, the Respondent was not a newly qualified solicitor, he was experienced in life and law. He had been in practice as a solicitor for over two decades. From the first day of those two decades the sacrosanct nature of client account would have been known to him. It was inconceivable that a solicitor of his experience would not recognise the dishonesty involved in transferring money from client account to office account to pay the VAT bill without giving the client notice of what he was doing so that they could object or ask for their money back.

19.12 Mr Bullock asked the Respondent whether he agreed with Mr Bullock that an honest solicitor would make sure that he had notified his client before taking money from client account on account of costs. The Respondent stated that he thought that he would agree with that proposition. The monies should be billed and then transferred from client to office account.

19.13 Mr Bullock referred the Tribunal to the case of Bultitude. In that case a number of client credit balances had been transferred to Mr Bultitude's office account on the basis of his cashier's advice and Mr Bultitude had been found to have been dishonest.

19.14 The SRA submitted that the Respondent was himself aware by the ordinary standards of reasonable and honest people that he was acting dishonestly. It was inconceivable that the Respondent did not realise that his actions would be viewed as dishonest by reasonable and honest people and that an allegation of misconduct of this nature was a very serious allegation, particularly given that he was a solicitor with in excess of twenty one years post qualification experience at the relevant time.

The Respondent's Case

19.15 The Respondent denied the allegation. He explained his decision to repay all of the money that he had billed on 1 August 2013 should not be taken as an admission that the bills were wrongly raised in the first place. The Respondent had set out in respect of allegation 1.2 the reasons why he thought that each bill could properly be raised. In his witness statement he explained that he was trying to get the Firm back into a state of compliance and these bills were clearly an issue. The amount involved in total was not significant and it seemed, to the Respondent, that the best thing to do was just to draw a line under it and move on, hence the decision to cancel them. The fact that the

Respondent had repaid these amounts reflected his commitment to doing the right thing and was not an acceptance that he had been dishonest.

19.16 The Respondent had made reference to work being done since the final bills in his interview but should have set this out more fully. The Respondent had not appreciated the importance of explaining that his clients sought further advice from him, it was the sort of thing that happened in the everyday life of a solicitor. His clients had had letters of engagement and knew what he charged per hour. The Respondent genuinely believed that he had done the work and was entitled to raise the bills which were all for relatively modest amounts. Given this belief the allegation of dishonesty had to fall away.

19.17 The Respondent stressed that the suggestion that the Firm needed the money to pay its creditors was incorrect. It was correct that the Firm at that time had debts that were falling due, including one to HM Revenue & Customs, but in the past if the Firm was going to get close to or to go over the agreed overdraft facility the Respondent had never had any problem with agreeing a short term extension of the facility with the bank. This has happened several times in the last eleven years at particular pinch points. The Respondent's dealings with the bank were generally good and he had no reason to believe that if he had needed to extend the facility to cover the payments due they would not have agreed to that as they have done in the past and had done since this incident. The impression given that the Firm was in such dire straits financially as to need to bill improperly was misconceived, that was not the case.

19.18 The Respondent stated that he had already prior to the FIO's visit put in hand steps to sort out his accounts and it never crossed his mind that he would face an accusation that he had acted dishonestly. He said that he therefore dealt with the interview too lightly, being anxious just to get it out of the way. Despite his wife's illness he did not want to put matters off as he felt things would just drag on.

19.19 The Respondent did not accept that his conduct would be viewed as being dishonest by the ordinary standards of reasonable and honest people and further it was denied that the Respondent realised that by those standards he was acting dishonestly when either authorising the issuing the invoices or the making of the transfers. When authorising the issuing of the invoices and the transfer of funds from client account to office account to settle the same the Respondent honestly and reasonably believed that he was entitled to act as he did.

19.20 The fact that the Respondent had taken steps to put matters right before the investigation was important. The Respondent had focussed on his clients. The Respondent was clear that the suggestion that he would risk all for the amount involved in these bills was just not credible. He would not have authorised them being issued if he had not believed that the sums were properly due to him for the work that he had carried out. At no time did it cross his mind that his actions in authorising the drawing of the bills could be viewed as being dishonest, or could be viewed as being dishonest by others. For the reasons set out the Respondent honestly and reasonably believed that the monies were properly due to his practice and as such the bills could properly be raised.

19.21 The Respondent said that he had been like "a rabbit in headlights" during the investigation, he still could not believe that he was before the Tribunal. He found it quite upsetting to be accused of dishonesty. The Respondent was doing his best to show the Tribunal that he was not dishonest.

19.22 Mr Christianson confirmed that he agreed with Mr Bullock as to the legal test that the Tribunal had to apply when considering the issue of dishonesty.

The Tribunal's Findings

19.23 The Tribunal considered the objective limb of the test for dishonesty, namely had the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. The Tribunal found that the Respondent had acted dishonestly by those standards. Reasonable and honest people would consider it dishonest to take other people's money that they were not entitled to, however small the amount. The Respondent had raised bills which were not sent and had transferred the monies to his office account. There was no evidence, other than his witness statement which was inconsistent with his prior explanations, that he had done the work that he had purportedly charged for and the Tribunal did not believe his evidence in this regard. There was no evidence that he had examined the files to assure himself that the sums were due to him. The objective limb was satisfied.

19.24 The Tribunal had been referred to the case of Bultitude. There were similarities between that case and the Respondent's actions. At paragraph 24 the Judgment stated:

> "So, he professed to have been under the impression that despite the shortage of time, the work had been properly done, and he was specific that he never saw the debit notes until after the first visit by Mr Lane in August 2000. That was rejected by the Solicitors' Disciplinary Tribunal which found that:
>
> > "Mr Bultitude was guilty of conscious impropriety amounting to dishonesty in endorsing the system of transfers of client money from office to client account devised by Mr Rosen and had failed to exercise the proper stewardship of clients' money which was a fundamental duty of a solicitor.""

19.25 At paragraph 26 of the Bultitude Judgment it stated:

> "The nature of the dishonesty alleged against him was, as Mr Goodwin made clear in the Divisional Court, that:
>
> > "He had signed a cheque transferring his clients' funds to his office account without knowing or caring whether or not his firm was entitled to be paid those funds. Such conduct was dishonest, even if there was an intention to repay the clients if it was found on a subsequent investigation that the firm was not in fact entitled to the sums transferred under the cover of the debit notes.""

19.26 The Divisional Court had found Mr Bultitude to be dishonest. At paragraph 45 of the Bultitude Judgment in it stated:

> "I accept that for the reasons set out by the Divisional Court in Langford v Law Society (2002) EWCA 2802 Admin, the approach of the court to decisions of the Solicitors' Disciplinary Tribunal is not quite as it used to be. But we can, and in my judgment should, take cognizance of what the profession regards as the normal necessary penalty to be imposed upon those found to have acted dishonestly. Furthermore, as Mr Treverton-Jones points out, this was quite a bad case of its kind. The firm was Mr Bultitude's firm. He was the sole equity partner and he was experienced. There was, in reality, no compelling reason for him to do what he did, and the sum of money involved was significant. False documents were created and continued to exist and, unlike in some cases there has not been any clear-cut evidence of restitution."

19.27 The Tribunal had to consider whether the Respondent realised that by the ordinary standards of reasonable and honest people that he was acting dishonestly.

19.28 In determining the question of dishonesty the Tribunal was not convinced by the Applicant's argument that the residual balances had been cleared off in order for the Firm to remain within its overdraft limit. There was a lack of evidence before the Tribunal that allowed it to reach this conclusion beyond reasonable doubt.

19.29 The Respondent had stated that the bills were raised as part of a "tidying-up" exercise. As part of that exercise in addition to the seventeen bills that formed the basis of allegation 1.2 a number of duplicate bills had been raised. This gave further weight to the conclusion that the Respondent did not consider the position at all in terms of whether or not bills should or should not be raised and whether monies were due to the Firm. The Respondent had also contradicted himself as to what had and had not been done as part of the "tidying-up" exercise. Had this been a genuine "tidying-up" exercise then an honest solicitor looking at his residual client balances and determining what could be billed would take steps to assure himself that the monies were due and would also have ensured that the bills were sent to the clients. The Respondent's then cashier had only worked for him for less than a year at the time of the misconduct. He could not have known what work the Respondent had done over previous years. The vast majority of the work the Respondent said had been done was not documented. The Respondent said much of it was in his head, which again the cashier could not have known.

19.30 If the Respondent had genuinely believed that the clients owed him money for work done he would have sent the bill to them with a covering letter explaining the bill or ensured the bill contained sufficient detail as to the work done and was sent. If the Respondent had in fact done more work than the monies held covered he could have billed for all the work done giving the client a credit on the bill for the monies held. None of the bills reflected that they were to be paid from monies held by the Firm, they all referred to an amount due.

19.31 The Tribunal in finding allegation 1.2 proved had found that the Respondent had not sent the bills he raised to his clients, that there was no proper justification for the bills and that the Respondent could not have been certain that he was entitled to these

sums. Indeed, by his own admission on one matter the wrong client had been billed. The Tribunal found that the Respondent must have realised that his actions would be considered to be dishonest by the standards of reasonable and honest people. The Tribunal considered that the Respondent had been very foolish in his actions and it was not clear what his motive had been. Both of these factors were however irrelevant in considering the test for dishonesty. Had the Respondent raised the invoices, sent them to the client and waited for a period for the client to respond with any challenge or queries before he transferred the monies the situation might then have been very different. The fact that he did not take any of these steps was very telling and he must have realised that in not doing these things he was acting dishonestly by the standards of reasonable and honest people. The subjective limb of the test was satisfied.

Previous Disciplinary Matters

20. There were no previous matters.

Mitigation

21. In his letter of 10 August 2016 Gary Christianson confirmed that the Firm ran in a state of compliance with the SAR for a number of years. Although the Respondent did not seek to resile from his responsibilities as the principal of the Firm, he was not made aware of the accounts problems until after the departure of the then cashier.

22. The Respondent appreciated that there was a problem as to the Firm's accounts, prior to the visit of the FIO in July 2015, and had already taken steps to restore the accounts to a fully compliant condition. Monies had already been repaid to clients where appropriate and progress was being made to bring the accounts and reconciliations up to date. The Respondent was mortified to find that the client account had a shortage and that the circumstances giving rise to the shortfall involved many small errors accumulating over a period. The Respondent's primary focus at all times was in providing a good service to his clients. He achieved that, as was evidenced by the lack of claims against the Firm and the low level of complaints experienced by the Firm. He did not take any money from client account that he did not believe he was entitled to take.

23. Prior to the investigation the Respondent had appointed a new book keeper and had agreed with her a course of action to bring matters back into shape. The new book keeper, Ms SJ, set about her task well and was of considerable assistance to the FIO in her investigation. There was no attempt to hide anything from the FIO and the Respondent believed the steps the Firm had in place showed his commitment to running the Firm properly. He accepted that he was ultimately responsible for the accounts but he had thought that the previous book keepers were doing a better job than they were

24. In his witness statement dated 3 July 2017 the Respondent had explained that since qualifying he had worked mainly as a matrimonial lawyer. Prior to setting up the Firm in 2005 he was a partner in a small local firm carrying out matrimonial work for primarily legally aided clients. After setting up the Firm he carried out private matrimonial work. His practice was small; he usually had a couple of fee earners and a part time book keeper working with him. The Respondent liked to think the work

carried out at the Firm was of a high standard, as was reflected by the good levels of client satisfaction which manifested itself in a steady stream of referrals of new clients from his previous clients. The Respondent's focus was very much on providing a good service to his clients.

25. The Respondent stated that he had contributed to the profession by training at least five solicitors and had a trainee at present. As to his current financial position, the Firm was trading profitably but the Respondent stated that if he were to be struck off he would immediately lose his sole source of income. The Respondent owned the house he lived in, which he estimated was worth about £400,000 and had a mortgage of £157,000. The Respondent supported his wife and their three children. He had no other savings or assets.

26. Mr Christianson accepted that he could not submit that there were exceptional circumstances in this case. Given the finding of dishonesty the Respondent's future employment and income prospects were uncertain.

Sanction

27. The Tribunal referred to its Guidance Note on Sanctions (5th Edition-December 2016) when considering sanction.

28. The Respondent was a sole practitioner who was the only person in the Firm who could operate the bank account. In connection with the allegation at 1.2 the Respondent's motivation for the misconduct appeared to be a desire to clear off old client balances. He had not given proper consideration to how this was done and could not blame the cashier. Given the small amount of money the Tribunal could not say that his motivation was financial. The Respondent's actions had been planned in so far as he had asked for a list to be prepared and he had signed the instruction to the bank. The Respondent had made a conscious decision. The Respondent had acted in breach of a position of trust. He had had direct control of or responsibility for the circumstances giving rise to the misconduct. The Respondent was an experienced solicitor who had run his own Firm for a number of years. Although the harm caused to the clients was temporary as the monies were ultimately repaid the clients were deprived of their funds for two and a half years. Although the Respondent had not deliberately misled the Regulator, and there had not been a "cover-up" the Respondent had maintained that the bills had been sent out when there was no evidence to support this assertion and he had not been believed. His culpability was high.

29. The Respondent had departed from the standards of complete integrity, probity and trustworthiness expected of a solicitor. A solicitor's client would expect the solicitor to deal with client money fairly and carefully and for small sums to be returned relatively promptly. Here the Respondent had initially transferred client monies to office account before repaying those monies to the client. There was harm to the reputation of the legal profession, client funds no matter how small the amount had to be safeguarded. The public should be able to trust solicitors to manage money. The Tribunal considered that whilst the Respondent had not intended any harm the harm that had arisen from his misconduct was reasonably foreseeable. Clients had been

deprived of their monies for a period of time, albeit, as far as the Tribunal was aware, there was no permanent financial loss to them.

30. Dishonesty had been alleged and proved. The misconduct was not repeated but the Respondent had realised what he was doing, so it was deliberate. The Respondent had maintained that the bills had been sent out but had provided no evidence to support this assertion and he had not been believed in this regard. He must have known, or ought reasonably to have known, that the conduct complained of was in material breach of his obligations to protect the public and the reputation of the legal profession. These were all aggravating factors that the Tribunal took into account in determining sanction.

31. The relevant mitigating factors were that once the FIO inspection was underway the loss to the clients was made good. Additionally, the misconduct was a single episode in a previously unblemished career. Whilst the Respondent had not demonstrated any insight he had co-operated with the FIO and had made admissions in respect of allegations 1.1, 1.3 and 1.4. He had also taken significant steps to rectify his accounts both prior to and during the SRA's investigation.

32. Although the Tribunal commenced its consideration of sanction with No Order the Tribunal was mindful that where an allegation of dishonesty had been proved this would almost invariably lead to striking off, save in exceptional circumstances. Given the findings of dishonesty and lack of integrity No Order, Reprimand, Fine and Restriction Order were not sufficient sanction.

33. Dishonesty involving client funds had been proved. The Tribunal did not consider that suspension provided the appropriate protection to the public or the reputation of the profession.

34. The Tribunal considered that this was a sad case and recognised that the consequences of the imposition of a strike-off for the Respondent would be significant. However, the need to maintain the trust that the public placed in the profession and the provision of legal services was paramount. If the Tribunal did not strike the Respondent off there was risk of harm to the public, not from the Respondent who the Tribunal considered would have learnt his lesson, but from the message that would be sent to the profession that it was acceptable to help oneself to small amounts of client money if subsequently it was re-paid. Client money was sacrosanct and had to be safeguarded. Public confidence in the legal profession had to be maintained.

35. There was no evidence put before the Tribunal of exceptional circumstances. Accordingly, the Tribunal determined that the appropriate sanction was for the Respondent's name to be struck off the Roll of Solicitors.

Costs

36. Mr Bullock and Mr Christianson explained that in light of the Tribunal's comments about costs that had been made at the previous case management hearing there had been discussions between the parties. Costs had been agreed in the sum of £21,000.00.

37. The Tribunal noted that the costs schedule dated 17 July 2017 was for a total sum of £38,064.91, including £31,404.61 in respect of the costs of the FIR. Given the amount claimed and the agreement reached the Tribunal did not assess costs as it did not consider it necessary to seek to go behind the parties' agreement. The Tribunal ordered that the Respondent pay costs in the agreed sum of £21,000.00.

38. As an aside the Tribunal noted that the breakdown of the work undertaken by the FIO was quite difficult to understand. Mr Bullock acknowledged that this was not the first time that this issue had been mentioned and he would relay this comment to those responsible for such schedules.

Statement of Full Order

39. The Tribunal Ordered that the Respondent, VERNON JAMES BURKE, 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 agreed in the sum of £21,000.00.

Dated this 7th day of August 2017
On behalf of the Tribunal

Jane Martineau

J Martineau
Chairman