SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11672-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

IAN JAMES DOUGLAS First Respondent

[SECOND RESPONDENT] Second Respondent

Before:

Mr D. Green (in the chair)
Mr T. Smith
Dr S. Bown

Date of Hearing: 19 December 2017

Appearances

Giles Wheeler, Counsel, Fountain Court Chambers, Fountain Court, Temple, London EC4Y 9DA (instructed by Alastair Willcox, Solicitors Regulation Authority), for the Applicant.

Jonathan Oultram, the First Respondent's friend, was permitted by the Tribunal with the explicit consent of the First Respondent, the Applicant, and the Second Respondent to provide mitigation on behalf of the First Respondent. The First Respondent attended the hearing in person until 13:00 hours on 19 December 2017.

Saima Hanif, Counsel, 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD (instructed by Anthony Sebastian, Sebastians Solicitors) for the Second Respondent.

JUDGMENT

Allegations

1. The allegations were as follows:

Against Both Respondents

1.1 The Respondents, at all material times of Cook & Partners of 241 Lower Addiscombe Road, Croydon, Surrey, CRO 6RD ("the Firm"), caused or permitted:

1.1.1 unauthorised debit balances in the sum of £423,239.92 to exist on client account as at 31 August 2015; and

1.1.2 a client account shortage in the sum of £725,433.23 to exist as at 18 March 2016; and

1.1.3 a client account shortage in the sum of £999,336.06 to exist as at 8 April 2016 (amended by consent on 19 December 2017);

in breach of Rule 20.6 of the SRA Accounts Rules 2011 ("SAR") and in breach of all or alternatively any of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the Principles").

1.2 Between September 2015 and March 2016, made unallocated transfers from client account to office account totalling £302,193.31 in breach of Rule 1.2(a) and (c) and Rules 20 and 21.1 of the SAR and in breach of all or alternatively any of Principles 2, 4, 5, 6 and 10 of the Principles.

1.3 The Respondents failed to carry out adequate client account reconciliations or at all and failed to maintain proper accounting records and systems and books of account for the period 1 September 2015 to 8 April 2016 in breach of Rules 29.12, 29.13, 1.2(e) and 1.2(f) of the SAR and in breach of all or alternatively any of Principles 2, 4, 5, 6 and 10 of the Principles.

1.4 The Respondents failed to rectify breaches promptly on discovery in breach of Rule 7.1 of the SAR and in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the Principles.

1.5 The Respondents failed to run their business or carry out their roles in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of all or alternatively any of Principles 2, 4, 5, 6 and 8 of the Principles and failed to achieve Outcome 7.4 of the SRA Code of Conduct 2011 ("the Code").

1.6 The Respondents failed to protect client money and assets in breach of all or alternatively any of Principles 2, 4, 5, 6 and 10 of the Principles, and failing to achieve Outcome 7.4 of the Code.

Allegations against the First Respondent only

1.7 In his capacity as the Compliance Officer for Finance and Administration ("COFA") of the Firm at the material time, the First Respondent did not report the breaches of the SAR set out in this Statement to the SRA, in breach of Rule 8.5 of the Authorisation Rules 2011 ("AR") and in breach of all or alternatively any of Principles 2, 7 and 8 of the Principles, and thereby failing to achieve Outcome 10.3 of the Code.

1.8 From November 2015 to March 2016, the First Respondent carried on business as a sole practitioner without first making the necessary application to the SRA for recognition as such in breach of Rule 25 of the AR and Rule 1.1(a) of the SRA Practice Framework Rules 2011 ("PFR") and in breach of all or alternatively any of Principles 7 and 8 of the Principles.

Allegation against the Second Respondent only

1.9 In his capacity as the Compliance Officer for Legal Practice ("COLP") of the Firm at the material time, the Second Respondent did not report the breaches of the SAR, AR and PFR set out in this Statement to the SRA, in breach of Rule 8.5 of the AR and in breach of all or alternatively any of Principles 2, 7 and 8 of the Principles, and thereby failing to achieve Outcome 10.3 of the Code.

2. In addition, in relation to allegations 1.1 and 1.2, it was further alleged that the conduct of the First Respondent was dishonest. However, dishonesty was not an essential ingredient of the allegations against him.

Documents

3. The Tribunal reviewed the following documents submitted by the Applicant and the Respondents (in addition to Standard Directions, Memoranda and other procedural documents):

Applicant

- Application and Rule 5 Statement with exhibit "AHJW1" dated 28 June 2017;
- Witness statement of Sarah Taylor dated 20 November 2017;
- Witness statement of Neil Alexander Sharman dated 23 November 2017;
- Updating report from the SRA Compensation Fund as at 7 December 2017;
- Schedules of Costs as at 28 June 2017 and from 29 June to 11 December 2017;
- Bundle of Authorities.

First Respondent

- First Respondent's Answer to the Rule 5 Statement dated 3 October 2017;
- Letter from First Respondent to Alastair Willcox dated 26 November 2017;
- First Respondent's Witness Statement (undated);
- "To Whom It May Concern" letter from the First Respondent's doctor dated 30 October 2017;

- Personal Financial Statement dated 15 December 2017.

Second Respondent

- Second Respondent's Answer to the Rule 5 Statement dated 14 August 2017;
- Second Respondent's Amended Response dated 20 September 2017;
- Second Respondent's Witness Statement dated 4 December 2017;
- Statement of Agreed Facts and Admissions in Relation to the Second Respondent (undated);
- Statements of Means dated 20 November 2017 and 19 December 2017.

Preliminary Matters

4. The Applicant requested the Tribunal's permission to withdraw the allegation of dishonesty made in the Rule 5 Statement against the Second Respondent with the latter's consent. After reviewing the case, the Applicant no longer considered that it had sufficient evidence to prove the allegation. The First Respondent did not oppose the application. The Tribunal gave its permission for the allegation to be withdrawn.

5. Allegation 1.1.3 was amended by consent to reduce the client account shortage as at 8 April 2016 to £999,336.06 (see also paragraph 8.3 below).

Factual Background

6. The Second Respondent was born in February 1953 and admitted to the Roll of Solicitors on 1 July 1978. He founded the Firm in 1981. The Second Respondent does not hold a current Practising Certificate, it having been suspended when the SRA intervened into the Firm on 8 April 2016. The First Respondent was born in November 1964 and admitted to the Roll of Solicitors on 15 February 1991. He does not hold a current Practising Certificate, it too having been suspended on intervention. The Second Respondent sold the Firm to the First Respondent in May 2008. The First Respondent became the Firm's sole equity partner. The Second Respondent remained at the Firm as a salaried partner until 27 November 2015 when he resigned as a partner but continued as a consultant. He was also the Firm's COLP following his resignation. The First Respondent was the Firm's COFA throughout the material time.

7. The SRA commissioned a forensic investigation into the Firm. Sarah Taylor, the Forensic Investigation Officer ("Ms Taylor"), began her inspection on 22 March 2016. She interviewed both Respondents on 23 March 2016. The First Respondent told Ms Taylor at the outset of the investigation that there were debit balances on client account of approximately £270,000. Ms Taylor was informed by the Firm's bookkeeper that the last client account reconciliation had occurred in August 2015 and that since then there had been transfers from client account to office account which were unallocated and which exceeded the bills issued. Ms Taylor prepared an Interim Report dated 24 March 2016 and concluded her investigation with a Final Report dated 22 December 2016.

Summary of Allegations against the First Respondent

8. Allegation 1.1

8.1 On 22 March 2016, Ms Taylor identified the existence of a cash shortage of £725,433.23 made up as follows:

Client cash shortage as at 31 August 2015:	£423,239.92[1]
Unallocated transfers from client to office account:	£302,193.31
	£725,433.23

8.2 In the Final Report Ms Taylor recorded that as at 8 April 2016 the cash shortage was £1,011,923.06 made up as follows:

Client cash shortage as at 8 April 2016:	£372,561.20
Suspense payments (ex. client to office transfers):	£235,512.84
Unallocated transfers from client a/c to office a/c:	£320,092.80
Suspense ledger brought forward:	£83,756.22
	£1,011,923.06

8.3 On 15 June 2017, Mr Sharman reported that as at 8 April 2016 the shortfall on client account was £999,336.06.

9. Allegation 1.2

9.1 Between September 2015 and March 2016, unallocated transfers of £302,193.31 were made from client account to office account.

9.2 For example, the Firm acted on Mr CJ's probate matter. On 7 January 2016, probate was granted for a gross amount of £364,702 with net value of £212,933. On 9 December 2015, the First Respondent wrote to CJ's son to say that the probate process was "rumbling along" and that there was no Inheritance Tax to pay. Ms Taylor reviewed the ledger and noted that as at 23 July 2015 the credit balance was £666.01[2]. The Intervention Agents later recreated the ledger and found that as at 8 April 2016, the Firm should have been holding £285,755.77 for this matter. The total of client account cash held by the Firm for all of its client matters was £224,063.64. The liabilities on CJ's matter therefore exceeded all of the cash held by the Firm for clients. As at 7 December 2017 total payments had been made by the SRA Compensation Fund in respect of all claims in relation to the Firm of £902,668.02.

9.3 The First Respondent told Ms Taylor during interview that he authorised the client to office account transfers. He checked the file to see if it was appropriate to take a bill. He would normally ask for the bill to be typed up and then sent out to the client but he could not guarantee that this had happened. He accepted that it was his

[1] The figure of £423,239.92 was extracted from the Firm's August 2015 client ledger reconciliation. The overdrawn figure taken from the client ledgers was £422,939.92. The difference between the figures was £300. The reason for the difference was not known.
[2] Incorrectly shown as £6,660.01 in the Rule 5 Statement.

responsibility if the bill had not gone out. When asked about the amount of the unallocated transfers, the First Respondent replied:

> "Well again, again because I'm behind I haven't had, I haven't gone through all the files. Not all the files necessarily have - it maybe that there's a file that's fine, waiting to be billed and hasn't been billed and I don't, you know I'm the one that seems to sit down and go through the bills to try to keep the accounts or to do the billing to justify the monies that have gone over."

The First Respondent agreed that client money could not be transferred until written notification or bills had been delivered, and that the unallocated transfers were improper withdrawals. He accepted that the office had personally benefitted from client monies. He observed that, in the absence of clients saying that they had not had their money, he did not understand how the shortfall figure of over £700,000 had been reached. The First Respondent accepted that round sum transfers from client to office account did not comply with the requirement to be able to identify a specific matter to which the withdrawal related. In his witness statement, the First Respondent accepted responsibility for the transfer of the funds on a daily basis. He encouraged the Tribunal to look at the background to the transfers. He tried to ensure that the Firm had funds to transfer but accepted that in light of the figures it was obvious that it did not. He described his personal circumstances that were, in his words, causing him to act like "an automaton".

10. Allegation 1.3

10.1 At the time of the investigation a reconciliation (which was unsigned) had been carried out by the Firm for August 2015. The most recent signed reconciliation was for June 2015.

11. Allegation 1.4

11.1 On 22 March 2016, Ms Taylor found a shortage on client account of £725,433.23. Neither Respondent had taken any steps to remedy the shortfall in accordance with their respective obligations (the Second Respondent's responsibility continued up to his resignation as a partner in November 2015). Ms Taylor asked the Respondents if they could replace the shortage if clients wanted their money back immediately. The First Respondent said that he would have to "try and work out where the money would come from". He would not be able to replace the shortfall personally if the Firm was closed on that day. He would hope to be able to pay some money back but not the full figure of £700,000 which he described as "astonishing". He said "I haven't got £700,000 or anything like it". The shortfall had not been remedied by either Respondent as at the date of the hearing.

12. Allegations 1.5 and 1.6

12.1 At the time of these events the First Respondent was a solicitor of 24 years' post-qualification experience and the Firm's COFA. Client account reconciliations had not been carried out. Proper accounting records were not maintained. The cash shortage could not be replaced. The First Respondent did not report the deficiencies

in the accounts and the breaches to the SRA. The SRA Adjudication Panel on 7 April 2016 decided to intervene into the practice to protect client money.

13. Allegation 1.7

13.1 As the Firm's COFA, the First Respondent was responsible for taking all reasonable steps to ensure compliance with the SAR and the Code. The First Respondent did not report the breaches to the SRA.

14. Allegation 1.8

14.1 Following the Second Respondent's resignation in November 2015, the First Respondent did not make an application to the SRA for temporary emergency authorisation nor, subsequently, recognition as a sole practitioner as he should have done. During interview, the First Respondent said that he had assumed that it was unnecessary to make the application because the Second Respondent was a consultant at the Firm. He described this as "naivety" on his part and said that he would make an immediate application for authorisation as a sole practitioner.

15. Allegation 2 Dishonesty – Allegations 1.1 and 1.2

15.1 It was alleged by the Applicant that in respect of allegations 1.1 and 1.2 the First Respondent's conduct was dishonest. The test for dishonesty applied by this Tribunal was that considered in the Supreme Court decision of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67, per Lord Hughes JJSC at [74]:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

Summary of Agreed Facts and Admissions – Second Respondent Only

16. The Second Respondent and the Applicant agreed facts (summarised briefly at paragraphs 17 – 21 below), and the Second Respondent made admissions. The "Statement of Agreed Facts and Admissions" is reproduced in full at Appendix 1, save for one redaction at paragraph 12 to remove the Second Respondent's current home address in compliance with Solicitors Disciplinary Tribunal policy. The First Respondent was not a party to the agreement but he did not dispute the facts agreed.

17. In 2008 the Second Respondent employed the First Respondent as a locum solicitor. In May 2008, the Second Respondent sold the equity in the Firm to the First Respondent. As part of the agreement and to ensure a smooth and orderly handover in the run-up to his retirement, the Second Respondent agreed to work as a salaried partner in the Firm for 5 years.

18. As the sole equity partner the First Respondent took full control of the Firm's financial matters, including matters relating to client accounts. The Firm's bookkeeper reported to the First Respondent. The Second Respondent remained the COLP. In the vast majority of the Second Respondent's cases, he did not take monies on account. He often carried out his work on a fixed fee basis. In respect of any matters which were not carried out on a fixed fee, the Second Respondent recorded the time spent on the file, and the First Respondent billed for the work. This arrangement was requested by the First Respondent, who believed that, as the sole equity partner, he should be responsible for all financial matters, including billing. The Second Respondent did not object. Accordingly, at all times the First Respondent had full control of the Firm's financial affairs.

19. A notice was placed in the London Gazette informing the reader that the Second Respondent was no longer a partner of the Firm and that the sole proprietor was the First Respondent. The Second Respondent continued as a consultant and remained the COLP, working 2½ days a week on average.

20. At the time of the Second Respondent's resignation in November 2015:

- There was a debit balance on the Firm's client account of £423,239.92 as at 31 August 2015;
- There were further unallocated transfers from the client account to the office account of £48,591 in September and £23,564.96 in October 2015;
- The Firm benefitted from the transfers of client money into its office account;
- There were no client account reconciliations after 31 August 2015;
- No steps were taken to rectify the shortfall on client account.

21. To the extent that there continued to be breaches of the SAR from 27 November 2015 onwards the Second Respondent bore minimal responsibility for the same. He accepted that he remained the Firm's COLP from November 2015 onwards, even though he had specifically asked the First Respondent in his resignation letter to notify the SRA accordingly.

22. The remaining facts are set out in Appendix 1. The Applicant accepted the explanation given by the First Respondent that he had full control of the books of account and the Second Respondent had nothing to do with them. The Second Respondent admitted that he did not, in his capacity as COLP, report the deficiencies in the accounts and the breaches to the SRA, because he was not at the time aware of the deficiencies.

Steps Leading to these Proceedings

23. The SRA wrote to both Respondents on 30 March 2016, attaching a report recommending intervention into the Firm. Neither Respondent provided any representations or submissions in response at that stage. The decision to intervene in the Respondents' respective practices was made by the SRA's Adjudication Panel on 7 April 2016, at the same time as the decision to refer their conduct to this Tribunal. Proceedings were received by the Tribunal on 29 June 2017, over 14 months after the decision to refer had been made by the SRA.

Witnesses

24. None.

Findings of Fact and Law

25. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

26. The amended allegations having been set out in detail at paragraphs 1 and 2 above and, in relation to the Second Respondent only, at paragraph 8 of the Statement of Agreed Facts and Admissions at Appendix 1, it is unnecessary to repeat the same here.

27. The First Respondent admitted all allegations made by the Applicant, including breaches of the pleaded Accounts Rules, Principles, Outcomes, the Authorisation Rules, and the Practice Framework Rules. The First Respondent also admitted dishonesty in relation to the admitted breaches at allegations 1.1 and 1.2.

28. The Second Respondent admitted the allegations within limits which were accepted by the Applicant as set out at paragraph 8 of Appendix 1. In summary, he admitted breaches of the pleaded Accounts Rules, Principles, and Outcomes, save as otherwise indicated:

- allegation 1.1 to the extent that he permitted unauthorised debit balances of £423,239.92 to exist on client account as at 31 August 2015 (particular 1.1.1 only);

- allegation 1.2 to the extent that unallocated transfers were made (but not that the Second Respondent made them) during the period 1 September 2015 to 27 November 2015 when he ceased to be a partner. The amount transferred in September was £48,591 and in October £23,564.96. The total amount transferred of £302,193.31 was also agreed;

- allegation 1.3 for the period 1 September 2015 to 8 April 2016 to the extent of the period when he was a partner;

- allegation 1.4, save that he did not admit breach of Principle 5;

- allegations 1.5, 1.6, and 1.9 were admitted as pleaded.

29. The Tribunal had carefully read and reviewed all the documentary evidence in detail prior to the commencement of the hearing. The Tribunal had been referred by Mr Wheeler to the case of Weston v The Law Society (1998) Times, 15 July, in which the then Lord Chief Justice Of England, Lord Bingham of Cornhill, referred to the need for "anyone holding anyone else's money to exercise a proper stewardship in relation to it". The admissions by both Respondents were properly and appropriately made by them and accepted by the Applicant. The Tribunal therefore found the admitted allegations proved by the Applicant against the Respondents beyond reasonable doubt.

Previous Disciplinary Matters

30. At a hearing on 23 September 2014 a different Division of the Tribunal found 8 allegations proved against both Respondents. Each was ordered to pay a fine of £7,500 and costs of £15,000 on a joint and several basis. The allegations involved breaches of the Accounts Rules 1998 including, amongst other things: (1) failure to remedy breaches promptly upon discovery; (2) the transfer of money from client account on account of fees without first sending the client written notification of costs and withdrawal of client money from client account otherwise than in accordance with the Accounts Rules; (3) withdrawal of client money from a general client account in excess of funds held; and (4) failure to carry out reconciliations of client account.

Mitigation

First Respondent

31. Mr Oultram provided assistance in relation to mitigation on behalf of the First Respondent as follows:

- He had known the First Respondent since 1984. They were part of a close-knit group of college friends who had stayed in touch. Members of the group had been ready to provide references, and in one instance to delay his return overseas, in order to support the First Respondent at this hearing. Mr Oultram was present to express the group's views direct to the Tribunal.

- The First Respondent recognised that this was "a day of reckoning". Coming to court to face the process had appeared at one point during the morning to be too difficult for him. Mr Oultram hoped the Tribunal would share his respect for the First Respondent for ultimately finding the courage to attend.

- In keeping with people from all walks of life, the First Respondent is suffering from depression and difficulties with alcohol but did not put this forward as an excuse for his misconduct. It had been suggested by Mr Wheeler in his opening submissions that the Second Respondent should have been aware of the difficulties that the First Respondent was facing. Mr Oultram related this to his own experience of being completely unaware of what was going on in spite of the

fact that he saw the First Respondent regularly. The First Respondent appeared to be coping with his difficulties to such an extent that they were not apparent to Mr Oultram. The First Respondent is always first to step forward to help others within his group with their difficulties. On this occasion it appeared that he did not have the strength or ability to tell his friends that he was in a dreadful state with his accounts so that they could help him, and advise him that what he was doing to get by was not the solution.

- The First Respondent had come, with horror, to realise the extent of his dishonesty. Mr Oultram commented on the "starkness and brutality of the disciplinary process" in terms of the setting out of the facts. There appeared to be "a lack of understanding and ability" to deal with solicitors when they were suffering from depression. Mr Oultram had become aware of difficulties that the First Respondent was facing in his home life. The signs of depression were not always easy to pick up and it was not possible to tell someone suffering from depression to "get on with it". It took the First Respondent 3 days to open up about the allegations to Mr Oultram. When he did so, just as in his SRA interview, he said that he did not recognise the figures quoted. He was "astonished" at the level of money involved; the figures were double what he had anticipated. The First Respondent did not buy expensive cars and holidays or line his own pockets. The money kept the business going. He was "almost living in a fantasy world".

- At the beginning of 2017 Mr Oultram contacted the Applicant, and there came a point when he was able to speak to Mr Willcox (who he described as having been "completely fair" and having assisted at every level). This was in contrast to Mr Oultram's initial contact with the Applicant when there seemed to be a lack of understanding of the extent of the First Respondent's depression. Mr Oultram had therefore acted as a filter for correspondence to enable the First Respondent to cope. Mr Oultram described himself as impressed with the way in which the First Respondent had dealt with the proceedings, knowing how difficult it was for him to face up to a horrendous situation and wrongdoing on his part. That in itself had been a punishment.

- The Chairman provided clarification for Mr Oultram and the First Respondent. The Tribunal had not reached any decision on what the sanction should be in this case. In this jurisdiction the recognised sanction for dishonesty was strike off. The Chairman asked Mr Oultram whether his mitigation for the First Respondent was intended to establish the existence of exceptional circumstances in support of a lesser sanction. Mr Oultram was frank in stating that he was not instructed by the First Respondent to suggest that there were exceptional circumstances and that he did not believe that he was able to make that suggestion. The First Respondent had known for some time that strike off was the only option open to the Tribunal. The First Respondent's opinion was that no matter what Mr Oultram said or how well he said it, the First Respondent would not get over the bar of exceptional circumstances. It was however important that what happened to the First Respondent giving rise to the situation was put within the Tribunal's knowledge.

- The First Respondent's best mitigation was that he admitted the allegations immediately. It could be said that the First Respondent was playing down the extent of the figures during his interview. Nothing could be further from the truth. The First Respondent's horror was that he had committed the misconduct and his fear was that the figure might amount to £500,000. This fear was compounded when the figure was closer to £1 million. The First Respondent said that he was acting as "an automaton". He was making bad decisions fighting on his own and was not keeping track. He ran out of control. The extent of his drinking was not obvious to others. He had sought to protect his family by limiting the information given to them. On a more positive note, the First Respondent had now engaged with his general practitioner. He is waiting to commence a treatment programme. He is returning telephone calls and keeping in touch with his friends.

- The First Respondent is not in receipt of any income and is relying upon the finite funding of friends and family. Following these proceedings his next step will be to obtain benefits. In Mr Oultram's opinion, the First Respondent will be fit to work at some point but he could not say when and he is not fit for work now.

- After the discussion on costs, dealt with below, Mr Oultram asked the Chairman for information concerning the timetable for delivery of the Tribunal's decision. The Chairman explained that after hearing from Ms Hanif, the Tribunal would retire to consider its decision on sanction and costs. The Chairman would make a short announcement of the decision and detailed reasons would follow in the Tribunal's written Judgment. Mr Oultram invited the Tribunal to release both the First Respondent and himself so that they could discuss certain personal matters. Mr Oultram offered to leave his telephone number so that he could be contacted, if necessary, to deal with any arising matters. He expressed himself to be unwilling to leave the First Respondent alone at the hearing. The Chairman explained that the First Respondent did not have to be present if he was happy for Mr Oultram to be present on his behalf.

<u>Second Respondent</u>

32. Ms Hanif provided mitigation on behalf of the Second Respondent as follows:

- The Second Respondent accepted the seriousness of the allegations and the case law. The Tribunal must consider the facts of each case. In this instance strike off was not an appropriate sanction. The facts did not fall within the category of cases where such an outcome was consistent with the public interest.

- The Second Respondent's position was very different to that of the First Respondent. The First Respondent was responsible in practice for the operation of the Firm's financial matters including client account. The Second Respondent resigned from 27 November 2015 onwards and his responsibilities fell away at that stage save in respect of his duties as the COLP thereafter. He did not take monies on account: work was done and billed before money was taken from clients. The First Respondent's cases were those where money was taken on account. In the Second Respondent's non-fixed fee cases, he recorded his time and the First Respondent billed for the work. The Second Respondent had minimal responsibility for breaches of the SAR from

27 November 2015 onwards. The First Respondent accepted that it was he alone who authorised the client to office account transfers. It was accepted by the Applicant that at the time the Second Respondent was not aware of the deficiencies in the accounts which was why he did not report them to the Applicant in his capacity as the COLP.

- The Second Respondent left financial matters to the First Respondent. With hindsight, such faith was naive and a position that the Second Respondent ought not to have taken. There was no personal gain or benefit and no monies went to him. There was no egregious motivation identified for his misdemeanour. The Second Respondent was as much a victim of what happened as the clients. He placed, not unreasonably, a high degree of trust in the First Respondent. When considered against the background of the substantive change in the way the Firm operated on the Second Respondent's resignation from the partnership that was not an unreasonable position to adopt.

- The Second Respondent currently worked as a part-time receptionist on a modest income. He had accepted that he did not want to return to professional practice and that, at the age of 64, his professional career had come to an end. He had been punished enough by virtue of these proceedings. He had hoped at some stage to retire in very different circumstances. He now found himself in a situation where on a good case scenario he continues as a part-time receptionist and on a bad case there are a series of liabilities which he cannot pay. Strike off was not necessary to achieve the deterrent purpose of sanction, which could be met by means of an indefinite suspension from practice. That sanction would send out the correct message that even unwitting breaches of the Accounts Rules were taken seriously by the Tribunal. No behaviour of this type will be repeated following the Second Respondent's acceptance that he will not return to professional practice. There were no allegations of dishonesty against him and the reputation of the profession as a whole would be upheld by the imposition of an indefinite suspension.

- Imposition of a fine would not be appropriate because the Second Respondent could not pay the same. An indefinite suspension would be an adequate penalty. There was no further regulatory objective to be achieved by imposing a fine which would lead to the Second Respondent's bankruptcy and recourse to benefits which was not in the interests of anyone. Alternatively, only a modest fine should be imposed.

- Ms Hanif referred to the Second Respondent's revised Schedule of Means dated 19 December 2017. In summary, the Second Respondent is left with approximately £3,000 per annum once his living expenses are deducted from his income from all sources. The office was recently sold. Once Capital Gains Tax ("CGT"), and debts to the Inland Revenue, credit card companies and a contractor had been paid, the remaining balance in cash was £34,000. From that figure the Second Respondent had to pay £18,000 for outstanding legal fees. This left £16,000 from which to pay personal credit cards and bank loans, Firm utility and telephone bills and the office overdraft, thus wiping out the figure. The Second Respondent would be left with property assets, the value of which was outweighed by outstanding liabilities including the Firm's practice loan and the

possible cost of run-off insurance cover. A downturn in the economy was predicted which could result in the nosediving of property values.

Sanction

33. The Tribunal referred to its Guidance Note on Sanctions (5th Edition) December 2016 when considering sanction. All mitigation submitted on behalf of each Respondent was carefully considered even if not specifically detailed below. The Respondents could safely assume that the Tribunal took into account all that was written and said on their behalf.

34. First Respondent

34.1 The First Respondent had admitted 8 separate allegations, including numerous breaches of Accounts and other Rules and Principles and, in particular, acting without integrity and with dishonesty. The Tribunal was mindful during its deliberations of the words of the Lord Chief Justice in the case of Weston (above):

> "…the Accounts Rules exist to afford the public maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording this protection and assuring the public that such protection is afforded, an onerous obligation is placed on solicitors to ensure that the Accounts Rules are observed. That is a duty which binds solicitors, quite apart from a duty to act honestly and in accordance with the duties of a trustee."

34.2 **Culpability (responsibility for fault or wrong), including harm.** The First Respondent was motivated by his desire to keep the Firm afloat. The continued existence of the Firm was of direct financial benefit to the First Respondent. Once he had embarked on a decision to use client money for that purpose the downward spiral was rapid and devastating. His actions were planned and continued over a significant period. The First Respondent acted in breach of a position of trust as his clients' legal adviser. Some of the money used came from Estates, directly exploiting the trust and vulnerability of beneficiaries. The First Respondent had direct control of and responsibility for the circumstances which gave rise to the misconduct. He was solely and directly responsible for the financial management of the Firm and its client accounts. The First Respondent was a solicitor of over 24 years' post-qualification experience. The harm caused by his misconduct was considerable. As at 7 December 2017, claims on the SRA Compensation Fund amounted to £902,668.02, represented by 40 individual payments. The First Respondent's misconduct had a direct impact on those who made those claims in terms of increased stress, work, and inevitable delay to prove their entitlement. Individual solicitors contribute to that Fund by means of a payment included in their Practising Certificate fees. The majority of solicitors are scrupulously honest and treat client funds with the utmost care and respect. Those solicitors have been indirectly affected by the payments out of the Fund, potentially increasing their individual burden in future. The damage to the reputation of the profession by misconduct involving the misuse of client money is significant and inevitably diminishes the level of trust that the public perceives it can place in solicitors. At a time when there is concern about the ability of the public, and in particular vulnerable individuals, to access legal services in a cost-effective way,

the potential reputational damage is particularly high. The First Respondent might reasonably have foreseen that such harm would be caused, not least because he had already appeared before the Tribunal in September 2014. One would have expected the risks and consequences attached to breaches of the Accounts Rules to be at the forefront of his mind in 2015 when these events occurred.

34.3 **Aggravating Factors.** The First Respondent was dishonest and he admitted the same. His misconduct was deliberate, calculated and repeated, and it continued over a period of time. The First Respondent took advantage of vulnerable people. The bereaved were entitled to expect the administration of Estates by solicitors to be managed honestly and for Estate monies to be carefully preserved and protected pending distribution. The First Respondent concealed his wrongdoing from the SRA, flouting his responsibilities as the Firm's COFA. He kept his misconduct hidden from the Second Respondent, breaching the latter's trust. The First Respondent knew or ought reasonably to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession. The importance of the Accounts Rules was evident to him from his previous appearance before the Tribunal. That previous appearance was of itself an aggravating factor. The extent of the impact on those affected by the misconduct is explored above in relation to payments out of the Compensation Fund. The First Respondent was unable to make good the harm that he had caused by repaying any of the misappropriated sums which had been ploughed into the Firm and which had disappeared largely without trace.

34.4 **Mitigating Factors.** The Tribunal gave the First Respondent some credit for his admissions at an early stage, which reduced the ultimate cost of the proceedings and therefore the burden on the profession. The First Respondent was frank with Ms Taylor during the course of her investigation, although as the accounting records were not there to be inspected, he had no option but to be open. The Tribunal also accepted from Mr Oultram that it had taken courage for the First Respondent to attend the hearing.

34.5 As explained by the Chairman to Mr Oultram, it is well established that the starting point for sanction where dishonesty had been found proved is strike off. Mr Oultram fairly relayed the instructions of the First Respondent not to put forward any exceptional circumstances to seek to justify a lesser sanction. The Tribunal recognised the First Respondent's insight in that regard. There were no exceptional circumstances in this case. The only sanction that could be imposed upon the First Respondent in light of all that was said above and where the misconduct was at the very highest level was to strike his name off the Roll of Solicitors immediately. This outcome was necessary for the protection of the public and in order to maintain the confidence of both the public and the profession in the reputation of solicitors for complete integrity, probity and trustworthiness.

35. <u>Second Respondent</u>

35.1 The Second Respondent had admitted 7 separate allegations including numerous breaches of Accounts and other Rules and Principles and in particular breach of Principle 2, acting without integrity. There was no allegation of dishonesty against the Second Respondent. The Tribunal was mindful that the Second Respondent had

agreed a Statement of Facts and Admissions with the Applicant. The Tribunal used that Statement as its framework for considering sanction.

35.2 **Culpability, including harm.** The Second Respondent ceased to be a partner in the Firm on 27 November 2015. He was the COLP thereafter and had responsibility which he admitted, to ensure compliance with the Code and the Accounts Rules including the reporting of breaches of the latter, the Authorisation Rules and the Practice Framework Rules to the SRA. The First Respondent was responsible for all the Firm's financial matters and transactions. The Second Respondent had, to a significant degree, abdicated his responsibilities in respect of the Firm's financial management. He did not do what he should have done in terms of keeping his eye on the ball. His Counsel said that, with hindsight, he was naive, and that he placed too much trust in the First Respondent. Whatever the reason for his behaviour, he had duties, initially as a partner and later as the COLP, to ensure compliance by the Firm, including the First Respondent, with the requirements of the rules. Instead he kept his eyes closed, demonstrating a surprising lack of curiosity in how the Firm, which he had founded, was being managed. The Tribunal did not speculate on the Second Respondent's motivation for behaving in this way in the absence of evidence on the point. The Second Respondent acted in breach of a position of trust as a partner in the Firm and then the COLP. He was a very experienced solicitor, having been on the Roll since 1978, and was considerably more experienced than the First Respondent. The harm caused was similar to that arising from the First Respondent's actions, and in particular the claims on the SRA Compensation Fund. The Second Respondent's culpability was less than that of the First Respondent; he had no direct control over the financial management of the Firm or client monies. He was however culpable in terms of having failed catastrophically in respect of his fulfilment of his responsibilities as the COLP. The Second Respondent's role was to act as the check and balance on the First Respondent's behaviour. His failure to do so facilitated the First Respondent's actions. His timely intervention could have limited the damage by stopping the First Respondent either directly or indirectly by involving the SRA. Clients of the Firm were entitled to expect much more from him in the COLP role. The harm caused by the Second Respondent's misconduct, particularly in terms of damage to the reputation of the profession, was considerable. It was reasonably foreseeable that there would be a high risk of misappropriation of client money and consequent damage if the Second Respondent did not take his duties as a partner and COLP seriously. The Second Respondent had also had a previous appearance before the Tribunal, alongside the First Respondent, in relation to Accounts Rules breaches. Given that in September 2014 the Second Respondent had problems with the First Respondent in that regard, these should have alerted him to what could go wrong and heightened his vigilance. The Second Respondent was on notice of the risks which he chose to ignore.

35.3 **Aggravating Factors.** The Second Respondent's failure to act was repeated and continued over a significant period of time. It had already been identified that his misconduct was such that he knew or ought reasonably to have known that it was in material breach of obligations to protect the public and the reputation of the legal profession. Reference has already been made to the appearance before the Tribunal when Accounts Rules breaches were found proved and a £7,500 fine plus £15,000 costs order imposed on the Second Respondent. The extent of the impact on those

affected by the misconduct was great as indicated above in relation to the First Respondent.

35.4 **Mitigating Factors.** The Tribunal recognised that the Second Respondent did not have control of the accounts and was not responsible for the unallocated transfers from client account to office account. The Second Respondent had not been informed of the financial facts by the First Respondent and to that limited degree the former was deceived by the latter. If the Second Respondent had been more watchful over the Firm's compliance and more assertive with the First Respondent as he was tasked to be in his role as the COLP the First Respondent could not have continued with his misconduct for as long as he did. The Second Respondent had made some early admissions for which he was given credit. He had also attended the hearing with his Counsel and solicitor.

35.5 The Tribunal considered the misconduct to be grave, tending towards the highest end of the range even absent dishonesty. In deciding which sanction to impose, the Tribunal started from the least serious option in the usual way. This was not a suitable case for "no order" or reprimand. The seriousness of the misconduct did not justify a sanction at the lowest level and the Tribunal was concerned to protect the public and the reputation of the legal profession from any further harm. The misconduct itself militated against orders at the lowest end of the scale as did the previous appearance before the Tribunal.

35.6 Ms Hanif had counselled the Tribunal against imposing a financial penalty on the Second Respondent, primarily due to his inability to pay the same without pushing him into bankruptcy and on to benefits. The Tribunal would have discounted the imposition of a fine regardless of those features. The protection of the public and the reputation of the legal profession would not be satisfied by a fine. The Second Respondent had admitted acting without integrity in relation to 7 separate allegations. The Tribunal had to choose the sanction which most appropriately fulfilled the purpose of sanctions to act as a deterrent and to prevent repetition, always having in mind that the most fundamental purpose of all was to maintain the reputation of the solicitors profession as one in which every member, of whatever standing, may be trusted to the ends of the earth (Bolton v The Law Society [1994] 1 WLR 512). The Second Respondent had singularly failed to intervene to prevent the First Respondent's conduct so as to protect clients from harm. The call on the Compensation Fund could have been significantly reduced if he had done so. The imposition of a financial penalty was far from sufficient protection on the facts of this case.

35.7 A Restriction Order in a case where the Second Respondent was not working as a solicitor and had already indicated an intention not to return to practice was in effect an empty sanction. The Tribunal had been invited by Ms Hanif to impose a term of indefinite suspension. The inference drawn by the Tribunal from the tone of the mitigation was that this suggestion was made in order to militate against the risk of an order striking the Second Respondent's name off the Roll or a financial penalty. Ms Hanif's submissions did not convince the Tribunal that the true purpose of indefinite suspension had been properly considered. The Tribunal had however concluded that the misconduct met the criteria for some form of immediate suspension to be imposed. The Second Respondent's professional performance was

such as to call into question his continued ability to practise appropriately. He had taken on the role of COLP, perhaps passively rather than positively, and had failed to do what was required of him with disastrous results causing significant harm to clients. Suspension was a reflection of the serious view that the Tribunal took of his misconduct.

35.8 The Tribunal had concluded that the protection of the public and the reputation of the legal profession did not require that the Second Respondent be struck off the Roll. There was clear blue water between the First and Second Respondents in terms of their culpability and the seriousness of their respective misconduct. A term of suspension would serve to punish the Second Respondent and act as a deterrent to others whilst being proportionate to the seriousness of the misconduct committed by him.

35.9 The Tribunal was not satisfied that an indefinite period of suspension as proposed by Ms Hanif was fair and proportionate. It did not meet the criteria specified in the Guidance Note on Sanctions and should not be ordered in those circumstances. The fair, appropriate, and proportionate sanction on the facts of this case insofar as they related to the Second Respondent in the limited terms agreed with the Applicant was a fixed term of suspension for a lengthy period which the Tribunal had concluded should be 5 years to commence immediately.

Costs

36. The Applicant submitted two costs schedules; to 28 June 2017 and from 29 June to 11 December 2017. The total claimed before oral submissions was £24,122.60. The costs arguments were extensive and somewhat heated on occasion. They are summarised below, the Tribunal having heard first from Mr Oultram and Ms Hanif, and then from Mr Wheeler with further interjections from Ms Hanif in particular. The advocates were given latitude by the Tribunal to make their respective cases and to respond fully.

37. Mr Oultram did not seek to attack the content of the Schedules, deferring to Ms Hanif. He submitted that, whatever the ultimate order for costs, the First Respondent would not be able to pay the same. Even a contribution of £100 could not be paid without the help of his friends. Time to pay any order would be required. The First Respondent was living hand-to-mouth. The hope was that his situation would improve once he had engaged with the Benefits Agencies and his general practitioner.

38. Ms Hanif argued that no order for costs should be imposed on the Second Respondent. A costs order would be an additional penalty bearing in mind the Second Respondent's precarious personal financial circumstances and his age. He would be unable to pay. If the Tribunal considered that a costs order should be made, the amount should be modest and should not be able to be enforced without leave of the Tribunal. It was material in support of that argument that the value of the Second Respondent's assets may be far lower than they are today and the Second Respondent's personal circumstances may change.

39. Ms Hanif submitted that the Tribunal could not rely on the Applicant's Costs Schedules due to the lack of detail provided. There was no information regarding the claim for 1.3 hours spent on "drafting" since 29 June 2017. A total of 3.7 hours had been claimed for "preparation and perusal" when little had happened. A total of 5.6 hours had been claimed for "correspondence"; Ms Hanif expressed herself to be "dubious" that there was paperwork to support that claim. Similar criticisms applied to the Schedule for the period up to 28 June 2017. The Schedules were not particularised with the level of detail that one would normally expect in these proceedings. In those circumstances it was hard to identify whether the time spent was reasonable or not. Ms Hanif confirmed that she did not seek a direction from the Tribunal that the costs be subject to detailed assessment. Her submission was that in the absence of detail, "a very significant reduction" should be imposed by the Tribunal. Any costs incurred must be reasonable to the issues at stake. Both parties had made early admissions and the hearing before the Tribunal was, in effect, a plea in mitigation. Counsel's fees were not broken down, were not reasonable for a one-day plea in mitigation hearing, and should therefore be reduced. The Applicant had not justified its claim for costs. Ms Hanif invited the Tribunal to reduce the claim by 80% because the Tribunal had no way of knowing whether the costs claimed were fair.

40. The global figure of £24,122.60 related to the proceedings against both parties. On any view the greater share of liability should fall on the First Respondent. A 50:50 split would not be fair bearing in mind the Agreed Statement of Facts and Admissions. The appropriate split was 66:33 which would more truly reflect where the time spent might lie.

41. In summary, bearing in mind the limited means of the Second Respondent no costs order should be imposed, alternatively a very modest costs order of £2,000-£3,000 not to be enforced without leave of the Tribunal.

42. Mr Wheeler reminded the Tribunal that the First Respondent is a discharged bankrupt. The Applicant accepted that he is currently of limited means. The discharge from bankruptcy effectively wiped the financial slate clean to allow him to start afresh. The Tribunal had been told that the First Respondent was not currently in a position to work but that he would be in a position to do so in future. He was not on the verge of retirement. There was therefore the prospect that he might be able to pay a costs order at some point.

43. The Applicant had a great deal of experience of enforcing costs orders against respondents in financial difficulty. The Applicant understood the approach to be adopted as a responsible regulator acting in an appropriate way. Mr Wheeler invited the Tribunal to give the SRA latitude in terms of enforcement by leaving it to the SRA's discretion rather than making an order for costs not to be enforced without leave of the Tribunal. Such orders potentially create further costs, to be borne by respondents, if an application to enforce has to be made. It would not be appropriate to make no order for costs against the Second Respondent. He ought to bear the costs, not the profession as a whole which would be the effect of "no order".

44. A number of questions arose from the Second Respondent's revised Schedule of Means. Zero value was attributed to the first asset which Mr Wheeler was instructed was a 7-bedroom house. There was no evidence regarding the basis of the valuation of £350,000 or the structural repair costs of £45,000. Ms Hanif interjected that the valuation came from an estate agent in 2015 and there had been no increase in value since then due to the market. There would have been an additional expense for the Second Respondent attached to obtaining a more recent valuation. Mr Wheeler noted that deductions for CGT and sales costs had already been applied, which was surprising in circumstances where the property had not been sold. Ms Hanif explained that the valuation represented value after sale when these costs have been taken into account. She agreed with the Chairman that the figures anticipated what would happen if the property was sold. The Second Respondent's position was that he would have to sell the property to pay a fine or costs. Mr Wheeler argued that the property would not necessarily have to be sold because it could be rented out as it is currently. The Tribunal must look at the overall valuation of the property without taking into account future expenses that may be incurred. The same argument applied to the second property. The pension lump sum had been stated which was not necessarily the right way of looking at the asset. Mr Wheeler took issue with the debt of £290,000 representing "possible claim by firm's insurers' run-off cover". Ms Hanif explained her instructions, namely that this was 3 years' worth of cover for which there was a potential joint and several liability following the closure of the Firm. As the First Respondent is a discharged bankrupt the debt, if crystallised, will fall on the Second Respondent. Mr Wheeler queried the series of office-related expenses. The Second Respondent sold the business to the First Respondent in 2008. One would have expected these liabilities to have been transferred as part of the sale. Ms Hanif explained that these debts were still in the Second Respondent's name. Mr Wheeler suggested that enforcement of 10 years old debts was unlikely. Mr Wheeler invited the Tribunal to take into account state pension of £8,093 per year to which the Second Respondent is entitled in February 2018. The Second Respondent held assets in the form of income-generating properties. The Statement of Means did not justify a "not to be enforced without leave" order.

45. Mr Wheeler addressed the Tribunal on the amount of costs. The work done included: a forensic investigation resulting in two reports, the preparation and issue of the Rule 5 Statement, and the conduct of the proceedings up to this hearing. The Second Respondent's own outstanding legal fees were £18,000, a little lower than the Applicant's costs but not wildly out of kilter. The level of detail in the Schedules was consistent with that provided on summary assessment. The costs had been incurred and there was no basis for suggesting otherwise. Ms Hanif confirmed that her submission was limited to whether the costs had been reasonably incurred, rather than incurred at all. Mr Wheeler indicated that significant correspondence had been generated in relation to the agreement of the Statement of Agreed Facts and Admissions. There was however scope for some reduction. The cost of attendance at the hearing could be halved as it was premised on two days of attendance. The hotel accommodation was no longer necessary. Counsel's fees assumed a two-day hearing and could be reduced by £2,300 plus VAT in respect of the refresher fee. The remaining fee covered the Case Management Hearing in September 2017, the substantive hearing, and advising in conference.

46. Mr Wheeler submitted that there should be joint and several liability for costs, rather than a percentage apportionment. For much of the period under consideration the Respondents were partners and for the rest of the time they worked together in the same Firm. The allegations were largely advanced on the same basis. Little in the way of additional cost was attributable to the fact that the allegation of dishonesty proceeded against the First Respondent only. The Statement of Agreed Facts and Admissions was agreed the previous week and therefore had little impact. If the Tribunal disagreed and concluded that costs should be apportioned, that should be on a 50:50 basis which fairly reflected the incidence of costs incurred as between the Respondents. Ms Hanif opposed the making of a joint and several costs order. Such an order would force the Respondents to argue it out between themselves which would be, she said, "an unedifying position". If the Tribunal was minded to go down that road, all the more reason for making a "not to be enforced" order. Ms Hanif disputed that correspondence since 29 June 2017 arose from the agreement of the Statement of Facts and Admissions, on the basis that the bulk of the running about was carried out by the Second Respondent and his legal team. She said that there was no evidence that the time spent on this work had been reasonably incurred bearing in mind the nature of the task.

47. Ms Hanif stressed that although her client's Statement of Means had been served in an amended form that morning, a number of the items were on the original Statement dated 20 November 2017 and the Applicant had taken no issue with the same. There had been no request for underlying documents. If that request had been made the documents would have been provided. The Chairman drew to her attention the Tribunal's Standard Directions issued on 5 July 2017 which required the Second Respondent if he wished his means to be taken into consideration by the Tribunal in relation to possible sanctions and/or costs to provide a Statement of Means supported by documentary evidence. The direction provided that any failure to comply may result in the Tribunal drawing such inference as it considers appropriate and to be entitled to determine sanction and/or costs without regard to his means. Ms Hanif repeated her submission.

48. Mr Oultram was invited by the Chairman to comment on what had been said by Mr Wheeler. He responded as follows:

> "given what has already been said by me on Mr Douglas's behalf, given that today started with the real possibility that this would have gone into tomorrow or may have had to be adjourned yet further and with the help of both parties who are before you and sitting next to me I was allowed half an hour to help allow this case to move forward I can honestly say that I do not think I have ever witnessed such a tenacious application for costs in the face of that and a disregard to reality. You were addressed on the basis 'well don't worry you are being told by his friend he is going to be working in the future'. He is going to be struck off. Professionally he has to start again. Emotionally and mentally he has to start again. I for one am terribly pleased that Mr Douglas wasn't in the building let alone this room to witness what was said about his position."

The Chairman informed Mr Oultram that he had listened carefully that morning to what the latter had said. He knew that Mr Oultram had put the case in a careful way and the Tribunal would take that into account. Mr Oultram added that to suggest that the First Respondent could now, "buck up and get himself a job", which was how he had taken Mr Wheeler's comment, was "wholly unrealistic". Whether the First Respondent works again, and if so when, is immaterial and Mr Oultram is unable to comment.

49. Solicitor Member Mr Smith asked Mr Wheeler a number of questions regarding the Applicant's Schedules. He sought clarification concerning the case conferences held. Mr Wheeler confirmed that one conference was with him and the other was an internal conference between Mr Willcox and Ms Taylor in order to prepare the Rule 5 Statement. A total of 11 hours was spent on the drafting and dictation of that document. Preparation and perusal time as at 28 June 2017 and then up to 11 December 2017 was coincidentally 3.7 hours during each period. The work after 29 June 2017 included consideration of the Respondents' Answers to the Rule 5 Statement, preparation for the Case Management Hearing, and consideration of witness statements when served. There was inevitable preparation once proceedings had been issued as matters moved on. Mr Willcox travelled from his home, rather than his office, to court in order to arrive in time for the hearing: the claim of 5 hours was for door-to-door travel time in each direction.

Decision on Costs

50. The Tribunal recognised that it was not the purpose of an order for costs to act as an additional punishment on the Respondents. It was intended to compensate the Applicant for the costs it incurred in bringing the proceedings and the order must never exceed the costs actually and reasonably incurred. The Tribunal was mindful that where costs were not ordered, or indeed where they were ordered and not paid, they fell as a burden on the majority of solicitors who behaved in accordance with the professional rules to which they were subject.

51. The standard directions, and indeed the directions imposed at the Case Management Hearing held on 6 September 2017, made it crystal clear that if the Respondents wished their means to be taken into consideration in relation to costs they must file and serve on every other party a Statement of Means including full details of their assets, income and outgoings **supported by documentary evidence** (Tribunal emphasis). The Tribunal rejected Ms Hanif's submission that it was for the Applicant to flag up issues before evidence had to be provided by the Second Respondent. Neither Respondent had provided any documentary evidence or offered oral evidence in support of what they said about their means. The Tribunal was therefore entitled to draw the inferences that it considered appropriate, which included determining costs without regard to means.

52. The Applicant's Schedules of Costs were in a format entirely consistent with summary assessment of costs by this Tribunal. It was not necessary to provide the level of detail argued for by Ms Hanif which might well be appropriate when costs were presented to a Costs Judge for detailed assessment. Inevitably there would be a price to pay for drawing up a bill for detailed assessment and for dealing with the same which was likely to fall upon the Respondents. The reality in this case was that

those costs too would potentially fall on the shoulders of the majority of blameless solicitors. The Tribunal therefore intended to summarily assess the Applicant's costs once it had decided whether or not they should be paid by the Respondents as a matter of principle, and if so whether on a joint and several basis, alternatively in what proportions.

53. These proceedings were entirely properly brought and progressed by the Applicant. Allegations of a very serious nature were prosecuted, admitted, and found proved beyond reasonable doubt. The allegation of dishonesty against the Second Respondent was quite properly withdrawn at an appropriate point in the proceedings, once the Answers and witness statements from both Respondents had been served and the nature of their defences fully understood. There was no justification for making no order for costs against these Respondents. Their ability to pay costs was a separate matter not to be conflated with the well-established principle. Costs would therefore be ordered to be paid by the Respondents to the Applicant.

54. It was a matter for the Tribunal's assessment informed by the facts of the case whether costs should be ordered against the Respondents on a joint and several basis (so that they both retained responsibility for making payment of the totality of the same), or whether costs should be apportioned between the Respondents limited for each to an appropriate percentage. The Tribunal had concluded that the costs should be shared between the Respondents equally and not on a joint and several basis. The Tribunal was concerned to ensure that the Second Respondent did not find himself bearing a disproportionate share of the costs if the First Respondent paid nothing. The Tribunal recognised the significant risk that this order would leave the profession with the burden. In spite of this unpalatable result, the Tribunal had to be fair to the individual Respondents. The impact on them of making a joint and several order would be greater than that on the wider profession and disproportionate on the facts of this case. There was little to distinguish the costs incurred in prosecuting the cases against each Respondent and the Tribunal did not accept Ms Hanif's submission that the First Respondent should bear the greater burden. The Second Respondent could draw some comfort from the fact that his costs were limited to 50%.

55. Carrying out the summary assessment, the Tribunal reduced the total claim for £24,122.60 by the following amounts, accepting in part Mr Wheeler's submissions and rejecting as wholly unrealistic and unreasonable the submission for an 80% reduction made by Ms Hanif:

- Counsel's refresher fee, including VAT £2,760
- Attendance at hearing £780
- Hotel accommodation £180
- Waiting time at the Tribunal £195
- Total reduction **£3,915**

The resulting figure was £20,207.60 which the Tribunal rounded down to £20,200. The Respondents were to pay 50% of that summarily assessed figure i.e. £10,100 each.

56. Ms Hanif had urged the Tribunal to make a costs order against her client (at least) not to be enforced without leave of the Tribunal. The Tribunal's experience was that the additional costs of making the application for leave would be borne by the Respondents. The Second Respondent had property capable of liquidation, meaning that an application for leave was more likely to be made against him than the First Respondent. The Tribunal had noted Mr Wheeler's assurances, given in open court, that the SRA would use its vast experience of enforcing costs orders to inform its decisions in relation to these Respondents. There was no benefit to the SRA in spending money and other resources (for which they were publicly accountable) in pursuing respondents who could demonstrate that they did not have the means with which to pay costs. The Second Respondent had real estate available against which the SRA could, for example, seek charging orders. The First Respondent might at some point in the future be able to pay some contribution towards the costs out of his own pocket. It would be of no benefit to him if the costs contribution was immediately wiped out by a new order for the costs of an application for permission to enforce. The Tribunal therefore declined to make a costs order not to be enforced without leave of the Tribunal. It did however invite the SRA to proceed appropriately with enforcement. In particular the First Respondent was likely to need time to pay whilst he progressed his treatment programme and made his benefits claim.

Statement of Full Order

57. The Tribunal Ordered that the First Respondent, IAN JAMES DOUGLAS, Solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay 50% of the costs of and incidental to this application and enquiry summarily assessed and fixed in the sum of £10,100.00.

58. The Tribunal Ordered that the *[SECOND RESPONDENT]*, Solicitor, be suspended from practice as a solicitor for the period of five (5) years to commence on the 19th December 2017 and it further Ordered that he do pay 50% of the costs of and incidental to this application and enquiry summarily assessed and fixed in the sum of £10,100.00.

Dated this 11th day of January 2018
On behalf of the Tribunal

D. Green
Chairman

APPENDIX 1

CASE NUMBER: 11672-2017

IN THE MATTER OF THE SOLICITORS ACT 1974
AND
IN THE MATTER OF IAN JAMES DOUGLAS (A SOLICITOR) & *[SECOND RESPONDENT]*(A SOLICITOR)
BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

IAN JAMES DOUGLAS

First Respondent

and

[SECOND RESPONDENT

Second Respondent

STATEMENT OF AGREED FACTS AND ADMISSIONS IN RELATION TO THE SECOND RESPONDENT

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1. By a statement made by Alastair Henry John Willcox on behalf of the Solicitors Regulation Authority pursuant to Rule 5 of the Solicitors (Disciplinary Proceedings) Rules 2007 dated 28 June 2017 ("the Rule 5 Statement") the Solicitors Regulation Authority ("SRA") brought proceedings before the Tribunal making allegations of misconduct against the Respondents. The Tribunal gave directions for the preparation of the matter for hearing on 6 September 2017. The matter has been listed for a substantive hearing before the Tribunal over 4 days from 18 December 2017.

2. The Second Respondent, through Counsel, is prepared to make admissions to allegations set out in the Rule 5 statement, and accept the factual basis of the admitted allegations as set out in this document.

3. The allegations arise out of a Forensic Investigation, which commenced in 2016, following receipt by the SRA, on 14 March 2016, of information that the Firm had a number of debit balances on its client account.

4. Contained within the Rule 5 bundle is an Interim Report of Sarah Taylor (Forensic Investigation Officer at the SRA) dated 24 March 2016 and a further report dated 22 December 2016.

5. As a result of the matters set out in Ms Taylor's Interim Report a SRA Adjudication Panel sitting on 7 April 2017 decided to intervene into the firm of Cook & Partners Solicitors ("the firm").

6. In brief summary, it is alleged against, and admitted by the Second Respondent, that he failed to comply with the SRA Account Rules 2011, and that, as the Compliance Officer for Legal Practice at the material time, he failed to take reasonable steps to ensure compliance with the SRA Code of Conduct 2011 and compliance with the SRA Accounts Rules 2011.

7. The SRA has considered the admissions being made, and has considered whether those admissions, meet the public interest having regard to the gravity of the matters alleged. The SRA is satisfied that the admissions satisfy the public interest.

ADMISSIONS

8. The Second Respondent admits that:

   (1) He permitted unauthorised debit balances in the sum of £423,239.92 to exist on client account as at 31 August 2015, in breach of rule 20.6 of the SRA Accounts Rules 2011, and in breach of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011;

   (2) Between September 2015 and March 2016, unallocated transfers from client account to office account were made, totalling £302,193.31. It is admitted that for the period from 1 September 2015 until his resignation in November 2015 this was in breach of Rule 1.2(a) and (c) and Rules 20 and 21.1 of the SRA Accounts Rules 2011 and in breach of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011;

   (3) He failed to carry out adequate client account reconciliations and failed to maintain proper accounting records and systems and books of account for the period 1 September 2015 – 8 April 2016 (to the extent that it applies to the period when he was a partner of the firm) in breach of Rules 29.12, 29.13, 1.2(e) and 1.2(f) of the SRA Accounts Rules 2011 and in breach of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011;

   (4) He failed to rectify breaches promptly on discovery in breach of Rule 7.1 of the SRA Accounts Rules 2011 and in breach of Principles 2, 4 and 6 of the SRA Principles 2011;

   (5) He failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principles 2, 4, 5, 6 and 8 of the SRA Principles 2011 and failed to achieve Outcome 7.4 of the SRA Code of Conduct 2011;

(6) Failed to protect client money and assets in breach of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and failed to achieve Outcome 7.4 of the SRA Code of Conduct 2011;

(7) In his capacity as COLP of the firm at the material time he did not report the breaches of the SRA Accounts Rules 2011, SRA Authorisation Rules 2011 and SRA Practice Framework Rules 2011 set out in this document to the SRA, in breach of Rule 8.5 of the Authorisation Rules 2011 and in breach of Principles 2,7 and 8 of the SRA Principles 2011, and thereby failing to achieve Outcome 10.3 of the SRA Code of Conduct 2011.

9. For the avoidance of any doubt, the SRA withdraws the allegation in the Rule 5 statement that the Second Respondent acted dishonestly.

AGREED FACTS

10. The Second Respondent and the SRA agree the following facts.

11. The Second Respondent's [REDACTED] date of birth is 1953. He is currently 64 years old. He was admitted to the Roll of Solicitors on 1 July 1978. He originally set up his firm as a sole practitioner in 1981 under the name of "Cook & Partners."

12. His current address is – **REDACTED BY THE TRIBUNAL PRIOR TO PUBLICATION.**

13. He does not hold a current Practising Certificate; his Practising Certificate was suspended when the SRA intervened into Cook & Partners Solicitors.

14. He resigned as a salaried partner of the firm on 27 November 2015. Thereafter, he was a consultant at the firm and the Compliance Officer for Legal Practice.

15. In or around 2008, the Second Respondent decided that, in the foreseeable future, he wanted to retire from practice. In order to ensure a smooth handover of his practice, he began searching for an appropriate solicitor to whom he could sell the business. To that end, in 2008 he employed the First Respondent, Mr Douglas, initially as a locum solicitor. This engagement was successful, such that in May 2008, the Second Respondent sold the equity in the firm to Mr Douglas.

16. Hence, from May 2008, Mr Douglas was the sole equity partner. As part of the agreement and to ensure a smooth and orderly handover in the run-up to his retirement, the Second Respondent agreed to work as a salaried partner in the firm for a period of 5 years.

17. This change in the structure of the firm was also matched by a substantive change in the way the firm operated. As the sole equity partner, in practice, Mr Douglas took full control of the firm's financial matters, including matters relating to the firm's client accounts. A further example of this is the fact that the bookkeeper employed by the Firm reported to Mr Douglas, not *[SECOND RESPONDENT]*. However, the Second Respondent remained the Compliance Officer for Legal Practice.

18. In respect of the vast majority of the cases for which the Second Respondent was responsible, he did not take monies on account. Moreover, he often carried out his work on a fixed fee basis.

19. In respect of any matters which were not carried out on a fixed fee basis, the Second Respondent would record the time spent on the file, but it would be Mr Douglas who would bill for that work. This arrangement arose as a result of a request by Mr Douglas, who was of the view that, as he was the sole equity partner, he should be responsible for all financial matters, including the billing of clients. As he was no longer the equity partner, and as he was intending in any event to cease practising in due course, the Second Respondent did not object to this.

20. Accordingly, at all times Mr Douglas had full control of the firm's financial affairs.

21. From 27 November 2015, the Second Respondent resigned as a salaried partner. A notice was subsequently placed in the London Gazette informing the reader that *[SECOND RESPONDENT]* was no longer a partner of the Firm and that henceforth, the sole proprietor was Mr Douglas. However, he continued working as a consultant for the firm and remained the Compliance Officer for Legal Practice, although in practice his role was limited. On average, he worked for approximately two and a half days a week.The majority of that time was spent on bringing his existing matters to completion, and helping other staff on their cases as when they sought his assistance. He did not take on any new casework.

22. At the time of the Second Respondent's resignation:

    a) There was a debit balance on the firm's client account, which had been £423,239.92 as at 31 August 2015.

    b) There had been further unallocated transfers from the client account to the office account in September and October 2015 in the sums of £48,591.00 in September and £23,564.96 in October 2015;

    c) The firm benefitted from the transfers of client money into its office account;

    d) There had been no client account reconciliations after 31 August 2015;
    e) No steps whatsoever had been taken to rectify the shortfall on client account.

23. To the extent that there continued to be breaches of the SRA Accounts Rules from 27 November 2015 onwards *[SECOND RESPONDENT]* bears minimal responsibility for the same. However, he does accept that he remained the firm's COLP from November 2015 onwards even though he had specifically asked Mr Douglas in his resignation letter of 27 November 2015 to notify the SRA accordingly.

24. On 14 March 2016, the SRA received information that the firm had a number of debit balances on its client account.

25. Having received the information, the SRA's Supervision Department commissioned a Forensic Investigation. Ms Sarah Taylor, the Forensic Investigation Officer,

commenced her investigation on 22 March 2016. She interviewed the First and Second Respondents on 23 March 2016.

26. During her investigation, the FI Officer discovered that:

    (a) between September 2015 and March 2016, unallocated transfers from client account to office account had been made in the sum of £302,193.31;

    (b) client account reconciliations had been completed up until August 2015, but not thereafter;

    (c) when she visited the firm on 22 March 2016, there was a shortage on the client account of £725,433.23.

27. During the interview with the SRA, the First Respondent accepted that he was responsible for handling the financial affairs of the firm. He stated that:

    "…

    ID Well the billing tends to go through me. I tend to – I try and do as much as I can and to run all that I can, it comes down to me. Chris runs his case but um…

    ST So you would bill on Chris's matters?

    ID I, I try and bill – all the files get given to me to bill…

    ST …

    CC …

    ID but **Chris has nothing to do with the accounts** that's he has…**I'm responsible for taking out the accounts um and I was the one that you know if there is a debit balance Chris wouldn't have had anything to do with that, it would have been me**…" (Emphasis added.)

28. Mr Douglas also accepted that it was he, and he alone, who authorised the client to office transfers:

    "…

    ST Ok and you, and you are the one that authorises the client to office transfers?

    ID Yes

    …"

29. The final report of Sarah Taylor, the Investigation Officer, dated 22 December 2016 states as material: "…During the interview on 23 March 2016, Mr Douglas stated that he had full control of the books of account and *[SECOND RESPONDENT]* had nothing to do with them…".

30. The SRA accepts the explanation given by Mr Douglas.

31. Ms Taylor's report dated 22 December 2016 records that, as at 8 April 2016, a cash shortage existed in the sum of £1,011,923.06. However, the updating e-mail from

Mr Neil Sharman, Interventions Manager at Blake Morgan Solicitors (the Intervention Agents) dated 15 June 2017 (page 237 of the Rule 5 bundle) records that, due to further work which had been carried out, the cash shortage as at 8 April 2016 had been updated to £999,336.06.

32. The Second Respondent was the Compliance Officer for Legal Practice ('COLP'). He admits that he did not, in his capacity as COLP, report the deficiencies in the accounts and the breaches to the SRA, because he was not at the time aware of the deficiencies.