

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11684-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

TONY KIRTON
SIMON ANDREW CLIVE NEWBOLD
ZAKIA KHALID
ROY GEORGE
ADRIAN MICHAEL ORGAN

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent

Before:

Mr L. N. Gilford (in the chair)
Mr M Jackson
Mr R. Slack

Date of Hearing: 12th January 2018

Appearances

Marianne Butler, Counsel of Fountain Court Chambers, Fountain Court, Middle Temple Lane, London EC4Y 9DH instructed by Leanne Silvestro of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

Gregory Treverton-Jones QC of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD instructed by Nigel West of RadcliffesLeBrasseur, 5 Great College Street, London SW1P 3SJ for the First, Second, Third, Fourth and Fifth Respondents.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations made against the Second, Third, Fourth and Fifth Respondents on behalf of the Solicitors Regulation Authority (“SRA”) were that whilst in practice as members of Geoffrey Parker Bourne Limited (“the Firm”) between October 2010 and 1 August 2011, and/or as members of GPB Solicitors LLP (“the Successor Firm”) between 2 August 2011 and 30 April 2013:
 - 1.1 As a consequence of failing to ensure the systems in place were properly controlled, transfers from client account to office account were made other than in circumstances allowed under Rule 22 of the Solicitors Accounts Rules (“SAR”) 1998 and/or Rule 20 of the SAR 2011 which led to a shortfall arising on the client account and in doing so:
 - 1.1.1 Insofar as such conduct took place during the period up to and including 5 October 2011, they acted in breach on Rules 1.06 and 5.01 of the Solicitors Code of Conduct 2007 (“the SCC”); and
 - 1.1.2 Insofar as such conduct took place on or after 6 October 2011, they acted in breach of Principles 6 and/or 8, and/or 10 of the SRA Principles 2011 (“the Principles”).
 - 1.2 They failed to remedy promptly on discovery breaches of the SAR 2011 in breach of Rule 7.
2. The allegations against the First Respondent, who is not a solicitor, were that he had been guilty of conduct of such a nature that in the opinion of the SRA it was undesirable for him to be involved in a legal practice, in that, whilst he was a member of the Firm between October 2010 and 1 August 2011, and as a member of the Successor Firm between 2 August 2011 and 13 February 2013:
 - 2.1 As a consequence of failing to ensure the systems in place were properly controlled, transfers from client account to office account were made other than in circumstances allowed under Rule 22 of the SAR 1998 and/or Rule 20 of the SAR 2011 which led to a shortfall arising on the client account and in doing so:
 - 2.1.1 Insofar as such conduct took place during the period up to and including 5 October 2011, they acted in breach on Rules 1.06 and 5.01 of the SCC; and
 - 2.1.2 Insofar as such conduct took place on or after 6 October 2011, he acted in breach of Principles 6 and/or 8, and/or 10 of the Principles.
 - 2.2 He failed to remedy promptly on discovery breaches of the SAR 2011 in breach of Rule 7.
3. It was further alleged against the Third Respondent that:
 - 3.1 In her capacity as the Compliance Officer for Finance and Administration (“COFA”) at the Successor Firm between 9 January 2012 and 13 February 2013 and at the ABS from 13 February 2013, she failed to ensure or take adequate steps to ensure

compliance with the Firm's obligations under SAR 2011 contrary to Rule 8.5 of the SRA Authorisation Rules 2011.

Documents

4. The Tribunal had before it the following documents:-
 - Notice of Application dated 28 June 2017
 - Rule 5 Statement dated 28 June 2017
 - First, Second, Third, Fourth and Fifth Respondents' Answer to the Rule 5 Statement dated 13 September 2017
 - Statement of Agreed Facts and Indicated Outcome in relation to the First, Second, Third, Fourth and Fifth Respondents dated 5 January 2018
 - Correspondence from Daniel Clarke (the Sixth Respondent) who was not a party to the Application for an Agreed Outcome).
 - Witness Statements from the First and Fifth Respondents in relation to means

Factual Background

5. The First Respondent was not a solicitor and his name had never appeared on the Roll of Solicitors. He acted as the Managing Partner of the Firm and the Successor Firm and as at 30 April 2013 he held the position of Chief Executive Officer of the Successor Firm. He devoted a substantial part of his time to the management of the Successor Firm.
6. The Second Respondent was admitted to the Roll of Solicitors in October 1988. The Third Respondent was admitted to the Roll of Solicitors in August 2008. The Fourth Respondent was admitted to the Roll of Solicitors in March 2005. The Fifth Respondent was admitted to the Roll of Solicitors in December 1977. The Second, Third, Fourth and Fifth Respondents devoted the majority of their time to client matters.
7. The Firm was established on 1 October 2009. The First, Second, Fourth and Fifth Respondents were shareholders and directors. The Firm operated as a Legal Disciplinary Practice as the First Respondent was a non-lawyer director. He owned shares not exceeding 25% of the total shares.
8. The Firm ceased practice and transferred its business to the Successor Firm on 2 August 2011. At that time the First, Second, Fourth and Fifth Respondents were members of the Successor Firm. In February 2012, the Fourth Respondent ceased to be a member of the Successor Firm. The Third Respondent became a member of the Successor Firm in February 2012 and was appointed as its COFA on 9 January 2013. The Successor Firm became an ABS on 14 February 2013.
9. On 15 March 2013 the Fifth Respondent retired as a member, and the Third Respondent re-joined as a member.

Application for the matter to be resolved by way of Agreed Outcome

10. The parties invited the Tribunal to deal with the allegations against the Respondents in accordance with the Statement of Agreed Facts and Indicated Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

11. 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 lives under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
12. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondents' admissions were properly made.
13. The Tribunal considered its Guidance Note on Sanction (December 2016). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal considered that the level of fine proposed for each Respondent was appropriate and proportionate having regard to their individual levels of culpability and means. The Tribunal noted that the Second and Fifth Respondents had appeared at the Tribunal in July 2013 (Case No. 11080-2012). On that occasion the Second Respondent was ordered to pay a fine of £2,000.00 and the Fifth Respondent was ordered to pay a fine of £3,000.00. The Tribunal considered that the amount of the fines agreed in relation to the Second and Fifth Respondents adequately reflected the aggravating feature of their previous misconduct; the fines had been increased from what would otherwise have been imposed.
14. Having determined that the proposed sanctions were appropriate and proportionate, the Tribunal granted the application for matters to be resolved by way of the Agreed Outcome.

Costs

15. The Applicant applied for costs in the sum of £53,000.000. The parties had agreed that each Respondent should be jointly and severally liable for the payment of those costs. The Tribunal considered the costs application to be appropriate and proportionate, and ordered that the Respondents pay those costs on a joint and several basis.

Statement of Full Order


16. The Tribunal Ordered that as from 12th January 2018 except in accordance with Law Society permission:-
- (i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor TONY KIRTON;

- (ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Tony Kirton
- (iii) no recognised body shall employ or remunerate the said Tony Kirton;
- (iv) no manager or employee of a recognised body shall employ or remunerate the said Tony Kirton in connection with the business of that body;
- (v) no recognised body or manager or employee of such a body shall permit the said Tony Kirton to be a manager of the body;
- (vi) no recognised body or manager or employee of such a body shall permit the said Tony Kirton to have an interest in the body;

The Tribunal further Ordered that the said Tony Kirton do pay a fine of £6,000.00 such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £53,000.00, such costs to be paid on a joint and several basis with the Second, Third, Fourth and Fifth Respondents.

17. The Tribunal Ordered that the Respondent, SIMON ANDREW CLIVE NEWBOLD, solicitor, do pay a fine of £12,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £53,000.00, such costs to be paid on a joint and several basis with the First, Third, Fourth and Fifth Respondents.
18. The Tribunal Ordered that the Respondent, ZAKIA KHALID, solicitor, do pay a fine of £7,501.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £53,000.00, such costs to be paid on a joint and several basis with the First, Second, Fourth and Fifth Respondents.
19. The Tribunal Ordered that the Respondent, ROY GEORGE, solicitor, do pay a fine of £5,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £53,000.00, such costs to be paid on a joint and several basis with the First, Second, Third and Fifth Respondents.
20. The Tribunal Ordered that the Respondent, ADRIAN MICHAEL ORGAN, solicitor, do pay a fine of £1,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £53,000.00, such costs to be paid on a joint and several basis with the First, Second, Third and Fourth Respondents.
21. The Tribunal further directed that this judgment must not be published until the substantive hearing in relation to Mr Clarke had concluded. This judgment could be provided to the Panel sitting on that hearing.

Dated this 25th day of January 2018
On behalf of the Tribunal


L. N. Gilford
Chairman

Judgment filed
with the Law Society
on 25 JAN 2018

IN THE MATTER OF THE SOLICITORS ACT 1974

AND IN THE MATTER OF

SOLICITORS REGULATION AUTHORITY

Applicant

and

TONY KIRTON
(524559)
(Non-admitted)

First Respondent

SIMON ANDREW NEWBOLD
(139547)

Second Respondent

ZAKIA KHALID
(372288)

Third Respondent

ROY GEORGE
(417588)

Fourth Respondent

ADRIAN MICHAEL ORGAN
(112708)

Fifth Respondent

DANIEL CLARKE
(Non-admitted)

Sixth Respondent

**STATEMENT OF AGREED FACTS
AND INDICATED OUTCOME
(First to Fifth Respondents)**

The Tribunal Proceedings

1. By an application dated 28 June 2017 and a statement made under Rule 5(2) of the Solicitors (Disciplinary Proceedings) Rules 2007, the Solicitors Regulation Authority (“the SRA”) brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of Tony Kirton (“Mr Kirton”), Simon Andrew Newbold (“Mr Newbold”), Zakia Khalid (“Ms Khalid”), Roy George (“Mr George”), Adrian Michael Organ (“Mr Organ”) and Daniel Clarke (“Mr Clarke”).

The Parties to this Agreed Outcome

2. The SRA and the first to fifth Respondents (Mr Kirton, Mr Newbold, Ms Khalid, Mr George and Mr Organ) have agreed to the outcome set out below relating to the proceedings against those respondents. The sixth Respondent (Mr Clarke) is not a party to this Agreed Outcome.

The allegations

3. The allegations as set out below (which are amended from the Rule 5 Statement) are the basis of this Agreed Outcome between the SRA and the First to Fifth Respondents.

Second, Third, Fourth and Fifth Respondents

4. The allegations made against the Second, Third, Fourth and Fifth Respondents on behalf of the SRA are that whilst in practice as members of Geoffrey Parker Bourne Limited (“the Firm”) between October 2010 and 1 August 2011, and/or as members of GPB Solicitors LLP (“the Successor Firm”) between 2 August 2011 and 30 April 2013:

4.1 As a consequence of failing to ensure the systems in place were properly controlled, transfers from client account to office account were made other than in circumstances allowed under Rule 22 of the SAR 1998 and/ or Rule 20 of the SAR 2011 which led to a shortfall arising on the client account and in doing so:

4.1.1 Insofar as such conduct took place during the period up to and including 5 October 2011, they acted in breach of Rules 1.06 and 5.01 of the SCC 2007; and

4.1.2 Insofar as such conduct took place on or after 6 October 2011, they acted in breach of Principles 6 and/ or 8 and/or 10 of the SRA Principles 2011;

4.2 They failed to remedy promptly on discovery:

4.2.1 breaches of the SAR 2011 in breach of Rule 7 of the SAR 2011 insofar as the conduct took place on or after 6 October 2011;

First Respondent

5. The allegations made against the First Respondent, who is not a solicitor, is that he has been guilty of conduct of such a nature that in the opinion of the SRA it would be undesirable for him to be involved in a legal practice, in that, whilst he was a member of the Firm between October 2010 and 1 August 2011 and as a member of the Successor Firm between 2 August 2011 and 13 February 2013:

5.1. As a consequence of failing to ensure the systems in place were properly controlled, transfers from client account to office account were made other than in

circumstances allowed under Rule 22 of the SAR 1998 and/ or Rule 20 of the SAR 2011 which led to a shortfall arising on the client account and in doing so:

5.1.1. Insofar as such conduct took place during the period up to and including 5 October 2011, he acted in breach of Rules 1.06 and 5.01 of the SCC 2007; and

5.1.2. Insofar as such conduct took place on or after 6 October 2011, he acted in breach of Principles 6 and/ or 8 and/or 10 of the SRA Principles 2011;

5.2 The First Respondent failed to remedy promptly on discovery:

5.2.1 breaches of the SAR 2011 in breach of Rule 7 of the SAR 2011 insofar as the conduct took place on or after 6 October 2011.

Third Respondent

6. It is further alleged as against the Third Respondent that, in her capacity as the Compliance Office for Finance and Administration (“COFA”) at the Successor Firm between 9 January 2013 and 13 February 2013 and at the ABS from 13 February 2013, she failed to ensure or take adequate steps to ensure compliance with the Firm’s obligations under SAR 2011 contrary to Rule 8.5 of the SRA Authorisation Rules 2011;

Admissions

7. The first to fifth Respondents (being Mr Kirton, Mr Newbold, Ms Khalid, Mr George and Mr Organ) are willing to make the admissions set out below.

8. Mr Kirton admits that during his period of acting as a Manager of The Firm and The Successor Firm between 1 October 2010 and 30 April 2013 transfers were made from client account to office account other than in circumstances allowed under the Solicitors Accounts Rules 1998 and the SRA Accounts rules 2011 and as a consequence of failing to ensure the systems in place were properly controlled:

8.1. Mr Kirton breached rule 22 of the Solicitors Accounts Rules 1998 and rule 20 of the SRA Accounts Rules 2011,

8.2. Mr Kirton breached rule 7 of the SRA Accounts Rules 2011, and

8.3. Mr Kirton breached rules 1.06 and 5.01 of the Solicitors Code of Conduct 2007 and principles 6, 8 and 10 of the SRA Principles 2011.

9. Mr Newbold admits that during his period of acting as a Manager of the Firm and The Successor Firm between 1 October 2010 and 30 April 2013 transfers were made from client account to office account other than in circumstances allowed under the Solicitors Accounts Rules 1998 and the SRA Accounts rules 2011 and as a consequence of failing to ensure the systems were in place were properly controlled:

9.1. Mr Newbold breached rule 22 of the Solicitors Accounts Rules 1998 and rule 20 of the SRA Accounts Rules 2011,

9.2. Mr Newbold breached rule 7 of the SRA Accounts Rules 2011, and

9.3. Mr Newbold breached rules 1.06 and 5.01 of the Solicitors Code of Conduct 2007 and principles 6, 8 and 10 of the SRA Principles 2011.

10. Ms Khalid admits that during her period of acting as a Manager of the Successor Firm between 1 February 2012 and 30 April 2013 transfers were made from client account to office account other than in circumstances allowed under the SRA Accounts rules 2011 and as a consequence of failing to ensure the systems in place were properly controlled:

10.1. Ms Khalid breached rule 20 of the SRA Accounts Rules 2011,

10.2 Ms Khalid breached rule 7 of the SRA Accounts Rules 2011,

10.3 Ms Khalid breached principles 6, 8 and 10 of the SRA Principles 2011, and

10.4. Ms Khalid breached rule 8.5(a) of the SRA Authorisation Rules 2011.

11. Mr George admits that during his period of acting as a Manager of The Firm between 1 October 2010 and 1 August 2011 and during his periods of acting as a Manager of the Successor Firm between 2 August 2011 and 1 February 2012 and between 31 March 2013 and 30 April 2013 transfers were made from client account to office account other than in circumstances allowed under the Solicitors Accounts Rules 1998 and the SRA Accounts rules 2011 and as a consequence of failing to ensure the systems in place were properly controlled:

11.1. Mr George breached rule 22 of the Solicitors Accounts Rules 1998 and rule 20 of the SRA Accounts Rules 2011,

11.2 Mr George breached rule 7 of the SRA Accounts Rules 2011, and

11.3 Mr George breached rules 1.06 and 5.01 of the Solicitors Code of Conduct 2007 and principles 6, 8 and 10 of the SRA Principles 2011.

12. Mr Organ admits that during his period of acting as a Manager of the Firm and the Successor Firm between 1 October 2010 and 31 March 2013 transfers were made from client account to office account other than in circumstances allowed under the Solicitors Accounts Rules 1998 and the SRA Accounts rules 2011 and as a consequence of failing to ensure the systems in place were properly controlled:

12.1. Mr Organ breached rule 22 of the Solicitors Accounts Rules 1998 and rule 20 of the SRA Accounts Rules 2011,

12.2. Mr Organ breached rule 7 of the SRA Accounts Rules 2011, and

12.3. Mr Organ breached rules 1.06 and 5.01 of the Solicitors Code of Conduct 2007 and principles 6, 8 and 10 of the SRA Principles 2011.

The Agreed Facts

13. The facts and matters set out below are agreed between the SRA and the first to fifth Respondents.

14. Mr Kirton is not a solicitor, and his name has never appeared on the Roll of Solicitors.

15. Mr Newbold is a solicitor and he was admitted to the Roll of Solicitors on 1 October 1988.

16. Ms Khalid is a solicitor and she was admitted to the Roll of Solicitors on 15 August 2008.

17. Mr George is a solicitor and he was admitted to the Roll of Solicitors on 15 March 2005.

18. Mr Organ is a solicitor and he was admitted to the Roll of Solicitors on 15 December 1977. He does not hold a current practising certificate.

19. The Firm was established on 1 October 2009. Mr Kirton, Mr Newbold, Mr George and Mr Organ were shareholders and directors. The Firm operated as a Legal Disciplinary Practice as the non-lawyer director (Mr Kirton) owned shares, holding a shareholding which did not exceed 25% of the total shares. The Firm had a specialist Debt Collection practice which acted for banks and other financial institutions in connection with the collection of debts arising on consumer credit cards and loans. The Firm also had conveyancing and litigation departments.

20. The Firm ceased practice and transferred its business to the Successor Firm on 2 August 2011. Mr Kirton, Mr Newbold, Mr George and Mr Organ were at that time the members of the Successor Firm. The Successor Firm's head office was at Arden Court, Arden Street, Stratford Upon Avon, CV37 6NT.

21. In February 2012, Mr George ceased to act as a member and Ms Khalid became a member.
22. On 9 January 2013, Ms Khalid was appointed as the Successor Firm's Compliance Officer for Finance and Administration ("COFA").
23. The Successor Firm became an ABS on 14 February 2013.
24. On 15 March 2103 Mr Organ retired as a member and Mr George re-joined as a member.
25. Mr Kirton acted as the Managing Partner of the Firm and the Successor Firm and as at 30 April 2013 he held the position of Chief Executive Officer of the Successor Firm. Mr Kirton devoted a substantial part of his time to the management of the Successor Firm. The other members devoted the majority of their time to client matters.
26. The Sixth Respondent, Daniel Clarke ("Mr Clarke") was employed by the Firm and the Successor Firm in the accounts department. Mr Clarke is not a solicitor, and his name has never appeared on the Roll of Solicitors. He was the Finance Co-ordinator from September 2010 (prior to that Legal Cashier and then Head Legal Cashier) until his resignation on 16 May 2013.
27. On 13 May 2013 the SRA provided Mr Kirton with notice that a forensic investigation would be carried out.
28. On 16 May 2013, Mr Clarke submitted his resignation. In his resignation letter, he admitted improperly utilising client money for the firm's outgoings. His letter stated: *"In order to keep the firm running, I have gone above and beyond the remit of my role and have consistently utilised client's monies to pay bills, wages and anything else that kept the firm going. I have acted on my own in the above and ensured that no one else knew of my actions."*
29. Immediately after receipt of Mr Clarke's resignation and letter:
 - 29.1. Mr Kirton and Ms Khalid reported the content of Mr Clarke's letter to the SRA;
 - 29.2. The members informed their insurers and made a claim under the PI Policy, and
 - 29.3. The members instructed the auditors, Accura, to carry out a review of the accounts and prepare a report on the extent of the shortfall to the client account.
30. The SRA's inspection commenced on 20 May 2013.

31. The SRA's interim forensic investigation report was completed on 9 September 2013, and the final forensic investigation report was completed on 4 August 2014. The investigation revealed a shortfall in the client account as at the extraction date of 30 April 2013 of £1,681,044.96.
32. On 8 October 2013, an Adjudication Committee of the SRA resolved to intervene into the Successor Firm. The intervention took place on 9 October 2013.

The auditor's Report

33. As referred to above, following receipt of the Sixth Respondent's resignation letter, the members of the Successor Firm appointed Accura to conduct a detailed audit. The audit carried out by Accura identified that the ABS's liabilities to clients totalled £2,359,115.07 and the client cash available in the various client accounts was £678,070.11, creating the shortfall of £1,681,044.96.
34. The audit confirmed the position set out in Mr Clarke's resignation letter, namely that sums transferred from client account were used to support the firm (and therefore the transfers were not made in accordance with the circumstances permitted under Rule 20 of the SAR 2011).

The FI Report

35. The FI Report identified breaches of the SAR 1998 and the SAR 2011 in that significant sums of money had been transferred from client account to the office account which created a shortfall on the client account. The debit on client account was made up of shortages on three ledgers: "Client I Invoicing ledger", "GPB Collections Ledger" and "Suspense Account Ledger".

The Accountants' Report for the Firm for the period 1 October 2010 to 30 September 2011

36. The Accountants' Report for the Firm for the period 01 October 2010 to 30 September 2011 identified credit balances on office ledgers and stated that many of these represented transfer of monies from client to office account before a bill had been raised. The Auditors state that explanation in the report was based on the explanation given to them by Mr Clarke.
37. The Accountants' Report also identified debit balances on client ledgers, that reconciliations were not being prepared correctly as debit balances were not being shown separately, that there were unidentifiable transfers between client accounts and that some of the monthly client account reconciliations have not been signed by a director of the company.
38. The Report confirmed that the Firm had been advised that client account reconciliations must be checked and signed in the future and that the directors of the firm were currently investigating the credit balances on office ledgers.

39. The Accountants' Report was sent to Mr Kirton on about 5 October 2012 and it was then sent to the SRA.

The Accountants' Report for the Successor Firm for the period 2 August 2011 to 31 July 2012

40. The Accountants' Report for the Successor Firm for the period 2 August 2011 to 31 July 2012 identified credit balances on office ledgers, debit balances on some client ledgers, missing information on some payments, transfers and receipts and that monthly client account reconciliations had not been signed by a member of the firm.

41. The Accountants stated that they were informed by Mr Clarke at the time the report was being prepared that the credit balances on office account were due to transfers from client to office account before bills were raised.

42. The Accountants' Report for 2012 was sent to Mr Kirton on about 19 April 2013 and was also sent to the SRA.

Transfers in the period 19 December 2012 to 24 April 2013

43. As stated above, the members instructed Accura to prepare a report after receipt of Mr Clarke's resignation and letter dated 16 May 2013. In that report Accura identified that regular transfers had been made from two ledgers in particular:

43.1. Client I invoicing ledger – reference 112547 (“the Client I ledger”);

43.2. GPB Collections ledger – reference 100960.

44. The client I ledger had a debit client balance of £17,646.09 on 11 April 2011 and that increased to £1,630,479.89 on 24 April 2013, which included 82 client to office transfers totalling £1,596,993.80. The reasons for these transfers were either not recorded or could not be relied on.

45. The GPB Collections ledger had a debit balance of £41,973.92 in respect of issues dating back to the previous partnership's consumer debt clients. On 31 January 2013 the ledger records a number of adjusting entries that increased the client account debit balance to £48,149.17.

Information withheld from Accura during preparation of the Accountants Reports for 2011 and 2012

46. The report prepared by Accura in July 2013 states that the Client I ledger was concealed from them when they were preparing the Accountants' Reports for 2011 and 2012. The ledger was concealed because the balances in respect of the ledger were excluded from the matter balance

listings provided to Accura by Mr Clarke when they were preparing the Accountants' Reports for 2011 and 2012). That was identified by Accura when they prepared the 2013 Report.

47. In a statement dated 16 February 2016 Mr Clarke states that the Client ledger and other ledgers with a negative balance were removed by him from the matter listings by exporting the report to Microsoft Excel and those lines were then deleted.

48. In addition, Accura state in the 2013 Report that Mr Clarke informed them when they were in the process of preparing the Accountants Report for 2012 that a main reason why unallocated credit balances had occurred was due to bills raised not being posted to matters during the transfer of the balances to the Successor Firm when the Firm ceased practice, but when Accura reviewed the ledgers in 2013 the ledgers did not support Mr Clarke's explanation.

Interviews

49. The First, Second, Third, Fourth and Fifth Respondents were interviewed by the Forensic Investigation Officer between 15 and 21 January 2014.

50. Mr Kirton confirmed in his interview that, although his oversight involved enquiring on a day to day basis with Mrs F, a qualified Accountant who acted as the Head of Finance, and although he received confirmations from Mrs F that all was in order, he did not check client account reconciliations and did not check the client matter listing and compare the balance against client money held at the bank. He assumed that Mrs F, as Head of Finance, checked reconciliations and the client matter listings.

51. The Second, Third, Fourth and Fifth Respondent confirmed in their interviews that they did not carry out monthly checks of the client account reconciliations during their respective periods of membership because the responsibility for oversight of the accounts had not been delegated directly to them.

Replacement of client account shortfall

52. The extent of the shortfall was such that the members were not able to repay the shortfall without a claim under their Professional Indemnity cover. An insurance claim was submitted to their professional indemnity insurance provider on 17 May 2013. The claim in relation to replacement of the shortfall was resolved by the insurers by direct communication with the SRA.

Knowledge of Mr Clarke's transfers

53. Mr Kirton, Mr Newbold, Ms Khalid, Mr George and Mr Organ all state that they did not have any knowledge of the improper transfers made by Mr Clarke until they became aware of his letter of

16 May 2013, and the SRA has not pursued any allegations of dishonesty or lack of integrity against any of them.

54. In addition, Mr Newbold, Ms Khalid, Mr George and Mr Organ all state that they did not have any knowledge of the content of the Accountants' Reports for 2011 and 2012 until after Mr Clarke's resignation and Mr Kirton has confirmed that he did not forward copies of the Accountants' Reports to them before that date.

Mitigation

55. The following points are advanced in mitigation by the First to Fifth Respondents. Their inclusion in this document does not amount to adoption of such points by the SRA, but the SRA accepts that account can properly be taken of the following points in assessing whether the proposed outcomes represent a proportionate resolution of the matter.

56. The directors of the Firm and subsequently the Members of the Successor Firm agreed that Mr Kirton would act as the managing partner and that the other partners would (subject to the dictates of specific roles such as Ms Khalid's role of COFA from January 2013) devote most of their time to the overseeing of client matters to ensure that the clients of the business received a professional service to a high standard.

57. Mr Kirton held the position of Chief Executive Officer and he carried out his day to day management responsibilities with the support of a full time Practice Manager, Mrs P, a professionally qualified Accountant, Mrs F, who was the Head of Finance and a Manager of the debt collection department, Ms B. The practice also engaged a Financial Consultant to provide advice when needed.

58. The day to day management team was supported by two main Committees, the Partnership Committee (which consisted of the Members of the LLP) and the Management Committee. The Management Committee normally had seven members including Mr Kirton, Mrs P (as General Practice Manager), Mrs F (as Head of Finance), Ms B, Mr Organ and Mr Newbold.

59. The practice had Lexcel accreditation and also operated the Rliance System (which is a Law Society approved risk and compliance system).

60. The Accounts Department normally had six members of staff and was managed by Mrs F (as the Head of Finance). She reported directly to Mr Kirton, who held daily meetings and discussions with her to discuss any issues of concern relating to the accounts and the financial position of the firm generally. Mr Kirton also spoke to other members of the Accounts Department, including her Deputy Mr Clarke, on a near daily basis.

61. Independently of Mr Kirton, Ms Khalid carried out her own oversight of the Accounts Department in her role as COFA after she became COFA in January 2013. She visited the Accounts Department on average once each day to check the general operation of the department and satisfy herself that it was being properly run.
62. The management structure set out above demonstrates that the Members were willing to incur more expenditure than normal on senior management to try ensure that the firm was properly managed and that the Accounts Department was properly run. In particular:-
- 62.1. The Members made arrangements for one of the Members (Mr Kirton) to devote most of his time to the management of the practice.
- 62.2. The Members were willing to employ a full time Practice Manager to assist Mr Kirton. It was unusual for a firm of the practice's size to countenance the costs of a full time Practice Manager in circumstances where one of the Members devoted all of his time to practice management.
- 62.3. The Members were willing to appoint a professionally qualified Chartered Accountant to oversee the Accounts Department.
- 62.4. The Members were also willing to employ a full time Debt Collection Manager and an HR professional to assist in the management of the business.
63. The Members were able to check that the management tasks which had been delegated to the senior management team were properly carried out not only by day to day discussions with Mr Kirton but also by their membership of the Partnership Committee. The Partnership Committee received reports on the management of the firm and was responsible for the decisions relating to the overall running of the firm. The Partnership Committee consisted of the Members and Mrs F (as the Head of Finance).
64. Neither Mr Kirton nor any of the other members were aware of the misappropriation of client account monies until 16 May 2013. Mr Clarke had worked for the practice since 2006. He was a trusted member of the accounts staff and the Members had no reason to doubt his honesty before 16 May 2013.
65. Although he was a trusted member of staff, Mr Clarke was subject to a number of different levels of supervision. The levels of supervision and control were as follows:
- 65.1. Mr Clarke reported directly to Mrs F (who, as stated above, is a professionally qualified Accountant and the Head of Finance).

- 65.2. The work of the Accounts Department, including Mr Clarke's work, was subject to the audits carried out by the practice's Auditors.
- 65.3. The work carried out by Mr Clarke and Mrs F was subject to Mr Kirton's oversight on a day to day basis (as Mr Kirton held daily meetings with Mrs F and made a point of talking to other members of the Accounts Department on a near daily basis).
66. The improper transfers made by Mr Clarke were concealed in a manner which prevented their detection by qualified Accountants. In particular:
- 66.1. The Auditors, Accura, stated in their 2013 report, in relation to the Client I ledger, that Mr Clarke managed to exclude the balance on that matter from the print outs of the matter listings during two separate audits and that "we are unsure how this matter was excluded from the matter listing printouts provided."
- 66.2. In 2013, after discovery of the misappropriation, Mrs F told Mr Newbold that, whilst she checked the client account reconciliations prepared by her department on a monthly basis, it would have been impossible for her to detect the misappropriation from the client account reconciliations.
67. Further:
- 67.1. Mr Clarke managed to make the transfers despite the fact that he was supervised by a professionally qualified Accountant;
- 67.2. He also managed to conceal the transfer from the managers despite the fact that Mr Kirton made it his business to speak to Mr Clarke and discuss his work with him on a near daily basis;
- 67.3. Mrs F had access to the same accounting system as Mr Clarke on a daily basis and she failed to notice the manner in which Mr Clarke had manipulated the ledgers;
- 67.4. The other cashiers in the Accounts Department also had daily access to the accounting software which Mr Clarke manipulated and they failed to notice the misappropriation, and
- 67.5. The Auditors carried out two audits without detecting Mr Clarke's conduct.

68. The Accountants' Report for the Firm for the year ending 30 September 2011 was prepared on 5 October 2012 and was passed to Mr Kirton by the Auditors on about 5 October 2012.
69. On receipt of the report, Mr Kirton discussed the report with the Auditors and also with Mrs F. Mrs F assured him that the shortcomings in the report related to historic matters concerning a practice formerly acquired by the Firm and which had previously been reported to, and investigated by, the SRA and that she was carrying out the work required to reconcile the accounts.
70. The Accountants Report for the Successor Firm for the period ending 31 July 2012 was prepared on 10 April 2013 and was passed to Mr Kirton by the Auditors on about 10 April 2013.
71. On receipt of the report Mr Kirton discussed the report with the Auditors and with Mrs F. Mrs F again assured him that the shortcomings related to the historic matter, and, as the work which Mrs F was carrying out relating to reconciliation of that matter had not been completed, Mr Kirton made arrangements with the Auditors to hold a meeting with them in May 2013 to review Mrs F's reconciliation work and obtain professional advice from the Auditors on the steps required to complete that work. The arrangements to hold that meeting were overtaken by the events of May 2013 relating to Mr Clarke.
72. As Mr Kirton believed after enquiry that the shortcomings in the Accountants Reports related to a historic matter which had already been reported to and investigated by the SRA, he did not consider that it was necessary to draw the Accountants' Reports to the attention of the other Members.
73. The Members took the following steps after discovering the improper transfers on 16 May 2013:
- 73.1. Mr Kirton and Ms Khalid reported the matter promptly to the SRA.
 - 73.2. The Members informed their insurers and made a claim under the PI Policy.
 - 73.3. They instructed the Auditors to investigate the misappropriation to identify the extent of the shortfall and the manner in which it had arisen and to advise on the steps if any which could be taken to prevent a recurrence.
 - 73.4. They took professional advice on the regulatory aspects of the matter.

- 73.5. They also took professional advice from Accountants on the financial stability of the business.

Cooperation by the First to Fifth Respondents with the SRA

74. Mr Kirton, Mr Newbold, Ms Khalid, Mr George and Mr Organ self-reported to the SRA immediately after receiving Mr Clarke's letter dated 16 May 2013.

75. Throughout the SRA's investigation, Mr Kirton, Mr Newbold, Ms Khalid, Mr George and Mr Kirton cooperated with the SRA.

Agreed Outcomes

76. Subject to reduction to take account of financial circumstances, the Parties propose the following sanctions:

- 76.1. There is a section 43 order relating to Mr Kirton (ie an order that as from the date of the Tribunal's order, no solicitor or recognised or licensed body shall in connection with its practice employ or remunerate Mr Kirton, or permit him to be a manager of or have an interest in the practice, except in accordance with SRA permission).
- 76.2. Mr Kirton shall pay a fine of £12,500
- 76.3. Mr Newbold shall pay a fine of £12,500
- 76.4. Ms Khalid shall pay a fine of £7,501
- 76.5. Mr George shall pay a fine of £5,000
- 76.6. Mr Organ shall pay a fine of £7,501

77. Having regard to their financial circumstances, the Parties agree that the following fines shall be reduced:

- 77.1. Mr Kirton's fine shall be reduced to £6,000.00 with monthly arrangements to be negotiated with HM Treasury
- 77.2. Mr Organ's fine shall be reduced to £1,000.00 with payment arrangements to be negotiated with HM Treasury

78. The Parties do make a contribution of £53,000.00 to the SRA's costs.

79. The Parties submit that in the light of the admissions set out above, the proposed outcomes represent a proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanctions.

Dated: 12th day of January 2018

Signed:

L SILVESTRO

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Leanne Silvestro of Capsticks

On behalf of the SRA

Signed:

RADCLIFFES LE BRASSEUR

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Radcliffes Le Brasseur

On behalf of the First to the Fifth Respondents