SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11733-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

LIAQAT HUSSAIN	First Respondent
RENE LEONARD NEVILLE DE SILVA	Second Respondent
AMARA SHAHEEN KAYANI	Third Respondent
SHERAZ SULTAN	Fourth Respondent

Before:

Mr L. N. Gilford (in the chair)
Mr B. Forde
Mr S. Howe

Date of Hearing: 6 -7 March 2018

Appearances

David Hopkins, barrister, of 39 Essex Chambers, 81 Chancery Lane, London, WC2A 1DD (Instructed by Suzanne Jackson, solicitor of Solicitors Regulation Authority) for the Applicant.

Michael Cogan, barrister, of Article 6 Law, Lower Ground Floor, 2 King's Bench Walk, Inner Temple, London, EC4Y 7DE for the First, Second and Third Respondents.

The Fourth Respondent appeared in person.

JUDGMENT

Allegations

1. The allegations made against the First, Second and Third Respondents in a Rule 5 and 8 Statement dated 17 October 2017 were that:-

1.1 Between 29 February 2016 and 31 August 2016, they made or allowed transfers from the client account to the office account of the firm in excess of funds held on client matters resulting in debit balances in client account ranging between £14,311.00 (at its lowest) and £47,108.00 (at its highest). They thereby breached any or all of the following:

1.1.1 Principles 2, 6, 8 and 10 of the SRA Principles 2011 ("the Principles")

1.1.2 Rule 20.06 of the SRA Accounts Rules 2011 ("SAR").

1.2 They failed to carry out proper reconciliations. When preparing reconciliation statements, they used the credits of one client against debits of another when checking total client liabilities resulting in shortages not being shown and in doing so breached Rule 29.12 and 29.14 of the SAR.

1.3 They failed to give or send a bill of costs or other written notification of costs on at least two occasions before withdrawing money from client account with the resulting invoices being back dated to when the transfer had been made and in so doing breached Rules 17.2 and 20.3 of the SAR.

2. Recklessness was alleged with respect to allegation 1.1 but recklessness was not an essential ingredient to prove the allegation.

Fourth Respondent only

The allegation made against the Fourth Respondent in a Rule 5 and 8 Statement dated 17 October 2017 was that:-

1.4 He has, occasioned or been a party to an act or default in relation to legal practices which involved conduct on his part of such a nature that it would be undesirable for him to be involved in a legal practice in that he, whilst remunerated by and under the direction of solicitors in the firm, allowed debit balances to occur in client account as detailed in allegation 1 above and back dated bills.

Documents

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

Applicant

- Application and Rule 5 and 8 Statement dated 17 October 2017 with exhibit "SEJ1"
- Forensic Investigation Report of David Bailey dated 31 January 2017
- The Applicant's Schedule of Costs dated 17 October 2017 and 27 February 2018.
- Skeleton Argument for Hearing on 6 – 7 March 2018.

Respondents

- Joint Answer from the Four Respondents dated 3 November 2017
- Further Answer from the Fourth Respondent dated 29 November 2017
- Witness Statement of the First Respondent dated 2 January 2018
- Witness Statement of the Second Respondent dated 3 November 2017
- Witness Statement of the Third Respondent dated 2 January 2018
- Response Letter to the SRA of the First Respondent on behalf of all four Respondents dated 8 March 2017
- Response Letter of the Fourth Respondent to the SRA dated 27 April 2017
- Joint Response of the First, Second and Third Respondents dated 2 January 2018 to the Fourth Respondent's Letter dated 29 November 2017
- First Respondent's Tax Return for the year to 5 April 2017
- Second Respondent's P60 End of Year Certificate for the year to 5 April 2017 and related financial documentation
- Fourth Respondent's Statement of Means dated 1 February 2018.

Other Documents

- Once The Tribunal had announced its findings it was provided with the Judgment in the previous Tribunal relating to the First Respondent (Case No. 9767-2007).

Factual Background

4. The First Respondent was born in April 1957 and was a Registered Foreign Lawyer. At the date of the hearing, his name remained on the Register of Foreign Lawyers. At all relevant times the First Respondent was the sole equity partner at Marks and Marks, Harrow, Middlesex ("the Firm").

5. The Second Respondent was born in April 1974 and was admitted as a solicitor on 3 November 2003. At the date of the hearing, his name remained on the Roll and he held an unconditional practising certificate. At all relevant times the Second Respondent was a salaried partner and Compliance Officer for Legal Practice ("COLP") at the Firm.

6. The Third Respondent was born in September 1986 and was admitted to the Roll on 1 December 2011. At the date of the hearing, her name remained on the Roll and she held an unconditional practising certificate. At all relevant times the Third Respondent was an associate and Compliance Officer for Finance and Administration ("COFA") at the Firm.

7. The Fourth Respondent was an unadmitted person and the Firm's accounts clerk. He was contracted by Zik Accountancy Services London Ltd ("Zik") who acted as accountants for the Firm. At all relevant times, he was the Firm's bookkeeper or accounts clerk, having begun working at the Firm on 8 June 2015. He appeared to be the sole person working in such a capacity at the Firm. He was undertaking the work under the direction of the First and Second Respondents. The Fourth Respondent was remunerated by the Firm via Zik for the work he undertook.

8. David Bailey, a Forensic Investigation Officer ("FIO") employed by the Applicant, initiated an investigation into the Firm on 20 September 2016 in response to concerns about immigration matters handled by the Firm. The FIO reviewed the Firm's books of accounts and other documents for the period 29 February 2016 to 31 August 2016. The inspection culminated in a report dated 31 January 2017 ("the FIR"). The FIR confirmed that, as at 31 August 2016, a minimum cash shortage existed upon the client account of £14,311.00.

9. On 22 February 2017, further to the FIR, the Applicant wrote to the First Respondent asking him to respond on behalf of the Firm, all of its managers and its COFA, answering the allegations made in that letter. The Applicant's letter attached a copy of the FIR. On 8 March 2017, the First Respondent replied on behalf of the Firm, its managers and its COFA, admitting the substantive breaches alleged by the Applicant.

10. On 12 April 2017, further to the FIR, the Applicant wrote to the Fourth Respondent asking him, amongst other things, to explain his conduct by answering the allegation made in the letter. The Applicant's letter attached the FIR and the Firm's 8 March 2017 letter. On 27 April 2017 the Fourth Respondent replied.

Witnesses

11. The FIO and Second Respondent gave evidence to the Tribunal. The Tribunal considered that at times the Second Respondent's evidence lacked credibility.

12. The First and Third Respondents did not give evidence despite an invitation from the Tribunal to re-consider this position as their different responsibilities might be relevant to sanction. Mr Cogan explained that they had not given evidence as the Second Respondent's evidence represented the position of all three of these Respondents. The main purpose of calling the Second Respondent was to answer any questions.

13. The Fourth Respondent was informed by the Tribunal that he could either give evidence, make submissions or both and that the weight attached to evidence could be greater than the weight attached to submissions as the Applicant and other Respondents would be able to test what he said in cross-examination. The Fourth Respondent decided not to give evidence. The Tribunal did not draw an adverse inference from this choice. The Fourth Respondent was not legally trained and was representing himself.

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

Findings of Fact and Law

15. 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.

16. **Allegation 1.1 - Between 29 February 2016 and 31 August 2016, the First, Second and Third Respondents made or allowed transfers from the client account to the office account of the Firm in excess of funds held on client matters resulting in debit balances in client account ranging between £14,311.00 (at its lowest) and £47,108.00 (at its highest). They thereby breached any or all of the following:**

1.1.1 Principles 2, 6, 8 and 10 of the Principles

1.1.2 Rule 20.06 of the SAR

The Applicant's Case

16.1 A review by the FIO of the Firm's client listing as at 31 August 2016 revealed debit balances ranging from £50.00 to £1,430.00 and totalling £14,311.00 on thirty one client files. The debit balances were caused by the transfer of monies from client account to office account when there were insufficient funds held on behalf of the individual clients. The transfers took place at the time bills were raised by the Firm irrespective of whether there were sufficient monies in client account to cover the transfer to office account.

16.2 During the period under review, 29 February 2016 to 31 August 2016, the FIO identified ongoing shortages in the Firm's client account. These were caused by similar transfers taking place. At the end of each month the debit balance in the Firm's client account ranged from £14,311.00 at its lowest to £47,108.00 at its highest.

16.3 The transfer of funds took place in the form of mixed round sum transfers during each month. Round sum transfers from client bank account into the office bank account took place regularly at the end of each calendar month. The Firm's bank overdraft facility was £10,120.00. Regular debit orders and standing orders totalling at least £6,000.00 were processed through the Firm's office bank account at the beginning of each month. The funds transferred at month end were used to meet the Firm's monthly overheads and ensured that the overdraft facility was not exceeded.

16.4 The FIO examined two month-end transfers in detail. On 29 February 2016 £10,500.00 was transferred from the Firm's client bank account into the Firm's office bank account. The sum was made up of transfers on twenty four individual client matters. The transfers created debit balances on twenty two client ledgers which in total amounted to - £12,585.00. On 31 May 2016, the sum of £8,000.00 was transferred from the Firm's client bank account into the Firm's office bank account. The sum was made up of transfers on nineteen individual client matters. The transfers created debit balances on fifteen client ledgers which in total amounted to -£9,696.00. The debit balances on eight client matters continued until the extraction date on the

31 August 2016. The debit balances totalling £14,311.00 were rectified on various dates in September 2016.

16.5 In an email dated 3 January 2017 from the FIO, addressed to the Second Respondent, the Firm was asked to explain the internal operational system applied by the Firm to action the client to office transfers. The Firm replied in a letter dated 18 January 2017: "Our Accountant Mr Sheraz Sultan identified the firms (sic) office account outgoings for the month in question to the partners and the COFA. The Partner's and the COFA then requested the Fee-Earners to provide their files for billing and billing invoices for processing by Mr Sheraz Sultan on the manual file ledgers as well as the computerised file ledgers on our 'Perfect Books' system. Mr Sheraz Sultan provided a total billing figure to be transferred from the client account to the office account, together with the invoice number, to the Partners and the COFA. Having been given this information, Mr De Silva proceeded to operate the firm's Internet Banking Facility with Barclays and physically transferred the sum detailed, quoting the relevant billing invoice number as the reference."

16.6 The FIR exemplified three client matters, Mr AQ, Mr MM and Mr AG. The files illustrated the premature transfer of funds creating debit balances on the clients' ledger. Accordingly, the Respondents' created debit balances in client account by moving or allowing the transfer of monies from office account into client account in excess of funds held on individual client matters, which resulted in a shortage which persisted from 29 February 2016 to 31 August 2016. They turned a blind eye to ensuring that there were sufficient monies in the individual client accounts when the bills were raised before transferring monies from client to office account. They should have been put on enquiry to ensure there were sufficient funds, due to composite round sums being transferred regularly at the end of each month from client to office account, to meet the Firm's overheads which were paid from office account at the beginning of each month.

16.7 Such conduct lacked integrity, undermined the trust that the public placed in them and the provision of legal services, showed a failure to run their business or carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles and a failure to protect client money. By the Respondents' transferring money from client account to office account in excess of money held on behalf of that client they are also in breach of Rule 20.6 of the SAR.

16.8 The FIO's evidence was that he would not expect to see debit balances on a client ledger. If a client had two client ledgers this might occur in very exceptional circumstances. The Respondents had not disputed his findings. During the investigation the FIO had liaised with the Second Respondent and had spoken to the Fourth Respondent on a number of occasions. The shortfall had not been obvious because the reconciliations had not been done properly.

16.9 Mr Hopkins submitted that the client account of a solicitor was or should be sacrosanct. Lord Bingham MR in Bolton v Law Society (C.A.) [1994] 1 WLR 512 said:

> "In its judgment the Divisional Court said that the misappropriation of money is a very serious matter. Later in the judgment the Divisional Court described the client account of a solicitor as "sacrosanct." With those expressions of

opinion I respectfully agree. Any approach to a case such as this must start from recognition of that as a correct starting point."

The First, Second and Third Respondents' Case

16.10 Allegation 1.1 was formally admitted by all of the First Respondent, the Second Respondent, and the Third Respondent.

16.11 In a letter to the Applicant dated 8 March 2017 "on behalf of all of the firm's managers and the firm's COFA" the First, Second and Third Respondents did not dispute the FIO's factual findings on this point. At the time they did not consciously attach any significance whatsoever to the "round sum" aspect of the transfers for the simple reason that their fees charged to clients tended to be also "round sum" figures. At the time they did not consider that the transfers were "withdrawals on account of costs" as opposed to genuine legitimate processed billing. They had assumed that the client bills issued related to funds on those clients' ledgers.

16.12 At the relevant time the First, Second and Third Respondents believed that they acted with integrity but following the FIO's factual findings they accepted that the factual element of the breaches themselves breached Principle 2. At the time they believed that they were running their business and carrying out their roles effectively and in accordance with proper governance and sound financial risk management principles. The FIO's findings highlighted that there were deficiencies in the internal office procedures which inevitably meant that Principle 8 had been breached. Given the FIO's findings as to client account shortages they accepted Principle 10 had been breached.

The Tribunal's Decision

16.13 Principle 2 required that a solicitor must act with integrity. Principle 6 required that a solicitor must behave in a way that maintained the trust the public placed in the solicitor and in the provision of legal services. Principle 8 required a solicitor to run their business and to carry out their role in the business effectively and in accordance with proper governance and sound financial and risk management principles. Principle 10 required solicitors to protect client money and assets.

16.14 The Tribunal gave careful consideration as to whether the First, Second and Third Respondents' conduct amounted to a lack of integrity. In Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin) the appellant solicitor made improper payments out of his firm's client account. This was found to be a lack of integrity. In this case the Firm had made or allowed transfers from individual client accounts to the office account in excess of the funds held on those accounts resulting in debit balances on client accounts. The Tribunal decided that there had been a breach of Principle 2 as the Respondents' had not complied with the SAR and had not safeguarded client money despite the fact two were partners in the firm and the other the COFA. They had lacked integrity... For the same reason Principle 10 had not been complied with as the First, Second and Third Respondents had not protected client money.

16.15 At the time of the FIO's inspection there had been debit balances which were not permitted. The SAR had not been complied with and Principle 8 had been breached. The Firm had not been run in accordance with sound financial risk management principles and there had not been proper governance. Two of the Respondents were partners and the other was the Firm's COFA. None of them had carried out their role in the business effectively. The public would expect a solicitor to comply with the SAR and to run their business effectively. A solicitor who did not do so would invariably not maintain the trust the public placed in them and in the provision of legal services. Client money should be sacrosanct and the public would not expect a solicitor to allow transfers from client to office account in excess of funds held for that client. Principle 6 had been breached.

16.16 Rule 20.06 of the SAR stated that money withdrawn in relation to a particular client or trust from a general client account must not exceed the money held on behalf of that client or trust in all general client accounts. It was clear on the evidence from the FIO that this was precisely what had happened. The First, Second and Third Respondents accepted that this had happened. Rule 20.06 of the SAR had been breached.

16.17 Allegation 1.1 was admitted in full and the Tribunal found it proved in full, to the requisite standard of beyond reasonable doubt, for the reasons stated above.

17. **Allegation 1.2 – The First, Second and Third Respondents failed to carry out proper reconciliations. When preparing reconciliation statements, they used the credits of one client against debits of another when checking total client liabilities resulting in shortages not being shown and in doing so breached Rule 29.12 and 29.14 of the SAR.**

The Applicant's Case

17.1 The Respondents failed to properly reconcile client liabilities with client funds and allowed debit ledger balances to be set-off against credit ledger balances. Monthly reconciliation statements did not identify the cause of the differences between the balance of the cash account and client liabilities. The FIR set out that a comparison by the FIO of the total recorded liabilities to clients of the Firm as at 31 August 2016 (£30,453.36) with the cash held on client bank accounts as of that date (£16,142.36) revealed a shortage of £14,311.00.

17.2 There was a reconciliation statement and client listings as at 31 August 2016. The reconciliation showed the accounts balance. It detailed liabilities to clients as £16,142.36. It showed money in client bank account of £29,703.36 which, less unpresented items of £13,561.00, amounted to £16,142.36. However, the calculation failed to take into account the client debit balances of £14,311.00 which should have been included in the liability to clients. This would have resulted in a shortage of £14,311.00, which should have been identified on the reconciliation. Accordingly, the Respondents' failed to produce formal statements reconciling the client account cash book balances, aggregate client ledger balances and the client bank account, to show unresolved differences to be investigated and for corrective action to be taken in breach of Rules 29.12 and 29.14 of the SAR.

The First, Second and Third Respondents' Case

17.3 Allegation 1.2 was formally admitted by the First, Second and the Third Respondents. At the time they believed that the reconciliations carried out were satisfactory. They accepted that they were not up to the required standard of Rule 29.12 although at the time they genuinely believed that they were in compliance with this Rule. Through ignorance of Rule 29.14 they failed to identify that what was happening was a breach of the Rule.

The Tribunal's Decision

17.4 Rule 29.12 required that reconciliations were undertaken at least once every five weeks. It made specific provision as to what was required as part of the process. Rule 29.14 stated that all shortages must be shown. In making the comparisons under Rule 29.12 (a) and (b) credits in respect of one client could not be offset against debits of another when checking total client liabilities.

17.5 The reconciliations that had been undertaken did not comply with Rule 29.12. They failed to properly reconcile client liabilities with client funds. Rule 29.14 specifically stated that all shortages must be shown and they were not. It also stated that credits in respect of one client could not be offset against debits in respect of another when checking total client liabilities but this was precisely what the Firm had done.

17.6 Allegation 1.2 was admitted in full and the Tribunal found it proved in full, to the requisite standard of beyond reasonable doubt, for the reasons stated above.

18. **Allegation 1.3 – The First, Second and Third Respondents failed to give or send a bill of costs or other written notification of costs on at least two occasions before withdrawing money from client account with the resulting invoices being back dated to when the transfer had been made and in so doing breached Rules 17.2 and 20.3 of the SAR.**

The Applicant's Case

18.1 The FIO found that invoices on two separate matters; Mr AQ and Mr MM had been backdated. The invoice on the matter relating to Mr AQ was backdated to a date before the client provided instructions to the Firm. In both matters funds were transferred from the Firm's client bank account into the Firm's office bank account in advance of the issue of the bill of costs or notification of costs. Bills were then created at a later date and back dated to correspond to the values transferred.

18.2 The Second Respondent agreed with the FIO's suggestion that in the case of Mr AQ the Firm had permitted the premature transfer of funds and then had later allocated bills to the sum already transferred. The Second Respondent said in the letter dated 18 January 2017: "..... We do not dispute that in the particular case you have identified, a premature transfer of funds took place, and then that a backdated bill was later applied, ..." and further confirmed "We understand that our Accountant Mr Sheraz Sultan altered the date on the bill from 10/05/2016 to 29/2/2016." In a consultation with the FIO on 18 January 2017, the Second Respondent acknowledged that the backdating of invoices had occurred. He stated that this was a "collective

oversight" on the part of the Firm and that measures would be taken to ensure that the practice was not repeated.

18.3 Monies were transferred to office account when they were not properly required for the Firm's costs and in doing so the First, Second and Third Respondents' breached Rules 17.2 and 20.3 of the SAR.

The First, Second and Third Respondents' Case

18.4 Allegation 1.3 was formally admitted by the First, Second and Third Respondents. They denied any personal knowledge of the isolated instances of "backdated billing" identified by the FIO. They acknowledged that this had occurred and said it was due to a "collective oversight". This inevitably placed them in breach of Rule 17.2 and Rule 20.3.

The Tribunal's Decision

18.5 Rule 20.3 governed when office money could properly be withdrawn from a client account. Rule 17.2 stated that if payment was properly required for payment of fees from money held for a client or trust in a client account then the solicitor/firm must first give or send a bill of costs or other written notification of the costs incurred to the client or the paying party.

18.6 In respect of Mr AQ funds were transferred from the client account to the office account on a date before the client provided instructions to the Firm. The invoice was then backdated to the date of the transfer having been created at a later date. In respect of Mr MM funds were transferred from client to office account in advance of the issue of a bill of costs. The bill was later backdated to correspond with the transfer. Rules 17.2 and 20.3 of the SAR had been breached and the First, Second and Third Respondents acknowledged these breaches.

18.7 Allegation 1.3 was admitted in full and the Tribunal found it proved in full, to the requisite standard of beyond reasonable doubt, for the reasons stated above.

19. **Allegation 2- Recklessness**

The Applicant's Case

19.1 The FIR identified that:-

- the Firm failed to keep client money separate from that of the Firm.

- a shortage existed in the Firm's client bank account, at the extraction date, in the sum of £14,311 and was caused by the transfer of funds from the Firm's client bank account into the Firm's office bank account at a time when insufficient funds were being held on behalf of the respective clients.

- an ongoing general deficiency in the Firm's client bank account persisted for at least six months prior to the extraction date.
- two bills were backdated and allocated to previous billing periods.

- the Firm failed to properly reconcile client liabilities with client funds and allowed debit ledger balances to be set off against credit ledger balances.

- the managers and compliance officers failed to run the business or carry out their roles in the business effectively and in accordance with proper governance and sound financial and risk management principles.

19.2 The actions of the First, Second and Third Respondents in failing to ensure that there were sufficient funds in client account before making transfers to office account were reckless according to the test for recklessness accepted as applying in Solicitors Disciplinary Proceedings by Mr. Justice Wilkie in Brett v SRA [2014] EWHC 2974 (Admin) at [78], namely the test set out by Lord Bingham in R v G and another [2003] UKHL 50: "…knowing disregard of an appreciated and unacceptable risk of causing an injurious result or a deliberate closing of the mind to such risk…"

19.3 There was an obvious risk that money may be improperly transferred from client to office account. The Respondents' would have been put on notice to ensure that sufficient funds were in client account before transfers were made because of the composite round sum transfers being made at the end of each month to meet the Firm's monthly overheads and to ensure that the overdraft was not exceeded. In effect, they turned a blind eye to the possibility that round sum transfers from client account to office account were being made at the end of each month in order to meet the Firm's overheads and not exceed the overdraft limit. The Respondents' must have known that the provisions of the SAR, which existed for the protection of client money, might be put at risk if proper checks were not made. Consequently, the First, Second and Third Respondents must be taken to have knowingly disregarded that risk by failing to effectively participate in the management of and checking of the Firm's accounts.

The First, Second and Third Respondents' Case

19.4 Allegation 2 was formally admitted by the First, Second and the Third Respondents.

19.5 They acknowledged that at the time neither the COFA nor partners had regularly checked monthly account reconciliation statements. Those statements were not signed by either the COFA or by a partner as evidence that they had been checked. The First, Second and Third Respondents were not aware of the existence of debit balances on the various client ledgers. The non-observance of this was an oversight. They did not knowingly permit or allow the irregular transfer of funds from the Firm's client account to its office account. They had assumed that the invoiced transfers represented billable sums. Immediate action was not taken to remedy the breach because they were not aware that any breach had actually taken place. At the time they genuinely believed that the Firm's books of account were maintained in accordance with the SAR. Their Accountants Report for 2014/15 had not been qualified and had not noted any breaches of the SAR.

19.6 The "collective oversight" of the first three Respondents as to the deficiencies in the Firm's operating procedures and indeed to the individual activities of other individual fee earners and accounting staff led to the occurrence and non-detection of the conduct which became the subject of the FIO's investigation. The First, Second and

Third Respondents accepted that they were "negligent" in this regard. The Firm was now fully compliant with the SAR. The FIO had suggested that the COFA undertake training which she had done. The First, Second and Third Respondents had realised that a lot of things needed to be focussed on to comply with the Rules. The requirements of being COLP and COFA were now quite a large part of the Second and Third Respondents' roles. The Second Respondent's evidence was that since the investigation they had done less fee earning work and spent more time on ensuring compliance. The Firm's invoices were now more detailed. The First, Second and Third Respondents worked as a team in regard to the finances of the business. The Second Respondent made the actual transfers.

The Tribunal's Decision

19.7 The question for the Tribunal, applying Brett and the test in R v G, was whether the First, Second and Third Respondents had "…knowing disregard of an appreciated and unacceptable risk of causing an injurious result or a deliberate closing of the mind to such risk…" From what the Tribunal had read and heard in relation to the matters alleged and found proved in respect of allegation 1.1 there had been a lack of sound financial management and a lack of compliance with the SAR. The First and Second Respondents were partners in the Firm, the Second Respondent made the actual transfers and the Third Respondent was the COFA. The Tribunal found that the way in which the Firm's billing and finances operated meant that there was an obvious risk that money may be improperly transferred from client to office account. The First, Second and Third Respondents had turned a blind eye to the risk. They had not ensured familiarity and compliance with the SAR. They had disregarded that risk by failing to effectively participate in the management of and checking of the Firm's accounts. They had clearly been reckless.

19.8 Recklessness was admitted and the Tribunal found allegation 2 proved, to the requisite standard of beyond reasonable doubt, for the reasons stated above.

20. **Allegation 1.4 – The Fourth Respondent had, occasioned or been a party to an act or default in relation to legal practices which involved conduct on his part of such a nature that it would be undesirable for him to be involved in a legal practice in that he, whilst remunerated by and under the direction of solicitors in the firm, allowed debit balances to occur in client account as detailed in allegation 1 above and back dated bills.**

The Applicant's Case

20.1 The Firm kept its client accounts electronically, using software called Perfect Books. The Fourth Respondent was the Firm's bookkeeper during the relevant period, and the only person who operated the Perfect Books software at the Firm.

20.2 The Fourth Respondent would identify to the other Respondents the Firm's expenses that required payment for any particular month. The fee earners would then be requested to provide their files for billing and billing invoices for processing by the Fourth Respondent on the manual file ledgers as well as the computerised file ledgers on the Perfect Books system. The Fourth Respondent provided a total billing figure to be transferred from the client account to the office account, to the Partners and the

COFA. The Fourth Respondent in his letter of the 27 April 2017 agreed that this was the process undertaken. The figure provided by the Fourth Respondent would routinely create a debit balance in client account notwithstanding his access to the file ledgers.

20.3 The Fourth Respondent back dated two invoices on two separate matters. The client Mr AQ had instructed the Firm on 18 April 2016. The file contained a bill dated "10 May 2016", which had been back dated to "29 FEB", (prior to the Firm being instructed). The invoice number was 6400 and it was for the sum of £495.00. On the 29 February 2016 a client to office transfer of £10,500.00 had been processed. The Fourth Respondent confirmed that this included the invoice for £495.00. The premature transfer created a debit balance in client account for that client.

20.4 The Firm acted for Mr MM. The file contained a bill dated "02/12/2015" for £400, invoice number 6359. The invoice had been backdated to "6-11-2015". The client ledger showed that on 6 November 2015 the sum of £400 was transferred from the Firm's client bank account into the Firm's office bank account which created a debit balance.

20.5 In his letter dated 27 April 2017 the Fourth Respondent said: "The term "back dated" explains to bill the files provided later by the fee earners with those dates when the premature transfers took place from the Client to Office account kept on the record to reduce the balance of those amounts. I can confirm that I have rectified the dates of those billings that were not coinciding with the date of premature transferred funds to avoid any discrepancy for bank reconciliation."

20.6 The Fourth Respondent was incompetent in how he managed the accounts and how he carried out his work for the Firm. Accordingly, his conduct made it undesirable for him to be involved in a legal practice in one or more of the ways mentioned in s.43(1)(A) of the Solicitors Act 1974 (as amended by the Legal Services Act 2007).

20.7 S.43 of the Solicitors Act 1974 provides:

> "(1) Where a person who is or was involved in a legal practice but is not a solicitor—
>
> […]
>
> (b) has, in the opinion of the Society, occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that in the opinion of the Society it would be undesirable for him to be involved in a legal practice in one or more of the ways mentioned in subsection (1A), the Society may either make, or make an application to the Tribunal for it to make, an order under subsection (2) with respect to that person.
>
> (1A) A person is involved in a legal practice for the purposes of this section if the person–

(a) is employed or remunerated by a solicitor in connection with the solicitor's practice;

(b) is undertaking work in the name of, or under the direction or supervision of, a solicitor; "

20.8 Mr Hopkin submitted that it was clear that the making of an order under s.43 was a regulatory matter, intended for the protection of the public and the maintenance of the good reputation of the solicitors' profession, rather than as a punishment against the person who it is made with respect to. Wilkie J at paragraph 9 of Solicitors Regulation Authority v Ali [2013] EWHC 2584 (Admin) said:

> "The prohibition in section 43 is not an absolute prohibition upon employment by a solicitor, but is one which applies where a person is engaged otherwise than in accordance with a Society permission. Thus the structure of the section reflects the fact that this is a structure which is intended to be protective of the public interest and the reputation of the Society […]."

20.9 Later on, Wilkie J added, at paragraph 41:

> "[…] [A] section 43 order has a regulatory function, not a penal function. That is why the order is of indefinite duration, subject to revocation upon review. The purpose of the order is to safeguard the public and the Society's reputation by ensuring that a person is currently only employed where a satisfactory level of supervision has been organised and for as long as that person requires such a level of supervision before being permitted to work effectively under his own steam."

20.10 There were a number of other cases agreeing with this position including Gregory v Law Society [2007] EWHC 1724 (Admin) and Ojelade v Law Society [2006] EWHC 2210 (Admin).

20.11 A single episode of misconduct may justify the making of a s.43 order, even where it occurred several years prior. In Ojelade, the Tribunal found that the subject of the s.43 order had made a "serious error of judgment, even though [he] was forced to exercise that judgment at the last minute". This error of judgment had involved Mr Ojelade representing a client of another firm in a bail hearing due to a misunderstanding. The relevant events occurred in July 2003 and there was no indication of any other misconduct between that time and the time of the oral hearing before the Tribunal in January 2006.

20.12 In Gregory the Court held that s.43 (1) (b) did not require a finding of dishonesty; (2) S.43(1)(a) did not necessarily limit the natural meaning to be given to the words of s.43(1)(b); and (3) The use of the word "connivance" in s.43(1)(b) did not mean that particularly grave misconduct was required. Use of the word "connivance" merely indicated a broader state of mind on the part of the solicitor than simple knowledge or consent.

20.13 Mr Hopkins submitted that the Fourth Respondent knew that monies were being transferred from the client account to the office account in excess of funds held on behalf of clients. Such knowledge was clear from the Fourth Respondent's letter dated

27 April 2017. Further, the Fourth Respondent carried out monthly reconciliations of the client account improperly. The Fourth Respondent admitted to having physically backdated the two invoices referred to in the FIR. In the Fourth Respondent's Further Answer, he alleged that he took this action at the direction of the Second Respondent (albeit that allegation was not made in the Fourth Respondent's letter dated 27 April 2017).

20.14 The Applicant disputed the Fourth Respondent's assertion that the FIO "did not find any error in the monthly reconciliations of the client account that I have carried out."

20.15 The Applicant submitted that it was clear that the Fourth Respondent occasioned, or was party to, the acts or defaults of the First to Third Respondents and such acts or defaults were in relation to the First to Third Respondents' and the Firm's legal practice. In the alternative, if the Fourth Respondent was unaware of this fact, such lack of awareness amounts to gross incompetence. The Fourth Respondent's behaviour involved conduct on his part, be it deliberate or otherwise, of such a nature that it would be undesirable for him to be involved in a legal practice.

20.16 The Applicant submitted that members of the public must be able to trust that money they entrust to a solicitor was utterly safe. Consequently, it was in the public interest to ensure the public were safeguarded, and the profession's reputation was protected, by requiring that the Fourth Respondent was only employed in a solicitors' firm where a satisfactory level of supervision had been organised. The Applicant emphasised that if a s.43 order was made, the Fourth Respondent would not be prohibited from working in solicitors' firms, provided the Law Society's permission was obtained and, if relevant, any conditions the permission was made subject to were satisfied. The intention behind making an order would be to effectively regulate the profession, not to punish the Fourth Respondent.

<u>The Fourth Respondent's Case</u>

20.17 The Fourth Respondent denied the allegation.

20.18 In a letter dated 29 November 2017 to Suzanne Jackson at the SRA the Fourth Respondent provided further evidence in support of his previous reply to the Regulatory Supervisor, Mandeep Rai, dated 27 April 2017.

<u>Letter of 27 April 2017</u>

20.19 The Fourth Respondent's letter of 27 April 2017 specifically addressed the Second Respondent's letter of 18 January 2018. He accepted that upon request from the Second Respondent he provided details of the amount of such expenses and the liabilities of the Firm. He accepted it was his job to inform the Second Respondent whether billing had been provided for the funds required or whether there was a shortfall. However it was the partners' responsibility to decide how to meet their Firm's expenses and liabilities. The Fourth Respondent did not have access to operate the bank, this was something the Second Respondent did. He accepted in that letter that he had rectified the dates of those billings that were not coinciding with the date of premature transferred funds to avoid any discrepancy in the bank reconciliation. He had not backdated the bills in order to move money from the client to the office

account. He said that the FIO had verified that there had been no discrepancy in transactions between the client account ledgers on Perfect Books and the bank statement. He asserted that the FIO had not found any errors in the monthly reconciliations of the client account that the Fourth Respondent had carried out.

20.20 The Fourth Respondent's position was that he was only providing the details of billing to the Second Respondent based on the information provided by the fee earners. Responsibility lay with the Third Respondent as COFA to verify that the list of bills and transfers from client account did not result in client debit balances.

Letter of 29 November 2017

20.21 The Fourth Respondent understood and believed that this evidence would prove that the failed reconciliations carried out by him on the Firm's instructions were due to frequent premature transfer of funds done by the Second Respondent.

20.22 The Fourth Respondent accepted that upon the Second Respondent's instructions to provide details for the weekly outgoings, he provided the Second Respondent with the total sum required. The fee earners were then asked by the Second Respondent to provide billing for such outgoings. The Fourth Respondent was only processing those files that were provided by the fee earners for billing on the same day. Perfect Books could only process the invoice bill for the exact funds present on the client ledger. If an amount more than the amount on the client ledger was entered, it would not process it and would give a warning message which could be overruled. The Fourth Respondent believed that he had already demonstrated this procedure to the FIO.

20.23 It had never been the case that the figures provided by the Fourth Respondent to the Second Respondent would routinely create a debt balance in the client ledgers. Debit balances were created due to premature transfer of funds from the client to the office account. It was up to the partners how to manage and arrange for funds. When there was no billing being provided by the fee earners the Second Respondent was carrying out premature transfers of the short fall of required funds from the client to the office account to cover the office outgoings. The Second Respondent after carrying out a transfer of such funds was keeping a record of it with the date of that transfer, amount and serial invoice number. This procedure had even taken place in the Fourth Respondent's absence. He was abroad on holidays from 14 December 2015 until 4 January 2016. If the Applicant believed that he was providing the Second Respondent with the figures that were routinely creating the debit balances, then the premature transfers should have stopped in December 2015 as he was on holidays. Whereas they continued in his absence.

20.24 The Fourth Respondent stated that monthly reconciliations could not be carried out where such premature transfer of funds had taken place without keeping proper invoicing. Reconciliation could only be made once these premature transfers were invoiced to be cleared off. The reconciliation for the month of December 2015 was carried out on 24 February 2016 which was due to delayed billing provided by the Second Respondent on behalf of the fee earners to reduce and clear the back log of premature transferred funds. During the same period more premature transfers of funds were being carried out to meet the office expenses and liability without any

billing for the same day. This series of frequent premature transfer of funds without appropriate billing carried on from month to month making it impossible to rectify any debit balances created and the bank reconciliations were delayed.

20.25 This operational weakness at the Firm was beyond the Fourth Respondent's control and carried on until the FIO was appointed by the Applicant. No premature transfers took place in the month of September 2016. By that time there was a huge back log of prematurely transferred funds for the months of May, June, July and August 2016. As there were no premature transfers in September 2016, a non-adjustment reconciliation was carried out in October 2016.

20.26 The Fourth Respondent said that it was evident that he was not responsible for any breach of Principle 10 which was to "Protect the client money and assets". He confirmed that he rectified the invoice bill of Mr QA from 10 May 2016 to 29 February 2016 for a sum of £495.00 with the invoice number 6400. He said that the Second Respondent instructed him to back date it in order to reduce the balance of premature transfers of £10,500 which the Second Respondent had made on 29 February 2016 which had allowed a debit balance to occur on that client's ledger. In respect of the Mr MM matter the Fourth Respondent said that he was instructed to back date it by the Second Respondent (changing the date from 2 December 2015 to 6 November 2015) in order to clear the back log transfer of £400.00 that the Second Respondent had made on 6 November 2015 which created a debit balance.

20.27 The Fourth Respondent denied that there had ever been a case where he had provided a billing figure to be transferred from the client account to the office account which could have resulted in a premature transfer. Premature transfers happened when no billing was provided upon instruction by the compliance officers of the Firm to the fee earners and this method was in the Firm's knowledge. The pending reconciliations due to the back log of premature transfers had to be carried out avoiding any discrepancy where the exact amount, date and invoice number should match with the same details on the billing invoices.

20.28 The Fourth Respondent said he joined the Firm on 8 June 2015. He received professional training from his supervisor at Zik. There had been no case of any discrepancy and debit balances in the client listings and the reconciliations for the months of May, June, July, August and September 2015. The Accounts Report for the year 2014/15 was unqualified. The issue of debit balances started from October 2015 due to the Firm's weak operational management and the fact they were not co-ordinating with the fee earners on time for billing to meet their expenses and liabilities and then started relying on premature transfers.

20.29 The Fourth Respondent said that he had been very cooperative and clear with the FIO. He provided and assisted him with all the backup of invoice billing along with the verified endorsements of funds received in the client account. The Fourth Respondent explained to the FIO that such reconciliations had created debit balances in the client listings due to premature transfers done by the Second Respondent which were unable to be rectified due to more transfers carried out at a time when no billing was provided by the fee earners when required. The FIR clearly identified that it was the Firm that had failed to properly reconcile client liabilities with client funds and allowed debit balances to be set-off against credit ledger balances. The managers and

compliance officers failed to run the business or carry out their roles in the business effectively.

20.30 The FIO conducted his investigation in September 2016 and prepared his report on 31 January 2017. During this period and in his report, the FIO did not mention that the premature transfers and debit balances were due to the Fourth Respondent's incompetence. As the FIO practically visited and interviewed people at the Firm, he became aware of the facts and procedures as to how the Firm worked. If the FIO believed that the Fourth Respondent was not doing the reconciliation properly, the FIO must have mentioned this in the FIR. Additionally, he would have advised the Firm to change the bookkeeper with immediate effect to avoid further noncompliance.

20.31 The Fourth Respondent said that since September 2016 there was no instance of any debit balance or backdated billing. He had continued the reconciliations in the same way as he started in June 2015. This would suggest that if premature transfers were eliminated, his reconciliations were as required by the Applicant. He believed that after providing this evidence and facts an order under s.43 (2) of the Solicitors Act 1974 should not be made against him.

Submissions to the Tribunal

20.32 The Fourth Respondent told the Tribunal that when the Second Respondent knew that there was to be an investigation he started to gather all the billable files for the fee earners including some of those who were deliberately holding funds on client ledgers and were not co-operating. The purpose was to clear the backlog of billing. The Fourth Respondent said that the FIO was aware that he knew how to do his job. What had occurred was due to the First, Second and Third Respondents' operational weaknesses and not the Fourth Respondent's misconduct.

20.33 The Fourth Respondent gave the Second Respondent a list of what was being billed by the fee earner. Sometimes the fee earners prepared the bills and sometimes they gave the Fourth Respondent the information and he prepared the bills. If the list of what was being billed did not cover the outgoings the Fourth Respondent gave details of the shortfall to the Second Respondent.

20.34 The Fourth Respondent accepted that he had backdated the two invoices. He did it to clear the backlog of premature transfers and to avoid any discrepancy in the reconciliations. The reconciliations had been done properly, the only issue was the premature transfers. Perfect Books had flagged that there were debit balances on those ledgers. It was very clear. The debit balance was corrected when the files had funds credited at a later date. The Fourth Respondent accepted that if a bill was created and there were no funds held it would create a debit balance.

20.35 The Firm continued to employ the Fourth Respondent. There was no evidence before the Tribunal from a senior accounts person. The First, Second and Third Respondents had not objected to his reply of 27 April 2017 in which he denied all of the allegations against him. Once the Rule 5 and 8 Statement had been received the Second Respondent had wanted the Fourth Respondent to accept the allegations so that they could reach an Agreed Outcome and avoid the hearing. The Fourth Respondent had refused to accept this and had decided to give his reply with

the supporting evidence. The Fourth Respondent had been allowed by the Applicant to continue working at the Firm. The Fourth Respondent said that the Tribunal should not impose a penalty on him or order him to pay costs.

The First, Second and Third Respondents' Case

20.36 On 3 November 2017 a Joint Answer had been filed on behalf of all four Respondents. That document contained an admission by the Fourth Respondent of allegation 1.4.

20.37 The Second Respondent's evidence to the Tribunal was that he had showed the Fourth Respondent (as well as the First and Third Respondents) the draft of this document. The Fourth Respondent had taken a copy away with him to speak to Zik and had then confirmed to the Second Respondent that the draft was fine. The Second Respondent had finalised the document and submitted it. Subsequently the Fourth Respondent had filed his own Answer.

20.38 The First, Second and Third Respondents had replied to the Fourth Respondent's individual response in a Joint Observations document dated 2 January 2018. They explained that on 6 November 2017, the four Respondents filed a Joint Answer dated 3 November 2017 in response to the allegations in the Rule 5 and Rule 8 Statement. This Joint Answer was fully approved by all four Respondents including the Fourth Respondent, before being filed with the Tribunal and served on the Solicitors Regulation Authority. The First, Second and Third Respondents confirmed that the Joint Answer and supporting documents was correct and remained the basis of their response in this case.

20.39 Subsequent to the above, on 4 December 2017, the Fourth Respondent handed the Second Respondent a copy of his letter dated 29 November 2017 (without attachments) addressed to the Solicitors Regulation Authority, stating that he now wished to defend the case in relation to himself. He stated that he had contacted the Solicitors Regulation Authority and had been advised to send his letter of 29 November 2017 to the Tribunal. He further stated that he would now be saying that he had 'never seen' the contents of the original Joint Answer served on 6 November 2017 on behalf of all four Respondents. The Fourth Respondent's statement that he had never seen the Joint Answer of the four Respondents was completely untrue. In fact the Fourth Respondent confirmed his approval of the Joint Answer (but not the covering letter which he had not seen). There was nothing in writing in relation to the Fourth Respondent's approval as it had been dealt with verbally as all of the Respondents still worked at the Firm. The Second Respondent disputed the Fourth Respondent's suggestion that he had pressured him to admit the allegations in order that agreement could be reached with the Applicant.

20.40 The First, Second and Third Respondents noted that the Fourth Respondent's Answer and Supporting Documents were not filed and served in time and asked the Tribunal not to grant leave to the Fourth Respondent to adduce his letter dated 29 November 2017 and supporting documents. They said that these documents should be disregarded by the Tribunal for the purpose of these proceedings. They asked the Tribunal to draw an adverse inference in relation to the Fourth Respondent's out of time change of answer to these proceedings.

20.41 During his investigation, the FIO explained to the Fourth Respondent that the reconciliations carried out by the Fourth Respondent were not correct due to the existence of debit balances in some of the client account ledgers. The First, Second and Third Respondents were unaware of this until the FIO highlighted this. The First, Second and Third Respondents accepted the factual findings of the FIO as regards debit balances having occurred in some client account ledgers. However, the Second Respondent (who was authorised by the Firm to operate its online banking facility) only transferred funds from the Firm's client account to the Firm's office account in accordance with the instructions provided to him by the Fourth Respondent detailing the billing invoices which had been processed by the Fourth Respondent from the fee earners including invoice numbers, amounts and noting the date of processing.

20.42 The fact that the billing invoices processed by the Fourth Respondent took some of the client account balances into debit was not something that the First, Second or Third Respondents were aware of at the time, and they all assumed that the billing invoice figures provided by the Fourth Respondent to the Second Respondent were correct and that the transfers made by the Second Respondent from the client account to the office account were correctly made. The First, Second, and Third Respondents became aware of the "premature transfer of funds" issue when it was highlighted and explained to them by the FIO. They accepted the FIO's factual finding in this regard and maintained that this was due to a "collective oversight" of all Four Respondents.

20.43 At the time of the processing of the billing invoices and consequent transfers, neither the First, Second, or Third Respondents were aware of the "warning messages" on the Perfect Books Accounting package as the system was only used by the Fourth Respondent, and had never been used by the First, Second or Third Respondents. At the time in question, the Fourth Respondent had not highlighted this to either the First, Second, or Third Respondents. Again they accepted the FIO's factual finding in this regard and maintained that this was due to a "collective oversight" of all Four Respondents.

20.44 It was the case that the figures provided by the Fourth Respondent to the Second Respondent routinely created a debit balance in the client ledgers. This was the factual finding of the FIO and the first three Respondents accepted this. The fact that debit balances were created due to premature transfer of funds from the client to the office account was a factual finding of the FIO. However, the First, Second and Third Respondents were not aware at the time that the invoice billing figure details provided by the Fourth Respondent to the Second Respondent were leading to a "premature transfer of funds" in consequence of the bank transfer actually being implemented by the Second Respondent. This was a "collective oversight" of the Respondents at the time.

20.45 The Second Respondent's evidence was that the way in which the internet banking recorded the order of the transactions was not the way it displayed to him on screen when he was making the transfers. The Firm had not exceeded its overdraft and that would not have been possible. He would not have been able to make the transfers if the limit had been reached. He was not familiar with some of the figures in the FIR. There had only been one invoice number for the transfers as these were composite

transfers, the Second Respondent understood that there were individual bills raised on each file.

20.46 It was denied that the Second Respondent, after carrying out premature transfers of funds, would keep a record of it with the date of that transfer, amount and serial invoice number. This account of the Fourth Respondent was completely false. The Second Respondent only transferred funds from the client account to the office account according to the billing invoice processed details (date, invoice number and amount) provided to him by the Fourth Respondent. The Second Respondent had never to date ever kept a record of date of transfer, amount and serial invoice number relating to processed billing transfers. In fact these records were only kept by the Fourth Respondent who provided the Second Respondent with these details after processing billing, for the Second Respondent to make the corresponding bank transfers from client account to office account'. He had not used Perfect Books which was the system that the Firm had used prior to any of the Respondents joining the Firm and which it continued to use. The use of Perfect Books was part of the Fourth Respondent's role.

20.47 As to what happened when the Fourth Respondent was on holiday, in early December 2015, the Fourth Respondent advised the first three Respondents that he had booked his holidays for the period 14 December 2015 to 04 January 2016. Bearing in mind that billing invoices could not be processed in his absence from the office, the First, Second and Third Respondents asked the Fourth Respondent to provide them with a list of the outgoings due in the period of his planned absence. They then asked the fee earners to provide their files for billing to the Fourth Respondent. As they understood it at the time, the Fourth Respondent processed the billing invoices in six batches depending on which fee earners gave him their files on which days in that period, which was early December 2015.

20.48 On his last working day in the office before his holiday, which was the week ending Friday 11 December 2015, the Fourth Respondent provided the Second Respondent with a note confirming the six batches of billing he had processed with their invoice numbers, which as the Second Respondent understood at the time were therefore ready for transfer by the Second Respondent from the client account to the office account. Due to other work pressures at the time when the Fourth Respondent provided the Second Respondent with the processed billing invoice information, the Second Respondent was not able to transfer the six amounts to which the Fourth Respondent's billing invoice note related on that particular day. Whilst the Fourth Respondent was on holiday, the Second Respondent looked at the list of outgoings for December 2015 provided by the Fourth Respondent, and then transferred each of the invoice billed amounts provided by the Fourth Respondent from the client account to the office account ahead of the dates that the various outgoings were due to go out of the office account.

20.49 At the time in question, the First, Second and Third Respondents believed that the Fourth Respondent had correctly processed the billing invoices from the fee earners prior to his holiday, and that after that, the Second Respondent had correctly transferred the six batches of billing from the client account to the office account. The first three Respondents accepted the subsequent factual findings of the FIO and maintained that it was a "collective oversight" of the Respondents that the processed

billing invoice numbers and amounts provided to the Second Respondent by the Fourth Respondent prior to his holiday led to the consequence of debit balances in some client account ledgers.

20.50 The First, Second and Third Respondents denied that the reconciliation for the month of December 2015 were not carried out until 24 February 2016 due to delayed billing provided by the Second Respondent on behalf of the fee earners to reduce and clear the back log of prematurely transferred funds. It was not at all correct to say that the Second Respondent provided delayed billing on behalf of the fee earners. This was untrue. It was the role of the fee earners, not the Second Respondent to provide their files and billing invoices for processing by the Fourth Respondent. Due to a "collective oversight" by the First, Second and Third Respondents, at the time in question, they were not aware of the difficulties with reconciliations referred to by the Fourth Respondent, until the FIO highlighted and explained this to them. As such, they assumed that the Fourth Respondent, who was aware of these difficulties, was unilaterally attempting to take a course of action which he considered at the time would rectify the problems he had identified with the monthly reconciliations.

20.51 Until it was highlighted by the FIO neither the First, Second, or Third Respondents were aware that the billing invoice details being provided by the Fourth Respondent to the Second Respondent for actual bank transfer were not correct. Nor were they aware of the huge back log of prematurely transferred funds for the months of May, June, July and August 2016 until the FIO highlighted and explained it to them during his investigation.

20.52 The Fourth Respondent had said that he had been instructed to backdate invoices by the Second Respondent in order to reduce the balance of the premature transfer of £10,500 on 29 February 2016 which created a debit balance in that client's ledger. This was totally untrue. The Second Respondent never instructed the Fourth Respondent to "back date" invoice bills and had no knowledge that this was occurring until this was highlighted and explained by the FIO during his investigation.

20.53 The Fourth Respondent had said that there had never been a case where he had provided a billing figure to be transferred from the client account to the office account which could have resulted in a premature transfer. This was totally untrue. The funds transferred from client account to office account by the Second Respondent during the Fourth Respondent's holiday were only transferred in line with the processed billing invoice details provided by the Fourth Respondent prior to his holiday.

20.54 The Fourth Respondent had said that premature transfers happened when no billing was provided, upon instruction by the compliance officers of the Firm to the fee earners and this method was in the Firm's knowledge. This was untrue. The first three Respondents had no actual knowledge of this problem at the time, and believed that the Fourth Respondent was providing the Second Respondent with correctly processed billing invoice information, after which the Second Respondent made the corresponding bank transfers from client account to office account.

20.55 The Fourth Respondent had said that: "The pending reconciliations, due to the back log of premature transfers, had to be carried out avoiding any discrepancy where the exact amount, date and invoice number should match with same details on the billing

process". The First, Second and Third Respondents presumed that this was the Fourth Respondent's own description of his efforts to rectify the problems that he was aware of, but were not at all in the knowledge of either the First, Second, or Third Respondents at the time in question.

20.56 The Fourth Respondent had said that the issue of debit balances started from October 2015 due to weak operational management. This statement was untrue. At the time in question, the First, Second and Third Respondents believed that the processed billing invoice information provided by the Fourth Respondent to the Second Respondent to effect the physical bank transfers was correct. The Second Respondent only physically effected bank transfers from client account to office account in line with, and after, the processed billing invoice details were provided to him by the Fourth Respondent, which the First, Second and Third Respondents believed to be correct at the time.

20.57 In their Answer to the Rule 5 and Rule 8 Statement of the Applicant, the First, Second, and Third Respondents formally admitted all of the allegations made by the Applicant. However, they totally denied and rejected the various 'allegations' made by the Fourth Respondent in his revised out of time "Answer". His letter dated 29 November 2017 had several attachments and according to the First, Second and Third Respondents the contents of these in themselves did not actually support or prove the Fourth Respondent's own allegations.

20.58 The Second Respondent's evidence to the Tribunal was that the Firm paid Zik for the Fourth Respondent's services. He did not receive performance related pay.

The Tribunal's Decision

20.59 At the hearing Mr Cogan had not pursued the First, Second and Third Respondents' opposition to the Fourth Respondent relying on his letter of 29 November 2017. The Tribunal considered that that was the appropriate approach. The Fourth Respondent was not legally qualified and he was representing himself. It was important that he was able to put his case to the Tribunal and the Tribunal considered the letter of 29 November 2017 and supporting documents. The Tribunal disregarded the contents of the Joint Answer in so far as it related to the Fourth Respondent's purported admission, as the Tribunal could not be sure that the Fourth Respondent had seen this document. It was not consistent with his letter of 27 April 2017.

20.60 The Fourth Respondent had admitted that he had backdated the two invoices. He accepted that he had done this to make the reconciliations work. He knew that the debit balances existed. The Fourth Respondent stated that monthly reconciliations could not be carried out where such premature transfer of funds had taken place without keeping proper invoicing. Reconciliations could only be made once these premature transfers were invoiced to be cleared off. These were serious admissions by the Fourth Respondent. He had, and was, responsible for the Firm's accounts as its bookkeeper.

20.61 Whether the transfers had been made on the basis of the Fourth Respondent's provision of information to the Second Respondent or of the Second Respondent's own violation was irrelevant. The admissions by the Fourth Respondent as to his

actions and as to what he knew together with his failure to ensure compliance with the SAR meant that the Tribunal found that he had occasioned or been a party to, with or without the connivance of a solicitor, an act or default in relation to a legal practice which involved conduct on his part of such a nature that it would be undesirable for him to be involved in a legal practice. A bookkeeper at a solicitor's firm had to ensure compliance with the SAR.

20.62 Allegation 1.4 was found proved, beyond reasonable doubt.

Previous Disciplinary Matters

21. There were no previous matters in respect of the Second, Third or Fourth Respondents.

22. There was one previous matter in respect of the First Respondent (Case Number 9767-2007). On that occasion the First Respondent had admitted the allegations and been fined £7,500 and ordered to pay the costs of and incidental to that application and enquiry fixed in the sum of £15,000. A number of the allegations in those proceedings related to the Solicitors Accounts Rules 1998, including one allegation of drawing monies out of client account otherwise than as permitted by Rule 22 of the Solicitors Accounts Rules 1998 leading to a cash shortage.

The Applicant's Submissions on Sanction in respect of the First to Third Respondents

23. As to sanction in respect of the First to Third Respondents, the Applicant referred, in particular, to paragraphs 50 to 52 of the Tribunal's Guidance Note on Sanctions (December 2016):

> "**Misappropriation of client money falling short of Dishonesty**
>
> 50. The Tribunal regards the breach of the heavy obligation to safeguard client money, which is quite distinct from the solicitor's duty to act honestly, as *extremely serious*.
>
> 51. The dishonest misappropriation of client money will invariably lead to strike off.
>
> 52. Strike off can be appropriate in the absence of dishonesty. Where a respondent's failure properly to monitor client money leads to its misappropriation or misuse by others, such a serious breach of the obligation could warrant striking off."
>
> (Emphasis added)

24. The Tribunal's Guidance Note on Sanctions indicated that breach of the heavy obligation to safeguard client money, even in the absence of dishonesty, was "extremely serious". Mr Hopkins invited the Tribunal to sanction the First, Second and Third Respondents and order that they do pay the costs of and incidental to this application and enquiry.

25. The fundamental misconduct at the heart of this matter was extremely serious, in that, as admitted by the First to Third Respondents, who were the managers and COFA of the Firm, over a period of at least six months:

- Monies were transferred from the client account to the office account in excess of the funds held on behalf of clients, resulting in debit balances totalling between £14,311 and £47,108;

- Proper monthly reconciliations were not carried out. Debit balances in the ledger accounts of some clients were set off against credit balances in the ledger accounts of other clients, obscuring the true position; and

- At least two bills were backdated.

Mitigation

26. Mr Cogan submitted that the First, Second and Third Respondents' culpability in this case was relatively low and had been caused by the Fourth Respondent's conduct. It was almost impossible to discern any motivation for their misconduct. It was not deliberate and there was no evidence that they had set out to do it. Consideration of whether it was planned or spontaneous did not apply nor did the question of whether they had acted in breach of a positon of trust. The First, Second and Third Respondents acknowledged that they had responsibility, it was their practice and they had responsibility for what went on. The First and Second Respondents were experienced. The Third Respondent was the least experienced but she was the COFA. There was no harm caused by the misconduct. No client had lost money, the shortfall was rectified relatively quickly. The impact of the misconduct was relatively low. There was no harm to the public.

27. In terms of aggravating factors the First Respondent had one previous matter before the Tribunal over ten years ago. The misconduct had occurred over a period of time, the FIO's inspection looked at a period of six months. There had been no concealment of wrongdoing, no dishonesty, no criminal offences. The misconduct was not deliberate or calculated. There had been no taking advantage of a vulnerable person.

28. In terms of mitigation the First, Second and Third Respondents each had a level of insight. The Tribunal had had evidence from the Second Respondent which showed that he had an abundance of insight. He had gone into what had gone wrong in great depth and the Firm had put procedures in place to ensure that it did not happen again. The Third Respondent had attended a course in respect of her role as COFA. There had been no subsequent issues raised. Mr Cogan understood that there had been a subsequent audit. Any loss had been made good in short order.

29. Mr Cogan acknowledged that this was not a case where No Order was the appropriate sanction. However the matter was at the lower level of cases that came before the Tribunal. A Reprimand should be considered as a possible sanction as the relevant factors that made this an appropriate sanction applied in this case. If the Tribunal was minded to impose a financial penalty in Mr Cogan's submission the appropriate level would be at the top end of level two or the lower end of level three, between £6,000 and £10,000. Any greater sanction was not justified on the facts of the case. The

First, Second and Third Respondents had expressed clear remorse and had taken positive steps, including employing other fee earners so that the Second and Third Respondents could concentrate on their respective roles as COLP and COFA. There would be no repeat of what had happened.

30. The First, Second and Third Respondents did not argue impecuniosity. The Second Respondent did ask the Tribunal to note that he only earnt £22,000.

31. The Fourth Respondent had submitted his tax return to the Tribunal. This showed that he had limited income of £9,450 which was reduced to a net profit of £6,342 for the year to 5 April 2017. He confirmed to the Tribunal that the earnings shown in the tax form were the extent of his income. He did not own a property and rented. He said that his income was sufficient to live on but that he did not have much spare at the end of the month. His only asset was a vehicle.

Sanction

32. The Tribunal referred to its Guidance Note on Sanctions (December 2016) when considering sanction.

The First, Second and Third Respondents

33. The Tribunal assessed the seriousness of the misconduct for each of the First, Second and Third Respondents individually.

The First Respondent

34. In assessing the First Respondent's culpability the Tribunal firstly considered his motivation. His position was that he did not know anything about the misconduct at the time and therefore it was not possible to identify a motivation or say if it was planned or spontaneous. He was not in a particular position of trust in that this was not a situation where he was an executor or similar. He did have direct control of or responsibility for the circumstances giving rise to the misconduct. He was the sole equity partner in the Firm and should have ensured compliance with the SAR. He was an experienced solicitor. Harm had been caused by the misconduct but he had not misled the regulator.

35. Individual client ledgers had been made good so clients had not lost money. However there was harm to the reputation of the profession and public confidence as client money was sacrosanct and it had not been safeguarded. The First Respondent appeared to have a complete lack of interest in what was going on and that would also have caused harm to the reputation of the profession. The harm might reasonably have been foreseen but was not intended. This was a case where the First Respondent did not do what he should have done and this had resulted in a failure to protect client money.

36. The aggravating factors were that the misconduct was repeated and it continued over a period of time. The First Respondent knew or ought reasonably to have known that the conduct complained of was in material breach of his obligations to protect the

public and the reputation of the legal profession. He had one previous matter also involving breaches of the Accounts Rules.

37. The shortage had been made good, albeit it took some time for some of the ledgers to be rectified. The First Respondent had made open and frank admissions. These were mitigating factors. His witness statement had not addressed how the Firm was run. He chose not to give evidence so the Tribunal was unable to assess whether or not he had genuine insight.

38. The overall seriousness of the misconduct was high because it involved client money. The Tribunal regards the breach of the heavy obligation to safeguard client money as extremely serious. The Tribunal was mindful of what had been said in Bolton as to client account being sacrosanct.

39. Having assessed seriousness the Tribunal considered the appropriate sanction. This was not a case where No Order was appropriate. The First Respondent's culpability was not low. A sanction at the lowest level was not justified meaning that a Reprimand was not a suitable sanction. It would not provide sufficient protection to the public and the reputation of the profession.

40. The Tribunal concluded that a financial penalty was sufficient sanction. It would provide the requisite protection to the public and the reputation of the profession. The Tribunal assessed the misconduct as falling within "level 3" of its indicative fine bands, namely conduct assessed as more serious. The First Respondent was the sole equity partner, there was no evidence that he had taken an interest in the financial running of the Firm and he had a previous matter that involved breaches of the Accounts Rules. The indicative level 3 fine band was from £7,501 to £15,000. The Tribunal concluded that the appropriate level of fine was towards the upper end of this range in the sum of £12,500.

The Second Respondent

41. In assessing the Second Respondent's culpability, the harm caused, the aggravating and mitigating factors the Tribunal determined that the position was largely the same as for the First Respondent. The key differences were that the Second Respondent was a salaried partner and did not have any previous matters. He had effected the transfers and was directly responsible for the lack of supervision of the Fourth Respondent. The Second Respondent had access to the online banking and could see the client account balances. His level of insight was unclear. He had given evidence as to the steps that the Firm had taken to avoid any repetition of the misconduct. Taking all of these factors into account the overall seriousness of the misconduct was high.

42. Having assessed seriousness the Tribunal considered the appropriate sanction. For the same reasons as applied to the First Respondent neither No Order nor a Reprimand were appropriate. The Tribunal concluded that a financial penalty was sufficient sanction. It would provide protection to the public and the reputation of the profession. The Tribunal assessed the misconduct as falling within "level 3" of its indicative fine bands, namely conduct assessed as more serious. The Second Respondent had made the actual transfers concerned. At the time he did not appear to have a grip on the finances of the Firm despite the fact that he was managing the

business. The Tribunal concluded that the appropriate level of fine was £12,500. Although the Second Respondent had provided evidence of his salary he had not pleaded impecuniosity and the Tribunal decided that the level of fine did not need to be reduced due to his means.

The Third Respondent

43. In assessing the Third Respondent's culpability, the harm caused, the aggravating and mitigating factors the Tribunal determined that the position was largely the same as for the First and Second Respondent. The key differences were that the Third Respondent was not a partner, she was less experienced than the First and Second Respondents and did not have any previous matters. She had not effected the transfers. However she was the COFA and there was no evidence before the Tribunal of her actively ensuring that she carried out this role effectively at the time of the misconduct. She appeared to have acquiesced to what was going on. It was notable that the FIO had suggested that she attend training on the role of the COFA. The fact that she was the COFA was an aggravating factor. Taking all of these factors into account the overall seriousness of the Third Respondent's misconduct was also high.

44. Having assessed seriousness the Tribunal considered the appropriate sanction. For the same reasons as applied to the First and Second Respondents neither No Order nor a Reprimand were appropriate. The Tribunal concluded that a financial penalty was sufficient sanction. It would provide protection to the public and the reputation of the profession. The Tribunal, again, assessed the misconduct as falling within "level 3" of its indicative fine bands, namely conduct assessed as more serious. The Third Respondent had been the COFA yet, at the time, she did not appear to have an active role in the finances of the Firm. The Tribunal concluded that the appropriate level of fine was £10,000 due to her lack of experience.

The Fourth Respondent

45. The Fourth Respondent had not benefited from his misconduct. His motivation appeared to be that he saw a problem and created a solution. The Tribunal considered that on the first occasion the Fourth Respondent's actions were spontaneous but then became part of the way in which he operated. To the extent he backdated invoices to make the reconciliations work his actions were planned. He knew that debit balances were not acceptable and that he should not backdate invoices. He had direct control over the circumstances giving rise to the misconduct. The Fourth Respondent's level of experience was not known. He did not appear to think of himself as particularly experienced. He commenced work for the Firm in June 2015 and the first issue arose in October 2015 according to the Fourth Respondent himself. There was harm to the reputation of the profession and in this respect the position in relation to the Fourth Respondent was the same as that of the First, Second and Third Respondents.

46. The fact that the misconduct had been calculated and repeated and had taken place over a period of time were aggravating factors. He had used one client's money for the benefit of other client's and he knew or ought reasonably to have known that this was in material breach of his obligations to protect client money and thus his obligations to protect the public and the reputation of the profession. This was also an aggravating factor. The Fourth Respondent had gone along with the processes in place

in the Firm. He had been malleable. Although he had not admitted the allegation he had co-operated with the Applicant. The Tribunal considered that the Fourth Respondent had insight into the fact that premature transfers should not be made and did not think that he would make them again. This was a mitigating factor. The overall seriousness of his misconduct was more serious than it might have been because it involved client money which had not been protected.

47. The Tribunal did not consider that No Order was the appropriate sanction. The Fourth Respondent had been the bookkeeper for a solicitor's firm and should have ensured compliance with the SAR, albeit there had been a lack of supervision of what he was doing.

48. On the basis of the allegation that it had found proved the Tribunal decided that the appropriate sanction in respect of the Fourth Respondent was for there to be an order under s.43 of the Solicitors Act 1974. This would prohibit, save with the prior consent of the regulator, any solicitor and others from employing or remunerating the Fourth Respondent. It would also prohibit the Fourth Respondent from being a manager or having an interest in a recognised body save with the prior consent of the regulator.

49. The Fourth Respondent had not made any financial gain, he was of limited means and unless the Applicant gave him permission the making of the s.43 order would deprive him of his current income. In the circumstances a financial penalty in addition to the s.43 order was not an appropriate sanction.

50. In making a s.43 order the Tribunal had in mind the protection of the public and the maintenance of the good reputation of the solicitors' profession, rather than a punishment against the Fourth Respondent. The Tribunal considered that the Fourth Respondent's actions had been misguided. Whilst it was appropriate to make the order sought the Tribunal hoped that the Applicant would permit the Fourth Respondent to be employed in a legal practice. However, the Tribunal acknowledged that whether or not to grant this permission was entirely a matter for the Applicant.

Costs

51. The Applicant applied for its costs in the sum of £20,056.01 as set out in costs schedule dated 27 February 2018. The Applicant applied for its costs against all four Respondents. The proceedings had been necessary due to their conduct. The fact that there had been an unsuccessful attempt to reach an Agreed Outcome was irrelevant. The hearing had been necessary.

52. Mr Cogan acknowledged that there was nothing he could say in relation to the principle of costs. He did not make any specific submissions on the figures but asked the Tribunal to take into account the Second Respondent's earnings.

53. The Fourth Respondent did not make any specific submissions in respect of costs.

54. All allegations had been found proved. It was appropriate that the Respondents paid the costs of the proceedings. Before determining each Respondents liability for costs the Tribunal assessed the costs. The Tribunal deducted the charges for photocopying and the amount claimed in respect of the publication decision. It also reduced the time claimed by the Applicant for attendance at the hearing. This was separate to the brief fee for the Applicant's counsel. The costs of and incidental to the application and enquiry were assessed as £18,600.

54. The Tribunal then considered the respective Respondents liability for these costs. There had been four allegations relating to the First, Second and Third Respondents all of which had been admitted. There had been one allegation against the Fourth Respondent that had been denied. The Tribunal considered whether the costs should be equally divided between the four Respondents with each paying a quarter. It decided that the Fourth Respondent should be responsible for a lower proportion of the costs to reflect the fact that he was not a partner in the Firm nor a compliance officer. The Tribunal decided that the Fourth Respondent should pay costs in the sum of £3,000. It then considered whether this amount needed to be reduced in light of the Fourth Respondent's limited means. The Tribunal reduced the figure of £3,000 by half to £1,500 due to his lack of means.

55. The First, Second and Third Respondents had put their case on a joint basis. They had been represented by the same counsel. Two of them were partners in the Firm and the Third was an associate. It was appropriate that any costs order made against them be made on a joint and several basis. The Tribunal assessed the costs that the First, Second and Third Respondents should pay as £15,600 being the balance of the figure of £18,600 less the costs the Fourth Respondent would have been ordered to pay but for his means. The Tribunal did not consider that the Second Respondent's liability for costs should be reduced on the basis of his financial position.

Statement of Full Order

56. The Tribunal Ordered that the Respondent, LIAQAT HUSSAIN, Registered Foreign Lawyer, do pay a fine of £12,500, 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 £15,600.00, such costs to be paid on a joint and several basis with the Second and Third Respondents.

57. The Tribunal Ordered that the Respondent, RENE LEONARD NEVILLE DE SILVA, 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 £15,600.00 such costs to be paid on a joint and several basis with the First and Third Respondents.

58. The Tribunal Ordered that the Respondent, AMARA SHAHEEN KAYANI, solicitor, do pay a fine of £10,000.00, 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 £15,600.00, such costs to be paid on a joint and several basis with the First and Second Respondents.

59. The Tribunal Ordered that as from 7 March 2018 except in accordance with Law Society permission:-

(i) no solicitor shall employ or remunerate, in connection with his practice as a solicitor SHERAZ SULTAN
(ii) no employee of a solicitor shall employ or remunerate, in connection with the solicitor's practice the said Sheraz Sultan
(iii) no recognised body shall employ or remunerate the said Sheraz Sultan;
(iv) no manager or employee of a recognised body shall employ or remunerate the said Sheraz Sultan in connection with the business of that body;
(v) no recognised body or manager or employee of such a body shall permit the said Sheraz Sultan to be a manager of the body;
(vi) no recognised body or manager or employee of such a body shall permit the said Sheraz Sultan to have an interest in the body;

And the Tribunal further Ordered that the said Sheraz Sultan do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,500.00.

Dated this 13th day of April 2018
On behalf of the Tribunal

L. N. Gilford
Chairman