SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11900-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

MARTYN ROBERT BROWN — Respondent

Before:

Ms A. Horne (in the chair)
Mrs J. Martineau
Mrs S. Gordon

Date of Hearing: 2 May 2019

Appearances

Shaun Moran, solicitor of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1 Following receipt of Qualified Accountants' Reports during the period 2013-2017 which put him on notice of SRA Accounts Rules 2011 breaches (including a significant client account shortage), caused by his retention of monies intended for payment of professional disbursements and insurance premiums, the Respondent failed to remedy the breaches identified promptly upon discovery contrary to all or any of Rule 7 of the SRA Accounts Rules 2011 and Principles 2, 8 and 10 of the SRA Principles 2011.

1.2 Having received monies for the purpose of discharging professional disbursements the Respondent failed to either pay those disbursements on to the appropriate recipients and/or in the absence of such payments, transfer the monies from office to client account in breach of all or any of Rule 17.1(1)(b) of the SRA Accounts Rules 2011 and Principles 2 and 6 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly.

The Respondent admitted all the allegations, including the allegation of dishonesty.

Documents

2. The Tribunal reviewed all the documents submitted by the Applicant and the Respondent which included:

Applicant:

- Application dated 29 November 2019 together with attached Rule 5 Statement and all exhibits
- Witness statement of Sarah Bartlett (SRA Forensic Investigation Officer) dated 9 April 2019
- Joint Statement and Updated Position of the parties
- Applicant's Statement of Costs as at date of Final Hearing dated 29 April 2019

Respondent:

- Statement of Respondent dated 7 January 2019

Preliminary Issues

3. Service of Proceedings

3.1 The Respondent did not attend the hearing and was not represented. Mr Moran, on behalf of the Applicant, referred the Tribunal to the agreed Joint Statement which had been signed by the Respondent on 16 April 2019. In that statement, the Respondent confirmed he was aware of the substantive hearing on 2 May 2019 and he did not propose to attend. Mr Moran submitted this indicated the Respondent had been served.

3.2 The Tribunal noted that the Tribunal office had sent a letter to the Respondent by recorded delivery on 4 December 2018 which attached a copy of the Rule 5 Statement, all the exhibits and the Standard Directions. The Standard Directions gave notice of the substantive hearing date of 2 May 2019. The Tribunal was therefore satisfied the Respondent had been notified of these proceedings and the hearing date in accordance with Rule 10 of the Solicitors (Disciplinary Proceedings) Rules 2007.

4. Application to Proceed in the Respondent's Absence

4.1 Mr Moran submitted the Respondent was clearly aware of the substantive hearing and had chosen not to attend. Indeed the Respondent had specifically asked the Tribunal to proceed in his absence.

4.2 The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Tribunal took into account the criteria set out in the case of R v Hayward and Jones [2001] QB 862 when considering whether it was appropriate to proceed in the Respondent's absence.

4.3 The Respondent had signed a Joint Statement in which it was stated:

> "The Respondent confirms that he has voluntarily absented himself and would like the Tribunal to proceed and hear the case in his absence on 2 May 2019 as he would like the case to be concluded expeditiously."

4.4 The Tribunal concluded that the Respondent had voluntarily absented himself and consented to the Tribunal proceeding in his absence. The Tribunal also took into account the serious nature of the allegations which had been made against the Respondent. It was in the public interest that matters should be concluded expeditiously and indeed the Respondent had specifically requested the hearing proceed without him. Taking all these matters into account, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence.

Factual Background

5. The Respondent was born in 1967 and admitted as a Solicitor on 2 November 1998.

6. At the material time the Respondent was a sole practitioner at Integrum Law, 72 Argyle Street, Birkenhead, Merseyside, CH41 6AF (the Firm).

7. An inspection was commenced by a Forensic Investigation Officer (FIO) on 9 April 2018 at the Firm's premises which resulted in the production of a Forensic Investigation Report (FIR) dated 6 June 2018. During the course of the investigation, a recorded interview with the Respondent was conducted by the FIO on 2 May 2018.

8. On 5 July 2018 an Adjudication Panel of the SRA resolved to intervene into the Firm. As a consequence of the intervention the Respondent's practising certificate was automatically suspended under section 15(1A) of the Solicitors Act 1974. At the date of the hearing the Respondent did not hold a current practising certificate.

Allegation 1.1

9. The FIO noted that the Firm's books of account were not in compliance with the SRA Accounts Rules 2011. A list of liabilities to clients as at the inspection date was produced which totalled £85,494.03. However, the FIO identified further liabilities which existed in the amount of £69,137.22 that were not shown by the books. A comparison by the FIO which included the total liabilities to clients, further liabilities and the cash held on client bank account at that date (after allowance for uncleared items) showed the following position:

Liabilities to Clients	£85,494.03
Liabilities not shown by the books	£69,137.22
Client Cash Available	£85,494.03
Cash Shortage	**£69,137.22**

10. As at 31 March 2018, there were credits on the office side of the client ledgers on the Firm's client matter list totalling £69,137.22. Of this sum, £49,123.42 related to unpaid professional disbursements. The remaining £20,013.90 related to ATE premiums which had not been paid out.

11. The FIO's conclusions in the FIR would not have come as a surprise to the Respondent, as his Accountants' Reports for each of the years 2013-2017 contained qualifications citing the same issue. The shortage amount was relatively static over the period cited. It was alleged that the Respondent was therefore fully aware of the shortage as at the date of the FIO's inspection and production of the FIR.

12. The Firm received Qualified Accountants' Reports from 2013 to 2017. On each occasion the breaches identified included unpaid professional disbursements. For example, the Accountants' Report for the year 1 August 2013 to 31 July 2014 contained the following statement:

> "The office account includes credit balances totalling £69,926.21 due to a delay from insurers paying the PI case costs and the payment going out to the various creditors. These creditors include counsel fees, medical and ATE premiums."

13. The Accountants' Report for the year 1 August 2016 to 31 July 2017 recorded that, as at July 2017, the unpaid professional disbursements and ATE premiums totalled £79,755.00.

14. The Respondent acknowledged during his interview with the FIO that he was aware of the issue, and that he had consciously decided to retain the funds (which he acknowledged represented client money) to aid the Firm's cash flow.

15. In a letter to the SRA dated 13 April 2018, the Respondent acknowledged the shortage identified by the FIO. He stated that he did not have immediate access to sufficient funds to enable him to replace the shortage. He stated that he was exploring other options to replace the shortage, but that it may take some time for these options to come

to fruition. However, by the date of this letter the Respondent had been on notice of the fact that he had retained client monies due to others (professional disbursements) in office account since at least 2012, and he was aware that this was a breach of the SRA Accounts Rules 2011.

16. It was alleged that the Respondent had failed to address the breaches identified in the Qualified Accountants' Reports in the period 2013 – 2017 (of which he conceded he was aware) or in the period following the FIO's inspection/report and prior to the Intervention.

17. It was also alleged that the Respondent caused a shortfall on client account by transferring funds to office account that had been properly received for the purpose of settling (inter alia) professional disbursements such as Counsel's fees and expert's reports, but failing to pay these sums out to their rightful recipients, instead retaining them in the office account. Client money had therefore been knowingly retained in office account, and the Respondent repeatedly carried out this practice throughout the period 2013 – 2017, aiding the Firm's cash flow with funds properly due to others.

Allegation 1.2

18. The Accountant's Report for the year 1 August 2016 to 31 July 2017 recorded that, as at July 2017, the unpaid professional disbursements and ATE premiums totalled £79,755.00.

19. The FIO examined a sample of 22 client matter ledgers, bills, and copies of the cheques received by the Firm, in relation to the unpaid professional disbursements and ATE premiums.

20. The value of the unpaid professional disbursements on these matters ranged from £100.00 to £1,260.00. The FIO noted that seven of those unpaid professional disbursements dated back to 2012. There were five unpaid professional disbursements dating back to 2013, two dating back to 2014, and two dating back to 2015. In each case the disbursement was included in the Firm's bill of costs. With the exception of one matter, the money received from the paying party was paid directly into the Firm's office account.

21. Unpaid ATE premiums dated back to 2012. In each case the ATE premium was included in the Firm's bill of costs. The money received from the paying party to pay that premium was paid into the Firm's office account.

Client SB – Unpaid Medical Expert's Fee: £360.00

22. On 8 October 2014, the Firm received a cheque from Insurer Z in the total sum of £4,215.17 for the payment of costs and damages on the matter of SB. Of that sum, £1,080.00 related to the Firm's costs. The Firm's bill of costs included a medical report fee in the sum of £360.00.

23. The client ledger showed that the cheque for £4,215.17 was paid into the Firm's client account on 16 October 2014. On the same day, the money for the Firm's costs, including the medical report fee, was transferred to the Firm's office account.

24. The medical expert's fee remained unpaid, causing a credit on the office side of the client ledger. During the interview on 2 May 2018 the Respondent accepted that the medical expert's fee had remained unpaid since October 2014.

Client PD – Unpaid Professional Disbursements: £1,530.50

25. On 19 January 2012, the Firm received a cheque from C solicitors in the sum of £24,647.40 in payment of the Firm's costs in the matter of PD.

26. The Firm's bill of costs included the following disbursements:

Disbursement	Amount
Mr P- GP	£100.00
G medical	£678.00
Dr E- GP	£200.00
Mr G	£552.50
Total	**£1,530.50**

27. The client ledger showed that the cheque was paid into the Firm's office account on 9 February 2012. The disbursements of £1,530.50 were not paid into the client account within two days, as required by the SRA Accounts Rules, and remained unpaid (to their rightful recipients) throughout, resulting in an office credit on the office side of the client ledger. During the interview on 2 May 2018, the Respondent accepted that the professional disbursements had remained unpaid since February 2012.

AR – Unpaid ATE Premium: £848.00

28. On 10 January 2012, the Firm received a cheque from CT Insurance in the sum of £1,900.00 in respect of its costs in the matter of AR. The Firm's bill of costs included an ATE premium in the sum of £848.00. The client matter ledger recorded that the costs were paid into the Firm's office account on 12 January 2012.

29. The ATE premium remained unpaid causing an office credit on the office side of the client ledger. During the interview on 2 May 2018, the Respondent accepted that the ATE premium had remained unpaid since 2012.

30. In dealing with funds received, which were intended for the payment of professional disbursements, by transferring those monies from client account to office account (or retaining them in office account) and utilising them for purposes other than discharging the liability to the proper recipient, it was alleged the Respondent had breached Rule 17.1(1)(b) resulting in a significant shortfall on client account.

31. It was also alleged that the Respondent had transferred funds, received for the purpose of settling professional disbursements, into office account and retained them for several years/indefinitely without paying them out to their rightful recipients.

32. During his interview with the FIO, the Respondent accepted that he had been aware of the issues arising from his retention of professional disbursements, dating back several years. He stated:

> "...I didn't feel as though I was in a position to deal with it."

33. The Respondent accepted that this issue had continued for some time, and that it was his inability to resolve it, as opposed to any ignorance on his part, that had allowed the issue to persist for so long.

34. The Respondent accepted that the specimen matters exemplified by the FIO were examples of professional disbursements for which the firm had been placed in funds, but in respect of which he had failed to make the associated payments out to the intended/rightful recipients.

35. The Solicitors Regulation Authority (SRA) sent a letter to the Respondent on 19 June 2018. In a letter dated 29 June 2018, the Respondent stated that he intended to close his firm and was likely facing bankruptcy. He confirmed in a telephone call with an SRA Supervisor on that same date that the shortfall on client account remained unremedied.

36. On 5 July 2018, a decision was made to intervene into the Respondent's practice.

Witnesses

37. The following witnesses gave evidence:

- Sarah Bartlett (SRA Forensic Investigation Officer)

Findings of Fact and Law

38. The Tribunal had carefully considered all the documents provided, the evidence given and the Applicant's submissions. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

39. **Allegation 1.1: Following receipt of Qualified Accountants' Reports during the period 2013-2017 which put him on notice of SRA Accounts Rules 2011 breaches (including a significant client account shortage), caused by his retention of monies intended for payment of professional disbursements and insurance premiums, the Respondent failed to remedy the breaches identified promptly upon discovery contrary to all or any of Rule 7 of the SRA Accounts Rules 2011 and Principles 2, 8 and 10 of the SRA Principles 2011.**

39.1 Mr Moran confirmed the Respondent had admitted all the allegations. He submitted the Respondent was aware of the significant shortfall on client account and took no steps to deal with it. Instead, Mr Moran submitted, the Respondent had used the money to prop up his own Firm rather than paying the money to the rightful recipients.

39.2 The Tribunal heard evidence from Sarah Bartlett who had conducted the forensic investigation and had interviewed the Respondent. She confirmed that when unpaid disbursements were left in the office account, the Respondent had had the benefit of that money which did not actually belong to him. She stated that these funds had assisted with the Respondent's Firm's cash flow. Ms Bartlett stated that when she had discussed the matter with the Respondent during the interview, he had accepted he should have utilised an overdraft to deal with his cash flow issues, rather than use client money. She stated the Respondent had admitted the money had remained in his office account for a long time.

39.3 In his witness statement dated 7 January 2019, the Respondent confirmed he accepted Allegation 1.1. He had also referred to litigation which had taken place between him and his former partners, and said this had led to "spiralling legal costs". The Respondent stated that this had a detrimental effect on his cash flow, and in those circumstances he had delayed payments to experts and others in order to keep the Firm afloat. The Respondent stated that some payments related to cases where there was an issue over payment, and some payments related to the litigation against him and so were still in dispute. The Respondent accepted and regretted he had breached the SRA Accounts Rules.

39.4 The Tribunal was satisfied that the Respondent had been aware, for a long period of time, of the breaches caused by his retention of money which should have been used to discharge professional disbursements and clients' insurance premiums. He had admitted during his interview with Ms Bartlett in May 2018 that many professional disbursements had remained unpaid since February 2012. The Respondent had stated:

> "Well, I certainly haven't tackled it. Um, I have been aware of it, and I have given it thought, but I didn't feel as though I was in a position to deal with it. So I, I was aware of it, um, and in fact I think I've mentioned, that I had spoken to my accountants about it.....
>
> .....with hindsight, I should have thought about approaching the bank much earlier. I, I, I accept that. But, it wasn't until, um, my discussions with you that um, that option became apparent to me."

39.5 The Tribunal concluded that the Respondent had received Qualified Accountants' Reports during the period 2013-2017 and had taken no steps to remedy the breaches identified therein. He had therefore failed to comply with Rule 7 of the SRA Accounts Rules 2011 which required any breach of the Solicitors Accounts Rules to be remedied promptly upon discovery.

39.6 The Tribunal was also satisfied that in so doing, the Respondent had failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles. He had transferred to office account funds which had been received, and were properly due, for the purpose of settling disbursements. He had failed to pay the proper recipients, and instead had retained the money in office account for a lengthy period of time, without taking any steps to ensure the funds were used for the purpose for which they were intended. He had therefore breached Principle 8 of the SRA Principles 2011.

39.7 The Respondent had acted with a lack of integrity as he had failed to discharge disbursements once the funds had been received enabling him to do so, and had been aware of this failure over a long period of time. The Respondent had therefore breached Principle 2 of the SRA Principles 2011. He had failed to adhere to the ethical standards required of solicitors, and failed to meet the higher standards expected of a solicitor by the public. The fees had been paid to enable the disbursements to be discharged, not for the Respondent to retain those funds for a long period of time. He had also breached Principle 10 of the SRA Principles 2011, as he had not protected client money and assets.

39.8 The Tribunal found Allegation 1.1 proved on the Respondent's admissions, but also on the evidence of Ms Bartlett and the documents provided.

40. **Allegation 1.2: Having received monies for the purpose of discharging professional disbursements the Respondent failed to either pay those disbursements on to the appropriate recipients and/or in the absence of such payments, transfer the monies from office to client account in breach of all or any of Rule 17.1(1)(b) of the SRA Accounts Rules 2011 and Principles 2 and 6 of the SRA Principles 2011. It was alleged the Respondent had acted dishonestly.**

40.1 The Respondent admitted Allegation 1.2 including the allegation of dishonesty.

40.2 Mr Moran referred the Tribunal to the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 which set out the test for dishonesty. Firstly the Tribunal was required to ascertain the actual state of the Respondent's knowledge or belief as to the facts. Having done so, the Tribunal then had to consider whether the Respondent's conduct was dishonest by the standards of ordinary decent people. Lord Hughes had set out the test to be applied when considering the issue of dishonesty as follows:

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

40.3 Mr Moran referred the Tribunal to comments made by the Respondent during his interview with Ms Bartlett. In response to questions, he had stated he had a good relationship with experts and Counsel, and most of them would wait for payment. The Respondent had stated that if an expert called him asking for payment, then he would normally make some payment to them. Mr Moran submitted the Respondent had also admitted during his interview that the situation had arisen as he had not sought to put proper funding in place, in terms of an overdraft, and that he had effectively allowed the professional disbursements to go unpaid for too long in order to "balance the books".

40.4 Mr Moran submitted the Respondent had clearly enjoyed the benefit of funds which did not belong to him over a course of years, and had used them to run his Firm, rather than paying the professionals to whom they were due. He submitted the Respondent had acted with a lack of integrity and dishonestly in doing so.

40.5 Ms Bartlett, in her evidence, stated that the Respondent had been selective as to how he used the money. He had told Ms Bartlett that when he received a phone call from the rightful recipient of a disbursement, chasing up payment, he would pay that recipient. She said that she got the impression that the Respondent had serious cash flow issues, and was ignoring the Qualified Accountants' Reports that had been issued.

40.6 In his witness statement dated 7 January 2019, the Respondent confirmed he accepted Allegation 1.2. Although he had initially denied in his witness statement that he had acted dishonestly, in the subsequent Joint Statement signed by the Respondent on 16 April 2019, he had admitted the allegation of dishonesty.

40.7 The Respondent stated in his witness statement that he appreciated it was wrong, but he had delayed payment to Counsel, medical experts etc., in order to keep the Firm afloat. He stated that although payment of some fees due to barristers and medical experts were not made, these represented only a small percentage of the fees due to them, and the vast majority had been paid. He stated that whenever he was able to pay monies to counsel and experts, he did so.

40.8 The Tribunal noted that when Ms Bartlett attended the Firm to conduct her investigation, the Respondent had produced to her a schedule, printed on 9 April 2018, which contained a list of outstanding disbursements in the total sum of £69,137.32. The list categorised the disbursements as "Medical_ Counsel" and "ATE" and contained the liabilities which were not shown by the books. It was therefore clear to the Tribunal that the Respondent could identify the sums which had not been paid and, indeed, had a record of them. The Tribunal concluded the Respondent had been operating a system involving a deliberate policy of keeping the money belonging to others by not paying disbursements until he absolutely had to.

40.9 The Tribunal also noted that the SRA had written to the Respondent on 12 April 2018, advising him to immediately replace the shortage as a matter of urgency. However, he failed to take any steps to do so and, indeed, accepted in his interview on 2 May 2018 that he had continued this practise even after receipt of the SRA's letter. His explanation was:

> "....the nature of the business is that I, I have to take costs...."

40.10 The Tribunal was satisfied that the Respondent had breached Rule 17.1(1)(b) of the SRA Accounts Rules 2011 which clearly prescribed how funds received for professional disbursements should be dealt with. He had failed to comply with those requirements.

40.11 The Tribunal was also satisfied that the Respondent had acted with a lack of integrity and had breached Principle 2 of the SRA Principles 2011 in that, despite knowing the disbursements had been paid by the third party, he failed to settle the invoices they related to, but had retained the funds for his own benefit in his office account. This

was a failure to adhere to the ethical standards required of solicitors, and a failure to meet the higher standards expected of a solicitor by the public. The monies had been provided to him for the specific purpose of paying disbursements, and no solicitor acting with integrity would retain that money for their own use.

40.12 The Tribunal was satisfied that this was conduct which did not maintain the trust the public placed in the Respondent or in the provision of legal services. The public would expect that money, which was rightfully due to others, would be paid to the correct recipient promptly and in accordance with the Rules. The Respondent had therefore breached Principle 6 of the SRA Principles 2011.

40.13 The Tribunal then considered the issue of dishonesty. The Respondent had made several comments during his interview with Ms Bartlett which were as follows:

> "....no I, I've you know I've not fallen out with any of them over, over payment. Um the way that, that most of them tend to operate is that um, that they're happy to wait for payment. If, um, any particular expert is, you know, perhaps they have a big tax bill or something like that, and they call me, um, then I would normally be able to, to, to make some payments to them ..... I keep them sweet um, and they continue to provide advice, or reports, or advocacy for us.....
>
> .... I've effectively allowed these um, professional disbursements to go unpaid um, for, for too long, um, to, to balance the books if you like..."

40.14 The Respondent in his witness statement confirmed that he had understood this practise to be wrong. He had stated:

> "I appreciate that it was wrong but in those circumstances I delayed payment to counsel, medical experts etc. in order to keep the firm afloat."

40.15 This indicated to the Tribunal that the Respondent was well aware that the money he had received properly belonged to others. However, he had made a conscious decision not to pay the third parties to whom the monies were owed, for as long as he could, before he was chased for payment. The Tribunal concluded that this was a deliberate system designed to assist with the Respondent's cash flow over a very long period of time. The Respondent had knowingly had the benefit of funds which did not belong to him, in some instances for a period of years.

40.16 The Tribunal was satisfied that, as an experienced solicitor, the Respondent would have been aware of the requirements of the SRA Accounts Rules in relation to money received in connection with payment of professional disbursements. By consciously determining that money was not to be paid to its rightful recipients, but instead transferring it to office account and using it for purposes other than that for which it was intended, the Respondent knew that his conduct was improper. The Tribunal had no doubt that this was conduct that would be regarded as dishonest by the standards of ordinary decent people.

40.17 The Tribunal found Allegation 1.2 proved, including the allegation of dishonesty, both on the Respondent's admissions and also on the evidence and documents before it.

Previous Disciplinary Matters

41. The Respondent had appeared before the Tribunal previously on 16 June 2009.

Mitigation

42. The Respondent's witness statement dated 7 January 2019, and the Joint Statement that had been signed by the Respondent on 16 April 2019, contained details of his mitigation.

43. In his witness statement the Respondent stated that he had set up his Firm in 2009, having previously been a partner in another firm. He stated he had no issues with his Firm until 2014, when he was sued by his former partners in relation to a case which had been transferred between the firms in 2009. The Respondent provided details of the litigation, and explained that his insurers were not prepared to indemnify him as they felt the claim fell outside the terms of cover. The Respondent stated that he was left with no alternative but to fund the litigation himself, which he described as "aggressive and complex litigation", which had led to him incurring considerable costs. The Respondent stated that the matter was still ongoing.

44. In his witness statement the Respondent stated that dealing with this litigation had taken up a disproportionate amount of his time, which adversely affected the firm's fee income. He stated he had had to pay various fees, as well as travel and accommodation expenses in relation to hearings in London, all of which had a detrimental effect on his Firm's cash flow. He stated that, due to the ongoing proceedings, it was impossible for him to consider a merger or sale of his practice. He asked the Tribunal to take all of this background into account.

45. The Respondent stated in his witness statement that he regretted he had breached the SRA Accounts Rules. He stated that during the material period he had been working very long hours, six days a week every week, and had taken reduced drawings only when cash flow allowed. The Respondent stated that he was regularly taking no drawings at all, and had injected his own money into the Firm on several occasions. The Respondent stated that he had been willing to raise funds to clear the shortfall by securing a further charge on his home, but was unable to do so before the intervention occurred.

46. The Respondent stated in his witness statement that none of the barristers or experts concerned had submitted complaints against him. He regretted that some of the barristers and medical experts he had dealt with were not fully paid for the work they had undertaken, however, he reminded the Tribunal that monies due to clients personally were not misappropriated in any way.

47. In his witness statement the Respondent stated that due to the litigation he had become embroiled in, he had been left completely disillusioned with the law and the legal process. He also stated that he had been left with no choice but to petition for his own bankruptcy and had been adjudged bankrupt on 10 July 2018.

48. The Respondent stated that he accepted he was culpable for the breaches, and that as a result there was a risk of harm to the reputation of the profession, although the Respondent stated this risk was modest as there had been no complaints. He stated that there would be no repeat of the breaches as the unfortunate circumstances he had found himself in were highly unlikely to recur. The Respondent suggested there were no aggravating factors, indeed, he stated he had been open and frank in these proceedings and had fully cooperated. The Respondent stated that he was not sure whether he wished to practice as a solicitor again but, having worked in the legal profession for his entire life, he could not afford to retire as he had a family to support. He therefore wished to keep open the possibility that at some point he may seek employment within a regulated practice.

49. In the Joint Statement, the Respondent stated he had tried to rectify the shortfall, including injecting his own money into the practice, trying to raise money on his home and seeking to dispose of the practice by sale or merger, but these had not proved possible. He stated that the shortfall on client account was wholly made up of unpaid professional disbursements, and there was no shortfall in funds held directly for clients. The Respondent stated he had lost everything, as his home was to be sold with any equity going towards his bankruptcy. He submitted that an indefinite restriction, ensuring that he could not practice as a sole practitioner, or be a partner, member, Compliance Officer for Legal Practice (COLP) or Compliance Officer for Finance and Administration (COFA) of any practice, would be an appropriate and proportionate sanction, taking into account the factors that had led to his difficulties.

Sanction

50. The Tribunal had considered carefully the Respondent's witness statement and the Joint Statement. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

51. The Respondent had appeared before the Tribunal previously on 16 June 2009, when he had been one of five respondents. On that occasion the Respondent had been found to have breached the Accounts Rules, in circumstances relating to the misappropriation of client funds by an employee who had not been adequately supervised. It was particularly notable that the Respondent had provided a response to the SRA collectively on behalf of four of the respondents. The Respondent had been ordered to pay a Fine of £4,000 and costs of £13,000 on a joint and several basis. In light of his previous appearance, the Tribunal would have expected the Respondent to be extremely vigilant and alert to compliance with the Accounts Rules, especially in light of the previous Tribunal's comments as follows:

> "It was vital for the reputation of and trust in the profession that client monies were held strictly in accordance with the Solicitors Accounts Rules."

52. The Tribunal firstly considered the Respondent's culpability. The motivation for the Respondent's conduct was to keep his Firm afloat and improve his cash flow, without any regard for others. The Respondent's firm had stayed solvent due to the detriment suffered by the experts and Counsel who had not been paid fees that were properly due to them. The Tribunal had already found that the Respondent's actions were planned,

as he had implemented and continued to operate a deliberate system whereby he only paid disbursements when payment was demanded by the relevant expert/Counsel, in order to assist with his Firm's cash flow. Most of the professionals whose fees the Respondent held on to would not have been aware that the monies to pay their fees had been paid to the Respondent, and so would not have known to chase for it.

53. The Respondent had breached the trust of those professionals who had trusted him to pay their fees once he himself had received the funds to enable him to do so. The Respondent was the COLP, COFA and the Money Laundering Reporting Officer (MLRO) for the Firm and he was therefore entirely responsible. He had direct control over his conduct and indeed was an experienced solicitor, having been admitted in 1998. He had also appeared previously before the Tribunal and therefore had experience of what could go wrong when the Solicitors Accounts Rules were not complied with. The Tribunal concluded that the Respondent's culpability was very high.

54. The Tribunal then considered the harm caused by the Respondent's conduct. The Respondent had clearly deprived a number of professionals of the money to which they were entitled for work that they had already carried out for his clients. The amount involved was over £69,000 for a number of years. The Tribunal found that the Respondent did not care about the consequences of his actions for those professionals, and had only thought about his own need for the money, rather than the needs of those who were actually entitled to it. The Tribunal concluded that the Respondent had caused direct harm to these professionals by delaying payments to them over a long period of time. He had also caused harm to the reputation of the profession, as the public would not expect a solicitor to act in the manner in which the Respondent had. The Tribunal assessed the level of harm as high and concluded that the extent of harm caused by the Respondent's conduct could reasonably have been foreseen.

55. The Tribunal then considered the aggravating factors in this case and identified them as follows:

- The Respondent had acted dishonestly
- His conduct had been deliberate, calculated and repeated over a period of four years. The Tribunal found it quite extraordinary for the Respondent to have withheld third-party funds for such a long period of time.
- The Respondent was the COLP and COFA of the Firm, so ought 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. Indeed, the previous Tribunal panel had stressed the need for "tight and rigorous control" in relation to accounts issues. Furthermore, the Respondent was fully aware of the breaches as he had received a number of Qualified Accountants' Reports during the period 2013 to 2017 putting him on notice of the breaches.
- The Respondent had previously appeared before the Tribunal in 2009
- In the Joint Statement, the Respondent made reference to all applications to the Compensation Fund having been paid out of the funds held in his former client

account with no shortfall. The Tribunal had no evidence concerning any such claims, but this indicated that there had been some impact on those affected by the Respondent's misconduct, as they had been required to submit claims to the Compensation Fund. The Tribunal had no evidence concerning the Respondent's alleged efforts to try to deal with the shortfall, despite his submissions that he had tried to do so.

56. The Tribunal then considered the mitigating factors and identified them as follows:

- There had been evidence of a degree of insight on the part of the Respondent, as he had admitted the breaches, although his responses to the FIO during his interview did not demonstrate insight into the impact his conduct would have had on those professionals he had not paid after he had received payment of their fees. Indeed, even in the Respondent's witness statement he appeared to distinguish the funds due to professionals from client funds stating:

  > ".....it is not suggested that any monies due to clients personally i.e. damages, compensation, legacies etc. were mishandled".

  This suggested he did not see the payment of Counsel and expert fees as part of client funds, and/or that he did not see anything wrong with using money belonging to others for his own purposes. Insight had therefore been lacking until very recently.

- The Respondent had cooperated with both the regulator and these proceedings

- The Respondent had made admissions

57. The Tribunal had found that the Respondent had acted with a lack of integrity and dishonestly. His conduct had led to a shortfall of over £69,000 over a long period of time. The Tribunal had found that his culpability and the level of harm caused were high. The Tribunal concluded, in light of this, that to make no order, or order a Reprimand or a Fine would not be sufficient to mark the seriousness of the conduct in this case.

58. The Respondent had urged the Tribunal to impose a Restriction Order on him. It was difficult to formulate conditions that could address dishonest conduct. The Tribunal also took into account that this was the Respondent's second appearance before the Tribunal, which made it more serious. The Tribunal determined that a Restriction Order was not a sufficient sanction in this case.

59. The Tribunal had concluded that the Respondent had put in place a deliberate system to assist with his cash flow over a long period of time, by keeping money to the detriment of experts and professionals who had provided services to his clients with the expectation that their fees would be discharged once the Respondent received payment for them. This indicated that the Respondent placed his own needs over and above his obligations under the Solicitors Accounts Rules, without any regard for the needs of the relevant professionals or for the responsibilities he had towards them. The Tribunal concluded the Respondent could not be trusted, and that he presented a risk to the

public. In light of this a Suspension was insufficient to protect the public or the reputation of the legal profession.

60. The Tribunal was mindful of the case of SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll."

61. The Tribunal was satisfied that there were no exceptional circumstances in this case. The Tribunal did not consider the litigation between the Respondent and his former partners to amount to exceptional circumstances. Cash flow issues were a common challenge which many practices dealt with on a daily basis, and could not be an excuse for the Respondent's behaviour. The Respondent had effectively been stealing money from the professionals to whom that money was due in order to finance his Firm. He certainly had no intention of paying it to them unless and until he had to. This was unacceptable behaviour, and to allow the Respondent to remain a member of the profession would undermine public confidence in it. The Tribunal was satisfied that the appropriate and proportionate sanction in this case, to protect the public and maintain public confidence in the reputation of the profession, was to remove the Respondent from the Roll of Solicitors.

62. Accordingly, the Tribunal Ordered the Respondent be struck off the Roll of Solicitors.

Costs

63. Mr Moran requested an Order for the Applicant's costs in the total sum of £10,008. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. Mr Moran confirmed there had been no discussion with the Respondent concerning the amount of costs when the Joint Statement was discussed.

64. In response to questions from the Tribunal, Mr Moran stated that the claim for 14.8 hours for "Other" costs of £1,391.20 related to the work done by the FIO when reviewing documents provided by the Firm off-site. He confirmed this was in addition to the 34.5 hours claimed for the preparation of the Forensic Investigation Report by the FIO. He also confirmed that although travel time of 15.5 hours had been claimed, there was no claim for the actual travel expenses incurred.

65. The Tribunal considered carefully the Statement of Costs and concluded that the amount claimed was very high. The breakdown was vague and unspecific so that it was not clear what large amounts of the time claimed had been spent on. There was a claim for 15.5 hours of travel time but no indication as to how or why this had been incurred. The Tribunal was not prepared to allow all of this part of the claim. The claim for the FIO's time was for 49.3 hours, 14.8 of which stated "Other" with no proper breakdown of how this had been spent. The Tribunal reduced this element by 10 hours.

66. Having made those deductions, the Tribunal assessed the Applicants costs in the total sum of £9,068 and made an Order that the Respondent pay this amount.

67. In relation to enforcement of those costs, the Tribunal noted that whilst the Respondent had stated he had been made bankrupt, he had not provided any evidence of this, and nor had he provided a schedule of his assets as required by the Tribunal's Standard Directions. The Tribunal had particular regard for the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

> "If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

68. In the absence of any documentary evidence of the Respondent's income, expenditure, capital or assets, it was difficult for the Tribunal to take a view of his financial circumstances. The Tribunal was also mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay the costs. However, in this case, the Respondent was of an age where it would be possible for him to gain some form of alternative employment.

69. In such circumstances, the Tribunal did not consider this was a case where there should be any deferment of the costs order.

Statement of Full Order

70. The Tribunal Ordered that the Respondent, MARTYN ROBERT BROWN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,068.00.

Dated this 3rd day of June 2019
On behalf of the Tribunal

A. Horne
Chair