

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11903-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

KEITH SMART

Respondent

Before:

Mr E. Nally (in the chair)

Mrs C. Evans

Mr R. Slack

Date of Hearing: 22 May 2019

Appearances

There were no appearances. The matter was dealt with on the papers

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority (“SRA”) Applicant were that whilst practising as sole practitioner at Keith Smart & Co (“the firm”) he:
 - 1.1 From in or around May 2017 failed to have properly written up books of account in breach of Rules 1.2e, 7.1, 29.2 and 29.12 of the SRA Accounts Rules 2011 (SRA AR11) and all or alternatively any of Principles 7 and 8 of the SRA Principles 2011 (SRA P11);
 - 1.2 Between 10 January 2017 and 22 May 2018 he made or permitted round sum transfers in the minimum amount of £128,000 on account of the firm's costs in breach of Rules 1.2e, 7.1, 17.2, and 17.7 of the SRA AR 2011 and all or alternatively any of SRA Principles 8 and 10 of the SRA P 11;
 - 1.3 Between the 31 July 2017 and 1 May 2018 he caused or allowed debit balances to exist on client account in breach of Rule 20.9 and 7.1 of the SRA AR11 and all or alternatively any of Principles 8 and 10 of the SRA P11;
 - 1.4 Between the 9 November 2017 and 16 January 2018, he transferred or caused the transfer of £40,066.66 excluding VAT for his firm's costs in relation to the estate of CM when he knew or should have known the costs transferred were excessive and not justified. Following the SRA investigation, the firm's revised total costs in the administration of the estate including VAT and disbursements were £4,057.50.

Consequently, the Respondent overcharged the estate of CM by a minimum of £36,009.16 and acted in breach of Rules, 17.2, 17.3 and 20.3 SRA AR 11 and all or alternatively any of Principles, 2, 4, 6, and 10 of the SRA P11

- 1.5 Between the 3 April 2017 and 13 August 2017, he transferred or caused the transfer of £37,004.50 excluding VAT for his firm's costs in relation to the estate of MJP when he knew or should have known the costs transferred were excessive and not justified. Following the SRA investigation, the firm's revised total costs in the administration of the estate including VAT and disbursements were £5,557.50.

Consequently, the Respondent overcharged the estate of MJP by a minimum of £31,447.30 and acted in breach of Rules, 17.2, 17.3 and 20.3 SRA AR 11 and all or alternatively any of Principles, 2, 4, 6, and 10 of the SRA P11.

- 1.6 On the 2 March 2017 he transferred or caused the transfer of £11,000 excluding VAT for his firm's costs in relation to the estate of SMC when he knew or should have known that the costs transferred were excessive and not justified. Following the SRA investigation, the firm's revised total costs in the administration of the estate including VAT and disbursements were £1,057.50.

Consequently, the Respondent overcharged the estate of SMC by a minimum of £9,942.50 and acted in breach of Rules, 17.2, 17.3 and 20.3 of the SRA AR 11 and all or alternatively any of Principles, 2, 4, 6 and 10 of the SRA P11.

- 1.7 On the 18 January 2018, he transferred or caused the transfer of £10,000 excluding VAT for his firm's costs in relation to the estate of MM when he knew or should have known that the costs transferred were excessive and not justified. Following the SRA investigation, the firm's revised total costs in the administration of the estate including VAT and disbursements were £4,057.50.

Consequently, the Respondent overcharged the estate of MM by a minimum of £5,942.50 and acted in breach of Rules, 17.2, 17.3 and 20.3 SRA AR 11 and all or alternatively any of Principles, 2, 4, 6, and 10 of the SRA P11.

- 1.8 Between the 2 August 2016 and 24 February 2017, he transferred or caused the transfer of £72,062.50 excluding VAT for his firm's costs in relation to the estate of AWD when he knew or should have known that the costs transferred were excessive and not justified. Following the SRA investigation, the firm's revised total costs in the administration of the estate including VAT and disbursements were £1,297.50.

Consequently, the Respondent overcharged the estate of AWD by a minimum of £70,765 and acted in breach of Rules, 17.2, 17.3 and 20.3 of the SRA AR 11 and all or alternatively any of Principles, 2, 4, 6, and 10 of the SRA P11.

- 1.9 Between the 9 June 2016 and 9 September 2017, he transferred or caused the transfer of £16,166.67 excluding VAT for his firm's costs in relation to the estate of YJJ when he knew or should have known that the costs transferred excessive and not justified. Following the SRA investigation, the firm's revised total costs in the administration of the estate including VAT and disbursements were £1,500.

Consequently, the Respondent overcharged the estate of YJJ by a minimum of £14,666.67 and acted in breach of Rules, 17.2, 17.3 and 20.3 SRA AR11 and all or alternatively any of Principles, 2, 4, 6, and 10 of the SRA P11.

- 1.10 The Respondent attempted to mislead the FIO in a meeting on the 15 February 2018 when he informed him that he had sent bills to the executors in relation to the estate of CM in breach of all or alternatively any Principles 2 and 6 of the SRA P11.

- 1.11 The Respondent attempted to mislead the FIO in a letter dated 23 March 2018 and in interview on 20 April 2018 when he informed him that he had discussed costs with Mr AM the executor of the estate of CM at a meeting with him on the 22 March 2018, in breach of all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

- 1.12 The Respondent attempted to mislead the FIO in interview on the 20 April 2018 when he informed him that he had sent a bill of costs to Mr JP, one of the executors of the estate of MJP in breach of all or alternatively any of Principles 2 and 6 of the SRAP11.

2. Dishonesty was alleged against the Respondent in respect of allegations 1.4 to 1.11; however, proof of dishonesty was not an essential ingredient for proof of the any of the allegations.

Documents

3. The Tribunal had before it the following documents:-
 - Rule 5 Statement dated 5 December 2018
 - Respondent's Answer of 16 January 2019
 - Witness Statement of Mr JP dated 10 May 2019
 - Statement of Agreed Facts and Proposed Outcome dated 21 May 2019
 - Previous findings dated 22 December 2005

Factual Background

4. The Respondent was born in 1952 and was admitted to the Roll of Solicitors in June 1979. The Respondent practised as a sole practitioner and was the COLP and COFA at the firm. The firm was intervened into by the SRA on the 26 June 2018 on grounds that included suspected dishonesty. The Respondent's practising certificate was suspended by the intervention and it remained suspended.

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

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

Findings of Fact and Law

6. 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 their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
7. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.
8. The Tribunal considered its Guidance Note on Sanction (December 2018). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Respondent had admitted 8 counts of dishonesty. His misconduct was assessed as very serious. He had deliberately and excessively overcharged clients. He had also deliberately misled the Applicant both during his interview and in writing. The Tribunal considered that given the serious nature of the allegations admitted, the only appropriate and proportionate sanction was to strike the Respondent from the Roll. Accordingly, the Tribunal granted the application for matters to be resolved by way of the Agreed Outcome.

Costs

9. The parties agreed that the Respondent should make a contribution to costs in the sum of £20,151.64. The Tribunal considered the costs application to be appropriate and

proportionate, and ordered that the Respondent pay a contribution to the costs in the agreed amount.

Statement of Full Order

10. The Tribunal ORDERED that the Respondent, KEITH SMART, 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 £20,151.64

Dated this 22nd day of May 2019
On behalf of the Tribunal



E. Nally
Chairman

Judgment filed
with the Law Society
on 23 MAY 2019

IN THE MATTER OF THE SOLICITORS ACT 1974

And

IN THE MATTER OF KEITH SMART

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

And

KEITH SMART

Respondent

<p style="text-align: center;">STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME</p>
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1. By its application dated 5 December 2018 which included a statement pursuant to Rule 5(2) Solicitors (Disciplinary Proceedings) Rules 2007, the Solicitors Regulation Authority ("SRA") brought proceedings before the SDT against the Respondent.

ALLEGATIONS

2. The allegations in the proceedings against the Respondent are:

Failure to comply with Accounts Rules

3. **1.1** From in or around May 2017 failed to have properly written up books of account in breach of Rules 1.2e, 7.1, 29.2 and 29.12 of the SRA Accounts Rules 2011 (SRA AR11) and all or alternatively any of Principles 7 and 8 of the SRA Principles 2011 (SRA P11);

1.2 Between 10 January 2017 and 22 May 2018 he made or permitted round sum transfers in the minimum amount of £128,000 on account of the firms costs in breach of Rules 1.2e, 7.1, 17.2, and 17.7 of the SRA AR 2011 and all or alternatively any of SRA Principles 8 and 10 of the SRA P 11;

1.3 Between the 31 July 2017 and 1 May 2018 he caused or allowed debit balances to exist on client account in breach of Rule 20.9 and 7.1 of the SRA AR11 and all or alternatively any of Principles 8 and 10 of the SRA P11;

Overcharging probate estates

1.4 Between the 9 November 2017 and 16 January 2018, he transferred or caused the transfer of £40,066.66 excluding VAT for his firm's costs in relation to the estate of CM when he knew or should have known the costs transferred were excessive and not justified. Following the SRA investigation, the firm's revised total costs in the administration of the estate including VAT and disbursements were £4,057.50.

Consequently, the Respondent overcharged the estate of CM by a minimum of £36,009.16 and acted in breach of Rules, 17.2, 17.3 and 20.3 SRA AR 11 and all or alternatively any of Principles, 2, 4, 6, and 10 of the SRA P11

1.5 Between the 3 April 2017 and 13 August 2017, he transferred or caused the transfer of £37,004.50 excluding VAT for his firm's costs in relation to the estate of MJP when he knew or should have known the costs transferred were excessive and not justified. Following the SRA investigation, the firm's revised total costs in the administration of the estate including VAT and disbursements were £5557.50.

Consequently, the Respondent overcharged the estate of MJP by a minimum of £31,447.30 and acted in breach of Rules, 17.2, 17.3 and 20.3 SRA AR 11 and all or alternatively any of Principles, 2, 4, 6, and 10 of the SRA P11.

1.6 On the 2 March 2017 he transferred or caused the transfer of £11,000 excluding VAT for his firm's costs in relation to the estate of SMC when he knew or should have known that the costs transferred were excessive and not justified. Following the SRA investigation, the firm's revised total costs in the administration of the estate including VAT and disbursements were £1057.50.

Consequently, the Respondent overcharged the estate of SMC by a minimum of £9,942.50 and acted in breach of Rules, 17.2, 17.3 and 20.3 of the SRA AR 11 and all or alternatively any of Principles, 2, 4, 6 and 10 of the SRA P11.

1.7 On the 18 January 2018, he transferred or caused the transfer of £10,000 excluding VAT for his firm's costs in relation to the estate of MM when he knew or should have known that the costs transferred were excessive and not justified. Following the SRA investigation, the firm's revised total costs in the administration of the estate including VAT and disbursements were £4,057.50.

Consequently, the Respondent overcharged the estate of MM by a minimum of £5,942.50 and acted in breach of Rules, 17.2, 17.3 and 20.3 SRA AR 11 and all or alternatively any of Principles, 2, 4, 6, and 10 of the SRA P11.

1.8 Between the 2 August 2016 and 24 February 2017, he transferred or caused the transfer of £72,062.50 excluding VAT for his firm's costs in relation to the estate of AWD when he knew or should have known that the costs transferred were excessive and not justified. Following the SRA investigation, the firm's revised total costs in the administration of the estate including VAT and disbursements were £1,297.50.

Consequently, the Respondent overcharged the estate of AWD by a minimum of £70,765 and acted in breach of Rules, 17.2, 17.3 and 20.3 of the SRA AR 11 and all or alternatively any of Principles, 2, 4, 6, and 10 of the SRA P11.

1.9 Between the 9 June 2016 and 9 September 2017, he transferred or caused the transfer of £16,166.67 excluding VAT for his firm's costs in relation to the estate of YJJ when he knew or should have known that the costs transferred excessive and not justified. Following the SRA investigation, the firm's revised total costs in the administration of the estate including VAT and disbursements were £1,500.

Consequently, the Respondent overcharged the estate of YJJ by a minimum of £14,666.67 and acted in breach of Rules, 17.2, 17.3 and 20.3 SRA AR11 and all or alternatively any of Principles, 2, 4, 6, and 10 of the SRA P11.

Misleading the SRA's Forensic Investigation officer

1.10 The Respondent attempted to mislead the FIO in a meeting on the 15 February 2018 when he informed him that he had sent bills to the executors in relation to the estate of CM in breach of all or alternatively any Principles 2 and 6 of the SRA P11.

1.11 The Respondent attempted to mislead the FIO in a letter dated 23 March 2018 and in interview on 20 April 2018 when he informed him that he had discussed costs with Mr AM the executor of the estate of CM at a meeting with him on the 22 March 2018, in breach of all or alternatively any of Principles 2 and 6 of the SRA Principles 2011.

1.12 The Respondent attempted to mislead the FIO in interview on the 20 April 2018 when he informed him that he had sent a bill of costs to Mr JP, one of the executors of the estate of MJP in breach of all or alternatively any of Principles 2 and 6 of the SRAP11.

Dishonesty is alleged against the Respondent in respect of allegations **1.4 to 1.11**; however, proof of dishonesty is not an essential ingredient for proof of the any of the allegations.

ADMISSIONS

4. The Respondent admits allegations **1.1 to 1.11** and admits that he was dishonest in respect of each allegations **1.4 to 1.11**.
5. The SRA apply to withdraw allegation **1.12**. This allegation relates to the Respondent misleading the SRA FIO about whether he had sent a bill of costs to Mr JP, one of the executors of the estate of MJP. Mr JP's evidence is that he did receive a document from the Respondent in March 2018 detailing the firm costs although he did not consider it as an official invoice.
6. On the basis of Mr JP's evidence, the SRA accept that it cannot prove allegation **1.12** to the required standard. And in light of the admitted allegations it is not proportionate to pursue the allegation. A copy of Mr JP'S witness statement is attached this statement.

BACKGROUND

7. The Respondent, Mr Smart was born in 1952 and he was admitted to the Roll of Solicitors on the 16 June 1979. His address for service **REDACTED BY THE TRIBUNAL**.
8. The Respondent practised as a sole practitioner and was the COLP and COFA at the firm.
9. The firm was intervened into by the SRA on the 26 June 2018 on grounds that included suspected dishonesty. The Respondent's practising certificate was suspended by the intervention and it remains suspended at the date of this statement.
10. In or around June 2017 a qualified-accountants report (QAR) for the firm was submitted to the SRA. The QAR covered the reporting period 1 January 2016 to the 31 December 2016.

11. The QAR recorded a failure by the firm to fully investigate and take corrective¹ action in respect of a large amount of material unexplained, unexpected and unusual entries on its reconciliations. The QAR also recorded that the firm had made round sum transfers in respect of costs, those costs being rounded off rather than being for precise amounts.
12. The QAR led to an SRA investigation which began in January 2018.
13. The SRA investigation into the firm led to the production of Forensic Investigation Report (FIR) dated 11 May 2018, which ultimately led to the intervention into the firm.
14. The FIR contains evidence of:
 - The Respondent's failure to undertake reconciliations and to have accurate accounting records;
 - The existence of debit balances on client account and round sum transfers in respect of the firm's costs;
 - a minimum cash shortage of £77,071.16² as at the extraction date of the 30 November 2017, caused by the Respondent's failure to send bills of costs on two probate matters³;
15. The most serious concerns expressed in the FIR related to the Respondent's systematic overbilling in probate matters and his attempts at misleading the FIO as to whether he had sent bills to executors and discussed costs with them.
16. The FIR records that the Respondent had failed to send any bills to the executors in advance of transferring costs. The Respondent accepted during the investigation that he could not justify the costs taken on the probate files and agreed to "*moderate*" his costs. The amount of the revised costs was a fraction of the costs that were transferred by the Respondent. In the example of client AWD, the revised costs were some 55 times less than the costs transferred by the Respondent.
17. The Respondent accepted in interview on the 20 April 2018 that he should not have told the FIO that he had sent a bill to an executor and that he should not have told him that he had spoken to an executor about costs.

¹ The QAR records that the accountants did not find any evidence to confirm that, until March 2017 the COFA had checked the reconciliation and any corrective action and that the unusual entries on the reconciliations had not been explained to them.

² The shortage was not fully replaced until the 21 May 2018.

³ In the matter of CM and MJP.

AGREED FACTS

ALLEGATIONS 1.1 - 1.3 (Failure to comply with accounts rules)

ALLEGATION 1.1

18. When the FIO attended the firm on the 15 January 2018, the most recent reconciliation provided to him was dated 30 April 2017. This contained various unexplained adjustments. After the FIO gave the firm further time to bring the books of account up to date, a further reconciliation was produced dated 30 January 2017 (mistakenly dated 30.1.18). The most recent reconciliation produced was dated 30 December 2017.
19. The reconciliation dated 30 November 2017 contained several unexplained adjustments which included the following:
 - Unrepresented credits in the sum of £1,370,463.15 and
 - 31.8 trf diff in the sum of £18,528.
20. At the FIO's last visit to the firm on the 20 April 2018, no further reconciliations had been produced.
21. The Respondent was under the impression that his books of account were up to date and that there were no issues with them. He confirmed that to be his understanding at an initial meeting with the FIO on the 15 January 2015.
22. In the interview with the FIO on the 20 April 2018, the Respondent said that he was unaware that the firm was not carrying out reconciliations and thought the books were up to date. He could not explain the adjustments on the reconciliation dated 30 November 2017 and admitted that he hadn't looked at the reconciliations or the adjustments on the reconciliation. It was apparent that he relied on the cashier to rectify matters.
23. The Respondent had since September 2016 employed a cashier, Gina Bottomley to prepare the reconciliations. She informed the FIO that she had no prior experience of solicitors' accounts and received limited training. She was on maternity leave between May 2017 and March 2018 and she had prepared reconciliations until May 2017. She understood that Carol Leaf, an external consultant was due to reconcile the accounts. She also told the FIO that she was not asked to investigate the adjustments that appeared on client account.

24. In his e-mail to the SRA of the 21 May 2018, the Respondent explained that the firm had not undertaken any further reconciliations as the firm were still finalising their end of year accounts first.
25. It was confirmed on behalf of Carol Leafe that she was engaged by the firm for data entry and reconciled the client account with adjustments bought forward as instructed by the Respondent.

Breaches of the SAR AR11 and SRA P11

26. The Respondent failed to carry out reconciliations every 5 weeks. No reconciliations were carried out from May 2017 to October 2017 and from January 2018 until the firm was intervened into in June 2018. This was in breach of Rules 29.12 and 1.2e of the SRA AR 11 as the Respondent failed to undertake timely reconciliations and failed to maintain and establish proper accounting systems.
27. The reconciliations that were carried out contained unexplained adjustments. The Respondent was unable to explain them in interview with the FIO. As a consequence of this and the preceding paragraph the Respondent failed to maintain proper books of accounts in breach of Rule 29.1 of the SRA AR11.
28. The accounts rules breaches existed from at least May 2017 although they are likely to have been in existence from before that date bearing in mind the reasons for the qualified accountants reports. The Respondent was put on notice of the issues relating to his reconciliations since receiving the qualified accountants report. Further the FIO discussed the issues with the Respondent's reconciliations with him at the meeting on the 15 February 2015. However, the Respondent failed to rectify the breaches promptly or at all, in breach of Rule 7.1 of the SRA AR11.
29. As a result of the Respondent's failure to comply with the SRA AR11, he breached Principle 7 of the SRA P11 as he has failed to comply with his legal and regulatory obligations.
30. The Respondent's failure to ensure that the firm undertook reconciliations and his failure to ensure that adjustments on the reconciliations were investigated together with his lack of knowledge as to the state of his accounts is also a breach of Principle 8 of the SRA P11. The Respondent failed to run his business or carry out his role in the business in accordance with proper governance and

risk management principles. He was the sole principal of the firm and should have ensured that his firm's accounts records complied with the rules and that he took an active part in reviewing them.

ALLEGATION 1.2

31. The FIO identified a sample of 7 round sum transfers of money from client to office account between 10 January 2017 and 15 January 2018 totalling £128,000.
32. The Respondent in a meeting with the FIO on the 7 March 2018 told him that the firm transferred costs that were not specific to bills rendered and that the previous cashier had implemented the process.
33. The Respondent also told the FIO at the meeting that the transfers were estimated on the basis of information provided by his previous cashier and that there were unlikely to be bills that matched the transfers exactly. He accepted that the practice was not right and that he had been advised by Carol Leafe to stop.
34. The FIO reviewed two of the client matters that formed part of the sample referred to in paragraph 31 above. His review established that the bills and other written notification of costs did not match the round sums of transfer of costs made on those matters and that a number of the bills or other written notification of costs were dated after the transfers were undertaken.
35. Despite the Respondent informing the FIO that the practise of taking round sum transfers had stopped, the practise continued. In a letter to the FIO dated 28 March 2018, the Respondent stated that *"we have....almost completely stopped making large transfers in this way"* and *"we now ensure that transfers are made to reflect exact amounts"*.
36. In the interview with the FIO on the 20 April 2018 the Respondent again informed him that he had stopped the practice of taking round sum transfers and his explanation as to why he had done so previously was: *"Mr Shields, um I think we said that we were clumping everything together really um, I recall the conversation with him because he looked at one month and in fact we should have taken more than we'd should have taken so....."*
37. As to why he wasn't taking precise amounts, the Respondent said in interview on the 20 April 2018 *"....no I mean since I don't know last November? No, before. I*

*mean I've taken precise amounts but before I think it was um, maybe a lack of supervision from me, I whatever, yeah it's my call."*⁴

38. In an e-mail of the 21 May 2018 to the supervisor, the Respondent said the following in respect of round sum transfers *"We no longer carry out round sum transfers, and only take precise costs based upon exact figures. We recognise that poor practices were previously undertaken. We endeavoured to rectify this, and with the guidance of Carol Leafe, we now fully understand how we need to act moving forward, in terms of the speed at which costs must be taken, the manner in which this must be done and that round sum transfers are not acceptable"*.

Breaches of the SRA AR11 and SRA P11

39. The Respondent caused or permitted his firm to undertake round sum transfers on account of costs in breach of Rule 17.7 of the SRA AR. The transfers were not for precise amounts in accordance with bills rendered but based upon estimates of the amounts owing, with the firm often transferring costs in excess of what was due to them.
40. The Respondent also failed to ensure that bills of costs or other written notification of costs incurred were given to the client prior to transferring money from client to office account in breach of Rule 17.2 of the SR AR11.
41. The round sum transfers were made in accordance with a practice established by the firm's previous cashier who had left in or around June 2016. The Respondent had been put on notice of the practice since he received the QAR. The practice however appeared to continue throughout 2017 and into 2018 only coming to an end in or around April/May 2018 after the matter had been raised with the Respondent by the FIO. Consequently, the Respondent breached Rule 7.1 by failing to stop the practice of making round sum transfers promptly.
42. The Respondent also breached Principle 8 of the SRA P11 because he caused or permitted the practice of making round sum transfers at the firm and failed to put a stop to it promptly when it was brought to his attention. He was a sole practitioner and the COLP and COFA of the firm and should have ensured that the firm implemented proper processes at his firm for transferring costs and not the poor practise that existed. Consequently, the Respondent also breached Rule 1.2 (e) of the SRA AR11 as he failed to establish and maintain proper accounting

⁴ See page 34 of Appendix A1 of the FIR at IJ1 p61.

systems at the firm and proper internal controls over the use of the systems to ensure compliance with the rules.

43. The Respondent failed to protect client money in breach of principle 10 of the SRA P 11 as the amounts of monies transferred from client to office accounts in respect of accounts were on certain occasions in excess of the costs due to the firm. The Respondent should have ensured that the firm transferred an exact amount of costs in accordance with specific bills and not estimates which were in excess of the amounts due.

ALLEGATION 1.3

44. The firm's reconciliation dated 30/11/17 included a client listing which showed 35 debit balances where client ledgers had been overdrawn totalling £37,243.67. The debit balances ranged from between £5.00 to the largest being £12,082.51. The FIO identified that £12,082.51 was not a debit balance but in fact a mis posting.

Breaches of the SRA AR11 and SRA P11

45. The Respondent breached Rule 20.9 SRA AR 11 as client account was overdrawn as a result of the numerous debit balances that existed on the client ledgers. The Respondent was made aware of the debit balances in February 2018 however he did not completely rectify all of them until the 1 May 2018. As a consequence, the Respondent breached Rule 7.1 as he failed to rectify the debit balances promptly.
46. The debit balances existed from 31 July 2017 until 1 May 2018 and as at November 2017, they totalled £25,161.16. Although the Respondent was notified of the existence of the debits in February 2015, he did not completely eradicate them until 1 May 2018. By causing or permitting the debits to exist on client account and not rectifying them promptly he breached Principle 8 of the SRA P11. Further he breached Principle 10 of the SRA P 11 as the debit balances amounted to a shortage on client account. Consequently, he failed to protect client money.

ALLEGATIONS 1.4 – 1.10 (overcharging on probate matters)

47. On 6 probate client matters the Respondent had significantly overcharged for his firms costs. The Respondent was the sole fee earner on each probate matter, was in complete charge of the files and was responsible for making the transfers

on the files. The Respondent did not deliver any bills to the executors in advance of the costs being transferred.

48. In respect of a number of the probate files, the work carried out on the files did not justify the amount of money transferred for costs and the Respondent had made a number of large transfers in the early stages of the retainers where little work had been carried out. The amount of costs transferred were far in excess of the draft estate accounts that the Respondent had prepared on some of the files and he was not able to explain why that was the case in interview with the Respondent.
49. In February 2018, when the FIO first asked the Respondent as to whether there were any issues with the probate files, the Respondent immediately volunteered that he had taken too much costs. The Respondent also told the FIO that he had not undertaken any time recording on the probate matters and that he had billed the file according to what it was "worth". He also admitted, after initially denying it that he did not send out bills to the executors on the CM and MJP client matters.
50. The Respondent informed the FIO in a letter dated 23 February 2018 that he was going to moderate the fees charged on probate matters to a much more acceptable level. In the letter the Respondent also states: "*this has been a wakeup call & I have started working through all my files to see if I need to review the costs*".
51. The table below shows that the Respondent subsequently vastly reduced his costs from those that he initially transferred on the 6 probate matters. The table below shows the initial costs that he transferred, the firms revised costs and the final costs.

Client	Initial Total costs (as per client ledger) exclusive of VAT	Firm's revised costs following the FI inspection	Final Total Costs (including VAT and disbursements) ⁵
CM	£40,066.66	£3,250	£4,057.50
MJP	£37,004.50	£4,500	£5,557.50
SMC	£11,000 (although ledger shows that £15000 was billed)	£750	£1,057.50
MM	£10,000	£3,250	£4,057.50
AWD	£72,062.50	£950	£1,297.50

YJJ	£16,166.67	£1,250	£1,500
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52. The table shows that the Respondent's level of costs initially claimed were significantly in excess of his revised costs and on some occasions, he had transferred costs which were almost 1000% mark up on what he had moderated his costs down to. The starkest example is that of client AWD, where he transferred costs of £72,062.50 and moderated his costs down to £1,297.50. The Respondent's level of costs that he had initially transferred in the AWD matter was a 5500% mark up on what he should have transferred.
53. The Respondent overcharged the 6 probate clients by a minimum of £168,772.83. The Respondent transferred a total of £186,300.33 in costs from client to office account between the 9 June 2016 and 18 January 2018. The final total costs in these cases, inclusive of VAT and disbursements was £17,527,50. Although the Respondent provided documentary evidence that he had replaced the shortage created by taking excess costs in the estates of CM and MJP, there was no documentary evidence that he had replaced the shortage in the remaining estates.
54. The FIO reviewed the 6 probate cases and discussed them with the Respondent in interview. By way of example, relevant extracts from the Respondent's review and discussion of the estate of AWD is set out below.

Client AWD

55. The executor of the estate was GMD.
56. The firm transferred costs of £72,062.50 between the 2 August 2016 and the 24 February 2017.
57. There was no bills or costs information on the client file.
58. The file contained estate accounts showing the firm's costs of £950. The total value of the estate was £123,666.30.
59. During the interview on the 20 April 2018 with the FIO the Respondent said the following:
- He described the matter as "*rather simple probate I suppose*"
 - In relation to the costs "*I don't know what happened there, I really don't, it, it's inappropriate, I don't understand*"
 - "*I reduced the costs down to a far smaller amount and paid the whole of it back*"

60. The Respondent accepted in interview that the costs were not justifiable, and that the client file was an incredibly small file.
61. The revised costs in this matter was £1,297,50 as evidenced by the estate accounts, a copy of which was provided by the Respondent to the SRA in his e-mail of the 21 May 2018. The Respondent did not provide a copy of the bill in this matter.
62. The Respondent has not provided any evidence that the excess money that he transferred in respect of costs was returned to the client account or the executor. This was a matter that the FIO raised with the Respondent in interview and the Respondent appeared to indicate that there was a transfer of the excess money from office to client account.
63. On the 26 April 2018, the FIO sent an e-mail to Jonathan Smart requesting evidence of the transfer of £71,000 from office to client account in respect of this matter.
64. The FIO received a copy of the client ledger from Jonathan Smart in the AWD matter which did not show any transfer of the excess monies. The FIO on the 1 May 2018, again sought evidence of the payment to client account and again he received a copy of the AWD ledger. In Jonathan Smart's e-mail to the FIO on the 1 May 2-018, he said "*Keith is not sure where the £71,000 reference has come from.*"
65. On the 11 May the SRA supervisor sent an e-mail to the Respondent in which a request was made for evidence that the costs had been returned. Although the Respondent purported to provide evidence of it in his response, he did not provide any evidence.

Breaches of the SAR AR11 and SRA P11

66. The Respondent accepts that he knew or should have known that the costs that he initially transferred were excessive and not justified because:
- He was the fee earner in charge of the probate files;
 - The level of work on the files, many of which were in the early life of the retainer did not justify the costs claimed;
 - No bills were delivered to the executors before the costs were taken;
 - The costs taken were far in excess of the estate accounts that he had prepared;

- The costs transferred were so high and out of proportion to what was ultimately billed.
 - He was an experienced probate practitioner.
 - He immediately confessed to the FIO that he had "*taken too much costs*" on the probate files.
 - The costs he had transferred in the CM case was far in excess of what he had told Mr AM, the executors of what that they would be.
67. The Respondent's actions resulted in all 6 clients being overcharged a total of some £168,000.
68. The Respondent admitted that after being pressed that he did not send bills of costs to the executors. There were no bills on the files reviewed by the Respondent and little costs information on them. A number of executors confirmed that they did not receive any bills or costs information. In taking costs before delivering bills or providing costs information, the Respondent breached Rule 17.2 and 17.3 of the SRA AR 11.
69. The Respondent admitted that he had taken too much in costs and revised his costs down. In making or causing the initial transfers for costs he breached Rule 20.3 of the SRA AR 11 as the vast majority of the costs taken from client account were not properly required for payment of costs.
70. The Respondent's conduct in transferring excessive costs compromised his integrity in breach of principle 2 of the SRA P11. No solicitor acting with integrity would overcharge clients in the amounts that the Respondent did. Overcharging clients is clearly not in their interests and the Respondent failed to account for all of the excess costs he took. Accordingly, the Respondent failed to act in the best interests of clients and failed to protect client money in breach of Principle 4 and 10 of the SRA P11.
71. The Respondent's conduct in systematically overcharging clients in the amounts that he did and failing to ensure that he returned excess costs to them or to the client account undermines public confidence in him and in the delivery of legal services in breach of Principle 6 of the SRA P11.

ALLEGATIONS 1.10 AND 1.11 (misleading FIO)

ALLEGATION 1.10

72. In the 15 February 2018 meeting the Respondent told the FIO that he had sent bills of costs to the executors in the client matter of CM. When the FIO questioned him further the Respondent admitted that he had not sent the bills.
73. When the FIO asked the Respondent why he had tried to mislead him, the Respondent answered, *"trying to answer honestly"*. The Respondent also said that he was aware of the requirement to send the bills but was unable to explain why he had not sent them. He said it was *"unintentional"* and *"I can't explain why"*. He also said *"I need time to think about it"*.
74. The FIO raised the issue of misleading him in the interview on the 20 April 2018. An extract from that interview is repeated here⁶:

FIO: *Ok, I mean taking bills in relation to McGhee, when I, when I came back in I asked you if you'd sent bills to the client.*

Respondent: *Mmm*

FIO: *And you initially said yes, And when I told you I was gonna check with the executors you changed your mind to no.*

Respondent: *Yeah,. Um I mean and that was not right. I mean I should have just told you know.*

FIO: *Mmm*

Respondent: *But again, but within the course of the meeting I did tell you that um, what the situation was.*

FIO: *Well no you lied to me. I asked you have you signed bills, and you said yes, and then I, my impression was you hadn't and so, I, I pushed you and you, you withdrew that and changed your answer.*

Respondent: *When you say lying, I mean that's a, you know*

FIO: *Well it is lying. It is lying.*

Respondent: *Well yeah, yeah, but you know when you're under a, I mean presumably you've never been under that kind of pressure, but when you're under a bit of pressure, like I was that day, um you know maybe you, you sort of say something perhaps not quite right, I altered it within moments so um...*

FIO: *You altered it when I pushed you?*

Respondent: *Yeah*

⁶ Pages 19 and 20 of Appendix A1 of the FIR (IJ1 p46-47).

FIO: *So, I mean obviously that's something that goes in my report and that's, that's you misleading the SRA.*

Respondent: *well*

FIO: *Have you any comments on that?*

Respondent: *Only the comment I just gave you, that you know, when you're under pressure like that..*

FIO: *OK,, So, the pressure led you to lie to me. Okey Doke.*

Respondent: *Umm mmmh, right, move on.*

Breaches of the SRA P 11

75. The Respondent attempted to mislead the FIO into believing that he had sent bills of costs to the executors on the CM client matter. This was because he knew of the requirement to send bills before transferring costs and was aware that he had not sent them prior to transferring costs in the CM matter. The Respondent admitted to the FIO that he had not sent the bills after being questioned further about the issue.
76. The Respondent accepted in the 20 April 2018 interview that he lied to the FIO as he felt under pressure.
77. A solicitor acting with integrity would not lie to an investigator from his regulator. The Respondent did so in an attempt to mislead the FIO into believing that he had sent bills of costs to the executors. Consequently, the Respondent compromised his integrity, in breach of Principle 2 of the SRA P 11.
78. Members of the public would expect a solicitor to be truthful and not to mislead. They would not expect a solicitor to lie to an investigator from his regulator in order to mislead him to conceal his professional failings. Accordingly, public confidence in the Respondent and the delivery of legal services is undermined by the Respondent's conduct.

ALLEGATION 1.11

79. Mr AM, the executor of the estate of CM attended a meeting with the Respondent on the 22 March 2018. In a telephone conversation on the 6 April 2018, Mr AM told the FIO that there was no mention of costs during that meeting and that the meeting was just to advise that the matter was close to concluding.

80. Mr AM also told the FIO that he had not received any costs information from the Respondent and that the only mention of costs during the lifetime of the case was the Respondent telling Mr AM that the costs would be “*about £1000*” at the outset of the case⁷.
81. Although there was no discussion between the Respondent and Mr AM about costs at the meeting, the Respondent wrote a letter to the FIO on the 23 March 2018 in which he stated “*Have spoken to Mr McGhee- who attended the office on the 22 March for a meeting. We have agreed to reduce the current costs to £4,850 + VAT and disbursements*”⁸.
82. During the interview on the 20 April 2018 the Respondent told the FIO that he had spoken to Mr AM about costs at the meeting. The Respondent resiled from that position when the FIO told him that he had spoken to Mr AM who had told informed him that there was no discussion about costs. The Respondent subsequently admitted that he did not have a conversation with Mr AM about costs and that he should not have said that to the FIO.
83. The relevant parts of the conversation between the FIO and the Respondent is repeated in the following extract from the interview⁹:

Respondent: “*and I’ve spoke to Mr McGhee and he’s happy with that*”

FIO: *Ok, Well sorry when you say that you’ve spoken to him what, what does he know then. Tell me what Mr McGhee knows?*

Respondent: *He just knows what sort of fees we’re gonna be taking;*

FIO: *Right*

Respondent: *And that we’re gonna settle the estate literally within the next seven or eight days;*

FIO: *So you had a conversation, is that when he came to the meeting?*

Respondent: *Yeah;*

FIO: *And you told him the costs in that meeting?*

Respondent: *Yeah;*

⁷ See telephone attendance note of a conversation between Mr AM and the FIO that took place on the 6 April 2018 at Appendix E24 of the FIR (IJ1 p155).

⁸ Pages 63-65.

⁹ Page 22 and 23 of Appendix A1 of the FIR (IJ1 p49-50).

FIO: *That's not what he says. I've spoken to Mr McGhee. He says he was told nothing about costs whatsoever.*

Respondent: *Oh;*

FIO: *You know what am I supposed to do with that? I mean you've, you've just told me you had a meeting with him, so I phoned him up. I have a chat with him. I speak to him yesterday, and I say if I'm told that you've been given costs information, can I phone you up and ask you to contradict Mr Smart? And he says yes.*

Respondent: *Well;*

FIO: *So, do you want me to phone him?*

Respondent: *No;*

FIO: *OK, so tell me the real position then?*

Respondent: *No, we just discussed that I would settle the estate literally within the next sort of week or so after coming back from holiday, which we will do. Um, the fees have been moderated down to £4,500.*

FIO: *So you haven't had a conversation?*

Respondent: *I didn't have a conversation with him;*

FIO: *Ok, why did you just tell me that you did?*

Respondent: *I don't know. I shouldn't have said that;*

FIO: *Yeah, you can see my concern. Three minutes ago, we're discussing misleading the SRA. I'm sat here now;*

Respondent: *Mmm;*

FIO: *and you've told me that you've sent bills;*

Respondent: *Mmm;*

FIO: *and you haven't;*

Respondent: *A discussion when that happened. But not about that, but I did have a discussion with him but not about that;*

FIO: *In fact, what McGhee told me is the only conversation he ever had with you, was costs somewhere in the region of a £1000 at the case. And he says he's heard nothing since, and he's been pushing you. Um he says he's made*

numerous calls and he seems well, he's of the view that you're avoiding his calls. I need you to write to him and update him.

Respondent: Yes.

Breaches of the SRA P11

84. The Respondent attempted to mislead the FIO into believing that he had discussed costs with Mr AM at the meeting on the 22 March 2018.
85. The Respondent attempted to mislead him in his letter dated 23 March 2018 and in the interview on the 20 April 2018. The Respondent only admitted that in fact he had not discussed costs with him Mr AM when the FIO told him that he had a conversation with Mr AM in which he had said that costs were not discussed. The Respondent accepted that he should not have told the FIO that he had discussed costs with Mr AM.
86. A solicitor acting with integrity would not attempt to mislead. The Respondent acted without integrity in breach of the principle 2 of the SRA P 11 when he attempted to mislead the FIO on two separate occasions during an investigation into his conduct. The Public would expect a solicitor to be truthful and not to mislead at all times. The Respondent's actions undermine public confidence in him and in the delivery of legal services in breach of principle 6 of the SRA P11.

DISHONESTY

87. The Respondent accepts that his actions were dishonest in accordance with the test for dishonesty laid down in Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67:
88. The Respondent acted dishonesty according to the standards of ordinary decent people by grossly overcharging his clients and in attempting to mislead the FIO.
89. The Respondent accepts in relation to the following allegations that:

Allegations 1.4-1.10

- He was an experienced solicitor, was the sole fee earner on probate matters and was in complete charge of the probate files.
- He authorised the transfer of all the costs on the probate files;
- He was aware that the costs that were transferred were significantly in excess of what could be justified when assessing the level of work on the client files and when considering the draft estate accounts which he had prepared;

- He concealed the level of costs he was taking by not sending bills to the executors as he knew that the level of costs taken could not be justified;
- The Respondent only moderated the costs to “*a much more acceptable level*” after the SRA investigation began. Prior to that he had overcharged clients by some £168,000 over a period of some 19 months.
- On those files in which he undertook a rough estimate, such as the “*simple probate matter*” of AWD, he would have known that there was simply no basis on which he could properly justify taking costs which were a 5,500% mark up on what he could properly claim. He admitted in interview that it was “*inappropriate*”.
- He admitted in interview that he taken too much in costs on the probate matters and had no explanation for the discrepancies in the amount transferred and the level of costs in the draft estate accounts.
- He was aware that the costs transferred in the CM matter (£40,066.06) were not justified as he told the executor Mr AM at the outset of the case that the costs would be about £1000.

Allegation 1.10

- He knew of the requirement to send bills before transferring costs and was aware that he had not sent them in the client matter of CM.
- He would have known that he was misleading the FIO (in a meeting on the 15 February 2018) into believing that he had sent a bill of costs to the executors on the CM client matter by telling that he had sent them. He did so because he wanted to conceal the fact that he had not complied with the rules.
- The reason that he had not sent bills to the executors was because he knew the level of costs transferred were excessive.
- He admitted to the FIO that he had not sent the bills after being questioned further about the issue.
- He accepted in the 20 April 2018 interview that he lied to the FIO as he felt under pressure.
- Although he had said that he was “*trying to answer honestly*” in the meeting with the FIO on the 15 February 2018, he would have known that to lie to him was dishonest.

Allegation 1.11

- He knew that he had not discussed and agreed costs with Mr AM at a meeting on the 22 March 2018.
- Consequently, he would have known that he was misleading the FIO in the letter of the 23 March 2018 and in the interview when he said that he had discussed and agreed costs with Mr AM at a meeting on the 22 March.
- He only admitted that he had not discussed costs with Mr AM when the FIO told him that he had a conversation with Mr AM in which he had said that costs were not discussed.
- He accepted that he should not have told the FIO that he had discussed costs with Mr AM. He knew that he was wrong in misleading the FIO.

MITIGATION

90. The following mitigation is put forward by the Respondent but is not endorsed by the SRA.
91. There was a number of contributing factors resulting in the poor state of the Respondent's accounts. The firm lost an experienced cashier and there was a catastrophic failure in the firm's accounts systems. A new accounts system was implemented which required a manual transfer of files, ledgers and matters. This led to the firm's accounts being out of date.
92. There was a delay in rectifying the shortfalls in client account because of the state of the firm's accounts. The Respondent spent £10,000 in instructing Advanced Legal, a software accounting company to bring the firm's books of account up to date.
93. Reconciliations could not be finalised because of the state of the books of account. Advanced legal assisted with completing the reconciliations once the accounts had been rectified.
94. Once Advanced Legal were on board the round sum transfers ceased and transfers were only undertaken for specific costs on matters.
95. The Respondent felt under pressure during interview with the SRA's FIO but admitted he had lied to him when pressed.

96. The Respondent replaced the shortage in the probate estates of CM and MJP by the 21 May 2018 by way of transfers totalling some £77,000.
97. The Respondent has not worked since the suspension of his practising certificate upon the intervention on the 26 June 2018 and sees no likelihood of ever doing so in the future.
98. The impact upon the Respondent's immediate family of the initial investigation and of these proceedings has of course been and will continue to be far reaching. Two of his children were employed in his former practice.
99. The loss of the Respondent's reputation and his standing is the inevitable consequence of the matters admitted herein.
100. The Respondent apologises profoundly for his actions and wishes to express his sincere apologies to those affected.

PROPOSED SANCTION

101. The proposed sanction is that the Respondent be struck off the roll of solicitors and that he pay the SRA costs in the fixed amount of £20,151.64

Explanation as to why the sanction is in accordance with the SDT's guidance note on sanction

102. The Respondent is a highly experienced solicitor having practised for almost 40 years. He is highly culpable for the admitted breaches as he as he was the COLP and COFA for the firm, had sole conduct of the probate files on which he excessively overcharged clients and he misled the SRA's FIO in interview and in writing.
103. The overcharging of clients, which took place over a period of 19 months was intentional and misleading the FIO was deliberate.
104. The Respondent has admitted 8 counts of dishonesty.
105. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (5th edition), at paragraph 47, states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)).*"

In **Sharma [2010] EWHC 2022 (Admin)** at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows: *“(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...*

(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...

(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others...”

106. The Respondent systematically overcharged 6 probate estates by some £168,772.83 over a period of 19 months. Four of those estates have yet to be repaid the excessive costs that the Respondent transferred.
107. Prior to the SRA investigation the Respondent did not send any bills of costs to the executors of the estates. He attempted to mislead the SRA's Forensic Investigation officer in interview on two separate occasions by informing him that he had sent bills of costs to executors and that he had discussed costs with an executor. He also attempted to mislead him in a letter.
108. These were serious acts of dishonesty. The overcharging of clients was committed over an extended period of time and which benefitted the Respondent to the detriment of the executors and beneficiaries of the probate estates. The misleading of the FIO was on 3 separate occasions during the investigation and it was in order to conceal that the Respondent hadn't sent bills of costs to the executor or discussed costs with him.
109. This case plainly does not fall within the small residual category where striking off would be a disproportionate sentence. Accordingly, the fair and proportionate penalty in this case is for the Respondent to be struck off the Roll of Solicitors.

110. The Respondent's misconduct is at the highest level. Protection of the public and public confidence in the provision of legal services requires the Respondent to be struck off the roll.
111. The parties invite the SDT to impose the sanction proposed as it meets the seriousness of the admitted misconduct and is proportionate to the misconduct in all the circumstances.

Dated this 21 May 2019

Signed I JOHAL

INDERJIT S JOHAL

Senior Legal Adviser

For and on behalf of the Solicitors Regulation Authority

The Cube

199 Wharfside Street

Birmingham

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Signed K SMART

Keith Smart

Respondent

