SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11908-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

MARK HENRY DAVID PAYNE — Respondent

Before:

Mr E. Nally (in the chair)
Mr. H Sharkett
Dr S. Bown

Date of Hearing: 25 March 2019

Appearances

There were no appearances as 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) were that:

1.1 The Respondent breached all or alternatively any of Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 ("the Code of Conduct") and Rule 22.1(e) of the Solicitors Accounts Rules 1998 ("the SAR") by using the funds of his client, AG, in January 2009 to fund a personal investment in FE Solar Fund LP in circumstances where he had no authority to do so.

1.2 The Respondent breached all or alternatively any of Rules 1.02, 1.04 and 1.06 of the Code of Conduct by sending an e-mail to the Firm's accounts department on 27 January 2009 to state that monies from the ledger of AG were to be used for an investment for AG's sons when in fact he was using the monies to fund a personal investment into FE Solar Fund LP.

1.3 The Respondent breached all or alternatively any of Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the Code of Conduct by sending a letter dated 20 September 2007 to his client AG in which he stated that he had invested money into AXA bonds on his behalf when he knew that was not true.

1.4 The Respondent breached all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011 ("the Principles") by sending a letter to his client AG on 11 August 2014 in which he provided false information and valuations for AXA bonds which he knew did not exist.

1.5 The Respondent breached all or alternatively any of Principles 2 and 6 of the Principles by producing a letter to AXA for the file dated 11 September 2015 (which was not sent) to mislead anyone reviewing the AG file into believing that the Respondent had contacted AXA when that was not true.

1.6 The Respondent breached all or alternatively any of Principles 2, 4, 5, 6 and 10 of the Principles and Rules 1.1, 1.2(c) and 20.1(f) of the SRA Accounts Rules 2011 ("the SAR 2011") by using client funds in the sum of £670,000 relating to the matter of the Estate of LR to purchase AXA bonds on the unrelated matter of AG in circumstances when he had no authority to do so.

1.7 The Respondent breached all or alternatively any of Principles 2, 4, 5, 6 and 10 of the Principles by creating and fabricating a letter dated 20 November 2015, purporting to have been written by Mr GK of Charles Russell Speechlys Solicitors LLP, stating that the firm was representing AXA when he knew that was not true.

1.8 The Respondent breached all or alternatively any of Principles 2, 4, 5, 6 and 10 of the Principles and Rules 1.1, 1.2(c) and 20.1(f) of the SAR 2011 by lending client BIL funds in the sum of £626,000 belonging to an unrelated client, namely the client matter of the Estate of LR, in circumstances in which he had no authority to do so.

1.9 The Respondent breached all or alternatively any of Principles 2 and 6 of the Principles by sending an e-mail to the Firm's accounts department on 29 January 2015 to state that he had received approval from a trustee of the Estate of LR to invest in a company in Switzerland when he knew that was not true.

1.10 The Respondent breached all or alternatively any of Rules 1.02, 1.04, 1.05 and 1.06 of the Code of Conduct and Rule 1(d) of the SAR by using funds in the sum of £57,950 belonging to client AG (TST), on an unrelated client matter of Mr H, in circumstances when he had no authority to do so.

1.11 The Respondent breached all or alternatively any of Rules 1.02, 1.04 and 1.06 of the Code of Conduct by producing a memo dated 5 June 2008 on the matter of AG in which he stated that AG had requested a transfer of funds to William Sturgess & Co Solicitors for the purchase of a property when he knew that was not true.

2. Allegations 1.1 – 1.11 inclusive were advanced on the basis that the Respondent's conduct was dishonest. In his Answer to the allegations, the Respondent admitted the allegations in their entirety, including that his conduct was dishonest.

Documents

3. The Tribunal had before it the following documents:-

- Notice of Application dated 20 December 2018
- Applicant's Rule 5 Statement dated 20 December 2018
- Respondent Answer to the Rule 5 Statement dated 30 January 2019
- Respondent's Statement of Means dated 6 March 2019
- Medical Report dated 26 April 2017
- Statement of Agreed Facts and Indicated Outcome

Factual Background

4. The Respondent was born in 1961, and was admitted to the Roll of Solicitors in October 1987. He did not hold a current practising certificate. At the time of his conduct, the Respondent was a Partner at Wiggin Osborne Fullerlove Solicitors ("the Firm").

5. On 2 December 2015, the SRA received a report from the Compliance Officer at the Firm. On 4 January 2016, the SRA received a letter dated 29 December 2015 from the Respondent in which he reported his own misconduct.

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

6. The parties invited the Tribunal to deal with the Allegations against the Respondent 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

7. 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.

8. The Tribunal reviewed all the material before it and was satisfied beyond reasonable doubt that the Respondent's admissions were properly made.

9. The Tribunal considered the Guidance Note on Sanction (December 2018). The Tribunal assessed the culpability and harm identified in the Agreed Outcome document, together with the aggravating and mitigating factors that existed. The Tribunal considered that the level of culpability and harm of the Respondent's misconduct was high. Dishonesty had been alleged and admitted as an aggravating feature in relation to all allegations he faced. The Tribunal considered that given the nature and circumstances of his misconduct, the only appropriate sanction was to strike the Respondent off the Roll. The Tribunal did not find, and indeed the parties did not submit, that there were any exceptional circumstances in this matter such that striking the Respondent from the Roll would be a disproportionate sanction.

10. The parties submitted that the appropriate sanction in this matter was for the Respondent to be struck from the Roll. Having determined that the proposed sanction was appropriate and proportionate, the Tribunal granted the application for matters to be resolved by way of the Agreed Outcome.

Costs

11. The parties agreed that the Respondent should make a contribution to costs in the sum of £12,405.80. The Tribunal considered the agreed costs to be appropriate and proportionate, and ordered that the Respondent pay a contribution to the costs in the agreed amount.

Statement of Full Order

12. The Tribunal Ordered that the Respondent, MARK HENRY DAVID PAYNE, 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 £12,405.80.

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

E Nally
Chairman

Case Number: 11908-2018

IN THE MATTER OF THE SOLICITORS ACT 1974

and

IN THE MATTER OF MARK HENRY DAVID PAYNE

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MARK HENRY DAVID PAYNE

Respondent

STATEMENT OF AGREED FACTS AND INDICATED OUTCOME

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1. By its application dated 20 December 2018, and statement made pursuant to Rule 5(2) of the Solicitors (Disciplinary proceedings) Rules 2007, which accompanied that application, the Solicitors Regulation Authority ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of the Respondent, Mark Henry David Payne.

2. The facts [redacted] which are agreed by the Respondent are set out at paragraphs 20 to 103 below. That agreement is confirmed by his signature at the bottom of this document. In addition, further facts agreed and relied on by the Respondent are set out at paragraph 6 below.

Allegations

3. The allegations against the Respondent are that:

4. The Respondent breached all or alternatively any of Rules 1.02, 1.03, 1.04, 1.05, 1.06 of the Solicitors Code of Conduct 2007 and Rule 22.1(e) of the Solicitors Accounts Rules 1998 by using the funds of his client, AG, in January 2009 to fund a personal investment in FE Solar Fund LP in circumstances where he had no authority to do so.

5. The Respondent breached all or alternatively any of Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 by sending an e-mail to the Firm's accounts department on 27 January 2009 to state that monies from the ledger of AG were to be used for an investment for AG's sons when in fact he was using the monies to fund a personal investment into FE Solar Fund LP.

6. The Respondent breached all or alternatively any of Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 by sending a letter dated 20 September 2007 to his client AG in which he stated that he had invested money in AXA bonds on his behalf when he knew that was not true.

7. The Respondent breached all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011 by sending a letter to his client AG on 11 August 2014 in which he provided false information and valuations for AXA bonds which he knew did not exist.

8. The Respondent breached all or alternatively any of Principles 2 and 6 of the SRA Principles 2011 by producing a letter to AXA for the file dated 11 September 2015 (which was not sent) to mislead anyone reviewing the AG file into believing that the Respondent had contacted AXA when that was not true.

9. The Respondent breached all or alternatively any of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and Rules 1.1, 1.2(c) and 20.1(f) of the SRA Accounts Rules 2011 by using client funds in the sum of £670,000 relating to the matter of the Estate of LR to purchase AXA bonds on the unrelated matter of AG in circumstances in which he had no authority to do so.

10. The Respondent breached all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011 by creating and fabricating a letter dated 20 November 2015, purporting to have been written by Mr GK of Charles Russell Speechlys Solicitors LLP, stating that that firm was representing AXA when he knew that was not true.

11. The Respondent breached all or alternatively any of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and Rules 1.1, 1.2(c) and 20.1(f) of the SRA Accounts Rules 2011 by lending client BIL funds in the sum of £626,000 belonging to an unrelated client, namely the client matter of the Estate of LR, in circumstances in which he had no authority to do so.

12. The Respondent breached all or alternatively any of Principles 2 and 6 of the SRA Principles 2011 by sending an e-mail to the Firm's accounts department on 29 January 2015 to state that he had received approval from a trustee of the Estate of LR to invest in a company in Switzerland when he knew that was not true.

13. The Respondent breached all or alternatively any of Rules 1.02, 1.04, 1.05, 1.06 of the Solicitors Code of Conduct 2007 and Rule 1(d) of the Solicitors Accounts Rules 1998 by using funds in the sum of £57,950.00, belonging to client AG (TST), on an unrelated client matter of Mr H, in circumstances in which he had no authority to do so.

14. The Respondent breached all or alternatively any of Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 by producing a memo dated 5 June 2008 on the matter of AG in which he stated that AG had requested a transfer of funds to William Sturges & Co Solicitors for the purchase of a property when he knew that was not true.

15. In addition, allegations 1.1 to 1.11 inclusive are advanced on the basis that the Respondent's conduct was dishonest.

Admissions

16. In his response (dated 30 January 2019) to the SRA's Rule 5 statement, the Respondent admits the allegations in their entirety, such that he admits having acted dishonestly in relation to all 11 allegations.

Agreed facts

17. The following facts and matters are agreed between the SRA and the Respondent:
    - The Respondent's date of birth is [redacted]1961 and he was admitted to the Roll of Solicitors on [redacted] October 1987.
    - He does not hold a current practising certificate.
    - At the time of the misconduct, the Respondent was working as a solicitor at Wiggin Osborne Fullerlove Solicitors ("the firm"), the address of which is: 95 The Promenade, Cheltenham, Gloucestershire, GL50 1HH, where he was also a partner.
    - On 2 December 2015, the SRA received a report from Mr Paul Hunston, a partner and the Compliance Officer for Legal Practice ("the COLP") and the Compliance Officer for Finance and Administration ("the COFA") at the firm.
    - On 4 January 2016, the SRA received a letter from the Respondent, dated 29 December 2015 in which he reported his own misconduct to the regulator.

18. In addition, the Respondent agrees that the facts set out at paragraphs 20 to 103 of this statement are, so far as they are within his knowledge, accurate.

19. In addition to the matters raised in this statement, the SRA became aware during its investigation of a number of substantial payments made by Mr Payne from his own private resources in respect of client invoices which were properly charged and payable by clients of Wiggin Osborne

Fullerlove those payments being made by the Respondent without the knowledge of the relevant clients. Those payments made over a number of years amounted to in excess of £1.4M.

Allegations

20. [redacted]

Allegation 1.1

The Respondent breached all or alternatively any of Rules 1.02, 1.03, 1.04, 1.05, 1.06 of the Solicitors Code of Conduct 2007 and Rule 22.1(e) of the Solicitors Accounts Rules 1998 by using the funds of a client by the name of AG in January 2009 to fund a personal investment in FE Solar Fund LP in circumstances where he had no authority to do so.

Allegation 1.2

The Respondent breached all or alternatively any of Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 by sending an e-mail to the Firm's accounts department on 27 January 2009 to state that monies from the ledger of AG were to be used for an investment for AG's sons when in fact he was using the monies to fund a personal investment into FE Solar Fund LP.

21. [redacted] Mr Hunston's initial report to the SRA. Mr Hunston said, "On 28 January 2009, Mr Payne arranged for the transfer of 234,000 euros from funds being held in this firm's client account for the G...family to FE Solar Fund LP...Mr Payne has told us that this payment related to a personal investment made by him and that the payment was made without the knowledge or consent of the G...family. During the course of our discussions with the client over the past 24 hours they have advised us that there is a personal loan outstanding between AG and Mr Payne. We do not know whether this loan relates to this personal investment or is something separate. In any event, Mr Payne denies any knowledge of a loan between him and Mr G..." For the avoidance of doubt, there is no allegation that there were any further loans made between the Respondent and Mr G.

22. Mr Hunston attached to his report a "client account statement" showing the payment in the sum of £220,857.02 leaving the Firm's client account on 28 January 2009 [redacted]

23. [redacted] It will be noted that, before her inspection started, the Firm discovered a cash shortage on client account in the sum of £1,521.857.02.

24. As at the date of inspection, the FI Officer discovered a further shortage in the sum of £111,450.00 [redacted] bringing the total cash shortage to £1,633,307.02. Ms Taylor details, [redacted] the dates on which the cash shortage was replaced.

25. [redacted] Ms Taylor, like Mr Hunston in his initial report to the SRA, refers to £500,000.00 being received by the Firm on 14 January 2006. It was posted to the ledger of AG on that date [redacted]

26. Ms Taylor reports that "the money was intended to purchase bonds for the benefit of TG & EG." [redacted]

27. On 27 January 2009, the Respondent sent an internal e-mail to a person in the Firm's accounts department. It [redacted] reads as follows:

"Dear J...

The transfer details which we discussed earlier are as follows:

The amount to be transferred is 234,000 euros and we must pay the charges so this amount is received by RBOS without deductions.

This represents an investment for the (for his two sons) which is to be held in the name of a UK nominee company which MJG is forming.

I shall let you have a yellow payment form.

Any questions, give me a shout...

Many thanks

Mark"

28. The monies were then duly transferred, as can be seen from the ledger provided by Mr Hunston [redacted]

29. The Firm provided the FI Officer with a "Drawdown notice" from Foresight European Solar Fund LP [redacted] "which requested a payment of 761,400.00 euros by 27 February 2009" [redacted]. It bore the Respondent's name and residential address and also named the Respondent as a "Limited Partner." It stated also that his commitment to the fund was 2,000,000 euros.

30. On 31 March 2009, the Respondent wrote to Barclays Bank in Cheltenham [redacted] requesting that funds in the sum of 516,980 euros be transferred from his personal account into an account held by the FE Solar Fund LP at the Royal Bank of Scotland International Limited, St Helier, Jersey.

31. It will be noted that the transferee bank account details set out in the letter are the same as those which the Respondent provided in his e-mail to the Firm's accounts department on 27 January 2009 [redacted]

32. Ms Taylor questioned the Respondent on his investments in FE Solar Fund LP during the course of the interview which took place on 13 July 2016. [redacted].

33. Ms Taylor quotes, [redacted] the overview which the Respondent gave her concerning FE Solar Fund LP during the course of the interview. However, the following further points are also noteworthy.

34. The Respondent stated, "the sentence that says *this represents an investment* is not true, but I wished to give the appearance that it was a regular investment transaction." [redacted]

35. The Respondent stated that he "hadn't worked out" at the time quite how he was going to repay the money.

36. The Respondent stated that he feared he would forfeit the monies he had already invested if he did not make the payment which was made from the AG Trust and added that he needed the "G... money to make up the remainder of the payment that needed to be paid..." [redacted]

37. He said that it was correct that, whilst the AG matter was still ongoing, he had received returns on the monies he had invested but had not used those monies to repay the money he had taken without authority. He said that he "was very fixated with trying to repay it in one lump sum".

38. Ms Taylor refers, [redacted] to the repayments which the Respondent made to the firm in respect of the money he had misappropriated and the dates on which those repayments were made. The first repayment, in the sum of £25,000.00, was made on 18 December 2015, with the final one being made on 7 January 2016. The total sum repaid was £223,143.20.

39. During the course of the interview, Ms Taylor asked the Respondent if the total sum of £223,143.20 included interest and the Respondent replied as follows: "that was the interest that Paul Hunston advised they'd (meaning the firm) calculated the money would have earned."

40. The following exchange then ensued [redacted]:

"ST: Ok and the [redacted] hadn't authorised that – for you to utilise that money?
MP: No, they hadn't.
ST: And um you authorised it via the um accounts and doing that email.
MP: Correct.
ST: You misled the accounts department into thinking it was an investment.
MP: Yes, I did.
ST: On the B...G...matter?
MP: Yes, I did."

41. It is for these reasons that the SRA says that the Respondent has breached Rules 1.02, 1.03, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 and Rule 22.1(e) of the Solicitors Accounts Rules 1998.

Allegation 1.3

The Respondent breached all or alternatively any of Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 by sending a letter dated 20 September 2007 to his client AG in which he stated that he had invested money in AXA bonds on his behalf when he knew that was not true.

Allegation 1.4

The Respondent breached all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011 by sending a letter to his client AG on 11 August 2014 which provided false information and valuations for AXA bonds which he knew did not exist.

Allegation 1.5

The Respondent breached all or alternatively any of Principles 2 and 6 of the SRA Principles 2011 by producing a letter dated 11 September 2015 to AXA but not sending it, with the intention of misleading anyone who was to read his file for the client AG into believing that he had contacted AXA when that was not true.

42. [redacted]

43. When asked by Ms Taylor, during the course of the interview which took place on 13 July 2016, for some background on the AG matter, the following exchange ensued:

"ST: ...just to confirm um was you the fee earner for A...G...and his trust matters?

MP: Um yes, I was. I was the fee earner and the partner.

ST: Was you the sole fee earner or did anybody else work on it?

MP: No, from time to time I think Assistants um helped, perhaps with drafting deeds and documents, but I was the principal fee earner.

ST: Ok and had they been a long-standing client of the firm?

MP: I – yes, I think I first did some work for A...G...back in 1990."

44. On 20 September 2007, the Respondent sent a two-page letter to AG, the stepson of BG, who had left the monies [redacted] on trust for AG's two sons TG and EG. The letter [redacted] bears the Respondent's reference in the top left-hand corner [redacted] and the Respondent's name [redacted].

45. The letter referred to investments made in an IMS Select Fund and an Elite Income Fund and started with the sentence,

"As requested I am writing to summarise the recent valuation history of the Settlement's investments in the IMS Select Fund and an Elite Income Fund through a bond wrapper issued by AXA."

46. In his initial report to the SRA, Mr Hunston stated, [redacted] "It is clear that the AXA bonds were never issued. For a number of years, Mr Payne appears to have told the client and his advisors that the bonds had been issued and provided false valuation figures for those bonds to the client. We do not know whether the trustees were involved in this deception or whether it came from Mr Payne alone." [redacted]

47. [redacted] Ms Taylor reports that her inspection of the client ledger revealed that, as at 19 September 2007 [redacted] "the firm had not purchased the AXA bonds and had a balance totalling £419,335.84." [redacted]

48. When asked during the course of the interview why he had sent the letter, Mr Payne admitted to the FI Officer that the content of the letter was not true and the following exchange took place:

"ST: Um...again um here you're saying that you have, well the letter purports to say that you actually have bought the bonds

MP: Which was untrue.

ST: Ok

MP: Um it's untrue um that's – I worked out what the bonds should have been worth by reference to some data, and gave this information on. I think it's part of my...character that I never like to fail or let clients down, so I fully intended at some stage if necessary,

to make sure the bonds – that would reflect these values - were purchased, even if that involved using my own funds to make up any difference."

49. Similarly, on 11 August 2014, the Respondent sent to EG, one of the beneficiaries, a letter headed: "Your Grandmother's Settlement: AXA" [redacted]. The letter was sent by e-mail.

50. [redacted]

51. [redacted] In the letter, the Respondent stated as follows:

- He enclosed an AXA report "at March end."
- He stated that the AXA report did not include, "any performance data, or any indication how much the investments have increased or fallen over the period…or give any market indices or other comparators."
- He stated that AXA had said that "it is not their job to provide such data" and referred to Factsheets which he had previously circulated and which he said, " give some feel of relative performance."
- He said that it seemed that AXA had "simply copied a file copy and covering compliment slip of the end March report without much care as the report does not show the Policy number and trustee name."
- He referred to a further report he had received from AXA for "end December" and asked EG if he wished to see that.
- Referring to the "end June valuation," he said that he had not received that from AXA and referred to telephone enquiries he had made of AXA in that regard.
- He said that he had also asked AXA if they could "locate their copy of the Bond" because he had "embarrassingly mislaid our file temporarily."
- He stated that AXA had said that they would send a copy of the Bond.
- He said that he had "passed on" a question which EG had previously asked him as to whether AXA held the shares or units in certificated form or not. He stated that the lady he had spoken with had said that she thought "it was in uncertificated but registered form."
- The Respondent closed his letter apologising for the "slight delay" and said that the reason for that was his workload at the time.

52. During the course of the interview on 13 July 2016, the Respondent admitted to the FI Officer that the letter summarised [redacted] above, was a "horrific complete work of fiction" and gave the following explanation [redacted]:

"The values are from the Internet but um…I think one of my colleagues um had an investment with, with one his clients with AXA and, and so I new (sic) the sort of form that it would take, and this is, I'm just – again I'd worked out the values from internet valuations, as to what they should have been - I thought should have been - worth."

53. As at 19 October 2014, the AXA bonds had still not been purchased [redacted]. Ms Taylor reports that a balance of £459.17 only remained on the client ledger as at that date.

54. She also discovered a letter dated 11 September 2015, purportedly sent to AXA Isle of Man Limited [redacted]. The letter bears the Respondent's reference in the top left-hand corner and is signed by the firm.

55. The letter stated that the Firm was "extremely disappointed" not to have received "a recent valuation of the Settlement's Evolution investment bonds," asked for an explanation as to why an IFA had been appointed, referred to AXA's "continuing failure to provide such information" and said that the Firm would "welcome proposals for compensation, to be paid to the trustee outside of the bonds..."

56. The Respondent admitted to the FI Officer during the course of the interview that the letter was never sent and gave the following explanation:

> "I think...it was...drafted...with a view to...creating an illusion that we were trying to resolve the bond situation...I think I was trying to...buy some time to, to misguidedly resolve it...I'm just appalled that I could ever got into a mindset and just carried on digging."

57. The Respondent agreed that the letter was not sent to AXA but that it was there on the file if anyone ever wanted to enquire as to what the position was.

58. It is because of these matters that the SRA says that the Respondent has breached Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 and Principles 2, 4, 5 and 6 of the SRA Principles 2011.

Allegation 1.6

The Respondent breached all or alternatively any of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and Rules 1.1, 1.2(c) and 20.1(f) of the SRA Accounts Rules 2011 by using client funds in the sum of £670,000 relating to the matter of the Estate of LR to purchase AXA bonds on the unrelated matter of AG in circumstances in which he had no authority to do so.

59. [redacted] As at 19 October 2014, the balance on the client ledger relating to the AG matter was £459.17.

60. Ms Taylor's enquiries led to her discover that, on 7 October 2015, the Respondent "completed two 'Payment on client/office account' for a transfer of £350,000 and £320,000 from an unrelated

matter in the name of L...R..." The Respondent has confirmed to the SRA that this was an unauthorised loan from one client to another. The Respondent asserts that the Trustees of the Estate of LR had previously authorised a loan on interest bearing terms to another client.

61. The 'Payment on client/office account' form for the payment in the sum of £350,000 [redacted]. It is dated 7 October 2015 and the Respondent's name appears in the box which says, "Originated by." The Respondent confirmed to the FI Officer that the signature at the bottom of the document, in the box headed "Authorisation," is his signature. The document shows that it was posted by the Firm's accounts department on 12 October 2015. The corresponding confirmation of payment, also understood to have been authorised by the Respondent[redacted].

62. The ledger for the client matter of the Estate of LR shows a debit on that ledger on 7 October 2015 in the sum of £350,000. The details quoted are, "AXA Isle of Man Limited Premium (Re.EVO150915003975) – mhdp." [redacted]

63. The 'Payment on client/office account' form for the payment in the sum of £320,000 [redacted]. It is dated 7 October 2015 and the Respondent's name appears in the box which says, "Originated by." The Respondent confirmed to the FI Officer that the signature at the bottom of the document, in the box headed "Authorisation," is his signature. The document shows that it was posted by the Firm's accounts department on 12 October 2015. The corresponding confirmation of payment, also understood to have been authorised by the Respondent[redacted].

64. The ledger for the client matter of the Estate of LR shows a debit on that ledger on 7 October 2015 in the sum of £320,000. The details quoted are, "AXA Isle of Man Limited Premium (Re. EVO150915003978) – mhdp." [redacted]

65. On 20 June 2016, Ms Taylor sent an e-mail, timed at 12:48, to Mr L, a trustee of the Estate of LR, asking him if he had authorised a loan in the sum of £670,000 to the AG matter. [redacted]

66. Mr L replied by e-mail on 30 June 2016, at 10:18, to say, "We have no record of a request for a loan to the G...family and thus there was certainly no such authorisation." [redacted]

67. The Respondent admitted to the FI Officer, during the course of the interview which took place on 13 July 2016, that the Estate of LR had not authorised the loan in the sum of £670,000 to the AG matter.

68. To Ms Taylor's statement., "...there was £420,000 left and you were supposed to purchase them then and you hadn't. Um so when it come round to purchasing them in November 2015, there wasn't enough money left on the G...account, and you used funds from the R...account, to purchase in the tune of £300,000 - £670,000" the Respondent replied, "correct, without authority." [redacted]

69. On 18 December 2015, the Firm authorised an office to client transfer to replace the cash shortage totalling £671,749.56 (£670,000.00 + interest of £1,749.56). [redacted]

70. It is for these reasons that the SRA submits that the Respondent has breached Principles 2,4,5,6 and 10 of the SRA Principles 2011 and Rules 1.1, 1.2(c) and 20.1(f) of the SRA Accounts Rules 2011.

Allegation 1.7

The Respondent breached all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011 by creating and fabricating a letter dated 20 November 2015, purporting to have been written by Mr GK of Charles Russell Speechlys Solicitors LLP, stating that that firm was representing AXA when he knew that was not true.

71. Reference is made to [redacted] the report to the SRA from Mr W[redacted], a partner at Charles Russell Speechlys Solicitors LLP.

72. The Without Prejudice Save as to Costs letter dated 20 November 2015, purportedly sent by Mr GK, a partner at Charles Russell Speechlys Solicitors LLP[redacted]

73. The Respondent represented to his clients on the AG matter that he had received the letter from Charles Russell Speechlys Solicitors LLP in response to a complaint which he had made to AXA Isle of Man Limited about the bonds.

74. Mr GK's e-mail, dated 4 December 2015 and timed at 08:09, setting out the background to the matter, and which led him to report the matter to Mr JW, [redacted].

75. Mr GK refers in his e-mail to a text message he said he had received from the Respondent "a couple of weeks ago." The text message, which appears at the bottom of his e-mail, read:

"G..., hope you are well and the trial is going well. I think two client files may possibly have been vulnerable to potential hacking while I was working on them from an out of office location: the families concerned are the H and the G so if you receive any communications (phone or e-mail)

from an unknown person about either family, can you please decline the call – or not reply to the email – and let me know. Thanks, Mark"

76. It will be noted that the date of the text message is 24 November 2015, with the time being 08:39.

77. It is understood that the text message preceded the following e-mail exchanges between the Respondent and Mr GK and Mr GK and TG on 25 November 2015 [redacted].

At 16:31 on 25 November 2015, TG e-mailed Mr GK to say:

"Dear G...

Good to talk to you yesterday briefly regarding the letter you sent to Mark Payne regarding the AXA bonds.

Are you any the wiser to what the situation was, having initially been unaware about it ?

I look forward to hearing from you.

Kind regards

T..."

At that, Mr GK is understood to have e-mailed the Respondent, at 16:37 on the same day, to say:

"HI Mark

This is a follow up email I have just received.

Regards

G..."

The Respondent replied shortly after, at 16:42, to state:

"Dear G...

I spoke with T...earlier and we are meeting up next week.

We have a lead we are investigating and hope to know more soon.

Mark."

Four minutes later, at 16:46, the Respondent e-mailed Mr Kleiner again to say the following:

"G...

On further reflection, don't say anything more to T...other than you understand from me that I have spoken to him and am due to see T...next week.

Best wishes

Mark."

Later that day, at 18:04, Mr Kleiner e-mailed TG in the following terms:

"Dear T...

I understand from Mark that he is due to see you next week.

Regards

G..."

TG replied at 17:08 on 25 November 2015 to say:

"Dear G...
Yes we have scheduled a meeting, I will wait to see what comes of that.
Kind regards
T..."

78. The SRA understands that the discrepancy in the time between Mr GK's e-mail timed at 18:04 and TG's e-mail timed at 17:08 may be due to the fact that the time on the device from which Mr GK sent his e-mail was one hour further forward compared with the device from which TG sent his e-mail timed at 17:08.

79. Ms Taylor raised this matter with the Respondent during the course of the interview.

80. When asked by Ms Taylor,
"...do you know where this letter originates from?"
the Respondent replied,
"Yes I do. It was manufactured by myself. It's a complete...work of fiction, and I'm, I'm absolutely ashamed that I, even if I was ill, that I could ever have dreamt that this was the right...way to be." [redacted]

81. As a result of these matters the SRA considers that the Respondent has breached Principles 2, 4,5 and 6 of the SRA Principles 2011.

Allegation 1.8

The Respondent breached all or alternatively any of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and Rules 1.1, 1.2(c) and 20.1(f) of the SRA Accounts Rules 2011 by lending client BIL funds in the sum of £626,000 belonging to an unrelated client, namely the client matter of the Estate of LR, in circumstances in which he had no authority to do so.

Allegation 1.9

The Respondent breached all or alternatively any of Principles 2 and 6 of the SRA Principles 2011 by sending an e-mail to the Firm's accounts department on 29 January 2015 to state that he had received approval from a trustee of the Estate of LR to invest in a company in Switzerland when he knew that was not true.

82. As mentioned [redacted], the Respondent also acted for a client on the matter of the Estate of LR.

83. During the course of her investigation, it came to Ms Taylor's attention that the Respondent had authorised a loan in the sum of £626,000 from monies belonging to the Estate of LR to an unrelated client, BIL, in circumstances in which he had no authority to do so.

84. In an e-mail dated 21 January 2015 and timed at 13:42, DB of BIL confirmed, "Thank you for the confirmation of the availability of the funds."

85. On the 29 January 2015, the Respondent sent to the Firm's accounts department the e-mail (timed at 14:37) [redacted]. It will be noted that the Respondent concluded his e-mail by stating, "I can sign the attached yellow payment form tomorrow but, if you need it signing in the interim, please ask PDH or another partner to do so."

86. The 'Payment on client/office account' was duly completed and authorised [redacted] and funds in the sum of £626,000 belonging to the Estate of LR were transferred [redacted] to MIL.

87. The reason the Respondent gave for the transfer, in his e-mail to the accounts department on 29 January 2015, was "the trustees' decision to make an investment in a company operating from Switzerland."

88. However, he told Ms Taylor during the course of the interview that he "was not authorised" [redacted] to make that loan and that:

- the money was not for an investment in a company in Switzerland but for BIL to purchase some container tanks from a supplier, with a view to selling those container tanks on to a company owned by Mrs G [redacted]. However, the Respondent asserts that DB did not reveal to him the identity of his intended purchaser until after the loan was made.
- he "certainly didn't discuss" the loan with Mr L, a trustee of the Estate of LR.
- when the FI Officer put it to him that the e-mail he had sent to the accounts department was "a bit of a fabrication," he replied, "probably to give them some background yes."
- "he didn't have the authority" and "should have sought authority before making it."

89. The FI Officer reports that, "on 18 December 2015, the firm authorised an office to client transfer to replace the client account cash shortage totalling £626,000.00 with an additional £824.97 for interest."

90. She also reports that, on 3 February 2016, Mr Hunston emailed DB to ask him when he intended to repay the loan which had, at that date, been outstanding since January 2015 [redacted].

91. On 1 March 2016, DB responded to state that the loan was to be refinanced through GLL.

92. Though WN of GLL had e-mailed the Firm on 11 March 2016 with proposals for purchase of the container tanks and thus repayment of the loan, as at the date of Ms Taylor's report, the Firm had refused the repayment on the terms offered.

93. It is for these reasons that the SRA says that the Respondent has breached Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and Rules 1.1, 1.2 (c) and 20.1(f) of the SRA Accounts rules 2011.

Allegation 1.10

The Respondent breached all or alternatively any of Rules 1.02, 1.04, 1.05, 1.06 of the Solicitors Code of Conduct 2007 and Rule 1(d) of the Solicitors Accounts Rules 1998 by using funds in the sum of £57,950.00, belonging to client AG (TST), on an unrelated client matter of Mr H in circumstances in which he had no authority to do so.

Allegation 1.11

The Respondent breached all or alternatively any of Rules 1.02, 1.04 and 1.06 of the Solicitors Code of Conduct 2007 by producing a memo dated 5 June 2008 on the matter of AG (TST) in which he stated that AG had requested a transfer of funds to William Sturges & Co for the purchase of a property when he knew that not to be true.

94. [redacted] During the course of her investigation, Ms Taylor discovered that, on the separate client matter of AG (TST), a payment in the sum of £57,950.00 had been made to William Sturges & Co Solicitors, on 10 June 2008, for the matter of Mr H.

95. The payment was authorised by the Respondent on 10 June 2008 [redacted].

96. The ledger relating to client AG (TST) [redacted]. It will be noted that the detail attached to the debit out of client account on 10 June 2008 is, "William Sturges & Co completion monies for part share of heatland and grousemoor – mhdp."

97. On 5 June 2008, the Respondent had prepared a memorandum [redacted] following a meeting with AG.

98. Of note is the last paragraph of the memorandum which reads,

"AG requested that we transfer to William Sturges and Co the sum of £57,950 as they were acting on the purchase on behalf of the consortium. He did not have the account details to which the transfer had to be made but the monies had to be received no later than Wednesday 11th

June. Confirming we would either wire the funds if we were supplied with the account details or arrange for delivery of a banker's draft as I would be in London on 11 June."

99. When questioned about the memorandum during the course of the interview which took place on 13 July 2016, the Respondent stated,

"...Um...the first...two paragraphs look to me...bona fide are true...but the last two paragraphs, that does look to be...um a fabrication..."

100. Ms Taylor discovered that the reason as to why £57,950.00 was sent direct to William Sturges & Co on the matter of Mr H was because £57,969.40 of Mr H's money had previously been used to pay two of the firm's invoices on an unrelated client matter [redacted].

101. The Respondent continued,

"I, I knew that I was using client money that I wasn't authorised to you (sic). I think...I think I knew it was wrong...but I think I...may have adjusted...myself on the basis that I would...sort it all out later.

102. Ms Taylor reports, [redacted], that, "on 1 April 2016, the firm authorised an office to client transfer to replace the client account cash shortage totalling £57,950.00 with an additional £1,447.58 for interest."

103. It is for these reasons that the SRA says that the Respondent has breached Rules 1.02, 1.04, 1.05 and 1.06 of the Solicitors Code of Conduct 2007 and Rule 1(d) of the Solicitors Accounts Rules 1998.

Dishonesty

104. The Respondent's actions were dishonest in accordance with the test for dishonesty laid down in *Ivey (Appellant) v Genting Casinos (UK) Limited t/a Crockfords (Respondent) [2017] UKSC 67*: 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.

105. The SRA says that the Respondent's conduct was dishonest in relation to allegations 1.1 to 1.11 inclusive for the following reasons which are not exhaustive.

106. The Respondent's dishonest misconduct was systematic and repeated over a very long period of time. Given his state of knowledge and belief, as set in the above paragraphs of this statement, that conduct was dishonest by the objective standards of ordinary decent people.

107. He fabricated a letter, told lies in communications to his clients and to members of staff at the Firm in which, as a partner, he held a senior position, in order to conceal the web of deception he had been weaving.

108. His dishonesty not only concerned the misappropriation of client monies for personal gain but also the fabrication of a document to cover his tracks and the telling of lies to clients and colleagues in order not to be found out.

109. He had a number of opportunities to reflect on and to own up to what he had done. However, he chose not to do that apparently, according to the Respondent, misguidedly believing that he could put all the clients back in the position in which each should have been but for his actions.

110. The Respondent admitted to the FI Officer, on a number of occasions, that his conduct had been dishonest.

111. As a senior member of the profession and in a senior position at the firm at the material time, the Respondent would have known that his clients and colleagues would have trusted him and would have taken him at his word. However, he abused that trust by misleading them, by providing information which was untrue and by using their money without authority.

112. As a solicitor of over 20 years' post qualification experience at the material time, who was a partner in the Firm and who was experienced in life as well as in the profession, he should have fully understood his professional obligations when handling client money and the sacrosanct nature of the client account. He must also have understood the impropriety inherent in paying away other people's money for his own purposes, notwithstanding any intention that he may have had to repay the money in question.

113. In relation to each allegation, the Respondent admits that his conduct was dishonest.

Proposed outcome

114. Mr Payne accepts that his admitted dishonest conduct constitutes misconduct of the most serious kind that a solicitor can commit.

115. Having considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanctions (December 2018), the SRA contends, and the Respondent accepts, that in those circumstances, and in the absence of any exceptional circumstances mitigating in favour of a lesser sanction, the protection of the public and the protection of the reputation of the profession require that the Respondent is struck off the Roll of Solicitors.

116. The following factors aggravate the seriousness of the Respondent's misconduct:

    i. The misconduct involves repeated dishonesty.

    ii. The misconduct was repeated, continued over a very long period of time and involved the concealment of wrongdoing from clients and employees of Wiggin Osborne Fullerlove Solicitors, the firm of solicitors at which the Respondent was at the time working as a partner.

    iii. The Respondent is an experienced solicitor, with over 20 years of post-qualification experience at the material time.

Mitigation

117. The following is put forward by the Respondent in mitigation. However, it is not endorsed by the SRA.

118. The following mitigation is advanced on behalf of Mr Payne.

119. Mr Payne has expressly instructed those acting for him to make clear that he takes full responsibility for the events described by the SRA and which are the subject matter of this enquiry. He considers that he has let down his clients and his fellow partners as well as his profession, for which he apologises unreservedly. Mr Payne recognises that he has also badly let down his family and fallen far short of the standards that for many years he set himself. He does not seek to excuse himself for his wrongdoing. Mr Payne indicated to the SRA at an early stage (for example, in an SRA interview on 13 July 2016) that he would voluntarily undertake not to practice as a solicitor in the future having entirely accepted that it would not be appropriate for him to do so and, since leaving Wiggin Osborne Fullerlove, he has not practiced as a solicitor nor sought to do so. He will never practice as a solicitor again and he entirely accepts that the SDT will inevitably order that he be struck off the Roll.

120. It is right, though, that those acting for him bring to the Tribunal's attention the following facts and matters so that the Tribunal has a sense of the specific circumstances affecting and impacting on Mr Payne's life in the period leading up to, during and following his misconduct.

121. Mr Payne practised as a solicitor for over 25 years with an unblemished record prior to the events described by the SRA. In the period leading up to and during these events, Mr Payne was suffering (and continues to suffer) from depression and significant abnormal personality traits, [redacted]

122. Mr Payne has three children and, until recently, was married. [redacted] This understandably had a huge emotional impact on Mr Payne. [redacted] which were compounded by serious physical health issues [redacted]

123. The significant difficulties that Mr Payne was experiencing in his personal life coincided with increasing pressure in his practice with Wiggin Osborne Fullerlove. By 2010, Mr Payne was handling a long-running complex piece of Bahamian trust litigation almost single-handedly, on top of an already busy practice. Further, in 2013 and 2014, Mr Payne was asked to take on a number of additional trust disputes.

124. Wiggin Osborne Fullerlove was unconventionally structured, such that it had less than one assistant per partner (an inverted pyramidal form). It was, therefore, poorly equipped to deal with time-intensive litigation. Furthermore, the secretarial support that Mr Payne received was also unreliable and inadequate, increasing considerably his stress at work.

125. To add to matters, Mr Payne experienced the illness and [redacted] of his mother, culminating in her bereavement in September 2015.

126. As indicated above, Mr Payne has suffered from depression and/or adjustment disorder for a number of years. This had a significant impact on Mr Payne's mental and physical wellbeing at the time of the alleged misconduct. It also had a disastrous impact on Mr Payne's existing personality traits of [redacted] behaviour, resulting, for example, in an inability to admit to his failure to make the investment in AXA bonds on behalf of his client AG in 2005 and to face the significant financial difficulties that were arising as a result of his subsequent inappropriate actions. Mr Payne held onto the irrational hope that he could make good his errors and keep everyone happy.

127. The extent of Mr Payne's delusion and, in particular, of his [redacted] is perhaps most clearly illustrated by his remarkable behaviour in terms of the substantial payments that Mr Payne made from his own resources in respect of client bills which were properly chargeable to, and payable by, clients of Wiggin Osborne Fullerlove.

128. For example, in relation to matters in which Mr Payne acted for clients RH, SH and other members of their family, Mr Payne made the following payments (unbeknown to the clients) in respect of fees that were properly payable by the clients in those matters:

1.	2008 (various)	£60,832.33
2.	9 December 2010	£750,000.00
3.	20 August 2014	£385,652.43
4.	18 March 2015	£50,000.00
5.	15 April 2015	£50,000.00
6.	4 June 2015	£50,000.00
7.	1 July 2015	£50,000.00
Total		£1,396,484.76

Many of these payments related to fees incurred in relation to the long-running Bahamian litigation referred to above.

129. Mr Payne also made further payments in respect of bills due to various other clients of Wiggin Osborne Fullerlove from time to time. These totalled at least £420,674.78.

130. Mr Payne's payment of in excess of £1.8 million in settlement of client bills properly payable by the relevant clients is extraordinary behaviour and speaks to the extent of his [redacted].

131. Once the events described by the SRA above were discovered in early December 2015 and Mr Payne was taken out of the environment that was so significant in causing his irrational behaviour, Mr Payne began to obtain appropriate medical support and he was able to reflect upon his behaviour. He made full and unqualified admissions at the earliest stage of the investigation and has fully co-operated with the SRA's enquiries.

132. A psychiatric report in respect of Mr Payne has been disclosed to the SDT and the SRA. That report has been prepared by Dr Philip Hopley MBBS (Dist) MRCPsych, Consultant in General Adult and Forensic Psychiatry. In his report, Dr Hopley refers (starting at page 9) to a factual account of events relevant to the SRA's investigation provided to him by Mr Payne. That account is frank and makes admissions of wrongdoing. The SDT is asked to accept that this account demonstrates insight and acceptance of that wrongdoing by Mr Payne.

133. Starting at page 24 of his report, Mr Hopley sets out Mr Payne's collateral history and, in particular, the views expressed by other medical practitioners.

134. Dr Sally Braithwaite, Consultant Psychiatrist, speaks of Mr Payne's tendency to be a [redacted] and the [redacted] at his work in particular as a contributory factor for his variable and psychological symptoms. Dr Joanna Nowell, Chartered Counselling Psychologist, saw Mr Payne on 14 occasions between January and July 2016 (in other words, shortly after he left his firm) and has continued to see him at regular intervals since. Dr Nowell considered that the building pressures of Mr Payne's home and work life impacted on his judgement and influenced his behaviour at work and that his irrational behaviour and thinking drove him to behave as he did. Dr Nowell identified a core belief in Mr Payne that [redacted] The SDT is invited to consider those professional opinions as clear indicators of health issues that directly impacted on and influenced Mr Payne's sometimes (and in connection with the allegations always) irrational and inexplicable behaviour.

135. In a similar vein, Dr Guy Moss, a Consultant Clinical Psychologist and Neuropsychologist (who assessed Mr Payne in April 2017), found that Mr Payne had marked [redacted] and moderate [redacted] He identified significant traits of [redacted].

136. At page [redacted] of his report, Dr Hopley provides his opinion. He also diagnosed [redacted] traits as well as [redacted] and [redacted] Dr Hopley is clear. He considers those traits to be relevant to his misconduct. In particular at paragraph [redacted] of his report, he links Mr Payne's [redacted] with [redacted] and [redacted] His [redacted] leads him to be [redacted] and [redacted] His [redacted] lead to altruistic actions, resulting in negative personal consequences.

137. At paragraph [redacted], Dr Hopley puts it thus:

[redacted]

At paragraph 12.7, Dr Hopley sums matters up - [redacted]

138. A clear consensus emerges from the doctors who have examined and/or treated Mr Payne, as set out in this mitigation. That consensus is consistent with Mr Payne's clearly irrational and inexplicable behaviour in making (over a number of years) secret payments of client invoices in excess of £1.5M using his own money, lending client monies to other clients in circumstances where he had convinced himself that such a transaction would benefit both parties, his inability to seek help, and acting entirely irrationally in failing to admit mistakes but instead seeking to hide them. That behaviour mirrors the findings of the medical practitioners set out in the paragraphs above.

139. Mr Payne does not seek to excuse his behaviour or to hide from his responsibility for his serious mistakes; however, the SDT is asked to take account of the compelling body of medical opinion that seeks to explain the reasons behind that extraordinary behaviour. Mr Payne entirely accepts that he should never practice as a solicitor again. His actions have brought about his personal financial ruin, his marriage has ended, his family has fragmented. He is essentially homeless with no prospects in his private life. His professional life has been destroyed. He is hoping to retrain as a landscape gardener, but has yet taken no steps to do so, having been looking after his [redacted] father since the [redacted] early 2018 and been working with [redacted] Mr Payne has paid and will continue to pay a very high price for his mistakes. He has accepted Dr Hopley's advice that he requires treatment and he has had - and continues to have - [redacted]

That is how it is put for Mr Payne.

Costs

140. With respect to costs, the Respondent agrees that the SRA costs of the application fixed in the sum of £12,406.80 should be admitted as a debt provable in his individual voluntary arrangement.

Dated this 15 day of April 2019

Alastair Henry John Wilcox, Senior Legal Adviser, Legal & Enforcement Department
(For and on behalf of the Applicant Solicitors Regulation Authority)

Mark Henry David Payne