SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11977-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NICHOLAS PAUL TSIOUPRAS Respondent

Before:

Mr P. Lewis (in the chair)
Mr J. C. Chesterton
Mr S. Howe

Date of Hearing: 8 November 2019

Appearances

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

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that:

1.1 Between 25 June 2018 and 13 August 2018, the Respondent made improper withdrawals from the firm's client account totalling £415,221.00, which:

1.1.1 caused a minimum cash shortage on client account; and

1.1.2 caused client bank account to become overdrawn;

and in doing so he breached any or all of Rules 17.7, 20.1, 20.6 and 20.9 of the Solicitors Accounts Rules 2011 ("SAR 2011") and Principles 2, 4, 6, and 10 of the SRA Principles 2011 ("the Principles 2011"). It was alleged the Respondent had acted dishonestly.

1.2 As at August 2018, the Respondent failed to keep accounting records properly written up to show dealings with client and office money and failed to appropriately record all dealings with client money on client ledgers in breach of any or all of Rules 29.1 and 29.2 AR 2011.

1.3 The Respondent failed to comply with his legal and regulatory obligations and deal with his regulator in an open, timely and co-operative manner during the period June 2018 to December 2018, as he failed to:

1.3.1 co-operate with or engage with the SRA during the forensic inspection of his firm;

1.3.2 effect an orderly and transparent wind down of activities, including informing the SRA before the firm closed;

1.3.3 respond promptly or at all to communications sent to him by the SRA;

and in doing so, he breached any or all of Principles 2, 4, 6 and 7 of the SRA Principles 2011 and failed to achieve Outcomes O(10.6) and O(10.13) of the SRA Code of Conduct 2011.

Documents

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

Applicant:

- Application and Rule 5 Statement dated 25 June 2019 together with all exhibits
- Witness Statement of Sarah Taylor dated 8 October 2019 (Forensic Investigation Officer)

- Witness Statement from the Respondent's firm's trainee solicitor dated 15 October 2019
- The Applicant's Statements of Costs dated 25 June 2019 and 4 November 2019
- Emails from the Applicant to the Respondent dated 10 October 2019, 16 October 2019, 17 October 2019, 21 October 2019 and 4 November 2019
- Report from I J Beim & Associates Limited dated 18 October 2019
- Letter dated 4 November 2019 from the Applicant to the Respondent

Preliminary Issues

3. Service of Proceedings

3.1 The Respondent did not attend the hearing and was not represented. Mr Moran, on behalf of the Applicant, stated the Respondent had been served with details of these proceedings by a letter dated 28 June 2019 from the Tribunal to the Respondent's last known address, which was sent by recorded delivery. That letter contained details of the substantive hearing date. Mr Moran stated that the proof of delivery had been signed "George" on 29 June 2019 who was believed to be related to the Respondent.

3.2 The Tribunal noted the letter dated 28 June 2019 had been sent by recorded delivery to the Respondent to his last known address. A proof of delivery had been provided to the Tribunal which confirmed the letter had been delivered on 29 June 2019. In the circumstances, the Tribunal was satisfied the Respondent had been notified of these proceedings and the substantive hearing date in accordance with Rule 10 of the Solicitors (Disciplinary Proceedings) Rules 2007.

4. Application to Proceed in the Respondent's Absence

4.1 Mr Moran informed the Tribunal that the Respondent had not engaged with these proceedings at all. He submitted that the Respondent was unlikely to attend on a future date if proceedings were adjourned and that it was therefore in the public interest to proceed with the hearing in the Respondent's absence.

The Tribunal's Decision

4.2 The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Tribunal took into account the criteria set out in the case of R v Hayward and Jones [2001] QB 862 when considering whether it was appropriate to proceed in the Respondent's absence. The Tribunal also took into account the case of GMC v Adeogba [2016] EWCA Civ 162 which stated that there was an obligation on professionals to keep their regulator informed of their current contact details.

4.3 The Respondent had not engaged with these proceedings at all. He had a duty to keep his regulator informed of his current address and any failure on his part to do so was not a sufficient reason to adjourn the hearing. The Tribunal had been provided with a

report from I J Beim & Associates Limited dated 18 October 2019 which stated that the Respondent's relatives were currently residing at his last known address and "George" was believed to be related to the Respondent. That report confirmed that the Applicant's agent had spoken to the Respondent's relatives at that address on two occasions and on both they had told the agent that they believed the Respondent was residing abroad but they were unable to provide a contact address for him. They had confirmed that should the Respondent be in touch with them, they would convey the agent's message to him.

4.4 In the circumstances, the Tribunal was satisfied that the Respondent was aware of these proceedings and of the hearing today. He had not engaged with the proceedings at all and there was nothing before the Tribunal to suggest that he would attend a hearing on a future date if the hearing was to be adjourned.

4.5 The Tribunal also took into account the serious nature of the allegations which had been made against the Respondent. These involved an allegation of dishonesty. The Tribunal concluded the Respondent had voluntarily chosen to absent himself from the hearing. It was in the public interest that matters should be concluded expeditiously. Taking all these matters into account, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence.

Factual Background

5. The Respondent, born in 1969, was admitted to the Roll on 1 December 2000.

6. At the material time the Respondent was practising as a sole practitioner as Nicholas Angelo Solicitors at 23 Hampden Square, Southgate, London, N14 5JP ("the firm"). He employed a trainee solicitor. The firm was intervened on 3 September 2018 and the Respondent's practising certificate for 2017/2018 was suspended.

7. On 23 August 2018, a Forensic Investigation Officer ("IO") from the Solicitors Regulation Authority ("SRA") attended the firm and met with the trainee solicitor at the firm. The trainee solicitor had contacted the SRA on 21 August 2018 to advise the SRA that he had received an email from the Respondent dated 19 August 2018 in which the Respondent stated that he had decided to close the office. The Respondent had also stated in that email that he "*wouldn't be around for a while*", he had told the SRA the office was closing and said that he had asked the SRA to intervene. The SRA had no record of the Respondent informing it of the closure of his office.

8. The firm's trainee solicitor provided a statement to the IO in which he stated that he had last seen the Respondent on 8 August 2018. He stated the Respondent had emailed him on 19 August 2018 and stated that he was closing the firm. The firm's trainee solicitor stated that he went to the Respondent's home address on 21 August 2018 where the Respondent's brother told him that the Respondent had gone travelling to Malaysia.

9. The IO prepared a Memo dated 24 August 2018 setting out her initial findings and on 31 August 2018, an Adjudication Panel decided to intervene into the Respondent's practice.

10. The IO continued her investigation after the intervention and produced a report dated 18 November 2018 ("the Report"). The extraction date used to conduct a comparison of the firm's client liabilities against client money held in client bank account was 23 August 2018. The SRA's intervention agents did not remove any accounting information from the firm and did not produce a Statutory Trust report to show whether the firm held sufficient funds in client bank account to match is liabilities as at 23 August 2018.

11. Prior to producing the Report, the IO wrote to the Respondent at his home address on 25 September 2018 inviting him to attend an interview at the SRA's offices in London on 4 October 2018. The Respondent did not attend the meeting and did not make any contact with the IO throughout the investigation.

12. The SRA wrote to the Respondent on 3 December 2018 requesting his explanation for the matters raised in the Report. The letter was also sent to the Respondent's email addresses. The Respondent did not reply, and the SRA sent a further email to the Respondent on 20 December 2018. The Respondent did not reply to that either.

Allegation 1.1

13. On 22 August 2018, the IO spoke to the firm's trainee solicitor and arranged to attend the firm the following day. The Memo dated 24 August 2018 set out the IO's initial findings. As at the date of the Memo, the IO noted, amongst other things, that:

- The Respondent had had medical treatment towards the middle of July 2018.
- The firm's trainee solicitor last saw the Respondent on 8 August 2018 and the last communication the trainee solicitor had with the Respondent was the email of 19 August 2018.
- The firm's trainee solicitor believed that there were four client matters where the firm should be holding £403,611.00 in the client bank account.
- The firm had three current files where it was holding £3,640.00 on account for one client matter.
- There was no accounting information available. The firm's trainee solicitor did not have access to the firm's client bank account and had never seen any client account ledgers.

14. A previous inspection had been carried out at the firm in January 2017, which resulted in no further action being taken. The IO contacted the firm's accountant at the time of the previous inspection and the accountant had confirmed that he had not carried out any reconciliations since May 2017.

15. The IO was unable to determine whether the firm was holding £403,611.00 in client bank account for the client matters as she could not access the firm's client bank account. Only the Respondent had access to the firm's client bank account.

16. The IO noted that the books of account were not in compliance with the SRA Accounts Rules 2011 as no books were available, and the IO was unable to calculate whether the firm held sufficient funds in client bank account to meet its liabilities to clients as at 23 August 2018. The only accounting information available was client and office bank account statements for the period 24 June 2017 to 4 September 2018, which the IO obtained from the Intervention agents after the firm had been intervened into.

17. As at 22 June 2018, the balance on the client bank account statement was £30,211.96 and by 23 August 2018, the firm's client bank account was overdrawn in the sum of £16.04. The firm's office bank account also had a zero balance as at 23 August 2018.

18. The IO reviewed the client account bank statements from 22 June 2018 and noted that between 25 June 2018 and 13 August 2018 round sum transfers totalling £415,221.00 had been made to the firm's office bank account and a bank account in an unknown name, which was presumed to be a bank account held by the Respondent or on his behalf. The Respondent was the only person who operated the client bank account and therefore who could have made the transfers to the unknown accounts personally. Transfers totalling £163,022.00 were made from client bank account to office bank account during the period 25 June 2018 to 1 August 2018, whilst transfers totalling £252,199.00 were made from client bank account to an account in an unknown name during the period 31 July 2018 to 13 August 2018. The transfers varied in amounts and several transfers were made on the same day.

19. The overdrawn balance on client bank account was due to incorrect transfers from the client bank account to the firm's office bank account or an account in an unknown name. The IO calculated that there was a minimum cash shortage in the sum of £403,611.00, which the Respondent had not replaced. The shortage related to four clients – PA, GM, MC and SK.

Client PA

20. The firm acted for PA in his purchase of a flat for £332,000.00. The completion statement showed the date of completion as 31 July 2018. The balance to complete the matter was £350,651.00. The file was handed back to PA on 22 August 2018 and he instructed new solicitors.

21. The IO reviewed PA's personal bank statements, which showed that PA had made two payments to the firm's client bank account for money on account of costs (£546.00 paid on 27 June 2018) and the balance to complete the purchase (£350,651.00 paid on 27 July 2018).

22. As at 24 August 2018, the seller's solicitor had not received the completion money. The IO reviewed the client bank account statement and noted a balance of £61.96 on 26 July 2018. The balance increased to £350,712.96 following receipt of completion funds from PA on 27 July 2018. The client bank statement also showed that between 27 July 2018 and 13 August 2018, a total of £345,921.00 was transferred from client bank account to either the firm's office bank account or a bank account in an unknown name.

23. On 26 September 2018, the SRA Compensation Fund made a payment to PA in the sum of £350,945.00 and a further payment in the sum of £14,041.13 was authorised on 29 November 2018 for Stamp Duty, which the Respondent had failed to pay on behalf of PA.

Client GM

24. The firm acted for GM in a lease extension on a property. AJ Solicitors sent an email to the Respondent on 20 June 2018 at 10.58. In that email, AJ Solicitors confirmed that they had remitted £26,200.00 by telegraphic transfer which was the balance required to complete the matter. AJ Solicitors asked the Respondent to *"please hold strictly to this firm's order, pending completion of the lease"*. In a second email sent at 17.21 on the same date, AJ Solicitors confirmed that the lease had completed at *"2.30pm today"* when the completion monies were released.

25. The IO reviewed the firm's client bank account statement and noted that £26,200.00 was received from AJ Solicitors on 20 June 2018. The IO also noted that GM did not receive the £26,200.00, which was due to him. GM later made a claim to the Compensation Fund and on 1 May 2019, the Compensation Fund made a payment in the sum of £24,900.00.

Client MC

26. The firm acted for MC in the purchase of property in the sum of £414,000.00. The completion statement showed a completion date of 10 May 2018 and that Stamp Duty fees were £23,120.00. The completion statement also showed the following:

"BALANCE REQUIRED	£437,516.64
BALANCE SENT	£439,670.00
OVERPAYMENT DUE	£2,153.36

27. The firm's client bank account statement showed that £439,670.00 was received from the client on 24 April 2018 leading to an overpayment of £2,153.36.

28. On 14 June 2018, HMRC wrote to the firm requesting payment of the outstanding stamp duty which was £23,129.00. HMRC also sent a letter to the client on 28 June 2018 requesting payment of £23,156.00, which included interest of £36.00. HMRC sent a further letter to the firm on 12 July 2018 stating that stamp duty was still outstanding and accruing interest. The amount which HMRC required had increased to £23,182.00. On 10 August 2018, the client paid £23,156.00 from his own funds to HMRC to settle the outstanding stamp duty and interest.

29. On 3 October 2018, the SRA Compensation Fund repaid MC £23,156.00 for the loss he had suffered.

Client SK

30. The firm was holding money on account for a landlord's undertaking and legal fees. The trainee solicitor told the IO that he was working on this matter and had

maintained a client ledger account himself because the matter had aborted a few times and he wanted to keep a check of what money the firm should be holding.

31. The IO reviewed the client ledger and noted that the last entry on the ledger was dated 21 June 2018. The IO also noted that the client ledger showed that the firm should have been holding £3,640.00 as at 23 August 2018. However, as at 20 August 2018, the firm's client bank account was £16.04 in debit.

32. Between the period 25 June 2018 and 13 August 2018, the Respondent had made round sum transfers from client bank account totalling £415,221.00 to either the firm's office bank account or a bank account in an unknown name. The IO calculated that the firm should have been holding £403,611.00 for the four clients – PA, GM, MC and SK. The IO was unable to establish which clients the balance of the transfers totalling £11,610.00 related to (£415,221.00 less £403,611.00).

Allegation 1.2

33. No books of account were available for the IO to review. The only accounting information available were client and office bank account statements for the period 24 June 2017 to 4 September 2018, which the IO obtained from the Intervention agents after the firm had been intervened. The SRA intervention agents did not recover any accounting information from the firm.

34. The firm's trainee solicitor confirmed to the IO that he had never seen any client account ledgers and that he had maintained his own client ledger for client SK. The firm's previous reporting accountant also confirmed that the last client account reconciliation that he completed was in May 2017.

Allegation 1.3

35. The Respondent stated in an email sent on 19 August 2018 to the firm's trainee solicitor that he had told the SRA that his office was closing and that he had asked the SRA to intervene into his firm. The SRA had no record of the Respondent informing it of the closure of his firm. The firm's trainee solicitor contacted the SRA on 21 August 2018 after he had received the Respondent's email.

36. The Respondent confirmed in his email of 19 August 2018 to the firm's trainee solicitor that he was not going to be around for a while. He also confirmed that he had not been around for the last six months or so.

37. The trainee solicitor confirmed to the IO that he last saw the Respondent on 8 August 2018 and the last communication he had had with the Respondent was on 19 August 2018. He also confirmed to the IO that he had attended the Respondent's home address where the Respondent's brother told him that the Respondent had gone travelling to Malaysia.

38. The IO invited the Respondent to attend an interview on 4 October 2018 at the SRA's offices in London. The Respondent did not attend this interview and nor did the Respondent reply to the SRA's letter dated 3 December 2018 or email dated 20 December 2018.

Witnesses

39. The following witnesses gave evidence:

- Sarah Taylor (Forensic Investigation Officer)

Findings of Fact and Law

40. The Tribunal had carefully considered all the documents provided, the evidence given and the Applicant's submissions. The Applicant was required to prove the allegations beyond reasonable doubt. All references to the Tribunal's findings of fact within this Judgment apply that standard of proof. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

41. **Allegation 1.1: Between 25 June 2018 and 13 August 2018, the Respondent made improper withdrawals from the firm's client account totalling £415,221.00, which:**

1.1.1 caused a minimum cash shortage on client account; and

1.1.2 caused client bank account to become overdrawn;

and in doing so he breached any or all of Rules 17.7, 20.1, 20.6 and 20.9 of the Solicitors Accounts Rules 2011 ("SAR 2011") and Principles 2, 4, 6, and 10 of the SRA Principles 2011 ("the Principles 2011"). It was alleged the Respondent had acted dishonestly.

41.1 Mr Moran submitted the Respondent was the sole principal of the firm and therefore the only person who could transfer funds out of client account. Mr Moran drew the Tribunal's attention to a schedule which set out the monies that had been withdrawn from client account on various dates from 25 June 2018 to 13 August 2018 in the total sum of £415,221. Of this amount, the sum of £252,199 had been transferred to an account in the Respondent's name. Mr Moran submitted the Respondent had withdrawn client funds in breach of the rules and had thereby caused a cash shortage. He submitted the Respondent had subsequently abandoned his practice leaving his trainee solicitor to deal with matters and as a result of the Respondent's conduct, payments had been made by the Compensation Fund to reimburse clients for the monies they had lost. Mr Moran submitted that, as the Respondent had refused to engage with his regulator or these proceedings, it could be inferred that he had made the improper withdrawals.

41.2 Mr Moran further submitted that the Respondent had acted dishonestly as he had made transfers which he knew were not permitted under the rules and he had transferred some of those funds to an unknown bank account. On questioning from the Tribunal, Mr Moran confirmed that the firm's bank would not confirm the exact name to which the funds had been sent but, Mr Moran submitted that although he could not confirm which account some of the funds had gone to, only the Respondent could have made those transfers.

41.3 The Tribunal heard evidence from Sarah Taylor who was the SRA Forensic Investigation Officer who had carried out the investigation. She confirmed that the firm's trainee solicitor had contacted the SRA and stated that the Respondent had sent him an email saying that the SRA would intervene and that the trainee solicitor should not go into the office. Ms Taylor stated that the trainee solicitor had called to find out what he should do with the client files at the firm.

41.4 Ms Taylor stated that the trainee solicitor had no access to the client account and was unable to provide any accounting records. She stated that she had used the bank statements obtained by the intervention agents to ascertain the position with the accounts and had then realised that a number of transfers from the client account had been made by the Respondent to an account in his own name. Ms Taylor confirmed that there had been no bills or other documents to show that the money was due to the Respondent.

41.5 Ms Taylor confirmed that she had tried to contact the Respondent on a mobile telephone number that she had for him but there had been no response.

41.6 The Tribunal considered carefully all the documents to which it had been referred and in particular the schedule of transfers that had been made by the Respondent during the period 25 June 2018 to 13 August 2018. There was no evidence of any bills of costs or other documents to indicate why these amounts had been transferred either to the Respondent's own account or to an unknown bank account.

41.7 The Tribunal found that a number of clients had lost money due to these transfers. Client PA had expected the sum of £350,651.00 that he had paid to complete his purchase of a property would be used for that purpose. However, the seller's solicitor had not received the money on completion and instead the sum of £345,921 was transferred to a bank account in an unknown name. The Compensation Fund had repaid this amount to PA together with an additional sum of £14,041.13 which the Respondent should have paid in stamp duty.

41.8 Client GM had not been paid the sum of £26,200 in relation to a lease extension on a property, which amount had been sent to the firm by AJ Solicitors on completion of the lease. The Compensation Fund had reimbursed GM.

41.9 Client MC had provided funds to the firm to pay for Stamp Duty on his purchase of a property but that was never paid to HMRC. Again the Compensation Fund had reimbursed MC who had had to pay the Stamp Duty to HMRC from his own funds.

41.10 The Tribunal took into account the firm should have been holding the sum of £3,640 for Client SK as at 23 August 2018 but on 20 August 2018, the firm's client account was in debit by £16.04.

41.11 Ms Taylor had confirmed that she had found it difficult to establish which clients the balance of the transfers related to and it was to the trainee solicitor's credit that he had attempted to assist the SRA as best he could. Indeed, he was able to assist by retrieving two files from the Respondent's home address.

41.12 The Tribunal found that the Respondent had breached Rules 17.7, 20.1, 20.6 and 20.9 of the Solicitors Accounts Rules 2011 as he had made round sum transfers out of client account which did not relate to a bill or other written notification of costs, he had withdrawn client money without complying with the rules, he had withdrawn sums exceeding the amount held on behalf of particular clients and he had allowed the client account to become overdrawn in circumstances which did not fall within the exceptions allowed by the AR 2011.

41.13 The Tribunal found that the Respondent had failed to act with integrity as he had allowed a shortfall to arise on client account. He had failed to protect client money by transferring funds from client account in circumstances which were not permitted by the rules. As a result clients had suffered financial losses. This was a failure to act in the best interests of each client. The Respondent's conduct showed a failure to act with moral soundness, rectitude and a steady adherence to an ethical code. He had failed to meet the high standards expected of a professional. The Tribunal was satisfied that the Respondent had breached Principles 2, 4 and 10 of the Principles 2011.

41.14 The Tribunal further found that such conduct did not maintain the trust the public placed in the Respondent or in the provision of legal services. Solicitors were expected to exercise proper stewardship over client monies and the Solicitors Accounts rules existed to protect the public. The Respondent had improperly withdrawn client money in breach of the trust placed in him to look after that money, and he had failed to replace the cash shortage he had caused. The Tribunal found that in doing so the Respondent had breached Principle 6 of the Principles 2011.

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

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

41.16 The Tribunal noted that the Respondent had been a sole practitioner for over five years, from 23 January 2013 until his firm was intervened on 3 September 2018. He had been a solicitor since 2000 and was an experienced practitioner who would have been familiar with the Solicitors Accounts Rules. A number of transfers had been

made into the Respondent's own personal bank account and to a bank account in an unknown name. The Respondent had failed to engage with either his regulator or these proceedings.

41.17 The Tribunal was mindful of the case of Iqbal v The SRA [2012] EWHC 3251 (Admin) in which it was stated:

> "Ordinarily the public would expect a professional man to give an account of his actions."

41.18 The Tribunal also took into account its Practice Direction No 5 "Inference To Be Drawn Where Respondent Does Not Give Evidence" which stated:

> "….where a Respondent denies some or all of the allegations against him (regardless of whether it is alleged that he has been dishonest), and/or disputes material facts, and does not give evidence or submit himself to cross-examination, the Tribunal shall be entitled to take into account the position that the Respondent has chosen to adopt as regards the giving of evidence when reaching its decision in respect of its findings."

41.19 As the Respondent had failed to engage with these proceedings, the Tribunal drew an adverse inference from his failure to explain his actions. The Tribunal considered it was particularly relevant that the Respondent had sent an email to his trainee solicitor on 19 August 2018 advising the trainee solicitor that the Respondent had decided to close the office, that he would not be around for a while, telling the trainee solicitor not to go into the office as the Respondent claimed he had asked the SRA to intervene. Furthermore, the Respondent had stated:

> "Obviously there are going to be a few angry clients. You don't need to do anything. The firm acting for the SRA will contact these people and deal with these files going forward. Any loss associated with the abrupt closure of the firm will be covered by my indemnity insurance….."

41.20 This email was indicative of the Respondent's state of mind at a time when he had been making improper withdrawals from client account causing a cash shortage. The Tribunal found that the content of that email showed that the Respondent knew clients had suffered losses and he had no intention to return to the office. Instead he expected his indemnity insurers to pay for those losses which he had caused. The Tribunal was in no doubt that making unauthorised round sum transfers, which were not permitted, from client account over a period of time, and transferring that money to his own account or to an unknown bank account, thereby causing a shortfall in client funds would be regarded as dishonest conduct by the standards of ordinary decent people. The Tribunal found that the Respondent had acted dishonestly.

41.21 The Tribunal found Allegation 1.1 proved.

42. **Allegation 1.2: As at August 2018, the Respondent failed to keep accounting records properly written up to show dealings with client and office money and failed to appropriately record all dealings with client money on client ledgers in breach of any or all of Rules 29.1 and 29.2 AR 2011.**

42.1 Mr Moran submitted that as there were no books of account available, the Respondent had breached Rules 29.1 and 29.2 of the AR 2011.

42.2 The Tribunal had already heard evidence from Ms Taylor confirming that no accounting records were available and she had used the bank statements obtained by the intervention agents in order to ascertain the position regarding the firm's accounts. The Tribunal also noted from the documents provided that the trainee solicitor, who did not have any access to the firm's accounts, had maintained a ledger account himself on the file relating to SK which he had been working on, so that he had a record of the money the firm should have been holding. This was to his credit. He had confirmed to the IO that he had never seen any client account ledgers.

42.3 Rule 29.1 of the AR 2011 required solicitors to keep accounting records properly written up to show all dealings with client money and any office money relating to any client matter. Rule 29.2 required all dealings with client money to be properly recorded in (a) a client cash account or in a record of sums transferred from one client ledger account to another, and (b) on the client side of a separate client ledger account for each client. The Respondent had clearly failed to do this and had breached Rules 29.1 and 29.2 of the AR 2011 as there were no books of account available. It was notable that the intervention agents had been unable to recover any accounting information from the firm.

42.4 The Tribunal found Allegation 1.2 proved.

43. **Allegation 1.3: The Respondent failed to comply with his legal and regulatory obligations and deal with his regulator in an open, timely and co-operative manner during the period June 2018 to December 2018, as he failed to:**

1.3.1 co-operate with or engage with the SRA during the forensic inspection of his firm;

1.3.2 effect an orderly and transparent wind down of activities, including informing the SRA before the firm closed;

1.3.3 respond promptly or at all to communications sent to him by the SRA;

and in doing so, he breached any or all of Principles 2, 4, 6 and 7 of the SRA Principles 2011 and failed to achieve Outcomes O(10.6) and O(10.13) of the SRA Code of Conduct 2011.

43.1 Mr Moran submitted the Respondent had abandoned the firm and left his trainee solicitor to deal with all matters. He submitted that as a result, the Respondent had failed to effect an orderly wind down of the practice and had subsequently failed to engage with the SRA at all.

43.2 The Tribunal took into account the email dated 19 August 2018 which had been sent by the Respondent to the firm's trainee solicitor. This made it clear that the Respondent had no intention of returning to deal with the orderly closure of the firm even though he had made the decision to close the practice.

43.3 The Tribunal considered carefully the witness statement provided by the trainee solicitor which set out details of the Respondent's conduct prior to his departure. The trainee solicitor had not seen the Respondent since 8 August 2018 as after this date, the Respondent had not answered any of the trainee solicitor's phone calls or text messages. On 13 August 2018, the trainee solicitor had received an email from the Respondent stating the Respondent "*was away until Wednesday and not on the phone*". On 15 August 2018, the trainee solicitor had received an email from the Respondent stating he was happy with a letter the trainee had drafted and "*speak tomorrow*". The next communication the trainee solicitor received from the Respondent was on 20 August 2018 when he saw the email from the Respondent dated 19 August 2018 sent at 23.18 informing him that the Respondent had decided to close the firm.

43.4 On 21 August 2018 the trainee solicitor had attended the Respondent's home address to retrieve two files which he knew the Respondent had taken home around a month earlier. The trainee solicitor had met with the Respondent's brother and was told the Respondent had gone to Malaysia. When the trainee solicitor had asked when the Respondent would return, his brother had stated "*I don't know he's gone travelling*".

43.5 The Tribunal found that the Respondent had no intention of returning to deal with the orderly wind down of his firm. Indeed, the Respondent was of the view that his insurers would pay any losses to clients which indicated that he also had no intention of replacing the shortfall he had caused in client funds. The Tribunal found that the Respondent had breached Outcome O(10.13) as he had failed to effect an orderly and transparent wind down of activities once he had decided to close the firm and this included failing to inform the SRA before the firm closed.

43.6 The Tribunal's attention had been drawn to various attempts made by the SRA to contact the Respondent. He had been asked to attend for an interview with the SRA on 4 October 2018 and had failed to do so. He had also failed to reply to the SRA's letter dated 3 December 2018 or the SRA's email dated 20 December 2018. He had therefore breached Outcome O(10.6) as he had not cooperated fully with the SRA.

43.7 The Tribunal found that abandoning a practice, knowing full well that there would be matters that needed to be dealt with, was a failure to act with moral soundness, rectitude and a steady adherence to an ethical code. The Respondent had failed to meet the high standards expected of a professional and had acted with a lack of integrity. The public would not expect a solicitor to simply walk away from the firm without taking any steps to ensure client matters and client funds were safe, protected and had been properly and appropriately dealt with. In doing so, the Respondent had failed to act in the best interests of each of his clients who would have expected him to take whatever steps were necessary to protect their interests before closing the firm. They would not have expected a trainee solicitor to be left to deal with such important matters alone. The Respondent had therefore failed to comply with his legal and regulatory obligations, and he had failed to deal with his regulators in an open, timely and cooperative manner by not responding to communications from the SRA. He had failed to behave in a way that maintained the trust the public had placed in him and in the provision of legal services. The Tribunal found the Respondent had acted with a lack of integrity, he had breached Principles 2, 4, 6 and 7 of the SRA Principles 2011.

43.8 The Tribunal found Allegation 1.3 proved.

Previous Disciplinary Matters

44. None.

Mitigation

45. There was no mitigation from the Respondent before the Tribunal. There was some reference to possible health issues in July 2018 within the documents but no medical evidence had been provided.

Sanction

46. The Tribunal considered carefully the documents provided. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

47. The Tribunal firstly considered the Respondent's culpability. The documents before the Tribunal showed that over £250,000 had been dishonestly withdrawn from client account and paid into a bank account in the Respondent's name or in an unknown name. Furthermore, the Respondent had stated in his email to the trainee solicitor dated 19 August 2018 that any losses suffered by clients would be paid by his insurers. It was therefore apparent to the Tribunal that the Respondent's motive was to personally gain financially from the client funds. His conduct was planned as the money was withdrawn over a period of two months, after which the Respondent disappeared. The Respondent had direct control over the transfers that were made as only he could have made them. He had breached his position of trust as clients had trusted him to look after their money. The Respondent was a very experienced solicitor, who was a sole practitioner and therefore the lack of accounting records was solely down to him. The Tribunal concluded that the Respondent's culpability was extremely high.

48. The Tribunal then considered the harm caused by the Respondent's conduct. It was clear from the documents before the Tribunal that the Respondent's behaviour had impacted directly on the clients who had suffered substantial losses in transactions and had had to make claims on the Compensation Fund. Fortunately the payments from the Compensation Fund had been made with alacrity, but this meant that the profession had also suffered financial losses, as the Compensation Fund was made up from contributions from members of the profession.

49. In addition, the Respondent had also caused harm to the firm's trainee solicitor who had, very commendably, done his best to pick up the pieces, inform the SRA of his predicament and try to appease some very angry and frustrated clients. The trainee solicitor's prompt action ensured that the SRA and the Compensation Fund were engaged at an early stage so that the clients' property transactions were completed. But for that action the harm to the clients and reputational damage to the profession would have been considerably greater. The Trainee Solicitor had been in the middle of a training contract and had been deliberately left with no support, not knowing

what the impact of the Respondent's actions might be for him financially as well as on his career.

50. The Tribunal concluded the level of harm caused by the Respondent was extremely high. He had departed from the complete integrity, probity and trustworthiness expected of solicitors and had caused immense harm to the reputation of the profession.

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

- The Respondent had acted dishonestly in withdrawing client funds and transferring them to an account in his own name and/or in an unknown name

- His conduct had been deliberate, calculated and repeated over a period of two months. It had affected four clients who were all involved in transactions.

- The Respondent had concealed his behaviour because he had informed the trainee solicitor in the email dated 19 August 2018 not to go into the office, claiming to have asked the SRA to intervene into his practice. The SRA had no record of such a communication. The Respondent was trying to conceal what was happening from the SRA for as long as possible by encouraging the trainee solicitor not to attend work, where he would no doubt have been faced with angry clients wanting to know what was going on.

- The Respondent ought reasonably to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession

- The Tribunal had already found that his conduct had impacted tremendously on clients, the trainee solicitor and on the reputation of the profession.

52. The Tribunal then considered the mitigating factors. The only mitigating factor that the Tribunal could identify was that the Respondent had a previously unblemished record.

53. The Tribunal considered this case to be very serious. The Respondent's conduct had been disgraceful. He had taken advantage of his position as a solicitor entrusted with client money by dishonestly withdrawing that money and transferring a large proportion of it to an account in his name or to an account in an unknown name. This had caused clients to suffer financial loss. Client funds were sacrosanct and the Respondent's conduct undermined public confidence and trust in the profession. The Tribunal was satisfied that it was not appropriate to make No Order, or impose a Reprimand or a Fine as such sanctions were not adequate to reflect the seriousness of the misconduct or Respondent's high culpability or the immense harm he had caused. Furthermore, a Restriction Order was not sufficient to address the need to protect members of the public. It would be very difficult for the Tribunal to formulate suitable conditions that could adequately address dishonest conduct.

54. The Tribunal then considered whether to impose a Suspension. It was clear to the Tribunal that the Respondent could not be trusted and he was a risk to the public. He had been found to have acted dishonestly in taking client funds, he had failed to keep proper records relating to the firm's client account and then he had simply disappeared without any regard for his legal and regulatory obligations. The public clearly needed to be protected from him.

55. The Tribunal took into account the case of The SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:

> "(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see Bolton and Salisbury."

56. The Tribunal was satisfied that there were no exceptional circumstances in this case. The Respondent was not fit to be a member of the profession and could not be trusted. The minimum necessary to protect the public and the reputation of the profession was to remove the Respondent's ability to practise permanently. Accordingly the Tribunal made an Order that the Respondent be Struck Off the Roll of Solicitors.

Costs

57. Mr Moran, on behalf of the Applicant requested an Order for the Applicant's costs in the total sum of £8,751.05. He provided the Tribunal with a Statement of Costs which contained a breakdown of those costs. He accepted the costs would need to be reduced to take into account the shorter hearing time that had been estimated on the breakdown provided.

58. The Tribunal considered carefully the matter of costs. The hearing had taken less time than had been estimated and some reduction was required to reflect this. The Tribunal would allow three hours for the time spent at the hearing. Having made this reduction, the Tribunal assessed the Applicant's total costs in the sum of £8,361.05 and made an Order that the Respondent to pay this amount in costs.

59. On the matter of enforcement of costs, the Tribunal had particular regard for the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:

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

60. In this case the Respondent had not engaged with the Tribunal at all and therefore the Tribunal did not have any financial information from him. In the circumstances, the Tribunal did not consider this was a case where there should be any deferment of the costs order.

Statement of Full Order

61. The Tribunal ORDERS that the Respondent, NICHOLAS PAUL TSIOUPRAS, 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 £8,361.05.

Dated this 7th day of January 2020
On behalf of the Tribunal

P. Lewis
Chairman