SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11983-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JOHN LEONARD TURNER Respondent

Before:

Mr J. C. Chesterton (in the chair)
Mr W. Ellerton
Mr S. Hill

Date of Hearing: 15 January 2020

Appearances

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

The Respondent attended in person and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent by the Solicitors Regulation Authority ("SRA") were that:

1.1 Between 16 May 2017 to 7 November 2017, he withdrew client money totalling £83,834.000 from the client account, transferred it to his office account and misused it by applying it to fund his practice. In so doing, he breached any or all of:

1.1.1 Rule 20.1 of the Solicitor Regulation Authority Accounts Rules 2011 ("AR 2011");

1.1.2 Rules 1.2(a) of the AR 2011; and

1.1.3 Principles 2, 6, 8 and 10 of the SRA Principles 2011.

1.2 Between 16 May 2017 to 10 July 2018, he caused a client account cash shortage to exist on the client account in breach of Rule 20.6 of the AR 2011.

1.3 He withdrew office money from the client account on 14 October 2016 and 4 and 5 April 2018 in advance of issuing a bill of costs in breach of any or all of Rules 17.2 and 20.3 of the AR 2011.

1.4 He failed to remedy breaches of the Rules promptly upon discovery in breach of Rule 7 AR 2011.

2. It was further alleged that the Respondent had acted dishonestly in relation to the conduct set out at Allegation 1.

Documents

3. The Tribunal considered all of the documents that had been filed and served by the parties which included:

- Applicant's Rule 5 Statement, as amended, dated 5 July 2019.
- Respondent's Answer to the Rule 5 Statement dated 11 September 2019.
- Witness statement of DB, for the Applicant, dated 7 November 2019.
- Respondent's financial statement of means dated 11 December 2019 and bankruptcy order made against him.
- Joint application for an agreed Outcome, in respect of the allegations, signed by the parties on 8 January 2020 but in respect of which costs were in dispute.
- Emails and letters between the parties and the Tribunal from 8 – 10 January 2020.

Agreed Facts

4. The Respondent was admitted to the Roll in February 1972 and practised on his own account at Lindsay Salt and Turner ("the Firm"), Woking, from 31 July 2014 until 31 October 2018. He last held a practising certificate for the practice year 2017/2018.

5. An inspection of the Firm's books of accounts and other documents commenced on 25 June 2018 by and Investigation Officer ("IO") of the SRA. An interim report was produced dated 6 July 2018 and the IO arranged to return to the Firm on 11 July 2018.

6. On 15 July 2018, an Adjudication Panel ("the Panel") of the SRA decided to refer the Respondent to the Tribunal. The Panel decided not to intervene into the Respondent's practice and directed that:

- Notice of the intervention should be given to the Respondent.
- The IO should provide an update in respect his visit on 11 July 2018.
- The matter may be referred back to an Adjudication Panel for consideration of whether to intervene.

7. Following a further visit to the Firm on 11 July 2018, the IO prepared a Memo dated 17 July 2018, summarising his visit to the Firm.

8. **Allegation 1.1 - Withdrawal of client monies from the client account**

8.1 The IO noted that the books of Account were not in compliance with the AR 2011 as at the extraction date of 31 May 2018 in that:

- During the period 16 May 2017 to 7 November 2017 on eighteen separate occasions, the Respondent withdrew client funds from the Firm's client bank account and transferred these funds into the Firm's office bank account to fund the running of the practice. The amounts transferred ranged between £1,000 and £10,000 and totalled £83,834.

- The Respondent took this action without the consent of his clients.

- The Respondent's actions caused a cash shortage on the client account in the sum of £83,834.

8.2 A comparison of total liabilities with cash held on client bank accounts as at 31 May 2010 showed that client liabilities totalled £2,477,823 whilst available funds totalled £2,393,989. There was a cash shortage in the sum of £83,834, which was caused by the improper transfer of £83,834 from client bank account to office bank account on eighteen separate occasions. The client account reconciliation for 31 May 2018 also identified this shortage.

8.3 At a meeting on 25 June 2018 with the IO, when asked whether he was aware of any problems with the books, the Respondent confirmed that the client bank account was overdrawn by £84,000 and that he was re-mortgaging his home to cover the shortage. The Respondent explained that there were insufficient funds to pay outgoings and staff and that he had taken client funds to cover this shortage over a period of time starting in May 2017.

8.4 The Respondent provided a written statement to the IO dated 27 June 2018, in which he confirmed:

- During the period 16 May 2017 to 7 November 2017, he withdrew client funds.

- He was under financial pressure at the time. There were insufficient funds in the office bank account to pay for monthly outgoings for the Firm and that he took the funds to cover the shortage.

- He did not have the consent of his clients to transfer the funds and admitted that he did so in breach of the Solicitors Accounts Rules.

- It was always his intention to replace the funds once he had overcome his financial difficulties.

- He was in the process of securing an equity release on his home in order to raise £84,000 which he intended to inject into the Firm's client bank account to address the shortage.

- He had received an offer from Legal and General for a lifetime mortgage offer in the sum of £184,849.00, the proceeds of which would be used to redeem an existing mortgage over his property and the balance released to address the shortage.

8.5 The cash shortage on client bank account was not rectified as at the date of the interim report. The IO returned to the firm on 11 July 2018 and prepared a Memo dated 17 July 2018, summarising his visit to the firm and in which he stated:-

- the sum of £83,705.45 was deposited into the firm's client bank account on 10 July 2018 from the lifetime mortgage taken out by the Respondent and his wife over their home; and

- an additional sum of £5,000.00 was deposited into the firm's client bank account by the Respondent's brother on 10 July 2018, as a loan to assist in rectifying the shortage.

8.6 The Respondent admitted that between 16 May 2017 to 7 November 2017, he withdrew client money from firm's client bank account on eighteen separate occasions, transferred those monies into his firm's office bank account to fund the running of his practice and that the circumstances in which he withdrew client money from client bank account were not in accordance with Rule 20.1 AR 2011. As at 31 May 2018, the firm's office bank account was overdrawn in the sum of £13,995.05. Client monies were withdrawn without the consent of any of the clients and the monies were not used for clients' matters only, as the monies were used for the Respondent's own purposes. The Respondent admitted that this was in breach of Rule 1.2 (a) of the AR 2011.

8.7 The Respondent admitted that he took client monies and misused those monies to fund the running of his practice and that he lacked integrity in doing so contrary to Principle 2 of the SRA Principles 2011. The Respondent further admitted that he failed to exercise proper stewardship over client monies and failed to protect client monies and assets by misusing those monies for his own purposes. The Respondent placed client money in his firm's office account which was overdrawn as at 31 May 2018. Client money was therefore at risk and the Respondent admitted that he breached Principle 10 of the SRA Principles 2011. The Respondent admitted that

he failed to run his business or carry out his role in the business effectively, and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 of the SRA Principles.

8.8 The trust that the public placed in solicitors, and in the provision of legal services, depended upon the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. Solicitors were required to discharge their professional duties with integrity, probity and trustworthiness. In withdrawing client money from client bank account and misusing that money for his own benefit to fund the running of his practice, the Respondent did not discharge his professional duties with integrity, probity and trustworthiness and he admitted that he had damaged the trust that the public places in him and the provision of legal services in breach of Principle 6 of the SRA Principles.

9. **Allegation 2 - Dishonesty in respect of Allegation 1.1**

9.1 The Respondent's conduct was dishonest in accordance with the test for dishonesty laid down in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. The Respondent accepted that he acted dishonestly according to the standards of ordinary decent people under the test in Ivey. The Respondent accepted that he acted dishonestly in withdrawing client monies from his firm's client bank account on eighteen separate occasions between 16 May 2017 to 7 November 2017 and transferring those monies into the firm's office bank account to fund the running of the practice.

9.2 The Respondent admitted that he deliberately used client monies to fund the running of his practice, as he was under financial pressure at the time and there were insufficient funds in the firm's office bank account to pay for monthly outgoings for the firm. Client monies were used to cover this shortage. The Respondent knew that he had to replace client monies and admitted that it was always his intention to replace the funds once he had overcome his financial difficulties. The Respondent accepted that he made a huge error or judgement and was always of the opinion that the transfers could be easily remedied within time. He had made an application and received an offer from Legal and General in advance of the IO's visit. However, the Respondent knew that he was not entitled to misuse client monies to fund the running of his practice, did not have the consent of his clients to transfer those funds and he transferred client money otherwise than in accordance with the AR 2011.

10. **Allegation 1.2: Caused a client account cash shortage to exist on client account**

10.1 In addition to the cash shortage of £83,834.00 identified on client account, which was caused by the Respondent misusing client monies to fund the running of his practice, the IO examined the books of account and noted an additional cash shortage of £7,196.98 and a potential cash shortage of £16,167.53 totalling £23,364.51 as at 10 July 2018.

10.2 The additional cash shortage was caused by:

- Debit balances on the following client account ledgers:

Client reference	Name of Client	Balance £
C48/1	Client Suspense Account	16,167.531
E10/1	E	3.00
A24/1	Mr and Mrs A	9.00
S147/1	Ms JS	53.00
G77/1	Mr SG & Mrs CG	4,660.00
	Total	20,892.53

Client reference	Name of Client	Balance £
E7/1	Mr DKE (Deceased)	600.00
F23/1	Mrs WBF	1,787.98
P41/1	Mr and Mrs P	19.00
D28/1	Mr D	6.00
S147/1	Ms JS	59.00
	Total	2,471.98

10.3 The cause of the shortages was exemplified as set out below.

10.4 Client Suspense Account - £16,167.53

10.4.1 The client suspense ledger card showed a debit balance on the client side of the ledger in the sum of £16,167.53. There was a narrative on the ledger from 30 April 2014 which stated that there was an "Error on take on balance with designated deposits being included twice in Alpha". The Respondent informed the IO that the debit balance on the suspense ledger was an error, which had been caused by an incorrect take-on balance of £18,081.11 when the Firm changed from Alpha Law to Perfect Books. The debit balance as at 30 April 2014 was £15,090.60. The IO reviewed the designated deposit accounts and relevant client ledgers, which showed that the correct balances were brought forward onto the new ledger cards. However, the IO could not explain the debit balance on the suspense account.

10.5 Client E

10.5.1 The client ledger for Mr E showed an over-transfer of funds from client bank account to office bank account on 31 July 2016 to cover a disbursement for £3.00 which was incurred on 1 June 2016. That caused a debit balance on the client ledger.

10.6 Mr and Mrs A

10.6.1 The client ledger for Mr and Mrs A showed an over-transfer of funds from client bank account to office bank account on 27 August 2015 to cover a disbursement for £9.00 which was incurred on 24 August 2015. That caused a debit balance on the client ledger.

10.7 Ms JS

10.7.1 The client ledger for Ms S showed that on 1 June 2016, £857.00 was transferred from client bank account to office bank account to cover fees

totalling £798.00 at a time when funds held on behalf of the client totalled £804.00. That caused a debit balance of £53.00 on the client ledger and a credit balance on the office ledger in the sum of £59.00, resulting in a net shortage of £112.00.

10.8 Mr SG & Mrs CG

10.8.1 On completion of a residential conveyance, the sum of £16,539.96 was paid to the Mr SG and Mrs CG on 26 April 2018. The client ledger showed that this left a balance after deductions in the sum of £11,340.00. On 4 May 2018, £16,000.00 was paid to HMRC for SDLT and that created a debit balance on the client ledger in the sum of £4,660.00.

10.8.2 The IO noted that £3,000.00 was returned by the client and lodged into the firm's client bank account on 3 July 2018. On 4 July 2018, the Respondent transferred, £1,660.00 from the firm's office bank account to client bank account to rectify the shortage on the ledger.

10.9 Mr DKE (Deceased)

10.9.1 The client ledger for Mr DKE (deceased) showed that on 14 October 2016, £3,000.00 was transferred from the firm's client bank account to the firm's office bank account to cover a bill for £2,400.00 which was issued on 29 November 2016. That resulted in a credit balance of £600.00 on the office side of the client ledger.

10.10 Mrs WBF

10.10.1The client ledger for Mrs WBF showed that on 6 August 2014, £3,105.00 (£2,898.00 plus £207.00) was transferred from the firm's client bank account to the firm's office bank account to cover fees totalling £1,305.00. That represented an over transfer of £1,800.00 and after deductions, resulted in a credit balance on the office side of the ledger in the sum of £1,787.98.

10.11 Mr and Mrs GP

10.11.1The client ledger for Mr and Mrs P showed that on 24 August 2014, £19.00 was transferred from the firm's client bank account to the firm's office bank account which created a credit balance on the office side of the client ledger in the sum of £19.00.

10.12 Mr D

10.12.1The client ledger for Mr D showed that an over-transfer of £6.00 from the firm's client bank account to the firm's office bank account had occurred on 31 July 2014.

10.13 Further client matter – Mr ME

10.13.1 The IO further noted that the client ledger for Mr ME showed two client to office transfers totalling £4,200.00 on 4 and 5 April 2018, which was in advance of the Respondent issuing of a bill of costs on 20 April 2018.

10.13.2 In addition to the written statement dated 27 June 2018 which the Respondent provided to the IO, on 1 August 2018, the Respondent's representatives provided a written response to the notice of intervention. The Respondent's representatives explained that the Respondent accepted that he made a huge error of judgement and was always of the opinion that the transfers could be easily remedied within time. The Respondent was fully aware that the monies had to be replaced and in advance of the IO visit on 25 June 2018, he had already made an application and received an offer from Legal and General.

10.13.3 The Respondent's representatives confirmed that the debit balances on client account and credit balances on office account were fully rectified and the firm's reporting accountants did not identify and report the debit balance on the suspense ledger or bring the matter to the Respondent's immediate attention. The Respondent's representatives also stated that £30,000 was paid into the suspense account on 26 July 2018 when those funds were provided by the Respondent's sister to rectify the deficit with the balance being transferred to office account to support the practice in the short term.

10.13.4 The Respondent admitted that he caused a cash shortage to arise on client bank account by withdrawing client monies totalling £83,834.00 from client bank account and transferring those monies to office bank account to fund the running of his practice. Debit balances were noted on five client account ledgers totalling £20,892.53, which included a suspense ledger account. Credit balances were also identified on the office account ledgers for five client matters totalling £2,471.98. This created a further shortage totalling £7,196.98 and a potential shortage of £16,167.53.

10.13.5 The Respondent, as sole principal of his firm, was responsible for ensuring compliance with the rules. The Respondent had an additional duty as the firm's Compliance Officer for Finance and Administration ("COFA") to ensure compliance with the AR 2011. That obligation was in addition to, not instead of, the duty of all the principals to ensure compliance, which means that the COFA may be subject to this duty both as COFA and as a principal. Even if the Respondent was not fully aware of the debit balance on the suspense ledger account, the Respondent was aware that there was a shortage of at least £83,834.00 on client bank account, as he had made eighteen separate transfers between 16 May 2017 to 7 November 2017 to the firm's office bank account to fund the running of his practice. The client account reconciliation for 31 May 2018 also identified this shortage and the Respondent admitted that he breached Rule 20.6 AR 2011.

11. **Allegation 1.3 - Withdrawal of client money prior to issuing a bill of costs**

11.1 The client ledger account for Mr DKE (deceased) showed that on 14 October 2016, £3,000.00 was transferred from the firm's client bank account to the firm's office bank account to cover a bill for £2,400.00 which was issued on 29 November 2016. The Transfer therefore occurred in advance of the bill of costs or other written notification of costs being issued. The client ledger for Mr ME showed two client to office transfers totalling £4,200.00 on 4 and 5 April 2018, which was in advance of the Respondent issuing of a bill of costs on 20 April 2018. In transferring client money to office account before issuing bills of costs, the Respondent admitted that he breached Rules 17.2 and 20.3 AR 2011.

12. **Allegation 1.4 - Failure to remedy breaches promptly**

12.1 Breaches of the Accounts Rules must be remedied promptly upon discovery and all principals in a firm must ensure compliance with the rules by themselves and everyone employed in the firm. Principals were responsible for remedying any breaches and the COFA has an additional obligation to ensure compliance with the Accounts Rules. The Respondent was sole principal of his firm and COFA. He was responsible for rectifying any breaches of the AR 2011 promptly upon discovery including replacing any money improperly withdrawn from a client account from his own resources.

12.2 The suspense ledger showed that there was a debit balance in existence from 30 April 2014 and this continued until July 2018 when the Respondent's sister provided funds to rectify the deficit. Other client ledgers became overdrawn on various dates between 27 August 2015 until 4 May 2018. Between 16 May 2017 and 7 November 2017, the Respondent also withdrew client money totalling £83,834.00 and did not replace these monies until July 2018. The breaches had occurred from at least 30 April 2014 and continued until July 2018. The Respondent admitted that he did not rectify the breaches promptly upon discovery and that this was in breach of Rule 7 AR 2011.

<u>Respondent's Further Submissions on the Agreed Facts</u>

13. The Tribunal enquired of the Respondent whether he wished to make any further submissions in relation to the allegations. The Respondent stated that he had nothing further to add to the agreed facts as opened by the Applicant but that he was open to any questions or clarifications if the Tribunal so required.

14. The Tribunal did not have any questions for the Respondent.

Findings of Fact and Law

15. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

16. The Tribunal reviewed all the material before it, the oral submissions of Mr Moran and the Respondent. The Tribunal considered that the admissions made by the Respondent to all allegations, including dishonesty, were properly made and accepted the same. The Tribunal found that as an experienced solicitor of significant standing the Respondent knew, at the material time of the cash shortage, that he could not pay staff wages, knew that he was prohibited from transferring money from the client account into the office account and was well aware that it was unacceptable conduct.

17. On the basis of the evidence before it and the facts as presented, the Tribunal therefore found:

17.1 **Allegation 1.1, 1.1.1, 1.1.2, 1.1.3** proved beyond reasonable doubt.

17.2. **Allegation 1.2** proved beyond reasonable doubt.

17.3 **Allegation 1.3** proved beyond reasonable doubt.

17.4. **Allegation 1.4** proved beyond reasonable doubt.

17.5 **Allegation 2 (dishonesty)** proved beyond reasonable doubt.

Sanction

<u>The Respondent's Mitigation</u>

18. The Respondent relied upon the mitigation set out in the Agreed Outcome document namely that he was under financial pressure at the time and accepted that he made a huge error of judgement.

19. Before the SRA commenced its investigation, the Respondent had been in the process of securing an equity release on his home in order to raise £84,000.00 which he intended to inject into the firm's client bank account to address the shortage. On 10 July 2018, £83,705.45 was deposited into the firm's client bank account from the lifetime mortgage and an additional sum of £5,000.00 was also deposited into the firm's client bank account by the Respondent's brother as a loan to assist in rectifying the shortage.

20. The Respondent's sister provided £30,000.00 which was paid into the suspense account on 26 July 2018 to rectify the deficit with the balance being transferred to office account to support the practice in the short term.

21. The Respondent further relied upon his letter to the Tribunal dated 10 January 2020 in which he stated:

> "…I would wish it to be recorded, as I do not believe it appears any where *(sic)* in the papers before the Tribunal or there has been an opportunity for me to say so, that I very much regret my actions in this matter and I accept that I have not only failed myself but also my family, my friends, my staff, my clients and the profession for which I am sorry and apologise wholeheartedly.

> I have worked in the law for over 50 years. It has been my life and although there have been many challenges and stresses it has been all I wanted to do serving my clients and my community. Its loss I feel deeply and considerably more than the financial repercussions not made any easier by the realisation that it is all my own fault. It has left a big hole in my life.
>
> When the events occurred I was somewhat unsettled and I accept that I exercised poor judgment. I realised that I would not be able to continue but was faced with immediate business failure and the closure of my practice. It appeared to me that the only course of action was to re-mortgage our home in order to cover the immediate financial problem and then arrange for an orderly transfer of the practice. I appreciate that this was wrong and very foolish on my part but I did believe that it would serve the best interests of my clients. I did not try to hide my actions and knew that they would be apparent in the annual accountants report but I believed that I would have by then rectified the position and protected their interests.
>
> I appreciate that this was a serious error of judgment on my part and I acted very foolishly. I accept the consequences of my actions, I regret the consequences to those affected by my actions and I apologise for this…"

22. Additionally the Respondent submitted that he very much regretted his actions, he was extremely embarrassed to be before the Tribunal to whom he apologised wholeheartedly. He accepted that he could not undo his misconduct but that he accepted full responsibility for his actions.

<u>The Tribunal's Decision</u>

23. The Tribunal considered the Guidance Note on Sanction (Seventh Edition). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

24. In respect of culpability, the Tribunal noted that the Respondent was sole proprietor, Compliance Officer for Legal Practice ("COLP") and COFA of the Firm. The Tribunal determined that whilst his motivation for the misconduct may have been altruistic, in that he was trying to maintain the Firm or wind it down in an orderly manner, it was still a flagrant disregard of the duties incumbent upon him in the roles that he held. The Tribunal determined that there was no nefarious motivation on the part of the Respondent but that his actions were planned, repeated and occurred over a protracted period of time. He was in breach of the significant position of trust that he held and he should have known better in light of his significant experience as a solicitor. The Tribunal concluded that although he did not mislead the Applicant, either during the investigation into the Firm or the proceedings before the Tribunal, he was highly and solely culpable for the misconduct.

25. The Tribunal, on the basis of the allegations found proved and mitigation received, determined that there was significant and foreseeable harm caused to the reputation of the profession and to clients by the Respondent's misconduct.

26. The Tribunal considered the aggravating features present were that the Respondent's misconduct was (a) dishonest, (b) deliberate, (c) calculated and (d) repeated over a protracted period of time. The Tribunal concluded that the detrimental impact of his misconduct on the reputation of the profession was significantly high.

27. There were a number of mitigating features advanced by the Respondent and accepted by the Tribunal namely (a) he endeavoured to make good the inappropriate withdrawals from the client account, (b) he demonstrated genuine and significant insight into his misconduct and (c) he was open with the Applicant and made full admissions to the allegations. The Tribunal also found the fact that the Respondent attended the hearing to apologise for his misconduct was brave and to his credit.

28. Notwithstanding the significant mitigating factors present, it fell to the Tribunal to consider sanction in respect of very serious misuse of client monies which was found to have been dishonest. The seriousness of the allegations found proved in conjunction with the fact that the Respondent was solely responsible in that regard led the Tribunal to conclude that no order, a reprimand, a financial penalty, a restrictions order and/or a period of suspension were not appropriate. The Tribunal concluded that the only appropriate order was a Striking Off Order that removed the Respondent from the Roll of Solicitors. No exceptional circumstances were advanced by the Respondent or found on the face of the papers that could militate against the imposition of a Striking Off Order.

Costs

<u>The Applicant's Application</u>

29. Mr Moran applied for costs in the sum of £8,711.50. He made plain that costs had been limited to that which was incurred by the Applicant as at the date of issue of the proceedings in light of the Respondent's admissions to the allegations.

30. The costs claimed essentially reflected the costs of the IO investigation at the Firm upon which the Rule 5 Statement was predicated, attendance costs at the hearing and costs of communications between the Applicant and Respondent. Mr Moran submitted that pragmatic approach to costs had been taken by the Applicant who was cognisant of the Respondent's financial position.

<u>The Respondent's Position</u>

31. The Respondent adopted and endorsed the submissions made in his letter to the Tribunal dated 10 January 2020 in which he stated:

> "…With regards to the costs claimed this presents me with a considerable problem. I had not appreciated until this week that it was to be the problem that it is. It has been put to me that because proceedings were issued after I had been declared bankrupt they would not be covered by my bankruptcy. Whereas if these proceedings were issued before, they would have been. It concerns me that I do not have the means with which to pay the costs and that if they remain unpaid or there is a requirement to make instalment payments this could be hanging over me for many years to come. I am not confident

that I should be able to earn an income from employment and I am not sure how this can be resolved…"

32. The Respondent further submitted that he had no line of credit open to him and that he was unable to meet any order for costs. His only asset was the matrimonial home in respect of which he held a 50% share. The Respondent stated to the Tribunal that with regards to the lifetime mortgage that he had taken out, those funds were "rolled up" against his capital, the matrimonial home, and that his Trustee in Bankruptcy had advised that there was a shortfall in the region of £35,000 to £40,000.

33. The "other expenses" set out in his Statement of Means related to IT, accounting and storage costs, for matter files, that were required in order for him to wind down the Firm in an orderly manner. The Respondent was unable to state with any certainty how much longer he would be required to meet those costs but estimated that it would be for at least 6 months.

34. The Respondent accepted that the application for costs was justified in that they were reasonably incurred. He further accepted that they were proportionate in light of the fact that the Applicant had limited the costs claimed to that which existed at the point of issue. However, he reiterated that he was approaching 73 years of age with no prospect of future employment and that his outgoings exceeded his income such that he did not have the means to pay.

The Tribunal's Decision

35. The Tribunal carefully considered the application for costs and the schedule of costs filed by the Applicant. The Tribunal noted that the Applicant had taken account of the Respondent's admissions and financial position in that the costs claimed limited to that which was incurred at the time of issue of proceedings. The Tribunal commended the approach taken and concluded that the costs claimed were both reasonable and proportionate.

36. The Tribunal carefully considered the statement of means filed by the Respondent, the bankruptcy order, his letter dated 10 January 2020 and his oral submissions. The Tribunal had significant regard to the fact that the Respondent had monthly expenses of nearly £500 so as to ensure that the Firm was wound down in an orderly manner. The Tribunal found that the Respondent was in a parlous position as a consequence of taking full responsibility for the consequences of his misconduct and the closure of his Firm. The Tribunal paid significant regard to the fact that, in light of the sanction imposed, the Respondent was unable to practice as a solicitor and as such his livelihood had been removed. The Tribunal paid further regard to the age of the Respondent, the limited likelihood that he would gain future employment in any capacity, the fact that he was impecunious and living beyond his means.

37. Ordinarily the Tribunal would have ordered costs in the amount claimed as they were reasonable and proportionate to the case. However, the submissions made by the Respondent led the Tribunal to consider and apply the principles promulgated in D'Souza v The Law Society [2006] EWHC 987 (Admin) in its consideration of the application. The Tribunal therefore concluded that the application for costs was

granted in principle but reduced to the sum of £500 in recognition and acceptance of the Respondent's impecuniosity.

Statement of Full Order

38. The Tribunal Ordered that the Respondent, JOHN LEONARD TURNER, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £500.00.

Dated this 20th day of January 2020
On behalf of the Tribunal

J. C. Chesterton
Chairman

JUDGMENT FILED WITH THE LAW SOCIETY
21 JAN 2020