SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12020-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

CABEER AHMED Respondent

Before:

Mr J Evans (in the chair)
Ms C Jones
Mrs C Valentine

Date of Hearing: 10 August 2020

Appearances

Alastair Willcox, solicitor, of the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

The Respondent attended in person and represented himself.

JUDGMENT

Allegations

1. The allegations against Cabeer Ahmed, the Respondent, made by the Applicant are that:-

1.1 By failing to ensure that £440,090.94 held in the Firm's client account, representing proceeds from the estate of GV (deceased), was properly transferred and paid out in full to the beneficiary (SV) prior to the closure of his Firm; the Respondent breached all or alternatively any of Principles 2, 6 and 10 of the SRA Principles 2011

1.2 In the course of winding down and closing his practice between 20 – 28 September 2018, the Respondent made improper transfers from client to office account totalling £120,000 in breach of all or alternatively any of Rules 6 and 20.1 SRA Accounts Rules 2011 and Principles 2, 6 and 10 of the SRA Principles 2011.

1.3 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 all or alternatively any of Rules 6, 29.1 and 29.2 SRA Accounts Rules 2011.

2. In addition, allegations 1.1 and 1.2 are advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but it is not an essential ingredient in proving those allegations.

Documents

3. The Tribunal reviewed all of the documents submitted by the parties, which included:

- Rule 5 Statement dated 31 October 2019 and Exhibit SM1.
- Answer to the Rule 5 Statement dated 20 February 2020.
- Applicant's Statements of Costs dated 4 November 2019 and 31 July 2020.
- Respondent's undated 'Asset List.'

Preliminary Matters

4. <u>Respondent's application for part of the hearing to be heard in private</u>

4.1 When giving evidence the Respondent alluded to sensitive personal matters relating to health and bereavement. He applied for that section of the hearing to be heard in private so as to prevent the details entering into the public domain.

4.2 Mr Willcox did not oppose the application.

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

4.3 The Solicitors (Disciplinary Proceedings) Rules 2007 provide that:

> "R12 (3) Subject to paragraphs (5) and (6) every hearing shall take place in public.

> (4) Any party to an application and any person who claims to be affected by it may seek an order from the Tribunal that the hearing or part of it be conducted in private on the grounds of—
>
> (a) exceptional hardship; or
> b) exceptional prejudice,
>
> to a party, a witness or any person affected by the application.
>
> (5) If it is satisfied that those grounds are met, the Tribunal shall conduct the hearing or part of it in private and make such order as shall appear to it to be just and proper.
>
> (6) The Tribunal may, before or during a hearing, direct that the hearing or part of it be held in private if—
>
> (a) the Tribunal is satisfied that it would have granted an application under paragraph (4) had one been made; or
> (b) in the Tribunal's view a hearing in public would prejudice the interests of justice…"

4.4 The Tribunal determined that the matters of familial ill health and bereavement could be relevant to the Respondent's state of mind at the material time. The Tribunal further determined that the details of such matters were sensitive and, if ventilated in public, could cause exceptional hardship to the Respondent's family.

4.5 The Tribunal therefore acceded to the application and matters relating to familial ill health were heard in private session.

Factual Background

5. The Respondent was admitted as a solicitor in England and Wales on 2 January 2008. As at the date of the substantive hearing he did not hold a Practising Certificate. At all material times the Respondent was a solicitor and sole practitioner at Hartley Bains Solicitors, 188 The Grove, London, E15 1NS ("the Firm").

6. On 30 August 2018 the Firm submitted a `Firm Closure Notification` to the SRA which stated that it would cease to practise as of 30 September 2018. An orderly wind down of the Firm had not taken place by 30 September 2018 when the Firm was due to cease trading.

7. On 5 October 2018 the SRA received a complaint from SV about the conduct of the Firm whilst acting in the probate matter of his aunt, Client GV. SV was a beneficiary of the estate.

8. At the purported date of closure of the Firm no payments had been made to the beneficiaries of Client GV. Following the purported closure of the Firm, three payments were made on 1, 2 and 4 October 2018, in a total sum of £239,818.99. Following those payments the outstanding balance to the estate was £200,271.95 (£440,090.94 – £239,818.99).

9. On 5 February 2019 a Forensic Investigation commenced at the Firm which was led by Liz Bond ("LB") with the assistance of Frank Jaja ("FJ"). On 27 February 2019, LB and FJ conducted a recorded interview with the Respondent. Further questions were asked of the Respondent on 20 March 2019 which he responded to on 2 April 2019.

10. On 3 May 2019 an SRA Adjudication Panel resolved to:

> "…intervene into the remnants of [the Respondent's] practice at Hartley Bain Solicitors as there was:-
>
> (a) …reason to suspect dishonesty on his part in connection with his practice at the Firm (paragraph 1(1)(a)(i) of schedule 1 to the Solicitors Act).
>
> (b) … [a failure to] comply with the SRA Principles 2011 and the SRA Accounts Rules 2011, being rules made under sections 31 and 32 of the Solicitors Act (paragraph 1(1)(c) of schedule 1 to the Solicitors Act)…"

Witnesses

11. The following witnesses gave oral evidence to the Tribunal:

- Liz Bond – Forensic Investigation Officer ("FIO").
- Cabeer Ahmed – Respondent.

12. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

13. 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.

Dishonesty

14. The test for dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] 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

> knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder 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."

15. When considering dishonesty the Tribunal firstly established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

16. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … [Professionals] are required to live up to their own professional standards … Integrity connotes adherence to the ethical standards of one's own profession".

17. **Allegation 1.1 - By failing to ensure that £440,090.94 held in the Firm's client account, representing proceeds from the estate of GV (deceased), was properly transferred and paid out in full to the beneficiary (SV) prior to the closure of his Firm; the Respondent breached all or alternatively any of Principles 2, 6 and 10 of the SRA Principles 2011**

The Applicant's Submissions

17.1 SV raised concerns with the Applicant on 2 October 2018 in relation to the Firm`s conduct of his aunt's (GV) probate matter. He stated that GV had died on 24 January 2017 and that the Firm was retained to conduct the probate matter. Dean Vickery, a solicitor at the Firm, initially had conduct of the matter but on 3 August 2018, Mr Vickery advised SV via email that he was leaving the Firm on 7 September 2018. The Respondent took over conduct of the matter.

17.2 On 18 September 2018 SV sent a copy of the final estate accounts to the Respondent who confirmed that they "appeared to be correct" by email dated 26 September 2018. The net balance of the estate cited and agreed was in the sum of £440,090.94. The Respondent further informed SV that the Firm was to close at the end of the month. On 26 September 2018 the Respondent asked SV for relevant bank account details so the Respondent could transfer the residual net balance of the estate of £440,090.94.

17.3 Separate transfers of £99,999.00 were made from the Firm`s client account to SV on both 1 and 2 October 2018. On 4 October 2018, a third transfer of £39,820.99 was made from the Firm`s client account to SV. The total amount paid to the estate of Client GV was £237,820.99, leaving a shortfall of £200,271.95.

17.4 On 4 and 5 October 2018 SV emailed the Respondent querying when the remainder of the estate monies would be transferred. SV did not receive a satisfactory response to these emails.

17.5 On 6 October 2018 SV sent a further email to the Respondent seeking an update in relation to the outstanding sum due. On 7 October 2018 the Respondent informed SV that, notwithstanding that he had made only a partial payment of the net balance of the estate proceeds (with a further £200,271.95 outstanding) no further payments would be made. The Firm's client account was empty. The Respondent provided the details of the Firm`s professional indemnity insurer to SV. Mr Willcox contended that was presumably because the Respondent had no intention of paying the money due to SV and was inviting SV to make a claim against the Firm under that policy.

17.6 The total sum received by SV of £239,818.99 left an outstanding balance owed by the Respondent of £200,271.95 (£440,090.94 - £239,818.99). This £200,271.95 comprised estate funds that had at one time been entrusted to the Firm's client account for future distribution.

17.7 SV contacted the Firm's professional indemnity insurer. He was informed on 21 December 2018 that the claim had been rejected as the insurer concluded that the Respondent had "…committed or condoned a dishonest and/or fraudulent act in respect of the missing £200,271.95 from the estate..."

17.8 LB and FJ, Forensic Investigation Officers, interviewed the Respondent on 27 February 2019. Mr Willcox submitted that at that time, LB did not have the benefit of reviewing the Firm's books of account or the Firm's bank statements which was unusual. Ordinarily the Forensic Investigation Officer carrying out an inspection would have the benefit of the same for interrogation. The Respondent was unable to provide either the books of account or the bank statements to LB.

17.9 LB raised the Client GV estate matter during the interview and the Respondent was asked for an explanation. The following exchange occurred:

> "…
>
> (LB) So what work has been conducted since, to try and trace that £200,000.00?
>
> (CA) Um it was left, it's been left with the accountant to sort of come back on the information. Um and unless I've not had a clear answer with respect to that and going in detail back um, I'd been through sort of, when I had access to the online banking and been through some of the details. And the only thing that I could conclude um would have been the fact that either the information that had been given, or the ledgers weren't held correctly or maintained correctly and therefore that the figures that we were told it's got to be transferred across were not necessarily correct.
>
> (LB) Transferred across to…?
>
> (CA) The office account. All our payments went into the client account,

(LB) Ok.

(CA) before we transferred to office..."

(LB) So are you talking about your costs going across?

(CA) Yes…"

17.10 Mr Willcox submitted that the Respondent was unable to provide a cogent explanation for the missing £200,271.95 that was owed to the beneficiaries of the estate. Mr Willcox contended that the Respondent's explanation that he was awaiting information from his accountant was neither a credible nor accurate explanation as LB subsequently discovered that the Respondent's accountant had ceased trading on 11 December 2018.

17.11 Mr Willcox submitted that the Respondent's appeared to assert that the missing money was caused by accounting errors which led to amounts having been taken across from client to office account as costs.

"…

(FJ) …and you believe that that may have been an error there. So, you could have transferred over more than was required from the client account?

(CA) That's what seems to, that's what seems to, that's the only thing that I can see. I mean there's only so many things that obviously, so much, so much information that I have access to at the moment. Um but from what I'd see that's the only thing that effectively comes to mind…"

17.12 Mr Willcox submitted that the Respondent's position lacked credibility as he accepted that he was solely responsible for managing the Firm's accounts and no one else had the authority to make transfers and payments.

17.13 In interview LB queried with the Respondent why he could not have undertaken a relatively simple exercise to establish the correct position in relation to any misallocation of costs in the intervening 5 months, in order to clear up the confusion that he professed persisted:

"…

(LB) So, I'm struggling to see how you could, if that's what you thinks *(sic)* happened, you're talking about large chunks of money going into office account,

(CA) Mmm.

(LB) not just fixed fees. It's like, well the accounts will speak for themselves when we see them.

(CA) Yeah.

(LB) But obviously that could be linked up as well, that could be easily audited by looking at your client care letters and money that's come in and bills to clients, fixed fee. So, it's not a difficult exercise to go through and match up which payments have been made and work you know what I mean. I don't understand how's, how's that not been done yet. Because we're talking five months since the Firm closed, and this came to light in November.

(CA) Um from my own position, as I mentioned, um I'd been preoccupied with obviously my mom's health."

17.14 When further questioned by LB and FJ as to whether there had been any misappropriation the Respondent stated:-

"…

(FJ) So, in terms of the £200,000.00, do you believe there was any misappropriation of that money, on behalf of the Firm?

(CA) Um no.

(LB) Ok.

(FJ) So what happened to it then?

(CA) Um like I said, the only thing that I can see there's been an issue with regards to the way the financials have been handled um from, on the paperwork and between how the ledgers had been maintained, and obviously information that was given, maybe there an issue [00:14:14 unclear] that's what comes to mind.

(FJ) Do you recall making any kinds of large payments that did not seem clear?

(CA) No…."

17.15 In view of the Respondent's failure to pay out the estate proceeds in full to SV and after the declinature by the Firm's professional indemnity insurer, an application was made by SV to the Solicitors Compensation Fund. On 6 September 2019, an Adjudicator determined that the Respondent had acted dishonestly and drew the following conclusions:

> "..I am unable to find that he genuinely believed that it was appropriate to use the estate funds for matters or purposes which were unconnected with it. The funds must have been used for other purposes because they were not present in the Firm's client account on intervention…"

17.16 The Applicant's Compensation Fund subsequently paid out £200,271.95 (and interest) to ensure that SV was not financially prejudiced by the Respondent's conduct. The Respondent remained unable to offer an explanation as to where the missing

£200,271.95 had gone after it had left the client account save for confirming that he agreed that £440,040.69 was held in the Firm's client account and that it ought properly to have been transferred to SV. He had been unable to do so because of insufficient funds held in his client account.

Principle 2 (Integrity)

17.17 Mr Willcox submitted that by failing to ensure that the full £440,040.69 held in the Firm's client account, representing proceeds from the estate of Client GV (deceased), was properly transferred and paid out in full to SV prior to the closure of his Firm; the Respondent failed to act with integrity contrary to Principle 2 SRA Principles 2011.

Principle 6 (Public trust in the Respondent and in the provision of legal services)

17.18 Mr Willcox further submitted that the Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services contrary to Principle 6 SRA Principles 2011. Mr Willcox contended that the public expected a solicitor, in the position of trust and responsibility that the Respondent occupied in these circumstances, to act with honesty and probity by ensuring that effect was given to Client GV's intentions as set out in her will. The Respondent's failure to account to SV gives rise to the risk of serious harm to the reputation of the profession.

Principle 10 (Protection of client money and assets)

17.19 Mr Willcox submitted that as a solicitor and sole practitioner, the Respondent's duty to safeguard client money was of paramount importance. Client monies were sacrosanct and the Respondent's failure to properly account to SV represented a serious departure from his professional duties as to stewardship of client money placed in his care. Mr Willcox contended that the Respondent's correspondence informing SV that there was a shortfall of £200,271.95 curtly referred SV to the Firm's professional indemnity insurer without any adequate or cogent explanation to SV about the breach of his professional obligations or why such a claim was necessary, given the funds should have been held securely in the Firm's client account. That was a wholly inadequate and improper position for the Respondent to have adopted in dealing with SV. Mr Willcox concluded that by failing to safeguard and properly transfer £200,271.95 representing monies due to SV, the Respondent failed to protect client money in breach of Principle 10 SRA Principles 2011.

The Respondent's Submissions

17.20 The Respondent confirmed that the content of his Answer to the Rule 5 Statement was true to the best of his knowledge and belief. He accepted, as a matter of fact, that he failed to ensure that the proceeds of Client GV's estate were properly transferred and paid out in full to SV prior to the closure of the Firm. He reiterated that the failure was as a consequence of his over reliance on the Firm's accountant.

17.21 The Respondent maintained that his failure was predicated on a "mistake" as opposed to a deliberate act intended to deprive Client GV's estate of what was due. On that basis, the Respondent denied that his conduct lacked integrity (Principle 2), denied that

it undermined public trust in him and/or in the provision of legal services (Principle 6) and denied that he had failed to protect client money (Principle 10).

17.22 Under cross examination the Respondent accepted that, (a) as a solicitor he held a privileged and trusted role, (b) he was required to act with probity and trustworthiness in that role, (c) he was Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration at the Firm ("COFA"), (d) he was solely responsible for ensuring the Firm complied with the SAR and (e) he was well aware of the value of Client GV's estate and payments that had been made in respect thereof.

17.23 The Respondent accepted, under cross examination, that he was ultimately responsible for the client account but reiterated that he relied on the advice given by his accountant, whose services he had retained for the preceding 3 years, in relation to transfers from the client to office account. The Respondent stated "I am not an accountant…I relied on the advice of another professional [the accountant] … I should have checked better than what *(sic)* I did. I accept that fact."

The Tribunal's Findings

17.24 The Tribunal carefully considered the submissions made and the evidence before it. The Tribunal noted that the Respondent admitted the factual matrix of Allegation 1.1 and that he did not challenge the written evidence of SV or the oral evidence of LB.

17.25 The Tribunal found that the Respondent's email to SV, dated 26 September 2018, made plain that the agreed value of Client GV's estate was £440,090.94. The Respondent accepted that only £239,818.99 had been paid to SV by the Firm.

17.26 The Tribunal found that at that time the Respondent knew he was unable to meet the remainder of his liability to Client GV's estate, as the Firm purportedly ceased trading on 30 September 2018, in light of the fact that he provided SV with details of his public indemnity insurers for a claim to be made in that regard.

17.27 In light of all attendant circumstances the Tribunal found the factual matrix of Allegation 1.1 proved beyond reasonable doubt.

Principle 2 (Integrity)

17.28 The Tribunal applied the test promulgated in Malins to the facts found proved. Having concluded that the Respondent failed to ensure that the client account contained sufficient funds to pay SV what was due, the Tribunal determined that the Respondent could not have been acting with integrity in his failure to preserve the sacrosanct nature of the client account.

17.29 The Tribunal therefore found the allegation that the Respondent had breached Principle 2 proved beyond reasonable doubt.

Principle 6 (Public trust)

17.30 Members of the public rely upon the trustworthiness of solicitors to handle their affairs. Solicitors are entrusted to safeguard client money and any failure to do so inevitably diminishes public trust in solicitors and in the provision of legal services. The Tribunal determined that the Respondent's failure to preserve £200,271.95 that was due to SV severely and incalculably undermined public trust in him and in the profession.

17.31 The Tribunal therefore found the allegation that the Respondent had breached Principle 6 proved beyond reasonable doubt.

Principle 10 (Protection of client money and/or assets)

17.32 The Solicitors Accounts Rules and the Solicitors Code of Conduct provide a clear framework within which solicitors must operate in order to protect client money and assets. Any derogation, no matter how minor, from the Rules potentially places client money and assets at risk. The Tribunal found that the Respondent's conduct marked a clear departure from the Rules. The Respondent's failure to preserve the sacrosanct nature of the client account was compounded by his attempts to absolve himself as COFA by blaming the Firm's accountant. The Tribunal determined that the Respondent plainly failed to protect the estate of Client GV, which consequently led to SV having to make a claim to the public indemnity insurer and ultimately to the Solicitors Compensation Fund.

17.33 The Tribunal therefore found the allegation that the Respondent had breached Principle 10 proved beyond reasonable doubt.

18. **Allegation 1.2 - In the course of winding down and closing his practice between 20-28 September 2018, the Respondent made improper transfers from client to office account totalling £120,000 in breach of all or alternatively any of Rules 6 and 20.1 SRA Accounts Rules 2011 and Principles 2, 6 and 10 of the SRA Principles 2011.**

The Applicant's Submissions

18.1 Mr Willcox reminded the Tribunal that the Respondent had failed to provide copies of his bank accounts to LB at or prior to the interview on 27 February 2019 but he did authorise the FIO to obtain them directly from his bank. LB was therefore able to obtain the statements directly from Lloyds bank, these being statements for the period 30 January 2017 to 31 October 2018.

18.2 Mr Willcox submitted that the account activity for which the Respondent was directly responsible had to be considered in the context of a Firm that the Respondent was closing down on 30 September 2018.

18.3 Having inspected the bank statements, LB discovered that:

19 September 2018: Office account balance was £154.04 in credit.

20 September 2018: Following the transfer of £20,000.00, office account was £20,154.04 in credit.

21 September 2018: A payment of £9,998.72 was made from the office account on to `The Firm's Insurers Company`.

28 September 2018: The office account balance increased from £528.73 to £100,528.73 in credit following a transfer of £100,000.00 from the client to office account.

18.4 The following payments were subsequently made from office account:

1 October 2018: £54,736.30 to 83210120010120.

3 October 2018: £25,000.00 to HMRC PAYE.

3 October 2018: £21,000.00 to HMRC PAYE.

18.5 Mr Willcox submitted that the account activity identified by LB indicated that in the days leading up to the closure of his Firm and immediately thereafter, the Firm's office account contained minimal funds. Furthermore, prior to making significant payments to his professional indemnity insurer and HMRC the Respondent made large round sum transfers from client to office account which allowed him to make those payments.

18.6 On 20 March 2019 LB wrote to the Respondent and asked supplemental questions in relation to her findings. The Respondent replied on 2 April 2019 and stated:

"…

..Q State the reason for the client to office transfers of £20,000.00 and £100,000.00 made on 20 and 28 September 2018.

A I was led to believe that these were outstanding monies that were due to be transferred`.

Q What was the purpose of the payment of £9,998.72 on 21 September2018 from the office account to The Firm's Insurers Company, and who was The Firm's Insurers Company?

A Purpose of payment to The Firm's Insurers company was for 'run off cover`.

Q What was the purpose of the payment of £54,736.30 from the office account on 1 October 2018 and provide details of the recipient?

A £54,736.30 payment was to the HMRC.

Q Were the transfers from client to office account to assist with financial difficulties in the Firm, such as HMRC payments?

A The transfers were made believing that these were outstanding monies due to be transferred.

Q Did you believe at the time, that you were acting honestly by making the client to office transfers?

A At the time of the transfers, the transfers were done with honest actions.

Q Did you intentionally try to mislead the Regulator by stating that payments from client to office account were made in error during the interview on 26 February 2019?

A During the interview on the 26th February 2019, I had tried to be as open as possible to try and assist you. I had not tried to mislead you in anyway…"

18.7 The Respondent was a solicitor and sole practitioner responding to queries from his regulator regarding serious matters involving missing client money and being asked to explain why significant amounts paid to the Firm's insurers and HMRC from the office account had occurred after he had made similarly large and suspicious transfers from his client to office account.

18.8 Mr Willcox submitted that the Respondent's answers to LB's questions were inadequate and lacking in detail. He further submitted that the Respondent had been given the opportunity to explain his actions and reassure LB, if any such reassurance was possible, that he had conducted himself properly and discharged his duties concerning stewardship of client money (as his professional code of conduct required) with probity and trustworthiness. Mr Willcox contended that the Respondent failed to do so. Mr Willcox invited the Tribunal to draw clear inferences from the Respondent's answers or lack thereof.

18.9 In explaining the large round sum transfers that he made on 20 and 28 September 2018, the Respondent stated that he was led to believe that these were outstanding monies that were due to be transferred. Mr Willcox submitted that the answer lacked any substance and was wholly insufficient in that the Respondent failed to clarify who or what caused him to believe that those sums were due to the Firm.

Solicitors Accounts Rules 2011 ("SAR"): R.20.1

18.10 Before making the transfers the Respondent would have had to satisfy himself that one of the criteria set out in Rule 20 (a) – (k) of the SRA Accounts Rules 2011 in order for the transfer to be made. If satisfied, the Respondent was then required to take consequential steps having determined which of the criteria applied. Mr Willcox submitted that if the Respondent had done so, he would have been able to explain to LB why the transfers complied with R.20.1 and as such were properly made.

18.11 The Respondent was unable to provide to LB any information to establish that the transfers were permissible in accordance with R.20.1 and properly made. Mr Willcox emphasised the fact that the Firm was in the process of closing at the material time, thus the transfers were, he submitted, highly suspicious. There were insufficient funds in the

office account to pay the Firm's insurers "run off cover" and the HMRC sums that were due prior to the large round sum transfers that the Respondent made from client into office account. Added to the Respondent's subsequent unwillingness or inability to provide an explanation for the transfers, Mr Willcox submitted that those transfers were improper and in breach of R.20.1.

Solicitors Accounts Rules 2011 ("SAR"): R.6

18.12 As the sole practitioner and principal of the Firm, Rule 6 required the Respondent to ensure compliance with the accounts rules. Mr Willcox submitted that by making improper transfers in an amount totalling not less than £120,000, the Respondent failed to uphold such compliance with the accounts rules in breach of Rule 6.

Principle 2 (Integrity)

18.13 Mr Willcox contended that by making improper transfers from client to office account totalling not less than £120,000, the Respondent failed to act with integrity.

Principle 6 (public trust)

18.14 Mr Willcox contended that by making improper transfers from client to office account, this represented a failure on the part of the Respondent to behave in a manner that maintained the trust the public placed in him and in the provision of legal services.

Principle 10 (Protection of client money and assets)

18.15 Mr Willcox contended that by making improper transfers and using funds, that ought to have been safeguarded in client account, for the purposes of satisfying the Firm's liabilities to the Firm's insurers and HMRC, the Respondent failed to protect client money.

The Respondent's Submissions

18.16 The Respondent accepted that as COFA and Sole Practitioner at the Firm he was solely responsible for the Firm's client and office account. The Respondent did not dispute that he transferred £20,000.00 from the client account to the office account on 20 September 2018. The Respondent did not dispute that he transferred £100,000.00 from the client account to the office account on 28 September 2018.

18.17 The Respondent accepted, under cross examination, that he was ultimately responsible for the client account but reiterated that he had relied on the advice given by his accountant in relation to transfers from the client to office account. The Respondent stated "I am not an accountant…I relied on the advice of another professional [the accountant] … I should have checked better than what *(sic)* I did. I accept that fact."

18.18 The Tribunal enquired of the Respondent as to the manner in which he communicated with the Firm's accountant. The Respondent stated that there had been "…a couple of meetings at the end of September and some telephone conversations. [The Respondent] can't remember the detail, we were going through some paperwork and he said 'this is what you can transfer across and you owe this.'… I remember asking 'are you sure'

and he said 'yes' so I transferred the money across…" The Tribunal asked the Respondent if he consulted the Firm's accountant every time he wanted to transfer funds between the client and office account. The Respondent stated he did so "mostly" and that following the close family bereavement (in late 2016) he had suffered which affected him greatly, he did so "entirely." The Respondent asserted that prior to the family bereavement, the subsequent familial ill health and domestic issues, he was "far more active" in relation to the Firm's accounts and "looked at them weekly." The Respondent accepted that at all material times he had an "overall good idea of client and office account balances".

18.19 In response to a question from the Tribunal as to his knowledge and understanding of the Solicitors Accounts Rules at the material time the Respondent stated; "I was very aware of them, I almost knew them word for word but [at the material time] all was fuzzy and I couldn't answer questions…".

The Tribunal's Findings

18.20 The Tribunal carefully considered the submissions made and the evidence before it. The Tribunal noted that the Respondent admitted the factual matrix of Allegation 1.2 and that he did not challenge the written evidence of SV or the oral evidence of LB.

18.21 The Tribunal found as a matter of fact that the Respondent, (a) submitted a notice of closure of the Firm to the Applicant on or around 30 August 2018, (b) was solely responsible for the physical act of transferring money between the client and office account, (c) was broadly aware of the respective balances of each account, (d) transferred £20,000.00 on 20 September 2018 and (e) transferred £100,000.00 on 28 September 2018.

18.22 The Tribunal rejected the Respondent's assertion that he was entitled to make those transfers on the advice of the Firm's accountant. The Respondent, on his own admission, had been cognisant of the Solicitors Accounts Rules almost "word for word." The Respondent, on his own admission, overly relied upon the accountant but that did not absolve him of ultimate responsibility for the improper transfers.

18.23 On the basis of the Respondent's admissions and the evidence before the Tribunal, the factual matrix of Allegation 1.2 was proved beyond reasonable doubt.

Solicitors Accounts Rules 2011: R.6

18.24 R.6 provides that:

> "…All the *principals* in a *firm* must ensure compliance with the rules by the *principals* themselves and by everyone employed in the *firm*. This duty also extends to the *directors* of a *recognised body* or *licensed body* which is a *company*, or to the members of a *recognised body* or *licensed body* which is an *LLP*. It also extends to the *COFA* of a *firm* (whether a *manager* or non-*manager*)…"

18.25 Having determined that the Respondent was (a) sole proprietor of the Firm therefore the principal, (b) COFA and (c) bore sole responsibility for the making of two improper transfers between the client and office account; the Tribunal found that the allegation that the Respondent had breached R.6 proved beyond reasonable doubt.

Solicitors Accounts Rules 2011: R20.1

18.26 R.20.1 provides that:

> "*Client money* may only be withdrawn from a *client account* when it is:
>
> (a) properly required for a payment to or on behalf of the *client* (or other person on whose behalf the money is being held);
> (b) properly required for a payment in the execution of a particular *trust*, including the purchase of an investment (other than money) in accordance with the *trustee's* powers;
> (c) properly required for payment of a *disbursement* on behalf of the *client* or *trust*;
> (d) properly required in full or partial reimbursement of money spent by *you* on behalf of the *client* or *trust*;
> (e) transferred to another *client account*;
> (f) withdrawn on the *client's* instructions, provided the instructions are for the *client's* convenience and are given in writing, or are given by other means and confirmed by *you* to the *client* in writing;
> (g) transferred to an account other than a *client account* (such as an account outside England and Wales), or retained in cash, by a *trustee* in the proper performance of his or her duties;
> (h) a refund to *you* of an advance no longer required to fund a payment on behalf of a *client* or *trust* (see rule 14.2(b));
> (i) money which has been paid into the account in breach of the rules (for example, money paid into the wrong *separate designated client account*) – see rule 20.5 below;
> (j) money not covered by (a) to (i) above, where *you* comply with the conditions set out in rule 20.2; or
> (k) money not covered by (a) to (i) above, withdrawn from the account on the written authorisation of the *SRA*. The *SRA* may impose a condition that *you* pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received…"

18.27 Having determined that the transfers between client and office account were not made to meet the wishes of deceased Client GV, or the Client executor's duties, namely to pay the beneficiaries what was due to them pursuant to Client GV's will, the Tribunal found that none of the criteria set out above applied to either transfer made.

18.28 The Tribunal therefore found the allegation that the Respondent had breached R20.1 proved beyond reasonable doubt.

Principle 2 (Integrity)

18.29 The Tribunal applied the test promulgated in Malins to the facts found proved. Having found that the Respondent made two improper transfers from the client to the office account, the Tribunal had no hesitation in concluding that the conduct lacked integrity. No solicitor acting with integrity would behave in a manner outwith the parameters of the Solicitors Accounts Rules. The Respondent's conduct represented a flagrant disregard for the Rules and Code of Conduct with which he was expected to adhere.

18.30 The Tribunal therefore found the allegation that the Respondent had breached Principle 2 proved beyond reasonable doubt.

Principle 6 (Public trust)

18.31 Members of the public rely upon the trustworthiness of solicitors to handle their affairs. Solicitors are entrusted to safeguard client money and any failure to do so inevitably diminishes public trust in solicitors and in the provision of legal services. The Tribunal determined that by making improper transfers of any amount, let alone £120,000.00 on the present facts, the Respondent plainly diminished public trust in him and in the provision of legal services.

18.32 The Tribunal therefore found the allegation that the Respondent had breached Principle 6 proved beyond reasonable doubt.

Principle 10 (Protection of client money and assets)

18.33 The Solicitors Accounts Rules and the Solicitors Code of Conduct provide a clear framework within which solicitors must operate in order to prevent the improper use of client money. The Tribunal found that the Respondent's conduct marked a flagrant disregard of and clear departure from that framework.

18.34 It appeared to the Tribunal that the purpose of the transfers made was not to protect Client GV's estate, rather that it was to enable the Respondent to meet the Firm's liabilities to its public indemnity insurer and HMRC PAYE. The first transfer, on 20 September 2018, was made at a time when the balance of the office account was just £154.04. The subsequent transfer, eight days later, was for £100,000.00. On 1 October, three days later, a payment of £54,736.30 was made from the office account to the Firm's professional indemnity insurer. On 3 October, two days later, two payments, totalling £46,000.00, were made to HMRC. It was abundantly clear to the Tribunal that the transfers were made to meet office costs from Client GV's estate. Consequently SV was required to make a claim to the Firm's insurers which was refused and thereafter to make a claim to the Solicitors Compensation Fund which was approved. The Tribunal concluded that the Respondent failed to protect client money in that he placed the financial obligations of the Firm before the obligations to Client GV's estate and the entitlement of its beneficiaries.

18.35 The Tribunal therefore found the allegation that the Respondent had breached Principle 10 proved beyond reasonable doubt.

19. **Allegation 1.3 - 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 all or alternatively any of Rules 6, 29.1 and 29.2 SRA Accounts Rules 2011.**

The Applicant's Submissions

19.1 The Respondent was unable to provide the Firm's books of account to LB for inspection and therefore, Mr Willcox submitted, he failed to comply with the Solicitors Accounts Rules.

19.2 On 27 February 2019, during the interview, the Respondent informed LB that the books of account were with the Firm`s accountant "J Stanley Riz Accountax Limited" (J Stanley Riz), 92a Goodmayes Road, Ilford, Essex. The Respondent further stated that he had "spoken with the accountant within the last ten days and the accountant had informed him that he would return the books of account when he was back in the country."

19.3 LB requested that the Respondent telephone the accountant so that she could make arrangements to attend at his office to review the books of account. The Respondent tried repeatedly to call the accountant in LB's presence but was informed by the Respondent that the phone number was constantly engaged.

19.4 LB conducted a Companies House search which revealed that J Stanley Riz had only been trading for just over a year, was no longer trading and was dissolved on 11 December 2018. The Respondent indicated his surprise at the outcome of the search and said that he was not aware that the accountant was no longer trading.

19.5 LB requested that the Respondent update her when the accountant had made contact with him and to provide the books of account as soon as possible. The Respondent did not do so and consequently LB was unable to calculate whether the Firm held sufficient funds in client bank account to match its liabilities to clients as at 30 September 2018.

Solicitors Accounts Rules 2011: R29.1 and R29.2

19.6 Mr Willcox submitted that the Respondent's failure to ensure that books of account were maintained was in breach of both Rule 29.1, in that he failed to keep accounting records properly written up to show dealings with client and office money, and also Rule 29.2, which required that all dealings with client money must be appropriately recorded as prescribed under that rule.

Solicitors Accounts Rules 2011 ("SAR"): Rule 6

19.7 Mr Willcox further submitted that the Respondent, as the sole practitioner and principal of the Firm, was required to ensure compliance with the accounts rules and that his failure to keep the Firm's books of account rendered him in breach of Rule 6.

The Respondent's Submissions

19.8 The Respondent maintained that he had delegated responsibility for maintaining the Firm's "financial records" to the accountant following a close family bereavement, familial ill health and domestic issues from late 2016. He accepted, in hindsight, that he should have maintained a copy at the Firm's offices but that was not done as he "trusted that they were safe." The Respondent reiterated that he was unaware that the Firm's accountant had ceased trading until LB notified him of the same. The Respondent asserted that he should have undertaken "checks of the accountants works *(sic)* with a greater level of scrutiny and several other steps all of which would have prevented the situation today…"

19.9 The Tribunal enquired of the Respondent what, if any, steps he took following the discovery of the shortfall in the client account from October 2018 until the interview with LB in February 2019. The Respondent stated that following the Firm's closure he "needed time out; a couple of weeks" during which time he sought to contact the accountant. When he "finally" managed to do so the Respondent could not recall whether he had asked for the client ledgers. The Respondent had a "vague chat" with the accountant in December 2018 in which he was told that the accountant was "looking into it and would get back" to him but that did not occur. The Respondent contended that at some point he sent a text to the accountant asking for the ledgers but he received no response and had no further contact.

19.10 The Respondent accepted that he had failed to make the Firm's books of account and ledgers available for inspection by LB and FJ.

The Tribunal's Findings

19.11 The Tribunal carefully considered the submissions made and the evidence before it. The Tribunal noted that the Respondent admitted the factual matrix of Allegation 1.3 and that he did not challenge the oral evidence of LB.

19.12 The Tribunal concluded that the Respondent failed to produce accounting records and client ledgers as at 30 September 2018. His explanation as to why that was did not vitiate the duty incumbent on him to keep accounting records properly written up in respect of client and office monies. The fact remained, and the Tribunal so found, that the Respondent did not provide the books of account to LB as at 30 September 2018. Consequently, she was unable to ascertain whether the Firm held sufficient funds in the client account to satisfy client liabilities at the material time.

19.13 The Tribunal found the Respondent's conduct to have been a flagrant disregard of the obligation on him to maintain accounting records. Ensuring that accounting records were properly written up breached the fundamental tenet of recording all dealings with client money in an open and transparent manner. The Respondent's inability to produce accounting records and client ledgers prevented LB from calculating whether the Firm's client account held sufficient funds to meet client liabilities. The inadequacy of funds in the client account and extent thereof was only discovered by LB upon receipt of the Firm's office and client account bank statements on 20 March 2019 which revealed a shortfall between the two accounts of £200,062.42.

19.14 On the basis of the Respondent's admissions and the evidence before the Tribunal, the factual matrix of Allegation 1.3 was found proved beyond reasonable doubt.

Solicitors Accounts Rules 2011: R.6, R.29.1 and R.29.2

19.15 Rule 6 provides that:

> "…All the *principals* in a *firm* must ensure compliance with the rules by the *principals* themselves and by everyone employed in the *firm*. This duty also extends to the *directors* of a *recognised body* or *licensed body* which is a *company*, or to the members of a *recognised body* or *licensed body* which is an *LLP*. It also extends to the *COFA* of a *firm* (whether a *manager* or non-*manager*)…"

19.16 Rule 29.1 provides that:

> "…*You* must at all times keep accounting records properly written up to show *your* dealings with:
>
> (a) *client money* received, held or paid by *you*; including *client money* held outside a *client account* under rule 15.1(a) or rule 16.1(d); and
> (b) any *office money* relating to any *client* or *trust* matter…"

19.17 Rule 29.2 provides that:

> "… All dealings with *client money* must be appropriately recorded:
>
> (a) in 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* (or other person, or *trust*).
>
> No other entries may be made in these records…"

19.18 The Tribunal determined that both Rules set out above were mandatory in nature. The Tribunal rejected the Respondent's assertions that the financial records were with his accountant who had since disappeared. Even if that had been the case, it could not and did not detract from the duty on the Respondent to keep accurate accounting records and to provide them upon request.

19.19 Having found that the Respondent failed to produce accounting records demonstrating that he had recorded all dealings with client monies, his failure to comply with R.29.1 and R.29.2 was abundantly clear. As a consequence of those findings, it inevitably followed that the Respondent failed to comply with R.6.

19.20 The Tribunal therefore found the allegations that the Respondent had breached R.6, R.29.1 and R.29.2 proved beyond reasonable doubt.

20. **Allegation 2: Dishonesty**

The Applicant's Submissions

20.1 Mr Willcox relied upon the Ivey test for dishonesty as set out above. Mr Willcox submitted that although there was "…no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest." the Tribunal was required to consider the "…actual state of the individual's knowledge or belief as to the facts..." Mr Willcox contended that the test therefore required the Tribunal to establish the Respondent's understanding of the material facts before applying the objective standard in determining whether the Respondent's conduct was dishonest.

20.2 Mr Willcox reminded the Tribunal that the Respondent assumed personal conduct of the GV matter on 7 September 2018 at the latest. On 18 September 2018 SV sent a copy of the final estate accounts to the Respondent which were agreed by the Respondent on 26 September 2018. The net balance of the estate was cited and agreed to have been £440,090.94. Mr Willcox submitted that the Respondent was therefore aware of and had agreed the amount to be distributed from Client GV's estate that was held in the Firm's client account.

20.3 The Respondent made several transfers from the Firm`s client account to SV between 1 and 4 October 2018 which totalled £239,818.99. This left an outstanding balance owed by the Respondent to SV of £200,271.95. This £200,271.95 comprised funds that the Respondent acknowledged were entrusted to the Firm's client account for distribution.

20.4 On 7 October 2018 the Respondent informed SV that no further payments would be made as the Firm's client account was empty. The Respondent provided the details of the Firm`s professional indemnity insurer to SV.

20.5 Mr Willcox submitted that the Respondent's understanding of the material facts was clear. The Respondent's explanation of his conduct in light of those facts was, however, wholly incredible. During the interview with the FIO on 27 February 2019 the Respondent was asked about the missing funds due to SV:

> "…
>
> (LB) So what work has been conducted since, to try and trace that £200,000.00?
>
> (CA) Um it was left, it's been left with the accountant to sort of come back on the information. Um and unless I've not had a clear answer with respect to that and going in detail back um, I'd been through sort of, when I had access to the online banking and been through some of the details. And the only thing that I could conclude um would have been the fact that either the information that had been given, or the ledgers weren't held correctly or maintained correctly and therefore that the figures that we were told it's got to be transferred across were not necessarily correct.
>
> (LB) Transferred across to…?

(CA) The office account. All our payments went into the client account,

(LB) Ok.

(CA) before we transferred to office …"

20.6 When questioned by LB and FJ as to whether there had been any misappropriation the Respondent stated:

"…

(FJ) So, in terms of the £200,000.00, do you believe there was any misappropriation of that money, on behalf of the Firm?

(CA) Um no.

(LB) Ok.

(FJ) So what happened to it then?

(CA) Um like I said, the only thing that I can see there's been an issue with regards to the way the financials have been handled um from, on the paperwork and between how the ledgers had been maintained, and obviously information that was given, maybe there an issue [00:14:14 unclear] that's what comes to mind.

(FJ) Do you recall making any kinds of large payments that did not seem clear?

(CA) No."

20.7 Mr Willcox submitted that the position adopted by the Respondent on 27 February 2019, was that the missing funds due under Client GV's estate were the result of an accounting error. That position was unsustainable and became even less so when the LB reviewed the Firm's bank statements and identified the £120,000.00 that the Respondent transferred to his office account (which had contained minimal funds until enriched by these improper transfers) that enabled the Respondent to pay the Firm's insurers run off cover and his HMRC liabilities.

20.8 Mr Willcox stated that the Respondent was unable to offer any explanation as to where the missing £200,271.95 had gone after it had left the client account despite having confirmed that £440,040.69 was held in the Firm's client account and that it ought properly have been transferred to SV. Mr Willcox submitted that (a) the Respondent's knowledge in relation to the funds held in the client account pertaining to Client GV's estate and his awareness of his duty to safeguard and properly distribute it was clear and (b) his subsequent actions should be viewed as being objectively dishonest in that context.

20.9 It was worthy of note, Mr Willcox submitted, that at no point during the Forensic Investigation Officer's inspection, the Intervention Resolution process or during SV's compensation fund application (when serious findings of professional misconduct including dishonesty were made against him) did the Respondent offer any explanation for his actions.

20.10 Mr Willcox submitted that ordinary, decent people would regard it as dishonest for a solicitor who should be safeguarding £440,090.94 in his Firm's client account and representing proceeds from the estate of Client GV (deceased), to fail to properly transfer and pay out this amount in full to the executors prior to the closure of his Firm. In fact the Respondent failed to pay over £200,271.95 to SV when there could be no legitimate basis on which he could have retained or dispersed that money elsewhere.

20.11 In explaining the large round sum transfers that he made on 20 and 28 September 2018, the Respondent accepted his responsibility for solely operating the Firm's accounts and for making the transfers totalling £120,000. The Respondent stated that he was led to believe that these were outstanding monies that were due to be transferred. Mr Willcox submitted that that answer lacked substance and was wholly insufficient in that the Respondent did not clarify who or what caused him to believe that these sums were due to the Firm.

20.12 Additionally, before making the transfers the Respondent would have had to satisfy himself that one of the criteria set out in Rule 20 (a) – (k) of the SRA Accounts Rules 2011 applied. It was clear, Mr Willcox contended, that none of those criteria applied and consequently the transfers were improper.

20.13 Ordinary, decent people would regard it as dishonest for a solicitor to make improper transfers from client to office account totalling not less than £120,000.00, particularly in circumstances where the evidence indicates that the reason for those transfers was the Respondent's apparent need for those funds to satisfy the Firm's insurers and HMRC liabilities.

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

20.14 The Respondent denied that his conduct was dishonest in respect of the two transfers from the client to the office account and in respect of the improper payments made to his insurers and HMRC PAYE.

20.15 The Respondent stated that his mental state at the material time was severely impacted as a result of the close family bereavement, familial ill health and domestic issues. It was as a consequence of those matters, he submitted, that wholesale reliance was placed on the accountant to advise in respect of transfers and payments. The Respondent reiterated and maintained that his conduct was predicated on a "mistaken belief" as opposed to any deliberate intention to deceive.

20.16 In cross examination, Mr Willcox put to the Respondent that the transfers were made in order for liabilities to the Firm's insurers and HMRC PAYE to be met; the Respondent did not accept that contention and reiterated that he genuinely believed that he was "entitled" to carry out those transactions. Mr Willcox put to the Respondent that if his account were true, there would have been evidence adduced to corroborate

his account. The Respondent did not accept that contention and asserted that "just because evidence can't be adduced doesn't make a fact false. It makes a fact unprovable but not false." The Respondent did not accept that at the material time he (a) transferred £120,000.00 from the client account to the office account to meet office liabilities, (b) knew that in so doing he had breached the Solicitors Accounts Rules and (c) was dishonest.

The Tribunal's Findings

20.17 The Tribunal carefully considered the evidence before it and the submissions made by the parties. The Tribunal applied the Ivey test and in so doing established the Respondent's state of knowledge of the facts at the material time to have been:

20.18 Allegation 1.1 (Transfers from client to office account)

20.18.1 The Respondent knew from at least 30 August 2018 that the Firm was to close. The Respondent, on his own admission, was broadly aware of the respective balances in the office and the client accounts. The Respondent was aware of the Firm's liabilities to its insurers and to HMRC PAYE. The Respondent therefore must have known that there were insufficient funds in the office account to meet the Firm's financial liabilities.

20.18.2 The Respondent, on his own admission, knew that GV's estate was valued at £440,090.94 and as at 3 October 2018 interim payments totalling £239,818.99 had been made which left an outstanding payment due to SV of £200,271.95.

20.18.3 The Respondent was therefore aware that the Firm held insufficient funds to pay the office liabilities and pay SV the residual amount from Client GV's estate as evidenced by the fact that he notified SV of the Firm's insurance details on 7 October 2018.

20.18.4 The Respondent, whilst cognisant of the material facts set out above, made a decision which enabled him to meet the Firm's liabilities with Client GV's money which was payable to the estate. The Tribunal found that conduct was dishonest by the standards of ordinary, decent people.

20.19 Allegation 1.2 (improper payments to insurers and HMRC PAYE)

20.19.1 Having concluded the basis upon which the Respondent made the transfers from client to office account was dishonest, the Tribunal considered that the Respondent must have known that the office account was improperly seized of client money. The Respondent knew that circa £200,000.00 was still due to SV and he also knew that the Firm had liabilities of at least £100,736.30 owed to insurers and HMRC PAYE. Notwithstanding that knowledge of the bald facts, the Tribunal found that the Respondent made a positive choice on three successive occasions to make payments on behalf of the Firm with the residue of Client GV's estate. The Tribunal found that conduct was dishonest by the standards of ordinary, reasonable people.

20.20 The Tribunal therefore found the dishonesty alleged in respect of Allegation 1.1 and Allegation 1.2 proved beyond reasonable doubt.

Previous Disciplinary Matters

21. None.

Mitigation

22. The Respondent acknowledged that he had read the Tribunal's latest guidance note on sanctions. He reiterated that at the material time he had experienced a close family bereavement, familial ill health and domestic issues which impacted on his practice.

23. The Respondent submitted that he "loved being a solicitor … enjoyed helping people in court and in finding solutions and it had been amazing…" The Respondent stated that he had not held a practising certificate since 2018, was not working and was in receipt of Universal Credit. He stated that he was "sofa surfing" and had no savings.

Sanction

24. The Tribunal had regard to the Guidance Note on Sanctions (7th Edition). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

Culpability

25. The Tribunal considered that the Respondent's motivation for his misconduct was personal in that he used client monies to meet the Firm's liabilities and relied upon his insurers and/or the Solicitors Compensation Fund to make good his shortcomings in respect of Client GV's estate. His conduct was planned in that the Respondent (a) made the transfers from client to office account in flagrant disregard for the Solicitors Accounts Rules and (b) on three occasions make improper payments. The misconduct occurred over a 13-day period, from 20 September – 3 October 2018 and comprised of five separate transactions. The Tribunal considered that to be both calculated and repeated misconduct. The Respondent was undoubtedly in a position of trust as a solicitor, COLP and COFA of the Firm. He severely breached the trust vested in him as custodian of client money by virtue of his misconduct. At the material time the Respondent had been practising as a solicitor for 10 years thus the Tribunal determined that he held significant experience.

26. The Tribunal concluded that responsibility for the circumstances giving rise to and the misconduct itself rested solely with the Respondent and as such his culpability was high.

Harm

27. The Tribunal noted that as a consequence of the Respondent's misconduct SV (a) knew that he was owed circa £200,000.00 from the estate of Client GV, (b) knew that the

Firm was unable to make that payment, (c) was required to make a claim to the insurers which was rejected and (d) had to make a claim to the Solicitors Compensation Fund which was accepted. The harm to SV and other beneficiaries of Client GV's estate was significant.

28. Having found that the Respondent's misconduct represented an abhorrent departure from the "complete integrity, probity and trustworthiness" expected of a solicitor, the harm that it caused to the reputation of the legal profession was significant.

29. The Tribunal found that the harm expressed was intended in that it occurred as positive acts on the part of the Respondent as opposed to omissions. It was reasonably foreseeable as a consequence of the decisions made by the Respondent in respect of the transfers and payments.

30. The Tribunal concluded that the harm caused by the Respondent's misconduct was high.

Aggravating Factors

31. The Tribunal considered a finding of dishonesty inevitably aggravated the underlying misconduct. The transfers and payments were made as a consequence of the Respondent's deliberate decisions to do so, calculated to enable him to meet the Firm's liabilities and repeated on five occasions over a period of 13 days. In so doing, the Respondent took advantage of vulnerable individuals, namely the deceased GV and the beneficiaries of her estate. The Respondent admitted, and the Tribunal found proved, that he had materially breached the fundamental tenet of the profession to preserve the sacrosanct nature of the client account. The Tribunal was in no doubt that the Respondent knew or ought reasonably to have known that his misconduct failed to protect the public who trusted solicitors as custodians of their money, to safeguard the same. The Tribunal was in no doubt that the Respondent knew, or ought reasonably to have known, that his misconduct would cause incalculable harm to the reputation of the legal profession.

Mitigating Factors

32. The Tribunal had regard to the limited admissions of the Respondent in respect of the facts giving rise to the allegations. However, it noted that the Respondent denied all Principle breaches alleged which in itself demonstrably showed his lack of insight. The Respondent was found to have co-operated with the Applicant to a certain degree. However, the Tribunal did not accept that he had been open with LB in relation to the financial records, ledgers, bank statements and consistently vague answers given in interview and in writing.

33. Weighing all of the attendant circumstances in the balance, the Tribunal concluded that the misconduct found was extremely serious.

34. The Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 (HC) and the comment of Coulson J that; "save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll." The Tribunal was not asked to consider exceptional circumstances and, in relation to the close family

bereavement, familial illness and domestic issues advanced by the Respondent, the Tribunal found that these would not amount to exceptional circumstances in any event.

35. Having found that the Respondent acted dishonestly the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that; "to maintain the reputation of the solicitors' profession as one which every member, of whatever standing, may be trusted to the ends of the earth."

36. The Tribunal determined that the findings against the Respondent which included dishonesty required him to be struck off from the Roll.

Costs

The Applicant's Application

37. Mr Willcox referred the Tribunal to the Statement of Costs as at 31 July 2020 which claimed £11,667.00. Mr Willcox asked that the total be reduced to reflect the fact that the substantive hearing concluded in one as opposed to two days.

38. Mr Willcox further referred the Tribunal to title registration documents in respect of Adley Street, not registered to the Respondent but an address that he provided to the Applicant and Opal Court, in which the Respondent held a 25% share.

39. Mr Willcox further referred the Tribunal to bankruptcy and insolvency searches undertaken against the Respondent which revealed that he was neither bankrupt nor insolvent.

The Respondent's Position

40. The Respondent did not file a Statement of Means. He filed an "Asset List" which stated that he held a 25% share in Opal Court. The Respondent submitted that his mother resided at that address and that he did not. The Respondent asserted that he was "sofa surfing", "surviving on money lent to me by friends and family" and that he was in receipt of Universal Credit with no savings.

The Tribunal's Decision

41. The Tribunal reduced the costs claimed on the Statement of Costs at Issue by £1,690.00 (to reflect the fact that the hearing concluded in one day) which gave a total of £9,977.00. The Tribunal considered that the amended amount of costs claimed were reasonably incurred and proportionate to the case. The Tribunal did not have the benefit of a Statement of Means and the Tribunal was not satisfied that his submissions revealed impecuniosity on his part.

42. The Tribunal therefore awarded costs to the Applicant in the sum of £9977.00.

Statement of Full Order

43. The Tribunal Ordered that the Respondent, CABEER AHMED, 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 £9977.00.

Dated this 26th day of August 2020
On behalf of the Tribunal

J. Evans
Chair