SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12049-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

CHRISTOPHER JOHN BENTLEY Respondent

Before:

Mr P. Jones (in the chair)
Ms T. Cullen
Mr S. Marquez

Date of Hearing: 3 August 2020

Appearances

Inderjit Johal, barrister, in the employ of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that whilst practising as a sole principal at Cole Bentley & Co Solicitors ("the Firm"), he:

1.1 Between the 24 April 2017 and the 30 April 2018, made the following improper transfers of monies from his client account to his office current bank account:

- £2,400, £8,040 and £4,000 in relation to the client matter of Mr W;
- £2,905.20 in relation to the client matter of Mr H;
- £6,000 in relation to the client matter of Mr M and
- £6,000 in relation to the client matter of Mr S;

which he used for his own benefit and/or the benefit of his staff in breach of: all or alternatively any of the following SRA Account Rules 2011 ("the Accounts Rules"): 7, 14.1, 14.3, 17.2, 20.1 and 20.9 AND all or alternatively any of the following SRA Principles 2011 ("the Principles") 2, 6 and 10.

1.2 On 1 February 2018 and 31 August 2018 he purported to send letters enclosing cheques to his client Mr W for the purposes of returning his monies paid on account of costs in circumstances were there was insufficient funds on the office No. 2 bank account from where the cheques were drawn. In doing so the Respondent acted in breach of all or alternatively any of Principles 2 and 6 of the Principles.

1.3 On or around 1 February 2018 he purported to send a cheque for £4000 drawn from his office No. 2 bank account to Mr Lobbenburg QC for his fees in circumstances where he knew or should have known that those fees were not due and where there was insufficient funds on office No. 2 bank account from where the cheque was drawn. In doing so the Respondent acted in breach of all or alternatively any of Principles 2, 6 and 8 of the Principles.

1.4 From April 2017 failed to keep proper and accurate accounts records in breach of Rule 29.1 and 29.11 of the Accounts Rules and Principle 8 of the Principles.

2. Dishonesty is alleged against the Respondent in respect of allegations 1.1 to 1.3, however, proof of dishonesty was not an essential ingredient for proof of the any of the allegations.

Documents

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

- Rule 12 Statement and Exhibit IJ1 dated 17 January 2020
- Correspondence from the Respondent
- Applicant's Schedule of Costs dated 27 July 2020

Preliminary Matter

4. The Respondent did not attend and was not represented. Mr Johal applied for the matter to proceed in the Respondent's absence pursuant to Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("the Rules"). It was submitted that the Respondent had been served with the proceedings in accordance with Rule 44 of the Rules. The Respondent had been sent numerous notifications to both his personal and professional email addresses.

5. Whilst the hearing had initially been intended to take place at the Tribunal's offices, the Tribunal directed on 29 July 2020 that the hearing was to take place remotely. The memorandum of that hearing had been emailed to the Respondent. It was clear the Respondent was aware of the hearing date, given the communications he had had with the Tribunal. On 30 July 2020, the Respondent emailed the Tribunal and explained that he was fragile due to personal issues and was only able to cope with short simple cases at Court and the police station. He found it difficult to cope with involved lengthy tasks. He hoped that the Tribunal would take account of what he had told the FI Officer, the content of his interview and the representations sent to the Applicant on his behalf. He stated that: "there is very little that I can add to what is already in the documentation regarding the facts, and my own flawed reasoning for the steps that I took at the time".

6. The Respondent also explained that he wanted to "go to the Court and the Police Station to do the job required by my employer, and to gradually wind down to my retirement. I hope that the Tribunal will come to a decision that will allow me to continue to do this, and I will give any appropriate undertakings or abide by any appropriate conditions, but in any event I will respect and abide by any decision that is made."

7. Mr Johal submitted that whilst the Respondent had referred to his health, he had provided no evidence in relation to it. Further, he had expressed no intention of attending a hearing were the hearing to be adjourned, nor had he requested an adjournment. The Respondent had failed to serve an Answer in the proceedings, despite the Tribunal extending time for service of the Answer on three occasions.

8. The Tribunal was referred to the principles espoused in GMC v Adeogba [2016] EWCA Civ 162. The Tribunal should exercise caution in proceeding in the absence of the Respondent, with fairness to the Respondent being of prime importance. The Tribunal, in exercising its discretion should also consider fairness to the regulator. The Respondent had waived his right to appear and was voluntarily absent. An adjournment would not secure his attendance. It was in the interests of the public to proceed.

9. The Tribunal determined that the Respondent had been properly served with the proceedings and notice of this hearing. It was clear that he was aware of the proceedings and the hearing given his email to the Tribunal of 30 July 2020, in which it was implicit that the Respondent would not attend the hearing.

10. The Tribunal had regard to the principles in Adeogba. There was nothing to indicate that the Respondent would attend or engage further with the proceedings if the case were adjourned. The Respondent had not, in any communications with the t Tribunal, applied for the matter to be adjourned.

11. The Respondent had cited his state of health as a reason for his non-attendance, however he had provided no medical evidence in support of his assertion that his health was such that he could not participate effectively in the hearing. It was noted that the Respondent was still working which included representing clients both at the police station and in Court. The Tribunal considered that the Respondent had prioritised work over participation in the proceedings. The Respondent had failed to engage fully with the proceedings and had a history of non-compliance with directions made by the Tribunal.

12. The Respondent had further referred to his inability to access documents given that he had limited access to his work PC. The Tribunal noted that the Respondent had referred to possession of a hard copy of the papers, which, it was determined, he could have used to participate in the hearing.

13. In all the circumstances, the Tribunal was satisfied that in this instance the Respondent had chosen voluntarily to absent himself from the hearing. The Tribunal considered that it was in the public interest that this case should be heard and determined as promptly as possible. Having carefully considered the reasons for the Respondent's non-attendance, the Tribunal determined that it was in the interests of justice to proceed with the case, notwithstanding the Respondent's absence.

Factual Background

14. The Respondent was admitted to the Roll of Solicitors in September 1993. He was the sole Principal of the Firm and was its Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA) from December 2018 until the Firm's closure on 30 September 2019.

15. The Respondent held a current practising certificate with conditions that prevented him (amongst other things) from being a manager or owner of an authorised body, acting as the COLP or COFA, or holding/receiving client money, being the signatory on any client account or being able to authorise any transfers from the client or office account. The Respondent agreed to the imposition of the conditions.

Witnesses

16. None appeared in person.

Findings of Fact and Law

17. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent's right 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. The Tribunal considered all the evidence before it including all written and oral submissions.

Dishonesty

18. 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."

19. 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

20. 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".

21. **Allegation 1.1 - Between the 24 April 2017 and the 30 April 2018, the Respondent made the following improper transfers of monies from his client account to his office current bank account: £2,400, £8,040 and £4,000 in relation to the client matter of Mr W; £2,905.20 in relation to the client matter of Mr H; £6,000 in relation to the client matter of Mr M and £6,000 in relation to the client matter of Mr S; which he used for his own benefit and/or the benefit of his staff in breach of: all or alternatively any of the following Accounts Rules: 7, 14.1, 14.3, 17.2, 20.1 and 20.9 AND all or alternatively any of the following Principles: 2, 6 and 10.**

The Applicant's Case

21.1 On the 18 July 2018 the SRA received a complaint against the Firm from a Mr C on behalf of his stepfather, Mr W. The Firm represented Mr W in a criminal matter which resulted in his conviction in July 2017. Following the conviction Mr W provided the Firm with £15,000.00 in July 2017 on account of the costs of his appeal to include the fees for the Firm and for the instruction of counsel.

21.2 Despite the appeal being abandoned in December 2017, the Firm failed to account to Mr W for unspent fees. Mr C contacted the Respondent by email between March to June 2018 and by letter in June and July 2018 enquiring about the return of monies to Mr W and complaining about his inaction. The only response that Mr C received from

the Respondent was an email in April 2018 saying that he would give the matter his urgent attention, however Mr C did not receive anything further from him.

21.3 Following the complaint, a forensic investigation began into the Firm on 8 October 2018 and a Forensic Investigation Report (FIR) dated 18 April 2019 was prepared. The FIR highlighted that there was a minimum cash shortage of £13,419.19 as at the 30 September 2018 which had been caused by improper transfers made by the Respondent from his client account to his office current bank account. Prior to the start of the investigation there had been a shortage of £15,926.01 which was caused by improper transfers made by the Respondent from his client account to his office current bank account.

21.4 The shortage of £15,926.01 was rectified before the start of the investigation and the £13,419 was rectified in full by 19 April 2019.

21.5 The FIR highlighted 6 improper transfers which took place across four client files detailed below. The FIO found no evidence or justification for the transfers on the files. All the improper transfers had been made by the Respondent on private paying client matters where the Firm had acted in the defence of criminal proceedings.

21.6 All the improper transfers from the client account were made at a time when the Firm's office current bank account was close to its overdraft limit of £25,000. The money improperly transferred was used for the Respondent's drawings, staff wages and office overheads. Without the transfers from the client account, it was submitted, the office current bank account would have exceeded its overdraft limit. Payments were made by the Respondent from the office account on the same day or within a few days of the improper transfers being made.

21.7 In interview with the FI Officer, the Respondent confirmed that he had made all the transfers from the client account. He explained that four of the transfers on the Mr W and Mr H matters were errors as he had transferred the money to the office current account in order to replace monies that he thought he had paid from that account by cheque, when in fact he had drawn the cheques from client account. Mr Johal submitted that two of the transfers said by the Respondent to have been made in error were made on the same day as he had written out the cheques from the client account.

21.8 The Respondent denied that the two transfers totalling £12,000 on the client matters of Mr S and Mr M were improper. He stated that the transfers were for the costs due to the Firm and he provided invoices to the FI Officer that he said justified the transfers.

21.9 Mr Johal submitted that all the transfers appeared to have been made deliberately so the Respondent could make payments from the office current account whilst keeping within its overdraft limit to avoid the incurring of bank charges. All the payments from the office current account were made for the benefit of the Respondent, his staff or his Firm. Further, it was submitted, the improper transfers took place against the backdrop of financial difficulty of the Firm.

21.10 The Respondent made a number of improper payments from the client account:

Payment 1 - £2,400 - Mr W:

21.11 On 25 April 2017, the Respondent sent a cheque from his client account in the sum of £2,400 for counsel's fees. On 27 April 2017, the Respondent transferred the same sum from his client account to his office current account purportedly in settlement of the same fee. Mr Johal noted that on 27 April, the office current account was close to its overdraft limit. The transfer of the monies enabled the Respondent to make a number of payments which included his own drawings and payments to staff without exceeding the Firm's overdraft limit. But for the transfer the Respondent would have exceeded the overdraft limit by £1,808.21. The Respondent rectified the shortage caused by the improper payment on 15 June 2017.

Payment 2 - £8,040 – Mr W:

21.12 On 14 July 2017, the Respondent sent a cheque from his client account in the sum of £8,040 for counsel's fees. On the same day the Respondent transferred the same sum from his client account to his office current account purportedly in settlement of the same fee. Following the transfer, the Respondent made a number of payments which, save for the improper transfer, would have meant that the Firm would have exceeded its overdraft limit by £7,670.35. The shortage caused by the improper payment was rectified by the Respondent on 2 November 2018.

Payment 3 - £4,000 – Mr W:

21.13 On 31 July the Respondent transferred £4,000 from client account to the Firm's office current account purportedly as a reimbursement for a cheques drawn on the Office No. 2 account in that sum and send to Mr Lobbenburg QC for his fees in acting on Mr W's appeal. Chambers confirmed that the only invoice sent to the Firm in respect of fees due was on 14 July for the amount of £1,000. Those fees were settled by the Firm on 21 July 2017. The Respondent explained that there was no fee note nor was there any written record of the £4,000 fee. He claimed he was aware of the fees due following a conversation with Mr Lobbenburg QC's junior. The cheque had been returned to the Firm. He cancelled the cheque with the bank. Mr Johal submitted that from the time the cheque was drawn up until its cancellation on 10 August 2018, there was at no time sufficient funds in the Office No.2 account to honour the cheque if it had been presented. Following the transfer, the Respondent made a number of payments which, save for the improper transfer, would have meant that the Firm would have exceeded its overdraft limit by £3,941.76.

Payment 4 - £2,905.20 – Mr H

21.14 On 21 December 2017, the Respondent sent a cheque from his client account in the sum of £2,905.20 to Mr H. On the same day the Respondent transferred the same sum from his client account to his office current account causing the client account to become overdrawn. Following the transfer, the Respondent made a number of payments which, save for the improper transfer, would have meant that the Firm would have exceeded its overdraft limit by £2,342.23. The Respondent rectified the shortage caused by the improper payment on 11 February 2019.

Payment 5 - £6,000 – Mr M

21.15 On 24 April 2017, the Respondent made a payment to a member of staff which caused the office current account to be overdrawn. On the same day he made a transfer in the sum of £6,000 from the client account of Mr M to the office current account. Had the Respondent not made the transfer, the office current account would have exceeded its overdraft limit by £4,035.79. The Respondent rectified the shortage caused by the improper payment on 26 May 2017.

21.16 During her review of the file, the FI Officer noted that there were 4 invoices:

- 26 May 2017 - £7,740.80 in respect of work carried out to 19 May 2017;
- 23 August 2017 - £6,443.85 for work carried out between 19 May to 23 August 2017
- 25 August 2017 - £623 in respect of a hearing on 29 June 2017;
- 25 August 2017 - £1,223.50 for a hearing on 28 July 2017; and

21.17 The shortage appeared to have been rectified by the Respondent transferring £1,740.80 having raised the invoice of 26 May 2017 as opposed to £7,740.80 which was the full amount of the invoice.

21.18 In January 2019, (two months after the FI Officer's file review) the Respondent provided an invoice dated 24 April 2017 in the amount of £6,000. That invoice had the same invoice number as the 26 May 2017 invoice. The Respondent explained that the May invoice was a replacement for the April invoice and that he suspected that the fee earner with conduct of the case had not sent the April invoice to the client. He further explained that he had located the invoice in a pile of papers on his desk, but that he had been unable to find a copy of the invoice on his computer. He denied that the April invoice had been created to legitimise the £6,000 transfer.

Payment 6 - £6,000 – Mr S

21.19 On 30 April 2017, the Respondent made a number of payments from his office current account which included payments to his staff as well as to himself. On the same day the Respondent transferred £6,000 from the client account of Mr S to the office current account. Had the Respondent not made the transfer, the office current account would have exceeded its overdraft limit by £3,122.72. The shortage caused by the improper payment was partly rectified on 13 July 2018, with the remainder being rectified on 4 February 2019.

21.20 The FI Officer was unable to review the file. The Respondent said that the file had been taken by the fee earner with conduct to her new firm. On 27 November 2018, the Respondent provided the FI Officer with an invoice and a statement of account, both dated 13 July 2018. The invoice in the sum of £5,573.02 itemised the work carried out by the Firm.

21.21 The statement of account detailed the invoices rendered to Mr S and the payments received by the Firm. It recorded that the total of the invoices rendered to Mr S as £5,573.02, fees paid to Counsel as £4,200 and the total payments received from Mr S

as £10,000. Finally, it recorded the balance being due to Mr S as £226.98 and that the payment had been made into the nominated account.

21.22 On the basis of the invoice above it appeared to the FI Officer that the shortage created by the £6,000 improper payment was partially rectified by the raising of the invoice dated 13 July 2018. The remainder of the shortage was replaced by payment of £226.98 to Mr S from the office current account on the 13 July 2018 and a payment of £200 from office current account to the client account on the 4 February 2019.

21.23 Some 2 months later on the 25 January 2019, the Respondent provided the FI Officer with a copy invoice dated 30 April 2018 and was for an "agreed fee" of £6,000. The Respondent's explanation as to the 30 April 2018 invoice was similar to the explanation that he provided in respect of the 27 April 2017 invoice on the Mr M matter. In addition he stated that he prepared the statement of account in respect of Mr S and that he did not make any reference to the invoice dated 30 April 2018 in it, because he did not want to, "confuse the client", by including an incorrect invoice.

21.24 Mr Johal submitted that in order to avoid incurring additional fees for exceeding the overdraft limit, the Respondent improperly transferred monies as detailed above. The Respondent used client monies to pay himself and his staff as well as other bills of the Firm. The Respondent was, it was submitted, using client monies to support the Firm.

21.25 The Respondent's explanations regarding the transfers were not credible and should be rejected as:

- The transfers were made either to bring the office current account within its overdraft limit, or to allow payments to be made without the account exceeding its overdraft limit;

- There were insufficient monies in the office current account and the Respondent's other office accounts to make the payments without the transfers of money from client account;

- As regards payments 2 and 4 (the transfers in the sum of £8,040 and £2,905.20 respectively) the Respondent would have known that he had drawn the cheques from the client account and not the office account as he had drawn the cheques from client account on the same day as the transfers for reimbursement;

- As regards payment 1 (the £2,400 transfer), he drew the cheque from client account within 2 days of making the transfer for reimbursement;

- The Respondent knew that there were no fees due to Mr Lobbenburg QC. He had no fee note, and was, in any event, familiar with the case having been the solicitor with conduct. Thus he knew that the fees had not been incurred;

- In respect of the invoices dated 24 April 2017 and 30 April 2018 raised by the Respondent on the Mr M and Mr S matters, it was not accepted that they were genuinely created by the Respondent on the dates purported:

(i) The 24 April 2017 invoice was not on the Mr M file that was reviewed by the FI Officer and the Respondent had not provided any reasonable explanation as to why;

(ii) The invoices were provided 2 months after the Mr M file had been reviewed and after the provision of the 13 July 2018 invoice on the Mr S file;

(iii) The Respondent informed the FI Officer that he had been unable to locate either invoice on his computer;

(iv) Both invoices were for round sum transfers, in contrast with the four invoices on the Mr M file and the 13 July 2018 invoice on the Mr S file;

(v) The invoices on the Mr M file have a watermark 'PAID' on them whereas the 24 April invoice did not.

(vi) The Respondent told the FIO that he suspected that neither invoice had been sent by the fee earner with conduct to the clients;

(vii) The invoices did not correspond with the documents reviewed by the FI Officer. The 24 April 2017 invoice was not mentioned in the letter sent to the client on the 2 June 2017, which described the 26 May 2017 invoice as an 'interim bill'. According to the Respondent the 24 April 2017 invoice was a replacement for the 26 May invoice.

(viii) The invoice dated 30 May 2018 on the Mr M matter was inconsistent with the statement of account sent to Mr M on the 13 July 2018. The statement of account referred to the total of invoices rendered to Mr M as £5,573.02, which was consistent with the amount of the invoice dated 13 July 2018. Had the invoice dated 30 April 2018 been prepared on the date it purported to, it no doubt would have been referred to in the statement of account. If a mistake had been made in the calculation of the monies owed to Mr M, then all the more reason for the Respondent to clarify matters in the statement of account.

21.26 Mr Johal submitted that the improper transfers made by the Respondent breached Rule 20.1 of the Accounts Rules as they were not properly required on behalf of his clients. The transfers were for the Respondent's own purposes. The Respondent, knowing that the transfers were improper failed to remedy them promptly in breach of Rule 7 of the Accounts Rules. By way of example, the Respondent failed to remedy completely the improper transfer made in July 2017 of £8,040 until 2 November 2018.

21.27 The transfer of £2,905.20 in the Mr H matter resulted in the client account being overdrawn as it had a nil balance prior to the transfer. That was in breach of Rule 20.9 which requires a client account not to be overdrawn.

21.28 In accordance with Rule 14.1, the Respondent was required to keep client money in client account and in accordance with Rule 14.3 he was required to return client money to the client promptly where there was no longer any proper reason to retain the funds. As a result of the improper transfers, the Respondent kept client money in office

account and breached Rule 14.1. Further by failing to return client money to Mr W after his appeal was unsuccessful in December 2017, the Respondent breached Rule 14.3.

21.29 Pursuant to Rule 17.2, the Respondent was required to send a bill of costs or other written notification of costs incurred before taking payment of his fees. The Respondent breached this rule by transferring money from client to his office current account in the matters of Mr M and Mr S and subsequently raising invoices for the transfers. Mr Johal submitted that even in the event that the Tribunal accepted that the invoices dated 24 April 2017 and 30 April 2018 were raised at the time of the transfers, the Respondent's conduct was still in breach of Rule 17.2 as he accepted that the fee earner with conduct of those matters was not likely to have sent the invoices to the clients.

21.30 In making improper transfers, the Respondent failed to protect client money in breach of Principle 10 of the Principles. Members of the public would expect solicitors to treat client money carefully, not to make improper use of it and to account to clients when it was no longer needed. By deliberately making improper transfers of client money for his own benefit and failing to account to Mr W, the Respondent breached Principle 6 of the Principles. Even if the Tribunal concluded that the Respondent's conduct was the result of errors and inadvertence, such conduct would still fail to maintain trust in the Respondent and in the provision of legal services in breach of Principle 6.

21.31 By making improper transfers of client money to his office account, the Respondent failed to act with integrity in breach of Principle 2. Solicitors acting with integrity did not make improper transfers for their own benefit or the benefit of their firm. Mr Johal submitted that even in the event that the Tribunal accepted that the Respondent had made errors and acted inadvertently in making the transfers, it should still be found that he acted without integrity. By the making of several improper transfers from which he benefitted, he failed to maintain the high standards expected of the profession. Had the Respondent acted with integrity he would have checked his accounts (to discover from which account he had drawn cheques) and ensured that bills had been sent to clients, prior to making the transfers.

21.32 Mr Johal submitted that the Respondent's conduct was dishonest. As to his actual knowledge:

- the Respondent knew when his office current account was close to its overdraft limit;
- the Respondent was aware that had he exceeded his overdraft limit his firm would incur additional fees from the bank;
- the Respondent knew that payments from the office account for wages, drawings and overheads would result in the firm exceeding its overdraft limit;
- the Respondent knew that the transfer of client money into the office current account would keep the office account within its overdraft limit in light of payments from the account;
- the Respondent knew that he could raise invoices on the client matters for the Firm's costs, transfer monies from his office account to client account or pay the client in order to rectify the shortage created by the improper transfers;
- he knew that the creation of invoices after the event to justify the improper transfers was wrong;

- he knew that transfers from client account without proper justification was wrong; and
- he knew that posting false entries in ledgers to show money was transferred from office account and not client account was wrong.

21.33 Ordinary and decent people would consider that such conduct was dishonest.

The Respondent's Case

21.34 In his interview, the Respondent explained that as regards payments 1, 2 and 4, he believed that he had sent the cheques from the office account and thereafter transferred the monies from the client account to the office account. In his statement to the FI Officer of 7 February 2019, the Respondent further explained that he had later realised his errors and had tried to correct them.

21.35 In the written representations sent by the Respondent, it was restated that the transfers were in error, and that the Respondent acknowledged the errors and was apologetic. In his email to the Tribunal of 30 July 2020, the Respondent stated: "I accept that Client money was not handled with the care that it should have been, transfers took place that should not have occurred, and the records were not kept with the care that should have been taken. I accept that I am totally responsible for all of that". In his email of 30 July 2020, the Respondent explained that whilst some of the transactions occurred on the same day, the writing of the cheques and the transfer of the monies were not done at the same time; they were "often separated by a number of hours and significant distractions".

21.36 As regards payment 3, the Respondent explained in his interview that following a conversation with junior counsel, the Respondent understood that there was £4,000 outstanding to Mr Lobbenburg QC for his fees. He sent a cheque to chambers. It transpired that there were no outstanding fees and the cheque was returned. In his statement the Respondent explained that at the time, he did not have the client account chequebook so he wrote a cheque from the office account and transferred monies from the client account to the office account to cover the cheque. That position was repeated in the submissions of 17 June 2019 on the Respondent's behalf.

The Tribunal's Findings

21.37 The Tribunal did not accept that the Respondent had made errors when the improper payments were made. It noted that the improper payments were made at a time when, save for those payments, the Respondent's office current account would have exceeded its overdraft limit. There was, it was found, a clear pattern between the financial position of the Firm and the making of improper payments from the client account. This was not a mere co-incidence, or a series of co-incidences, and was, the Tribunal determined, the intentional and deliberate conduct of the Respondent.

21.38 The Tribunal found that the invoices of 27 April 2017 as regards payment 5 and 30 April 2018 as regards payment 6, were not invoices that had been created by the Respondent on the purported date. The Tribunal found that the Respondent had fabricated those invoices after the event in an attempt to justify the improper transfers. Whilst the Respondent would have been entitled to those monies once bills had been

delivered to the clients, at the time of the transfers, no bills had been delivered. Accordingly, those transfers were improper.

21.39 The Tribunal did not accept that the Respondent had sent the cheque to chambers as asserted. The Respondent had provided no evidence that the cheque had been sent. The Tribunal found the Respondent's assertion that he sent a cheque for £4,000 for fees, (that as the fee earner he knew had not been incurred) on the basis of a telephone call from junior counsel without a fee note to be incredible.

21.40 The Tribunal found that the transfers made were in breach of 20.1 of the Accounts Rules as submitted; the transfers were not properly required on behalf of his clients. In making payment 4, the Respondent had caused the client account on the Mr H matter to become overdrawn. Accordingly, the Tribunal found that the Respondent had breached Rule 20.9. He had failed to keep client money in the client account in breach of Rule 14.1, and in delaying the return of the monies on the Mr W matter, the Respondent had failed to return client monies to the client promptly in breach of Rule 14.3. He had not sent a bill of costs or other written notification of costs prior to taking payment of his fees on the Mr S and Mr M matters. Accordingly, his conduct was in breach of Rule 17.2 as alleged. The Tribunal further found that the Respondent whilst having remedied the shortfall on client account, had failed to do so promptly as was required by Rule 7.

21.41 Accordingly, the Tribunal found that the Respondent had breached the Accounts Rules as alleged.

21.42 That such conduct failed to protect client monies in breach of Principle 10 was plain. Further, members of the public would not expect a solicitor to use client money so as to financially support his firm. In making the transfers in the way that he did, the Respondent failed to maintain the trust placed in him and in the provision of legal services in breach of Principle 6.

21.43 The Tribunal found that the Respondent had made the transfers so as to support the Firm through times of financial difficulty. It found that no solicitor acting with integrity would use client monies to prop up his Firm in the way that the Respondent have. Members of the profession would be appalled by the Respondent's failure to treat client money as sacrosanct and his flagrant breach of the Rules created to protect client money. Accordingly, the Tribunal found that the Respondent's conduct lacked integrity in breach of Principle 2.

21.44 The Tribunal found that the Respondent had knowingly and deliberately transferred monies so as to support his Firm. The Respondent, it was determined, knew that such conduct was improper and in breach of the Rules. As regards payments 5 and 6, the Respondent had fabricated invoices in an attempt to justify the improper transfers. He had also recorded the sending out of cheques when, it was found, no cheques had been sent in order to facilitate improper transfers (as to which see allegations 1.2 and 1.3 below). The Tribunal found that ordinary and decent people would consider such conduct to be dishonest.

21.45 Accordingly, the Tribunal found allegation 1.1 proved including that the Respondent's conduct was dishonest.

22. **Allegation 1.2 - On 1 February 2018 and 31 August 2018 he purported to send letters enclosing cheques to his client Mr W for the purposes of returning his monies paid on account of costs in circumstances were there was insufficient funds on the office No.2 bank account from where the cheques were drawn. In doing so the Respondent acted in breach of all or alternatively any of Principles 2 and 6 of the Principles.**

Allegation 1.3 - On or around 1 February 2018 he purported to send a cheque for £4000 drawn from his office No.2 bank account to Mr Lobbenburg QC for his fees in circumstances where he knew or should have known that those fees were not due and where there was insufficient funds on office No.2 bank account from where the cheque was drawn. In doing so the Respondent acted in breach of all or alternatively any of Principles 2, 6 and 8 of the Principles.

The Applicant's Case

22.1 The FIR highlighted concerns relating to the Respondent purportedly rectifying the shortage in client account on the Mr W matter by sending out cheques to Mr Lobbenburg QC and Mr W.

22.2 The Respondent informed the FI Officer that he thought that he had identified the issue of the incorrect £8,040 transfer on the Mr W matter on the 1 February 2018 and that was the date it was rectified. The ledger, which was recreated by the Respondent, showed that on the 1 February 2018, there was a payment of £4,000 to Mr Lobbenburg QC and a payment of £5,490.65 to Mr W. The Respondent stated that: "the ideal thing would have been to transfer from office account to client account, the amount to rectify the situation". However instead of doing that, he tried to correct the position by posting a bill which was due and sent the two cheques to Mr W and to Mr Lobbenburg QC.

22.3 The cheques purportedly sent by the Respondent were written from the office No.2 account. The Respondent told the FI Officer that he thought that may have been because the client bank account cheque book was with his accountant. There was no correspondence on the file in respect of the cheque sent to Mr Lobbenburg QC, nor was there a fee note. The Respondent informed the FI Officer that he could not recall whether he would have sent a covering letter with the cheque or just a compliment slip.

22.4 The Respondent explained that the cheque was sent to Mr Lobbenburg QC after a telephone call with his junior where he thought he had said that this was the amount owed. The Respondent confirmed that he did not receive any fee note or confirmation of this in writing. He further explained that he had written both cheques and had definitely sent them out and also made the postings to the Mr W ledger.

22.5 The Respondent told the FI Officer that he sent a Rule 39 letter dated 1 February 2018 to Mr W in prison, enclosing a cheque in the sum of £5,490.65. In that letter he informed Mr W that he had paid counsel and that he was now closing the Court of Appeal matter. The Respondent explained that he cancelled the cheque on 10 August 2018 as it had not been cashed. Mr W stated that he did not receive that letter. Further, the Security Custodial Manager at the prison confirmed that there was no record of the letter arriving or being received at the prison. The receipt of all Rule 39 mail was recorded thus it was concluded that no such letter had arrived.

22.6 The Respondent explained that he cancelled the cheque to Mr Lobbenburg QC as it had not been required so had been returned to the Firm. The clerk to Mr Lobbenburg QC stated that the only invoice in the Mr W matter was paid in full by the Respondent. He also confirmed that there was no record of Chambers receiving a cheque on the Mr W matter in the sum of £4,000.

22.7 As detailed above, the balance in the No.2 office account was not sufficient at any time from the date the cheques issued until their cancellation to cover the amount of either cheque.

22.8 Following the cancellation of the 1 February 2018 cheque, the Respondent on 31 August 2018 wrote another cheque to Mr W in the amount of £9,490.65 and purportedly sent that to him by way of a covering letter of the same date. The letter explained that the £4,000 sent to chambers had been returned as it was not needed. The cheque was again drawn from office No.2 account and the Respondent posted it to the Mr W ledger.

22.9 The Respondent told the FIO that he knew he should have transferred the funds from the two cheques back to the client bank account, but instead of doing that wrote another cheque to Mr W for £9,490.65, which he again sent to HMP Bure. He also said that he did not make any enquiries with the prison or Mr W as to the whereabouts of the initial cheque prior to sending the second. The second cheque was cancelled by the Respondent on 2 November 2018 after he was informed by the FI Officer that Mr W had not received any cheques from him.

22.10 Mr Johal submitted that there were insufficient funds in the No.2 office account to cover the amount of the cheque from the date it was issued to 23 October 2018, when £10,000 was credited to the account.

22.11 In respect of all three cheques issued from the office No.2 account, the Respondent stated that at the time these cheques were issued he was in talks with a number of people to invest in the Firm, including Ms B who he stated had invested £10,000 into the Firm. When asked what would have happened if the cheques had been presented prior to the receipt of additional funds, the Respondent stated: "um they would have bounced obviously, yes, and that I wasn't as quick as I should have been in terms of getting things in place to cover them, and again I think I put that down to the state of mind I was in at the time".

22.12 Mr Johal submitted that following the improper transfers of £8,040 on 14 July 2017 and of £4,000 on the 31 July 2018 in respect of client money on the Mr W matter, the Respondent purported to rectify the shortfall by sending cheques to Mr W dated 1 February and 31 August 2018 under cover of letters of the same dates, when in fact he did not send the letters or cheques. The Tribunal, it was submitted, should find that the Respondent had not sent the cheques to Mr W as:

- The Respondent was made aware by Mr W when paying him £15,000 in June 2017 and then again in November 2017 that he should return any monies remaining on account to his wife. In the circumstances, there was no need for him to send any cheques to Mr W in prison.

- The Respondent, who had Mr W's authority to deal with Mr C, did not tell Mr C that he had sent the cheques to Mr W. This was despite having the opportunity to do so and despite receiving emails and letters of complaint between March and July 2018 about his failure to account for the money to Mr W;

- The office No.2 account from which the cheques were drawn did not have sufficient monies in it to cover the cheque dated 1 February 2018 nor the cheque dated 31 August 2018 until October 2018;

- Mr W did not receive the letters or cheques dated 1 February 2018 or 31 August 2018 and the prison confirmed that there was no record of those letters having been received;

- The Respondent did not make any enquiries about the whereabouts of the letter dated 1 February 2018 and the cheque of the same date before cancelling the same and reissuing a further cheque;

- The Respondent did not transfer any money from client account for reimbursement of the monies that he had sent by way of the cheques from his office No.2 account.

22.13 Equally, the Tribunal could be satisfied that the Respondent did not send a cheque for £4,000 to Mr Lobbenburg QC as:

- Chambers did not send a fee note or invoice;

- There was no record of the cheque being received by chambers;

- As the fee earner, the Respondent was aware that the fees had not been incurred;

- It was not credible that the Respondent would send a cheque to chambers for a QC's fees on the sole basis of a conversation with another barrister as to outstanding fees;

- Had the Respondent mistakenly sent the cheque to chambers, he did not explain why he did not cancel it immediately upon discovery and why the cheque was not cancelled until 10 August 2018.

22.14 Mr Johal submitted that a solicitor acting with integrity would return monies owed to clients in accordance with their instructions and not delay their return until after the start of an SRA investigation. In purporting to send letters enclosing cheques to Mr W, for the purposes of reimbursement of monies owed to him, the Respondent lacked integrity and failed to maintain the trust the public placed in him. Members of the public would expect solicitors to reimburse monies to their clients as soon as they are no longer needed and not to pretend to reimburse them.

22.15 Further, a solicitor acting with integrity would not purportedly send a cheque for the fees of a barrister to chambers. The Respondent did so, knowing that those fees were not due and knowing that he should have reimbursed those monies to his client Mr W. It appears that the Respondent took this course of action to delay the eventual reimbursement of those monies to Mr W. Members of the public would expect

solicitors to reimburse monies to their clients as soon as they are no longer needed and not to pretend to send monies owed to barristers in order to delay reimbursement.

22.16 Accordingly, the Respondent's conduct in respect of allegations 1.2 and 1.3 was in breach of Principles 2 and 6.

22.17 Mr Johal submitted that it was the Applicant's primary case that the Respondent's conduct had also been dishonest (as to which see below). In the event that the Tribunal did not find that the Respondent's conduct had been dishonest, it was the Applicant's secondary case that the Respondent's conduct as regards allegation 1.3 had been in breach of Principle 8. By sending a cheque to Counsel in these circumstances the Respondent 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 sending the cheque to chambers when those fees were not due. A solicitor exercising proper governance and acting in accordance with risk management principles would not send a cheque for £4,000 for a barristers fees to chambers without receiving a fee note or other notification of fees owed from chambers. They would ensure that they contacted the clerk to chambers to enquire about outstanding fees owed before sending a £4,000 cheque, albeit from office account as ultimately Mr W, his client was responsible for those fees.

22.18 Mr Johal submitted that the Respondent's conduct was dishonest. As to his actual knowledge:

- The Respondent knew that he should have reimbursed Mr W at the end of 2017 when his appeal had been concluded, and that he had been instructed to pay any monies to Mr W's wife.

- He knew that Mr C was chasing for the balance of the monies to be paid;

- He knew that he had made improper use of Mr W's monies in 2017 and that he had insufficient monies to reimburse Mr W;

- He sought to delay the reimbursement of monies to Mr W by purporting to send cheques to him in prison and to Mr Lobbenburg QC for fees, in the knowledge that no fees were due and that he had not sent a cheque for fees to chambers;

- The Respondent knew that if he told Mr C that he had sent cheques to Mr W, that Mr W would set the record straight;

- The Respondent knew that it if he posted the cheques to the Mr W ledger it would give the appearance that the shortage had been rectified;

22.19 It was noteworthy that once the matter was raised with the Respondent by the FI Officer, he knew that he needed to reimburse Mr W and did so within a few days.

22.20 Ordinary and decent people would consider that such conduct was dishonest.

The Respondent's Case

22.21 In his interview, the Respondent explained that he had sent the cheques to both Mr W and chambers. He had misunderstood the position as regards fees owed to counsel. He cancelled the cheque to counsel when it was returned to him. It was at that point that he realised that the cheque sent to Mr W on 1 February had not been cashed. He then wrote a new cheque which he sent to Mr W with a covering letter explaining the error as regards the fees for counsel and enclosing a cheque in the sum of £9,490.65.

22.22 That position was repeated in the letter of representations sent to the Applicant on the Respondent's behalf.

22.23 In his email of 30 July 2020, the Respondent stated: "I did send cheques to Mr W at the Prison to refund the unused money he had provided on account, I accept that I should have noticed more quickly that those cheques had not been cashed, I did not deal with the refund in accordance with the instructions of Mr C (or treat his comments as a complaint) due to the fact that he was not my Client, and I did not have written authority from Mr W to do so."

The Tribunal's Findings

22.24 The Tribunal did not accept that the Respondent had sent a cheque to chambers for the fees of Mr Lobbenburg QC. It was not credible that the Respondent would have sent a cheque to chambers in the sum of £4,000 following a conversation with junior counsel, without being in receipt of a fee note. Further, as the fee earner on the case, the Respondent was aware that work to that value had not been undertaken by counsel and that the appeal had been abandoned. The Tribunal noted that the Respondent had no evidence that a cheque had been sent, and that chambers had no evidence of the receipt or return of the cheque. Similarly the Tribunal did not accept that the Respondent had sent cheques to the client as purported. The Tribunal noted that the client's instructions as regards the return of outstanding monies to his wife had been clear. The Respondent had not, as instructed, returned the monies to Mr W's wife. Nor had he informed Mr C, who was chasing for the outstanding monies, that a cheque had already been sent to Mr W in prison. The prison had confirmed that had any letters been received, they would have been recorded in line with the prison's policy. Further, the Respondent did not have sufficient funds in the office No.2 account from which the cheques had been drawn, to honour the cheques had they been presented.

22.25 The Tribunal found that the Respondent had deliberately delayed in returning the monies to Mr W so that he could use those monies to stabilise the Firm's precarious financial position. He had purported to send cheques to the client and to counsel to facilitate the improper use of the monies. That such conduct failed to maintain the trust the public placed in him and in the profession in breach of Principle 6 was clear. It was also clear that the Respondent's had acted without integrity in breach of Principle 2. No solicitor acting with integrity would make it appear in the Firm's financial records that payments had been made to clients and others so as to then use those monies for the benefit of the Firm. The Respondent had knowingly and deliberately conduct himself in this was so as to improperly transfer and use client monies. Ordinary and decent people would find such conduct to be dishonest.

22.26 Accordingly, the Tribunal found allegations 1.2 and 1.3 proved on the balance of probabilities, including that the Respondent's conduct had been dishonest.

22.27 Having made a finding of dishonesty as regards allegation 1.3, the Tribunal did not consider whether the Respondent's conduct was in breach of Principle 8. To the extent that such a breach was alleged, it was found not proved.

23. **Allegation 1.4 – From April 2017 the Respondent failed to keep proper and accurate accounts records in breach of Rule 29.1 and 29.11 of the Accounts Rules and Principle 8 of the Principles.**

The Applicant's Case

23.1 The FIR recorded that the Firm's books of account were not accurate, and that Respondent had not carried out client account reconciliations. The Respondent had a manual accounting system and used Excel spreadsheets to create client ledgers, cashbooks, the client matter list and reconciliations. The most recent complete client bank account reconciliation that the Respondent was able to produce was dated March 2017 although he claimed that his accounts had been complete and up to date.

23.2 According to the Respondent, in April 2018 the office experienced a power cut whilst he was trying to back up the data to the server and this "fried" his spreadsheets which contained the client ledgers, cashbook, client matter list and reconciliations. As a result, the Respondent lost all data from April 2017 to 2018 for his accounts. He had tried to reconstruct the accounts but in September/October 2018 had been told the data could not be recovered.

23.3 As at the date of the FIR, the Respondent had not provided the FI Officer with any additional up to date accounts records, other than a printout of a spreadsheet showing his client liabilities (which related to 5 client matters) as £712.00 as at 30 September 2018. The Respondent was unable to provide any supporting documentation in respect of the information on the spreadsheet and was unable to explain the difference of £322.60 between the client liabilities and the client bank account balance.

23.4 The ledgers for the client matters identified in allegation 1.1 above were not accurate. The W ledger was inaccurate because amongst other things, it showed a cheque being issued from office account when the bank statements showed that it was issued from the client account. It also showed a transfer from client to office account was made on the 1 February 2018 when again the bank statements did not show the transfer taking place. The ledger did not show any transactions having taken place after 31 August 2018 when the ledger that had been recreated showed that there were a further three transactions in November 2018.

23.5 Similarly, the H ledger did not show any transactions taking place after 25 October 2017 and the M ledger did not show any transactions having taken place after 17 March 2017 although there were transactions up until August 2017. The Respondent agreed the reconstructed ledgers were accurate although he disputed that the shortage in M was not rectified by the Firm's invoice of £6,000 on the 24 April 2017.

23.6 The Respondent was required by Rule 29.1 to keep accounts records properly written up at all times. The Respondent's ledgers were incomplete as they did not show all his dealings with client money and office money relating to client matters. Further they contained inaccurate entries showing that cheques had been drawn from office account

23.7 The only complete reconciliation provided by the Respondent was dated April 2017. Although the data loss occurred in April 2018, the Respondent should have carried out accounts reconciliations every 5 weeks in accordance with Rule 29.12.

23.8 In failing to keep his accounts properly written up, the Respondent had 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.

The Respondent's Case

23.9 In his interview, the Respondent accepted that records had not been kept up to date in breach of Rules 29.1. The Respondent stated that he had been conducting client account reconciliations but that they had got lost, and that since then he had not been doing so.

23.10 As regards Principle 8, the Respondent accepted that there had been a "blip", but that it had not been "disastrous".

The Tribunal's Findings

23.11 The Tribunal found that the Respondent had failed to comply with Rules 29.1 and 29.11 as alleged. The admission made by the Respondent in his interview was properly made.

23.12 The Tribunal found that in breaching Rules 29.1 and 29.11, the Respondent had also breached Principle 8; he had not carried out his role in the business in accordance with proper governance and sound financial and risk management principles.

23.13 Accordingly, the Tribunal found allegation 1.4 proved on the balance of probabilities.

Previous Disciplinary Matters

24. None.

Mitigation

25. None.

Sanction

26. 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.

27. The Respondent's motivation for his conduct was to ensure that he was able to pay for the Firm's liabilities (including taking drawings for himself) whilst ensuring that the Firm did not exceed its overdraft limit. The timing of the improper payments matched those times when the Respondent needed an injection of cash into the office account. It was clear from that timing that the Respondent's actions were planned. He had breached the trust placed in him by his clients to operate proper stewardship of their monies. He was an experienced solicitor who was solely responsible for his conduct. The Tribunal assessed the Respondent's culpability as high.

28. The Respondent's conduct had caused harm to his clients. Whilst he had made good the shortage, he caused Mr W to have to wait for longer than necessary to be reimbursed with monies that were due to him. Further, the Respondent had caused significant harm to the reputation of the profession. As was stated by Coulson J in SRA v Sharma [2010] EWHC 2022 (Admin):

> "34. There is harm to the public every time that a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

29. The Tribunal assessed the harm caused by the Respondent's conduct as significant.

30. The Respondent's conduct was aggravated by his proven dishonesty, which he knew was in material breach of his obligation to protect the public and maintain confidence in the profession. His misconduct was deliberate, calculated, repeated and had continued over a significant period of time. He had tried to conceal his wrongdoing by entries on client ledgers and the fabrication of invoices.

31. In mitigation, the Respondent had made good the shortage on client account, and had replaced some of the monies prior to the Applicant's investigation. He had made admissions to the Accounts Rules breaches during his interview with the FI Officer.

32. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

33. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll."

34. The Tribunal found that the only appropriate and proportionate sanction, in order to protect the public, and maintain public confidence in the integrity of the profession and the provision of legal services, was to order that the Respondent be struck off the Roll.

Costs

35. Mr Johal applied for costs in the sum of £18,794.12. This sum took into account a reduction for the shortened hearing time. The Respondent had not provided any evidence as regards his means. In his email of 30 July 2020, the Respondent explained that he did not own property, was living on a "hand to mouth" basis, and that his only income was from his employment. Further, he had no money in the bank and no investments.

36. The Tribunal considered the costs schedule with care. It determined that the costs claimed were reasonable and proportionate to the nature of the case. The Tribunal did not consider that there should be any further reduction to the costs claimed and ordered that the Respondent pay the costs claimed in full.

Statement of Full Order

37. The Tribunal Ordered that the Respondent, CHRISTOPHER JOHN BENTLEY, 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 £18,794.12.

Dated this 27th day of August 2020
On behalf of the Tribunal

P. Jones
Chair