

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12061-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

SARAH LESLEY WATSON

Respondent

Before:

Mr S. Tinkler (in the chair)

Mr P. S. L. Housego

Mrs C. Valentine

Date of Hearing: 30 June-3 July 2020

Appearances

Andrew Bullock barrister of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent represented herself.

JUDGMENT

Allegations

1. The allegations made by the Applicant against the Respondent were set out in a Rule 12 Statement dated 5 March 2020 and were that while in practice as sole director of Watson Legal Limited (“the Firm”):

Incorrect/improper transfers and payments from client account and retention of professional disbursements in office account.

- 1.1 She failed to properly operate client and office account in accordance with the SRA Accounts Rules 2011 (“SAR”) in that:
 - 1.1.1 Between January 2017 and April 2019 she made 71 incorrect/improper transfers from client to office account on 31 client matters resulting in debit balances in client account and credit balances in office account;
 - 1.1.2 On 30 November 2018 she withdrew £1,053.98 from client account to pay staff wages from unallocated ledger 1;
 - 1.1.3 On 18 January 2019 she made a payment from client account of £14,000 to HMRC on the matter of Mr VDE (6) in excess of monies held for that client, resulting in a debit balance of £6,161.68;
 - 1.1.4 Between 1 March 2017 and 17 May 2018, she caused and allowed the retention in the Firm’s office bank account of monies received on five client matters in respect of professional disbursements totalling £4,246.38 for periods in excess of the time limits prescribed by the 2011 Accounts Rules;
 - 1.1.5 Between 30 November 2017 and 30 April 2019 the Respondent caused a client account cash shortage to exist in the sum of at least £52,868.02;

She thereby breached any or all of the following:

- 1.1.6 SAR 1.2 (a), 1.2 (c), 14.1, 17.1 (b), 17.2, 17.7, 20.3, 20.06 and 20.9 of the SRA Accounts Rules 2011;
- 1.1.7 Principles 2, 6 and 10 of the SRA Principles 2011 (“the Principles”).

Accounting systems and records

- 1.2 Between at least January 2017 to 30 April 2019, she failed to maintain proper accounting systems, and proper internal controls over those systems and failed to keep proper accounting records to show accurately the position with regard to the money held for each client.

She therefore breached any or all of the following;

- 1.2.1 Principles 7 and 8 of the Principles;
- 1.2.2 Rules 1.2 (e) 1.2 (f) 29.1, 29.2, 29.4, 29.12 and 29.13 SAR.

Failure to remedy a shortfall on client account

- 1.3 She failed to remedy on discovery the shortfall on the Firm's client account arising from the breaches of the SAR promptly or at all.

She therefore breached any or all of the following:

- 1.3.1 Principle 2 and 6 of the Principles;
1.3.2 Rule 7.1 of the 2011 Accounts Rules.

Serious financial difficulty

- 1.4 She failed to notify the SRA that the Firm was in serious financial difficulty in that:

- between January 2018 and 12 September 2019 98 direct debits were returned unpaid;
- between 14 November 2017 and 30 April 2019 three County Court Judgments were made against the firm; and two payment plans were entered into with HMRC for arrears of VAT and PAYE in the total sum of £27,944.73; and
- There were arrears of rent in the sum of £4,000.00 and in so doing:

1.4.1 breached Principle 7 of the Principles; and

1.4.2 failed to achieve Outcomes 7.4 and 10.03 of the SRA Code of Conduct 2011.

Dishonesty

2. In addition, allegations 1.1.1 and 1.1.2 were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but it was not an essential ingredient in proving the allegations.

Documents

Applicant

- Application and Rule 5 Statement with exhibit "SEJ1" dated 5 March 2020
- Statement of Costs dated 9 April and 26 June 2020

Respondent

- Response to Allegations dated 2 June 2020
- Witness Statement of Sarah Watson dated 29 June 2020
- Bank Screenshot dated 1 July 2020
- Letter from GP dated 24 June 2020
- Character References x 4

- Financial Statement dated 26 June 2020

Factual Background

3. The Respondent, who was born in 1984, was a solicitor having been admitted to the Roll on 1 May 2009. She was the sole owner and director of the Firm based in Chelmsford, Essex. The Firm became a limited company on 1 October 2017. Prior to this, from 23 August 2013 to 30 September 2017, the Respondent traded under the name of Watson Legal as a sole practitioner.
4. The Respondent was assisted by two unadmitted members of staff and she was the Compliance Officer for Legal Practice (COLP), Compliance Officer for Finance and Administration (COFA) and Money Laundering Reporting Officer (MLRO).
5. The conduct in this matter came to the Applicant's attention due to a qualified accountant's report dated 28 September 2018, covering the period 1 October 2016 to 31 March 2018.
6. The Report was qualified for a number of reasons which included issues with the client bank account reconciliations and a substantial amount of reversals on the ledgers. There were also "numerous" occasions where funds had been transferred from client account to office account before a bill was issued to the client.
7. The Firm's previous Accountant's Report dated 30 May 2017, had also been qualified. This covered the period 1 October 2015 to 30 September 2016. It was qualified due to issues with client bank account reconciliations and a number of bookkeeping errors which had caused office credit balances and client debit balances. The same person, RB had completed both reports.
8. Ms Garrard, a Forensic Investigation Officer ("FIO") commenced a Forensic Investigation of the firm on 18 February 2019 and her inspection culminated in a report dated 26 April 2019. ("the First FI report").
9. In summary this report revealed a number of account rule breaches and financial stability issues. These matters were considered to be serious. As at 18 February 2019, the Firm had a minimum cash shortage of £27,191.26. This was partly rectified leaving a minimum cash shortage of £13,958.86 as at 26 April 2019.
10. An intervention report dated 20 May 2019 was prepared by an SRA Investigation Officer (IO) and disclosed to the Respondent. In the response the Respondent requested that the panel not exercise its powers of intervention.
11. The Respondent accepted there had been breaches of the Firm's regulatory obligations but denied dishonesty. The Respondent set out that the errors had been as a result of honest mistakes in process caused by the operation of her accounting software ["P"] which was cumbersome and had since been replaced, and, a genuinely held belief that the Firm was entitled to transfer the monies rather than an intent to use client monies for her own benefit knowing that she was not entitled to use it. Confirmation was given that the client account shortage had been replaced.

12. On 12 June 2019 the Adjudication Panel decided to stand the matter over to 1 August 2019 to enable her to demonstrate that she had rectified the issues identified in the forensic investigation report and to enable her to finalise the accounts data transition to LEAP (her new accounts package), to reconcile her accounts for the Firm and to demonstrate compliance. After 1 August 2019 a decision would be taken on whether a second report was required.
13. A further Forensic Investigation commenced at the Firm on 5 September 2019 which resulted in the Second FI report dated 17 October 2019. The books of account were still not in compliance with the SAR and as at 5 September 2019 there was a cash shortage of £25,676.76. This had been caused by incorrect client to office bank transfers.
14. The incorrect transfers had occurred between 30 November 2017 and 30 April 2019, prior to the date of the intervention report. As in the First FI report, the Respondent maintained that the issues with the accounts were genuine errors and caused predominately by problems with “P” the accounting software package the Respondent had used at the time the errors occurred.
15. The shortage was partially rectified by a payment of £3,600.76, reducing the shortage to £22,076.00. As at 17 October 2019, the Respondent confirmed that she was not in a position to replace the shortage immediately but would replace it as soon as she was able. There continued to be financial stability issues. The Respondent gave the SRA an update of the replacement of the shortage in an email dated 13 December 2019 in which she said she had been able to arrange a loan £15,000 which clear the majority of the deficit and she confirmed that she had also returned £2,001.72.
16. In the Respondent’s response to a notice recommending referral to the Tribunal in relation to the Second FI Report the Respondent stated that the balance of the shortage had been reduced to £18,853.30.
17. The Respondent said that when the Firm became a limited company in October 2017, the Respondent changed her accounting software to P. It took up until January 2018 to get P up and running but that was when things started to “really go wrong” with the accounts. In November 2018 the Respondent decided to change her accounts software to LEAP and this system was up and running around February 2019 and the Respondent was still in the process of transferring accounts data from P to LEAP in April 2019.
18. The Respondent held three bank accounts at Metro Bank. These were Client Account, Office Account and Office Reserve. Cheque and manual CHAPS payments on all three bank accounts could only be authorised by the signature of the Respondent. Additionally, the Firm operated online banking for all three bank accounts. This could only be accessed and operated by the Respondent. None of the Firm’s bank accounts had an overdraft facility.

Witnesses

19. The following gave evidence:
 - Natalie Garrard (FIO)
 - The Respondent
 - Cheryl Sharp

- Mark Birchall
20. 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

21. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

22. **Incorrect/improper transfers and payments from client account and retention of professional disbursements in office account.**

1.1 She failed to properly operate client and office account in accordance with the SRA Accounts Rules 2011 ("SAR") in that:

1.1.1 Between January 2017 and April 2019 she made 71 incorrect/improper transfers from client to office account on 31 client matters resulting in debit balances in client account and credit balances in office account;

1.1.2 On 30 November 2018 she withdrew £1,053.98 from client account to pay staff wages from unallocated ledger 1;

1.1.3 On 18 January 2019 she made a payment from client account of £14,000 to HMRC on the matter of Mr VDE (6) in excess of monies held for that client, resulting in a debit balance of £6,161.68;

1.1.4 Between 1 March 2017 and 17 May 2018, she caused and allowed the retention in the Firm's office bank account of monies received on five client matters in respect of professional disbursements totalling £4,246.38 for periods in excess of the time limits prescribed by the 2011 Accounts Rules;

1.1.5 Between 30 November 2017 and 30 April 2019 the Respondent caused a client account cash shortage to exist in the sum of at least £52,868.02.

She thereby breached any or all of the following:

1.1.6 SAR 1.2 (a), 1.2 (c), 14.1, 17.1 (b), 17.2, 17.7, 20.3, 20.06 and 20.9 of the SRA Accounts Rules 2011;

1.1.7 Principles 2, 6 and 10 of the SRA Principles 2011 ("the Principles").

The Applicant's Case

[Note: the matters in Allegation 1.1.1 – 1.1.3 were all identified in the First FI Report]

Allegation 1.1.1 - Incorrect Transfers - Office credits and client debit balances

22.1 The First FI report exemplified three client files where incorrect client to office transfers had been made. They were:

AG PLC matter ADS001.001 shortage £5,206.28

22.2 The matter was opened on 14 December 2015 and related to a contract dispute between AG PLC and its IT provider. The Respondent provided the FIO with two ledgers in respect of this matter. The first client ledger covered the period 9 December 2016 to 11 July 2017. This ledger was created using the Respondent's previous accounts package AIB. The second client ledger covered the period 27 June 2018 to 29 January 2019. This ledger was created using the P software.

22.3 The FIO reviewed the transactions detailed on the ledgers and considered them along with the Firm's bank statements, bills and documents held on the client file. This showed that the client ledgers were inaccurate. Due to the discrepancies the ledgers provided by the Respondent were unreliable. The FIO reconstructed the client ledger showing only the transactions that could be verified. This was done using information from the client file and bank statements.

22.4 This ledger showed that there were seven incorrect client to office transfers made between 25 January 2017 and 18 February 2019.

22.5 The four transfers listed below, which totalled £2,600, were made from client to office disbursement: account, were for round sums and did not relate to the amount of any specific bill:

- 25 January 2017 - £250
- 10 July 2018 - £600
- 16 July 2018 -£750
- 17 July 2018 - £1,000.

22.6 The transfers that occurred on 16 and 17 July 2018 caused a client debit balance because at the time of the transfer, the client only had 28p on account. These transfers (represented as office credit balances) were subsequently rectified by the issuing of bills.

22.7 On 29 June 2018 the Firm transferred £903 to office account for this matter, when there were no funds held for the client. This was for payment of the Firm's bill dated 27 June 2018 and caused a client debit balance of £903. This was rectified on 10 July 2018, by the receipt of £1,503.28 from the client.

22.8 On 1 August 2018 the Firm transferred £2,206.56 from client to office account in respect of its bill dated 19 July 2018, which showed an outstanding balance due from the client of £2,206.56. However, the full amount of this bill had already been paid by

way of the transfers made on 10 July (£600), 16 July (£750) and 17 July 2018 (£1,000) and a client to office transfer of £456.56 which was made on 19 July 2018. This transfer was therefore a duplicate and caused a client debit balance.

- 22.9 On 22 November 2018 the client made a payment of £3,000 into client account. This payment was for counsel, PS's fees, in the sum of £3,000. This disbursement fee was shown on the Firm's bill dated 26 November 2018. The money to pay counsel's fees was then transferred from client to office account on 30 November 2019. However, it was not paid out to counsel as confirmed by PS's clerk of H Chambers.
- 22.10 This transfer caused a shortage on client account of £5,206.28 (£3,000 + £2,206.28). On 18 and 19 April 2019 the Respondent made a payment to H Chambers totalling £3,000 from the office bank account. The shortage on client account was therefore reduced to £2,206.28.
- 22.11 The Respondent confirmed in interview that in respect of the transfer of £250 she did not know why this was made for that amount or prior to the bill being issued. The Respondent confirmed that she knew that the bill should be issued prior to payment being taken.
- 22.12 In respect of the client to office transfer of £903 the Respondent did not know why that had been made and understood that it was a breach of Solicitors Accounts Rules as it caused a client debit balance.
- 22.13 In respect of the client to office account transfers of £600, £750 and £1,000 the Respondent stated that the transfers had been made based on the work in progress and in anticipation of a bill being issued.
- 22.14 The Respondent stated that the three transfers were errors which were caused by the accounts system. She stated that due to how the accounts system worked she "had no choice but to often move the money from the bank and then I'd have to go and do the actual entries." She said that she would often create the bill after the transactions had occurred at the bank.
- 22.15 The Respondent said that she did not know why the three transfers had been round sum amounts and she did not know why the client to office transfer of £2,206.56 had been made.

Mr V D E matter 100024.002 shortage of £5.542 94

- 22.16 The FIO reconstructed the client ledger for this matter using the information from the client file, bank statements and bills. She noted that between the period 15 December 2017 and 18 February 2019 eleven incorrect client to office transfers occurred. Nine of the eleven transfers, totalling £6,886 did not relate to any specific bill or disbursement. These transfers were for round sum amounts.
- 29 December 2017 - £1,000
 - 31 August 2018 - £500
 - 11 October 2018 - £480 and £96
 - 15 October 2018 - £576
 - 19 October 2018 - £500

- 31 October 2018 - £864
- 1 November 2018 - £870
- 31 December 2018 - £2,000

- 22.17 On 25 May 2018 the Firm issued a bill in the sum of £1,023.67. On 31 May 2018 the Firm transferred £1,023.67 from client account to office account which caused a client debit balance because at the time of the transfer the client had a debit balance of 20p. The Firm did not hold a credit balance on any other matters for this client at this time.
- 22.18 On 14 September 2018 the Firm issued a bill, which showed a balance due from the client of £615.17. On 28 September 2018 the Firm transferred £615.17 from client to office account. However, at the time of the transfer, there was only a debit office balance held of £99.43. This transfer caused an office credit balance of £515.74.
- 22.19 The Respondent explained in interview that due to her issues with the P software, she made client to office transfers in respect of work carried out for the client, prior to issuing a bill, because the P accounts package had been difficult to use. The Respondent said that she would look at the WIP on the matter listing and consider whether the matter could be billed. The Respondent would move the money across from office to client account against “what would be a bill, but I hadn’t physically generated the bill”.
- 22.20 The Respondent partially rectified the shortage by raising bills and at the time of the First Report the shortage in respect of this matter stood at £1,625.54.

Ms R W 100162.001

- 22.21 This matter was opened on 13 December 2018 and related to a contested probate matter.
- 22.22 Ms Garrard, the FIO was unable to locate a client care letter on the file and the Respondent was unable to locate one. An attendance note dated 13 December 2018, was located on the file which stated, “Advised fees initially £5000 but costs could easily be £40,000 if went to court. Can pay monthly e.g. £500 per month”.
- 22.23 On 14 December 2018 the client paid £5,000 into client account. The client ledger showed two improper client to office transfers made on 14 December 2018 in the sum of £1,000 and 17 February 2019 in the sum of £4,000. The sums had been transferred without a bill or written notification as to costs.
- 22.24 As of 18 February 2019 no bills had been issued and the shortage of £4,980 (less £20 court fee paid from the Firm’s office account on 21 December 2018) remained outstanding.
- 22.25 The Respondent stated the £5,000 transferred was an agreed fee. She explained that she was not sure she had dealt with it in the correct way, “...I don’t know whether I’d necessarily put the correct wording in, in the client care letter...to be able to cover that eventuality”. The Respondent later said that “for clarification, I confirm due to the lack of access to our data on P software I could not be certain whether a client care letter had been sent to RW. As such as a precautionary measure a further client care letter was sent from LEAP”.

22.26 On 3 April 2019 the Respondent provided the FIO with a copy bill dated 14 December 2018. The narrative of the bill stated, “to our professional charges” and showed a nil balance due.

Second FI Report

22.27 A review of the client matter list for 5 September 2019 showed that 29 client matters had either an office credit balance, client debit balance or both. A review of the client matter ledgers for these matters and the Firm’s client and office bank account statements showed that 51 incorrect client to office bank account transfers had taken place. The transfers had taken place between 30 November 2017 and 30 April 2019, prior to the transfer of the accounts from the P software to the LEAP software and prior to the Intervention Report.

22.28 The transfers caused a shortage of £25,676.76. They all related to transfers that had been actioned before a bill of costs had been issued and were for round sum amounts or for amounts in excess of the amount required in respect of bills of costs issued. The excess remained in the office bank account and were not returned to the client bank account.

22.29 Where transfers resulted in client debit balances, the amount of the transfers was in excess of the funds held in the client bank account and the circumstances of the transfers were the same as those exemplified in the First FI Report. No further matters were therefore exemplified in the Second FI Report.

22.30 As in the First FI Report the Respondent maintained that the issues with the accounts were genuine errors and predominately caused by problems with the P software which she had used at the time the errors occurred.

22.31 The Respondent said she was not in a position to replace the shortage immediately but would endeavour to replace it as soon as she was able.

Allegation 1.1.2 - Payment of wages from client account

22.32 On 30 November 2018 the following payments were made from the office bank account:

- £860.25 to Miss F (a member of staff)
- £1,713.60 in respect of the office rent.
- £1,900 to the Respondent.

22.33 Following these payments, the balance of the office account was £392.62 and there were insufficient funds to pay Mrs T, the Firm’s legal secretary.

22.34 On 30 November 2018, Mrs T was paid her salary of £1,053.98 from the client bank account. The payment reference on the client account bank statement was “Outward Faster Payment L T”.

22.35 The payment was corroborated by the bank statement for the Firm’s client bank account.

22.36 The client ledger ('Unallocated 1 ledger') showed a client debit balance of £1,053.98. The funds were not replaced.

22.37 When asked about this payment from client account in interview the Respondent stated: "Yes, that was a complete error".

Allegation 1.1.3 - Payment made from client account to HMRC in excess of monies held on client account.

Mr V D E matter 100024.006

22.38 This matter related to VDE's purchase of a residential property in which completion took place on 20 December 2018 and a copy of the client ledger in respect of this matter was provided to the FIO by the Respondent.

22.39 On 18 January 2019, a payment of £14,000 was made from the client bank account to HMRC in respect of stamp duty. However, at the time of this transaction the matter had a client balance of £7,838.32 and the transaction caused a client debit balance of £6,161.68 which as at the date of the First FI Report had not been replaced.

22.40 Ms Garrard reviewed the client ledgers for all of this client's matters and discovered that none of these matters had funds on account at the time of this transaction or as at 18 February 2019.

22.41 In an email to the Ms Garrard dated 24 April 2019 the Respondent stated that this client debit balance had occurred due to "Inherent issues with [P software]. Money had been transferred from client to office thinking sufficient was available leading to the financial file being short, which then in turn meant the maths did not add up on matter 6 when funds were transferred between matters".

Allegation 1.1.4 - Unpaid professional disbursements

22.42 This related to the following matters:

- A E G - £961.38
- Mr and Mrs A - £780
- Mr F and Ms G - £2,505

22.43 On these matters disbursements were billed to the clients and the associated monies transferred from client account to office account. Once transferred, they were not paid out but were retained and used by the Firm to meet running costs.

AEG

22.44 The following disbursements were incurred by the client:

- Counsel's fees in the sum of £720 due to EA Law Chambers
- Process server's fees in the sum of £241,38, due to KSM Investigations

- 22.45 The Firm issued a bill dated 30 April 2018. This bill included the above disbursements and showed an outstanding balance of £1,453.70 to be paid by the client. This balance was paid in full by the client on 17 May 2018 by a client to office transfer.
- 22.46 On 17 May 2018 a further invoice was issued by EA Law Chambers in the sum of £1,800 in respect of Counsel's fees and a bill was issued by the Firm dated 25 May 2018 for £4,278.44. This bill included the disbursement due to EA Law Chambers in the sum of £1,800. The bill showed an outstanding balance of £2,478.44 to be paid by the client.
- 22.47 The client ledger showed that a sum of £1,800 had already been paid into client account on 16 May 2018 'on account of costs'.
- 22.48 On 14 June 2018 £3,932.14 was transferred from client account to office account. This left an outstanding balance to be paid on this bill by the client in the sum of £346.30. This balance was paid by the client on 18 June 2018 into client account and then transferred to office.
- 22.49 On 6 March 2019, the FIO contacted Mr T, clerk of EA Law Chambers who confirmed the invoices had not been paid. Mr T confirmed that between the period 4 June 2018 and 15 February 2019 he had sent four letters to the Respondent, one email and telephoned on eight occasions to request payment of the outstanding invoices.
- 22.50 On 15 February 2019, the Respondent telephoned Mr T and agreed that she would pay the sum owing in four instalments of £630, the first to be made at the end of February 2019, however this payment was not made. On 1 March 2019 the Respondent sent an email to Mr T which stated that she was "embarrassed by the situation and that as soon as her (other) clients paid, she would make payment".
- 22.51 On 6 March 2019 the FIO telephoned KSM Investigations, who confirmed their invoice dated 26 April 2018 remained unpaid.

Mr and Mrs A

- 22.52 A disbursement in the sum of £780 was incurred by the client, for payment to KW Accountants. A bill was issued to the client on 25 May 2018, which included the disbursement to KW Accountants and the Firm's professional costs.
- 22.53 The bill showed a total balance due from the client in the sum of £2,538.66. A copy of the invoice from KW Accountants dated 10 May 2018 accompanied the bill. On 5 June 2018 the client paid the Firm's bill in full and a payment of £2,538.66 was paid into client account. This payment was then transferred to office on 8 June 2018.
- 22.54 On 6 March 2019 the FIO contacted KW Accountants who confirmed their invoice dated 10 May 2018 remained outstanding.

Mr F and Ms G

- 22.55 A disbursement in the sum of £2,505 was incurred by the client in respect of counsel's fees. An invoice for this amount was issued by H Chambers and is dated 1 March 2017.

- 22.56 On 22 June 2016 the Firm issued a bill which showed a balance due from the client in the sum of £5,973.64. This sum included counsel's fees for a different sum of £2,805. The invoice issued by H Chambers was for £300 less than the amount shown on the Firm's bill, because between the period 22 June 2016 and 1 March 2017 the Firm made two payments to H Chambers totalling £300.
- 22.57 On 4 July 2017 the client paid £5,973.64 into client account representing payment of the bill in full. On 7 July 2017 this sum was transferred from client account to office account.
- 22.58 On 7 March 2019 the FIO contacted H Chambers and it was confirmed that between the period 15 September 2016 and 14 January 2019 the Firm had made ten payments totalling £1,749.99 leaving an outstanding balance due of £705.
- 22.59 In respect of the unpaid disbursements on the three matters of AEG, Mrs and Mrs A and Mr F and Ms G, the Respondent said that, "...there are a number of disbursements whereby the client has paid the bill. I've moved the money into the office account, with the intention of paying Counsel ... money has then come out of the office account against the office, basically for office bills of running the business, which has then absorbed the money that relates to those disbursements".
- 22.60 The Respondent also stated that she was not aware that the accounts rules specified that disbursements had to be paid within two working days, she thought it was 14 days.
- 22.61 The Respondent explained that she was paying off the disbursements through payment plans. This had reduced the client shortage in respect of unpaid professional disbursements to £2,911.38 as at the date of the FIR.

Allegation 1.1.5 - Client account cash shortage in the sum of at least £52,868.02

- 22.62 At the time of the First FI Report it was said that with respect to 22 out of 23 occasions if the transfer of funds had not been made then there would have been insufficient funds in office account to meet the Firm's liabilities for those days.
- 22.63 Also on 11 occasions following receipt of the incorrect transfers, payments were made from the office account in respect of staff wages, rent payments and PPI insurance.
- 22.64 A similar position persisted at the time of the Second FI report and improper transfers were made which enabled the Respondent to pay salary, rent and payments to HMRC: without the improper payments in, the Firm's office account balance would have been in debit and the rent, salary and payments to HMRC could not have been made.
- 22.65 With respect to allegations 1.1 to 1.1.5 it was said that the Respondent's conduct represented the following breaches of the Principles and Solicitors Accounts Rules.
- 22.66 *Breach of Principle 2 of the Principles*
- 22.66.1 The Respondent's actions amounted to a failure to act with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code) in breach of Principle 2 of the SRA Principles. In Wingate v Solicitors Regulation

Authority v Malins [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession. By the Respondent misapplying clients' money she caused a shortage on client account in the sum of at least £52,868.02.

- 22.66.2 The Respondent demonstrated a pattern of behaviour where she would transfer money from client account at times when there was insufficient money in office account to pay the expenditure in running the business. Monies were often transferred in round sum amounts before any bill had been issued and often in excess of the bill eventually issued and often in excess of the monies held for that client. The Respondent had often recognised herself that monies had been transferred in error but failed to correct it. She had marked the transfers with the word error, when she identified them.
- 22.66.3 The Respondent further retained monies in office account that should have been used to pay disbursements, the monies for which having already been paid by the client. Instead the Respondent failed to make the payments and retained the money in office account, and by so doing used the money to pay for office expenses.
- 22.66.4 Clients' monies were also drawn from client account to pay a member of staff her wages and a payment was made out of client account in excess of the money held.
- 22.66.5 The business was struggling financially and these monies that had been incorrectly/improperly transferred or retained in office account were being used to run the business.
- 22.66.6 Although the Respondent blamed the Firm's P software system, for many of these improper transfers and payments there was in fact no excuse for clients' monies being misused.
- 22.66.7 A solicitor of integrity would have ensured that clients' money was safe and not have misapplied it as she did.

22.67 *Breach of Principle 6 of the Principles*

- 22.67.1 The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by misapplying of client monies. The Respondent therefore breached Principle 6.

22.68 *Breach of Principle 10 of the Principles*

- 22.68.1 The conduct alleged also amounted to a breach by the Respondent of failing to protect clients' money. The Respondent therefore breached Principle 10.

22.69 Breaches of the SAR

- 22.69.1 By the Respondent creating debit balances in client account and credit balances in office account she has breached Rules 1.2 (a) and (c), 14.1, 17.1 (b), 17.2, 17.7, 20.3, 20.06 and 20.09 of the Rules.
- 22.69.2 Rule 1.2 (a) requires that a solicitor keep other people's money separate from money belonging to the solicitor or the Firm and Rule 1.2 (c) that the solicitor uses that client's money for that client matter only. The Respondent did not do this as the credit balances showed that client money was being held in office account and debit balances indicated that other clients' money was being used for that transfer.
- 22.69.3 Rule 14.1 provides that client money must be held in client account unless the rules provide to the contrary. The Respondent was transferring monies on account of costs before creating a bill and sending this to the client. Often these would be by way of round sum transfers.
- 22.69.4 Rules 17.2 and 17.7 requires, respectively, a bill of costs to be sent to the client before the costs are taken and that round sum transfers are in breach of the Rules.
- 22.69.5 Rule 20.03 (b) says that office money may only be withdrawn from the office account when it is properly required for the solicitor's costs. The transfers made by the Respondent were premature in that no bill had been created and would often be in excess of the costs finally billed. Further transfers were made when there was insufficient money in the client account to make the transfer creating a debit balance in the account in breach of Rule 20.6 and 20.09.
- 22.69.6 By the Respondent using clients' money to pay for an office expense she had breached Rules 14.1 and 20.03 as client monies must be held in client account and can only be withdrawn for specific purposes relating to that client. Client monies cannot be used to fund office expenses.
- 22.69.7 By the Respondent retaining money to pay disbursements in office account for longer than the Rules permit she breached Rule 17. 1 (b) (ii). This requires that the disbursement must be paid within two days of the money being in office account or transferred back to client account. The disbursement monies were held in office account for longer periods than 2 days. It resulted in client monies being used to pay office expenses.
- 22.69.8 By the Respondent having a shortage in client account she was in breach of Rule 20.9 as client account must not be overdrawn.

The Respondent's Case

Allegation 1.1.1

- 22.70 The Respondent accepted that the Firm would not have been able to settle its liabilities without the transfers taking place but denied that she had been using the client account as a means of propping up the Firm and she submitted that the payment errors were made by simple mistake (from the wrong account) or as a result of a genuine belief that the Firm was entitled to the monies withdrawn. The Respondent said that she never attempted to hide her mistakes.
- 22.71 The Respondent maintained that she had always believed she was entitled to withdraw the monies from client account.
- 22.72 The Respondent said that the Firm's bank statements showed that the Firm had not paid direct debits when there was no money which could be legitimately withdrawn from client account to cover them. The Respondent postulated that had she taken money to which she thought she was not entitled then surely she would have paid all the Firm's outgoings in this way and there would have been no unpaid direct debts.
- 22.73 The Respondent submitted that many small Firms operated in the same way, billing work in progress ("WIP") in order to fund the Firm. The Respondent believed at all times that the money she was transferring was money that the Firm was entitled to receive as they related to WIP accrued on a number of files (albeit she accepted that by transferring money before raising a bill the payments were in breach of the SARs, even if a bill was issued shortly afterwards).
- 22.74 The Respondent pointed out that many of the mistakes were made as a result of the previous accounting package (the P software) which had been antiquated, difficult and cumbersome to use. The Respondent said that the reports generated by the P software accounts package were difficult to interpret and WIP reports proved to be inaccurate and of little help to her. The Respondent commented that even a qualified accountant would have had trouble using this particular accounting package and this was a point which was taken up in the later evidence of Ms Sharp, the Respondent's accountant, who said that the P software was extremely antiquated and unreliable and she believed that it had had an impact on the issues the Respondent had faced. The Respondent pointed out that the FIO had also commented on how hard that system was to use, and on occasion counter-intuitive, as below.
- 22.75 The Respondent pointed to issues raised in Ms Garrard's evidence which supported this view. Ms Garrard had said that she had been shown the P software when she attended at the Firm and had observed that the production of a bill had taken many steps using the P software. Ms Garrard had also noted the potentially confusing quirk of the P software that in reports generated by P debits had shown as credits and credits as debits. Ms Garrard said that the ledgers had been difficult to interpret and that the information had been clearer in the later LEAP software used by the Respondent. Ms Garrard said and that on her second attendance there had been a noticeable change in the accuracy of the records and no further evidence of additional errors or incorrect transfers.

- 22.76 The Respondent said that she had purchased the P software on the basis that it had been approved by the Law Society. Unfortunately, despite the extensive investment in the software it was a disaster from the outset despite the fact that she had tried hard to make it work. The accounts package with the software was not immediately available and the proprietor of P would only allow access to the software once all training had been undertaken which meant there was a period of time where the accounts were unable to be kept up to date.
- 22.77 The Respondent had had very limited guidance on how to use the P software and it became apparent that the P software was far too complex for the Respondent's needs, an issue which was also raised in the evidence of Ms Sharp, and Mr Birchall, the Respondent's business mentor who had experience of working with other law firms. Both Ms Sharp and Mr Birchall stated that the P software was antiquated and difficult to navigate even for those more versed in financial account and management as they were.
- 22.78 The Respondent said that the problems with the P software included WIP not showing correctly and WIP not being allocated against bills already issued therefore creating the risk of billing the same WIP twice. A number of the transfers referred to in the allegations were indeed bills that had been issued on WIP that had already been billed.
- 22.79 The process of preparing bills using the P software had been extremely onerous with each bill taking at least 10 minutes to prepare. LEAP was very much faster. Also, when carrying out reconciliations on the client account the Respondent had assumed, incorrectly, that the P software would generate the three-way reconciliation required by the SARs when in fact the P software generated only two-way reconciliations.
- 22.80 The Respondent maintained that her difficulties with the P accounts system caused the errors on the three exemplified matters, however, she believed that she had been entitled to transfer the monies to office account from client account as she was owed this money for work she had properly carried out on behalf of her clients.
- 22.81 The Respondent accepted that in breach of the SAR she had not first raised a bill before transferring the money from client to office account. The error arose from her misunderstanding of the rules and not from an intention on her part to prevent her clients from having an opportunity to object to the transfer of money or to breach their trust.
- 22.82 The Respondent accepted that she had had the process the wrong way round and that she should first have raised the bill and then transferred the money from client to office account. Her mistake had been a genuine and honest one and she had received no complaints from her clients. Her intention was to obtain money to which she was entitled for the work carried out by the Firm. She made the point that she would have been fully entitled to transfer the money to office account as soon as the bill was raised without needing client approval, or the client to have received the bill. She said that no client was denied a chance to challenge a bill, and that these were bills she was fully entitled to raise and then make an immediate transfer to office account.
- 22.83 The Respondent said that throughout the period the Respondent had had the P software in place she endeavoured to keep a manual record of the accounts so that each month when she transferred funds from client to office account she kept a record of the client

matter to which the transfer related and the invoice number. The Respondent would then prepare the bills a few days later using the spreadsheet she had created.

- 22.84 The Respondent said that when she changed over to the LEAP accounts system was able gain an accurate reflection of the monies held on client account. The Respondent said that she did not employ a legal cashier but that this was something she would now look to do.
- 22.85 The Respondent said that she now had a much better appreciation of the SARs because she had attended a solicitors accounts rules training course in November 2018 and it was as a result of that course that she had recognised the mistakes she had made previously and was sure that she would not repeat them.
- 22.86 The Respondent pointed out that the Applicant had in total identified 71 incorrect transfers for the 28 months from 25 January 2017 to 30 April 2019 which represented on average 2.5 errors a month: this when set within the volume of her work and the timeframe of the FIO's report was not a significant amount and explainable as human error.

Allegation 1.1.2

- 22.87 The Respondent accepted that the payment to Mrs T in the sum of £1,053.98 was made on 30 November 2018 from the client account.
- 22.88 The Respondent recognised that the payment should have been made out of office account and it was taken from client account by mistake due to a manual error utilising the Firm's online banking facility in which she had been making a number of online payments and transfers from office and client accounts at one time.
- 22.89 The Respondent's mistake on this particular transfer occurred when she had not switched out of the client account before making the payment of Mrs T's wages. This had been a one-off mistake and was not repeated.
- 22.90 A payment to staff described as such in the statement would be immediately apparent to anybody investigating the accounts of the Firm and indeed she herself had drawn attention to the error by writing the word 'breach' next to the mistaken transfer on the print out of the statement.
- 22.91 The Respondent maintained that the sheer obviousness of the payment to a staff member suggested that a mistake was the most likely scenario in the circumstances and not the result of the Respondent attempting to take money to meet a liability which she could not otherwise have met. It was also the only time there had been such a payment.
- 22.92 In evidence the Respondent accepted that the error had not been rectified until after the FIO's visit and therefore she had taken no immediate corrective action when she became aware of the mistake.

- 22.93 The Respondent accepted that she had not reduced the amount of the salary she subsequently paid herself during this tranche of transfers to replace the shortfall and accepted that on reflection she should have done so and taken more definitive action to ensure the client account was not left short.
- 22.94 With hindsight the Respondent accepted that this was a failing on her part.

Allegation 1.1.3

- 22.95 The Respondent accepted that she had made an incorrect payment to HMRC with respect to the stamp duty land tax and that this had given rise to a debit balance on the client account, however, this had occurred in a confusing time when the Firm was transferring from the P software to LEAP and she had held the genuine belief that there had been sufficient money in the client account to meet this payment. She felt she had an obligation to make the payment of SDLT, both to the client and to HMRC.

Allegation 1.1.4

- 22.96 The Respondent accepted that disbursements were not paid and were unintentionally used against the Firm's running costs. The Respondent accepted that the failure to pay disbursements was a breach of the SARs. At that time the Respondent had misunderstood the rules and had believed that disbursements could be paid within 2 weeks when in fact they were required to be paid within 2 days.
- 22.97 With respect to the allegations set out in 1.1.1 to 1.1.5 the Respondent broadly accepted that she had breached the SARs but that the breaches had been largely unintentional. However, the Respondent denied that she had breached Rule 1.2 (a) of the SARs and contended that the money had been the Firm's money for work it had legitimately carried out on behalf of its clients.
- 22.98 The Respondent denied that she acted without integrity in breach of Principle 2 of the Principles and maintained that she had simply made mistakes which any professional person could have made from time to time. The Respondent submitted that many of the breaches were as a result of simple human error, compounded by the difficulties presented by the accounts package she then had, and therefore should not be found to amount to a lack of integrity. The Respondent pointed to the assistance and co-operation she gave to the SRA during the investigation as evidence of her integrity.
- 22.99 The Respondent denied that she had breached Principle 6 of the Principles. The Respondent considered that she had been entitled to the monies she had transferred and her actions were not such as to damage the confidence the public would have in her or in the provision of legal services generally. Indeed, no client had complained that she had taken money in excess of a bill subsequently rendered.
- 22.100 The Respondent accepted that she had breached Principle 10 of the Principles but had done so unintentionally due to errors caused by the P software which had also caused her to fall foul of the SARs. The P software had not been suitable for the purposes of a small operation such as her Firm. The Respondent had rectified many of the problems with the introduction of the LEAP software and the mistakes had not been repeated.

The Tribunal's Findings

22.101 The Tribunal reminded itself with respect to all the allegations that the Applicant must prove its case on the balance of probabilities; the Respondent was not bound to prove that she did not commit the alleged acts and that great care must be taken to avoid an assumption (without sufficient evidence) of any deliberate failure or act on the Respondent's part.

Allegation 1.1.1

22.102 The Tribunal carefully considered the evidence it had heard. The Tribunal found as a fact that between January 2017 and April 2019 the Respondent made 71 transfers from client to office account on 31 client matters resulting in debit balances in client account and credit balances in office account.

22.103 The Tribunal found that the transfers had not been made in accordance with the SARs. However, the Tribunal accepted that the Respondent had experienced severe difficulties with the P accounting software. It took into account not only what the Respondent had said about this accounts package but also the evidence of Ms Sharp and Mr Birchall, both of whom had had experience in accounts and financial administration: both of whom said that this software had been unsuitable for the Respondent and her business.

22.104 The Tribunal also noted and gave weight to the fact that the FIO, Ms Garrard, had observed that the P accounts package had shown credits as debits and debits as credits and that the ledgers had been difficult to interpret (albeit this exercise had been made more difficult by the number of mis-postings).

22.105 The Tribunal accepted the Respondent's evidence that the P accounts package had been a 'nightmare to use', and this was supported by the manual spreadsheet she kept of what she needed to do with respect to the monthly billing of client matters. Round sum transfers, while an alarm signal, were understandable here where the Respondent customarily took money on account and billed the whole with that taken as part payment of a final bill. In addition, the Respondent had not infrequently quoted a round sum as a fixed fee, so that in such cases the sum transferred would represent the actual fee due from the client.

22.106 The Tribunal noted that no client had ever complained about not receiving a bill before the transfer had been made and accepted that the Respondent had sincerely considered that she had been entitled to the money she had transferred notwithstanding she had taken the money before raising the bill as she was required to do so under the SARs.

22.107 Having made the findings the Tribunal proceeded to consider whether on the basis of its factual findings the Respondent had breached any, or all, of Principle 2, Principle 6, Principle 8 and Principle 10 of the Principles.

22.108 Principle 2 requires a solicitor to act with integrity. As set out in Wingate acting with integrity connotes adherence to the ethical standards of one's own profession. The Tribunal did not consider that the Respondent's conduct with respect to the transfers represented a breach of Principle 2 of the Principles.

22.109 The Tribunal recognised that professional tribunals must not set unrealistically high standards and that not every breach of the rules represented a lack of integrity and in this particular allegation the Tribunal was not satisfied to the requisite standard, namely on the balance of probabilities, that the Respondent had made the transfers from client account with the intention of propping up her business at times when there was insufficient money in office account to pay the expenditure in running the business. The Tribunal was satisfied that the Respondent had believed she was entitled to the money (and indeed would have been perfectly entitled to transfer the money in accordance with the rules if she had reversed the order of her actions and created an invoice immediately prior to the transfers). Her actions in this regard did not demonstrate a lack of integrity on her part.

22.110 The Respondent was found not to be in breach of Principle 2.

22.111 Principle 6 required the Respondent to behave in a way that maintained the trust the public placed in her and in the provision of legal services. It was clear that by not raising a bill prior to transferring money from client account to office account the Respondent had not behaved in a way that maintained the trust that the public placed in her and in the provision of legal services as the public would expect a solicitor to follow the rules and to bill her clients following the correct process. The Respondent had therefore breached Principle 6 of the Principles.

22.112 Principle 10 requires the Respondent to protect clients' money. The Tribunal did not consider the Respondent to have breached this particular Principle under this part of the allegation. No client had lost money, or complained, and the bills subsequently rendered accorded with the sums transferred.

22.113 The Tribunal found that the Respondent had breached Principle 6 of the Principles but that she had not breached Principles 2, or 10. Allegation 1.1.1 was proved in part to the requisite standard of proof, namely on the balance of probabilities.

Allegation 1.1.2

22.114 The Tribunal noted that the Respondent had accepted that she had paid Mrs T's wages from the client account and found as a fact that she had done so.

22.115 For the reasons in the next paragraph, the Tribunal did not consider that the Respondent's error demonstrated lack of integrity or a failure to maintain the trust the public placed in the Respondent and the provision of legal services.

22.116 The Tribunal accepted that the payment of wages from the client account had been a genuine mistake made by the Respondent when carrying out internet banking and not changing back to the correct screen before making the transfer. The Respondent had not attempted to conceal the mistake, which had not been repeated, and had in fact drawn attention to it by writing the word 'breach' on a printout of the client account bank statement whilst carrying out a reconciliation.

22.117 The Tribunal found, however, that the Respondent had breached Principle 10 of the Principles and had not protected client money. A solicitor protecting client money would not have made this mistake and if they had they would have swiftly remedied

the mistake. Even if the Respondent did not have the resources to do so immediately she could have replaced the money by restricting her future drawings.

22.118 The Tribunal found that the Respondent had breached Principle 10 of the Principles but that she had not breached Principles 2, or 6. Allegation 1.1.2 was proved in part to the requisite standard of proof, namely on the balance of probabilities.

Allegation 1.1.3

22.119 The Respondent accepted that she had incorrectly made a payment made from client account to HMRC in excess of monies held on client account and the Tribunal found as a fact this to have happened.

22.120 The Tribunal accepted the Respondent's account that this had been a mistake during the period when the Respondent was transferring her accounting system from the P software to LEAP and that the Respondent had believed that there were sufficient funds in the client account to make the payment of stamp duty to HMRC.

22.121 The Tribunal did not find that the Respondent's conduct with respect to this part of the allegation amounted to lack of integrity and a breach of Principle 2 of the Principles as it had been an inadvertent mistake. However, the fact that she had allowed the client account to fall into deficit represented conduct on her part which diminished the trust the public placed in her and in the provision of legal services in breach of Principle 6 of the Principles and an overt failure to protect client money in breach of Principle 10 of the Principles.

22.122 The Tribunal found that the Respondent had breached Principle 6 and 10 of the Principles but that she had not breached Principles 2. Allegation 1.1.3 was proved in part to the requisite standard of proof, namely on the balance of probabilities.

Allegation 1.1.4

22.123 The Tribunal found as a fact that disbursements were billed to clients and the associated monies transferred from client account to office account and that once transferred, the disbursements were not paid out as they should have been but were retained, and then depleted by the running costs of the Firm, such that the disbursements could not be paid. In that sense the Tribunal found that the Respondent had had use of disbursement monies (monies to which the Respondent was not entitled) to assist in the ongoing financing of her Firm.

22.124 This was not a 'one off' or isolated matter which could be explained by mistake rather this had occurred with respect to 5 client matters over a period of 16 months. She knew that she had received money from clients to pay disbursements and that she had transferred that money to her office account and she knew she had then failed to pay the disbursements, and failed to return the money to the client account, but had instead made many other payments from her office account for expenses of the firm. This was conduct which represented lack of integrity and a breach of Principle 2 of the Principles. A solicitor acting with integrity would not have allowed this to happen over the period of time which occurred in this case and would have taken corrective action much sooner than the Respondent did in this case.

22.125 It also followed from this finding that the Respondent had breached Principles 6 and 10 of the Principles as there had been a clear failure on a number of occasions to protect client money and that the public would trust a solicitor to deal with disbursement monies in the correct way and not to allow such monies to be eaten up by the daily running needs of her firm.

22.126 The Tribunal found that the Respondent had breached Principles 2, 6 and 10 of the Principles. Allegation 1.1.4 was proved to the requisite standard of proof, namely on the balance of probabilities.

Breaches of SARs with respect to Allegations 1.1.1 to 1.1.4

22.127 The Tribunal was satisfied that upon the facts found by the Tribunal and upon the Respondent's own admitted conduct with respect to the accounts rules that she had breached Rules 1.2 (a), 1.2 (c), 14.1, 17.1 (b), 17.2, 17.7, 20.3, 20.06 of the SARs.

22.128 However, on a careful analysis of the Respondent's conduct the Tribunal did not find that she had breached Rule 20.9 as there was no evidence that the client account had been overdrawn.

Allegations 1.1.5; 1.1.6 and 1.1.7

22.129 The Tribunal made no specific findings on these parts of the allegations as it considered Allegation 1.1.5 to be a summation of the previous sub allegations of Allegation 1.1 and allegations 1.1.6 and 1.1.7 to be a further recital of the various SAR breaches and breaches of Principles.

23. Allegation 1.2 - she failed to maintain proper accounting systems and records

The Applicant's Case

23.1 The Respondent was unable to provide the FIO with a client bank account reconciliation for 31 January 2019. The client account reconciliation for 31 December 2018 was incomplete as it was only a two-way reconciliation. Further, it was unreliable as it contained manual adjustments made by the Respondent for which she could not provide any supporting documentation.

23.2 As a result of the Firm's books of account not being reliable or up to date the FIO was unable to calculate during her first visit to the Firm whether the Firm held sufficient funds in the client bank account to match its liabilities to clients as at 31 January 2019. A minimum cash shortage was therefore calculated of £27,191.26.

23.3 The matters of concern were all identified from the client matter list dated 18 February 2019. The client matter list showed that a further 34 client matters also had either a client debit balance, office credit or both.

23.4 Due to the Firm's books not being reliable the balances on the 34 matters were not included in the minimum cash shortage figure, which only included balances of the matters which were reviewed and verified as genuine client cash shortages by the FIO.

- 23.5 The Respondent told the FIO that she was in the process of changing accounts software from P to LEAP so had not completed the postings for January or February 2019, and therefore the accounts were not up to date. The Respondent provided a printout of what she thought was the client matter list for 31 December 2018, but said she, “did not trust the figures” due to the problems she had experienced with the P software.
- 23.6 The Respondent said that she did not realise her reconciliations were not correct and she assumed that P software had printed the correct information at the end of the month.
- 23.7 Both of the qualified Accountants Reports for the periods 1 October 2015 to 30 September 2016 and 1 October 2016 to 31 March 2018 identified problems with the reconciliations and both included the failure to carry out bank account reconciliations at least once every five weeks and not carrying out three-way client bank reconciliations.
- 23.8 The Respondent put the problems with the accounts down to the P software she was using. She said when she became a limited company in October 2017, she changed her accounting software to P and that this had been a “disaster” and that this was when things started to go “really wrong” with the accounts. She said that she had wanted to be up and running with P in October 2017, however this had taken until January 2018, which had meant keeping manual records. She also said she was “not as on top of the bookkeeping as she should have been”.
- 23.9 The Respondent told the FIO that on the advice of her accountant she had attended an SRA Accounts rules training course, after which she decided to change her accounts software to LEAP. The Respondent was still in the process of transferring the accounts data from P to Leap in April 2019. When the FIO went back to the Firm in September 2019, the Respondent confirmed to the FIO that she had successfully transferred all of the Firm’s books of account to the LEAP software.

Breaches of the Principles and Accounts Rules

- 23.10 It was said that the books of account were not in compliance with the SRA Account Rules. At the commencement of the investigation the FIO observed that the books of account were not up to date and were unreliable. Due to the issues with the books of account no opinion could be reached as to whether there existed sufficient funds in the client bank account to satisfy the Firm’s liabilities to its clients as at 31 January 2019. Only a minimum cash shortage could be calculated as at 18 February 2019. The books of account failed to clearly show the position of client monies.
- 23.11 Although the Respondent blamed the Firm’s P software system, P, it was the Applicant’s position that this was no excuse for the accounts not being in compliance for an extended period of time. Manual accounts should have been kept in this situation until a new software system was introduced.
- 23.12 It was said that the Respondent’s conduct amounted to breaches of the Principles and Solicitors Accounts Rules.

23.13 *Breach of Principle 7 of the Principles*

23.13.1 By the Respondent failing to have books of account that were in compliance with the SARs she breached Principle 7 as she has failed to comply with her regulatory obligations.

23.14 *Breach of Principle 8 of the Principles*

23.14.1 The Respondent's failure to keep up to date books of account also demonstrated her failure to run the business effectively in breach of Principle 8.

23.15 *Breach of SARs*

23.15.1 The Respondent has breached Rules 1.2 (e) and (f), Rules 29.1, 29.12 and 29.13 of SARs. Rule 1.2 (e) and (f) and Rule 29.1 require that proper accounting systems should be established over which there must be proper controls to ensure compliance with the Rules.

23.15.2 Further, that proper accounting records must be held to show accurately the position with regard to the money held for each client. The Respondent's alleged conduct had placed her in breach of this rule.

23.15.3 Additionally, the failure to carry out proper reconciliation statements was a breach of Rules 29.12 and 13 of the Rules.

The Respondent's Case

23.16 The Respondent accepted that there were periods where the accounting systems were inaccurate. This was during the period in which the P software was in use. This was largely due to the complexity of the P software and the onerous task of entering data via this difficult and antiquated system and this was a reason the software was changed in February 2019 to LEAP.

23.17 The Respondent accepted that she had not fully understood the 3-way reconciliation but that a 2-way reconciliation was always undertaken, although not always within the 5 week period which was required under the rules. The Respondent stated that she was now complying with the SARs.

The Tribunal's Findings

23.18 The Tribunal accepted that the Respondent had had very real problems in using the P accounting software and in this regard the Tribunal had noted the evidence of Ms Sharp and Mr Birchall on this point, and the observations of the FIO.

23.19 Whilst the Respondent had realised fairly quickly after procuring this system it was not doing the task she required of it, she had spent many thousands of pounds in its purchase and 'soldiered on' with it in an attempt to make it work for her.

- 23.20 The Tribunal considered that there was no evidence that the Respondent had deliberately or comprehensively mis-entered data in the P software. The Tribunal accepted the Respondent's evidence that the P software had been recommended to her but that in the final analysis it had not been suitable for her needs and it had ultimately let her down. The complexity of the system and the number of mispostings were clear reasons why errors had occurred in the running of the accounts of the Respondent's practice.
- 23.21 However, by not having an accurate and reliable accounts system the Tribunal found that the Respondent had failed in her regulatory obligation to have to have books of account that were in compliance with the Accounts Rules and as such the Tribunal found that the Respondent had breached Principle 7 of the Principles as she has failed to comply with her regulatory obligations in this regard.
- 23.22 The Tribunal did not consider that this failure also demonstrated that she had failed to run the business effectively in breach of Principle 8. The period of 15 months in which the Respondent had persevered with the P software had not been an unreasonable time frame to do so before taking the decision to change to new and easier to use system.
- 23.23 The Tribunal found that the Respondent had breached Principle 7 of the Principles but that she had not breached Principle 8. Allegation 1.2 was proved in part to the requisite standard of proof, namely on the balance of probabilities.

Breaches of SARs with respect to Allegations 1.2

- 23.24 The Tribunal was satisfied that upon the facts found by the Tribunal and upon the Respondent's own admitted conduct with respect to the accounts rules that she had breached Rules 1.2 (e) and (f), 29.1, 29.12 and 29.13 of the SARs.
- 23.25 The Tribunal was not satisfied that the Respondent breached Rule 29.4 of the SARs.

24. Allegation 1.3 - Failure to remedy breaches

The Applicant's Case

- 24.1 On the 18 February 2019, the Firm had a minimum cash shortage of £27,191.26. At the date of the First FI Report, 26 April 2019, £13,232.40 had been replaced and this left an outstanding shortage of £13,958.86 as at 26 April 2019.
- 24.2 On the 5 September 2019, the Respondent confirmed that she had rectified this and provided evidence. The amount had been rectified between 17 May 2019 and 9 September 2019.
- 24.3 With regard to the cash shortage identified of £25,676.76 as at 5 September 2019, £3,600.76 of this had been replaced as at the date of the second FI Report (17 October 2019). The amount had been rectified between 9 September 2019 and 23 September 2019. This left an outstanding cash shortage of £22,076.00 as at the date of the second FI Report.

Breaches of the Principles and the SARs

24.4 It was said that the Respondent's conduct amounted to breaches of the Principles and Solicitors Accounts Rules.

24.5 *Breach of Principle 2 of the Principles*

24.5.1 The Respondent's failure to remedy the breaches was a failure to act with integrity as she had failed to replace clients' money as soon as the shortage was known or at all. A solicitor of integrity who is aware that money is missing from the client account rectifies the situation as soon as possible and does not wait. A delay of 3 months is unacceptable and a delay of 8 months even more so. A solicitor of integrity would have replaced the money immediately. The full amount, which was a substantial amount, was still yet to be replaced.

24.6 *Breach of Principle 6 of the Principles*

24.6.1 The Respondent's conduct was said to also amount to a breach by her of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by a failure to replace clients' money immediately. The Respondent therefore breached Principle 6.

24.7 *Breach of Rule 7 (1) of the SARs*

24.7.1 The alleged conduct also amounted to a breach of Rule 7 (1) of the SARs which provides that any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account.

The Respondent's Case

24.8 The Respondent admitted that the shortfall on the client account was not rectified as promptly as it should have been.

24.9 The Respondent denied however, that she had lacked integrity or breached the trust her clients and the public placed in her. The Respondent said that she had not ignored the matter but had actively worked on reducing the client shortage but had had to balance this with the business need of the Firm to continue to function and the meeting of its outgoings: essentially, the Respondent considered that she could 'trade through' the problem and generate funds through that work to assist in remedying the shortfall.

24.10 The Respondent said that £13,000 of the shortfall had been remedied by 3 September 2019. The delay in rectifying the rest of the shortfall was linked with the deterioration of the Respondent's marriage, itself connected with the financial issues of the practice. In addition to the loss of emotional support, the Respondent lost the financial support of her husband and his family and therefore the possibility of loans and help from this source disappeared.

24.11 Despite her own personal problems and setbacks the Respondent continued to trade and work and was able to source other loan options. The Respondent informed the Tribunal that she had cleared the totality of the deficit by 10 June 2020.

The Tribunal's Findings

24.12 The Tribunal noted that whilst many of the problems which had been identified by Ms Garrard may have been the result of the difficulties and problems created by the P software this did not explain why the Respondent had taken so long to rectify the shortages on the client account which had persisted for many months and upon the Respondent's own account had not been fully rectified until June 2020.

24.13 The Tribunal agreed with the contention that a delay of 3 months was unacceptable and a delay of 8 months even more so. A solicitor of integrity would have replaced the money immediately, or if that was not financially possible would have severely restricted drawings to leave money in the firm to remedy the situation.

24.14 The Tribunal considered that a solicitor who knew that money was missing from the client account would have remedied the situation as soon as possible, that the Respondent did not do so, and that failure demonstrated a lack of integrity on the Respondent's part.

24.15 The Tribunal viewed the failure promptly to repay the sum transferred from the client account and paid as wages to Mrs T was a stark example of a breach of Principle 2 of the Principles. The Respondent admitted that she knew almost immediately that she had made a transfer from client account that was not allowed, but despite that she did not transfer money back into client account, but went on to make many transfers from office account including to her own bank account, and more generally to defray her office expenses. She knew she should have put money back into client account but chose to prioritise other payments instead.

24.16 It followed logically that the Respondent's conduct also amounted to a breach by her of the requirement to behave in a way which maintained the trust placed by the public in her and in the provision of legal services. The Tribunal considered that public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by a failure to replace clients' money immediately. The Respondent therefore breached Principle 6 of the Principles.

24.17 The Tribunal found that the Respondent had breached Principles 2 and 6 of the Principles and Allegation 1.3 was proved to the requisite standard of proof, namely on the balance of probabilities.

Breaches of SARs with respect to Allegations 1.2

24.18 The Tribunal was satisfied to the requisite standard that the Respondent's conduct also amounted to a breach of Rule 7 (1) SARs.

25. Allegation 1.4 – Failure to notify the SRA that she was in serious financial difficulty.

The Applicant's Case

First FI Report

- 25.1 On the dates when 22 of the incorrect transfers took place the office bank account balance would not have met its liabilities without the funds having been transferred from client bank account and on 13 occasions following receipt of the incorrect transfers, payments were made from the office account in respect of staff wages, rent payments and PPI insurance.
- 25.2 Between 2 January 2018 and 21 February 2019, 78 direct debits and standing order payments were returned as unpaid due to insufficient funds in the office bank account and the Respondent had been served with two County Court Judgements (CCJs). Both had subsequently been paid. One was for £182.59 and the other for £898.00.
- 25.3 The Respondent was in arrears with HMRC in respect of her VAT and PAYE and the outstanding VAT was £15,586.02 to be repaid by twelve monthly payments of £1,321.33.
- 25.4 The outstanding PAYE was £27,788.87 to be repaid by twelve monthly payments of £2,315.74.
- 25.5 During the period January 2018 to February 2019 the Respondent also made drawings from the business in the sum of £50,280.50 and paid in funds of £3,704.95.

Second FI Report

- 25.6 Between 1 July 2019 and 12 September 2019, 20 direct debits were returned unpaid from the Firm's office bank account and a further CCJ, was made against *Sarah Watson T/A Watson Legal* on 30 April 2019.
- 25.7 This CCJ was for an amount of £18,000.00 and was in respect of recruitment fees, interest and costs owed to '*Law Staff Recruitment*'. The Respondent said she had agreed to make payments of £500 per month from her personal finances and notification of this was given to the SRA by email on 5 September 2019.
- 25.8 Between 1 July 2019 and 12 September 2019, the Respondent took £5,815.00 in drawings from the office bank account and paid £2,534.25 back into the office bank account.
- 25.9 In respect of the financial stability and business management of the Firm, the Respondent told the FI Officer that she had struggled with cash flow for some time and that she had changed from a sole trader to a limited company as she "needed to protect" herself. She stated that she had no real assistance or guidance when she made this decision.

- 25.10 The Respondent said that Mr Birchall (Consultant Business Adviser) started as a consultant at the Firm in August 2018 and advised her that the Firm was too “top heavy” and that she needed to reduce her staff (Mr Birchall confirmed this to be so in his evidence before the Tribunal). On Mr Birchall’s advice the Respondent disposed of three members of staff which reduced her liabilities by 25 percent.
- 25.11 The Respondent also told the FI Officer that she had always ensured staff were paid and that her drawings had been variable over the last year, and for a period she took a minimum salary which had caused her personal financial hardship and that she had to take out payment plans to deal with respect to her personal finances.
- 25.12 The Respondent stated that in addition to the HMRC arrears, she also had rent arrears of £4,000.00 which she is currently paying at £500.00 per month.
- 25.13 It was said that the Respondent’s conduct amounted to breaches of the Principles, the SARs and failure to achieve outcomes.
- 25.14 *Breach of Principle 7 of the Principles*
- 25.14.1 The Respondent was at all times the COLP and COFA of the Firm and responsible for its financial and regulatory compliance.
- 25.14.2 By the Respondent failing to inform the SRA that the Firm had financial stability issues she had failed to comply with her regulatory obligations and this conduct therefore amounted to a breach of Principle 7 (a failure to comply with the Respondent’s regulatory obligations)
- 25.15 *Failure to achieve outcome 7.4 and 10.03 of the SRA Code of Conduct*
- 25.15.1 It was said that the Respondent had failed to achieve outcome 7.4 in that she failed to maintain systems and controls for monitoring the financial and stability of the Firm and risks to clients’ money and assets.
- 25.15.2 Further she failed to achieve Outcome 10.03 of the SRA Code of Conduct 2011 by failing to notify the SRA promptly about the Firm being in serious financial difficulty.

The Respondent’s Case

- 25.16 The Respondent admitted that she had breached Principle 7 of the Principles in respect of her legal requirements to pay for VAT and PAYE, although she had entered into arrangements with HMRC.
- 25.17 The Respondent accepted the Firm had faced financial challenges but she denied that she had failed to achieve outcome 7.4 as she had been continuously working on ways in which to improve the Firm’s financial position including the obtaining financial advice; attending; attending courses on matters such as marketing strategies and sales; cutting costs wherever possible, reducing staff levels, and moving office.

- 25.18 The Respondent denied that she had failed to achieve outcome 10.3 as she had not believed that the Firm had been in serious financial difficulty such that had required her to report it to the SRA. She believed the firm was in financial difficulty, but in her view the difficulty was not serious and so it did not need to be reported to the SRA.
- 25.19 The Respondent explained that from her understanding of the Rules she did not consider that she had needed to report two of the CCJ's to the SRA as they did not relate to the firm, but she did tell Ms Garrard about them when she attended at her office in February 2019. With hindsight the Respondent accepted that she should have reported the CCJ's to the SRA sooner, but pointed out that she had voluntarily reported the third CCJ the SRA.
- 25.20 The Respondent said that she had entered into payment plans with respect to the third judgment (as the other judgments had been paid in full) and with the HMRC and whilst there had historically been arrears of rent the Respondent said that she had made changes within the business to improve its financial position as follows:
- In August 2018 the Respondent terminated the contracts of employment of three employees, which based on financial advice given to her by Mr Birchall.
 - In October 2019, she vacated the premises from which she ran her business and relocated to smaller premises to reduce costs, and a change to her case management software also reduced costs.
- 25.21 The Respondent said that prior to the coronavirus pandemic the Firm's financial position was improving, but that the finances had been affected by the pandemic, however, she had been fortunate in obtaining a 'bounce back' loan, which had assisted her to repay a number of debts including the client account deficit.

The Tribunal's Findings

- 25.22 The Respondent had convinced herself that with the help of loans from her husband's family and by 'trading through' the Firm had avoided being in serious financial difficulty and there had been no obligation upon her to report her financial situation to the SRA.
- 25.23 The Tribunal noted that in answer to a direct question from the Respondent on the point Mr Birchall, the Respondent's business mentor, had stated his opinion that the Respondent's Firm had been in serious financial difficulty.
- 25.24 The Tribunal found that on any objective analysis of the evidence the Respondent's Firm had in fact been in serious financial difficulty with direct debits, rent and payments to HMRC going unpaid and the Respondent had struggled to pay other bills and her staff. It was a question of fact as to whether the firm was in serious financial difficulty, and the Tribunal concluded that it clearly had been in serious financial difficulty.
- 25.25 The Tribunal considered the precarious nature of the Firm's finances was something which must have been obvious to the Respondent at the time had she sincerely applied her mind to it and the Tribunal noted that with hindsight the Respondent now appeared

to accept that the Firm had been in serious financial difficulty and that she should have reported this to the SRA.

- 25.26 The Tribunal considered that as COLP and COFA of the Firm and responsible for its financial and regulatory compliance the Respondent had breached Principle 7 of the Principles by failing to inform the SRA that the Firm had serious financial stability issues.
- 25.27 Further, the Tribunal found that whilst the Respondent had had systems and controls for monitoring the financial stability of the Firm she had chosen to override those systems in order to keep her business going and thereby had placed clients' money and assets at risk by attempting to 'trade through' and by failing to notify the SRA promptly about the Firm's serious financial difficulties. The Respondent had therefore failed to achieve respectively outcomes 7.4 and 10.03 of the Code.
- 25.28 The Tribunal found that the Respondent had breached Principle 7 of the Principles and had failed to achieve outcomes 7.4 and 10.03 of the Code. Allegation 1.4 was proved to the requisite standard of proof, namely on the balance of probabilities.

26. Dishonesty with respect to Allegations 1.1.1 and 1.1.2

The Applicant's Case

- 26.1 Mr Bullock submitted that the Respondent's conduct with respect to Allegations 1.1.1 and 1.1.2 had been dishonest and Mr Bullock relied upon the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67, which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts.

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

- 26.2 In Mr Bullock's submission the Respondent acted dishonestly according to the standards of ordinary decent people by:
- Making incorrect/improper transfer of money from client account to her office account to assist with the running of the Firm.
 - Making a payment from client account to pay a member of staff her wages.

- 26.3 At the time that the Respondent made the incorrect/improper transfers it was alleged she knew or believed the following matters:
- that there were insufficient funds in office account to meet the Firm's liabilities for those days, to include payments for staff wages, rent payments and PPI insurance;
 - that the transfer of client money into the office current account would mean that payments could be made without her account going excessively or at all into overdraft;
 - that she could raise invoices on the client matters for the Firm's costs and transfer monies from his office account to rectify the shortage created by the incorrect/improper transfers;
 - that the creation of invoices after the event to justify the improper transfers was wrong;
 - that transfers from client account without justification would be wrong;
- 26.4 At the time that the Respondent made a payment from client account to pay a staff member she knew or believed the following matters:
- that the payment was being made from the client account;
 - that on the day the payment was made there were insufficient monies in the office account to make the payment.
- 26.5 In those circumstances, it was submitted that the Respondent was dishonest by the standards of ordinary decent people.

The Respondent's Case

- 26.6 The Respondent denied that she had acted with dishonesty and maintained the account she had given with respect to the substantive allegations namely that she had been entirely honest and that the transfers set out in Allegation 1.1.1 and 1.1.2 were the result of a mistake when using internet banking or a genuine belief that the Respondent was entitled to transfer the monies rather than any dishonest intent on her part use client monies for her own benefit knowing that she was not entitled to use it.
- 26.7 The Respondent stated that she was an honest and transparent person: a good lawyer who had made a few mistakes. The Respondent had learned from those mistakes and had sought guidance and made the necessary changes to her practice. The Respondent said that she had fully co-operated throughout with the investigation and neither she nor the Firm had ever been the subject of a complaint to the Legal Ombudsman.
- 26.8 The Respondent submitted that the evidence of Ms Sharp and Mr Birchall who had both spoken highly of her character and the other the client testimonials and character references she had provided demonstrated evidence of her good character and helped show that she did not have any propensity to behave in the way alleged and lent credibility to the Respondent's explanation that she had not acted dishonestly.

The Tribunal's Findings

- 26.9 Having found the factual matrix in Allegations 1.1.1 and 1.1.2. proved to the requisite standard, the Tribunal considered whether the Respondent had acted dishonestly.
- 26.10 When considering the allegation of dishonesty, the Tribunal applied the test in Ivey. The test for dishonesty was set out at paragraph [74] of the judgment in that case, and accordingly the Tribunal adopted the following approach:
- First, the Tribunal 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;
 - Second, once the actual state of the Respondent's knowledge or belief as to the facts had been established the Tribunal next considered whether her conduct would be thought to have been dishonest by the standards of ordinary decent people.
- 26.11 The Tribunal considered the Respondent's state of knowledge at the material times.
- 26.12 The Respondent had accepted that she had transferred monies from client to office account prior to raising a bill and that she had paid Mrs T's wages out of the office account but had not done so to prop up her Firm which was facing financial difficulties.
- 26.13 The Respondent said that with respect to the payment of Mrs T's wages this had been a simple mistake and she had drawn attention to it by writing the word 'breach' next to the transaction on the paper print out of the statement. The Respondent had said that this was a one-off error and she had paid other staff wages and indeed her own salary from the office account in accordance with the SARs. The Tribunal noted that the allegation of dishonesty in relation to this allegation was that the making of the transfer itself was dishonest; there was no allegation of dishonesty in relation to any subsequent failure to repay money to client account or to otherwise rectify the mistake.
- 26.14 With respect to the other transfers the Respondent stated that she had genuinely believed that she was entitled to take this money for work carried out by the Firm. The Respondent had been struggling with the P accounts package which had proved unsatisfactory for her purposes and had compounded the mistakes and errors which had been made innocently. She had also stated she believed she was invoicing WIP which she was entitled to invoice and that although she had made the transfers before issuing the invoices, if she had done that the other way round then there would be no breach at all, let alone a dishonest one.
- 26.15 Having established the Respondent's state of knowledge the Tribunal considered whether the Respondent's conduct was honest or dishonest by applying the (objective) standards of ordinary decent people.
- 26.16 The Tribunal accepted that the Respondent had been open with Ms Garrard during the investigation process and had not sought to hide or conceal her mistakes and that she had given a consistent, and an apparently genuinely held, account of her actions. The Tribunal considered the Respondent's evidence in this regard to be sincere and truthful.

- 26.17 The Tribunal also considered with care the character references put forward by the Respondent as evidence of her good character and lack of propensity to be dishonest and also the evidence presented by Ms Sharp and Mr Birchall who both spoke of her honesty in the dealings they had had with the Respondent.
- 26.18 In the light of its factual findings; its evaluation of the evidence of the Respondent and its conclusions in relation to the Respondent's knowledge, and the character evidence, the Tribunal considered that an ordinary person would not conclude that it was dishonest in these circumstances where (a) some transfers were made because the accounting software showed them to be permissible (b) the majority of transfers were transfers that would have perfectly proper if the invoice had been issued prior to transfer rather than the reverse and (c) other transfers were made in error. Consequently the Tribunal found that the Applicant had not shown that, on the balance of probabilities, the Respondent had been dishonest by the standards of ordinary decent people.
- 26.19 Dishonesty in relation to Allegation 1.1.1 and 1.1.2 was not been proved on the balance of probabilities.

Previous Disciplinary Matters

27. There were no previous matters.

Mitigation

28. The Respondent had been fully co-operative throughout the entire investigative process and she expressed her remorse for the breaches of Principle and the breaches of the SARs which had occurred. She had largely admitted the facts of the allegations but had contested the interpretation of the facts presented by the Applicant who had been successful in some respects but not all. The Tribunal had found that she was not dishonest.
29. The Respondent explained that she had entered the legal profession to help people and that this was demonstrated by the testimonials, character references and character evidence which had been put before the Tribunal.
30. She was a passionate and competent solicitor and this had been supported by the observations of Ms Garrard in her evidence who considered that Respondent had been sincere and caring of her clients.
31. The Respondent had put everything into making her Firm work and this had been at the expense of her marriage and health.
32. The errors were not entirely of her making and while the P software was approved by the Law Society that meant only that it was compliant, not that it was a good system, which it was not, as her accountant, business mentor and the FIO agreed.
33. The Respondent accepted that she should have complied with the relevant rules however no client actually lost money and no client at the time complained about any bill when she caught up with the paperwork and raised the bill. The Respondent said

that she was actually entitled to all the money she transferred, although she transferred it in breach of the SAR.

34. The Respondent had commenced changes to her Firm voluntarily even before the SRA had started its investigation and she had taken all the matters revealed by the investigation very seriously and she had not put her head in the sand and avoided issues which needed to be addressed. To this end she had introduced the new LEAP accounting software and worked hard to clear the deficit in full.
35. The Respondent said that if she was permitted to continue practising she would employ a legal cashier to assist with the financial management of the Firm and report her accounts to the SRA on a much more frequent basis. There was now no possibility of error concerning disbursements because she paid them from client account.
36. As matters now stood the Respondent was up to date in all respects regarding her business and financially she was now meeting her repayment plans. She had not shirked her responsibilities but had actively negotiated repayment plans with creditors.
37. The Respondent requested that the Tribunal allow her to continue in the profession and not to strike her from the Roll.

Sanction

38. The Tribunal first had regard to the observation of Sir Thomas Bingham MR (as he then was) in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

“to maintain the reputation of the solicitors’ profession as one in which every member, of whatever standing, may be trusted to the ends of the earth”.
39. The Tribunal next considered 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.
40. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent’s culpability and the harm caused, together with any aggravating or mitigating factors.
41. In assessing culpability, the Tribunal found that the motivation for the Respondent’s conduct was not direct financial gain but her need to obtain funds in the ordinary course from work she was entitled to bill to keep her business going whilst it faced significant financial challenges.
42. The Respondent had genuinely considered that she was entitled to the monies she had transferred from the client account to the office account, however, in breach of the SARs she had not followed the correct procedure and had transferred funds before first raising a bill. This failure had not prevented a client from objecting to the transfer if they considered that the amount of the bill was wrong or inaccurate.

43. The incorrect transfers may have started as a spontaneous action on the Respondent's part to meet immediate and pressing financial commitments however this conduct became more planned and habitual as a course of conduct albeit the Respondent considered that she was entitled to the money.
44. Notwithstanding the accepted problems caused by the operation of the P software the shortfall on the client account which occurred and the Respondent's failure to return promptly money mistakenly transferred from the client account was unacceptable and a cause for concern.
45. Client money was in a very real sense 'trust money' and, absent genuine mistake, clients expect solicitors to use their money for the purpose for which it was entrusted to the solicitor. The payment of staff wages from client account or failure to pay disbursements when these should have been paid represented a breach of trust and a lack of integrity
46. The Tribunal accepted that many of the mistakes arose from the P software and was not directly under the Respondent's control. However, this did not excuse the delay of some 18 months to make good the deficit once the Respondent had solved most of her accounting problems. However, the failure to pay the disbursements was a course of conduct for which the Respondent had been entirely responsible. Nor had she replaced the money paid from client account to a member of staff in any reasonable time, though fully aware that it had been paid from client account the very day it was paid.
47. Whilst it was noted that no client lost money this did not to diminish the opprobrium of not respecting the sanctity of the client account which the SARs were there to protect, and not ensuring proper stewardship of client funds. The Respondent had sufficient experience as a sole practitioner to understand and follow the rules, but had failed to do so.
48. There was no evidence that the Respondent had deliberately mislead the Regulator and it was accepted by the Tribunal that she had co-operated fully during the investigation.
49. Overall, the Tribunal assessed the Respondent's culpability as moderate to high, taking into account all the factors it had considered.
50. The Tribunal next considered the issue of harm. There was no evidence of direct harm to any of the Respondent's clients by the loss of their money. However, those who had supplied services to the Respondent had lost out on their income by the Respondent not paying disbursements in a timely manner and it took many months of chasing by those to whom the Respondent owed such money before they received fees properly owed to them, and for which clients had paid.
51. The harm caused by such conduct was reasonably foreseeable and the misuse of client money was by its very nature damaging to a client. Further, the damage to the reputation of the profession by the Respondent's misconduct was significant as the public would trust a solicitor to look after their clients' money and pay disbursements when these fell to be paid, from money provided by the client, and in accordance with time limits set out in the rules. The Tribunal considered that the Respondent ought

reasonably to have known that she had been in material breach of her obligation to protect the public and the reputation of the profession.

52. The Tribunal assessed the harm caused as high.
53. The Tribunal then considered aggravating factors. The Tribunal, in its finding of fact, had not found the Respondent to have acted dishonestly; there was no criminal offending associated with the misconduct and no evidence that she had taken advantage of a vulnerable person. The Respondent had not sought to conceal the wrongdoing and she had no previous disciplinary findings against her.
54. However, this had been a long term failure on the part of the Respondent which had been deliberate and repeated. The failure to make good the shortfall on the client account within a reasonable period and failure to pay disbursements were found by the Tribunal to demonstrate lack of integrity as the Respondent had prioritised the immediate needs of her Firm and the payment of its running costs over her responsibility to protect client money.
55. The Tribunal considered the prime example of this behaviour to have been the Respondent's failure to reimburse the client account with money she had paid in wages to Mrs T. This mistake should have been remedied swiftly by the Respondent and the money paid back into the client account at the time when she became aware of her mistake. In this case it took many months before the mistake was put right and was it was not remedied until after Ms Garrard had made her report.
56. Many of the problems had been caused by the P software, which the Tribunal accepted had been difficult to use and not suitable for her size of business. Whilst the P software was in operation and in the transitional period when the new accounts system had been introduced the Respondent had done her best to keep a manual record of the accounts.
57. The Respondent had expressed genuine insight into her misconduct. The Respondent had learned lessons from this experience, and before the SRA had commenced its investigation she had obtained a new accounting system and attended a solicitors' accounts course to ensure that her continued practise in the profession was in compliance with her regulatory duties.
58. The Respondent had eventually made good the shortfall, although this had taken longer than it should have done. It was noted by the Tribunal that the first tranche of the shortfall had been cleared relatively quickly but that the second tranche had taken longer.
59. It could not be said that this had been a single episode as the conduct had occurred over a period of time, as it came to light because of a second successive qualified accountant's report although the Respondent had been open and frank with the Regulator and had co-operated fully with the investigation.
60. Whilst the Tribunal had some sympathy with the problems the Respondent had encountered, the finding of lack of integrity with respect to client money made this a matter of high seriousness as the public expect client money to be handled and protected with the utmost probity.

61. The Tribunal considered that given the serious nature of the Respondent's misconduct, sanctions of No Order or a Reprimand or a financial penalty were inappropriate and insufficient.
62. The Tribunal gave very careful consideration to all the circumstances in the case which had involved the serious matters of retaining client money mistakenly transferred to the office account and funding the practice in part from unpaid disbursements.
63. This was to be weighed in the balance against the personal mitigation put forward by the Respondent and the positive testimonials which spoke to her good qualities as a person and a solicitor. The Tribunal accepted that the Respondent was a passionate, caring and in many respects a competent solicitor, and one with a hitherto unblemished record. The Tribunal also considered that the Respondent had shown by her conduct that she had learned lessons, and was unlikely to make these mistakes again, and that consequently the major issue to consider was the protection of the reputation of the profession, rather than protection of the public from the Respondent going forward.
64. The Tribunal considered that the public would expect a solicitor to act with integrity especially in relation to client money. Although the respondent had only been found to have lacked integrity in relation to 2 allegations, and those both related to a failure to return money, rather than transferring money in the first place, the Tribunal considered that the public would expect a serious sanction. However neither the protection of the public nor the protection of the reputation of the legal profession justified the Respondent from being prevented from practising forever by striking her off the Roll. However, having made findings of lack of integrity with respect to client money the reputation of the profession demanded a term of suspension, in the judgment of the Tribunal for a period of 12 months.
65. In the particular circumstances of the case the Tribunal considered that the suspended order should itself be suspended for 2 years on the basis that there was now limited future risk to the public, and that by imposing a Restriction Order this risk could be further ameliorated or resolved by making sure the Respondent carried through on her expressed intention to appoint a legal cashier and having more frequent audits than were usually required. This would ensure the public were protected, but also signify the seriousness with which the Tribunal viewed the breaches as any breach of the order would result in the Respondent losing the right to practice for a significant period of time.
66. The Tribunal was satisfied that the combination of a Restriction Order and a suspended Suspension Order provided adequate protection and addressed the risk of harm to the public and the need to maintain the reputation of the profession (*the details of the order are set out below*).
67. The Tribunal ensured that the Respondent was fully aware that if she breached the Restriction Order then activation by the Tribunal of the term of suspension could follow, and that the suspension could also be activated if the Respondent committed any further misconduct.

68. The Respondent was informed that if the period under restriction was successfully completed and the Restriction Order lifted, the pending/suspended suspension would cease to have effect.

Costs

Applicant's Submissions

69. The Applicant initially claimed costs in the sum of £23,612.96 which included 21 hours case preparation for the hearing however Mr Bullock conceded that this had been an over-estimate and that his preparation time had in fact been in the region of 16 hours. This reduced the costs to the sum of £22,962.96.
70. Mr Bullock submitted that the majority of the allegations against the Respondent had been proved including two findings of lack of integrity but accepted that the Applicant had not proved dishonesty and that he would not resist a further reduction to the Applicant's costs on this basis.

Respondent's Submissions

71. The Respondent said that she had always contested the dishonesty component of the allegation and the costs would have been reduced had the Respondent chosen not to pursue this aspect of their case or had resolved the matter by way of an Agreed Outcome.
72. The Respondent asked the Tribunal to consider her very limited financial means as set out in her personal financial statement. The Respondent's debts exceeded her monthly income.

The Tribunal's Decision

73. The Tribunal considered the Applicant's cost schedule, the statement of means and the submissions made by both parties.
74. The Tribunal had found two serious allegations of lack of integrity proved and it was therefore right in principle that the Respondent pay at least some of the Applicant's costs. This was a case properly brought by the Applicant, but one in which some matters had been proved and others not proved, most notably the most serious allegation (of dishonesty) had not been proved to the requisite standard.
75. The Tribunal found that the Applicant's costs should be reduced to take account of the fact that dishonesty had not been proved and that in principle the appropriate level of the Applicant's costs should be set at £20,000.
76. The Tribunal next considered whether to reduce this figure on the basis of the Respondent's limited means. The Tribunal considered that a reduction of £5,000 was a just and proportionate reduction on this basis and that although her immediate financial means were limited the Respondent had not been prevented by the terms of the order from continuing to practise and she retained the potential for a reasonable earning capacity in the future.

77. The Tribunal assessed costs to be paid by the Respondent in the sum of £15,000.

78. **Statement of Full Order**

1. The Tribunal Ordered that the Respondent, SARAH LESLEY WATSON, solicitor, be suspended from practice as a solicitor for a period of 12 months, that period of suspension to be suspended for 2 years from today's date subject to compliance by the Respondent with the terms of the Restriction Order imposing conditions on practice set out in paragraph 2 below. The Tribunal further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00.
2. The Respondent shall from the date of this Order be subject to conditions imposed by the Tribunal as follows:
 - 2.1 The Respondent must file with the SRA an unqualified accountant's report in relation to the 6 month periods to 31 December 2020; 30 June 2021; 31 December 2021 and 30 June 2022 (the reports to be filed within 2 months of each specified date).
 - 2.2 Unless within 3 months of today's date the Respondent outsources the management of her client account to a third party managed account or employs (and retains) a cashier with a qualification as a legal cashier (and so notifies the SRA of so doing) she must not:
 - 2.2.1 Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;
 - 2.2.2 Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;
 - 2.2.3 Hold client money;
 - 2.2.4 Be a signatory on any client account.
 - 2.3 If the Respondent does not meet the conditions in 2.1 or 2.2 (and has not made application to vary this order) the suspension will commence automatically, from the date of non-compliance.
 - 2.4 If the Respondent is found by this Tribunal to have committed further misconduct, activation by the Tribunal of the period of suspension of 12 months from that date will follow in addition to any sanction imposed for that further misconduct.
3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 26th day of August 2020

On behalf of the Tribunal



S. Tinkler
Chair

JUDGMENT FILED WITH THE LAW SOCIETY

26 AUG 2020