

# **SOLICITORS DISCIPLINARY TRIBUNAL**

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12082-2020

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

RAYMOND LAWRENCE TOMS

Respondent

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Before:

Mr J. P. Davies (in the chair)

Mr R. Nicholas

Ms J. Rowe

Date of Hearing: 3 September 2020

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## **Appearances**

There were no appearances as the matter was dealt with on the papers.

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## **JUDGMENT ON AN AGREED OUTCOME**

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## Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority (“SRA”) were that while acting as sole practitioner at Goldbergs Solicitors (“the Firm”), he:
  - 1.1 Between 1 March 2015 and 31 October 2018, made and/or authorised improper transfers from the Firm’s client account to the office account in respect of any or all of the client matters referred to in Schedule A and in doing so breached any or all of Principles 2, 4, 6 and 10 of the SRA Principles 2011 (“the Principles”) and any or all of Rules 1.1, 1.2 (a) and (c) and 20.1 of the SRA Accounts Rules 2011 (“the Accounts Rules”):
  - 1.2 Between 1 March 2015 and 31 October 2018, sought to disguise the improper transfers referred to at paragraph 1.1 above by cancelling, delaying or failing to send cheques in respect of any or all of the client matters referred to in Schedule A and in doing so breached any or all of Principles 2, 4, 6 and 10 of the Principles.
  - 1.3 Between 1 December 2015 and 31 October 2018, made transfers from the client account to the office account of sums which were in excess of those which had been estimated to the client in respect of all or any of the client matters as set out in Schedule B, and in doing so breached all or any of Principles 2, 4, 6 and 10 of the Principles and Rule 17.2 of the Accounts Rules.
  - 1.4 - Withdrawn –
  - 1.5 Between 1 March 2015 and 31 October 2018, failed to pay disbursements owed to third parties within a reasonable time and/or at all in relation to any or all of the client matters as set out in Schedule C and in doing so breached any or all of Principles 2 and 6 of the Principles.
  - 1.6 Between 1 March 2015 and 31 October 2018, failed to comply with the Accounts Rules and/or failed to run his business in accordance with proper governance and sound financial and risk management principles by:
    - 1.6.1 failing to keep client money safe; and/or
    - 1.6.2 failing to remedy breaches; and/or
    - 1.6.3 failing to send bills to clients; and/or
    - 1.6.4 withdrawing monies from the client account when unauthorised to do so;
 in breach of any or all of Rules 1.1, 1.2(c), 7.1, 7.2, 17.2 and 20.1(a) (c) (d) of the Accounts Rules and any or all of Principles 2, 4, 6, 8 and 10 of the Principles.
  - 1.7 Allegations 1.1 to 1.6 inclusive above 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 was not an essential ingredient in proving the allegations.

## **Documents**

2. The Tribunal had before it the following documents:-
  - Rule 12 Statement and exhibit GLB1 dated 9 April 2020
  - Respondent's Answer dated 14 May 2020
  - Statement of Agreed Facts and Proposed Outcome dated 28 August 2020

## **Factual Background**

3. The Respondent was admitted to the Roll in 1973. He remained on the Roll. The Firm was the recognised sole practice of the Respondent from 3 November 2010. From 3 November 2010 to 21 January 2018 the Respondent was the nominated Money Laundering Officer (becoming the Anti Money Laundering Reporting Officer, Anti Money Compliance Officer and Anti Money Laundering Officer from 21 January 2018). From 28 December 2012, the Respondent was the Firm's Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA"). The Firm carried out a range of work including probate, litigation and conveyancing.
4. One of the admitted fee earners who assisted the Respondent at the Firm became concerned about the Respondent's conduct and reported matters to the SRA by email dated 6 August 2015. The Firm closed on 30 September 2018. On 5 November 2018 an Adjudication Panel within the SRA made a resolution to intervene into the Respondent's practice on the grounds that there was reason to suspect dishonesty and that there had been a failure by him to comply with the Principles and the Accounts Rules.

## **Application for the matter to be resolved by way of Agreed Outcome**

5. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Proposed Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

## **Findings of Fact and Law**

6. 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
7. The Tribunal reviewed all the material before it and was satisfied that the Respondent's admissions were properly made.
8. The Tribunal considered the Guidance Note on Sanction (November 2019). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Respondent admitted that his conduct had been dishonest. The Respondent made improper transfers of money causing a minimum client account shortage of £325,576.18. He had written cheques

to or on behalf of clients to support the client account transfers. He did not send those cheques out instead retaining the monies in office account for the Firm's use. Further, the Respondent withdrew money from the client account for costs when clients had not been notified of them and when they were in excess of the work done.

9. The Tribunal considered that the Respondent's conduct was such that it was untenable for the Respondent to remain in the Roll. The protection of the public and the protection of the reputation of the profession demanded that the Respondent be struck off the Roll of Solicitors. In the circumstances, the agreed sanction of striking the Respondent off the Roll was appropriate and proportionate to the seriousness of the Respondent's misconduct.

### **Costs**

10. The parties agreed costs in the sum of £17,250.00. The Tribunal found the agreed costs to be reasonable and appropriate. Accordingly it ordered that the Respondent pay costs in the agreed sum.

### **Statement of Full Order**

11. The Tribunal Ordered that the Respondent, RAYMOND LAWRENCE TOMS, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £17,250.00.

Dated this 9<sup>th</sup> day of September 2020  
On behalf of the Tribunal



J. P. Davies  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**09 SEPT 2020**

**IN THE SOLICITORS DISCIPLINARY TRIBUNAL**

**IN THE MATTER OF THE SOLICITORS ACT 1974 (AS AMENDED)**

**BETWEEN:**

**SOLICITORS REGULATION AUTHORITY**

**and**

**Applicant**

**RAYMOND TOMS  
(101204)**

**Respondent**

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**STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME**

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1. By its application dated 9 April 2020 and the statement made pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making allegations of misconduct against Mr Raymond Toms ("the Respondent").

**The allegations**

2. The allegations against the Respondent made by the SRA within that statement were that:
  - 1.1. *Between 1 March 2015 and 31 October 2018, made and/or authorised improper transfers from the Firm's client account to the office account in respect of any or all of the client matters referred to in Schedule A [Persons A, B, C, D, E and F] and in doing so breached any or all of Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the Principles") and any or all of Rules 1.1, 1.2 (a) and (c) and 20.1 of the SRA Accounts Rules 2011 ("the Accounts Rules"):*
  - 1.2. *Between 1 March 2015 and 31 October 2018, sought to disguise the improper transfers referred to at paragraph 1.1 above by cancelling, delaying or failing to*

*send cheques in respect of any or all of the client matters referred to in Schedule A [Persons A, B, C, D, E and F] and in doing so breached any or all of Principles 2, 4, 6 and 10 of the Principles.*

1.3. *Between 1 December 2015 and 31 October 2018, made transfers from the client account to the office account of sums which were in excess of those which had been estimated to the client in respect of all or any of the client matters as set out in Schedule B [Persons A, B and G], and in doing so breached all or any of Principles 2, 4, 6 and 10 of the Principles and Rule 17.2 of the Accounts Rules.*

1.4. *By letter of 7 October 2015, provided misleading information to a beneficiary, ("C4"), about a letter that was received from HMRC and in doing so breached all or any of Principles 2 and 6 of the Principles.*

1.5. *Between 1 March 2015 and 31 October 2018, failed to pay disbursements owed to third parties within a reasonable time and/or at all in relation to any or all of the client matters as set out in Schedule C [Persons D and E] and in doing so breached any or all of Principles 2 and 6 of the Principles.*

1.6. *Between 1 March 2015 and 31 October 2018, failed to comply with the Accounts Rules and/or failed to run his business in accordance with proper governance and sound financial and risk management principles by:*

1.6.1. *failing to keep client money safe; and/or*

1.6.2. *failing to remedy breaches; and/or*

1.6.3. *failing to send bills to clients; and/or*

1.6.4. *withdrawing monies from the client account when unauthorised to do so;*

*in breach of any or all of Rules 1.1, 1.2(c), 7.1, 7.2, 17.2 and 20.1(a) (c) (d) of the Accounts Rules and any or all of Principles 2, 4, 6, 8 and 10 of the Principles.*

1.7. *In addition, allegations 1.1 to 1.6 inclusive above are advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegations.*

### **Admissions and application to withdraw allegation**

3. Solely for the purposes of these proceedings but not otherwise, the Respondent admits allegations 1.1, 1.2, 1.3, 1.5, 1.6. Solely for the purposes of these proceedings but not otherwise, he also admits that his conduct in acting as alleged and admitted was dishonest, and so admits allegation 1.7 save insofar as it relates to allegation 1.4.
4. The Respondent does not admit allegation 1.4. By application dated 17 August 2020 the SRA applied to withdraw allegation 1.4 and allegation 1.7 in so far as it expressly related to allegation 1.4. This application was granted by the Tribunal by way of its decision dated 21 August 2020.
5. In light of the Respondent's admissions as set out above, the statement of agreed facts below exemplifies the admitted conduct rather than repeating all of the instances of such conduct as set out in the Rule 12 statement.

#### **Agreed Facts**

6. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraphs 2 of this statement, are agreed between the SRA and the Respondent. The Respondent is unable to confirm or deny some of the facts from his own personal knowledge but nonetheless accepts the evidence collated by the SRA for the purposes of these proceedings only.
7. The Respondent was admitted to the Roll on 1 June 1973. He remains on the Roll. The Firm was the recognised sole practice of the Respondent from 3 November 2010. From 3 November 2010 to 21 January 2018 the Respondent was the nominated Money Laundering Officer (becoming the Anti Money Laundering Reporting Officer, Anti Money Compliance Officer and Anti Money Laundering Officer from 21 January 2018). From 28 December 2012, the Respondent was the Firm's Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA"). The Firm carried out a range of work including probate, litigation and conveyancing.
8. There were four admitted fee earners who assisted the Respondent at the Firm.
9. On 22 December 2017 an Accountant's report was produced for the period 2016/2017 by Houndiscombe Consultants Limited ("the Accountant's Report") and this was subsequently sent to the SRA. The Accountant's Report was marked 'qualified' due to the fact the Accountant found numerous breaches of the Accounts Rules.
10. On 10 May 2018 and following receipt of the Accountant's Report a Forensic Investigation Officer at the SRA began an investigation into the Firm. The FI Officer reviewed a total of thirteen of the Firm's files and on 11 September 2018 interviewed the

Respondent. The Respondent closed his firm and ceased to practise on 30 September 2018.

11. On 5 November 2018 an Adjudication Panel within the SRA made a resolution to intervene into the Respondent's practice on the grounds that there was reason to suspect dishonesty and that there had been a failure by him to comply with the Principles and the Accounts Rules. At the same time a decision was made to refer the Respondent's conduct to the Solicitors Disciplinary Tribunal ("SDT").
12. An application was made to the Tribunal on 9 April 2020 and the application was certified by the Tribunal as showing a case to answer on 16 April 2020. The Respondent filed an Answer to the allegations on 14 May 2020. A substantive hearing has been listed for one day on 15 September 2020.

Allegations 1.1 (improper transfers), 1.2 (unpresented cheques), 1.3 (overcharging)

13. The admitted conduct giving rise to Allegations 1.1, 1.2 and 1.3 are exemplified below in the case of Person A.
14. In addition in relation to allegations 1.1 and 1.2 the Applicant relies upon and the Respondent admits conduct arising from the matters of Persons B, C, E, F. In relation to Allegation 1.3 the Applicant relies upon and the Respondent admits conduct arising from the matters of Persons B and G.

*Person A*

15. Person A died on 18 September 2017. In her Will dated 8 April 1978 she requested that her estate be left to her mother with the wish that should her mother predecease her that her estate should be left to Person A1. In September 1990 Person A had appointed the Firm as Executors and Trustees of her Will. Both Person A's mother and Person A1 predeceased Person A which meant the beneficiaries became Person A1's two children, Person A2 and Person A3.
16. Allegations 1.1 (improper transfers) and 1.2 (unpresented cheques):
  - 16.1. Ms Youngs was the fee earner on the matter. Ms Youngs sent a letter to each beneficiary<sup>1</sup> on 14 November 2017. The letters explained that they were beneficiaries to Person A's estate but that there would be no distribution of funds for a minimum period of 10 months from the date of the Grant of Probate. It was stated in the letter that this delay was in order to give the executor protection in

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<sup>1</sup> There is only one letter included in the FI Report but it is understood there was an identical letter to the other beneficiary.



- the event that at some time in the future there was a claim made on the estate by someone else.
- 16.2. Probate was granted by the Court on 18 January 2018 and the probate document shows that the net value of the estate was £331,434.
  - 16.3. The file contained letters to the beneficiaries with Ms Young's reference on it, which stated that cheques for interim payments were enclosed. The ledgers showed nine cheques were listed as being for Person A2 and nine for Person A3 and the cheques ranged in value from £1,200 to £20,000. The cheques totalled £111,000.
  - 16.4. Three of the transfers from the client to the office accounts corrected an overdrawn position on the office account; on 7 February £18,000 was transferred into the office account correcting an overdraft of £14,290.81, on 20 April 2018 £10,000 was transferred into the office account correcting an overdraft of £357.52 and on 11 May 2018 £40,000 was transferred into the office account correcting an overdraft of £26,792.58.) Some of the letters began with the opening sentence: *"We have heard nothing in relation to any potential claim against this Estate and therefore am now making a small interim payment to each of the beneficiaries."*
  - 16.5. Ms Youngs would, at interim periods, write to the Respondent, as executor, with an update on the matter. None of the file review letters sent by Ms Young mentioned that any distribution had been made to either of the beneficiaries. There was no correspondence from the beneficiaries on the file confirming receipt of the cheques. All of the cheques remained unrepresented. None of the cheques were sent out to the beneficiaries.
  - 16.6. In the file update letters from Ms Youngs to the Respondent dated 5 April 2018, 3 May 2018, 31 May 2018, 25 June 2018 and 26 July 2018 it was stated that the beneficiaries had been *'advised that there will be no distribution until 10 months after the Grant of Probate'*.
  - 16.7. The Respondent caused 18 payments to beneficiaries to be recorded on the office side of the client ledger on three occasions to correct an overdraft on the Firm's office bank account. The cheques drawn against the client ledger totalled £111,000. None of the cheques were sent to beneficiaries.
17. Allegation 1.3 (overcharging):
- 17.1. The first letter from Ms Youngs to the Respondent dated 18 January 2018 stated: *"The value of the work done and billed to date is £9,900 plus VAT. The Value Element which has also been billed is £4,110. We have also billed disbursements of £179.26 (bill number 488/17). We estimate that our future costs to conclude this matter will be in the region of £2,500 plus VAT."*
  - 17.2. The update from Ms Youngs to the Respondent on 5 February 2018 provided the same cost estimate

- 17.3. The update from Ms Youngs to the Respondent dated 5 March 2018 provided: *"The value of the work done and billed to date is a little over £15,000 plus VAT. This includes the Value Element which is £4,110 plus VAT. We estimate that our future costs to conclude this matter will be in the region of £2,000 plus VAT."*
- 17.4. The 5<sup>th</sup> April update stated that the value of the work done was £15,300 plus VAT and the update of 3 May 2018 provided that the value of the work was £15,500 with estimated future costs of £1,800 to conclude the claim.
- 17.5. The letter update of 31 May 2018 stated: *"The value of the work done and billed to date is approximately £15,600 plus VAT. This includes the Value Element which is £4,110 plus VAT. We estimate that our future costs to conclude this matter will be less than £1,700 plus VAT."*
- 17.6. The client ledger shows that between 14 November 2017 and 4 June 2018, 18 bills were raised on the matter, totalling £45,871.59 including VAT. This amount had been transferred from the client to the office account as costs.
- 17.7. There was no evidence of letters providing cost estimates to the beneficiaries. There were numerous interim bills on the file, with Ms Young's reference, setting out the fees but with a caveat that *"a detailed narrative bill has not been prepared. Any further information required will be furnished on request."*
- 17.8. These bills were in excess of Ms Young's estimate to the Respondent in her update letter of 31 May 2018 that costs to date were £15,600 with future costs estimated at £1,700, i.e. a total of £17,300. These bills were prepared by the Respondent and included costs not incurred.
- 17.9. Ms Young sent letters to the Respondent dated 25 June 2018 and 26 July 2018. In the letter dated 26 July 2018 Ms Youngs stated: *"The value of the work done to date is approximately £16,300 plus VAT. This includes the Value Element which is £4,110 plus VAT. We estimate that our future costs to conclude this matter will be less than £1,250 plus VAT. In terms of timescale, we initially estimated that the matter would take 9-12 months. I think we will now over-run that as it took some time to collect in in [sic] all the information before we could apply for the Grant of Probate. We need to wait 10 months from the date of the Probate before we can make any distribution, which takes us to 18<sup>th</sup> August 2018. I would, therefore, revise the estimate to approximately 15 months from when the file was opened (September 2017)."*
- 17.10. In Ms Young's witness statement to the SRA, she refers to the file of Person A and explains: *"The firm's position on probate matters was that we would not pay monies out to beneficiaries until 10 months after probate was granted if [the Respondent] was the executor...I was not aware that any cheques had been written to beneficiaries on the [Person A] deceased matter. [The Respondent] was the sole executor for the estate and probate was granted on 18 January 2018. I was not aware that any funds had been transferred from the client to the office account in connection with the cheques written to the beneficiaries. I was first aware of the fact when I was informed by [the FI Officer] on 16 November 2018. I*

*do not know why the cheques were written from the office account. None of the letters written to accompany the cheques were drafted by me. I had not seen them until they were sent to me by [the FI Officer] on 16 November 2018. I have since checked our Soho system and some of the letters are saved on the file (I did not look for all of them) and it shows that the author of the letters was [the Respondent], but I did not see them at the time...I only started preparing bills on probate matters in March or April 2018.... Of the 18 bills listed as being raised on the [Person A] matter, only 2 of them were prepared by me. Those are bill 108/18 dated 6 March 2018 for £654.00 and bill 247/18 dated 26 June 2018<sup>2</sup> for £324.00. I did not know that bills to the value of £45,871.59 had been created on this matter... "*

Allegation 1.4 – is withdrawn

Allegation 1.5 – failure to pay disbursements within a reasonable time or at all

18. The admitted conduct giving rise to Allegation 1.5 is exemplified below in the case of Person D with regards to payment of an insurance premium and counsel's fees. In addition in relation to allegation 1.5 the Applicant relies upon and the Respondent admits conduct arising from the matter of Person E.
19. Mr Ellis acted for Person D in relation to a litigation matter.
20. After the Event Insurance Premium: During the course of the litigation, after the event ("ATE") insurance was taken out by the Firm. The policy cost £13,250.
  - 20.1. Nearing the conclusion of the litigation and once an offer for costs and damages had been accepted by the Firm, Mr Ellis sent an email to the Respondent dated 3 March 2015. He informed the Respondent that the costs of the claim were £55,273.54 and the costs of the assessment of the bill were £8,558.30. As costs on account of £25,000 had already been received, £38,831.84 was expected into the client account, which was paid on 18 March 2015. Mr Ellis listed the insurance premium of £13,250 amongst the disbursements that needed to be paid. The other disbursements were for Counsel's fees.
  - 20.2. A cheque requisition form dated 27 March 2015 was issued by Mr Ellis for £13,250, made payable to DAS the ATE insurer. On the same day a transfer form was completed by Mr Ellis for the transfer of £13,250 from the client account to the office account. On 30 March 2015, £13,250 was transferred from the client account to the office account.

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<sup>2</sup> The bill referred to is in fact dated 25 June 2018.

- 20.3. The file contained a letter from the firm to DAS dated 30 March 2015 stating that the cheque for £13,250 was enclosed. The client entries showed a cheque payment to DAS for £13,250 from the office account on 30 March 2015.
- 20.4. On 21 May 2015, DAS sent an email stating they had heard nothing from the Firm since 3 March 2015. Further messages were sent on 1 June and 8 June 2015. On 8 June 2015 Mr Ellis forwarded the message on to the Respondent. On 17 July 2015 the Respondent's secretary explained they would look into the matter and revert the following week. A letter from DAS dated 21 August 2015 stated "*we were assured that we would receive a response by 4pm 31 July 2015 but note we have still not heard from you.*" Further chasers were sent on 22 October 2015, 18 December 2015, 19 February 2016, 29 April 2016 and 14 September 2016.
- 20.5. The cheque for £13,250 was on the list of unrepresented office account cheques as at 31 July 2018.
21. Counsel's Fees: Two invoices were contained on the file, one dated 1 June 2015 for £1,080 including VAT and the other dated 22 October 2013, for £6,000 including VAT. The fee for £6,000 pertained to one barrister and was included in the firm's bill of costs that was sent for assessment. The fee for £1,080 was in relation to the costs assessment itself and pertained to a different barrister.
- 21.1. A ledger showed that a cheque payment of £1,080 was recorded on the office side of the client ledger on 27 June 2013, but was cancelled on 20 December 2013. The client ledger showed that a replacement cheque for £1,080 was written and posted to the office side of the client ledger on 17 March 2015.
- 21.2. A cheque for £3,000 for counsel's fees was recorded on the office side of the client ledger on 20 December 2013 and a client to office transfer was made on the same day for £25,000. The money had been received from the other side as an interim payment on account of costs on the same day. On 17 March 2015, a further cheque was recorded on the office side of the client ledger to counsel for £3,000. The two cheques of £3,000 were not received by Counsel.
- 21.3. Counsel repeatedly chased payment, sometimes to Mr Ellis and other times to the Respondent. On 16 November 2015, after multiple chasers and a threat to refer the debt to a collection agency the Firm purportedly sent a letter to Counsel purportedly enclosing a cheque for £1,080. No cheque at this date was recorded on the ledger, the only cheque to Counsel for this sum had been recorded on 17 March 2015. The cheque was unrepresented.
- 21.4. Several interim payments to Counsel appeared to have been made by the Firm. An internal email from the Firm's cashier to the Respondent dated 14 December 2015 stated that five cheque payments had been made; Four for £324 plus VAT and one for £900 plus VAT (£1,080). These interim payments were not however recorded on the ledger. The cashier stated that the cheque for £1,080 had yet to clear the bank. On 14 December 2015 the Respondent was sent an email by

Counsel explaining that they were writing again following the refusal to settle the full outstanding bill of the fees owed to the barrister due £6,000, failing which proceedings would be brought.

21.5. On 2 December 2015 the Firm sent a letter to Chambers with a cheque for £384 and a second letter was then sent on 17 December 2015 with a cheque for £1,152.

21.6. The last correspondence on the file was dated 17 December 2015 from Chambers stating the full outstanding amount had not been paid and that £2,304 was still owed to the barrister due the £6,000. There was no evidence on the file that payment of £2,304 had been made.

22. Mr Ellis has provided in his witness statement:

*"When DAS started chasing for their payment on 21 May 2015, I was not particularly surprised.... I was aware that cheques were rationed by [the Respondent], and did not know for certain if the cheque had been sent or not. By rationed, I mean that he would not always send the cheque and would hold some back. I do not know why he was rationing cheques. It was not uncommon for people to be chasing asking for their money. I did not have a discussion with [the Respondent] about this particular payment at the time. I do not know what happened to the cheque and I do not know if DAS ever received their payment..."*

*...Counsel were also chasing on the [Person D] matter for the same reason as the cheques had not been sent...*

*Those chasing for payment would either contact me (as the fee earner) or Mr Toms. I was aware that he owed money to people but we did not discuss the situation except in broad terms...The situation had always been the same at the firm in the time I had worked there."*

Allegation 1.6 – failing to comply with the Accounts Rules and/or failed to run his business in accordance with proper governance and sound financial and risk management principles

23. The Applicant relies upon and the Respondent admits conduct arising from client matters A to F inclusive and the report and statement of Mr Ellis to the Applicant.

24. Mr Ellis states at paragraph 15 of his statement:

*"The issue with the office account payments had been something that had been happening at the firm before I started. It was the culture... ..I cannot say that it happened on most client matters, but it was not uncommon... I was aware that there was an issue with the finances, but it thought it was being managed. I was aware that the firm's accountants produced annual reports and also that Mr Toms was in contact with someone from the SRA when he was presented with a bankruptcy petition. I understand that he had also reported cashflow problems at around the time of an insurance/practicing certificate renewal but I cannot now remember which renewal this was."*

25. On 6 August 2015 a report was made by Mr Ellis to the SRA via their redalert email address which raised concerns with the Respondent's conduct. The concerns reported included:
- 25.1. Breaches of the Code of Conduct and Solicitors Accounts Rules;
  - 25.2. That the Firm was technically insolvent and that the Respondent had sought to preserve the life of the firm in an inappropriate way;
  - 25.3. That disbursements were billed and funds moved from client account to office account. Cheques were drawn but are not sent to the recipient within two working days, that cheques were then cancelled and marked on the ledger as being lost in the post. That the funds were "used to ease cashflow". The funds included Counsel's fees, expert fees, after the event insurance premiums recovered from a paying party, estate agent's fees, stamp duty land tax;
  - 25.4. That he suspected that the amount of drawn, un-presented cheques sitting in the office, was in the region of £50 to £100,000;
  - 25.5. That the Respondent had an outstanding liability to HMRC and frequently failed to pay salaries to his staff (including Mr Ellis);
  - 25.6. That the Respondent had relied on a loan from a non fee-earning member of staff.
  - 25.7. That whilst he was not involved in probate work, it appeared that probate files were billed to bring in money when needed in a manner which bore little resemblance to the work done, especially where the beneficiary is a charity with little or no progress being made on some files.
  - 25.8. That there appeared to be a policy to delay payment to suppliers such as costs draftsmen and that he had seen 3 or 4 sets of court proceedings and a statutory demand against the firm by costs draftsmen. In addition, there had been claims brought by a local football club, a computer supplier and expert witnesses.
26. Mr Ellis concluded his report by stating:

*"I make this report with a heavy heart. You will no doubt consider whether I have been under a professional obligation to make a report earlier. I really do not want to jeopardise my colleague's jobs but the situation cannot continue indefinitely. I have no desire to see [the Respondent] face disciplinary action but I am satisfied in my own mind that he is in breach of his duties as a solicitor and that there is a risk to clients."*

27. Office bank statements for the 18 months from 1 January 2017 to 30 June 2018 identified the following:

- Regular round sum deposits into the office account totalling £150,500;
- Loans from loan providers totalling £120,634.14;
- Loan and credit card repayments averaging £32,632.22 per month;
- The account being overdrawn at least once every month (when there was not agreed overdraft facility).

28. The Respondent failed to keep client money safe instead he made improper transfers of money in relation to eight matters causing a minimum client account shortage of £325,576.18. He wrote cheques to or on behalf of clients to support the client account transfers but the evidence shows that they were not sent out; the monies were therefore retained in office account and instead used by the Firm. The breaches had not been remedied at the time of the intervention.

29. The Respondent withdrew money from client account to purportedly satisfy cheques he was sending to clients. However, they were not in fact sent to client and instead the money was to be used to run the firm. In addition, the Respondent withdrew money from the client account for costs when clients had not been notified of them and when they were in excess of the work done.

30. According to the witness statement of Mr Ellis, the Respondent sometimes did not pay his staff.

### **Non-Agreed Mitigation**

31. The following mitigation, which is not agreed by the SRA, is put forward on behalf of the Respondent:

A little over 5 years ago, for a number of reasons, the Respondent moved from Plymouth and away from the West Country.

He thought that, he would be able (with monthly visits to the office, where he had worked since 1970) to run the practise remotely and comply fully with his professional responsibilities but he was, very sadly, wrong.

32. However, the Respondent does not contend that the mitigation set out above amounts to exceptional circumstances which would justify the Tribunal in making any order other than that he be struck off the Roll.

### **Penalty proposed**

33. It is therefore proposed that Mr Raymond Toms should be struck off the Roll of Solicitors.
34. With respect to costs, it is further agreed that Mr Raymond Toms should pay the SRA's costs of this matter in the sum of £17,250 within 14 days of approval of the Agreed Outcome.

### **Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance**

35. Solely for the purposes of these proceedings but not otherwise, the Respondent has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (6th edition), at paragraph 51, states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see **Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)**).*"
36. In **Sharma [2010] EWHC 2022 (Admin)** at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:
  - (a) *Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...*
  - (b) *There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...*
  - (c) *In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others..."*
37. The Respondent admits dishonesty in relation to allegations 1.1, 1.2, 1.3, 1.5, and 1.6. The Respondent admits dishonesty in:
  - 37.1. transferring funds from client accounts to the Firm's office account in order to inflate the balance of the office account;



- 37.2. seeking to disguise those transfers by cancelling, delaying or failing to send cheques;
  - 37.3. withdrawing funds from client accounts for costs in excess of those which had been estimated or incurred;
  - 37.4. failing to pay disbursements to third parties with a reasonable time or at all;
  - 37.5. failing to keep client money safe, failing to remedy breaches, failing to send bills to clients and withdrew monies from the client account when unauthorised to do so.
38. The acts of dishonesty were numerous and repeated, and were to the detriment of clients, beneficiaries and third parties, and to the benefit of the Respondent and/or his Firm in using funds to which he had no right to aid his own cash flow and financial position, and to cover up previous transfers. The misconduct and dishonesty clearly placed at risk the reputation of the Respondent and the broader profession.
39. These were serious, systemic and calculated acts of dishonesty committed over an extended period which benefitted the Respondent to the detriment of clients, estates, beneficiaries and third parties, including charities and vulnerable people. Wrongdoing by the Respondent was concealed both by further wrongdoing, and on initial investigation by the SRA. The Respondent's misconduct has caused financial harm to others.
40. The Respondent's motivation for the misconduct was to limit the impact of financial difficulties of the Firm, to the Firm's benefit and his own. In so misusing and concealing misuse of client money, including overcharging clients, the Respondent acted in breach of a position of trust in which he was placed both by clients and by junior solicitors. It is submitted that the Respondent's culpability is high. The Respondent was an experienced solicitor who was aware of the relevant rules, principles and duties to which he was subject.
41. Reference is made to the points of mitigation raised by the Respondent.
42. The serious and repeated nature of the misconduct, the need to protect both the public, and the reputation of the legal profession, and the fact that the case plainly does not fall within the small residual category where striking off would be a disproportionate sentence confirms that the fair and proportionate penalty in this case is for the Respondent to be struck off the Roll of Solicitors.

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Mark Rogers, Partner, Capsticks upon behalf of the SRA

Dated:

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TOMS

Dated: 28 August 2020.