SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12099-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

PETROS PETROU First Respondent
STYLIANOS PETROU Second Respondent

Before:

Mr P Lewis (in the chair)
Miss H Dobson
Mr P Hurley

Date of Hearing: 29 September 2020

Appearances

Rory Mulchrone, barrister in the employ of Capsticks LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

Nick Trevette, solicitor of Murdochs Solicitors, 45 High Street, Wanstead, London, E11 2AA for the First Respondent.

Tim Nesbitt QC of The Outer Temple, 222 Strand, London WC2R 1BA, instructed by Nick Trevette, solicitor of Murdochs Solicitors, 45 High Street, Wanstead, London, E11 2AA for the Second Respondent.

JUDGMENT ON AN AGREED OUTCOME

Allegations

First Respondent

1. The allegations against the First Respondent made by the Solicitors Regulation Authority ("SRA") were that, while he was in practice as a solicitor, a partner and/or the compliance officer for finance and administration ("COFA") at Petrou Law Partnership ("the Firm"):

Estate of JW (deceased)

Overcharging

1.1 Between approximately 16 May 2016 and 29 December 2017 he caused or allowed the Firm to overcharge the estate of JW (deceased), of which he was an executor, by up to £237,999.23 and, in doing so:

1.1.1 breached all or any of Rules 1.2, 6.1, 17.7, 20.1 and 20.3 of the SRA Accounts Rules 2011 ("the Accounts Rules");

1.1.2 breached all or any of Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the Principles");

1.1.3 failed to achieve all or any of Outcomes 1.1, 1.2 and 11.1 under the SRA Code of Conduct 2011 ("the Code of Conduct").

Failure to disclose charges to residuary beneficiary

1.2 He failed adequately or at all to inform the sole residuary beneficiary of the JW estate, Mr C, of the charges referred to in allegation 1.1 above or any of them and, in so failing:

1.2.1 breached Principles 2 and/or 6 of the Principles;

1.2.2 failed to achieve Outcome 11.1 under the Code of Conduct.

Borrowing from estate funds

1.3 On or about 21 November 2016 he caused or allowed the Firm to borrow £100,000.00 from Mr C, funded out of the JW estate, without:

1.3.1 ensuring that Mr C and/or the estate had obtained independent legal advice;

1.3.2 recording the loan agreement in writing, adequately or at all.

In doing so he:

1.3.3 breached all or any of Principles 2, 3, 4, 6 and 10 of the Principles;

1.3.4 failed to achieve all or any of Outcomes 1.1, 3.4, and 11.1 under the Code of Conduct.

Improper transfers from client account

1.4 Between approximately 10 August 2018 and 6 February 2019 he caused or allowed the Firm to make payments to Mr C totalling up to £230,000.00 out of funds belonging to other clients and, in doing so:

1.4.1 breached all or any of Rules 1.2, 6.1 and/or 20.1 of the Accounts Rules;

1.4.2 breached all or any of Principles 2, 4, 6, 8 and 10 of the Principles;

1.4.3 failed to achieve Outcome 1.1 and/or Outcome 1.2 under the Code of Conduct.

Estate of GL (deceased)

Overcharging

1.5 Between approximately 3 August 2018 and 4 January 2019, while acting in the estate of GL (deceased), he caused or allowed the Firm to:

1.5.1 raise bills of costs totalling up to £175,923.14, which materially exceeded the level of fees agreed with the estate's lay executors, including Ms L;

1.5.2 transfer monies totalling up to £156,638.00 from client to office account, representing a material overcharge.

In doing so he:

1.5.3 breached all or any of Rules 1.2, 6.1, 17.7, 20.1 and 20.3 of the Accounts Rules;

1.5.4 breached all or any of Principles 2, 4, 6 and 10 of the Principles;

1.5.5 failed to achieve Outcomes 1.1 and/or Outcome 1.2 under the Code of Conduct.

Failure to disclose charges to lay executors

1.6 He failed adequately or at all to inform the lay executors of the GL estate including Ms L, of the bills of costs and/or the client to office transfers referred to in allegation 1.5 above and, in so failing:

1.6.1 breached all or any of Rule 17.2, 20.1 and 20.3 of the Account Rules;

1.6.2 breached all or any of Principles 2, 4, 5 and 6 of the Principles;

1.6.3 failed to achieve Outcome 1.1 under the Code of Conduct.

Cash shortage on client account

1.7 As at 31 January 2019, a cash shortage of up to £489,649.57 existed on the Firm's client bank account, which was caused by:

1.7.1 debit balances on client account totalling up to £124,054.49;

1.7.2 incorrect payments from client account totalling up to £208,957.08, including up to six of the improper payments to Mr C referred to in allegation 1.4 above;

1.7.3 the incorrect transfers of costs from the GL estate totalling up to £156,638.00 referred to in allegation 1.5 above.

He therefore breached:

1.7.4 (to the extent not already dealt with in allegations 1.1 to 1.6 above) all or any of Rules 1.2, 6.1, 7.1, 20.1, 20.3 and 20.6 of the Accounts Rules;

1.7.5 Rule 8.5(e) of the SRA Authorisation Rules 2011 ("the Authorisation Rules");

1.7.6 (to the extent not already dealt with in allegations 1.1 to 1.6 above) Principles 2, 4, 6, 7, 8 and 10 of the Principles.

Second Respondent

2. The allegations against the Second Respondent made by the SRA were that, while he was in practice as a solicitor, a partner and/or the compliance officer for legal practice ("COLP") at the Firm:

2.1 - Withdrawn -

2.2. - Withdrawn -

2.3. - Withdrawn -

2.4. - Withdrawn -

2.5. - Withdrawn -

2.6 - Withdrawn -

2.7 As at 31 January 2019, a cash shortage of up to £489,649.57 existed on the Firm's client bank account, which was caused by:

2.7.1 debit balances on client account totalling up to £124,054.49;

2.7.2 incorrect payments from client account totalling up to £208,957.08, including up to six of the improper payments to Mr C referred to in allegation 2.4 above;

2.7.3 the incorrect transfers of costs from the GL estate totalling up to £156,638.00 referred to in allegation 2.5 above.

He therefore breached (to the extent not already dealt with in allegations 2.1 to 2.6 above):

2.7.4 all or any of Rules 1.2, 6.1, 7.1, 20.1, 20.3 and 20.6 of the Accounts Rules;

2.7.5 Principles 2, 4, 6, 7, 8 and 10 of the Principles.

3. - Withdrawn -

Recklessness

4. Further or alternatively, recklessness was expressly alleged in relation to allegations 1.1, 1.2, 1.4, 1.5 and 1.6 above but proof of recklessness was not necessary in order to establish those allegations or any of their particulars. Recklessness was withdrawn in relation to allegations 2.1, 2.2, 2.4, 2.5 and 2.6.

Documents

5. The Tribunal had before it the documents including:-

- Rule 12 Statement and Exhibit RTM1 dated 1 June 2020
- First Respondent's Answer dated 21 July 2020
- Second Respondent's Answer dated 21 July 2020
- Statement of Agreed Facts and Proposed Outcome dated 21 September 2020
- Applicant's written submissions dated 28 September 2020
- Second Respondent's written submissions dated 28 September 2020

Factual Background

6. The First Respondent was a solicitor, having been admitted to the Roll in October 1990. He was one of two partners in the Firm, the other being the Second Respondent. The First Respondent held a current practising certificate, subject to the following conditions:

- He is not a manager or owner of any authorised body, authorised non-SRA firm or legal services body.

- He may not act a Compliance Officer for Legal Practice ("COLP") or Compliance Officer for Finance and Administration ("COFA) for any authorised body, or Head of Legal Practice ("HOLP") or Head of Finance and Administration ("HOFA") in any authorised non-SRA firm.

- He does not hold or receive client money, or act as a signatory to any client account, or have the power to authorise transfers from any client or office account. This condition shall not apply to the holding and transfer of client monies held on Petrou Law Partnership's client account specified by the SRA for the purposes of closing the Firm.

- He will immediately inform any actual or prospective employer of these conditions and the reasons for their imposition.

7. The Second Respondent was also a solicitor, having been admitted to the Roll in October 1997. He was the other partner in the Firm. He held a current practising certificate, subject to the following conditions:

- Mr Petrou is not a manager or owner of any authorised body, authorised non-SRA firm or legal services body.

- Mr Petrou may not act as a Compliance Officer for Legal Practice ("COLP") or Compliance Officer for Finance and Administration ("COFA") for any authorised body, or Head of Legal Practice ("HOLP") or Head of Finance and Administration ("HOFA") in any authorised non-SRA firm.

- Mr Petrou does not hold or receive client money, or act as a signatory to any client account, or have the power to authorise transfers from any client or office account. This condition shall not apply to the holding and transfer of client monies held on the Firm's client account specified for the purposes of closing the Firm.

- Mr Petrou will immediately inform any actual or prospective employer of these conditions and the reasons for their imposition.

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

8. 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

9. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondents rights to a fair trial and to respect for their private and family lives under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

10. The Tribunal reviewed all the material before it and was satisfied that the Respondents' admissions were properly made.

11. 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 Tribunal considered the seriousness of the First Respondent's misconduct. The overcharge on the JW estate was in excess of £200,000. He had failed to inform Mr C of his charges and had sent a completion statement that was misleading and inaccurate in that it suggested that Mr C was in debt to the Firm, and omitted a number transfers made from the estate to the Firm. The First Respondent had procured a loan in the sum of £100,000 from the estate. The loan was not recorded in writing and Mr C had not received independent legal advice before making it. As a result of overcharging on the JW estate, there

were insufficient monies in that matter to pay Mr C. In order to make payments to Mr C, the First Respondent had used monies belonging to other clients. As regards the GL estate, the First Respondent had transferred funds for bills without providing any bills to his clients. He had also overcharged the estate. As a result of the improper payments, there was a shortage on the client account of up to £489,649.57. The First Respondent admitted that his conduct had been reckless. The Tribunal found that the First Respondent's misconduct was extremely serious and that he was fully culpable. In mitigation, the minimum shortage had been replaced, the First Respondent had cooperated with the SRA's investigation. Further, he had a previously unblemished career and had made full and frank admissions to the substantive allegations of misconduct (and to the aggravating feature of recklessness), thereby demonstrating a degree of insight.

12. The seriousness of the First Respondent's misconduct was such that sanctions such as a Reprimand, Fine or Restrictions were not proportionate. The Tribunal considered that the seriousness of the First Respondent's misconduct was such that the protection of the public and the reputation of the profession required that the First Respondent be struck off the Roll. The Tribunal noted the undertaking provided to the Applicant by the First Respondent never to apply for readmission as a solicitor. In all the circumstances, the Tribunal found that the proposed sanction was appropriate and proportionate to the admitted misconduct.

13. The Tribunal found that the Second Respondent was entirely culpable for his failures as admitted. Those failings were serious. He had failed to prevent the First Respondent from taking advantage of estates entrusted to the Second Respondent as a professional executor. His failure to comply with his obligations as regards the accounts allowed the First Respondent's conduct to go unnoticed and unchecked. The Second Respondent's conduct was further aggravated by a previous finding of misconduct. On 26 September 2019 he was fined £50,000.00 for using interim payments of a client's damages to pay the Firm's profit costs and professional disbursements without the approval of the Court and for failing to provide a litigation friend with any or adequate information about costs. His inattention to the accounts was repeated and continued over a period of time. He had caused harm to his clients (although it was accepted that no clients had suffered financial loss). He had also caused harm to the reputation of the profession.

14. In mitigation, the shortfall had been replaced, he had made full and frank admissions to the allegation he faced and had thus demonstrated insight. The Tribunal gave careful thought as to the appropriate sanction. It determined that the seriousness of the Second Respondent's misconduct, together with the aggravating and mitigating factors, was such that sanctions such as a Reprimand or a Fine were insufficient. The Tribunal determined that the nature of the Second Respondent's conduct was such that there was a need to protect both the public and the reputation of the profession from future harm by removing his ability to practise, however neither the protection of the public nor the reputation of the profession justified striking the Second Respondent off the Roll.

15. The Tribunal considered that a period of suspension followed by restrictions on the Respondent's practice would appropriately and proportionately reflect the serious of his misconduct. Given the nature of his failings, the Tribunal considered that the

restrictions proposed were appropriate. The Tribunal considered that those restrictions should be indefinite. The Second Respondent, in order to have those restrictions removed, would be required to apply to the Tribunal and in so doing would need to demonstrate to the Tribunal's satisfaction that the restrictions on his practise were no longer necessary. The Tribunal determined that in conjunction with restrictions on his practice, a suspension of 12 months was appropriate. In all the circumstances, the Tribunal found that the proposed sanction was appropriate and proportionate to the Second Respondent's admitted misconduct.

16. Accordingly, the Tribunal approved the application for the matters to be dealt with by way of an Agreed Outcome.

Costs

17. The parties agreed that the Respondent's should pay costs of £20,000 each. The Tribunal determined that the amount proposed was reasonable and proportionate. Accordingly the Tribunal ordered that costs be paid in the agreed sums.

Statement of Full Order

18. **First Respondent**

1. The Tribunal Ordered that the Respondent, PETROS PETROU, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00.

19. **Second Respondent**

1. The Tribunal Ordered that the Respondent, STYLIANOS PETROU, solicitor, be suspended from practice as a solicitor for the period of 12 months to commence on 29th September 2020 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,000.00.

2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall be subject to conditions imposed by the Tribunal as follows:

2.1 The Respondent may not:

2.1.1 be a manager or owner of any authorised body, authorised non- SRA firm or legal services body.

2.1.2 act as a Compliance Officer for Legal Practice ("COLP") or Compliance Officer for Finance and Administration ("COFA") for any authorised body, or Head of Legal Practice ("HOLP") or Head of Finance and Administration ("HOFA") in any authorised non-SRA firm.

2.1.3 hold or receive client money, or act as a signatory to any client account, or have the power to authorise transfers from any client or office account.

2.1.4 He will immediately inform any actual or prospective employer of these conditions and the reasons for their imposition.

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 19th day of October 2020
On behalf of the Tribunal

P. Lewis
Chair

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No: 12099-2020**

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

B E T W E E N:

SOLICITORS REGULATION AUTHORITY

Applicant

and

PETROS PETROU (146692)

First Respondent

and

STYLIANOS PETROU (29195)

Second Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

Introduction/ Executive Summary

1. By an Application and Statement made by Rory Thomas Mulchrone on behalf of the Solicitors Regulation Authority ("SRA"), pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("the Rules"), dated 1 June 2020 ("the Rule 12 Statement"), the SRA brought proceedings before the Tribunal making allegations of misconduct against the First and Second Respondents, including allegations of dishonesty. The matter has been listed for a substantive hearing before the Tribunal on 19 - 27 October 2020.

2. Having reviewed their positions as set out in their respective Answers dated 21 July 2020, and having taken advice from solicitors, the Respondents are now prepared to make **admissions** which are acceptable to the SRA and, subject to the Tribunal's approval, to accept **sanctions** which are in line with the Tribunal's Guidance Note on Sanction (7th Edition) ("the Guidance Note").

3. The First Respondent admits all of the allegations made against him in the Rule 12 Statement (including lack of integrity, manifest incompetence and recklessness), save for the aggravating feature of dishonesty. The agreed factual matrix underlying those admissions is set out below. Given the seriousness of his admissions, the First Respondent has agreed to be **struck off** the Roll of Solicitors and also to give an **undertaking** never to apply for readmission as a solicitor.

4. The Second Respondent admits allegation 2.7 only (including lack of integrity and manifest incompetence). Again, the agreed factual matrix underlying those admissions is set out below. Given the seriousness of his admissions, the Second Respondent has agreed to be **suspended for 12 months** and to accept an **indefinite restriction order**, whereby the existing conditions on his practising certificate shall subsist until further order of the Tribunal.

5. For its part, the SRA is prepared to seek leave of the Tribunal to withdraw the remaining disputed charges under Rule 24, on the basis that a full trial of those discrete issues would no longer be in the public interest or likely to make a material difference to sanction. In the case of the Second Respondent only, having reviewed its case in light of both Respondents' Answers, the SRA is also prepared to make limited evidential concessions, which are explained where appropriate below.

6. For the avoidance of doubt, the SRA's readiness to withdraw certain of the charges is contingent and conditional upon the Tribunal's approval of this Agreed Outcome. Until such time, the contents of this document are and shall remain Without Prejudice.

7. In addition, the Respondents have agreed to pay the SRA's costs of the Application and Enquiry, fixed in the agreed sum of **£40,000.00** (including VAT), which represents just over 60% of the SRA's total costs incurred to date. The Respondents have agreed to apportion this liability between themselves on a 50:50 basis.

8. The SRA has considered the admissions made and whether those admissions, and the outcomes proposed in this document, meet the public interest having regard to the

gravity of the matters alleged. For the reasons explained in more detail below, the SRA is satisfied that the admissions and outcome do satisfy the public interest, such that it is appropriate to seek leave of the Tribunal to withdraw the remaining, disputed charges under Rule 24.

Admissions

First Respondent

9. The First Respondent admits **all** of the allegations pleaded at paragraph 1 of the Rule 12 Statement, namely that, while he was in practice as a solicitor, partner and/or compliance officer for finance and administration ("COFA") at Petrou Law Partnership ("the Firm"):

"Estate of JW (deceased)

Overcharging

1.1 Between approximately 16 May 2016 and 29 December 2017 he caused or allowed the Firm to overcharge the estate of JW (deceased), of which he was an executor, by up to £237,999.23 and, in doing so:

1.1.1 breached all or any of Rules 1.2, 6.1, 17.7, 20.1 and 20.3 of the SRA Accounts Rules 2011 ("the Accounts Rules");

1.1.2 breached all or any of Principles 2, 4, 6 and 10 of the SRA Principles 2011 ("the Principles");

1.1.3 failed to achieve all or any of Outcomes 1.1, 1.2 and 11.1 under the SRA Code of Conduct 2011 ("the Code of Conduct")…

Failure to disclose charges to residuary beneficiary

1.2 He failed adequately or at all to inform the sole residuary beneficiary of the JW estate, Mr C, of the charges referred to in allegation 1.1 above or any of them and, in so failing:

1.2.1 breached Principles 2 and/or 6 of the Principles;

1.2.2 failed to achieve Outcome 11.1 under the Code of Conduct…

Borrowing from estate funds

1.3 On or about 21 November 2016 he caused or allowed the Firm to borrow £100,000.00 from Mr C, funded out of the JW estate, without:

1.3.1 ensuring that Mr C and/or the estate had obtained independent legal advice;

1.3.2 recording the loan agreement in writing, adequately or at all.

In doing so he:

1.3.3 breached all or any of Principles 2, 3, 4, 6 and 10 of the Principles;

1.3.4 failed to achieve all or any of Outcomes 1.1, 3.4, and 11.1 under the Code of Conduct…

Improper transfers from client account

1.4 Between approximately 10 August 2018 and 6 February 2019 he caused or allowed the Firm to make payments to Mr C totalling up to £230,000.00 out of funds belonging to other clients and, in doing so:

1.4.1 breached all or any of Rules 1.2, 6.1 and/or 20.1 of the Accounts Rules;

1.4.2 breached all or any of Principles 2, 4, 6, 8 and 10 of the Principles;

1.4.3 failed to achieve Outcome 1.1 and/or Outcome 1.2 under the Code of Conduct…

Estate of GL (deceased)

Overcharging

1.5 Between approximately 3 August 2018 and 4 January 2019, while acting in the estate of GL (deceased), he caused or allowed the Firm to:

1.5.1 raise bills of costs totalling up to £175,923.14, which materially exceeded the level of fees agreed with the estate's lay executors, including Ms L;

1.5.2 transfer monies totalling up to £156,638.00 from client to office account, representing a material overcharge.

In doing so he:

1.5.3 breached all or any of Rules 1.2, 6.1, 17.7, 20.1 and 20.3 of the Accounts Rules;

1.5.4 breached all or any of Principles 2, 4, 6 and 10 of the Principles;

1.5.5 failed to achieve Outcomes 1.1 and/or Outcome 1.2 under the Code of Conduct…

Failure to disclose charges to lay executors

1.6 He failed adequately or at all to inform the lay executors of the GL estate including Ms L, of the bills of costs and/or the client to office transfers referred to in allegation 1.5 above and, in so failing:

1.6.1 breached all or any of Rule 17.2, 20.1 and 20.3 of the Account Rules;

1.6.2 breached all or any of Principles 2, 4, 5 and 6 of the Principles;

1.6.3 failed to achieve Outcome 1.1 under the Code of Conduct…

Cash shortage on client account

1.7 As at 31 January 2019, a cash shortage of up to £489,649.57 existed on the Firm's client bank account, which was caused by:

1.7.1 debit balances on client account totalling up to £124,054.49;

1.7.2 incorrect payments from client account totalling up to £208,957.08, including up to six of the improper payments to Mr C referred to in allegation 1.4 above;

1.7.3 the incorrect transfers of costs from the GL estate totalling up to £156,638.00 referred to in allegation 1.5 above.

He therefore breached:

1.7.4 (to the extent not already dealt with in allegations 1.1 to 1.6 above) all or any of Rules 1.2, 6.1, 7.1, 20.1, 20.3 and 20.6 of the Accounts Rules;

1.7.5 Rule 8.5(e) of the SRA Authorisation Rules 2011 ("the Authorisation Rules");

1.7.6 (to the extent not already dealt with in allegations 1.1 to 1.6 above) Principles 2, 4, 6, 7, 8 and 10 of the Principles…"

10. In addition, the First Respondent admits the aggravating feature pleaded in the alternative to dishonesty at paragraph 4 of the Rule 12 Statement, namely, that his conduct in relation to each the allegations admitted above was reckless.

11. The First Respondent does not admit the aggravating feature pleaded at paragraph 3 of the Rule 12 Statement, i.e. that (with the exception of allegations 1.3 and 1.7) his conduct in relation to the allegations admitted above was dishonest. His position remains that: *"there was never any intention to deprive clients of their monies, once the errors had been identified the shortfall was replaced, none of the beneficiaries in either matter have suffered any loss nor have clients where there were mispostings"*.

12. However, for the reasons set out under 'Sanction' and elsewhere below, the First Respondent recognises that the admitted misconduct is nevertheless so serious that any sanction short of a striking-off order would be clearly inappropriate. In those circumstances, and provided that the First Respondent also undertakes never to reapply to the Roll in future, the SRA does not consider that continued pursuit of the dishonesty

charge against the First Respondent would be in the public interest or likely to make a material difference to sanction, even if proved (as to which, it is respectfully submitted that the Tribunal should not speculate[1]).

13. Subject to the Tribunal's approval of this Agreed Outcome, the SRA accordingly seeks leave to withdraw the dishonesty charge against the First Respondent under Rule 24.

Second Respondent

14. The Second Respondent admits that while he was in practice as a solicitor, a partner and the compliance officer for legal practice ("COLP") at the Firm:

"…Cash shortage on client account

2.7 As at 31 January 2019, a cash shortage of up to £489,649.57 existed on the Firm's client bank account, which was caused by:

2.7.1 debit balances on client account totalling up to £124,054.49;

2.7.2 incorrect payments from client account totalling up to £208,957.08, including up to six of the improper payments to Mr C referred to in allegation [1].4 above;

2.7.3 the incorrect transfers of costs from the GL estate totalling up to £156,638.00 referred to in allegation [1].5 above.

He therefore breached (to the extent not already dealt with in allegations [1].1 to [1].6 above):

2.7.4 all or any of Rules 1.2, 6.1, 7.1, 20.1, 20.3 and 20.6 of the Accounts Rules;

2.7.5 Principles 2, 4, 6, 7, 8 and 10 of the Principles."

15. The Second Respondent insists that he was entirely ignorant of the First Respondent's misconduct as set out in allegations 1.1 to 1.6 (albeit he recognises that he could and should have identified and remedied it). As such, the Second Respondent does not admit:

    15.1. allegations 2.1 to 2.6 in the Rule 12 Statement (which broadly mirror the charges admitted by the First Respondent);

    15.2. paragraph 4 in the Rule 12 Statement (recklessness in relation to all charges);

[1] See Secretary of State for Trade and Industry v Rogers [1996] 1 W.L.R. 1569 at p.1574

15.3. paragraph 3 in the Rule 12 Statement (dishonesty in relation to all charges save for allegations 2.3 and 2.7).

16. The SRA has given very careful consideration to the Second Respondent's position and notes that it is broadly supported by the First Respondent's Answer. This is not a case where the Respondents have advanced 'cut-throat' defences which could only be resolved at a trial. Both Respondents agree that the First Respondent was the solicitor with conduct of the files in question and that he caused or allowed the impugned transactions to be made without the knowledge or approval of the Second Respondent (who appears to have taken little interest in the Firm's accounts).

17. In those circumstances, and although the SRA considers that the allegations were quite properly brought on the evidence, the SRA is now prepared to accept that the Second Respondent may have been genuinely unaware of the relevant transactions, such that he could not have disclosed them to Mr C and/or to his co-executors of the GL estate. Subject to the approval of this Agreed Outcome, and for the reasons developed further below, the SRA therefore applies to withdraw allegations 2.1 to 2.6, recklessness and dishonesty against the Second Respondent, pursuant to Rule 24.

18. That said, it is agreed that the Second Respondent's ignorance was seriously culpable in circumstances where he was co-Principal and COLP of this small, two-partner firm and jointly responsible for its compliance with the Accounts Rules. On his own case, the Second Respondent has run his business in such a way as to allow his brother to run up a client account shortage approaching half a million pounds on his watch. It is agreed that this demonstrates, among other matters, a lack of integrity contrary to Principle 2 and manifest incompetence contrary to Principle 6, such that the Second Respondent's admission to allegation 2.7 is quite properly made and a lengthy suspension order followed by restrictions is clearly indicated.

Agreed facts

Professional details

First Respondent

19. The First Respondent is a solicitor, having been admitted to the Roll on 1 October 1990. He was one of two partners in the Firm, the other being the Second Respondent. The First Respondent holds a current practising certificate, subject to the following conditions:

19.1. *"He is not a manager or owner of any authorised body, authorised non-SRA firm or legal services body.*

19.2. *"He may not act [as] a Compliance Officer for Legal Practice ("COLP") or Compliance Officer for Finance and Administration ("COFA") for any authorised body, or Head of Legal Practice ("HOLP") or Head of Finance and Administration ("HOFA") in any authorised non-SRA firm.*

19.3. *"He does not hold or receive client money, or act as a signatory to any client account, or have the power to authorise transfers from any client or office account. This condition shall not apply to the holding and transfer of client monies held on Petrou Law Partnership's client account specified by the SRA for the purposes of closing the Firm.*

19.4. *"He will immediately inform any actual or prospective employer of these conditions and the reasons for their imposition."*

The Second Respondent

20. The Second Respondent is also a solicitor, having been admitted to the Roll on 1 October 1997. He was one of two partners in the Firm, the other being the First Respondent. He holds a current practising certificate, subject to the following conditions:

20.1. *"Mr Petrou is not a manager or owner of any authorised body, authorised non-SRA firm or legal services body.*

20.2. *"Mr Petrou may not act as a Compliance Officer for Legal Practice ("COLP") or Compliance Officer for Finance and Administration ("COFA") for any authorised body, or Head of Legal Practice ("HOLP") or Head of Finance and Administration ("HOFA") in any authorised non-SRA firm.*

20.3. *"Mr Petrou does not hold or receive client money, or act as a signatory to any client account, or have the power to authorise transfers from any client or office account. This condition shall not apply to the holding and transfer of client monies held on the Firm's client account specified for the purposes of closing the Firm.*

20.4. *"Mr Petrou will immediately inform any actual or prospective employer of these conditions and the reasons for their imposition."*

Background

21. The Firm commenced trading on or about 1 January 2002. At all material times it traded from a single office at 21 Grand Parade, Green Lanes, London N4 1LA. The Firm was a general 'High Street' practice but predominately undertook personal injury, residential conveyancing and probate work.

22. The Respondents, who are brothers, owned the Firm in equal shares and were its only managers. As such, they were each responsible for the Firm's (and each other's) compliance with the Accounts Rules and were obliged to remedy any breaches promptly upon discovery: see Rules 6.1[2] and 7.2[3] of those rules. A principal's obligation to ensure compliance with the Accounts Rules is of course a matter of strict liability.[4]

23. In addition:

    23.1. The First Respondent was the Firm's Compliance Officer for Finance and Administration ("COFA"). As such, he owed a duty under rule 8.5(e) of the Authorisation Rules to take *"all reasonable steps to ensure"* that the Firm and its managers, including the Second Respondent, complied with *"any obligations imposed upon them"* under the Accounts Rules.

    23.2. The Second Respondent was the Firm's Compliance Officer for Legal Practice ("COLP"). As such, he owed a duty under rule 8.5(c) of the Authorisation Rules to take *"all reasonable steps to ensure compliance with"* the terms of the Firm's authorisation and statutory obligations excluding (without prejudice to his obligations under Rule 6.1), the Accounts Rules. The Second Respondent was therefore obliged to take all reasonable steps to ensure that the Firm and its managers, including the First Respondent, complied with the Principles and the

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

[3] "*In a private practice, the duty to remedy breaches rests not only on the person causing the breach, but also on all the principals in the firm. This duty extends to replacing missing client money from the principals' own resources, even if the money has been misappropriated by an employee or another principal, and whether or not a claim is subsequently made on the firm's insurance or the Compensation Fund."*

[4] See R. (on the application of Holden) v Solicitors Regulation Authority [2012] EWHC 2067 (Admin) per Irwin J at [19]

Code of Conduct (being rules made pursuant to section 31 of the Solicitors Act 1974).

24. The Respondents were both signatories to the Firm's client account and could both authorise payments from it.

25. On 28 September 2018, Haines Watts North London LLP ("Haines Watts") submitted to the SRA a qualified Accountant's Report concerning the Firm, which covered the period 1 January 2017 to 31 December 2017 ("the 2017 Report").

26. The 2017 Report identified that, as at 31 December 2017, there were 56 client ledgers showing debit balances totalling £41,896.95, in breach of Rule 20.6 of the Accounts Rules.[5] Of the total debit balances, 55 had occurred during the reporting period with one balance having existed prior to the reporting period. The debit balances had occurred due to transfers being made between the Firm's client and office account or to clients in excess of the total held on each ledger. Haines Watts observed: *"We have previously reported significant breaches of this rule and have seen a continual disregard of the rule."*

27. In addition, there were 148 ledgers with office credit balances totalling £30,271.11, in breach of Rule 17.2 of the Accounts Rules.[6] Of the total credit balances, 62 had occurred during the reporting period with 86 balances having existed prior to the reporting period. These had occurred due to client to office transfers being made before invoices were raised and/or sent to clients.

[5] *"Money withdrawn in relation to a particular client or trust from a general client account must not exceed the money held on behalf of that client or trust in all your general client accounts (except as provided in rule 20.7…)"*

[6] *"If you properly require payment of your fees from money held for a client or trust in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party."*

28. The Firm was not conducting regular/ timely client account reconciliations, in breach of Rules 29.12[7] and 29.13[8] of the Accounts Rules.

29. Such client account reconciliations as were carried out were not being signed off by the COFA (i.e. by the First Respondent), notwithstanding Guideline 5.4(5).[9] Haines Watts observed that when bank reconciliations are approved *"it is evident unreconciled transactions are not being investigated and resolved in a timely manner"*. They went on to state that the issues with the reconciliations have previously been raised with the Firm, however, they had *"seen no improvement with errors being resolved in the bank reconciliations and it continues not to improve"*.

30. Haines Watts advised that it was continuing to assist the Firm with its books of account.

31. The SRA's records show that no Accountant's Report for the period 1 January 2016 to 31 December 2016 was submitted to the SRA. The Respondents dispute that but the parties do not require the Tribunal to rule on the point for the purposes of approving this Agreed Outcome. In any event, the Accountant's Reports for the years 2013, 2014 and 2015 were all qualified and highlighted previous concerns with the Firm's accounting records, including client ledgers showing debit balances.

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[7] *"You must, at least once every five weeks: (a) compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all unpresented items) of all general client accounts and separate designated client accounts, and of any account which is not a client account but in which you hold client money under rule 15.1(a) or rule 16.1(d), and any client money held by you in cash; and (b) as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients (and other persons, and trusts) and compare the total of those balances with the balance on the client cash account; and also (c) prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons."*

[8] *"Reconciliations must be carried out as they fall due, or at the latest by the due date for the next reconciliation. In the case of a separate designated client account operated with a passbook, there is no need to ask the bank, building society or other financial institution for confirmation of the balance held. In the case of other separate designated client accounts, you must either obtain statements at least monthly or written confirmation of the balance direct from the bank, building society or other financial institution. There is no requirement to check that interest has been credited since the last statement, or the last entry in the passbook."*

[9] *"The firm should operate a system to ensure that accurate reconciliations of the client accounts are carried out at least every five weeks. In particular it should ensure that: … (5) a manager or the Compliance Officer for Finance and Administration checks the reconciliation statement and any corrective action, and ensures that enquiries are made into any unusual or apparently unsatisfactory items or still unresolved matters."*

32. Following receipt of the 2017 Report on 28 September 2018, a forensic inspection was commenced by a Forensic Investigation Officer ("the FIO") on 5 March 2019. The FIO issued a forensic investigation report on 23 September 2019 ("the FIR").

33. The Respondents were given prior notice of the forensic inspection by letters dated 26 February 2019. These were signed for the following day.

34. The FIO identified a minimum client account shortage of £489,649.57 as at 31 January 2019. This was caused by:

    34.1. 10 debit balances on client account totalling £124,054.49;[10]

    34.2. 8 incorrect payments from client account totalling £208,957.08;[11]

    34.3. Improper transfer of costs totalling £156,638.00 from the estate of GL (deceased).[12]

35. The FIO noted that between 28 February 2019 and 19 March 2019, the Firm transferred £564,565.80 from its office to client account. This sum replaced the minimum identified shortage (£489,649.57) and partially replaced a potential additional shortage relating to the remaining 141 debit balances (£92,344.28). These transfers began the day after the letters giving notification of the forensic inspection had been signed for at the Firm.

36. The FIR particularly exemplifies the matters of JW (deceased) and GL (deceased), which disclose a number of serious concerns about the Firm's billing practices.

[10] The client matter listing identified a total of 151 debit balances totalling £216,398.77; however, only the 10 highest value balances were reviewed by the FIO and included in the minimum client account shortage figure. The remaining 141 debit balances constituted a potential additional shortage of £92,344.28.

[11] Of these, 6 were interim payments totalling £190,000 made to the residuary beneficiary of the estate of JW (deceased). At the time the payments were made, there were insufficient funds held on the client ledger relating to this estate.

[12] As at 24 January 2019, the Firm had transferred £156,638.00 from client to office account, in relation to 10 bills of costs which had been raised. The co-executor, ML has stated that neither she nor her brother had been provided with any bills of costs, nor did they have knowledge of or consent to the transfers made by the Firm in relation to the bills of costs.

37. The Firm ceased trading on 1 November 2019 and was closed under the supervision of Murdochs Solicitors. On 12 November 2019 an Adjudication Panel of the SRA decided to refer the conduct of the Respondents to the Tribunal.

38. On 17 January 2020 and 3 March 2020, further qualified reports were submitted to the SRA, covering the periods 1 January 2018 to 31 December 2018 and 1 January 2019 to 31 December 2019 respectively. Each of these qualified Accountants Reports identified *"significant breaches"* of the Accounts Rules and/or *"significant weaknesses"* in the Firm's systems and controls, which *"put client money at risk"*.

Allegation 1.1 – Between approximately 16 May 2016 and 29 December 2017 the First Respondent caused or allowed the Firm to overcharge the estate of JW (deceased), of which he was an executor, by up to £237,999.23

39. The testator, JW, died on 4 March 2015. Her death certificate names the Second Respondent as the *"informant"*. JW's Will, dated 23 January 2015, had appointed the First and Second Respondents as the co-executors and administrators of the estate, which they were to hold *"upon trust"*. There were no other executors, lay or professional. The sole residuary beneficiary was Mr C.

40. The Firm acted in relation to the administration of the estate. The client file did not contain a client care letter. However, the Firm's client ledger indicates that the First Respondent was the solicitor with overall conduct and oversight of the matter and the First Respondent has now confirmed this in his Answer.

41. Probate was granted to the Respondents on 16 October 2015. The gross value of the estate was recorded as £1,050,000.00 and the net value was recorded at £1,047,400.00.

42. Between 16 May 2016 and 29 December 2017, 26 transfers totalling £254,025.89 were made from client account on this matter. These transfers were made in respect of 27 bills of costs, raised during the same period, totalling £269,033.68.

43. The reference for all the bills has the prefix *"PP"*, indicative that the First Respondent was the solicitor with conduct and/or supervision of the matter, who raised the bills or caused them to be raised. However, all but the first bill, which is addressed to the First Respondent

only, are addressed to the First and the Second Respondents (in their capacity as the co-executors of the estate). Further, all of the bills refer to *"our professional charges in connection with acting on your behalf in relation to the above matter"*.

44. Notwithstanding the foregoing, the Second Respondent maintains that he was entirely unaware of these bills until around February 2019 when the SRA's investigation began. The First Respondent has pleaded nothing to the contrary.

45. Having reviewed its case in light of the Respondents' Answers, the SRA is now prepared to accept that it might not be able to gainsay the Second Respondent's position in this regard or to establish the inference pleaded at paragraph 33 of the Rule 12 Statement, namely, that both of the Respondents must have been and were aware of the bills at the time they were raised.

46. Subject to the approval of this Agreed Outcome, the SRA therefore seeks leave to withdraw corresponding allegation 2.1 against the Second Respondent pursuant to Rule 24. This, however, is without prejudice to the SRA's case on admitted allegation 2.7 that the Second Respondent, as co-Principal of the Firm and an executor of this estate, could and should have been aware of his brother's billing against it.

47. The FIO noted that: only £26,400.00 was transferred to the office account in respect of the bill raised on 30 June 2016 (£36,000.00); £12,000 was transferred to the office account in respect of the bill raised on 1 July 2016 (£12,319.46); and no money was transferred in respect of the bill raised on 30 September 2016 (£4,088.33). In addition, no money was transferred in respect of the bill raised on 27 May 2016 (£1,000.00), which the Firm advised was posted in error. These transfers are tabulated at paragraph 139 of the FIR.

48. Of the 26 transfers from the W estate, 19 were made at a time when the Firm's office account was within £2,000.00 of its £35,000.00 overdraft limit.

49. As part of its investigation, the SRA instructed Marc Banyard, an expert Costs Draftsman, to review the client file and to report on the charges raised in relation to the JW estate. Mr Banyard produced an expert report, in which, to summarise, he opined as follows:

49.1. Maximum reasonable costs would have been £16,026.66 (inclusive of VAT) and therefore the Firm had overcharged the estate by £253,007.08.[13]

49.2. The invoices were addressed to the First and Second Respondents as executors and so the prospect of the bills being subject to detailed assessment and therefore external scrutiny was *"all but non-existent"*.

49.3. *"… any beneficiary or interested third party would have no way of ascertaining exactly what work the firm have been charging for under any of the invoices and the same are therefore entirely opaque"*.

49.4. *"… it is wholly unclear from any of the invoices exactly how the figure charged has been reached. The same are simply presented in round figures with no indication as to how that figure has been calculated which only adds to the opacity of the charging arrangements"*.

49.5. The client file did not contain any terms and conditions stating the basis on which the Firm was calculating its charges.

49.6. The pattern of invoicing defied *"any readily discernible logic"* with some bills being raised on the same day or on consecutive days.[14]

49.7. No work was evidenced on the file after 16 March 2017; however, six further bills were raised after that date, totalling £95,814.00. It was *"wholly unclear... what it is that the firm might imagine it was charging for after this date"*. The sum of £95,814.00 *"does not appear to relate to any identifiable work"*.

[13] It is noted that this figure is based on the total amount billed (£269,033.68) rather than the lower amount actually transferred from client to office account (£254,025.89). Calculating from the latter figure, the overcharge was £237,999.23, hence the figure pleaded in the allegation.

[14] For example, a bill was raised on 1 August 2016 for £12,000 and another bill for the same amount on 3 August 2016. Mr Banyard found *"difficult in the extreme to understand the pattern of invoicing"* and *"impossible to believe that work to the value of £12,000.00 was undertaken over a two-day period since the previous invoice had been raised"*.

Accounts Rules

50. It is agreed that the First Respondent's admitted misconduct in overcharging the JW estate constituted a material breach of the following provisions of the Accounts Rules:

50.1. Rule 1.2 – *"you must… (a) keep other people's money separate from money belonging to you or your firm; (b) keep other people's money safely in a bank or building society account identifiable as a client account (except when the rules specifically provide otherwise); (c) use each client's money for that client's matters only; (d) use money held as trustee of a trust for the purposes of that trust only"*;

50.2. Rule 6.1 – *"All the principals in a firm must ensure compliance with the rules by the principals themselves and by everyone employed in the firm… "*;

50.3. (to the extent that the charges were in 'round sums') Rule 17.7 – *"Costs transferred out of a client account in accordance with rule 17.2 and 17.3 must be specific sums relating to the bill or other written notification of costs, and covered by the amount held for the particular client or trust. Round sum withdrawals on account of costs are a breach of the rules"*;

50.4. Rule 20.1, set out in Appendix 1 to the Rule 12 Statement, which limits the circumstances in which client money may be withdrawn from client account, none of which could apply to a material overcharge;

50.5. Rule 20.3 – *"Office money may only be withdrawn from a client account when it is: (b) properly required for payment of your costs under rule 17.2 and 17.3"* (a material overcharge could not be *"properly required"*).

Principles

51. It is further agreed that the First Respondent's conduct was in breach of the following Principles.

Principle 2

52. By causing the Firm to overcharge the JW estate in all the circumstances described above, the First Respondent failed to act with integrity, i.e. with *"moral soundness, rectitude and steady adherence to an ethical code"*,[15] contrary to Principle 2.[16] A solicitor-executor acting with integrity would have scrupulous regard to his fiduciary duties, particularly the duty not to profit from his position at the expense of a beneficiary (such as Mr C). In any event, he would not raise bills of costs for professional fees in excess of that which might properly be charged to an estate. Nor would he transfer monies against such bills from client to office account.

Principle 4

53. The conduct alleged constituted a failure by the First Respondent to act in the best interests of the JW estate, contrary to Principle 4. A solicitor-executor acting in the best interests of his estate client would preserve its assets and would not dissipate them by raising and settling excessive bills of costs.

Principle 6

54. The First Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Members of the public expect that solicitor-executors who are entrusted with the care of estate funds and assets will safeguard them and only take costs to which they are reasonably entitled. The First Respondent's billing of the JW estate was, at best, manifestly incompetent within the meaning of Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin).[17] It follows that the First Respondent breached Principle 6.

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[15] Hoodless v Financial Services Authority [2003] UKFSM FSM007

[16] In Newell-Austin v Solicitors Regulation Authority [2017] EWHC 411 (Admin) it was affirmed that a *"solicitor who dips into the client account with the intention of putting the money back lacks integrity because a client account is sacrosanct and regardless of the risk of the money not being repaid"*. In Wingate & Evans v SRA v Malins [2018] EWCA Civ 366, it was held that: *"Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty… a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse… The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors: … Making improper payments out of the client account."*

[17] Per Sir Thomas P at [23]: *"If a solicitor exhibits manifest incompetence, as, in my judgment, the appellant did, then it is impossible to see how the public can have confidence in a person who has exhibited such incompetence. It is difficult to see how a profession such as the medical profession would countenance retaining as a doctor someone who had showed himself to be incompetent. It*

Principle 10

55. By charging for costs materially in excess of that which might properly be charged, the First Respondent failed to protect client money, contrary to Principle 10. The requirement to protect client money is a fundamental duty of solicitors. Client money is held on trust for clients and is sacrosanct. The proper protection of client money requires it to be kept in a client account and separate from a solicitor's own funds. This is a duty which may not be complied with retrospectively.[18] In this case, the breach was aggravated by the fact that the client money was not only improperly taken out of client account but also paid into an office account which was overdrawn, i.e. it was immediately spent in reducing the Firm's liability to its bank.

Code of Conduct

56. It is further agreed that the admitted misconduct constituted a failure by the First Respondent to achieve the following, mandatory outcomes under the Code of Conduct:

    56.1. O(1.1) – *"you treat your clients fairly"*;

    56.2. O(1.2) – *"you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice"*;

    56.3. (to the extent that any overcharge was prejudicial to the interests of the sole residuary beneficiary, Mr C), O(11.1) – *"you do not take unfair advantage of third parties in either your professional or personal capacity"*.

Allegation 1.2 – the First Respondent failed adequately or at all to inform the sole residuary beneficiary of the JW estate, Mr C, of the charges referred to in allegation 1.1 above or any of them

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seems to me that the same must be true of the solicitors' profession. If in a course of conduct a person manifests incompetence as, in my judgment, the appellant did, then he is not fit to be a solicitor. The only appropriate remedy is to remove him from the roll. It must be recalled that being a solicitor is not a right, but a privilege. The public is entitled not only to solicitors who behave with honesty and integrity, but solicitors in whom they can impose trust by reason of competence."

[18] See, for example, SRA v Wilson et al 12025-2019

Duty to inform

57. It is agreed that, although a residuary beneficiary is not technically a client, where there are no lay co-executors, beneficiaries should be informed of the basis of charging and all likely disbursements in advance.[19]

58. Further, as executors of the JW estate, the Respondents owed fiduciary duties to Mr C, including:

    58.1. a duty to act in the interests and for the benefit of Mr C, he being the sole residuary beneficiary under the Will;

    58.2. a duty not to place themselves in a position where their own interests conflicted with Mr C's;

    58.3. a duty not to profit from their position at Mr C's expense;

    58.4. a duty to account for estate funds and assets (including an account of any profits improperly made).

59. That said, and as explained above, having reviewed its case in light of the Respondents' Answers, the SRA is now prepared to accept that it might not be able to gainsay the Second Respondent's position that he was genuinely unaware of the bills raised by the First Respondent against the JW estate (albeit that, as co-Principal of the Firm and co-executor of the estate, he could and should have been aware of those bills which were addressed to himself).

60. Clearly, the Second Respondent could not have alerted Mr C to invoices of which he himself was ignorant, however culpably. Subject to the approval of this Agreed Outcome, the SRA therefore seeks leave to withdraw corresponding allegation 2.2 against the Second Respondent, pursuant to Rule 24. This, however, is without prejudice to the seriousness of the harm caused by the Second Respondent's culpable ignorance of the bills and consequent non-disclosure of the same, to the extent dealt with in allegation 2.7.

[19] See the Law Society's Wills and Inheritance Protocol, Part B, §20.2

61. For the avoidance of doubt, it is agreed that the First Respondent owed a duty to inform Mr C of the charges referred to in allegation 1.1 as a matter of professional conduct. This is because Outcome (11.1) in the Code of Conduct mandates that *"you do not take unfair advantage of third parties in either your professional or personal capacity"*.[20] A solicitor-executor who materially overcharges an estate thereby improperly reduces its overall value and, therefore, the amount available to any residuary beneficiary, by a corresponding amount. If the solicitor's charges are not disclosed, the residuary beneficiary will be kept in ignorance of them and deprived of the opportunity to complain or to raise challenge, for example, by way of bringing a claim for an account or by seeking a third party assessment under section 71 of the Solicitors Act 1974.

Breach of duty to inform

62. Mr C's evidence is that, although he was asked for *"monies on account"* and *"agreed to instruct"* (sic) the Firm, he was never *"given an estimate of how much it will cost to deal with the Probate and subsequent sale of the Property"*.

63. It is also Mr C's evidence that he was in regular contact with both of the Respondents throughout the relevant period. However, his statement gives no indication that he was made aware of the charges in question and it is now accepted that he was not.

64. Further, on 16 April and/or 15 May 2019 (after the SRA had commenced its investigation), the First Respondent provided Mr C or his solicitor with a 'Completion Statement', purporting to show payments made in relation to the estate. The cover email to Mr C's solicitor describes this document as *"a draft statement of account previously given to"* Mr C. The document did not include any of the transfers made between 16 May 2016 and 29 December 2017 against the bills of costs referred to above and, indeed, appeared to claim that Mr C was in debt to the Firm by £58,952.87. In failing to mention the Firm's charges, the 'Completion Statement' was inaccurate and misleading by omission.

Principles

[20] See also Indicative Behaviour (11.1), which recommends *"providing sufficient time and information to enable the costs in any matter to be agreed"*, and Indicative Behaviour (11.9), which warns against *"using your professional status or qualification to take unfair advantage of another person in order to advance your personal interests"*.

65. It is agreed that the admitted misconduct conduct was in breach of either or both of the following Principles.

Principle 2

66. By failing to inform Mr C of the charges referred to in allegation 1.1 above the First Respondent failed to act with integrity, as defined above, contrary to Principle 2. A solicitor-executor acting with integrity would, in the absence of any lay co-executors, disclose his full charges to the residuary beneficiary so that s/he could consider whether they are fair and reasonable. In any event, he would not submit a misleading and inaccurate statement of account or 'Completion Statement' (even in draft), which failed to mention substantial charges deducted from estate funds.

Principle 6

67. The First Respondent failed to behave in a way that maintained the trust the public placed in them and in the provision of legal services. Members of the public expect solicitors entrusted with the care of estate funds to deal with them transparently and, in the absence of lay co-executors, to be open and candid with residuary beneficiaries about the quantum of their professional costs. They do not expect solicitors to raise substantial charges, thereby diminishing the residual value of the estate, without disclosing this to the beneficiaries, to whom that money would otherwise have been due. They certainly do not expect solicitors to submit inaccurate and misleading statements of account/ Completion Statements (even in draft) which fail to mention substantial charges deducted from estate funds. The First Respondent's failure to disclose the Firm's charges to Mr C was, at best, manifestly incompetent within the meaning of the ***Iqbal*** case referred to above. It follows that the First Respondent breached Principle 6.

Code of Conduct

68. It is further agreed that the admitted misconduct constituted a failure by the First Respondent to achieve Outcome (11.1) under the Code of Conduct, which mandates: *"you do not take unfair advantage of third parties in either your professional or personal capacity"*.

Allegation 1.3 – On or about 21 November 2016 the First Respondent caused or allowed the Firm to borrow £100,000.00 from Mr C, funded out of the JW estate, without ensuring that Mr C and/or the estate had obtained independent legal advice or recording the loan agreement in writing, adequately or at all

69. So far as relevant, Mr C's witness statement states:

> *21. By November 2016 when it looked like Petros Petrou was running out of excuses for not paying me in full, Petros Petrou called me and asked me to meet him for a coffee which I agreed to do.*
>
> *22. I met Petros Petrou for a coffee in close proximity to the PLP office (Haringey N4). He looked visibly stressed and dishevelled. I asked him what the issue was and he told me that PLP had gotten into some trouble. I asked him to elaborate and told me that they had a £100,000 tax bill that they could not afford to pay. As he was a friend I offered to help. I did not want a friend of mine to be in financial difficulties if could help them.*
>
> *23. Petros Petrou asked if I could lend £100k to PLP to pay the tax bill and he would personally guarantee that I would be repaid the money. I told Petros Petrou that I was willing to lend the £100k to PLP and I said that I knew he personally would sort me out in any event. I told Petros Petrou to take it out of the proceeds of the sale of the Property. I did not understand why, but Petros Petrou said that he could not just take it out of the client account but would have to transfer the money to me and I would have to transfer it back. It did not make any sense to me but he reassured me that was the best way to do it, so I agreed.*
>
> *24. The £100k was transferred from PLP's client account into my account, ending […] on the 17 November 2016. I then transferred it back to PLP's account four days later on the 21 November 2016. To date, despite my repeated request to repay the Loan this money has not been paid back to me.*

70. Mr C's account is supported by the Firm's financial records, which show a CHAPS payment made out of estate funds to Mr C of £100,000.00 on 16 November 2016 and a payment in of £100,000.00 on 21 November. Three days later, the Firm made two payments to HMRC totalling £100,000.00.

71. There is no evidence that the loan agreement was recorded properly in writing. It appears to have been entirely informal and undocumented.

72. In his Answer, the First Respondent admits that he procured this loan, that it was not recorded in writing and that Mr C should have but had not received independent legal advice before making it. The First Respondent does not appear to implicate or contradict the Second Respondent.

73. The Second Respondent contends that he was entirely ignorant of the loan and denies that he *"allowed"* the Firm to accept it as alleged in allegation 2.3. The SRA still finds this extremely difficult to believe in circumstances where the Second Respondent was: (1) the co-executor of the estate out of which the loan was funded; and (2) the co-owner, co-principal and COLP of the Firm requiring the funds to satisfy its tax liability to HMRC. That said, dishonesty was never alleged in relation to this allegation and therefore proof of this allegation is unlikely to make a material difference to sanction. The SRA's application to withdraw allegation 2.3 is accordingly made on proportionality grounds only and on the basis that, subject to the Tribunal's approval of the sanctions proposed in this document, trial of the issue is no longer in the public interest.

Indicative Behaviour 3.8

74. So far as relevant, the Code of Conduct states:

> *Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the Principles:*
> *IB(3.8)*
> *in a personal capacity, selling to or buying from, lending to or borrowing from a client, unless the client has obtained independent legal advice;*

75. Neither Mr C nor the estate had obtained independent legal advice before making the loan to the Firm (nor could meaningful legal advice be given where the loan was undocumented). It follows that the loan was completely improper and should never have been accepted.

Principles

76. The First Respondent's admitted misconduct was in breach of the following Principles.

Principle 2

77. By causing or allowing the Firm to borrow substantial monies in the circumstances described above, the First Respondent failed to act with integrity, as defined above, contrary to Principle 2. A solicitor-executor acting with integrity would never accept a loan funded in this manner, without being satisfied that estate and/or the beneficiary had in fact received independent legal advice (which, in order to be meaningful, would require the loan to be properly recorded in writing).

Principle 3

78. By putting the Firm in debt to the JW estate or to its sole residuary beneficiary, Mr C, the First Respondent allowed his independence to be compromised. It is very well established that solicitors owe fiduciary duties to act with *"single-minded loyalty"* to their clients.[21] In particular, they must act in good faith and must not place themselves in a position where their duties and their interests may conflict. By paying £100,000.00 out of the JW estate's monies in their client account to Mr C for the sole purpose of receiving those funds back as a loan, the First Respondent failed to act with single-minded loyalty to the JW estate and placed himself in a position where his duties and interests conflicted. In all the circumstances, the First Respondent breached Principle 3.

Principle 4

79. It was not in the best interests of the JW estate (or Mr C) to finance the Respondents' tax bill, particularly in circumstances where they had not received independent legal advice and where the loan agreement was merely oral and contained no contractually enforceable provisions as to interest. The First Respondent therefore breached Principle 4.

Principle 6

80. The First Respondent failed to behave in a way that maintains the trust the public placed in them and in the provision of legal services. Members of the public expect solicitors to

[21] *Bristol & West Building Society v Mothew* [1998] Ch 1

manage their finances responsibly and not to look to their client account to finance their tax liabilities. If such loans must be made, they expect solicitors to record the agreement carefully in writing and, in any event, to have scrupulous regard to their duties under the Code of Conduct, including Indicative Behaviour 3.8. The First Respondent's conduct in relation to the loan was, at best, manifestly incompetent within the meaning of the ***Iqbal*** case referred to above. It follows that the First Respondent breached Principle 6.

Principle 10

81. By advancing £100,000.00 of client money to the residuary beneficiary of the JW estate for the sole purpose of receiving it back as a loan, in the absence of independent legal advice, and then applying those funds to the Respondents' tax liabilities, the First Respondent failed to protect client money, contrary to Principle 10. The breach is aggravated by the fact that, as at the date of Mr C's statement – 28 October 2019 – the loan had not been repaid.

Code of Conduct

82. It is further agreed that the admitted misconduct constituted a failure by the First Respondent to achieve all or any of the following, mandatory Outcomes under the Code of Conduct:

    82.1. O(1.1) – *"you treat your clients fairly"*;

    82.2. O(3.4) – *"you do not act if there is an own interest conflict or a significant risk of an own interest conflict"* (the Firm was put in substantial debt to the estate or its sole residuary beneficiary);

    82.3. O(11.1) – *"you do not take unfair advantage of third parties in either your professional or personal capacity"*.

Allegation 1.4 – Between approximately 10 August 2018 and 6 February 2019 the First Respondent caused or allowed the Firm to make payments to Mr C totalling up to £230,000.00 out of funds belonging to other clients

83. Section G.3 of the FIR, paragraph 93, describes and tabulates how a number of payments were made to Mr C between 10 August 2018 and 6 February 2019 totalling £230,000.00. It will be seen that, immediately prior to five of these payments being made, the JW ledger was significantly overdrawn. For the remaining two payments, the ledger held insufficient funds to make the payments. All of the payments in question were posted to unrelated client ledgers and were therefore made from funds belonging to other clients.

84. Three of the payments, totalling £120,000.00, were posted to the client ledger for the estate of GL (deceased). In her witness statement, the executrix of that estate, Ms L, confirms that she neither knew of, nor authorised any of those payments.

85. But for the First Respondent's conduct in overcharging the JW estate between 16 May 2016 and 29 December 2017 by up to £237,999.23 as described above, there would have been sufficient funds to make these distributions without recourse to the funds of other clients.

86. In his Answer, the First Respondent accepts this allegation but does not implicate the Second Respondent.

87. In his Answer, the Second Respondent states that although he had some knowledge that payments were being made to Mr C at the relevant time, he believed that these payments were from or attributable to the JW estate. As a matter of internal organisation, the Second Respondent states that he had little direct involvement with the administration of the Firm's accounts.

88. Having reviewed its case in light of the Respondents' Answers, the SRA is prepared to accept that it might not be able to gainsay the Second Respondent's position that he was unaware that the payments to Mr C in question were made from funds belonging to other clients. Notwithstanding his duties as co-Principal and COLP, he seems to have taken very little interest in the accounts at all.

89. Subject to the approval of this Agreed Outcome, the SRA therefore seeks leave to withdraw corresponding allegation 2.4 against the Second Respondent pursuant to Rule 24. This, however, is without prejudice to the SRA's case on admitted allegation 2.7 that

the Second Respondent, as co-Principal of the Firm and co-executor of the JW and GL estates could and should have identified and remedied the First Respondent's misconduct.

Accounts Rules

90. It is agreed that the First Respondent's conduct in making these improper payments constituted a material breach of the following provisions of the Accounts Rules:

90.1. Rule 1.2 – *"You must… (b) keep other people's money safely in a bank or building society account identifiable as a client account (except when the rules specifically provide otherwise); (c) use each client's money for that client's matters only; (d) use money held as trustee of a trust for the purposes of that trust only"*;

90.2. Rule 6.1 – *"All the principals in a firm must ensure compliance with the rules by the principals themselves and by everyone employed in the firm…"*;

90.3. Rule 20.1, set out in Appendix 1 to the Rule 12 Statement, which limits the circumstances in which client money may be withdrawn from client account, none of which would apply to the payments in question.

Principles

91. It is further agreed that the First Respondent's admitted misconduct was in breach of the following Principles:

Principle 2

92. By causing or allowing the Firm to make payments to Mr C totalling up to £230,000.00 out of funds belonging to other clients as described above, the First Respondent failed to act with integrity, as defined above. It is well established that a solicitor *"who dips into the client account with the intention of putting the money back lacks integrity because a client account is sacrosanct and regardless of the risk of the money not being repaid."*[22] Indeed,

[22] *Newell-Austin v SRA* [2017] EWHC 411 (Admin), per Morris J at [50]

making improper payments out of client account was expressly cited by the Court of Appeal as an example of conduct lacking integrity in the ***Wingate*** case referred to above.

Principle 4

93. It was not in the best interests of the Respondents' other clients, including the GL estate, to fund distributions to Mr C (particularly without their knowledge or consent), nor would this have been necessary but for the First Respondent's conduct in overcharging the JW estate by up to £237,999.23. The First Respondent therefore breached Principle 4.

Principle 6

94. The First Respondent failed to behave in a way that maintains the trust placed by members of the public in them and the provision of legal services. Members of the public expect that solicitors who are entrusted with the care of client money will safeguard it zealously, not use it for improper purposes such as paying off the residuary beneficiaries of other clients/ estates. The First Respondent's conduct in paying away substantial client monies to Mr C (or permitting this to occur) was, at best, manifestly incompetent within the meaning of the *Iqbal* case referred to above. It follows that the First Respondent breached Principle 6.

Principle 8

95. In making substantial distributions to Mr C out of funds belonging to other, the First Respondent failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles. The First Respondent therefore breached Principle 8.

Principle 10

96. By paying away substantial client money to Mr C, the First Respondent failed to protect that money, contrary to Principle 10. The protection of client money requires that it is dealt with in accordance with the Account Rules. This is a continuing duty and may not be complied with retrospectively, e.g. after the money has been paid away (though breaches must of course be remedied promptly upon discovery).

Code of Conduct

97. It is further agreed that the First Respondent failed to achieve the following, mandatory outcomes under the Code of Conduct:

    97.1. O(1.1) – *"you treat your clients fairly"*;

    97.2. O(1.2) – *"you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice"*.

Allegation 1.5 – between approximately 3 August 2018 and 4 January 2019, while acting in the estate of GL (deceased), the First Respondent caused or allowed the Firm to: raise bills of costs totalling up to £175,923.14, which materially exceeded the level of fees agreed with the estate's lay executors, including Ms L; transfer monies totalling up to £156,638.00 from client to office account, representing a material overcharge.

98. The testator, GL died on 27 November 2017. His Will dated 19 September 2014 appointed his daughter Ms L, his son Mr L and the Second Respondent as co-executors of his estate.

99. The Firm were instructed in or around January 2018 to deal with the administration of the estate. The file contained an unsigned client care letter dated 4 January 2018, addressed to Ms L and Mr L. The client care letter is unclear as to the fee earner was and the reference on the letter (*"L776"*) does not assist to identify who had care and conduct of the matter. However, the client ledger indicates that the First Respondent had overall conduct and oversight of this matter, as does a later client care letter relating to the sale of a property and a subsequent email dated 15 August 2018.

100. The First Respondent has now confirmed in his Answer that he was the relevant fee earner and the solicitor with conduct and oversight of the matter.

101. In relation to fees, the client care letter states: *"Our fees for the administration of an estate are charged at a percentage of the net estate, with our current percentage being 4% of the net value of the estate plus VAT and this is the percentage we will charge for this matter."* The letter goes on to state: *"if the Deceased appointed any person within our firm to be the executor of the estate, then we will charge 3% of the net value of the estate for our services as being an executor involves additional work and responsibility"*.

102. Probate was granted on 14 March 2018. The gross value of the estate was recorded at £1,606,203.00 and the net value was recorded at £1,598,863.00. 4% of the net value would be £63,954.52; 3% of the net value would be £47,965.89. The sum of those figures is £111,920.41 or £134,304.49 including VAT.

103. As part of the estate administration, the Firm were instructed to sell the deceased's former home at 41 Calabria Road, London, N5 1 HZ ("41 Calabria Road"). As noted above, the client care letter for the sale indicates that the First Respondent was the fee earner. It also states that professional fees were *"£TBA"*, i.e. to be agreed.

104. Between 3 August 2018 and 4 January 2019, 12 transfers totalling £156,638.00 were effected from client to office account on this matter. These transfers were made in respect of 10 bills of costs raised by the Firm during the same period, totalling £175,932.32 including VAT. Each bill bears a reference containing the initials *"PP"*, indicating that the First Respondent was the solicitor with conduct of the matter. The FIO noted that only £34,250.00 was transferred to office account in respect of the bill raised on 2 January 2019 (£47,294.62) and no money was transferred in respect of the bill raised on 4 January 2019 (£6,250.00). This resulted in the difference between the amount shown on the Firm's bills of costs and the amount transferred. These transfers are tabulated at paragraph 122 of the FIR.[23]

105. In his Answer, the First Respondent confirms that he issued the bills in question.

106. Of the 12 transfers from the GL estate, 11 were made at a time when the Firm's office account was within £2,000.00 of its £35,000.00 overdraft limit.

107. In addition, as noted above, between 10 August 2018 and 7 December 2018, a total of £120,000.00 was transferred from the GL ledger to the unrelated JW ledger.

108. On 15 August 2018, nearly a fortnight after the first bill (£16,950.00) was raised but prior to the rest of them being raised, the First Respondent sent an email to Ms L and Mr

[23] The final bill of £6,250.00 was omitted from this table in error.

L, cc the Second Respondent, confirming that his fees had been reduced from 4% to 3.5% and that he would not be charging for additional work relating to the sale of 41 Calabria Road. 3.5% of the net value as recorded in the Grant of Probate would be £55,960.21. Adding to this the executor's fee of 3% gives a total of £103,926.10 plus VAT or £124,711.31 including VAT.

109. Contracts for the sale of the property were signed on or about 13 September 2018. The sale price was stated to be £1,550,000.00.

110. Deposit monies in the sum of £155,000.00 were received on 14 September 2018, by when the Firm had invoiced £31,200.00 including VAT.

111. Completion took place on 15 November 2018, when the Firm received completion monies totalling £1,393,300. By this point Firm had invoiced £101,435.20 including VAT.

112. 3.5% of the stated sale price (First Respondent's fees) would be £54,250.00. 3% of the sale price (Second Respondent's/ executor's fees) would be £46,500.00. The sum of those figures is £100,750.00 or £120,900.00 including VAT.

113. Based on the figures quoted to the lay executors, following completion, the Firm would have been entitled to raise further invoices totalling, at most, £19,464.80 (including VAT).

114. However, the Firm went on to raise invoices totalling £74,507.12 (including VAT); a difference of £55,042.32. This was materially in excess of the figures quoted to the lay executors.

115. The overall difference between the maximum fees quoted to the lay executors (£120,900.00 including VAT) and the costs actually taken (£156,638.00 including VAT) was £35,738.00. On any view, that was a material overcharge.

116. Even calculating from the initial fees quoted (4% plus 3.5% of the net value of the estate as recorded in the Grant of Probate = £134,304.49 including VAT), there was still a material overcharge of £22,333.51.

117. On 19 March 2019, £239,681.07 was credited to the client ledger for the GL estate.

118. On 5 April 2019, the First Respondent sent Mr L and Ms L a *"completion statement"* showing the final distributions to be made from the estate. These distributions would not have been possible but for the credits made on 19 March. The completion statement records the Firm's 3.5% fee of £65,100.00 (including VAT but no separate executor's fee appears to have been charged), which retrospectively covered £65,100.00 of the total £156,638.00 taken in relation to costs. However, the completion statement did not record any of the transfers made between 3 August 2018 and 4 January 2019.

119. Ms L met with the FIO on 8 April 2019 and she subsequently provided a signed witness statement dated 3 May 2019. In relation to costs, she states that:

119.1. Neither she nor her brother (who were executrix and executor respectively along with the Second Respondent) had been provided with any bills of costs;

119.2. Neither she nor her brother had knowledge of or consented to the payment of any bills of costs raised in relation to the estate matter.

120. In his Answer, the Second Respondent contends that he had *"no involvement in the conduct of the matter by the Firm, or the billing and transfers that took place in relation to it at the time that they did."* He goes on to say that *"he knew nothing about the bills or the transfers referred to. In those circumstances he did not cause or allow the bills to be raised or the transfers made."*

121. It is noted that the Second Respondent's position has not been contradicted by the First Respondent.

122. Having carefully reviewed its case in light of the Respondent's Answers, the SRA is prepared to accept that it might not be able to gainsay the Second Respondent's position that he was ignorant of the bills in question or to establish the inference pleaded at paragraph 103 of the Rule 12 Statement that both of the Respondents must have been and were aware of the bills at the time they were raised. Subject to the approval of this Agreed Outcome, the SRA therefore seeks leave to withdraw corresponding allegation 2.5 against the Second Respondent, pursuant to Rule 24. This, however, is without prejudice to the SRA's case on admitted allegation 2.7 that the Second Respondent, as co-Principal

of the Firm and an executor of this estate, could and should have been aware of his brother's billing of it.

Accounts Rules

123. It is agreed that the First Respondent's admitted misconduct as described above constituted a material breach of the following provisions of the Accounts Rules (or any of them):

123.1. Rule 1.2 – *"you must… (a) keep other people's money separate from money belonging to you or your firm; (b) keep other people's money safely in a bank or building society account identifiable as a client account (except when the rules specifically provide otherwise); (c) use each client's money for that client's matters only; (d) use money held as trustee of a trust for the purposes of that trust only"*;

123.2. Rule 6.1 – *"All the principals in a firm must ensure compliance with the rules by the principals themselves and by everyone employed in the firm… "*;

123.3. (to the extent that the charges were in 'round sums') Rule 17.7 – *"Costs transferred out of a client account in accordance with rule 17.2 and 17.3 must be specific sums relating to the bill or other written notification of costs, and covered by the amount held for the particular client or trust. Round sum withdrawals on account of costs are a breach of the rules"*;

123.4. Rule 20.1, set out in Appendix 1 to the Rule 12 Statement, which limits the circumstances in which client money may be withdrawn from client account, none of which could apply to a material overcharge;

123.5. Rule 20.3 – *"Office money may only be withdrawn from a client account when it is: (b) properly required for payment of your costs under rule 17.2 and 17.3"* (a material overcharge could not be *"properly required"*).

Principles

124. It is further agreed that the First Respondent's admitted misconduct as described above was in breach of the following Principles.

Principle 2

125. By causing or allowing the Firm materially to overcharge the GL estate in all the circumstances described above, the First Respondent failed to act with integrity, as defined above, contrary to Principle 2.[24] A solicitor acting with integrity would have scrupulous regard to his fiduciary duties, particularly the duty not to profit from his position at the expense of beneficiaries (such as Ms L and Mr L). In any event, he would not raise bills of costs for professional fees in excess of that which had been agreed or which might properly be charged to an estate. Nor would he transfer monies against such bills from client to office account.

Principle 4

126. The conduct alleged constituted a failure by the First Respondent to act in the best interests of the estate and his executor clients, Ms and Mr L, contrary to Principle 4. A solicitor acting in the best interests of an estate and his executor clients would preserve estate assets and would not dissipate them by raising and settling excessive bills of costs.

Principle 6

127. The First Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Members of the public expect that solicitors who are entrusted with the care of estate funds and assets will safeguard them and only take costs to which they are reasonably entitled. The First Respondent's billing of the GL estate was, at best, manifestly incompetent within the meaning of the ***Iqbal*** case referred to above. It follows that the First Respondent breached Principle 6.

Principle 10

128. By charging for costs in excess of that to which he was reasonably entitled, the First Respondent failed to protect client money, contrary to Principle 10. The requirement to protect client money is a fundamental duty of solicitors. Client money is held on trust for clients and is sacrosanct. The proper protection of client money requires it to be kept in a client account and separate from a solicitor's own funds. This is a duty which may not be complied with retrospectively. In this case, the breach was aggravated by the fact that the

[24] In *Newell-Austin v Solicitors Regulation Authority* [2017] EWHC 411 (Admin) it was affirmed that a *"solicitor who dips into the client account with the intention of putting the money back lacks integrity because a client account is sacrosanct and regardless of the risk of the money not being repaid"*. In *Wingate & Evans v SRA v Malins* [2018] EWCA Civ 366, it was held that: *"Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty… a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse… The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors: … Making improper payments out of the client account."*

client money was not only improperly taken out of client account but also paid into an office account which was overdrawn, i.e. it was immediately spent in reducing the Firm's liability to its bank.

Code of Conduct

129. It is further agreed that the First Respondent failed to achieve the following, mandatory outcomes under the Code of Conduct:

129.1. O(1.1) – *"you treat your clients fairly"*;

129.2. O(1.2) – *"you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice"*.

Allegation 1.6 – the First Respondent failed adequately or at all to inform the lay executors of the GL estate including Ms L, of the bills of costs and/or the client to office transfers referred to in allegation 1.5 above

130. It is agreed that Ms L had no knowledge of the bills of costs or transfers until they were drawn to her attention by the FIO. In particular, they were omitted from the completion statement returned to her by the First Respondent. The First Respondent's Answer admits this allegation in full but does not implicate the Second Respondent.

131. As noted above, having carefully reviewed its case in light of the Respondents' Answers, the SRA is now prepared to accept that it might not be able to gainsay the Second Respondent's position that he was genuinely unaware of the bills raised by the First Respondent against the GL estate (albeit that, as co-Principal of the Firm and co-executor of the estate, he could and should have been aware of those bills).

132. Clearly, the Second Respondent could not have alerted his co-executors to invoices of which he himself was ignorant, however culpably. Subject to the approval of this Agreed Outcome, the SRA therefore seeks leave to withdraw corresponding allegation 2.6 against the Second Respondent, pursuant to Rule 24. This, however, is without prejudice to the seriousness of the harm caused by the Second Respondent's culpable ignorance of the bills and consequent non-disclosure of the same, to the extent dealt with in admitted allegation 2.7.

Accounts Rules

133. It is agreed that the First Respondent's admitted misconduct described above was in material breach of the following provisions of the Accounts Rules:

133.1. Rule 17.2 – *"If you properly require payment of your fees from money held for a client or trust in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party."*

133.2. Rule 20.1, set out in Appendix 1 to the Rule 12 Statement, which limits the circumstances in which client money may be withdrawn from client account, none of which could apply to a material overcharge (especially one made without first complying with Rule 17.2);

133.3. Rule 20.3 – *"Office money may only be withdrawn from a client account when it is: (b) properly required for payment of your costs under rule 17.2 and 17.3"* (a material overcharge could not be *"properly required"* and rule 17.2 was not complied with).

Principles

134. It is further agreed that the First Respondent breached the following Principles.

Principle 2

135. By failing to inform Ms L of the charges referred to in allegation 1.5 above the First Respondent failed to act with integrity, as defined above, contrary to Principle 2. A solicitor acting with integrity would disclose his full charges to the lay executors so that s/he could consider whether they are fair and reasonable. In any event, he would not return a misleading and inaccurate statement of account or Completion Statement, which failed to mention substantial charges deducted from estate funds.

Principle 4

136. It was not in the best interest of Ms L to be kept in ignorance of the bills of costs and transfers made against the same. The First Respondent therefore breached Principle 4.

Principle 6

137. The First Respondent failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Members of the public expect solicitors entrusted with the care of estate funds to deal with them transparently and to be open and candid with their lay executor clients about the quantum of their professional costs. They do not expect solicitors to raise substantial charges, thereby diminishing the residual value of the estate, without disclosing this to the lay executors, even if that money is belatedly replaced. They certainly do not expect solicitors to return inaccurate and misleading statements of account/ Completion Statements which fail to mention substantial charges deducted from estate funds. The First Respondent's failure to disclose his charges to the lay executors (including Ms L) was, at best, manifestly incompetent within the meaning of the *Iqbal* case referred to above. It follows that the First Respondent breached Principle 6.

Code of Conduct

138. It is further agreed that the First Respondent failed to achieve mandatory Outcome 1.1 under the Code of Conduct – *"you treat your clients fairly"*.

Allegations 1.7 and 2.7 – As at 31 January 2019, a minimum cash shortage of £489,649.57 existed on the Firm's client bank account

139. It is agreed that the Firm's books of account were not in compliance with the Accounts Rules and that both Respondents were jointly and culpably responsible for this as co-Principals. The FIO calculated and the Respondents both accept that a minimum client account shortage of £489,649.57 existed as at 31 January 2019 ("the extraction date"). The reasons for the shortage have been set out above and are agreed.

Debit client balances

140. It is agreed that the Firm's client matter listing for 31 January 2019 contained 151 debit balances totalling £216,398.77. The FIO reviewed the 10 highest value balances totalling £124,054.49, which contributed to the FIO's minimum client account shortage calculation. These are tabulated at paragraph 43 of the FIR.

141. The remaining 141 debit balances contributed to a further potential client account shortage of £92,344.28.

142. The five largest debit balances exemplified in the FIR occurred for the following agreed reasons:

142.1. Unexplained client to office transfers – on 2 July 2018, the Firm transferred £18,660.00 from the client to office account in the matter of AP, when the client ledger showed that the Firm held no money in relation to this matter. The debit balance of £18,660.00 existed for seven months until corrected on 28 February 2019.

142.2. Payments made on probate matters when there was insufficient money held on the client ledger for the matter – on 11 May 2018, the Firm made four payments totalling £180,193.26 in the matter of MA, when the client ledger showed the Firm only held £159,013.68 in relation to this estate, thereby creating a debit balance of £21,179.86. As at 31 January 2019, this had reduced to £14,884.44.

142.3. Payments to HMRC when there were insufficient funds held on the relevant client ledger:

142.3.1. On 12 June 2018, a debit balance of £14,058.50 was created in the matter of TA when a payment of £19,608.00 was made to HMRC.

142.3.2. On 18 September 2018, a debit balance of £9,803.92 was created in the matter of GD when a CHAPS transfer was made to HMRC in the sum of £26,263.92, in circumstances where only £16,460.00 was recorded against the ledger. This subsequently increased to £13,083.92 on 31 December 2018.

142.4. Inter-ledger transfers made when there was insufficient money held on the originating ledger – on 31 May 2018 an inter-ledger transfer of £202,639.57 was made in the matter of MD, which created a debit balance of £13,078.00.

143. In each of these matters, the debit balances were corrected on 28 February 2019 when a series of office to client account transfers and postings were made.

Incorrect payments from client account

144. It is agreed that between 4 April 2018 and 7 March 2019, 13 incorrect payments were made from client account totalling £328,957.08. Nine of these incorrect payments were made prior to 31 January 2019, and eight contributed to the minimum client account shortage calculation (£208,957.08). This is because a payment of £50,000.00 made on 4 April 2018 was corrected prior to the 31 January 2019.

145. Of the 13 incorrect payments, 10 were interim payments made to the beneficiary of the JW estate, Mr C, who was paid a total of £802,500.00 between 8 July 2016 and 7 March 2019. However, the FIO noted that not all the payments made to him were posted to the JW ledger.

146. The FIO noted that the JW ledger recorded 13 payments totalling £572,500.00 which were made to Mr C between 8 July 2016 and 7 March 2019. An additional seven payments totalling £230,000.00 were made to Mr C between 10 August 2018 and 6 February 2019. These payments were posted to three separate, unconnected ledgers, including that of the GL estate.

147. As noted above, in her witness statement, Ms L confirmed that neither she nor her brother had knowledge of or consented to the three incorrect payments to Mr C identified by the FIO and that is accepted by both the Respondents.

Incorrect transfer of costs

148. The balance of the shortage was caused by the incorrect transfer of costs out of the GL estate already referred to in allegations 1.5 above.

Accounts Rules

149. It is agreed that, to the extent not already admitted in allegations 1.1-1.6 above, the conduct of both Respondents in causing or allowing this substantial client account shortage to arise discloses material breaches of the Accounts Rules by each of them:

149.1. Rule 1.2 – *"You must… (a) keep other people's money separate from money belonging to you or your firm; (b) keep other people's money safely in a bank or building society account identifiable as a client account (except when the rules specifically provide otherwise); (c) use each client's money for that client's matters only; (d) use money held as trustee of a trust for the purposes of that trust only; (e) establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules; (f) keep proper accounting records to show accurately the position with regard to the money held for each client and trust";*

149.2. Rule 6.1 – *"All the principals in a firm must ensure compliance with the rules by the principals themselves and by everyone employed in the firm…"*;

149.3. Rule 7.1 – *"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"*;

149.4. Rule 20.1, set out in Appendix 1 to the Rule 12 Statement, limiting the circumstances in which client money may be withdrawn from a client account;

149.5. Rule 20.3, set out in Appendix 1 to the Rule 12 Statement, limiting the circumstances in which office money may be withdrawn from a client account;

149.6. Rule 20.6 – "Money withdrawn in relation to a particular client or trust from a general client account must not exceed the money held on behalf of that client or trust in all your general client accounts (except as provided in rule 20.7 below)".

Principles

150. It is further agreed that, to the extent not already admitted in allegations 1.1-1.6 above, the conduct of both Respondents in causing or allowing this substantial client account shortage to arise was in breach of the following Principles.

Principle 2

151. The requirement to protect client money is a fundamental duty of solicitors and may properly be considered a matter of professional ethics. Client money is held on trust for clients and it is sacrosanct. By causing or allowing a shortage of up to £489,649.57 to arise, whether deliberately or through carelessness, the Respondents have failed – and failed egregiously – in their most basic professional duties. The Respondents' conduct created a seriously deficient client account. By receiving money into and taking costs out of a deficient client account (or suffering this to occur) the Respondents were not only breaching the Accounts Rules with every transaction but, fundamentally, committing a breach of trust. For instance, if one client was paid out in full then the Respondents were using other clients' money to fulfil that transaction. That is not an acceptable or ethical way to practise when solicitors are custodians and trustees of client money. It follows that the First Respondent and the Second Respondent breached Principle 2.

Principle 4

152. It is obviously very far from being in the best interests of clients that their funds should be kept in a deficient client account. The First Respondent and the Second Respondent caused or allowed this to happen and therefore breached Principle 4.

Principle 6

153. By causing or allowing such an enormous shortage to arise on their client account and by continuing to operate a deficient client account, the Respondents have failed to behave in a way that maintains public trust in them and the provision of legal services. Members of the public expect that, when they entrust their money to a solicitor, that professional is someone who may be trusted *"to the ends of the earth"*.[25] The Respondents' conduct giving rise to the shortage was, at best, manifestly incompetent within the meaning of the *Iqbal* case referred to above. It follows that the First Respondent and the Second Respondent breached Principle 6.

Principle 7

[25] See again *Bolton v Law Society* [1993] EWCA Civ 32, per Bingham MR at [15]

154. The Accounts Rules are *"regulatory obligations"* for the purposes of Principle 7. While not every breach of the Accounts Rules will necessarily amount to misconduct, in this case the breaches were so serious and endemic that the First and the Second Respondents have clearly breached Principle 7.

Principle 8

155. In causing or permitting a shortage of up to £489,649.57 to arise on their client account, the First Respondent and the Second Respondent failed to run their business or carry out their roles in the business effectively and in accordance with proper governance and sound financial and risk management principles, contrary to Principle 8.

Principle 10

156. As long as the shortage existed, the First Respondent and the Second Respondent were failing to protect client money, contrary to Principle 10. On the contrary, they were using client money to prop up their business.

Authorisation Rules

157. In addition, it is agreed that the admitted misconduct shows that the First Respondent breached his obligations as COFA under rule 8.5(e) of the Authorisation Rules.[26]

Dishonesty

158. The SRA's case on dishonesty was particularised in paragraphs 138 to 148 of the Rule 12 Statement. It will be noted that dishonesty was never pleaded in relation to allegations 1.3, 1.7, 2.3 or 2.7.

First Respondent

[26] *"The COFA of an authorised body must: take all reasonable steps to: ensure that the body and its managers or the sole practitioner, and its employees comply with any obligations imposed upon them under the SRA Accounts Rules…"*

159. As noted above, the First Respondent does not admit dishonesty but he is willing to be struck off and also to give an undertaking never to reapply to the Roll. It follows that the SRA has already secured the most severe sanction available to the Tribunal, which clearly safeguards the public interest and protects the reputation of the profession. As such, the SRA has formed a view that there is little public interest in pursuing the First Respondent to a full hearing on the only disputed issue, namely whether his misconduct was aggravated by dishonesty as well as recklessness. To do so is unlikely to make a material difference to sanction.

Second Respondent

160. In respect of the Second Respondent, the Tribunal will appreciate that the SRA's case on dishonesty was contingent upon proof of substantive allegations 2.1, 2.2, 2.4, 2.5 and 2.6. For the reasons set out above, the SRA is now prepared to seek leave to withdraw those allegations. If that application is granted, it follows that dishonesty would also fall away.

Recklessness

161. The SRA's case on recklessness was set out in paragraphs 149 to 150 of the Rule 12 Statement. Reckless was pleaded in the alternative to dishonesty and respect of all the substantive charges.

First Respondent

162. The SRA's case on reckless is fully admitted by the First Respondent insofar as it concerns him. Accordingly, the First Respondent admits that he was reckless as to:

162.1. whether the JW estate was materially overcharged;

162.2. whether the GL estate was materially overcharged;

162.3. whether he was obliged to disclose the Firm's full charges to Mr C and Ms L;

162.4. whether he had in fact properly disclosed the Firm's full charges to Mr C and Ms L;

162.5. whether it was proper for the Firm to accept a loan from Mr C, funded out of the JW estate, in circumstances where neither he nor the JW estate had obtained independent legal advice;

162.6. whether the distributions to Mr C totalling up to £230,000.00 were made out of funds belonging to other clients, including the estate of GL;

162.7. whether there was a material shortage on client account;

162.8. whether he/ the Firm was operating a deficient client account.

Second Respondent

Allegations 2.1 to 2.6

163. In respect of the Second Respondent, the Tribunal will appreciate that the SRA's case on recklessness was contingent upon proof of substantive allegations 2.1 to 2.6. For the reasons set out above, the SRA is now prepared to seek leave to withdraw those allegations under Rule 24. If that application is granted, it follows that recklessness would also fall away.

Allegation 2.7

164. Although the Second Respondent admits allegation 2.7 in full, he does not admit that his misconduct was aggravated by recklessness. As noted above, the Second Respondent's position is that he was entirely ignorant (albeit culpably so) of the matters giving rise to the shortage. He was neither aware of a material risk (albeit he could and should have been), nor did he unreasonably take a material risk. The Second Respondent is nonetheless willing to be suspended for 12 months and thereafter to submit to a restriction order imposing onerous conditions upon his practising certificate.

165. Given the Second Respondent's apparent ignorance of the underlying defalcations made and loan taken by the First Respondent, the SRA does not consider that proof of recklessness is likely to result in a more severe sanction than that which the Second Respondent is already willing to accept. Accordingly, the SRA is prepared to accept that, in all the circumstances, it may no longer be in the public interest to pursue this discrete allegation against the Second Respondent. Subject to approval of the sanction proposed below, the SRA therefore seeks leave to withdraw the alleged aggravating feature of recklessness against the Second Respondent under Rule 24.

Mitigation

First Respondent

166. The following points were advanced by way of mitigation on behalf of the First Respondent in his Answer, but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:

166.1. *"The First Respondent… was dealing with the majority of the client base of the firm (some 4892 clients, 61% of the firm from 2003-2019). Although the Second Respondent was a partner in the firm, he took minimal interest in the business side and provided little support to the First Respondent, who became overwhelmed with all the workload.*

166.2. *"This effected [sic] the effectiveness and viability of the firm which left the First Respondent effectively running the firm alone which had an enormous impact on both his fee earning work and the effective systems that should have been in place to run the business compliantly. As the First Respondent was the main fee earner it also meant he was under constant pressure to invoice to pay their joint outgoings and personal expenses.*

166.3. *"At the start of 2018 the First Respondent was finding the pressure of singlehandedly running the firm too much and attempted to have serious and constructive discussions with the Second Respondent to close the practice and also sought advice from the firm's Accountants. A meeting was arranged to discuss all these matters with the Accountants which the Second Respondent did not attend.*

166.4. *"This series of events had a detrimental impact on the First Respondent[']s family life as he was unable to relax or switch off as he was constantly distracted with running the firm and ensuring his clients best interests were being looked after. These*

circumstances caused the First Respondent to lose focus and concentration making poor decisions with an obvious lack of judgement in making important decisions which led to the closure of the firm and referral to the SDT for matters which the First Respondent recognises he will lose his livelihood.

166.5. *"The First Respondent recognises that the business side of the practice was not his forte and it is clear that as a result of the disorganisation and chaos that ensued the practice failed. The First Respondent has built up a loyal and large clientele within the local, mostly Greek community, over the past 20 years. He is well respected and has many return clients. It was never his intention to cause any client loss or distress."*

Second Respondent

167. The following points are advanced by way of mitigation on behalf of the Second Respondent, but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:

"As set out above, the Second Respondent admits that he failed to be sufficiently active in ensuring that the Firm's accounts were properly managed and supervised. Whilst (as further explained below) the management of the accounts lay with the First Respondent, the Second Respondent fully accepts and recognises that he failed to act as a responsible partner in a Firm should have done in making sure the accounts were properly managed and reconciled. He fully accepts that in so doing he failed to act as he should have done as COLP and as a responsible solicitor. Although there is a relationship context to this (further explained below), he is very sorry that in failing to be more active in supervision his conduct fell below that which the public were entitled to expect from a solicitor in practice and partner in a firm, and wishes to offer his unreserved apologies for his failure to do so.

"The first is that whilst he accepts he should have been more pro-active in ensuring the Firm's accounts were properly managed and reconciled, the Second Respondent did not have any direct knowledge that any of the payments and transfers would give rise to cash shortages. The transfers and payments that caused the cash shortages were all on matters which Peter Petrou had the conduct of which the Second Respondent had no day to day involvement in the conduct of.

"As well as not being involved in or knowing about the transfers which now appear to have caused the shortages, the Second Respondent had no knowledge of the shortages themselves prior to February 2019 (when he was told about them by the First Respondent, and whereupon they immediately started taking steps to remedy the shortages – prior to the letter of 28 February 2019 from the SRA).

"In relation to this, day to day management of the accounts at the Firm was undertaken by the First Respondent (who was also COFA), and the Firm employed a bookkeeper ([EP], the First Respondent's wife) who is very experienced and who dealt with the postings and preparing the reconciliations.

"The Second Respondent understood that that appropriate steps were being taken by the First Respondent and [EP] to keep the accounts up to date and ensure that reconciliations were completed. Whilst in making the admissions that he does the Second Respondent accepts that he was too trusting of the First Respondent in relation to this, but he had been assured by the First Respondent that any issues were being appropriately dealt with (including via reviews by the Firm's accountants).

"Linked to this, the Second Respondent's representatives would also invite the Tribunal to take account of the family relationship between First and Second Respondent. The First Respondent was five years older than the Second Respondent, and the Second Respondent always looked up to him both professionally and personally. Whilst they were equal partners in terms of ownership of the Firm, Peter was the dominant party when it came to matters of administration of the Firm. He was also someone who he held in high esteem for his competence and honesty. He trusted him completely. With the benefit of hindsight the Second Respondent can see that these features of the relationship contributed to him being too trusting and less assertive (he accepts mistakenly) than he should have been.

"Finally, the Tribunal is asked to note that as soon as he was made aware of the cash shortages the Second Respondent took immediate steps to ensure they were remedied, and that despite not being in any way directly responsible for their having arisen, did so at very substantial personal cost to himself. In raising funds to remedy the shortfall and ensure clients were not at risk of being out of pocket, he has incurred a personal liability of nearly £250,000 in borrowing money for shortage to be remedied. (The borrowing was from a combination of re-mortgages on properties he had a share of ownership of and borrowing from his father and a friend). These steps were embarked upon before the letter from the SRA of 28 February 2019 indicating they wished to carry out an investigation. There seems little current prospect of his ever recovering the monies he has lost ensuring that matters were put right.

"In acting as he did (i.e. incurring substantial personal debt) to enable the shortages to be remedied the Second Respondent accepts that he was doing no more than what was "right" as a responsible partner in a solicitors' firm to ensure clients' interests were protected, but his representatives would invite the Tribunal to consider that the great lengths he has gone to, at substantial personal financial cost, to remedy a situation not caused by his own actions, to be substantial mitigation for him."

Proposed Sanctions

First Respondent

168. Subject to the Tribunal's approval, it is agreed that the First Respondent should be **struck off** the Roll of Solicitors. In the event that the Tribunal is minded to make that order, the First Respondent also gives an **undertaking** to the SRA that he will never apply for readmission to the Roll in future. For the avoidance of doubt, the SRA's readiness to withdraw the allegation of dishonesty against the First Respondent is conditional and contingent upon the First Respondent not only being struck off but also upon his provision of that undertaking.

169. In reaching this agreement, the parties have carefully considered and had regard to the Guidance Note. In particular, it is agreed that:

(with reference to §19 of the Guidance Note – culpability)

169.1. The First Respondent's level of culpability was **very high**. Although dishonesty has not been admitted or proved in these proceedings, the First Respondent has admitted to very serious recklessness, lack of integrity and manifest incompetence in relation to his handling of client money, such that he is no longer fit to be a solicitor. The misconduct was not spontaneous but rather endemic, disclosing a significant and prolonged breach of trust. The improper borrowing from Mr C was planned. As noted above, the First Respondent was the solicitor with care and conduct of the relevant matters. He had direct control of and responsibility for the circumstances giving rise to the misconduct. He was an experienced solicitor of over 25 years standing at the material time.

(with reference to §20 of the Guidance Note – harm)

169.2. The level of harm caused by the First Respondent's misconduct was **very high**. Although the First Respondent maintains that no client suffered actual harm as a result of his misconduct, the extent of the client account shortage caused by him was such that there was, at the least, a significant level of potential harm to clients of the Firm. Consequently, the harm caused to the reputation of the legal profession is profound. This was a very grave departure from *"the complete integrity, probity and trustworthiness"* to be expected of a solicitor. Whether intended or not, all of the harm caused by the misconduct was reasonably foreseeable.

(with reference to §21 of the Guidance Note – aggravating factors)

169.3. There are a number of aggravating factors, chiefly recklessness. Whether deliberate or not, the misconduct was repeated and continued over a significant period of time. By significantly overcharging the JW and GL estates, the First Respondent abused his position of trust and took advantage of the beneficiaries. By taking a loan of £100,000.00 funded out of the JW estate, the First Respondent failed in his fiduciary duties and took advantage of Mr C. The First Respondent ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession. Although the First Respondent has not previously appeared before the Tribunal, he was co-Principal and COFA of the Firm which, on 26 September 2019, received a rebuke for various breaches of the Accounts Rules (Case Number 11889-2018).

(with reference to §22 of the Guidance Note – mitigating factors)

169.4. The First Respondent's mitigation has been set out above. While those points are not adopted or endorsed by the SRA, it is accepted and to the First Respondent's credit that he is remorseful, that the minimum shortage was eventually replaced, that he cooperated with the SRA's investigation, that he had a previously unblemished career, and that he made full and frank admissions to the substantive allegations of misconduct (and to the aggravating feature of recklessness), thereby demonstrating a degree of insight. Subject to approval of this Agreed Outcome, for the reasons set out above, the SRA does not propose to pursue the charge of dishonesty. The First Respondent nonetheless recognises that the admitted misconduct is so serious that he ought to be struck off the Roll of Solicitors and he does not seek to persuade the Tribunal otherwise.

(with reference to §49 of the Guidance Note – striking off the Roll)

169.5. The seriousness of the First Respondent's misconduct (involving as it does the misuse of client money totalling up to £489,649.57, improper borrowing from estate funds, manifest incompetence, multiple failures to act with professional integrity and sustained recklessness) is such that neither a Reprimand, a Fine, a Restriction Order nor a Suspension Order is a sufficient sanction or in all the circumstances appropriate. The protection of the public and the protection of the reputation of the legal profession requires that the First Respondent's name be struck off the Roll.

Second Respondent

170. Subject to the Tribunal's approval, it is agreed that the Second Respondent should be **suspended for 12 months** from the date of this Agreed Outcome being approved. It is further agreed that, upon expiry of that term of suspension, there shall be an indefinite **Restriction Order**, imposing the following conditions on the Second Respondent's practice, until further order of the Tribunal:

170.1. He may not be a manager or owner of any authorised body, authorised non-SRA firm or legal services body.

170.2. He may not act as a Compliance Officer for Legal Practice ("COLP") or Compliance Officer for Finance and Administration ("COFA") for any authorised body, or Head of Legal Practice ("HOLP") or Head of Finance and Administration ("HOFA") in any authorised non-SRA firm.

170.3. He may not hold or receive client money, or act as a signatory to any client account, or have the power to authorise transfers from any client or office account.

170.4. He will immediately inform any actual or prospective employer of these conditions and the reasons for their imposition.

171. In reaching this agreement, the parties have carefully considered and had regard to the Guidance Note. In particular, it is agreed that:

(with reference to §19 of the Guidance Note – culpability)

171.1. The Second Respondent's level of culpability, though lower than that of the First Respondent, was still **high**. He has admitted to conduct lacking integrity and to incompetence. As Bingham MR said in Bolton v Law Society [1993] EWCA Civ 32 (at [14]): *"Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him"*. The misconduct cannot be described as spontaneous; rather, the Second Respondent's inattention to the accounts was endemic and cavalier. While he may not have been the solicitor with conduct, he was a professional executor of the JW estate and of the GL estate, as well as being co-Principal and COLP of the firm instructed in their administration. While he may not have had direct control of or responsibility for the First Respondent's misconduct, he failed to identify and remedy it in a timely manner. He therefore breached the trust placed in him by the executors and the public at large. The Second Respondent was

not as experienced as the First Respondent but he was still a solicitor of around 20 years standing at the material time.

(with reference to §20 of the Guidance Note – harm)

171.2. The level of harm caused by the Second Respondent's misconduct was **high**. Although the Second Respondent maintains that no client suffered actual harm as a result of his misconduct, the extent of the client account shortage which arose on his watch (due to his culpable ignorance) was such that there was, at the least, a significant level of potential harm to clients of the Firm. Consequently, the harm caused to the reputation of the legal profession is profound, albeit members of the public would likely judge the Second Respondent less severely than the First Respondent. Again, this was a very grave departure from *"the complete integrity, probity and trustworthiness"* to be expected of a solicitor, albeit not as grave as the First Respondent's. Whether intended or not, all of the harm caused by the misconduct was reasonably foreseeable.

(with reference to §21 of the Guidance Note – aggravating factors)

171.3. Notwithstanding the proposed withdrawal of dishonesty and recklessness against the Second Respondent, there remain a number of aggravating factors. The misconduct was repeated and continued over a significant period of time. The Second Respondent failed to prevent the First Respondent from taking advantage of estates entrusted to the Second Respondent as a professional executor. As co-owner of the Firm, the Second Respondent benefitted financially from the First Respondent's excessive billing and his improper borrowing out of the JW estate. The Second Respondent ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession. This is not the Second Respondent's first appearance before the Tribunal. On 26 September 2019 he was fined £50,000.00 for using interim payments of a client's damages to pay the Firm's profit costs and professional disbursements without the approval of the Court and for failing to provide a litigation friend with any or adequate information about costs. The relevant misconduct had occurred on dates between December 2007 and October 2014 (Case Number 11889-2018).

(with reference to §22 of the Guidance Note – mitigating factors)

171.4. The Second Respondent's mitigation has been set out above. While those points are not adopted or endorsed by the SRA, it is accepted and to the Second Respondent's credit that he is remorseful, that the minimum shortage was eventually replaced, that he cooperated with the SRA's investigation and has made full admissions to allegation 2.7. Subject to approval of this Agreed Outcome, for the reasons set out above, the SRA does not propose to pursue the charges of recklessness or dishonesty. The Second Respondent nonetheless recognises that the admitted misconduct (which is not his first disciplinary offence) is so serious that he ought to be suspended and made subject to a restriction order, and he does not seek to persuade the Tribunal otherwise.

(with reference to §39 of the Guidance Note – fixed term suspension of 12 months)

171.5. The seriousness of the Second Respondent's misconduct (involving as it does the failure to protect client money totalling up to £489,649.57, sustained incompetence, and multiple failures to act with professional integrity) is such that neither a Reprimand, a Fine, nor a Restriction Order on its own is a sufficient sanction or in all the circumstances appropriate. There is a need to protect both the public and the reputation of the legal profession from future harm from the Second Respondent by temporarily removing his ability to practise and public confidence in the legal profession demands no lesser sanction. However, given the SRA's readiness to accept that the Second Respondent was ignorant of the First Respondent's misuse of client funds (albeit culpably), neither the protection of the public nor the protection of the reputation of the legal profession justifies striking off the Roll.

(with reference to §§34 and 38 of the Guidance Note – restriction order)

171.6. Upon expiry of his suspension, restrictions in the form of conditions of practice will be necessary and appropriate until further order to ensure the protection of the public and the reputation of the legal profession from future harm by the Second Respondent. The conditions proposed reflect existing conditions on the Second Respondent's practising certificate and directly relate to and address the particular misconduct admitted above.

Costs

172. As noted above, subject to the approval of this Agreed Outcome, it is agreed that the First and Second Respondents will pay **£40,000.00** towards the SRA's costs of the Application and Enquiry, including VAT, the SRA waiving any further claim to costs. This

figure represents a little over 60% of the SRA's total costs incurred in these proceedings and is commended to the Tribunal as a reasonable and proportionate level of recovery. Should this order be approved, the Respondents have agreed to apportion this liability between themselves on a 50:50 basis.

Signed:

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RORY MULCHRONE

Barrister, Capsticks Solicitors LLP

For and on behalf of the Solicitors Regulation Authority

……

NICHOLAS TREVETTE

Solicitor, Murdochs Solicitors Ltd

For and on behalf of the First and Second Respondents

Date: