

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12155-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ANDREW JOHN MURLIS RUGG

Respondent

Before:

Mrs A. Kellett (in the chair)

Mr P. Lewis

Ms J. Rowe

Date of Hearing: 25 March 2021

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent were set out in a Rule 12 Statement dated 21 December 2020 and were that while in practice as the Recognised Sole Practice of “Andrew Rugg” (“the RSP”) he:
 - 1.1 Caused or permitted a client account shortage to exist, and show as a minimum of £26,448.05 as at 31 August 2019. This was in breach of any or all of:
 - a) Principle 6 of the SRA Principles 2011 (“the Principles”);
 - b) Principle 10;
 - c) Rule 1.2 (a) of the SRA Accounts Rules 2011 (“the Accounts Rules”);
 - d) Rules 20.1, 20.3 and 20.6 of the Accounts Rules;
 - e) to the extent applicable from 25 November 2019, Rule 4.1 of the SRA Accounts Rule 2019 (“the 2019 Accounts Rules”).
 - 1.2 Failed to maintain proper accounting records to ensure compliance with the Accounts Rules. In doing so he breached or failed to achieve any or all of:
 - a) Rule 1.2(e) and/or 1.2(f) of the Accounts Rules;
 - b) Rules 29.1 and/or 29.2 of the Accounts Rules;
 - c) Rule 29.9 of the Accounts Rules;
 - d) Outcomes 7.2 and/or 7.3 of the SRA Code of Conduct 2011 (“the Code of Conduct”);
 - e) Principle 6.
 - 1.3 Failed to carry out client account reconciliations in accordance with the requirements of the Accounts Rules, breaching Rule 29.14 of the Accounts Rules.
 - 1.4 Failed to remedy promptly any or all of the breaches of the Accounts Rules alleged in 1.1 to 1.3, above, in breach of Rule 7 of the Accounts Rules and, to the extent applicable after 25 November 2019, Rule 6 of the 2019 Accounts Rules.
 - 1.5 Transferred £290,584 from the client account to an incorrect third party bank account on 4 June 2018, resulting in a shortage on the client account of £290,584 from 4 June 2018 until 3 September 2018. In doing so he breached any or all of:
 - a) Principle 10;
 - b) Rules 20.1 and 7 of the Accounts Rules.
 - 1.6 Failed to report the large shortage and the circumstances of matters in allegation 1.5 to the SRA. In failing to do so he breached or failed to achieve any or all of:
 - a) Outcome 10.3 of the Code of Conduct;
 - b) Principle 7.
 - 1.7 Failed to comply with any or all of:
 - a) Principle 8; and/or

- b) his obligations as a Compliance Officer (COLP and COFA) under Rule 8.5(c) and/or Rule 8.5(e) of the SRA Authorisation Rules 2011 in relation to the matters referred to in allegations 1.1 - 1.6.

Admissions

2. The Respondent admitted all of the allegations.

Documents

3. The Tribunal had before it the following documents:
 - Application and Rule 12 Statement dated 21 December 2021 with exhibits
 - Respondent's Answer
 - Application and Statement of Agreed Facts and Proposed Outcome dated 23 March 2021
 - Directions made by the Tribunal
 - Applicant's cost schedule dated 21 December 2020

Background

4. The Respondent was admitted to the Roll of Solicitors on 15 December 1971. At all material times he was the owner and sole solicitor of the RSP, additionally holding the compliance roles of Compliance Officer for Legal Practice and Compliance Officer for Finance and Administration.
5. The Applicant's investigation arose following receipt of the RSP's Qualified Accountant's Report for the period 1 January to 31 December 2018. The report noted similar accounts issues and weaknesses to those identified by the Applicant's Forensic Investigation Officer in 2012/2013 (which had not then led to a formal report). A further Forensic Investigation was authorised which, in summary, raised the following issues:
 - a) general SRA Accounts Rules breaches and a minimum client account shortage of £26,448.05 showing on 31 August 2019 (Allegations 1.1 - 1.4);
 - b) specific issues relating to a large payment out of client funds to an incorrect third party bank account following a cybercrime incident (Allegations 1.5 - 1.6).

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

6. 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 (December 2020). The proposed sanction was that the Respondent pay a fine of £10,000.

Findings of Fact and Law

7. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
8. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.
9. The Tribunal considered the Guidance Note on Sanction (December 2020). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
10. The Tribunal agreed with the parties that the Respondent was in a position of trust in respect of client money, and that he breached that trust by not looking after it properly. The Respondent had full control over the circumstances giving rise to the misconduct and knew or ought reasonably to have known that he was in material breach of his obligations to protect the public and the reputation of the legal profession. This was particularly so given that he had received advice from the Applicant on similar issues in 2012/13. The Tribunal considered that the one-off breaches related to the cybercrime matter, and the failure to insist on additional verification steps when instructions as to the payment of sale proceeds were received, was particularly troubling given the critical importance of such steps to counter attempted fraud and criminality.
11. The Tribunal accepted that the Respondent had taken steps to remedy the breaches, had cooperated with the Applicant and, but for the matters identified in the attached Statement of Agreed Facts and Proposed Outcome, had a long unblemished disciplinary record.
12. The Tribunal considered that the appropriate sanction in this matter was a financial penalty falling within Level 3 of its Indicative Fine Bands (suitable for conduct assessed as "more serious") coupled with a condition that the Respondent provide accountant's reports to the Applicant. The parties proposed a fine in the sum of £10,000 coupled with a condition that for a period of three years the Respondent must file accountant's reports with the Applicant on 31 December and 30 June annually.
13. The Tribunal, having determined that the proposed sanction was appropriate and proportionate, granted the application for matters to be resolved by way of the Agreed Outcome.

Costs

14. The parties agreed that the Respondent should pay the Applicant's costs of these proceedings fixed in the sum of £16,000. The Tribunal considered the costs application to be appropriate and proportionate, and ordered that the Respondent pay the costs in the agreed amount.

Statement of Full Order

15. The Tribunal ORDERED that the Respondent, ANDREW JOHN MURLIS RUGG, solicitor, do pay a fine of £10,000, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £16,000.
- 15.1 The Tribunal further Ordered that for a period of three years beginning on 25 March 2021 the Respondent shall file accountant's reports, for his Recognised Sole Practice of Andrew Rugg, with the SRA in relation to six month periods ending on 31 December and 30 June annually, beginning with the current period, with the reports to be filed within two months of the respective period.
- 15.2 For the avoidance of doubt, the condition imposed in paragraph 15.1 above shall cease to apply in the event and from the date that the Respondent closes his Recognised Sole Practice in an orderly manner.
16. There be liberty to either party to apply to the Tribunal to vary the condition set out at paragraph 15.1 above.

Dated this 29th day of March 2021
On behalf of the Tribunal



A Kellett
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
29 MAR 2021

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

ANDREW JOHN MURLIS RUGG

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

Through an application and a statement dated 21 December 2020, made pursuant to Rule 12 (2) of the Solicitors (Disciplinary Proceedings) Rules 2019 ("the statement"), the Solicitors Regulation Authority ("SRA") brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of Andrew John Murlis Rugg.

The allegations

1. The allegations against the Respondent, Andrew John Murlis Rugg ("Mr Rugg"), made by the SRA are that, while in practice as the Recognised Sole Practice of "Andrew Rugg" ("the RSP") he:
 - 1.1 Caused or permitted a client account shortage to exist, and show as a minimum of £26,448.05 as at 31 August 2019. This was in breach of any or all of:
 - a) Principle 6 of the SRA Principles 2011 ("the Principles");
 - b) Principle 10 of the Principles;
 - c) Rule 1.2 (a) of the SRA Accounts Rules 2011 ("the Accounts Rules")
 - d) Rules 20.1, 20.3 and 20.6 of the Accounts Rules
 - e) to the extent applicable from 25 November 2019, Rule 4.1 of the SRA Accounts Rule 2019 ("the 2019 Accounts Rules").
 - 1.2 Failed to maintain proper accounting records to ensure compliance with the Accounts Rules. In doing so he breached or failed to achieve any or all of:
 - a) Rule 1.2(e) and/or 1.2(f) of the SRA Accounts Rule 2011 ("the Accounts Rules");
 - b) Rules 29.1 and/or 29.2 of the Accounts Rules.
 - c) Rule 29.9 of the Accounts Rules.
 - d) Outcomes 7.2 and/or 7.3 of the SRA Code of Conduct 2011 ("the Code of Conduct").
 - e) Principle 6 of the SRA Principles 2011.

- 1.3 Failed to carry out client account reconciliations in accordance with the requirements of the SRA Accounts Rules 2011, breaching Rule 29.14 of the Accounts Rules.
- 1.4 Failed to remedy promptly any or all of the breaches of the Accounts Rules alleged in 1.1 to 1.3, above, in breach of Rule 7 of the Accounts Rules and, to the extent applicable after 25 November 2019, Rule 6 of the 2019 Accounts Rules.
- 1.5 Transferred £290,584 from the client account to an incorrect third party bank account on 4 June 2018, resulting in a shortage on the client account of £290,584 from 4 June 2018 until 3 September 2018. In doing so he breached any or all of:
 - a) Principle 10 of the SRA Principles 2011
 - b) Rules 20.1 and 7 of the Accounts Rules
- 1.6 Failed to report the large shortage and the circumstances of matters in allegation 1.5 to the SRA. In failing to do so he breached or failed to achieve any or all of:
 - a) Outcome 10.3 of the SRA Code of Conduct 2011
 - b) Principle 7 of the SRA Principles.
- 1.7 Failed to comply with any or all of:
 - a) Principle 8 of the Principles; and/or
 - b) his obligations as a Compliance Officer (COLP and COFA) under Rule 8.5(c) and/or Rule 8.5(e) of the SRA Authorisation Rules 2011

in relation to the matters referred to in allegations 1.1 – 1.6.

Admissions

2. Mr Rugg admits the allegations made against him in Allegations 1.1 to 1.7 of the statement, and as set out above. He further accepts the factual basis of the admitted allegations as set out in this document.

Agreed Facts

3. The following facts and matters, which are relied upon by the SRA in support of the allegations set out in paragraph 1, are agreed between the SRA and Mr Rugg:
 - 3.1 Mr Rugg was born in 1947 and was admitted to the Roll on 15 December 1971. At all material times he has been the owner and sole solicitor of the RSP, additionally holding the compliance roles of COLP and COFA.
 - 3.2 The SRA had considered accounts concerns at the RSP with a visit from an SRA Forensic Investigation Officer (“the FIO”) to Mr Rugg in 2012/2013. This did not lead to a formal report, but to the problems being discussed with Mr Rugg and advice given on resolving the problems and preventing a recurrence.

This included providing advice on, amongst other issues, ensuring that reconciliations were undertaken properly and the need to carefully monitor ledgers showing client debits.

- 3.3 The SRA's investigation in this matter arose from receipt of the RSP's Qualified Accountant's Report (QAR) for the period 1 January to 31 December 2018. The QAR stated that the accountant did not consider Mr Rugg's integrity to present a risk, but noted "*continued weaknesses in the overall client accounting systems and bookkeeping environment [which]...could potentially increase the risk to client money from a lack of oversight*".
- 3.4 The SRA authorised another Forensic Investigation, Mr Rugg being informed of this inspection by letter dated 24 September 2019 and asked to prepare accounting information. The Forensic Investigation Officer ("FIO") used 31 August 2019 as the extraction date for accounts information.
- 3.5 The FIO had some difficulties ascertaining the exact position on the accounts, in part due to vague narratives used on the ledgers and an accounting package that was not well suited to solicitors' accounts. However, from reviewing the available documentation and discussion with Mr Rugg the FIO produced a report dated 24 January 2020 ("the FI Report"), which established the background facts to the matters set out below.

Client Debit Balances / Office Credit Balances

- 3.6 Mr Rugg had not properly investigated or rectified client debit balances of £128,649.46 across 103 matters, and office credit balances of £36,195.92 across 115 matters, as at 31 August 2019. The figure of £128,649.46 matched the difference between actual client money held and the amounts shown on the ledgers as being liabilities to clients.
- 3.7 Many of the client debit balances had arisen due to basic administration problems, with Mr Rugg not updating client ledgers across different matters and/or making or allowing posting errors. The FIO established that:
 - i. £85,997.86 of the client debit balances were found to be on matters where the same client retained a contra credit on other matter ledgers (but with no inter ledger transfer having taken place). Subject to any additional errors, these matters should have shown no shortage on funds held for those clients.
 - ii. £7,823.10 of the client debit balances were caused by other posting errors.
- 3.8 Of the remaining £35,008.50 client debit balances, the FIO identified that at least £26,448.05 had arisen from funds in excess of those held for specific clients being paid out of client account. The FIO could not establish the cause of the remaining £8,560.45 in client debits.

- 3.9 The FIO therefore identified Mr Rugg's accounts as showing a minimum client account shortage figure of £26,448.05, across 61 clients with debit ledgers. Mr Rugg corrected most of this shortage figure, £22,040.19, in a transfer on 30 September 2019. Mr Rugg corrected two other matters on 30 December 2019, with one (of £1,206.84) still being investigated by Mr Rugg at the time of the FIO's report. As noted in paragraph 5 below, Mr Rugg's reporting accountants have subsequently confirmed that "*Action has been taken to remedy the issues previously identified regarding the client account debit balances and office account credit balances*".
- 3.10 The FIO reviewed a selection of 12 files, which indicated causes of shortages included duplicate transfers of costs on several matters, and on one file an overpayment to beneficiaries in error.

Duplicate transfers of bills

- 3.11 The FIO reviewed the transfer lists for the period 11 September 2018 to 30 July 2019 and noted 24 duplicate transfers of costs totalling £16,689.63.
- 3.12 Mr Rugg did not operate an automated or computerised billing and record keeping system, but maintained transfer matter lists with a record of bills and other transfers. Mr Rugg explained to the FIO that he entered his bills in a book and ticked them off when transferring the money from client to office account. He said that he had probably forgotten to tick some matters off the list and had therefore transferred the costs again the following month.
- 3.13 Some of the matters with duplicate transfers were shown on the client debit list and others were not. It was unclear whether the matters with duplicate invoices that did not appear on the client debit list had been resolved at an earlier stage, or simply held sufficient funds in client account not to lead to a client ledger debit at that time.
- 3.14 On multiple matters, the situation was not addressed at all for at least 6 months.
- 3.15 At least initially, where the duplicate transfers were larger than the subsequent client account debit, on some matters the amount of the client account debit was initially transferred back to client account rather than the amount of the duplicate transfer.

Client S

- 3.16 One example reviewed by the FIO was the matter of Client S. Duplicate invoice amounts of £1,120 were transferred from client account to office account on 8 February and 4 March 2019. Prior to the initial transfer of costs on 8 February 2019, there was £1,255 credited to the client ledger (with the office ledger showing zero). After the second duplicate transfer of £1,120 was debited, the client ledger debit was £985 and the office ledger credit £1,160 (after an unspecified discrepancy in the transfers / ledgers).

- 3.17 When Mr Rugg made a bulk transfer of funds on 30 September 2019 to correct various matters, the £985 client account debit was corrected but an office credit remained showing and remained to be resolved.
- 3.18 As noted in paragraph 5 below, Mr Rugg's reporting accountants have subsequently written in January 2021 with confirmation that "action has been taken to remedy the issues previously identified regarding the client account debit balances and office account credit balances".

Overpayment to beneficiaries

- 3.19 On or around 27 June 2019 Mr Rugg had distributed the estate of Mrs C to the residuary beneficiaries without having paid £8,000 in specific bequests due to others. He noted the error and wrote to the executrices to inform them of the error on 11 July 2019. Each of the four residuary beneficiaries was required to repay £2,000.
- 3.20 Mr Rugg received £4,000 from two of the beneficiaries immediately, but sent out the full £8,000 in specific bequests from client account (i.e. when he had only received £4,000 back). A further £2,000 was refunded from a third residuary beneficiary on 17 July 2019. The fourth refund, from a residuary beneficiary residing in the USA, was not received until 6 September 2019 and arrived less banking charges of £33.34.
- 3.21 In addition to the error regarding the specific bequest, there had been a small £1.02 net debit balance. Accordingly, the relevant client matter had a shortage of £4,001.02 for one week in July, a shortage of £2,000.02 between 17 July 2019 and 6 September 2019 and a shortage of £34.36 from 6 September 2019 to 30 December 2019, when it was corrected by Mr Rugg.

General posting errors and inaccurate ledgers

- 3.22 As noted above, the FIO identified £85,997.86 in client ledger debits where contra entries in fact existed on other matters for the client (so no overall shortage but funds still on account), and a further £7,823.10 where separate posting errors were identified.
- 3.23 One example was a conveyancing file for a Mr and Mrs F. Mr Rugg maintained separate ledgers for the sale and purchase of their properties, but did not update the ledgers accurately when using funds from the sale to facilitate the purchase.
- 3.24 The last substantive entry regarding the transaction on the purchase ledger was on 1 April 2019. By 31 August 2019¹ the purchase ledger of Mr and Mrs F showed a debit of £328,132.91 with the sale ledger showing a credit of £328,109.10, in any event an overall shortage of £23.81 from 1 April to 31

¹ around 5 months after completion of the purchase

August 2019. However, on 31 August 2019 the ledgers showed the full balance of £328,109.10 being transferred from the sale ledger, but only £327,057.21 being transferred to the purchase ledger. None of the ledgers, the files, or Mr Rugg could explain where the missing difference of £1,051.89 was posted. On 30 September 2019 the Respondent rectified the shortage of £1,075.70 with a transfer from the office account to the client account.

3.25 In interview with the FIO, Mr Rugg said that:

- i. his method had been to manually write down transactions on the client account in a book. This would then be transferred to his accountants on a monthly basis, to input into the individual ledgers on his accounts package.
- ii. there had been some historic accounts issues, from prior to the involvement of his accountants.
- iii. with monthly updating the client ledgers were not always up to date.
- iv. there were various errors in the entries due to misreading and/or misposting of information provided to his accountants

Reconciliations

3.26 The FIO found that Mr Rugg's client account reconciliations had not been showing an accurate position. The reason for this was that his reconciliations showed a 'net' figure, instead of showing the client debit balances and the client credit balances separately. The result of this 'netting off' was that the client account reconciliations did not show the 103 client debit balances as a difference and as a potential shortage.

3.27 As stated in paragraph 3.2, the FIO had previously provided Mr Rugg with some advice on undertaking reconciliations properly. Nevertheless, Mr Rugg stated that he arranged for his accountants to prepare the reconciliations for him and had not realized that this was a breach of the Accounts Rules.

Correction of Debit balances (Delay)

3.28 Of the matters comprising the minimum shortage amount of £26,448.05 that showed on 31 August 2019, the majority (£22,040.19) were corrected with a transfer by Mr Rugg from office account to client account on 30 September 2019. A further £3,201 had been corrected by 30 December 2019, with one matter (£1,200) understood to be still being investigated by Mr Rugg at the time the FI Report was completed.

3.29 The FIO considered the dates most of the larger debits had arisen. Of these, 19 out of 25 had been in shortage for over six months (and less than ten months), with one outlier being in debit for over 21 months.

Cybercrime issue / transfer of funds to wrong account

- 3.30 In and around May / June 2018 Mr Rugg was acted on a property sale for a local company. Contracts were exchanged on 3 May 2018 with completion on 1 June 2018.
- 3.31 At some point, the email traffic between Mr Rugg and his client was compromised, with two emails supposedly sent from the client on 14 and 24 May 2018, but from very slightly different email addresses.
- 3.32 The day before completion, i.e. 31 May 2018, Mr Rugg received an email asking him to transfer the sale proceeds to a new bank account and to ignore the bank details provided previously.
- 3.33 On the day of completion, Friday 1 June 2018, Mr Rugg replied by email, seeking telephone confirmation of the new bank details. Mr Rugg received an email in reply, seeking to reassure Mr Rugg to use the new account details. This email appeared as if sent from one of the client's original email addresses, but was subsequently confirmed as not being genuinely sent by the client. Mr Rugg did not obtain telephone instructions but agreed to make the transfer the following Monday.
- 3.34 Mr Rugg has since stated that the client did not need the funds for an onward purchase, but on Monday 4 June 2018 he transferred £290,584.00 from the client account to the bank account details most recently provided by email. On 5 June 2018 an email was sent to Mr Rugg from one of the very slightly different email address, supposedly confirming receipt of the funds by the client.
- 3.35 On 12 June 2018 Mr Rugg's bank informed him they held suspicions about the account he had transferred the sale proceeds to. The client also confirmed he had not received the money and, on 13 June 2018, Mr Rugg reported the matter to his insurers.
- 3.36 The Respondent did ask his insurers on 13 June, 19 June and 5 July if he should report the matter to the SRA. There was no response to this point found on the file, but Mr Rugg did not report the matter to either the SRA or the police.
- 3.37 Mr Rugg accepted that the payment of the money to an account controlled by a third party, who was not entitled to the money, was a breach of the requirement to protect client money and assets and of the Accounts Rules.
- 3.38 Mr Rugg's consistent position has been that he had the facility to replace the client money, but did not do so as he did not know quite what had happened and the client had, at least initially, been quite relaxed about the situation while the insurers considered the position.
- 3.39 On 3 September 2018, the client ledger recorded receipt from the insurers of £290,584.00 to replace the missing client funds.
- 3.40 There was therefore a shortage on the client account for this matter of £290,584.00 between 4 June 2018 and 3 September 2018, with Mr Rugg not

reporting the matter at the time. The issue was included in the Qualified Accountant's Report referred to at paragraph 3.3.

COLP / COFA and general management

- 3.41 As the COLP and COFA (and sole solicitor) of his firm, Mr Rugg had additional but sole responsibility for the weaknesses in his accounts system, and to report any material failures to comply as soon as reasonably practicable.
- 3.42 Mr Rugg had failed to take reasonable and adequate steps to ensure his systems were compliant. In addition, although matters were reported within his Qualified Accountants Report, they were not otherwise reported when they arose.

Allegations 1.1 – 1.4 (General Accounting Breaches)

Accounts Rules Breaches

Allegation 1.1

- 4.1 Across multiple matters, Mr Rugg had withdrawn funds in relation to a particular client which exceeded the amount held on behalf of that client, in breach of Rule 20.6 of the Accounts Rules.
- 4.2 Similarly, in causing or permitting such payments to be made, and in making multiple duplicate transfers of costs in error, Mr Rugg was withdrawing client money from client account when it was not properly required to be so withdrawn, in breach of Rule 20.1 of the Accounts Rules. To the extent it was considered office money pursuant to an invoice, such money could not be legitimately withdrawn as office money a second time and any such funds withdrawn on this basis would alternatively be in breach of Rule 20.3 of the Accounts Rules.
- 4.3 Due to the errors set out, Mr Rugg was not properly keeping client money separate from office money, in breach of Rule 1.2(a) of the Accounts Rules and, to the extent it continued beyond 25 November 2019, Rule 4.1 of the 2019 Accounts Rules.

Allegation 1.2

- 4.4 Mr Rugg failed to establish and then maintain proper accounting systems and internal controls over the systems, resulting in substantial errors. Mr Rugg also failed to keep accounting records that show accurately the position with regard to the money held for each client, with multiple posting errors identified. Mr Rugg therefore breached Rules 1.2(e) and 1.2(f) of the Accounts Rules.
- 4.5 Similarly, Mr Rugg's ledgers were not all up to date and/or accurate, with several mispostings identified and with each client's separate client ledger account not appropriately recording all dealings with client money. This was in breach of Rules 29.1 and 29.2 of the Accounts Rules.

- 4.6 The FIO noted and evidenced that one of the difficulties in relation to Mr Rugg's accounts was that the client ledgers on the accounts package he used did not maintain a running balance and did not show, or make readily ascertainable, the current balance of the ledger. This failure was in breach of Rule 29.9 of Accounts Rules.

Allegation 1.3

- 4.7 Rule 29.14 of the Accounts Rules provided that, when undertaking client account reconciliations, solicitors must not use credits of one client against debits of another when checking total client liabilities, as all shortages must be shown. Mr Rugg's reconciliations showed a net figure instead of showing the client debit balances and credit balances separately. This meant that the reconciliations did not properly show the client account debits and that the reconciliations did not meet the requirements of this rule.

Allegation 1.4

- 4.8 Rule 7 of the Accounts Rules sets out the requirement to remedy breaches promptly upon discovery. There were delays in resolving both the specific issues and the general accounts process weaknesses, in breach of this rule.

Principles and Mandatory Outcomes

Outcomes 7.2 and 7.3 of the Code of Conduct (Allegation 1.2).

- 4.9 The substantial problems with his accounts systems and processes showed that Mr Rugg had failed to have effective systems and controls in place to achieve and comply with the Handbook, or to identify, monitor and manage the risks to compliance satisfactorily. Such failures comprise a failure by Mr Rugg to achieve mandatory Outcomes 7.2 and 7.3 of the Code of Conduct.

Principle 6 (Allegations 1.1 and 1.2)

- 4.10 The public trust solicitors with their financial affairs and significant funds. The public expects solicitors to have their accounts in order and comply with the regulations that protect client money. Mr Rugg's failure to (in summary):
- a. implement good accounting systems;
 - b. operate with accounting records that were properly written up;
 - c. ensure there was enough money on client account to repay his clients at all times;

is likely to lower the public trust in him and in legal services as a whole. He therefore breached Principle 6 of the Principles.

Principle 10 (Allegation 1.1)

4.11 It is self-evident that Mr Rugg's failure to have enough money in client account for a period of time, partly through making duplicate transfer of invoices in error, demonstrates a failure to protect client money adequately in breach of Principle 10. Client money is sacrosanct and Mr Rugg failed to provide it with the protection it deserves.

Allegations 1.5 and 1.6 (Cybercrime matter)

4.12 Mr Rugg is an experienced conveyancer, there was no inherent urgency for the client to receive the funds immediately and the circumstances of this matter are well known to be suspicious and worthy of proper investigation to prevent fraud.

Accounts Rules Breaches (Allegation 1.5)

4.13 As no payment to the third party account was properly required on behalf of the client, with no such genuine instructions from the client, the transfer of £290,584 to the third party account was in breach of Rule 20.1 of the Accounts Rules.

4.14 Mr Rugg has stated that he did have a facility available to replace the funds, but did not do so partly as the client was fairly relaxed about matters for some time. Rule 7 of the Accounts Rules stated that any breach of the rules must be remedied promptly upon discovery, including the replacement of money. Rule 7.2 amplifies the position by confirming that this applies whether or not a claim is subsequently made on the firm's insurance. Mr Rugg accordingly breached Rule 7 of the Accounts Rules through his decision to leave the client account in a position of significant shortage for over two months, pending clarification of and then payment of his insurance claim.

Principles and Mandatory Outcomes

Principle 10 (Allegation 1.5)

4.15 It is part of a solicitor's core duties to protect the money and assets of their clients, and solicitors should play their proper part in doing so². Given the "red flags" in this non-urgent matter, Mr Rugg could and should have taken some other steps in such a situation, e.g. waiting slightly longer to try to contact the client by telephone, perhaps before or after sending an initial low value test payment. However, although he had not received any telephone or in-person confirmation of a change in banking details, the funds were sent to a third party account on the next working day. This course of action failed to protect the client's money, in breach of Principle 10.

Principle 7 and Mandatory Outcome 10.3

² See note to Principle 10

- 4.16 Outcome 10.3 of the SRA Code of Conduct required the Respondent to “*notify the SRA promptly of any material changes to relevant information about you including...serious failure to comply with or achieve the Principles, rules, outcomes and other requirements of the Handbook*”.
- 4.17 Principle 7 of the SRA Principles required the Respondent to comply with his legal and regulatory obligations and deal with his regulator in an open, timely and cooperative manner.
- 4.18 Mr Rugg’s client account had a £290,584 shortage arising from this matter, which is likely to be considered a material change and/or serious failure to comply. In addition, guidance published by the SRA made clear that there was an expectation that solicitors report such cases, even where fraudulently obtained or stolen money has been replaced. Under the circumstances, although Mr Rugg had properly reported the matter to his insurers, his failure to report the matter to the SRA was a failure to achieve Outcome 10.3 and a breach of Principle 7.

Other matters

- 5 The following facts and matters do not relate directly to the allegations, but are agreed between the parties:

- 5.1 Since proceedings were issued, Mr Rugg’s reporting accountants have issued an update letter on 25 January 2021, a copy of which has been filed with the Tribunal. Information they set out included (in summary):
- i. Action has been taken to remedy the issues previously identified regarding the client account debit balances and office account credit balances;
 - ii. Mr Rugg’s bookkeeping procedures had been improved. In particular, Mr Rugg now files all transactions undertaken on a fortnightly basis with the results available online shortly after for any corrections to be carried out;
 - iii. They prepare reconciliations on a monthly basis for Mr Rugg, including details of any client debit balances – allowing for action to be taken on a timely basis [if required].
 - iv. Postings to the underlying software were (broadly) up to date.

Mitigation

- 6 The following mitigation, which is not endorsed by the SRA, is advanced by Mr Rugg:

Full details of Mr Rugg's history as a practising solicitor are set out in Attachment 1 to Mr Rugg's Answer dated 18th January 2021 (Attachment 1 dated the 29th May 2020) to which reference should please be made. In particular Mr Rugg wishes to highlight:

- 6.1 Mr Rugg has practised on his sole account since 10 January 1992, has not appeared before the Solicitors Disciplinary Tribunal previously and has only ever been the subject of one complaint to SRA/Law Society which was not upheld.
- 6.2 There is no question of dishonesty or lack of integrity on Mr Rugg's part.
- 6.3 The vast majority of the credit/debit balances reported are counter-balanced by balances to the same clients on other matter references.
- 6.4 No client has been charged twice for the same work. There has only ever been one bill rendered for each client in respect of any legal work on a particular matter. The error was that the same bill was occasionally duplicated in posting and transferring.
- 6.5 Ledgers, bank statements, bills and transfers are forwarded to Francis Clark, Mr Rugg's accountants, twice a month (rather than monthly). These entries are posted on the Cloud by the accountants and as soon as posted are subject to review and amendment where necessary by Mr Rugg. A letter from Francis Clark dated 25 January 2021 submitted to SRA confirms improvement of bookkeeping practices and, in particular:
 - 6.5.1 action taken to remedy the issues previously identified regarding client account debit balances and office account credit balances;
 - 6.5.2 fortnightly posting of figures;
 - 6.5.3 regular supply of any corrections or amendments
 - 6.5.4 reconciliations supplied monthly;
 - 6.5.5 postings up to date, in particular ledger postings to 31 December 2020 received at that time. The filing/reporting/posting basis has continued in the same way to date.
- 6.6 Mr Rugg has cooperated fully with the SRA investigation as confirmed by SRA.
- 6.7 Mr Rugg has admitted, accepted responsibility for, and expressed regret for the actions/omissions/errors.

Proposed Outcome

- 7 The parties submit that a fine is necessary and proportionate.
- 8 The parties submit to the Tribunal that a fine of £10,000, plus an order to pay the SRA's costs fixed at £16,000, is appropriate.

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

- 9 It is agreed by the parties, and submitted to the Tribunal, that the seriousness of the admitted misconduct is such that a reprimand will not be a sufficient sanction, and neither the protection of the public nor the protection of the reputation of the legal profession justifies suspension or strike-off.
- 10 Having considered the Tribunal's Guidance note on Sanctions (8th Edition) of December 2020 ("the Guidance note") the parties submit that the seriousness of this matter, and giving effect to the purpose of the sanction, places this case in the lower to middle range of level 3 of the indicative fine bands.
- 11 Mr Rugg was in a position of trust in respect of client money, and he breached that trust by not looking after it properly. The FI Report identified that his books of account were not in compliance.
- 12 In essence, Mr Rugg had not set up a reliably coherent accounts system and had not paid proper attention to the firm's accounts. Reliance on handwritten methods combined with not very suitable software, and the lack of other controls, meant that ledgers were not properly maintained, payments and transfers were made in error and many mis-postings were made. In addition, simple controls such as monthly reconciliations were not being undertaken properly at the time. A consequence of these matters was a shortfall on client account of over £25,000.
- 13 In addition to the general accounts failings, Mr Rugg committed breaches on a one-off basis in relation to the cybercrime matter as set out, involving a significant shortage on client account for a period of time while the matter was investigated by his insurers.
- 14 Mr Rugg had direct control of the circumstances giving rise to the misconduct. Given that he is the firm's Principal (and sole solicitor), his level of culpability is high.
- 15 The following factors aggravate the seriousness of the Mr Rugg's misconduct:
 - i. The misconduct continued over a period of time and was repeated over time (in relation to the general accounts issues).
 - ii. It was misconduct which Mr Rugg knew, or ought reasonably to have known, was in material breach of his obligations to protect the public and the reputation of the legal profession.
- 16 Factors mitigating the seriousness of Mr Rugg's misconduct include:
 - i. In relation to the cybercrime matter, the factual circumstances leading to the breaches arose from deception by a third party.
 - ii. Mr Rugg took steps to replace most of the client account shortage prior to the visit of the FIO (although this was later than the investigations and corrections should have taken place and was subject to further investigation and corrections).

- iii. Mr Rugg cooperated with the SRA investigation and has shown insight by making admissions to all the allegations in his answer to the proceedings and, on the currently available evidence from his accountants, improving his accounting and record keeping.
 - iv. Save for the misconduct identified in this Agreed Outcome, Mr Rugg has no adverse disciplinary record (over nearly 50 years as a solicitor).
- 17 In light of the misconduct identified, and having considered the Guidance Note, the SRA contends, and the Respondent accepts, that the proper penalty in this case is a fine of £10,000.
- 18 Accordingly, having regard to Mr Rugg's admissions to the misconduct, the SRA and Mr Rugg invite the Tribunal to make an order that Mr Andrew John Murlis Rugg be fined £10,000, and pay the costs of the SRA's application fixed in the agreed sum of £16,000.

Conditions

- 19 The Respondent agrees that he must file accountant's reports for his firm with the SRA in relation to six month periods ending on 31 December and 30 June annually, beginning with the current period, with the reports to be filed within two months of the respective period.
- 20 The above condition is to apply for a period of three years, save for if Mr Rugg were to close the RSP in an orderly manner during this time.

Dated this 23rd day of March 2021

.....
Jonathan Leigh

On behalf of the SRA

.....
Mr Andrew John Murlis Rugg