

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12160-2021

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

Respondent

JONATHAN ANDREW SIMON

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Before:

Mrs A. Kellett (in the chair)

Mr J. Evans

Ms E. Chapman

Date of Hearing: 13 May 2021

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**Appearances**

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

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**JUDGMENT ON AN AGREED OUTCOME**

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## **Allegations**

1. The allegations were set out in a Rule 12 Statement dated 18 January 2021 and were that between December 2013 and November 2019 while in practice at J A Simon & Co Ltd (“the Firm”) the Respondent failed to adequately remedy breaches of the SRA Accounts Rules 2011 (“the Accounts Rules”), including:
  - 1.1 Failing to maintain proper accounting systems or proper internal control of those systems or proper accounting records, contrary to Rules 1.2 (e) and 1.2 (f) of the Accounts Rules, in that he:
    1. did not retain any (or any adequate) accounting records for the period of 2012 to 2016, contrary to Rule 29.17 of the Accounts Rules;
    2. between 2016 to 2020, did not keep proper accounting records to show the position with regard to the money held for each client, contrary to Rules 29.1 and 29.2 of the Accounts Rules;
  - 1.2 Failing to return client money to the client promptly, or to inform clients of client money retained by the Firm, contrary to Rules 14.3 and 14.4 of the Accounts Rules;
  - 1.3 Failing to pay out promptly legacies to the beneficiaries of estates;
  - 1.4 Failing to ensure adequate client account reconciliation, contrary to Rules 29.1, 29.13 and 29.14 of the Accounts Rules;  
And, in so doing, he breached Rule 7.1 of the Accounts Rules and Principles 6, 7, 8 and 10 of the SRA Principles 2011 (“the Principles”).
2. The relevant Principles were:
  - Principle 6: You must behave in a way that maintains the trust the public places in you and in the provision of legal services;
  - Principle 7: You must comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and cooperative manner;
  - Principle 8: You must run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;
  - Principle 10: You must protect client money and assets.

## **Admissions**

3. The Respondent admitted all of the above allegations.

## **Documents**

4. The Tribunal had before it the following documents:

- Application and Rule 12 Statement dated 18 January 2021 with exhibits
- Respondent's Answer
- Application and Statement of Agreed Facts and Proposed Outcome dated 12 March 2021

## **Background**

5. The Respondent was admitted to the Roll in 1978. He was the sole owner, director and manager of the Firm and was assisted by one qualified member of staff and one unadmitted employee. The main areas of work conducted by the Firm were conveyancing, wills and probate and matrimonial work.
6. The Respondent was the Firm's Compliance Officer for Legal Practice and Compliance Officer for Finance and Administration and as such was responsible for the management and regulatory compliance requirements of running the Firm.
7. An intervention took place in July 2020 and the Respondent's practising certificate was suspended but was lifted and made subject to conditions on 18 September 2020.
8. The conduct giving rise to the allegations related to a lack of progress by the Respondent in rectifying previously identified Accounts Rules breaches which had come to light through previous forensic investigations and Accountants Reports submitted to the Applicant.

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

9. 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 be suspended from the Roll of Solicitors for a period of two years and that various conditions be placed on his practising certificate indefinitely at the end of the period of suspension.

### *Application to withdraw allegation*

10. The parties sought permission for a further allegation of manifest incompetence to be withdrawn. This was on the basis that the Applicant did not consider it was in the public interest to pursue this allegation given the admissions made by the Respondent. It was submitted that the proposed sanction of a two-year suspension followed by conditions was appropriate and proportionate whether or not the aggravating feature of manifest incompetence were established.

## **Findings of Fact and Law**

11. 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.

12. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.
13. Given the agreed facts and admissions made by the Respondent, which included breaches of Principles 6, 7, 8 and 10 of the Principles, the Tribunal accepted the submission that it would be disproportionate to require a hearing solely to determine whether the aggravating factor of manifest incompetence were proved. The Tribunal granted the application for the allegation of manifest incompetence to be withdrawn.
14. 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.
15. The detail of the Respondent's admitted failure to remedy breaches of the Accounts Rules over a period of several years is set out in detail in the attached Statement of Agreed Facts and is not repeated in this judgment. The Tribunal considered that whilst the Respondent's conduct was not malicious or dishonest, the maintenance of accurate accounts was a vitally important responsibility in which the Respondent had failed to a very significant degree over an extended period of time. The Respondent had full control over the circumstances giving rise to the misconduct and knew that he was in material breach of his obligations. The failure to remedy breaches highlighted on numerous occasions by his regulator amounted to a complete dereliction of duty. The harm caused by such failures to the reputation of the profession was significant.
16. The Tribunal considered that the appropriate sanction in this matter was a fixed term suspension of two years (suitable for serious misconduct where a fine is not a sufficient sanction but neither the protection of the public nor the protection of the reputation of the legal profession requires striking off the Roll) coupled with conditions relating to the control of client money. The parties proposed a period of two years' suspension with the following conditions to be applied indefinitely at the end of the period of suspension:
  - The Respondent is not a manager or owner of any authorised body;
  - The Respondent may not act as a COLP or COFA for any authorised body;
  - The Respondent does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account; and
  - The Respondent may not practice on his own account under regulation 10.2(a) or 10.2(b) of the SRA Authorisation of Individuals Regulations.
17. 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**

18. The parties agreed that the Respondent should pay the Applicant's costs of these proceedings fixed in the sum of £12,000. 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**

19. The Tribunal ORDERED that the Respondent, Jonathan Andrew Simon, solicitor, be suspended from practice for the period of 24 months to commence on 13 May 2021 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000.
20. 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:
- 20.1 The Respondent may not:
- 20.1.1 Practise as a manager or owner of any authorised or recognised body;
  - 20.1.2 Act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised or recognised body;
  - 20.1.3 Hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account;
  - 20.1.4 Practise on his own account under regulation 10.2(a) or 10.2(b) of the SRA Authorisation of Individuals Regulations.
- 20.2 There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 20.1 above.

Dated this 27<sup>th</sup> day of May 2021  
On behalf of the Tribunal



A. Kellett  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**27 MAY 2021**

**IN THE SOLICITORS DISCIPLINARY TRIBUNAL**

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

**AND IN THE MATTER OF:**

**SOLICITORS REGULATION AUTHORITY**

**Applicant**

**- and -**

**JONATHAN ANDREW SIMON**

**Respondent**

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**STATEMENT OF AGREED FACTS AND OUTCOME**

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**Introduction**

1. By a statement made by Mark Lloyd Rogers on behalf of the Solicitors Regulation Authority (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 18 January 2021, the SRA brought proceedings before the Tribunal making allegations of professional misconduct against the Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement. The Tribunal made standard directions on 20 January 2021. There is a substantive hearing listed for 19-21 May 2021.
2. The Respondent is prepared to make admissions to all Allegations in the Rule 12 Statement, as set out in this document, save for the allegation of manifest incompetence (Allegation 2).

**Admissions**

3. The Respondent admits that, while in practice between December 2013 and November 2019, he failed to adequately remedy breaches of the SRA Accounts Rules 2011 ("the Accounts Rules"), including:
  - 1.1. Failing to maintain proper accounting systems or proper internal control of those systems or proper accounting records, contrary to Rules 1.2 (e) and 1.2 (f) of the Accounts Rules, in that he:
    - 1.1.1. Did not retain any (or any adequate) accounting records for the period of 2012 to 2016, contrary to Rule 29.17 of the Accounts Rules;

- 1.1.2. Between 2016 and 2020, did not keep proper accounting records to show the position with regard to the money held for each client, contrary to Rules 29.1 and 29.2 of the Accounts Rules.
- 1.2. Failing to return client money to the client promptly, or to inform clients of client money retained by the Firm, contrary to Rules 14.3 and 14.4 of the Accounts Rules.
- 1.3. Failing to pay out promptly legacies to the beneficiaries of estates.
- 1.4. Failing to ensure adequate client account reconciliation, contrary to Rule 29.1, 29.13 and 29.14 of the Accounts Rules.

And in doing so, he breached Rule 7.1 of the Accounts Rules and Principles 6, 7, 8 and 10 of the SRA Principles 2011.

4. An allegation of manifest incompetence was made in the Rule 12 Statement in relation these allegations and was certified by the Tribunal.
5. However, on the basis of the full admissions to all allegations, other than manifest incompetence, the SRA considers that it is not in the public interest to pursue the allegation of manifest incompetence.
6. The SRA does not accept, as suggested on behalf of the Respondent, that the concept of manifest incompetence is an unsupported ingredient of the allegations against the Respondent. However the SRA is willing to agree that it is not necessary or proportionate to require a hearing on the issue of manifest incompetence, in light of the otherwise full admissions.
7. It is contended by the SRA that manifest incompetence flows on from the significant and long-standing failure to remedy extensive Accounts Rules breaches as alleged in Allegation 1, the elements of which can and should, in any event, be considered as part of the breach of Principle 6 and at the sanction stage, but which therefore does not necessitate separate adjudication as an allegation. It is accepted by the SRA that a finding of manifest incompetence does not necessarily lead to removal from the Roll and that such a sanction would likely be considered disproportionate in this case even if manifest incompetence was established as an aggravating feature. The parties consider the proposed Sanction of a two year Suspension, followed by conditions, to be appropriate and proportionate in this case, whether or not the aggravating feature of manifest incompetence is established.
8. The SRA is therefore satisfied that the admissions and outcome adequately meet the public interest having regard to the overall gravity of the matters alleged.

## **Agreed Facts**

9. The Respondent was admitted to the Roll in 1978. He was the sole owner, director and manager of the Firm and was assisted by one qualified member of staff and one unadmitted employee. The main areas of work conducted by the Firm were conveyancing, wills and probate and matrimonial work.
10. The Respondent was the Firm's COLP and COFA and as such was responsible for the management and regulatory compliance requirements of running the Firm.
11. An intervention took place in July 2020 and the Respondent's practising certificate was suspended but was lifted and made subject to the following conditions on 18 September 2020:
  - 8.1. The Respondent is not a manager or owner of any authorised body.
  - 8.2. The Respondent may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body.
  - 8.3. The Respondent does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account.
  - 8.4. The Respondent may not practise on his own account under regulation 10.2(a) or 10.2(b) of the SRA Authorisation of Individuals Regulations.
9. The conduct giving rise to the allegations is set out in a Forensic Investigation by DB and VJ, Forensic Investigation Officers (FIOs), as a result of a lack of progress by the Respondent in rectifying previously-identified Accounts Rules breaches which had come to light through previous forensic investigations and Accountants Reports to the SRA.
10. The Forensic Investigation Report ("FIR") of DB dated May 2020 ("the 2020 FIR"), concluded that the Firm's books of account could not be relied upon and that the Respondent had failed to maintain accurate accounting records, other breaches of the Accountants Rules being identified including the failure to correctly manage historical balances.
11. The Firm had been the subject of two previous forensic investigations undertaken in May 2016 and May 2018, culminating in FIRs dated 7 March 2017 ("the 2017 FIR") and 13 August 2018 ("the 2018 FIR") which also raised concerns about the Firm's compliance with the Accounts Rules. In addition, Accountants Reports over the years since 2013 had identified the same issues and the same breaches of the Accounts Rules.

## **Allegation 1: Failure to adequately remedy breaches of the Accounts Rules**

### Accountants Reports to the SRA from 2013 to 2019

*19 December 2013*



12. The Accountants Report of 19 December 2013, for the period 1 July 2012 to 30 June 2013, noted issues with residual client balances and stated: *'Client money must be returned to the client as soon as there is no proper reason not to hold funds. Many old balances exist and there is no review of client balances and return of funds to the client where correct to do so. The firm must address all old balances regularly to ensure all client monies are returned at the case end where applicable. Furthermore there must be procedures in place to contact any clients at least once every 12 months where balances are held'*.

22 December 2014

13. The Accountants Report dated 22 December 2014, for the period of 1 July 2013 to 2 March 2014, noted that the Firm was working through older residual client balances but that some remained. The Report stated that procedures were in place to clear these as soon as practical and that the Firm had been advised to address this aspect and to ensure that procedures were in place and regularly reviewed to ensure compliance, which had been duly acknowledged.

1 March 2016

14. The Accountant's Report dated 1 March 2016, for the period of 3 March 2014 to 30 June 2015, noted the same position as the previous report of 2014.

31 March 2017

15. The Accountant's Report form dated 31 March 2017, for the period of 1 July 2015 to 30 June 2016, noted a number of concerns, including residual balances. The Report set out the background that the Firm was a small practice which consisted of one solicitor, one fee earner, one legal conveyancer and two support staff and that the book-keeping function had always been outsourced.

16. The Report stated: *"In the period before the period under review, issues had arisen in relation to the book keeping function, both in relation to a change in accounting software and with the external book keeper. The system for recording accounting transactions consisted of manual slips prepared by the fee earners which were posted in batches by the book keeper. Following the introduction of the new accounting software, there were issues in relation to the operation of the system which resulted in delays in the processing of information and the breakdown in the ability to maintain up to date accounting records. A decision was made during 2015 – 2016 to stop using the external book keeper and to return to an accounting bureau that had been used before. As part of that change, the bank transactions for both the client and office bank account from 1 July 2015 had to be re-posted onto the new system, with opening balances entered as a single figure. There were historical issues arising out of that exercise which had not yet fully been resolved although it was noted that the practice was now addressing those issues and seeking to comply with the Rules"*.

17. The Report stated that a review of the client ledger had identified that there were balances on the client ledger totalling £349,835.09 which had not moved between August 2015 and

June 2016. That figure included a balance of £37,095 which was understood to relate to a conveyancing matter completed in 2002, the file for which had been destroyed, although the Firm was of the opinion that there was no liability to the client. If that was the case there had been an unidentified surplus in that sum which had existed since 2002. There was also one balance of £97,246.00 relating to a conveyancing matter from June 2015. A review of that client file indicated that there had been a payment made of £96,300 on the file which would have reduced the balance by that amount. However, the ledger card from the old system was not available to review and if that was the case, there was potentially an unidentified surplus of £97,246. It was also noted that there were a large number of smaller balances which had arisen historically that had not been cleared which suggested that the system for archiving files did not ensure that the client ledger balance was nil prior to the file being archived. The Report noted that it was understood that the residual balances were to be addressed once the current accounting records were brought up to date.

#### *21 December 2017*

18. An Accountant's Report dated 21 December 2017, for the period of 1 July 2016 to 30 June 2017, once again highlighted the historical issues and recited an understanding that they were being addressed, these being unreconciled adjustments of £103,162.31 on the bank reconciliation, unrecorded transactions on the client call account of £4,393.43 and the residual balances of £349,835.09.

#### *21 December 2018*

19. An Accountant's Report dated 21 December 2018, for the period of 1 July 2017 to 30 June 2018 once again highlighted similar issues, including bank reconciliation, the use of a suspense accounts and the continued existence of residual balances and the report concluded that it was understood that the residual balances, together with the differences that appeared to have arisen during the earlier years were being addressed now that the accounting records had been brought up to date. It was noted that four of the larger balances on the non-moving list reviewed had been returned to the client during the accounting period in question which showed that the practice had begun to address the issues.

#### *23 December 2019*

20. An Accountant's Report dated 23 December 2019, for the period of 1 July 2018 to 30 June 2019 again noted issues with residual balances and the use of suspense accounts.

### **The Forensic Investigation Reports of 2017 and 2018 and communications with the Respondent during this period**

#### **The 2017 Forensic Investigation Report**

21. The 2017 FIR identified issues of non-compliance with the SRA Accounts Rules 2011 and the Solicitors Accounts Rules 1998, including:
  - 21.1. failing to keep accounting records properly written up and up to date;
  - 21.2. overdrawn client balances including from balances which had been inappropriately posted to client account suspense ledgers; and
  - 21.3. failing to deal with historic client account balances despite being advised of the rule breach on at least three occasions by their accountants in their annual SRA Accountant's Reports.
22. This forensic inspection had been commissioned following the receipt of the Qualified Accountant's Report of 31 March 2017 for the Firm for the period ending in June 2016.
23. On 1 December 2016 an interim FIR was issued and it was reported that the Firm had failed to keep accounting records properly written up and accounting records were not up to date. The issues identified already at that stage included client debit balances which appeared to be increasing each month, unreconciled adjustments, a failure to deal with historic client account balances and failing to maintain a register of breaches. The FIO noted – *“the firm has failed to run their business effectively”* and that the Respondent *“appears to have abdicated his responsibility for the completion and checking of the Firm's accounting records to a third party”*.
24. Following further investigations, the final report was produced on 7 March 2017 which identified incomplete entries in the accounting records, a continued failure to deal with historic client account balances and that the firm's client matter listing contained details of client files where work had been completed, archived and in some cases destroyed but where client balances had been retained, with balances having been held for over five years (in one instance eleven years) and where they were still recorded as being open matters.
25. Following the 2017 FIR, the Respondent was provided with copies of the 2016 Interim Report and 2017 FIR on 20 March 2017.
26. On 19 October 2017, the SRA wrote to the Respondent. He was asked to respond to the allegations concerning the state of the Firm's accounting records based on the evidence contained in the FIRs, including failing to keep the accounting records promptly written up, failing to carry out client reconciliations, having overdrawn client and office account balances, failing to return client money promptly, failing to remedy breaches of the Accounts Rules in relation to historic client account balances despite being advised of this in the Accountants Reports for the period of 2012 – 2015, failing to maintain a record of breaches and failing to ensure that the Firm was in compliance with the Accounts Rules.

27. On 10 November 2017, the Respondent responded, stating “*as the firm’s Director, COLP and COFA, I am prepared to accept full responsibility for our firm’s failings as to ensuring full compliance with the account rules and principles as laid down by the SRA in relation to our accounting procedures. I am aware of the requirements to ensure that we have a proper governance and sound financial risk management system in place to ensure the effective control and compliance with regulations with a responsibility to protect clients’ money and assets and a duty to remedy breached....*”....“*..having reviewed the allegations raised, I am prepared, on behalf of my firm, to accept full responsibility for the failures within our system and for failing to take the appropriate reasonable steps to ensure compliance during the periods which lead to the investigation, including our failings to remedy the breaches and to ensure a fully compliant monitored system was in place in compliance with regulations (sic)*”.
28. The Respondent further explained in his letter that he was “*actively working with Quill [the firm’s new book-keepers] to investigate, correct and adjust various ledgers which have been queried...in an effort to ensure full compliance... Significant progress has been made*”. The Respondent stated that he was fully prepared to further cooperate and to accept responsibility for the Firm’s compliance with the SRA principles and rules and regulations.
29. Following a further request for information on 16 November 2017, the Respondent responded on 22 November 2017. Quill also provided a response to queries from the SRA on 9 January 2018.
30. On 24 January 2018 the SRA wrote to the Respondent and acknowledged that a number of the breaches identified in the 2016 Interim Report and the 2017 Final Report had been resolved but that there were a number of issues of concern which remained outstanding, including (the list not being exhaustive):
- 30.1. Unreconciled adjustments of £103,162.31 as at 9 January 2018, which had been reduced only by £2,550.74 in the six months from July 2017;
  - 30.2. Office credit balances of £10,814.24 as at 9 January 2018;
  - 30.3. Outstanding client debit balances;
  - 30.4. Historic client balances of £349,835.09, as noted in the Accountant’s Report for the period 1 July 2016 to 30 June 2017.
31. In that letter the Respondent was informed that the contents of the 2016 Interim Report and the 2017 Final Report, and the chronology set out in the letter, demonstrated a “*persistent failure of ensuring your firm’s compliance with the SRA Account (sic) Rules and SRA Principles*”. The Respondent was asked to provide, within 14 days, a detailed plan as to how he would resolve the outstanding accounts issues. He was also told that if a satisfactory plan was not received and timescales were not adhered to then the SRA would consider whether intervention into the firm was required.

32. The Respondent responded on 6 February 2018. He accepted that it was the Firm's duty to ensure full compliance with the SRA Accounts Rules and the SRA Principles and stated that he was endeavouring to ensure full compliance and to resolve the various issues that had arisen. He also stated that *"we have put forward a plan of action with the assistance and agreement of Quill, based on our accounting process and accounting year and system and, on this basis, are working to ensure the accounts have been fully reviewed, assessed and corrected by the end of our current financial year i.e. 30th June 2018"*.
33. On 26 February 2018, the Respondent was notified by the SRA by email that his proposal to complete and clear the outstanding accounts issues by 30 June 2018 had been accepted, on the basis that he would submit monthly updates, with the first update due on 12 March 2018. The Respondent was advised – *"If progress is not being made, we will have to reconsider what regulatory action is required"*.
34. The Respondent submitted one monthly report on 29 March 2018, following an agreed extension of time. In his covering email the Respondent stated: *"We are now effecting to clear these adjustments off the bank Reconciliation which should enable us to verify nil shortfall. We will also now be investigating both Office credit & client residual balances in compliance with regulations to clear & correct the same, &, will provide further reports shortly". (sic)*
35. However no further reports were submitted. A second forensic investigation was therefore triggered by the Firm's failure to submit monthly reports to the SRA (as agreed after the first forensic investigation). The investigation commenced on 29 May 2018 and the 2018 FIR was produced on 13 August 2018.

#### 2018 Forensic Investigation Report

36. The 2018 FIR again identified *'continuing and recurring books of account issues'*, a continuing failure to deal with historic client account balances and that such issues had *'remained ongoing and unrectified'* despite being brought to the Firm's attention on a number of occasions. This FIR noted that the Firm had agreed to submit to the SRA monthly progress reports to evidence that the books of account would be brought up to date by June 2018 but that after one monthly update having been submitted, the Firm had failed to submit any subsequent monthly updates; this is what triggered the second investigation which commenced on 29 May 2018.
37. The FIO found that the majority of the issues of concern were still present. Whilst client reconciliations were at that time being carried out on a monthly basis for the main client account, limited progress had been made with respect to unreconciled transactions, unreconciled adjustments and historic client balances. On 30 May 2018, Quill, the Firm's accounts package provider and online book-keeper, produced a report to the FIO and as at 30 April 2018, there were historic client account balances that totalled £272,060.33. The FIR states that *"the composition of the majority of these balances during the previous FI, had not been fully investigated and rectified"*. It was noted that the Respondent had received notice of possible SRA regulatory outcomes that could arise from the issues

identified and he said that he probably had to accept that he had already been provided with sufficient time to deal with the issues. The Respondent was still not able to provide his own folder of breaches and he stated that he could not deny that he had failed to fulfil his regulatory duties.

38. It was further found that the Firm had failed to deal with historic client account balances despite having been advised of the issue on at least three occasions by their accountants in their annual reports. It was also noted that the books of account were not in compliance with the Accounts Rules in respect of unreconciled transactions, adjustments and historic client balances and as a result the Firm had not brought the books of accounts up to date. In discussions with the Respondent, the FIO reminded him that the issue of client debit balances and office credit balances had been brought to his attention in FIR1, FIR2 and FIR3 and Account's Reports and that although the balances identified by the FIO were at reduced figures there was still a continuing breach of the Accounts Rules. In relation to Historic Client Account Balances, as at June 2017 the balance totalled £349,835.09 and therefore had reduced to £272,060.33 as at April 2018. However, the FIO set out that she had discussed the limited progress in this regard with the Respondent, it was noted that the previous FIR had reported breaches of the Account Rules in respect of historic client balances and that this breach had been brought to the attention of the Respondent by the SRA and his Reporting Accountant from August 2007 through to October 2016. The FIO identified 25 historic client balances where the sum held was in excess of £1,000, four of those matters having been previously reviewed by the previous FIO and discussed with the Respondent.

39. In relation to historic client balances, the following discussion took place between the Respondent (JS), the FIO, Miss Young (SY) and Mr Shields (MS), Forensic Investigation Manager, on 4 July 2018:

*"SY ... would it have been possible for you to at least have dealt with the four matters that had been highlighted to you previously? We would've hoped that at least those were the ones you would've looked at and resolved, but nothing changed.*

*JS ... the simple answer is yes. I should have done...*

*SY ... have you conducted a review of the historical balances?*

*JS Not fully yet, no.*

*MS ... can you be more specific in terms of the progress that you've made?*

*JS We have made limited progress with regard to it... we have tried to investigate, first of all the unreconciled adjustments... any debit balances on*

*client account to be cleared, to get those done on a regular basis... and then to look through the list of both the office and the client balances..."*

*MS Would you accept in this case, for long-standing balances in which you haven't communicated to the client ... That in those instances you're not acting in the client's best interest?*

*JS I would have to accept that in principle, yes."*

40. The FIO raised one historic conveyancing client balance in the sum of £37,095.00 with the Respondent. The Respondent stated that the balance went back to approximately 2002 but it was a bookkeeping error as those funds were not held by the firm. The Respondent said that he subsequently acted in the sale of that property and no one had queried those funds – *"... So we know it cannot be there. It's somehow, it's stayed on the ledger... and not been cleared... no one has picked it up... which, alright is my fault as well. But we are looking at it. That's an error..."*.
41. As at 4 July 2018, the Respondent had failed to meet his own deadline of 30 June 2018 to bring the books of account up to date. He said, in hindsight it was – *"... a rather optimistic, um and unachievable timeframe... but maybe it's been lack of effort on my behalf, which I'm not disputing"*.
42. When the FIO asked the Respondent to explain what action he had taken in relation to the issues and breaches of the Accounts Rules which had been brought to his attention previously, he stated:
- "we... have placed the matter with our bookkeepers, Quill to: a) try and reconcile these, um, balances, the differences um, and to try and make sure that sort of, we can correct what is on the system... we believe the errors were from previous accounting systems, input by the previous bookkeeper... as far as we are aware, there are no liabilities to missing funds, as far as clients are concerned. It's basically errors of the inputting of the information" but that Quill were "having difficulties in identifying some of the unadjusted reconciliation figures..."*.
43. With regard to compliance the Respondent said *"... I am trying to make sure that we are in full compliance. I know at this moment in time that's not the case... it affects my professional standing..... we've had sufficient time you'll probably say. And we probably have to accept that... that we've not followed, um, what we've professed, what we've been wanting to be doing, if that makes sense?"*.
44. The FIO once again reminded the Respondent that the situation had been on-going for a number of years, and he had been allowed time to deal with these matters.
45. Once again, this FIR concluded that the Firm's books of account were not in compliance with the Accounts Rules 2011 and the FIR stated that the breaches set out in the 2017

FIR had *“remained ongoing and unrectified after being brought to the firm’s attention on a number of occasions”*.

46. On 24 January 2019, a copy of the 2018 Report was disclosed to the Respondent by the SRA. The covering letter stated: *“As you are aware, there are significant Accounts Rules breaches that have now been ongoing for an unacceptable period of time. I would therefore like to discuss your progress on dealing with matters and explain to you the potential regulatory outcomes of our investigation. As previously discussed with [the previous Investigating Officer], intervention into your practise (sic) is still a consideration at this time due to the ongoing risk posed to clients”*.
47. Further exchanges took place between the Respondent and the Investigation officer, regarding the ongoing Accounts Rules breaches including a telephone conversation on 5 March 2019.
48. On 8 August 2019 the SRA wrote to the Respondent. He was asked to respond to allegations concerning the continuing Accounts Rules breaches at the firm, and provide a *“detailed chronology”* on progress made in rectifying those breaches. He was asked to respond to allegations including failing to ensure that the accounts were brought up to date by 30 June 2018, failing to provide monthly updates to the SRA as agreed, having only made limited progress in relation to the outstanding accounts issues between the 2017 and 2018 FIRs in relation to keeping accounting records up to date, carrying out client reconciliations, investigating unreconciled transactions, adjustments and historic client balances, returning money promptly to clients and keeping a record of the breaches of the Accounts Rules despite having informed the SRA that he maintained his own record of breaches. The letter also stated that *“due to the significant Accounts Rules breaches which have now been ongoing for a significant period giving rise to a risk to clients, we are also considering whether intervention into your practice is necessary”*.
49. On 11 October 2019, the Respondent responded to the SRA’s letter dated 8 August 2019. He stated that *“significant progress has been made following your report of August 2018”*. He also stated that Quill had undertaken a *“full investigation of the accounting records”* and produced *“full detailed reports”* and *“As previously stated I fully accept responsibility of all of the above and am fully aware of the issues and implications which led to your investigations, I wish to place on record my understanding and acceptance of previous failings which have been fully documented but to reassure that such issues have now been addressed leading to constant review ensuring full compliance with the Code of Conduct and Accounts Principles (sic).”*
50. The Respondent did not however provide a detailed chronology of the steps taken to address the concerns identified, as had been requested or evidence of the steps taken to remedy the breaches.
51. The Respondent had previously given assurances to the SRA that by the end of June 2018 and then June 2019 that the accounting issues and the residual balances would be actioned.



52. However, despite these assurances, the 2020 investigation evidences that the Respondent failed to adequately remedy the issues and that he had continued to act in breach of the Accounts Rules in relation to the same areas of breach previously identified.

### The 2020 Forensic Investigation Report

53. In the context of that background, the 2020 Report evidences breaches of the following Accounts Rules:

**Allegation 1.1 – Failure to maintain proper accounting systems and proper internal control of those systems, in that he (1.1.1) did not maintain any (or any adequate) accounting records for the period of 2012 to 2016 and (1.1.2) between 2016 to 2020, did not keep proper accounting records to show the position with regard to the money held for each client.**

### The relevant Accounts Rules

54. The overarching objective and underling principles of the Accounts Rules require solicitors to establish and maintain proper accounting systems and proper internal controls over those systems in order to ensure compliance with the Rules (Rule 1(e)) and must keep proper accounting records to show accurately the position with regard to the money held for each client and trust (Rule 1 (f)).

55. Rule 29.17 requires that accounting records, must be retained for at least six years from the date of the last entry.

56. Rules 29.1 and 29.2 require that accounting records, which are properly written up to show the Firm's dealings with client money must be kept at all times and must be appropriately recorded in a client cash account or in a separate client ledger for each client.

### Facts

#### No accounting records maintained for 2012 – 2016

57. Consistently with the previous FIRs, the FIO found that the Firm's books of account could not be relied upon and she was unable to express a view as to whether the Firm had sufficient funds to meet its liabilities to clients.

58. The FIO found that the Respondent had failed to keep accurate accounting records; there were limited accounting records available prior to June 2012 and none for the period of June 2012 to June 2016.

59. The Firm had used Quill Pinpoint Accounting Limited ("Quill"), an outsourced bookkeeping service, to maintain their accounts up to 2012 but had then changed their accounting system to a Lawbyte system until 2016. Lawbyte was an in-house system and the firm

used a self-employed bookkeeper to maintain their accounts. In 2016 the Firm again started using Quill.

60. When asked by the FIO on 27 November 2019 whether he had access to the accounting information for the four-year period when the Firm used Lawbyte (2012 – 2016), the Respondent stated that he would contact Leap Accountancy and Outsourcing Limited (“Leap”) who had taken over Lawbyte, which he did via email on 16 December 2019. Leap replied on 17 December 2019 and stated that they did not have the information.
61. The Respondent said *“There was no physical ledgers provided it was all electronic under the Lawbyte system, and the Lawbyte system we were able to retrieve until probably about a year eighteen months ago and it’s gone off, there’s, there’s no way of retrieving it”* (sic). The Respondent had not retained any printed copies of the ledgers. Whilst the FIO found old ledgers prior to June 2012 on two files she investigated, there were no ledgers available at all for the period of June 2012 to June 2016.
62. Specific examples can be cited:- in the case of Matter L there were no accounting records available for review by the FIO from between October 2009 and June 2016. In the case of Matter M, there were no client ledges available after June 2010 until an opening balance was posted to a ledger in June 2016.
63. During the interview on 12 March 2020, the Respondent stated that he might have copies of the ledgers on disc and would look for them, however when this was subsequently requested by the FIO the Respondent informed her in that *“Despite an exhaustive search of our records, I have been unable to locate from the previous system via Lawbyte these ledger records. The disk that I referred to which I thought was accessible has proven otherwise. Quill have also looked into this and are only able to provide ledgers showing opening balances taken from previous records. I am still trying to find these details, but this is proving difficult at this time”*.
64. As a result, the Respondent had failed to ensure that accounting records were retained for the requisite period in breach of Rule 29.17 and had not established or maintained proper accounting systems and internal control over those systems in order to ensure compliance with the Rules in breach of Rule 1(e).

*Failure to keep accounting records properly written up*

65. The Respondent had also failed to keep the accounting records that were available properly written up. As a result, the FIO was unable to rely on the accuracy of the accounting information provided by the Respondent.
66. The Firm did not make prompt and accurate postings to the Firm’s books of account. In some cases, bank transfers were made but the equivalent client ledger entries recording the transfers were not. Postings were made to incorrect ledgers and the Firm’s accounts records showed the existence of office credit balances indicating that client money was incorrectly held in the office account. Unknown adjustments had been made to the client account bank reconciliations and had not been posted to the correct client ledgers.

67. The Firm had failed to maintain proper accounting records which accurately identified the money they held for each individual client, in breach of Rules 1(f) and 29.1 and 29.2.

68. The FIO provides three examples in respect of this, which are set out in the following paragraphs.

#### *Matter O*

69. The ledgers indicated that the Firm held £42,425.00. A historical balance report was received from Quill on 11 December 2019, which indicated that there was £37,095 on matter ONE0041 and £5,330 on matter ONE0051. These were shown on the corresponding client ledgers as opening balances.

70. In an email dated 21 January 2020 to the FIO, the Respondent stated: *“This relates to matters completed 2002 (sic) & despite efforts by quill & previous bookkeeper we are unable to explain why ledgers are showing such credit balances. I believe they do not exist, especially as we have since handled the same client’s further sale & purchase with same lender & at that stage no mortgage account issues were flagged up. We have tried to access previous ledger records but without success & can only state belief these were accounting errors made at the time which we failed to notice & not flagged up on Accountants Reports. How this can be resolved I am unclear.”*

71. The Accountant’s report for the year ended 30 June 2018 stated *“the company are of the opinion that there is no liability to the client. If this is the case, then there is an unidentified surplus of this amount which has been in existence since 2002”*.

72. In interview on 12 March 2020, the Respondent could not explain whose money that was and was unable to respond when it was indicated that on the basis of this example of the Matter O ledger, the SRA’s position was that the Firm’s books of account could not be trusted or relied upon.

#### *Matter N*

73. Client Bank account number 2 showed a balance of £1,700.43 as at 31 January 2020 but this was not shown on the ledger, which instead showed a balance of £56.90.

74. The FIO requested the file on 16 January 2020, but in a meeting on 21 January 2020 the Respondent said *“the file was 20 years old and that it had been taken by an ex-employee of the firm as the file was in relation to her family. The £1700 is on hold pending resolution.”* The ex-employee in question was Person D.

75. On 28 January 2020 the FIO contacted Person D by telephone to discuss the matter and Person D subsequently provided a witness statement dated 2 April 2020. Person D stated that she had been employed by the Firm as a solicitor for approximately 10 years until 2001 or 2002. She stated that the Matter N monies related to a dispute regarding a probate matter in which she had a personal interest as a beneficiary. Person D said that she had

taken the Matter N file when she left the firm in order to resolve the dispute with the other family members. The amount in dispute was approximately £3,500 - £4,000 and this was retained by the firm in its client account pending resolution of the dispute.

76. Person D said that nothing further was done until 2016 when she met Mr N again and remembered the monies were still held by the firm. The Respondent was then contacted around September 2016 and asked to sort out the remaining funds. With interest, the amount was now £4,415.00. Person D said she suggested that the amount of £4,415.00 be transferred to Steinbergs Solicitors in Liverpool for them to deal with outstanding matters and distribute to the beneficiaries. This was authorised by the Respondent and Person D stated that she was unaware that he still held the amount of £1,700.
77. In the interview on 12 March 2020, the Respondent stated *"I've told her that there is an outstanding balance because she asked for £4,400.00 whatever it was, which she said that was going to be the figure. I said, 'You know, we've got some more'. She said, 'Oh.' I don't know what the details are of that one, she'll come back to me."*
78. On 30 June 2018 there was a posting to a suspense ledger OPE0011 of £4,415.00 with a narrative of 'Steinbergs Solicitors – Relates to ledger N4546 Matter N'. The Respondent produced a copy of the bank statement dated 4 November 2016 which showed a payment of £4,415.00 to Steinbergs Solicitors. Following this payment, the balance on the account was £1,698.41 as at 16 November 2016.
79. At the interview on 12 March 2020, the FIO asked the Respondent how the Firm's client account reconciliation could balance if the amount of £1,700.00 held on client bank account number 2 was not recorded on any client ledger. He replied, *"the simple answer is, I, I don't know the answer"*.

#### *Matter L*

80. There was a discrepancy of £12,051.72 in relation to an IHT refund which was shown as £35,090.85 on the client ledger and as £23,039.13 on the estate accounts and the Respondent was unable to evidence that the sum of £12,051.72 had been paid to the beneficiaries. The Respondent was joint executor on this matter with Person L, the client. Financial transactions started on this matter in November 2007.
81. The residue estate was bequeathed 50% to Person L with the remaining 50% split between the three other beneficiaries.
82. The FIO noted that there were two client ledgers in this matter. There was a client ledger held on the client matter file covering the period November 2007 to October 2009. The ledger had a balance of £46,093.43 after the last transaction on 30 October 2009. A further ledger with an undated opening balance of £4,370.31 was also provided. The FIO ascertained that this had been posted onto the system in June 2016. There was no record of transactions in between October 2009 and June 2016. There were no further transactions after the opening balance of £4,370.31.

83. On the ledger held on the file, there was an Inheritance Tax (IHT) refund of £35,090.85 dated 23 October 2009. There was also a chit on the file of the same date for this amount. On the final estate accounts dated 29 November 2010, there were receipts of £37,860.24 and payments of £3,792.69. The amount to be distributed was £34,067.28. The IHT refund was shown as £23,039.13, a difference of £12,051.72. The FIO asked the Respondent to explain the discrepancy and the following exchange took place:

*JS No, I know because what I'm saying is from my recollection, vague recollection, that that – the full amount of that would then have been split between the various beneficiaries to give them a proportion.*

*DB But these are the final estate accounts.*

*JS Yes, and I can't explain why we're not showing the £35,000.00. I've looked at that myself and I can't give an explanation to that....*

*VJ £12,051.72. Is your position that the estate accounts are incorrect and can't be relied on? Or is your position that that £12,000.00 is still somewhere, because it hasn't been paid out?*

*JS No, I would be saying that £12,000.00 has been paid bar the £4,000.00 to that individual beneficiary.....*

*JS But on that basis, that unfortunately the, the estate accounts weren't corrected or brought up to date at the time when the file was then archived.*

*VJ So we're unable to rely on the documents that are in the file as to be accurate?*

*JS I'd probably have to admit that to some extent.*

84. The final estate accounts were dated 29 November 2010. There was no record on the file of any transactions after December 2010. There was no record on the file of the firm taking steps to inform the client that they continued to hold the amount of £4,370.31.

85. On 17 March 2020 the Respondent was asked to provide evidence that the amount of £12,051.72 had been paid to the beneficiaries (Paragraph 66). He replied on 7 April 2020 and stated: '*I have further reviewed the file, but, cannot locate the information which would show how the additional payments were made to the beneficiaries*'.

### *Matter W*

86. The example of the case of Matter W can also be given where the FIO reconstituted the connected ledgers for this matter. The reconstituted ledgers contained a disparity of £774.15 as against the closing balance on the ledgers held by the Firm.
87. As a result, the Firm's accounts could not be relied upon to accurately show its dealings with client money in breach of Rules 1 (e), 1(f), 29.1 and 29.2.

### **Allegations 1.2 and 1.3 – Failed to return client money to the client promptly, or to inform clients of funds retained and not paying out promptly the legacies to beneficiaries of estates**

#### *The relevant Accounts Rules*

88. Rule 14.3 sets out that client money must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds. In line with that rule, Rule 14.4 requires a solicitor to promptly inform a client (or any other person on whose behalf money is held) in writing of the amount of any client money retained at the end of a matter and the reason for that retention and that a client (or other person) must be informed in writing at least once every twelve months thereafter of the amount of client money still held and the reason for the retention.

#### *Facts*

##### *Historical client balances*

89. As at 31 December 2019, the accounting records showed 1,422 historical client balances which totalled £232,022.67 on files that had not moved for over one year. Ten files were reviewed, of which eight had balances which had not moved for over 12 months. One file had been destroyed, one had been removed from the practice by a previous employee and six were in storage.
90. In the appendix to the 2018 FIR dated May 2018 there were 1,002 historic balances as at 30 May 2018. In November 2019 there were 1,422 such balances, so an increase in the number of balances of 420 (1422 – 1002). Furthermore when the IO within the SRA's Supervision Unit had had a conversation with the Respondent in March 2019 about the residual balances at that time of £227,698.71, the Respondent said that he thought they had been reduced but that he did not have the figures to hand. In fact, contrary to this, between March 2019 and November 2019, the figure increased by £4,323.96, rather than decrease.
91. This was despite previous assurances by the Respondent that these matters would have been reconciled and corrected by 30 June 2019 (email 29 March 2019) and despite having

been advised of the breach on at least three occasions before 2017 by the Accountants in their annual reports to the SRA.

92. In an email dated 17 December 2019, the FIO asked the Respondent what action he had taken to deal with historical balances, and in particular the balances on Matter O of £37,095.00 and £5,330.00 which had been raised as concerns in the 2017 FIR. By email dated 21 January 2020, the Respondent stated: *"I have been attempting to work with Quill to look into the numerous historical balances. This has been more arduous & time consuming than I realised & as a result I have only been able to deal with a small number, but I am fully aware of my obligations. It is my intention to try & clear the majority no later than the end of our current financial year"*. That end of the current financial year referred to by the Respondent would have been 30 June 2020.
93. In the interview on 12 March 2020, the FIO asked the Respondent how long he had known about the issues and he replied that he had known for over four years. He added *"I'm the first to admit that probably you, you then bury your head in the sand, and you say yes, we'll get round to doing it"*.
94. At the meeting on 21 November 2019, the Respondent stated that all historical ledger balances were on ongoing matters. However, the FIO subsequently found that this was not the case. The note of the meeting was provided to the Respondent by the FIO on 17 March 2020. The Respondent responded in an email dated 7 April 2020: *"If my explanation was not accurate I can only apologise as I cannot recall the exact details and misunderstood the point. I am aware of the issue surrounding historical balances combined with ongoing matters which is what I was alluding to at the interview"*.
95. One example of historical balances was a file in storage which had a legacy of approximately £80,000 that had not been distributed to a charitable beneficiary. This example, and other examples of where client money had been retained for years without any notification to the client/relevant person are summarised below.

#### *Matter W*

96. The FIO requested to review the two matters of matter W which were retrieved from storage by the Respondent on 21 January 2020. On review, the FIO discovered that approximately £80,000 had been retained by the Firm and not paid to the beneficiary.
97. The final correspondence on the estate administration file was dated 9 January 2015. Person E died on 4 June 2011 and the will dated 3 February 2010 left all his estate to a charity.
98. The only set of estate accounts on the file were partially completed and were undated. The details of the proceeds of the sale of the property, legal fees and totals were left blank.

99. In the interview on 12 March 2020, the FIO asked the Respondent why he had not paid the beneficiaries in this matter and he stated:

*“Erm the files, as far as the sale file was concerned the sale had been completed. The probate file we assumed that the matter had been resolved or completed and it was also put into just the filing cabinets, and basically our error it was archived incorrectly without checking the details. And one of the aspects of that was that the probate itself was involving a major charity, [xxxxxxx], but it also involved a family dispute from my recollection. That was then – went to I think if I’m right, solicitors who represented the benef – no, no, not the – yeah, beneficiaries of [the charity] who put a claim in, in relation or no, sorry, I apologise, I didn’t have full responsibility for this case at the time, I don’t think. I’ve got the file here if you want me to show it to you. But what I’m trying to sort of get at is that inadvertently, without realising that the matter had not been resolved the file was archived.”*

100. The Respondent was asked why the ledgers had roughly £80,000 on them when they were archived and he stated:

*“I think at the time when it was archived I had planned to deal with the account balances, and it was just one of those, it just fell through the gap.....And I suppose we just assumed that [the charity] would come back to us and say, ‘We have now resolved, can we now have payment’.*

101. When asked about contact with the beneficiary, the charity, the following exchange took place:

*JS We initially received I think early January, middle of January, an email from [the charity] to say it had come back into their system, and at that stage we then contacted them...*

*DB Well actually I contacted [the charity]... which is the reason they contacted you. So, had I not...*

*JS But in their email they say to me it fell off their radar.*

*DB Yes, yes and that’s what they told me too. But had I not contacted them, had I not found that file, what would have happened?*

*JS I admit it might have just lay in there, but because of your investigation, we were, I would have contacted [the charity].*

102. The FIO asked the Respondent if it was acceptable that this was overlooked, and he replied:



*“No, it’s not. No, it’s not acceptable I, I accept that, it’s not an acceptable position. And it’s one where you, you – it just goes into a closed area.”*

103. When asked if he thought he had complied with his legal and regulatory obligations on this matter, there was the following exchange:

*JS In reviewing it at this moment in time the simple answer is, probably no I’ve not. I cannot sort of, I, I complied with the requirements to oversee the administration of the estate, bar the fact that I was an executor, I have not finalised this until this moment in time. So, I haven’t...*

*DB So do you think you’ve been acting in the best interests of your client?*

*JS Uh, if I’m being honest, the simple answer would probably have to be say probably no. I’ve tried my best to adhere to the regulations and the rules within this particular matter. I would probably have to say I have failed.*

104. Following the investigation, the charity was paid £80,889.88 and given £1000 compensation for interest and delay, and a £1000 reduction in the bill of £7,500 plus VAT.
105. This matter was therefore ultimately resolved in March 2020, however some nine years after the death of Person E and only when questioned again by the FIO in 2020, despite the previous investigations which had identified historical balances which needed to be addressed and in this instance after the file had been archived with incomplete estate accounts on record and yet over £80,000 retained by the Firm rather than being distributed to the charitable beneficiary and with no communications to the beneficiary to explain the retention of those funds.

#### *Matter M*

106. The file for this matter was requested by the FIO from storage on 17 December 2019.
107. The undated estate accounts on the file had a final distribution value of £161,543.69. In a letter to the beneficiary dated 20 October 2010, the Respondent sent a payment of £160,000 to the beneficiary and stated: *“We have arranged to effect a bank transfer of funds held in the sum of £160,000.00 direct to your HSBC bank account having retained a small balance to cover any additional fees that might be incurred in finalising the Estate Administration for you. We trust you are happy with this arrangement”*.
108. A balance of £1,543.69 was therefore left and was retained by the firm in October 2010. There were no client ledgers available after June 2010 until an opening balance of £4,764.43 was posted to a ledger in June 2016. This was made up of the retention

and the funeral expenses which were retained for payment but the beneficiary had already paid the funeral expenses, so this sum was also due back to her.

109. When asked about this retention in the interview on 12 March 2020 the following exchange took place:

*“JS Unfortunately then it went off the radar. We didn’t hear from the client. She lived in London. Accepting we didn’t follow it up. We should have followed it up. We haven’t followed it up until it’s come to the fore now.*

*VJ So you say you didn’t hear from the client so, again, you’re putting the responsibility it would seem, on the clients to make sure that your accounts are fully being dealt with properly.*

*JS Yes, I accept that. At the time we should have followed it up on a regular basis and said, ‘We’re still holding your money, what do you want us to do with it?’ The file was then decided to be archived, put away out to storage. Out of sight out of mind. It just gets forgotten about.”*

110. The Respondent was asked at the interview on 12 March 2020 why this money had not been returned to the client. He said: *“Right, ok. I apologise for that. I don’t recall, we’re talking in terms of something, I know its ten years ago, so if it’s – we overlooked it and missed it it’s our error”.*

111. When questioned if he had kept client money safe and acted in the best interests of this client the Respondent stated: *“I, I hold up my hands and accept full responsibility that we have not adhered and kept to overseeing and viewing”.*

112. The following exchange then took place:

*VJ ..... I would say that you failed in keeping client monies safe for the client and giving it back to them.*

*JS Well, it’s been safe in the client...account so it’s, it’s my way of looking at it. It has been safe, relatively safe. It’s in a controlled account.*

*VJ ... you’ve got no reason to keep hold of that money. You failed to account to that client.*

*JS I accept that.*

*DB And do you think that you’ve acted in the best interest of this particular client?*

*JS ... not in that particular, because we've retained that money for that length of time. But we're prepared now to sort of resolve this, correct it as best we possibly can, and make the payment to the client.*

*VJ And this was a matter that had been going on for ten years, so you'd retained this money for over ten years.*

*JS We have to accept that."*

113. As a result, that money had not been returned to the client in a timely manner and the client had not been informed of the retention of £4,764.43 (funeral expenses of £3,206.24 and the retention of £1,542.69) for a substantial period of time.

#### *Matter L*

114. As set out above in relation to the case of Matter L at paragraph 78 – 83 there was no evidence that the Respondent had informed the client that the Firm continued to hold the sum of £4,764.43. The final estate accounts were dated 29 November 2010, there was no record on the file of any transactions after December 2010 and nor was there any record on the file of the firm taking steps to inform the client that they continued to hold the amount of £4,764.43.
115. This is therefore a further example of funds not being returned to the client in a timely manner when there was no proper reason to retain those funds and that client not being informed of the money retained. This was despite this issue of historical client matters having featured in the 2017 and 2018 FIRs as well as the earlier Accountants Reports and despite the assurances of the Respondent that he would work to remedy this issue.
116. The 2017 and 2018 FIRs contain other examples of this recurring issue. The Respondent had indicated that he had set a plan to review the majority of such ledgers where there were historic client balances by 30 June 2018, but at the time of the 2018 FI, there were still 25 historic client balances where the sum held was in excess of £1,000, including four matters which had previously been reviewed by the previous FIO and discussed with the Respondent at that time. And yet still in 2020 there was a considerable total of historic client balances where the Respondent had not assured that clients, or beneficiaries, were paid their money when there was no reason for such money to remain on account at the Firm.

#### **Allegation 1.4 – Inadequate client account reconciliation**

##### *The relevant Accounts rules*

117. Rule 29.12 requires that at least once every five weeks the balance on the client cash account(s) must be compared with the balances shown on the statements and passbooks of all general client accounts and separate designated client accounts, that a listing of all balances shown by the client ledger accounts of the liabilities to clients and comparison of the total of those balances with the balance on the client cash account must be prepared and that a reconciliation statement must be prepared which shows the cause of any difference of the comparisons.

### Facts

118. As at 30 September 2019 the client account reconciliation showed £41,700.49 of unreconciled adjustments. £41,072.00 of these adjustments were identified in the Accountant's report dated 21 December 2018, covering the period 1 July 2017 to 30 June 2018. As a result, from 30 June 2018 to 30 September 2019 the adjustments had increased and the Respondent had clearly not rectified this issue by the time of the 2019 investigation. As at 28 February 2020 they had been reduced to £8,200.51 of unreconciled adjustments, however there remained adjustments on the client reconciliation that had not been dealt with from 2015 onwards.

### **Most recent response from the Respondent to the Intervention Notice**

119. It is indicated on the Respondent's behalf (dated 19 June 2020) that he accepts that he has been afforded previous opportunities to bring his firm's books of account up to date and has provided assurances in the past that he would do so, however, the notice of an intervention has been a "wake up call" for him, "evaporating any continuing procrastination on his part".
120. It is asserted that he now appreciates that the remaining matters need to be dealt with as expeditiously as possible and he apologises for his previous conduct and the delays which have occurred.
121. It is asserted that while work remains to be done, the Respondent has made significant progress in the past with his accounts – a fact previously acknowledged by the SRA.
122. It is stated that the Respondent concedes that he placed too much reliance on the ability of the previous bookkeeper who dealt with the accounts between 2012 and 2016 which with the benefit of hindsight and reflection he acknowledges was an error of judgment and which he regrets and apologises for.
123. The Respondent provided an update as at 16 June 2020 in relation to the following:
- Office credit balances: These now total £13,109.75.
  - Unreconciled adjustments: 12 historic adjustments remain.

- Suspense accounts: There are now three suspense accounts which total £7,060.99.
- Debit balances: 1,082 debit balances were identified in the March 2019 report. 487 of these remain.
- Unreconciled adjustments: These now total £8,642.93.

124. Updates were also provided in relation to the following matters: Matter O, Matter N, Matter M and Matter W.

### **Mitigation**

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

125.1 The Respondent is an honourable, hard-working and honest solicitor of exemplary character and unblemished regulatory and disciplinary history, save for the matters the subject of the proceedings. The Respondent has been qualified for over 40 years, having been admitted as a solicitor in 1978. He has no adverse disciplinary or regulatory history and it is a matter of considerable regret and sadness that he should be the subject of proceedings before the Tribunal.

The Respondent offers his sincere apology to the Tribunal, the profession and the public at large for the admitted breaches.

125.2 The Respondent, as a result of the identified problems, had started to take remedial action prior to the decision to intervene into his practice and, as at the date of the intervention, whilst the Respondent acknowledged that there remained work to be done to bring the accounts fully up-to-date, he had made significant progress and which had historically been acknowledged by the SRA.

125.3 The difficulties experienced by the Respondent relate primarily to the period 2012 – 2016 when the firm used a LawByte accounting system and which was an in-house accounting system, with the firm utilising the services of a cashier to assist with the accounting entries. The Respondent does not seek to abdicate responsibility for that which occurred in that period, but it is relevant, by way of explanation, to demonstrate how the Respondent believed the difficulties occurred and which has carried forward, and informed the ability to take remedial action in the period subsequent to 2016, when Quill were reappointed by the firm.

- 125.4 The Respondent concedes that he placed too much reliance upon the ability of the previous bookkeeper who dealt with the accounts in the period 2012 – 2016, to ensure that he kept the accounts up-to-date and which, with the benefit of hindsight and reflection, the Respondent acknowledges, to his credit, was an error of judgment on his part and which he deeply regrets and for which he offers his sincere apology.
- 125.5 By way of further explanation, and whilst the Respondent accepts that certain of the identified breaches are historical, the fact of the lockdown imposed by the British Government on 23 March 2020 as a consequence of the spread of the COVID-19 pandemic, had a significant and adverse impact upon the ability of the Respondent to progress the work to bring the accounts up-to-date. By way of example, the storage facility where archived files were stored remain closed, meaning that the Respondent did not have the ability to access the archived client matter files and, in addition, Quill staff were working remotely from home.
- 125.6 However, and notwithstanding the difficulties caused as a consequence of the continuing pandemic, the Respondent continued his best endeavours to bring the accounts up-to-date, with the assistance of Quill, but which was halted as a consequence of the SRA intervention in July 2020.
- 125.7 The 2020 Report does not identify a shortage on client bank account, save for a cash difference of £0.71p, as at the extraction date of 28 February 2020, which was due to interest received on the Client 2 bank account that had not been posted to a ledger.
- 125.8 Included within the representations submitted on behalf of the Respondent to the SRA prior to the intervention, was a letter from Carol Burgess of Quill dated 16 June 2020 setting out the endeavours on the part of the Respondent to resolve the identified issues and which says, amongst other things, “Mr Simon continues to provide comprehensive lists detailing instructions on how to clear the balances on the client ledgers. This mainly consists of historic paperwork detailing financial transactions that haven’t yet been reflected in the accounts. Before processing any corrections, all available historic reports are checked to ensure that the corrections have not been processed before. From the information that Mr Simon has provided, a list of files with client balances remaining, has been provided to Mr Simon where it appears the bills have not been posted and the monies were due to Mr Simon.”
- 125.9 The Tribunal will recognise that it has always been the Respondent’s intention to comply with all rules and guidance issued by his professional body, to include

the Accounts Rules, and the Respondent's repeats his apology for the identified, and admitted, breaches to the Account Rules.

125.10 The Applicant has confirmed that the Respondent co-operated with the SRA during the investigations, albeit, it is suggested that that co-operation was not complete, and the SRA do not allege dishonesty or the loss of client money, and that the allegation of manifest incompetence is not to be pursued.

125.11 The Respondent has always been open and frank in his admissions with a genuine insight into accepting the seriousness of the position faced with. No element has been proven of any aggravating factors including no personal gain or motivation. As a consequence, the Respondent has now suffered the severest of penalties by way of intervention and closure of his firm and its direct impact and effect on his clients and staff, together with the consequential impact this has had both financially, mentally and physically not only on himself, but also, and in particular on his staff and his family, which the Respondent deeply and sincerely regrets.

### **Agreed Outcome**

126. The Respondent agrees:

126.1. to be suspended from the Roll for a period of two years from the date of the Tribunal's Order;

126.2. to pay costs to the SRA in the sum of £12,000; and

126.3. to the following conditions being placed indefinitely on his practising certificate at the end of the period of suspension:

126.3.1. The Respondent is not a manager or owner of any authorised body.

126.3.2. The Respondent may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body.

126.3.3. The Respondent does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account.

126.3.4. The Respondent may not practice on his own account under regulation 10.2(a) or 10.2(b) of the SRA Authorisation of Individuals Regulations.

127. The costs set out above take account of the Respondent's means. The Parties agree that the Respondent may apply to the Tribunal at any time to vary or revoke any or all of the conditions listed at paragraph 126.3 above.

128. The Parties consider and submit that in light of the admissions set out above, and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanctions 8<sup>th</sup> Edition. Suspension from the Roll, and thereby from practice, reflects serious misconduct.
129. In respect of the level of culpability:
- 129.1. The Respondent was the sole principal and had sole responsibility for the management of the Firm. The Respondent was solely responsible, directly or indirectly, for the breaches and the failure to remedy them.
- 129.2. The SRA acknowledges that there is no evidence of dishonesty or malicious intent on the part of the Respondent.
130. In respect of the level of harm:
- 130.1. The Respondent retained large amounts of client money in the form of residual balances for a substantial number of years. Files were archived without money being returned to clients or paid to beneficiaries or without the clients being informed of the sums retained, for lengthy periods of time.
- 130.2. At a most basic level it is clear that for years the Respondent failed to establish and maintain proper accounting systems or to have proper control over those systems, to ensure compliance with the Rules and the state of the accounting records was dire.
- 130.3. The regulatory framework is in place to ensure that:
- 130.3.1. client money is safe;
- 130.3.2. clients and the public have confidence that client money held by firms will be safe;
- 130.3.3. firms are managed in such a way, and with appropriate systems and procedures in place, so as to safeguard client money; and
- 130.3.4. the SRA is aware of issues in a firm relevant to the protection of client money.
- 130.4. The SRA acknowledges that there is no evidence of a no loss of client money. Nevertheless, the Respondent's failure to comply with the Account Rules and remedy the breaches at the very least put client monies at risk, which the resulting impact on public confidence.
131. In respect of aggravating features:



131.1. Despite seven Accountants Reports and three Forensic Reports over a period of seven years, the Respondent failed to remedy substantial Accounts Rules breaches for which he was given ample time and opportunity to remedy.

131.2. Whilst the Respondent cooperated with the SRA during the investigations, there was not complete cooperation; for example, he did not provide monthly updates as agreed and did not provide the SRA with the things requested such as a detailed chronology of the steps taken to address the concerns identified or evidence of steps taken to remedy the breaches.

132. In respect of mitigating features, the Respondent's mitigation is set out at paragraph 125 above. There is no evidence of dishonesty or the loss of client money.

Mark Rogers  
Partner, Capsticks Solicitors LLP

Signed: .....

(On behalf of the Solicitors Regulation Authority)

Date: 12 May 2021

Signed: .....

(JONATHAN ANDREW SIMON)

Date: 12 May 2021