SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12212-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

SAM THEMIS Respondent

Before:

Mr G Sydenham (in the chair)
Ms A Horne
Mr R Slack

Date of Hearing: 25 October 2021

Appearances

Andrew Bullock, Counsel employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

The Respondent did not appear and was not represented

JUDGMENT ON AN APPLICATION HEARD REMOTELY

Allegations

1. The allegations against the Respondent, SAM THEMIS, made by the SRA were that, while in practice as the owner and sole equity member at ST Solicitors LLP ("the firm"):

1.1 On 4 February 2019, the Respondent failed to ensure that the firm protected Client C's money.

In failing to do so the Respondent acted in breach of Principles 4, 6 and 10 of the SRA Principles 2011. The Respondent also failed to comply with Rule 1.2 of the SRA Accounts Rules 2011.

1.2 The Respondent caused or allowed unallocated client to office transfers, resulting in cash shortages on the client account:
(a) On 5 June 2019 - a minimum cash shortage of £5,000 on client account.
(b) On 13 June 2019 - a minimum cash shortage of £34,500 on client account.

In doing so the Respondent acted in breach of Principles 2, 4, 6 and 10 of the SRA Principles 2011. The Respondent also failed to comply with Rule 20.1 of the SRA Accounts Rules 2011.

1.3 On or around 13 August 2019, the Respondent failed to ensure that the firm was closed in an orderly manner and clients' interests were maintained.
In doing so the Respondent acted in breach of Principles 2, 4, 6 and 10 of the SRA Principles 2011 and Rules 7.1 and 7.2 of the Solicitors Accounts Rules 2011.

1.4 From or around November 2017 and 13 August 2019, the Respondent failed to maintain books of accounts, including client ledgers, client cashbooks, client liabilities and client account reconciliations.

In doing so the Respondent acted in breach of Principles 4, 6 and 10 of the SRA Principles 2011. The Respondent had also acted in breach of Rule 1.2(e). 1.2(f). 29.1, 29.2, 29.4, 29.12(a), 29.12(b) and 29.12(c) of the SRA Accounts Rules 2011.

1.5 Between 13 August 2019 and 27 September 2019, the Respondent failed to cooperate with the SRA's forensic inspection. In doing so the Respondent had acted in breach of Principle 7 of the SRA Principles 2011 and failed to achieve Outcome 10.6 of the SRA Code of Conduct 2011.

2. In addition, allegation 1.2 was advanced on the basis that the Respondent's conduct was dishonest, alternatively reckless.

3. Allegation 1.1 was advanced on the basis that the Respondent's conduct was reckless.

4. Dishonesty and/or recklessness, were alleged as aggravating features of the Respondent's misconduct but are not essential ingredients in proving the allegations.

Preliminary issue

5. For the Applicant, Mr Bullock made an application to proceed in the absence of the Respondent. He referred the Tribunal to the witness statement of a process server RT, dated 22 October 2021. Its significance was two-fold; RT confirmed that the Respondent was the joint registered proprietor of the property (a farm) to which the application in this matter had first been sent following issue, and that he was known from discussion with neighbours to continue to reside at that property. A man of about the Respondent's age was seen by RT when he attended the property. The statement also confirmed that both the farm address and another address known to be associated with the Respondent were attended by the process server, and that copies of the hearing bundle were left at those addresses on 19 and 21 October 2021, respectively. The documents left included copies of the Standard Directions dated 22 July 2021 which referred to the date of this substantive hearing in the first paragraph (1.1).

6. Mr Bullock submitted that, in addition to procuring the services of a process server, the Applicant had written to the Respondent at the farm address on no less than five separate dates between 14 June 2021 and 21 October 2021. The most recent letter dated 21 October 2021 confirmed the hearing date, and provided an explanation as to how the hearing might be joined by telephone if the Respondent was unable to attend by Zoom. That was done because the Applicant had not been notified in the course of these proceedings of an email address for the Respondent. Mr Bullock further understood that the Tribunal had also written to the Respondent to confirm the date of the hearing and to give him details of the login links for Zoom. Mr Bullock asked the Tribunal to accept that the Respondent had had proper notice of the proceedings, and that he had been duly served at the farm address. On that basis, Mr Bullock submitted that the Respondent had voluntarily absented himself from the hearing, so that the Tribunal should proceed in his absence.

7. The Tribunal asked if there was a reason the process server had not been asked to investigate an address in Margate at which the Respondent had indicated he was living in a letter dated 9 September 2019 he sent to the intervention agents. In the letter the Respondent said:

> "I no longer reside at the former matrimonial home in Essex, and the above address is to be used for future correspondence."

Mr Bullock responded that he was not aware of any reason, but that it was the evidence in the witness statement of the process server that the Respondent was not at the Margate address, but was living at the farm address.

8. The Tribunal considered the submissions for the Applicant and the evidence placed before it. The Tribunal noted that a neighbour had confirmed to the process server that the Respondent continued to live at the farm. The process server had also spoken with a woman at the farm who said she was related to the Respondent, confirmed that he continued to reside there, and was indeed present at that time. She asked him to wait outside the premises whilst she notified the Respondent of his presence. The process server stated that a man then appeared at the door and behaved aggressively. Although the man to whom the process server spoke did not identify himself as the Respondent,

it had been confirmed to the process server that the Respondent was in the house at the time, and the Tribunal was satisfied that the documents had come to his attention. The Tribunal also noted that the Respondent used the farm address as the registered office of a new company which he registered at Companies House. In doing so he gave as an address for correspondence a property which the process server's evidence showed was a close family member's address. The latter was the second address at which the process server had served the papers. The Tribunal was satisfied that the application had been properly served in accordance with the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR"). Rule 36 of the SDPR states:

> "Where a party fails to attend and is not represented at the hearing and the Tribunal is satisfied that notice of the hearing was served on the party in accordance with these Rules, the Tribunal may hear and determine any application and make findings, hand down sanctions, order the payment of costs and make orders as it considers appropriate notwithstanding that the party failed to attend and is not represented at the hearing."

In all the circumstances the Tribunal was satisfied that the Respondent had voluntarily absented himself from the proceedings and that it would be appropriate to proceed to hear the application in the absence of the Respondent.

Factual Background

9. The Respondent, who was born in 1960, was a solicitor, having been admitted to the Roll on 15 July 2003. He was the sole equity partner of ST Solicitors LLP ("the firm"), a recognised body which formerly carried on the business of a solicitor's practice from 8-10 Heralds Way, South Woodham Ferrers, Chelmsford, Essex, CM3 5TQ. It also traded from a branch office at Flat 224 Hutton Road, Shenfield, Brentwood, Essex, CM15 8PA.

10. The firm traded as a Limited Liability Partnership. There were 2 salaried partners in the firm: Mr X who left the firm on 13 August 2019 and Ms Y who left the firm on 29 July 2019.

11. The firm's work and specialisms were 40% conveyancing, 25% matrimonial and 10% litigation. The Respondent was the firm's appointed Compliance Officer for Legal Practice ("COLP"), Compliance Officer for Finance and Administration ("COFA") and the firm's Money Laundering Reporting Officer ("MLRO") at all relevant times.

12. The firm was intervened into by the Applicant on 28 August 2019. The Respondent did not hold a current Practising Certificate.

13. The conduct in this matter came to the attention of the Applicant on 24 May 2019 when it received an anonymous report which raised concerns about the management and financial operation of the firm. It was alleged that the firm's books of account were not maintained, and that in February there had been a shortage on the client account which meant that there were insufficient funds to allow a conveyancing matter to complete.

14. A forensic inspection of the firm commenced on 1 August 2019. The Forensic Investigation Officer ("FIO") issued an interim forensic investigation report ("FIR") on 19 August 2019.

15. Based upon the interim FIR, an Adjudication Panel made the decision to intervene into the practice of the Respondent on 23 August 2019.

16. The FIO continued with an investigation of the firm which culminated in the final FIR dated 27 September 2019.

17. The firm had the following bank accounts: a client deposit manager (the client account), a business current account number 46088989 and a business reserve account number 46088997. The firm's business current account overdraft limit was £10,000.00. There was no overdraft facility on the business reserve account.

Allegation 1.1

18. The firm acted for Client C in the sale of his property, which completed on 25 October 2018. Pending the completion of his related purchase (which completed on 4 February 2019), the firm agreed to retain £126,923.34 from the proceeds of sale in the client account.

19. Allowing for additional monies paid in by Client C, on 4 February 2019 the monies on account should have been £415,200, however the client account balance was £412,792.75. To pay the completion money, the Respondent made an office to client account transfer of £16,000. This ensured the firm could make payment of the completion monies.

20. The Respondent had provided no explanation for the basis on which the transfer of £16,000 was made into client account.

Allegation 1.2 (a)

21. A review of the client account showed a transfer from client to office. The transfer was made as shown below:

Date	Narrative	Amount (£)
5 Jun 2019	To A/C 46088997, via online - XFER 31	5,000.00

22. A review of the office bank statements to which this transfer was made, identified the funds were then transferred to the firm's business reserve account. Prior to the £5,000 transfer this account had a credit balance of £10,009.34. Following the transfer, the account had a credit balance of £15,009.34. On 5 June 2019, the bank statement recorded the following business payment from the office account:

Amount (£)	Narrative per Bank Statement
15,000.00	[RF], ST Solicitors, via online - PYMT, FP 05/06/19 10, 62123248878241000N 32.

23. The FIO reported that without this transfer from client bank account, there would not have been sufficient funds in the business reserve account to have made the payment as there was no overdraft facility.

24. No explanation has been provided by the Respondent for this transfer.

Allegation 1.2(b)

25. On 13 June 2019, the Respondent made a client to office account transfer in the amount of £34,500. The funds were transferred to the firm's business current account. This account had an authorised overdraft of £10,000. Prior to the transfer, the account had a debit (overdrawn) balance of £9,971. Following the transfer, the account had a credit balance of £24,529. On 14 June 2019, three transfers totalling £34,500 were made from the account as follows:

Amount (£)	Narrative Per Bank Statement
11,750.00	1972 13 Jun 19, HMRC.GOV.UK, SDLT, Glasgow GB,
16,000.00	1972 13 JUN 19, HMRC.GOV.UK, SDLT, Glasgow GB
6,750.00	1972, 13 JUN 19, HMRC.GOV.UK, SDLT, Glasgow GB

26. The Respondent had not identified the client matter(s) or produced accounting records for the above client to office transfer.

27. The practice manager could not identify the client matters or provide invoices pertaining to either the £5,000 or the £34,500 transfer.

Allegation 1.3

28. On 13 August 2019, the FIO received a telephone call from Mr X, a salaried partner of the firm. Mr X informed the FIO that the Respondent had dismissed him from the firm. Mr X forwarded to the FIO an email exchange with the Respondent in which the Respondent stated as follows:

> "I need a decision today from you if you wish to buy the business. If not I'm closing down. I've had enough of all this. If I do not hear from you by 4 today everyone will be dismissed and work will cease."

And

> "unfortunately the practice will be placed into administration and then liquidation. You will be contacted by the insolvency service who will deal with the redundancy process. The administrator will sell the assets and you will pay double what I have offered you (sic). This cannot continue any minute longer. [Ms Y, the other salaried partner] has a plethora of complaints. She has done nothing for her clients. I have tried to catch up but I cannot (sic). Please get [Z,

a staff member, name misspelt] (sic) to stop working and bring any live files to Woodham"

29. The FIO tried to contact the Respondent between 13 and 15 August 2019 to confirm closure of the firm, but no response was received.

30. On 15 August 2019, the FIO was notified of nine calls received by the Applicant's Contact Centre relating to the firm on 14 and 15 August 2019.

31. On 15 August 2019, 2 FIOs attended the firm's Shenfield and South Woodham Ferrers offices during the firm's office hours (09.00 to 17.00). The FIOs photographed the offices and summarised their visit as follows:

- Each office was locked. The Shenfield office door was completely shuttered, and unopened post remained in the unlocked post box.
- No one responded to knocks on the doors, and the door buzzer at the Shenfield office did not appear to be working.
- Neither office contained signs or notices stating that the firm's offices were closed.
- There were no signs or notices which provided information to clients about the status of the firm.
- Telephone calls to the phone numbers listed on the firm's website for each office went unanswered.

32. On 15 August 2019, the FIOs had a conversation with an employee of the business adjacent to the firm's Shenfield office, a pharmacy. The FIR summarised the conversation as follows: The firm had been closed all week. The office car park was emptier than normal. People had been coming into the pharmacy and asking if the firm was open.

33. On 19 August 2019, the Respondent placed a message on the firm's website entitled "ST Solicitors Closure" and inviting clients to collect their files.

34. As of 28 August 2019 (the date of intervention), the Applicant calculated the firm's liabilities to clients were at least £35,196.41. However, on intervention only £14,332.52 was recovered from the firm's client account.

35. The Applicant's "Guidance on Closing down your practice" enables those who wish to close their practice to do so whilst protecting the interests of their clients and complying with the SRA Standards and Regulations. The Guidance advises on steps to be taken when closing a practice and explains the importance of this.

<u>Allegation 1.4</u>

36. The FIO reported that the books of account were not in compliance with the SRA Accounts Rules 2011 for reasons set out in the interim FIR.

Allegation 1.5

37. The final FIR reported that the Respondent did not respond to communications from the FIO and did not attend for a regulatory interview when requested to do so.

Witnesses

38. There were no witnesses. Civil Evidence Act notices having been served and not replied to the Applicant chose not to call the FIO.

Findings of Fact and Law

39. The Applicant was required to prove the allegations to the standard applicable in civil proceedings, that is on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial, and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

General submissions for the Applicant

40. Mr Bullock submitted that according to the judgment of Lord Justice Hoffman in Re B [2008] UKHL 35, the allegations did not have to be proved to any higher standard because of their seriousness.

41. The interim FIR addressed the allegations relating to the Accounts Rules breaches and the failure to effect orderly closure of the firm. It confirmed that the Respondent was solely responsible for the operation of the firm's bank accounts; he was the only person who could move money. It also confirmed that, while the FIO was able to identify a minimum cash shortage when he first went into the firm, he was unable to calculate the full extent of the firm's liabilities to its clients because of the parlous state of its accounting records. Therefore, he could not say whether the minimum cash shortage of £5,000 represented the full amount of the shortfall on client account.

42. The final FIR was relevant to the allegation that the Respondent failed to cooperate with the Applicant.

43. The allegations all arose from the two FIRs.

44. **Allegation 1. While in practice as the owner and sole equity member at ST Solicitors LLP ("the firm"):**

1.1 On 4 February 2019, the Respondent failed to ensure that the firm protected Client C's money.

In failing to do so the Respondent acted in breach of Principles 4, 6 and 10 of the SRA Principles 2011. The Respondent also failed to comply with Rule 1.2 of the SRA Accounts Rules 2011.

Regulatory provisions cited in the allegation:

SRA Principles 2011

Principle 4 You must act in the best interests of each client

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 10 You must protect client money and assets

SRA Accounts Rules 2011

1.2 You must comply with the Principles set out in the Handbook, and the outcomes in Chapter 7 of the SRA Code of Conduct in relation to the effective financial management of the firm, and in particular must:

(a) keep other people's money separate from money belonging to you or your firm;
(b) keep other people's money safely in a bank or building society account identifiable as a client account (except when the Rules specifically provide otherwise);
(c) use each client's money for that client's matters only;
(d) use money held as trustee of a trust for the purposes of that trust only;
(e) establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the Rules;
(f) keep proper accounting records to show accurately the position with regard to the money held for each client and trust;
(g) account for interest on other people's money in accordance with the Rules;
(h) co-operate with the SRA in checking compliance with the Rules; and deliver annual accountant's reports as required by the Rules.

44.1 Mr Bullock submitted that the underlying facts were set out in the interim FIR. In essence, on 25 October 2018 the Respondent completed the sale of a property for Client C. The proceeds of sale of £126,923.34 were supposed to be held on client account pending the purchase of a second property completing on 4 February 2019. Over time between those dates Client C made further payments which were added to the credit balance in contemplation of the purchase on 4 February 2019. It followed from the fact that the Respondent was holding money for Client C that, at all times between 25 October 2018 and 4 February 2019, there should have been a minimum figure of £126,923.34, the amount of the proceeds of sale, held on the client account of the firm. In fact the amount held fell below that figure on nine occasions between those dates as set out in the interim FIR:

Date	**Client Account Balance (£)**	**Minimum Shortage (£)**
20-Dec-18	108,981.05	17,942.59
21-Dec-18	97,396.05	29,527.59
24-Dec-18	94,000.05	32,923.59

27-Dec-18	92,436.04	34,487.30
28-Dec-18	106,866.04	20,057.60
31-Dec-18	105,581.91	21,341.73
2-Jan-19	101,881.91	25,041.73
3-Jan-19	100,861.91	26,061.73
10-Jan-19	126,014.28	909.06

44.2 The lowest balance in the table was on 27 December when £92,436.04 was held on the client account, resulting in a minimum shortage of £34,487.30. It was submitted that this was a minimum shortage because, of course, if client funds were held for clients other than Client C at the relevant times, there would have been a greater cash shortage than that shown above. The Applicant's case was that, on those facts, the allegation was a very simple one; the Respondent was under an obligation to keep the money he was holding for his client safe. The fact that he was paying away money out of the client account and that a shortage arose on nine occasions in that interim period, showed that client money was not being kept safe. The existence of a shortage of almost £35,000 on one occasion would be a matter of concern to the public, who expected solicitors to keep their assets safe for them, such as to impair the trust and confidence they would place in the Respondent and the legal profession generally.

44.3 The Tribunal had regard to the evidence and the submissions for the Applicant. The Tribunal found the facts reported by the FIO in the interim FIR, and summarised by Mr Bullock at this hearing, to be proved on the evidence to the required standard. This included that on the crucial date of 4 February 2019, when Client C was due to complete the purchase of a property being funded in the main by the proceeds of sale of an earlier property, there was insufficient money held for him in client account. This was in spite of the fact that the earlier proceeds of sale and additional amounts paid in by the client were adequate to cover the purchase price. In order for the completion to go ahead the Respondent had to make a payment into client account of £16,000. The evidence showed that this was not the first occasion on which there had been a shortfall in the monies held for this particular client. The Respondent had not filed an Answer to the allegation nor attended this hearing to give an account of himself and his actions. Standard Directions issued by the Tribunal made the Respondent aware, at number 19, of the Tribunal's discretion to proceed in the absence of the Respondent under Rule 36 of the SDPR, set out under Preliminary Issue above. Rule 33 of the SDPR also gave the Tribunal the power to draw adverse inferences as follows:

> "Where a Respondent fails to—
>
> (a) send or serve an Answer in accordance with a direction under Rule 20(2)(b); or
> (b) give evidence at a substantive hearing or submit themselves to cross-examination;
>
> and regardless of the service by the Respondent of a witness statement in the proceedings, the Tribunal is entitled to take into account the position that the Respondent has chosen to adopt and to draw such adverse inferences from the Respondent's failure as the Tribunal considers appropriate."

44.4 The Tribunal noted that at the material time there were 2 salaried partners at the firm. In the closure notice posted on the firm's website the Respondent tried to blame them for the jeopardy in which sales and purchases had been placed. No allegations had been brought against them. The Tribunal found that the Respondent was in control of the firm and its accounting procedures, and only he had access to its bank accounts, the keys to its premises and access to its files. He was the only person who had authority to move money from client account, and it therefore followed that he must have caused the shortfall which existed on 4 February 2019. The Respondent had provided no explanation for the basis on which the transfer of £16,000 was made into client account. The Tribunal found that on 4 February 2019 the Respondent failed to ensure that the firm protected Client C's money.

44.5 The Tribunal further found that in so acting the Respondent had failed to discharge his obligation under Principle 4 to act in the best interests of each client. He was also in breach of Principle 6 because such actions would constitute a failure to maintain the trust which the public places in the Respondent and the provision of legal services; indeed the Respondent's conduct in dissipating client monies for an illegitimate purpose was the exact opposite of the proper behaviour expected under this Principle. The Tribunal also found that this was a very clear example of a breach of Principle 10, because the Respondent had failed to protect client money and assets. The Tribunal also found the Respondent to be in breach of Rule 1.2 of the SRA Accounts Rules.

44.6 The Tribunal therefore found proved to the required standard, that is the balance of probabilities, that the Respondent was in breach of Principles 4, 6 and 10 of the SRA Principles and Rule 1.2 of the SRA accounts Rules 2011.

Recklessness in respect of allegation 1.1

44.7 As to the allegation of recklessness, Mr Bullock referred the Tribunal to the test summarised in the Rule 12 Statement as follows:

> "The Applicant relies upon the test for recklessness which was set out in the case of Brett v SRA [2014] EWHC 1974. At paragraph 78 in that case, Wilkie J said that for the purposes of the Brett appeal, he adopted the working definition of recklessness from the case of R v G [2004] 1 AC 1034. He said that the word recklessly is satisfied: with respect to (i) a circumstance when (the solicitor) is aware of a risk that it exists[sic] or will exist and (ii) a result when (the solicitor) is aware that a risk will occur and it is, in circumstances known to them, unreasonable for them to take the risk."

44.8 The Tribunal determined that in conducting Client C's matters in particular, the Respondent knew of the risk that there would be insufficient funds in client account to complete the purchase on 4 February 2019. Nevertheless, he allowed a shortage to arise in the client account by using Client C's monies for ulterior, and unexplained, purposes. This was in spite of the fact that he would have been aware of the risk of being unable to repay the amounts so dissipated from his own funds at the required time. The fact that the Respondent was declared bankrupt in 2019 demonstrated that he was taking unjustified risks with client money. Bankruptcies do not occur overnight.

44.9 Accordingly the Tribunal found all aspects of allegation 1.1, including recklessness, proved against the Respondent on the evidence to the required standard.

45. **Allegation 1.2 - The Respondent caused or allowed unallocated client to office transfers, resulting in cash shortages on the client account:**

(a) On 5 June 2019 - a minimum cash shortage of £5,000 on client account.
(b) On 13 June 2019 - a minimum cash shortage of £34,500 on client account.

In doing so the Respondent acted in breach of Principles 2, 4, 6 and 10 of the SRA Principles 2011. The Respondent also failed to comply with Rule 20.1 of the SRA Accounts Rules 2011.

Regulatory provisions cited in the allegation:

SRA Principles 2011

Principle 2: You must act with integrity

Principles 4, 6, and 10 are set out under allegation 1.1 above.

SRA Accounts Rules 2011

Rule 20.1:

Client money may only be withdrawn from a client account when it is:

(a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held);
(b) properly required for a payment in the execution of a particular trust, including the purchase of an investment (other than money) in accordance with the trustee's powers;
(c) properly required for payment of a disbursement on behalf of the client or trust;
(d) properly required in full or partial reimbursement of money spent by you on behalf of the client or trust;
(e) transferred to another client account;
(f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing;
(g) transferred to an account other than a client account (such as an account outside England and Wales), or retained in cash, by a trustee in the proper performance of his or her duties;
(h) a refund to you of an advance no longer required to fund a payment on behalf of a client or trust (see Rule 14.2(b));
(i) money which has been paid into the account in breach of the Rules (for example, money paid into the wrong separate designated client account) - see Rule 20.5 below;
(j) money not covered by (a) to (i) above, where you comply with the conditions set out in Rule 20.2; or

(k) money not covered by (a) to (i) above, withdrawn from the account on the written authorisation of the SRA. The SRA may impose a condition that you pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received.

45.1 Mr Bullock submitted that allegations 1.2 and 1.3 included a lack of integrity, and the test to be applied was that set out by the Court of Appeal in Wingate and anor v SRA [2018] EWCA Civ 366, which states that integrity:

> "97. .... is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members ... the underlying rationale is that the professions have a privileged and trusted role in our society. In return, they are required to live up to their own professional standards"
>
> "100. ... connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty ..."

Mr Bullock summarised the test as being whether the Respondent abided by the high ethical standards of the solicitors' profession. He submitted that making improper payments out of the client account was specifically identified as one example of lack of integrity by Lord Justice Rupert Jackson in the Wingate case.

45.2 Mr Bullock submitted allegation 1.2 related to 2 separate payments: one of £5,000 from client account to the firm's business reserve account, which enabled a payment of £15,000 to be made to a named individual (RF) out of the latter account on the same day. If it were not for the making of the transfer from client account, there would have been insufficient funds in the business reserve account to enable the payment to RF to be made.

45.3 Secondly, allegation 1.2 related to three payments made on 13 June 2019 from the client account of the firm to its business current account, totalling £34,500. There were three payments in a corresponding sum made on the same day to HMRC, as seen from the narrative on bank statements, in respect of Stamp Duty land Tax ("SDLT"). Again those payments could not have been made without the prior transfer from the client account. In the course of the Applicant's investigation the Respondent was asked to produce documentation to support those transfers but was unable to do so.

45.4 Mr Bullock asked the Tribunal to infer from the correlation on each occasion between the making of the transfers from client account, and the fact of payments being made which could not have been made without that transfer, that the transfers from client account were made to facilitate the payments. Mr Bullock also asked the Tribunal to draw the inference that, if the transfers were properly made in accordance with the Accounts Rules, then the Respondent would have been prompt in producing evidence to show that was the case. On that basis Mr Bullock invited the Tribunal to conclude that the Respondent displayed a lack of integrity in making these transfers, because what he was doing was clearly making improper payments out of client account.

45.5 The Tribunal asked Mr Bullock whether, if the SDLT payments had related to legitimate client matters, and the firm was moving the client's money from client account to office account in order to make the SDLT payment out of office account, there would be anything wrong with that. The Tribunal appreciated that the Applicant would still criticise the lack of proper accounting records evidencing such transfers and payments on client matters, but questioned whether one could say that they were improperly made, and that lack of integrity followed. Mr Bullock agreed with the proposition that moving client monies, which were legitimately to be paid out, into office account for the purposes of effecting the legitimate payment would not amount to an improper transfer. However, he submitted that the only evidence for the payments being made in relation to SDLT came from the bank statement narrative, as reported in the FIR. He accepted the Tribunal's point; if these payments were indeed for SDLT payable on client matters then he might be in difficulty in demonstrating that the transfers from client account were improperly made.

45.6 The Tribunal enquired if the same point arose in relation to the payment to RF of £5,000. Could RF not be a legitimate recipient of client money? Mr Bullock responded that the same point arose as above; if it was a payment of that client's money to that client, albeit it was not evidenced by any necessary records, the fact that it was moved into office account and paid out from there would not attract censure. However, the difficulty with that proposition was that the Tribunal had not had an explanation from the Respondent as to why the payment was made, and so there was no reason to suppose that it was a legitimate payment to or on behalf of a client. Following on from that, in relation to the SDLT point Mr Bullock submitted that again the same issue might arise with regard to lack of integrity. It was not a problem if the money were being paid from the correct client ledger, however Respondent should not simply take £34,500 out of client account and use it to pay off SDLT liabilities, if that were going to result in a shortage to other clients.

Submission regarding dishonesty or alternatively recklessness in relation to allegation 1.2

45.7 Mr Bullock referred the Tribunal to the test for dishonesty set out by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, which applies to all forms of legal proceedings:

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

Mr Bullock submitted that the Applicant's case was a simple one. If, in relation to either of the two transfers which were the subject matter of allegation 1.2, the Tribunal accepted that firstly they were improper transfers being made to fund unrelated payments out of office account which could not otherwise be made, and secondly that

there was no good reason for the transfers to take place, then such transfers must be dishonest under the above test. Indeed, the Respondent had not produced any evidence to explain why the transfers were being made. A solicitor could not honestly move money from client account to office account simply to ensure that liabilities payable out of office account could be paid, without good reason. (The test for recklessness is set out under allegation 1.1 above.) With regard to recklessness, Mr Bullock submitted that the chaotic state of the firm's accounts, and the absence of ledgers and reconciliations in particular, meant there was a clear risk that payments being made out of client account would give rise to a shortage; this was because it could not be known by the Respondent when the payment was made whether there were in fact sufficient funds held on behalf of the client in Client account to fund the payment.

45.8 The Tribunal had regard to the evidence and the submissions for the Applicant. The Respondent had not engaged in the proceedings or given any explanation to the Applicant during the course of the investigation, or before the matter was referred to the Tribunal. There were two aspects to this allegation; one relating to a transfer of £5,000 (allegation 1.2(a)) and the other to a transfer of £34,500 (allegation 1.2(b)) both resulting in alleged cash shortages on client account. The Tribunal considered each separately.

Allegation 1.2(a)

45.9 Regarding the alleged cash shortage on client account of £5,000, the Tribunal noted that the allegation referred to an unallocated client to office transfer. The transfer was unallocated because the Respondent did not keep records within which he could allocate it, and he did not maintain ledgers. On 4 June 2019, the balance available on the business reserve account was just over £10,000. On 5 June 2019, the amount of £5,000 was transferred into the business reserve account from client account, allowing the sum of £15,000 to be paid out to RF later that day. The Tribunal reasoned that, if the individual named in the bank statement narrative, RF, was a client to whom money had to be paid, the payment to him would have been made direct from client account. The Tribunal therefore inferred that the individual was not a client. Furthermore, if the monies were to be paid to RF for a legitimate reason on behalf of a client, even if there was (an unexplained but legitimate) reason for making that payment out of the business reserve account, rather than the client account, the entire amount of £15,000 should have been moved from the client account, and that was not the case. The fact that the transfer from client account was for part of the amount paid out to RF, contributed to the evidence that this was not a legitimate payment. It was impossible to conceive of a legitimate payment to a recipient which required to be funded as to one third by a client and the remaining two thirds by the firm. Another way of expressing the position was that, if the sum of £5,000 did not relate to the office account payment to RF, but was transferred from client account for the purpose of some other client's matter, it was not then used for that client's purpose because it was used to make the payment to RF. In either circumstance the transfer of £5,000 from client account on 5 June 2019 must have caused a cash shortage on client account, because the monies were either withdrawn for an illegitimate purpose, or withdrawn for a legitimate purpose but used for an illegitimate purpose. The Respondent had not offered any explanation in respect of the transfer.

45.10 The Tribunal found proved on the balance of probabilities that on 5 June 2019, the Respondent, who was in sole control of the firm's client and office accounts, caused or allowed an unallocated transfer of £5,000 to be made for a purpose which was not legitimate. His actions thereby created a cash shortage in that amount on client account.

45.11 As to the allegation of breaches of Principles, the Respondent was sole equity partner in the firm and COFA. The Tribunal determined that the Respondent's creation of a cash shortage of £5,000 in making the transfer and onward payment to RF demonstrated a departure from the high ethical standards required of the profession by the definition of integrity in the case of Wingate. The Respondent had therefore failed to act with integrity in his handling of client money by creating a cash shortage of £5,000 (Principle 2). The Tribunal also determined that the Respondent's actions in respect of the improper transfer of £5,000 constituted a breach of Principle 4, the requirement to act in the best interests of each client, because in creating the resultant shortage in client account he was by definition depriving one or more of his clients of money belonging to them. In acting in this way, the Respondent had failed to maintain the trust of the public in him and in the provision of legal services, thereby breaching Principle 6. He had also breached Principle 10 by failing to safeguard client money and assets. The Respondent also breached Rule 20.1 of the SRA Accounts Rules 2011, governing the circumstances in which money might be withdrawn from client account.

45.12 Having regard to the allegation of dishonesty in respect of allegation 1.2 (a), the Tribunal had regard to the test in the case of Ivey and to the submissions of the Applicant. The Tribunal first had to ascertain what was the state of the Respondent's knowledge. The position was that the Respondent had complete control of the firm's bank accounts; he was the only person with access. He also had the keys to the office and access to all the files. The Tribunal noted that the Respondent was off sick for a period of three months, but this did not undermine his knowledge of the accounting position. Even during his absence, the salaried partners would inform the Respondent when money was needed, such as in the case of the property completion for Client C, and the Respondent would make the necessary transfer. He therefore knew at the time he made the £5,000 client to office transfer that the firm's office account needed funds to be able to meet the firm's outgoing liabilities, in this case the payment to RF which the Tribunal had found to be an improper use of client funds. The Tribunal noted that the Respondent had disengaged from the firm's accountants in any meaningful way for some 4 to 5 years, which was further indication of his sole control and knowledge of the firm's financial affairs. There was a clear inference that the £5,000 transferred from client account was not transferred in reference to any client matter; the Respondent's motive was to provide enough funds in office account to make a payment that did not relate to client matters, in accordance with the reasoning set out above in regard to this allegation. The Tribunal agreed with the proposition in the Rule 12 Statement that, in the absence of the Respondent producing evidence that the monies were correctly used and there being no other relevant evidence, it could be reasonably inferred, on the balance of probabilities, that the Respondent had taken someone else's (a client's) money without their knowledge or agreement. In the Tribunal's view this contrasted with the payments which were the subject of allegation 1.2(b) below. By the standards of ordinary decent people such conduct would be considered dishonest. The Tribunal therefore found dishonesty proved on the evidence to the required standard in respect of allegation 1.2(a). Having found dishonesty had been proved the Tribunal did not consider it necessary to consider the alternative allegation of recklessness in respect of

allegation 1.2(a). Allegation 1.2 (a) was therefore found proved in all its aspects, including dishonesty, on the evidence to the required standard in respect of the £5,000 transfer.

Allegation 1.2(b)

45.13 Having regard to the alleged cash shortage on client account of £34,500, in determining the facts the Tribunal did not overlook that the Respondent had not offered an explanation when he had been given the opportunity to do so, or that he had not kept proper accounting records for his practice (see the finding in respect of allegation 1.4 below.) However, the Tribunal could not be satisfied, for the seasons set out below that the monies transferred from client account to office account on 13 June 2019 were not transferred for a legitimate client purpose, and were not used for that legitimate client purpose, in contra-distinction to the circumstances of allegation 1.2(a) above. The Tribunal found as a fact on the evidence that on 13 June 2019 a transfer of £34,500 had been made from client account to the business current account, and that the Respondent had caused or allowed this transfer, as he was in sole control of the bank accounts. The following day, 3 separate payments had been made to HMRC with a narrative including "SDLT" which totalled the amount of the previous day's transfer from client to office account. The Respondent was up to his overdraft limit on the business current account before making the transfer from client account and the payments out; on 5 June 2019 the office account had been within £48 of that limit. On 12 June 2019 the office account had a debit (overdrawn) balance of £9,971.00 and so was within £29 of the limit. Nevertheless, that fact alone did not establish, on the balance of probabilities, that the transfer out of client account was improper. The inference from the narrative on the firm's bank statement was that the monies transferred from client account were used to make payments of SDLT, and the likelihood was that such payments were made in relation to conveyancing transactions on behalf of clients of the firm. The Applicant had not produced any evidence to rebut that inference. If those were the circumstances of the impugned transfer, the Applicant had not proved its case that the transfer was improper or that it resulted in a shortage on client account. The Tribunal also noted that the payments out of the office current account on 13 June 2019 were not the only payments made from that account where the narrative included "SDLT". There were three such payments on 13 May 2019. The Tribunal also noted that, after the transfer from the client account of the £34,500, there remained a balance of £119,744.53. The Tribunal also considered on the evidence that it would not have assisted the Respondent to increase the amount of money in office account for a single day for any obvious reason other than for the need to make the SDLT payments. The Tribunal determined that the mere fact that the business current account would be overdrawn without the transfer did not demonstrate that the monies were transferred for an illegitimate purpose. Mr Bullock had conceded that one could not say that the transfer was improperly made if the SDLT payments related to legitimate client matters, and that what the firm was doing was moving a client's money from client account to office account in order to make the SDLT payment out of office account, albeit the Applicant would still criticise the lack of proper accounting records evidencing such transfers and payments on client matters. The Tribunal concluded that the Applicant had not proved its case on the balance of probabilities; it had not produced evidence indicating that the funds the subject of the allegation were not used for a legitimate purpose. The Tribunal could not make the inference requested of it on the evidence that the payments were improper or caused a cash shortage on client account. The Tribunal could not therefore

be satisfied to the required standard that Rule 20.1 of the SRA Accounts Rules had been broken. The Tribunal did not find on the evidence that allegation 1.2(b) regarding the amount of £34,500 creating a cash shortage on client account had been proved to the required standard. It did not therefore have to consider the allegations of breach of Principles, of dishonesty or in the alternative recklessness.

46. **Allegation 1.3 On or around 13 August 2019, the Respondent failed to ensure that the firm was closed in an orderly manner and clients' interests were maintained.**

In doing so the Respondent acted in breach of Principles 2, 4, 6 and 10 of the SRA Principles 2011 and Rules 7.1 and 7.2 of the Solicitors Accounts Rules 2011.

Regulatory provisions cited in the allegation:

SRA Principles 2011

The Principles cited are set out under Allegation 1.1 above (Principles 4, 6 and 10) and Allegation 1.2 (Principle 2).

SRA Accounts Rules 2011

Rule 7: Duty to remedy breaches

7.1 Any breach of the Rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account.

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

46.1 Mr Bullock submitted that this allegation related to the Respondent's disorderly closure of the firm. It was the Applicant's case that on 15 August 2019 the Respondent "shut up shop" without first notifying clients. Mr Bullock referred to the following table of records of telephone calls received by the Applicant's Contact Centre on that date, in order to give context to the allegation (SF stands for Subject Firm):

> "AM last had contact with SF two weeks ago regarding an ongoing case. Not been able to get through the past 48 hours. Has visited the premises and the branch office is closed.
>
> MG has tried contacting the SF since last week. Phone rings and no answer. Claims to have rung 50 times and yesterday and third party solicitor can also not get in contact
>
> AG SF dealing with his divorce. Has not heard from them since 09/08/19. Tried to call no response all week and has visited the offices and they were closed.

JT has called the SF three times yesterday and four times today. No response. Neighbours of the SF advise they have closed.

SD Has been doing some conveyancing work for the SF. Received a call from estate agents that the SF is about to be inspected and staff made redundant. Has rung SF and no response.

[Mr Bullock commented that SD was possibly not a client]

SB last spoke to SF on 15/04/09. Unable to get through since then. Has been made aware the SF have received her PI compensation in May but have not notified her or paid her.

MH Ongoing divorce case with SF. Attending offices on 09/08/19 but were closed and no sign. Has been unable to get through on the phone.

M Due to complete on his property sale today. Visited offices and no one there and no answers to calls.

PR received a call that the SRA have being called in and have intervened into the firm. Has clients with the SF who will need their files."

46.2 Mr Bullock submitted that by 15 August 2021, the Applicant had clients ringing into it to complain that they could no longer get hold of the Respondent or his firm. That prompted an attendance by the FIO and a colleague at the offices of the firm. When they went there, they found the premises locked up and a neighbouring business of one of the offices, the pharmacy, advised that the firm had been closed for about a week, but there was no notice to advise clients of the position on the premises themselves. Clients were first notified of problems with the firm on 19 August 2019, when the Respondent put the following message on the website of ST Solicitors LLP:

"Re ST Solicitors Closure

Last week [X] our conveyancing partner left the practise without notice. It has placed a number of sales in jeopardy. I am aware that some of you wish to complete the transactions soon. [Y] left the practice last month. I am aware that they were setting up their own independent practice. If any clients wish to collect your files you may do so after making an appointment at our Woodham office.

Clients will only be seen if they have an appointment.

We will do as much as we can to help every client.

I apologise for the way that matters have been handled and it is with sincere regret that having served my clients to the best I can others in my practice have not. I will do all I can to help all of you."

46.3 Mr Bullock submitted that clients were only being notified of closure after the premises had been locked up, and the firm seemingly shut, by 15 August 2019 at the latest. Secondly although no allegation of dishonesty was being made regarding allegation 1.3, Mr Bullock submitted that the Tribunal might query how accurate the above statement was, and whether it suggested that the firm was proposing to continue to trade after 19 August 2021, when in fact the firm and its premises had been closed down. He emphasised that he made the point only in support of the proposition that this clearly was not an orderly closure, which would involve clients being properly advised of the position in good time, and appropriate arrangements being made for other members of the profession to take over their matters thus ensuring they had proper representation in place of the firm.

46.4 On the basis of that failure, Mr Bullock submitted firstly that there was a lack of integrity (Principle 2). A solicitor acting in accordance with the high ethical standards of the profession would not simply turn their back on their clients, shut up shop without warning, and fail to progress their matters going forward, still less post a message which suggested that in fact there were temporary problems only, which was one way of reading the notice of 19 August. A solicitor who did so was clearly failing to act in the best interests of clients, because those interests were promoted by orderly rather than disorderly closure (Principle 4).

46.5 The Tribunal sought clarification as to how the website notice suggested that the closure was temporary. Mr Bullock responded that the notice was ambiguous, and not as clear as it should be. He accepted that the word "Closure" appeared at the top, but the situation on the ground was that the offices were shut and locked up and client matters were not being progressed. There was reference to clients making an appointment at the Woodham office, but that office was not open, and as phone calls to both offices were going unanswered, there was no way for clients to make an appoint to be seen at either office. The Respondent indicated that he would do all he could "to help all of you" but nothing was in fact being done for clients. Mr Bullock maintained that the notice gave the impression that there were temporary difficulties, rather than permanent closure, albeit he accepted that the heading referred to closure. The Tribunal also noted that the reference to clients possibly wishing to collect their files left open the possibility that some might not wish to do so, and therefore suggested that there was an option to leave them where they were, which in turn suggested that the retained matters would be progressed in due course. Mr Bullock agreed; the notice should have said that all clients needed to collect their files.

46.6 In respect of the breaches of the SRA Principles which were alleged, Mr Bullock submitted that safeguarding of client assets (Principle 10) meant an orderly wind down of arrangements and a handover of files and client money to individual clients rather than simply shutting up shop. Taking all that together, the way the Respondent went about this was something that would inevitably impair the trust the public placed in him as an individual and in the provision of legal services generally (Principle 6).

46.7 The Tribunal had regard to the evidence and the submissions for the Applicant. Again the Respondent had not engaged in relation to this allegation. The Tribunal found all the facts alleged as to the way in which the firm had been closed at both its branches to be proved on the evidence to the required standard. The Respondent had written a confusing message for clients, advising that they might or might not collect files from

an office which was in fact closed. He had taken no proper steps to notify either his clients or the regulator that he was closing the firm. He had abandoned clients in the middle of their matters, and sought to blame his salaried partners for actions which were totally his own. In summary, the Respondent had made absolutely no arrangements for an orderly transfer of client files or funds. The Tribunal found that this conduct amounted to a breach of Principle 2, the requirement to act with integrity; the definition in Wingate was fully engaged as it was a significant departure from the high standards expected of a solicitor. The Tribunal agreed with the submission in the Rule 12 Statement that acting with integrity would require the Respondent to plan the closure of his firm, by archiving closed files, storing files and papers so confidentiality was maintained, informing clients of the planned closure, returning client money from client account, notifying the Applicant of the planned closure using the Firm Closure Notification Form, informing professional indemnity insurers of the planned closure and filing a final accountants' report. It also constituted a clear breach of Principle 4, the requirement to act in the best interests of each client; a breach of Principle 6, as such conduct would undermine the trust the public placed in the Respondent and in the provision of legal services; and it constituted a failure to protect client money and assets and thereby breached Principle 10.

46.8 In respect of Rules 7.1 and 7.2, the Tribunal noted the breaches of the Accounts Rules and the Respondent's failure to rectify them, as reported in the FIR, even though, as sole equity partner of the firm, it was his responsibility to do so. When the Respondent closed the firm the Applicant found there to be a cash shortage on client account, which the Respondent had not challenged. The Tribunal also noted that the Applicant's Notice Recommending Referral to the Tribunal dated 24 February 2020, indicated that at that point in time the Compensation Fund had settled claims worth £35,196.41, which suggested a client account shortage of at least £20,865.89. The Respondent had therefore acted in breach of Rules 7.1 and 7.2 of the Accounts Rules. The Tribunal found all aspects of allegation 1.3 proved on the evidence to the required standard.

47. **Allegation 1.4 - From or around November 2017 and 13 August 2019, the Respondent failed to maintain books of accounts, including client ledgers, client cashbooks, client liabilities and client account reconciliations.**

In doing so the Respondent acted in breach of Principles 4, 6 and 10 of the SRA Principles 2011. The Respondent had also acted in breach of Rule 1.2(e). 1.2(f). 29.1, 29.2, 29.4, 29.12(a), 29.12(b) and 29.12(c) of the SRA Accounts Rules 2011.

Regulatory provisions cited in the allegation:

SRA Principles 2011

The Principles cited are set out under Allegation 1.1 above (Principles 4, 6 and 10).

SRA Accounts Rules 2011

Rule 1.2 is set out under allegation 1.1 above.

Rule 29 Accounting records for client accounts, etc. Accounting records which must be kept

29.1 You must at all times keep accounting records properly written up to show your dealings with:

(a) client money received, held or paid by you; including client money held outside a client account under rule 15.1(a) or rule 16.1(d); and
(b) any office money relating to any client or trust matter.

29.2 All dealings with client money must be appropriately recorded:

(a) in a client cash account or in a record of sums transferred from one client ledger account to another; and
(b) on the client side of a separate client ledger account for each client (or other person, or trust). No other entries may be made in these records.

29.4 All dealings with office money relating to any client matter, or to any trust matter, must be appropriately recorded in an office cash account and on the office side of the appropriate client ledger account.

Reconciliations

29.12 You must, at least once every five weeks:

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

47.1 Mr Bullock submitted that various deficiencies in the firm's accounting systems were identified in the interim FIR:

"The books of account were not in compliance with the SRA Accounts Rules 2011 for the following reasons:

a. No client account reconciliations have been provided for inspection by the firm to [the FIO] for any period of time since the firm's inception.

b. The firm have not maintained any client ledger accounts.

c. The firm have not produced a client liabilities' listing for any period.

d. The firm made one unallocated round sum client to office transfer totalling £5,000.00. No accounting documents or explanations to support the transfer have been produced."

Mr Bullock submitted additionally that the firm's accountants indicated that client account reconciliations had last been completed in November 2017, but in fact the only reconciliation on file was for the year 2014-2015. No client ledger accounts were maintained, other than manuscript notes made on each individual client file. On any view of matters, Mr Bullock asked the Tribunal to accept that a firm which was not maintaining client account ledgers, and was not undertaking reconciliations for any practical period, was operating its accounts in a shambolic fashion. The Tribunal noted that the FIR stated:

> "On 14 August 2019, [the FIO] held a telephone call with Ms [B of the accountants]. On 15 August 2019, Ms [B] responded to the [FIO's] 14 August 2019 email summary of the call. The response can be summarised in part as follows:
>
> a. The firm has never maintained proper ledgers. However, individual fee earners have maintained handwritten records of client money paid to the firm.
>
> b. The accountants do not have any reconciliations after 2014-2015.
>
> c. No reconciliations have been prepared by the accountants in the past four to five months because the firm has not provided sufficient information for them to be completed."

Mr Bullock understood that the information set out by the FIO about the firm's accounting systems came from what he could see on the ground, and from his conversation with the firm's accountants. Nothing had come from the Respondent himself because, although he was the COLP and COFA, he did not engage with the Applicant on the issue of the firm's accounting records, or any other issues during the course of the investigation.

47.2 Mr Bullock submitted that the very basic failures identified by the FIO regarding maintaining ledgers, and particularly reconciliations, would inevitably serve to raise risk to client assets; it was clearly in the best interest of clients to ensure their assets were properly safeguarded through the maintenance of proper accounting systems and procedures, and the failure of the Respondent to have such procedures in place would inevitably still further impair the trust the public placed in him and in the provision of legal services.

47.3 The Tribunal had regard to the evidence and to the submissions for the Applicant. As with the other allegations, the Respondent had not filed an Answer or provided an explanation. The Tribunal had seen in the FIR unchallenged evidence from the firm's accountants that the Respondent had never kept any ledgers, and the salaried partner, Mr X, in interview with the Applicant stated that there were no client ledgers, but rather that notes of financial transactions were kept on individual client files. There had been no reconciliations since the year 2014-2015. The Tribunal found the unchallenged

evidence proved to the required standard, and that the Respondent's complete disregard for compliant record keeping constituted a breach of Principles 4, 6 and 10 as alleged. He had also by his failures breached Rules 1.2(e), 1.2(f), 29.1, 29.2, 29.4, 29.12(a), 29.12(b) and 29.12(c) of the SRA Accounts Rules 2011. The Tribunal therefore found allegation 1.4 proved on the evidence to the required standard in all its aspects.

48. **Allegation 1.5 - Between 13 August 2019 and 27 September 2019, the Respondent failed to cooperate with the SRA's forensic inspection.**

In doing so the Respondent had acted in breach of Principle 7 of the SRA Principles 2011 and failed to achieve Outcome 10.6 of the SRA Code of Conduct 2011.

Regulatory provisions cited in the allegation:

SRA Principles 2011

Principle 7 You must comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner.

SRA Code of Conduct 2011

Outcome 10.6 You co-operate fully with the SRA and the Legal Ombudsman at all times including in relation to any investigation about a claim for redress against you;

48.1 Mr Bullock submitted that the final FIR set out in essence that the FIO wrote to the Respondent on no less than 14 occasions between 2 August 2019 and 23 August 2019 in connection with his investigation, and that he did not receive a response to any of those letters. There were a couple of letters referred to in the FIR where the Respondent replied to say, in essence, that he was ill or would respond later. Clearly the failure to respond to letters of inquiry from the FIO was a breach of the Respondent's duty to cooperate with the Applicant as his regulator.

48.2 The Tribunal had regard to the evidence and to the submissions for the Applicant. As with the other allegations the Respondent had not filed an Answer or provided an explanation. The Tribunal found proved as a fact that the Respondent had never substantively engaged with the Applicant and had not provided any of the required accounting information. He had also failed to attend for a regulatory interview when requested to do so. He had indicated that he would attend an interview, and bring requested documents with him, but he did not in fact do so. The Tribunal found proved the allegation that by his conduct the Respondent had breached Principle 7 and Outcome 10.6, and that allegation 1.5 was therefore proved on the evidence to the required standard.

Previous Disciplinary Proceedings

49. None

Mitigation

50. The Respondent had not engaged with the Tribunal proceedings or submitted any Answer or mitigation. Mr Bullock pointed out that the Respondent was entitled to some credit for previous good character. There had been some reference in correspondence to his suffering from ill health, but the Applicant knew nothing about the nature or degree of any illness he suffered from.

Sanction

51. The Tribunal had regard to its Guidance Note on Sanctions (December 2020). It assessed the seriousness of the Respondent's misconduct. The Tribunal found the Respondent's level of culpability to be high as he was in complete control of the firm. He was the COLP, COFA and MLRO for the firm, and compounded his responsibility and culpability by excluding his accountants from financial processes. Once he started to take on salaried partners, he refused to allow them access to accounting information. The Tribunal concluded that his motivation was his own personal financial advantage, in terms of the cash shortage the subject of allegation 1.2(a). Even if his failure to maintain financial records initially arose out of indolence, it created an environment where he could carry out the other misconduct alleged against him without leaving a paper trail. The Tribunal considered that the Respondent's misconduct, particularly his proven dishonesty, was planned. His treatment of Client C's money, the accounting shortcomings proved against him, and his failure to cooperate with the Applicant had been carried out over a protracted period of time. The Respondent had absolute and direct control and responsibility for the circumstances giving rise to his misconduct. He was an experienced solicitor. As to the harm which the Respondent had caused, there was a proven cash shortage on client account, and his actions put other client funds at risk. His failure to effect an orderly closure of the firm impacted directly and seriously upon clients, including one who was due to receive damages held by the firm, another who was due to complete a property sale, and put others in difficult circumstances regarding ongoing cases. The Respondent had also caused loss of money to the Compensation Fund, which impacted on his professional colleagues. He had departed from the standard set out in the case of Bolton v The Law Society [1993] EWCA Civ 32 to a very significant degree, and seriously damaged the reputation of the profession by the way in which he conducted his practice and suddenly closed it. The extent of the harm caused was entirely foreseeable. There were aggravating factors; dishonesty had been alleged and proved. The Respondent's misconduct was deliberate, calculated, and repeated. He placed the blame for his misconduct on others, when the Tribunal had found that he was entirely responsible; he sought to blame his former salaried partners in the notice he placed on the website about closure of the practise, and did so in a letter he sent to one of them when he terminated their employment. It was clear that he knew what the consequences of his actions would be, as he predicted in that letter the intervention into his practice. As an experienced solicitor he knew that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession. There was no evidence that he had any insight into his misconduct; the only mitigating factor was that the Respondent had not previously appeared before the Tribunal. As to personal mitigation, the Respondent had referred to ill health in some of his few communications with the Applicant as a reason for not engaging, but he never tendered any evidence to the Applicant in respect of it (in spite of repeated requests to do so), nor to the Tribunal with whom he had not engaged at all.

52. The Tribunal considered sanction beginning with the lowest, but having regard to the fact that dishonesty had been found proved and to the impact of the Respondent's misconduct on the public and the profession's reputation, it did not consider that no order, a reprimand or a fine would be appropriate. Paragraph 48 of the Guidance Note sets out that where the Tribunal has determined that the seriousness of the misconduct is at the highest level, such that a lesser sanction is inappropriate; and the protection of the public and/or the protection of the reputation of the legal profession requires it, the Tribunal will strike a solicitor's name off the Roll. Paragraph 51 sets out that the most serious conduct involves dishonesty and that a finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances. The Respondent had not tendered any exceptional circumstances in respect of the proven dishonesty, and the Tribunal could find none. In the circumstances strike off was the only appropriate and proportionate sanction to protect the public and the reputation of the profession.

Costs

53. Mr Bullock drew the attention of the Tribunal to the Applicant's cost schedule which totalled £24,418, 99. He acknowledged that the hearing was unlikely to go to the listed second day and a reduction should be made from the 16 hour estimate to reflect that. The Tribunal generally found the costs to be reasonable and proportionate and made a reduction for the shorter than expected hearing time. It assessed costs in the sum of £23,378.99. One aspect of allegation 1.2 had not been found proved but the Tribunal did not consider that this had materially added to the time taken in the proceedings or the preparation for them, and the allegation had been properly brought. The Tribunal made no reduction to the Applicant's costs on that account. Although it had been drawn to the attention of the Respondent that it was open to him to make representations about his financial means, he had not done so. The Tribunal also noted that while the Respondent had been made bankrupt in late 2019, he had started a new business in June 2021. The Tribunal did not consider it appropriate to make any reduction in the amount of costs assessed on account of the Respondent's financial means.

Statement of Full Order

54. The Tribunal Ordered that the Respondent, SAM THEMIS solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £23,378.99.

Dated this 22nd day of November 2021
On behalf of the Tribunal

G Sydenham
Chair