SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12219-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

GEOFFREY RUSHTON Respondent

Before:

Mr W Ellerton (in the chair)
Mr J Evans
Dr S Bown

Date of Hearing: 2 November 2021

Appearances

Nathan Cook, solicitor of the Solicitors Regulation Authority Ltd, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent were that, while in practice as a Partner at Rushton Legal Services Ltd ("the Firm"):

1.1 From 8 November 2016 to 31 March 2017, he failed to hold client money in a client account and improperly benefitted from holding client money in the Firm's Business Current Account by virtue of the following:

1.1.1 the discharge of a negative balance in the sum of £2,219.88 on the Firm's Business Current Account;

1.1.2 the payment of the Firm's office overheads in the sum of £230.99 so he thereby breached of all or any of Rules 1.2 (a), (b) and (c) and 14.1 of the SRA Accounts Rules 2011 (SRA AR 2011) and Principles 2, 6 and 10 of the SRA Principles 2011 (the Principles).

1.2 Between 14 November 2016 and 16 December 2016, he made improper withdrawals totalling 27,000.00 from the Firm's Business Current Account which he used for his own benefit and thereby breached any or all of Principles 2, 6 and 10 of the Principles and Rules 7, 14.3, 17.2 and 20.1 of the SRA AR 2011.

1.3 On or around 7 April 2017, he sent a breakdown of charges to Client A totalling £3,305.13 which was misleading as it included a cost of £1,875.13 with the narrative "Bank Interest for deposit and transfer @5% on £37,502.73" when he had not incurred such cost in breach of any or all of Principles 2, 6 and 10 of the Principles.

1.4 Between 16 and 31 August 2016 he failed to ensure that a power of attorney for Client A was properly executed in that he failed to attest the signature of Client A while in his presence, thereby potentially invalidating the power of attorney and thereby breached any or all of Principles 2, 4, 5 and 6 of the Principles and failed to achieve Outcomes 1.2 and/or 1.5 of the SRA Code of Conduct 2011.

1.5 Between 7 April 2017 and 8 May 2017, he sent letters to Client A which were misleading and intended to mislead as follows:

1.5.1 On 7 April 2017, a letter stating that the firm's bank accounts had been frozen due to an accounting audit linked to the preparation of the firm's end of year accounts;

1.5.2 On 8 May 2017, a letter stating that:

"a. All of his accounts had been frozen pending investigation by "Police, HMRC and Legal Aid Agency"
b. he had "been placed on a restricted practising certificate"
c. The Firm had "been intervened"
d. he no longer had control of his monies until the investigation was completed
e. he would send "the monies tied up" when he was 'exonerated from the Police investigation and all [his] accounts are freed".

in breach of Principles 2 and/or 6 of the Principles.

1.6 He failed to co-operate with his regulator, the SRA, by failing to respond fully to production notices issued by the SRA, under s.44B of the Solicitors Act 1974 (as amended), on the following dates:

1.6.1 20 September 2018
1.6.2 7 January 2019
1.6.3 11 July 2019

And thereby breached Principle 7 of the Principles and failed to achieve any or all of Outcomes O(10.6), O(10.8) and O(10.9).

2. In addition, Allegations 1.1 to 1.5 above were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the Allegations.

Documents

3. The Tribunal considered all of the documents contained in an electronic hearing bundle on CaseLines that the Respondent had been given the opportunity to review.

Preliminary Matters

Application to proceed in absence

Applicant's Submissions

4. The Respondent did not appear and was not represented. Mr Cook made an application to proceed in absence. Mr Cook submitted that the Respondent had been properly served with the proceedings and had notice of the hearing date and the joining instructions to participate in the remote hearing. The Respondent had been served personally by a process server and had confirmed his identity to them. Since then, correspondence had been sent by special delivery and signed for in the name of "Rushton". Mr Cook submitted that the Tribunal could infer that either the Respondent had signed for them himself or that the documents had been brought to his attention. The Respondent had not engaged with the proceedings at all and had failed to attend a number of Case Management Hearings.

The Tribunal's Decision

5. The Tribunal considered the representations made by the Applicant. There was ample evidence that the Respondent was aware of the date of the hearing and had full knowledge of the proceedings. The Tribunal was satisfied that SDPR Rule 36 was therefore engaged. The Tribunal had regard to the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
> (ii) …;
> (iii) the likely length of such an adjournment;
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
> (v) …;
> (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
> (vii) …;
> (viii) …;
> (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
> (x) the effect of delay on the memories of witnesses;
> (xi) …;"

6. In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

> "…It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".

7. Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account".

8. The Respondent had consistently failed to engage with the proceedings despite having knowledge of them. He had not attended Case Management Hearings and had not communicated with the Applicant or the Tribunal. The Tribunal was entirely satisfied that the Respondent had voluntarily absented himself from the hearing and waived his right to attend. There was no point in adjourning the matter as there was no realistic prospect that he would attend any hearing. The Tribunal recognised that the Allegations were serious and there was a public interest in the matter being determined in a timely

manner. It was therefore in the interests of justice to proceed in the Respondent's absence and the Tribunal therefore granted Mr Cook's application.

Factual Background

9. The Respondent was a partner at the Firm, having been admitted to the Roll on 1 December 2006. He was the sole owner/director/shareholder as well as COLP and COFA in the Firm which started trading on 5 January 2016 and ceased on 31 March 2017. The Respondent was the sole signatory on the Firm's bank accounts. He acted as the Firm's COLP and COFA while the Firm was trading. The company Rushton Legal Services Limited was struck off at Companies House on 17 March 2020.

10. The Respondent last held a Practising Certificate for the practice year 2017 to 2018 free from conditions. At the time of the hearing the Respondent remained on the Roll.

11. Client A was a client of the Firm who was serving a prison sentence. His mother, Mrs A, died on 1 August 2016. Client A was the only surviving relative and he had instructed the Respondent to assist him in moving monies from his mother's account to his account. The matter came to the attention of the SRA following a complaint made by Client A. This resulted in a forensic investigation being commenced into the Firm.

12. Allegation 1.1

12.1 On 4 November 2016, the Respondent had informed Lloyds Bereavement Unit that he was willing to bank the money from Mrs A's estate and he provided the details of the Firm's Business Current Account. On 8 November 2016, that account received a CHAPS transfer totalling £37,502.73. The account was, at that time, overdrawn by £2,219.88 but was placed into credit by £35,282.85 following receipt of Mrs A's estate monies.

12.2 The FIO established that office overheads relating to the Firm totalling £230.99 were also paid from Mrs A's estate monies on 8 and 11 November 2016. These included £225.00 in respect of renewal of the overdraft facility and a £5.99 debit card transaction. The Firm had a Client Deposit Manager Account and the Applicant's case was that the £37,502.73 should have been paid into that account instead of into the Business Current Account. Client A stated in his witness statement that he had not authorised the transfer.

13. Allegation 1.2

13.1 The firm's bank statements for the Firm's Business Current Account recorded that two transfers (£5,000.00 on 14 November 2016 and £2,000.00 on 16 December 2016) were made from Mrs A's estate monies held in the Firm's Business Current Account to the Respondent. These transactions were online and "Geoff Rushton" was recorded under the Description tab of the statement. The Cash Book also contained the two entries dated 14 November 2016 totalling £5,000.00, described as "Directors Drawings" and one transaction for £2,000.00 dated 14 December 2016 described as "Drawings". The £2,000.00 had earlier been transferred into the Firm's Business Current Account from the Firm's Client Deposit Manager Account. At this point no breakdown of the costs had been sent to Client A.

13.2 The Respondent did not produce a client matter list so the FIO was unable to ascertain the Firm's liabilities to its clients. The FIO calculated the minimum cash shortage in the client bank account as totalling £6,237.73, taking into account the fees set out in the breakdown of the charges sent to Client A, which the Applicant did not dispute. The shortage had not been replaced.

14. Allegation 1.3

14.1 There was no client care letter on Client A's file detailing the Respondent's charges for dealing with the drafting of the Power of Attorney. On 7 April 2017, the Respondent sent a document recording the "Breakdown of the charges" as totalling £3,305.13 as follows:

- Bank Interest for deposit and transfer @ 5% on £37,502.73 - £1,875.13
- Drafting and re drafting Power of Attorney - £500.00
- Letters, emails and telephone calls to Ms [B] and Lloyds Bank charged at £15.00 including:
  4 to Ms [B]
  3 to Lloyds Bank
  2 E-mails to Lloyds Bank
  2 Telephone calls to Lloyds Bank
  Total - £165.00
- 27 telephone calls received totalling 8 hours attendance at £75.00 per hour - £765.00.

14.2 There was no evidence that the Firm had been charged for receiving Mrs A's estate monies or transferring them and the Applicant's case was that it would be unusual for the bank to make such charges. Client A was unaware of and had not consented to the charge. The Applicant's case was that even if the charge had been incurred, it would have amounted to an improper charge for Client A as it was the Respondent who had instigated the deposit of Mrs A's estate funds in the Firm's Business Current Account.

15. Allegation 1.4

15.1 The Respondent prepared a Power of Attorney dated 16 August 2016 which recorded that it had been signed by Client A in the presence of the Respondent. The FIOs' notes taken of the meeting between the Respondent and the FIOs on 30 January 2019 recorded that the Respondent stated that Client A signed it during an attendance.

15.2 The Respondent told the FIOs that he had intended to attend a meeting with Client A at the prison on 16 August 2016 but had not done so. The Respondent had sent Legal Aid forms and the Power of Attorney to Client A. Client A had signed the Power of Attorney and sent it back and the Respondent had counter-signed it on 31 August 2016.

15.3 Client A stated that the Respondent was not present when he signed the Power of Attorney. Client A had signed the Power of Attorney as instructed by the Respondent and sent it back. A second copy was sent due to an incorrect spelling but Client A did

not sign it as he had concerns. The second copy of the Power of Attorney contained the Respondent's signature as witness, name and office address stamp. The document was not signed by Client A but there was a post-it note containing an arrow pointing to the space for Client A's signature and instructed "[Initials of Client A] SIGN HERE ON ALL".

15.4 Section 1 (3) of The Law of Property (Miscellaneous Provisions) Act 1989 states that a deed is validly executed by an individual only if it is signed by the individual in the presence of a witness who attests the signature, or if it is signed at the individual's direction and in his presence and the presence of two witnesses who attest the signature. Client A was not in the presence of the Respondent when the Respondent attested his signature or when it was signed at his direction. Therefore, the instrument was not validly executed as a deed and, therefore, the power of attorney was not executed.

16. Allegation 1.5

16.1 The Respondent sent letters dated 7 April 2017 and 8 May 2017 to Client A which bore his signature. In his meeting with the FIOs on 30 January 2019, he denied that he sent the letters or had knowledge of the issues covered in the letters.

16.2 The letter dated 7 April 2017 confirmed an earlier telephone call in which the Respondent had informed Client A that his monies retained by the Firm would "be frozen" due to the Firm's audit relating to the Firm's "year ending for accounts and taxation issues". The Applicant's case was that the preparation of year end accounts and accounting audits did not require a Firm's accounts to be frozen. The bank statement for the Firm's Client Deposit Manager Account suggested that the account remained active as of 11 April 2017.

16.3 The 8 May 2017 letter stated that:

a. Greater Manchester Police and Kent Constabulary had executed a search warrant and seized the Respondent's computers and his mobile telephone.

b. All of the Respondent's accounts had been frozen pending investigation by "Police, HMRC and Legal Aid Agency"

c. The Respondent had "been placed on a restricted practising certificate"

d. The Firm had "been intervened"

e. The Respondent no longer had control of his monies until the investigation was completed

f. That he would send "the monies tied up" when he was "exonerated from the Police investigation and all [his] accounts are freed".

16.4 The Firm's Client Deposit Manager Account was not frozen as stated as there were transfers of £650.00 and £1,200.00 on 5 and 8 May 2017 respectively into the Firm's Business Current Account. As regards the Practising Certificate, the SRA's records

showed that the Respondent's last Practising Certificate for practice year 2017 to 2018 was free from conditions. The SRA never intervened into the Firm.

16.5 The Respondent stated during his meeting with the FIOs on 30 January 2019 that he had not drafted the letter, that it was not hard to forge the Firm's stationery and that a former employee had made off with computers and files.

17. Allegation 1.6

17.1 The first Production Notice was issued by post on 21 September 2018 to the Respondent's home address by recorded delivery. It was delivered on 22 September 2018 and signed for by "RUSHTON". A chaser letter was sent on 15 October 2018 which was again signed for by "RUSHTON". The notice requested copy files relating to instructions concerning Client A and Mrs A or relating to Mrs B, confirmation of the capacity in which he acted and instructions received and clarification on several matters including the events which the Respondent referred to in his letter dated 8 May 2017 to Client A. In the meeting with the FIOs on 30 January 2019, the Respondent stated that he had not received the letters and that his wife or sons may have signed for the letters.

17.2 The second Production Notice dated 7 January 2019 again required the Respondent to provide the files relating to Client A, Mrs A and Mrs B and requested financial/insurance information including bank statements for all client and office accounts held by the Firm from 5 January 2016. The Production Notice was served on the Respondent by a FIO by email on 7 January 2019 seeking the information by 17 January 2019. The Respondent acknowledged the email on 12 January 2019 providing only his "SRA FC Notification" and his "last firms accounts" but no bank statements. The FIO reminded the Respondent of Principle 7 of the SRA Principles 2011. The Respondent replied on 15 January 2019 stating "…I will endeavour to send you all the documents and papers you require by the 17th".

17.3 On 30 January 2019, the Respondent provided the FIOs with a file relating to Client A's prison parole matter, drafts of Client A's Power of Attorney and the Power of Attorney document signed by Client A and a bundle of NatWest bank statements relating to the Firm's Business Current Account for the period from 31 October 2016 to 28 December 2016. The Respondent confirmed that these were all the bank statements he could find and he had not contacted the Firm's bank.

17.4 The third Production Notice issued was dated 11 July 2019 and required the Firm's bank statements covering the period of 23 December 2016 to 31 March 2017, sought clarification in relation to monies received and transfers made, in relation to the Power of Attorney and letters sent to Client A. The notice also requested information concerning the letters dated 7 April 2017 and 8 May 2017 sent to Client A. The Respondent failed to respond to the notice or provide the material required or any further material.

Findings of Fact and Law

18. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with 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.

19. **Allegation 1.1**

Applicant's Submissions

19.1 Mr Cook reminded the Tribunal that Rule 1.2 (a) – (c) of the SRA AR 2011 required solicitors to keep client monies separate from office monies and to keep client monies in a client account. Rule 14.1 of the SRA AR 2011 required that client money was paid into a client account save where the rules provide to the contrary. Mr Cook submitted that no such exceptions applied in this case.

19.2 The Respondent had placed the money at risk as it removed the safeguards available when held in a client account. Mr Cook reminded the Tribunal that the payment of the funds into office account had cancelled a negative balance on that account.

19.3 Mr Cook submitted that the Respondent had demonstrated a lack of integrity and he referred the Tribunal to the test in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. He submitted that failing to hold client money in a client account and improperly benefitting from holding the money in the office account amounted to a lack of integrity. The Respondent had also failed to maintain the trust placed by the public in him and in the provision of legal services. Mr Cook submitted that the conduct also amounted to a breach of the requirement to protect client money and assets by holding client money in an office account and was therefore a breach of Principle 10 of the Principles.

19.4 Mr Cook further submitted that the Respondent had acted dishonestly. He relied on the test in Ivey v Genting Casinos [2017] UKSC 67.

19.5 The Rule 12 statement set out the following matters that it submitted were within the Respondent's knowledge:

> "a. That his request of the Bereavement Unit to transfer monies to his firm's accounts was made without the authority of his Client A.
>
> b. that his client, Client A, was a serving life prisoner who would be likely to have difficulties in pursuing the Respondent in relation to any funds owing.
>
> c. that his firm had a Client Deposit Manager Account which could be used to receive and hold the estate monies rather than the Firm's Business

Current Account which were the account details he provided to the Lloyds Bereavement unit.

d. that he was the sole signatory on all the accounts held by the Firm including the Client Deposit Manager Account and the Business Current Account.

e. that he was making transfers totalling £7,000.00 in circumstances where his name was recorded under the Description tab and the cash book recorded these as "Directors Drawings" or "Drawings" in circumstances where he was the sole principal of the firm.

f. that, at the point he wrote to client A on 7 April 2017, his Firm's accounts were not frozen and his assertions to this effect in his letter was misleading.

g. that, at the point he wrote to Client A on 8 May 2017, his firm's accounts had not been frozen.

h. no restrictions had been placed on his practising certificate and his firm had not been intervened into by the SRA and that his assertions to that effect in his letter were misleading."

19.6 Mr Cook submitted that there had been a course of conduct on the Respondent's part to dishonestly gain financially from the client and to subsequently mislead the client as to the true circumstances.

The Tribunal's Findings

19.7 The Tribunal found that the monies had been paid in to the office account and that they were clearly not office monies. They should therefore have been paid into the client account. This in itself created a benefit to the Respondent as was evidenced by the fact that the payment of this sum brought the account out of a significant overdraft and into credit. The payments of £2,219.88 and £230.99 were proved on the documentary evidence. These payments would have further deepened the office account overdraft but for the improper payment of the client monies into the office account. The Tribunal was satisfied on the balance of probabilities that the Respondent had therefore improperly benefited from his failure to hold the client monies in the correct account. The Tribunal therefore found the factual basis of Allegation 1.1 together with the breaches of the SRA AR proved on the balance of probabilities.

Principle 2

19.8 In considering whether the Respondent had lacked integrity it applied the test set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is

> expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".

19.9 The Tribunal considered that a solicitor acting with integrity would not pay client money into an overdrawn office account and then use it to discharge an overdraft fee and a debit card fee. The Tribunal found that this misuse of client funds evidenced a clear lack of integrity and found the breach of Principle 2 proved on the balance of probabilities.

Principle 6

19.10 The Tribunal found that Principle 6 was engaged as a logical conclusion from the findings it had already made. The trust placed in the profession required, at a minimum, that client funds were properly handled and properly utilised. This had not happened in this case and the Tribunal found that the public would consider it particularly distasteful in circumstances where the Respondent had taken advantage of the fact that his client was a serving prisoner and so would find it harder to challenge the financial accounts. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

Principle 10

19.11 The breach of Principle 10 followed as a matter of logic from the Tribunal's factual findings and was therefore proved on the balance of probabilities.

Dishonesty

19.12 The test for considering the question of dishonesty was that set out in Ivey at [74] as follows:

> "the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ….. 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 knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder 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."

19.13 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.

- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

19.14 The Tribunal found that the Respondent's was clearly aware that he had a client account and was aware that the payment had been made into office account, as that was where he had requested the Lloyds Bereavement Fund pay it. The Tribunal found that the Respondent knew that he was dealing with client monies as there was nothing else they could have been. He was therefore aware that the monies should have gone into the client account as there was no other possible destination for it under the SRA AR. The very fact that the Respondent had a client account was further evidence that he knew where the money should have been paid as that was the purpose of having a client account.

19.15 The Respondent was the only signatory on the accounts and so he knew that the office account had been overdrawn and was put into credit by the payment of those monies. The Respondent had been responsible for making the two payments from the office account, from monies which, as stated above, he knew to be client funds.

19.16 The Tribunal found that knowingly misusing client monies to benefit himself would be considered dishonest by the standards of ordinary decent people and it therefore found the allegation of dishonesty proved on the balance of probabilities in relation to Allegation 1.1.

20. **Allegation 1.2**

Applicant's Submissions

20.1 Mr Cook submitted that the Respondent had made improper withdrawals totalling £7,000.00 which he had used for his own benefit and that Client A's position as a serving prisoner made it more difficult for the client to seek redress. The transfers made by the Respondent breached Rule 20.1 of the SRA AR 2011 as they were not properly required on behalf of his client but were made for his own purposes. The Respondent had failed to remedy the breaches and had therefore not complied with Rules 7 or 14.3 of the SRA AR 2011.

20.2 Mr Cook reminded the Tribunal that under Rule 17.2, the Respondent was required to send a bill of costs or other written notification of costs incurred before taking payment of any fees. He submitted that the Respondent had breached this rule by withdrawing money prior to issuing a breakdown of charges to Client A. Mr Cook submitted that this demonstrated a lack of integrity. It was also a breach of Principles 6 and 10.

20.3 In relation to dishonesty, Mr Cook's submissions as to the Respondent's state of knowledge are included above under the submissions relating to Allegation 1.1.

The Tribunal's Findings

20.4 The Tribunal reviewed the bank statements and the cash book. It was clear that the withdrawals alleged by the Applicant had taken place. These withdrawals were improper because although they were made from the office account, the funds paid out were client monies and should have been in the client account as discussed in Allegation

1.1. The payments were not made pursuant to any bill of costs or notification to the client and appeared, on the face of the documents, to be for the Respondent's own purposes. The Tribunal found the factual basis of Allegation 1.2, together with the breaches of the SRA AR proved on the balance of probabilities.

Principles 2, 6 and 10

20.5 The same considerations applied in respect of the improper withdrawals as had applied in relation to the improper benefiting that the Tribunal had found in relation to Allegation 1.1. The payments in this Allegation related to the same monies as Allegation 1.1. The Tribunal found that making improper withdrawals breached Principles 2, 6 and 10 and those breaches were therefore proved on the balance of probabilities.

Dishonesty

20.6 The Tribunal considered the Respondent's state of knowledge, which included those factors it had identified in Allegation 1.1, which provided the context for the withdrawals in Allegation 1.2. Against that background, the Respondent knew that the transfers from client funds had been made and knew that they were made to him and for his own benefit. He was aware that there was no billing to justify the transfers and no explanation or notification was provided to the client.

20.7 The Tribunal found that knowingly making improper withdrawals of client monies for the Respondent's own benefit would be considered dishonest by the standards of ordinary decent people and it therefore found the allegation of dishonesty proved on the balance of probabilities in relation to Allegation 1.2.

21. **Allegation 1.3**

21.1 Mr Cook submitted that the breakdown of charges sent to Client A was misleading as it included the £1,875.13 charge, for which he sought payment from Client A. The charge was purportedly in relation to a bank charge in circumstances where no such charge had been incurred nor had it been agreed to by Client A. Mr Cook submitted that by sending a misleading breakdown of charges containing this purported charge, the Respondent had failed to act with integrity and had breached Principles 6 and 10.

21.2 In relation to dishonesty, Mr Cook submitted that at the time that the Respondent raised the misleading bill he knew or believed that he had included that charge on a bill to his client in circumstances where no such charge had, in fact, been incurred.

The Tribunal's Findings

21.3 The Tribunal reviewed the breakdown of charges dated 7 April 2017. The reference to the bank charges was not supported by any evidence and did not appear on any bank statements. The Tribunal found the reason for this was that the reference was fictitious, and no such charge had been made. It would be unusual for banks to make such a charge and on the evidence before the Tribunal, the bank had not done so. The Tribunal found the factual basis of Allegation 1.3 proved on the balance of probabilities.

Principle 2

21.4 The Tribunal found that falsely including charges on a document to a client was a shocking example of a lack of integrity. The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

Principles 6 and 10

21.5 The trust the public placed in the profession could not tolerate a situation in which a solicitor told a client that charges, for which that client was responsible, had been incurred when they had not. It represented a continuing failure to protect client money and assets as the bank charge would, on the face of it, have been payable by Client A when in fact it had never been incurred. The Tribunal found the breach of Principles 6 and 10 proved on the balance of probabilities.

Dishonesty

21.6 The Tribunal found that the Respondent knew the bank charge had not been incurred as he would have had no possible reason for concluding it had been. The bank statements showed no such charge and there was no document at all that referred to it. It was not usual practice for banks to levy such charges on client funds, something the Respondent would also have been aware of. The Respondent had nevertheless knowingly included the sum on the statement of charges and sent it to the client.

21.7 The Tribunal found that knowingly making a false entry on a statement of charges to include a disbursement that had never been incurred or paid would be considered dishonest by the standards of ordinary decent people and it therefore found the allegation of dishonesty proved on the balance of probabilities in relation to Allegation 1.3.

22. **Allegation 1.4**

Applicant's Submissions

22.1 Mr Cook submitted that the Respondent had failed to ensure that the power of attorney for his client was properly executed by failing to attest his signature in his presence. The Power of Attorney would not have been properly executed as a deed as the statutory requirements concerning valid execution were not followed. Mr Cook submitted that it would have been obvious to the Respondent that he needed to be in Client A's presence when he signed the document due to the wording of the attestation clause which included "in the presence of".

22.2 Mr Cook submitted that by failing to ensure that the Power of Attorney was properly executed the Respondent had failed to act with integrity. In addition he had failed to act in his client's best interests, failed to provide a proper standard of service and failed to behave in a way that maintained the trust placed by the public in him and in the provision of legal services in breach of Principles 4, 5 and 6 respectively, as well as failing to achieve Outcomes 1.2 and 1.5.

22.3 In relation to dishonesty, Mr Cook submitted that the Respondent knew or believed that he had pre-signed a Power of Attorney which he had sent to his client attaching a post-it note providing direction on where Client A was to sign the document. Mr Cook submitted that the Respondent would have known from the wording that he needed to be in the presence of Client A when he signed it. He further submitted that the Respondent would have known that others would place reliance on the document in the belief that it was a properly executed Power of Attorney.

The Tribunal's Findings

22.4 This was a straightforward Allegation that was proved by examination of the document which contained the Respondent's signature but not Client A's. It was abundantly clear that the Respondent had not attested the signature of Client A as there was no signature that could have been attested. The Tribunal found the factual basis of Allegation 1.4 proved on the balance of probabilities.

Principles 2, 4, 5 and 6 and Outcomes 1.2 and 1.5

22.5 It clearly lacked integrity to purport to, but to actually fail to, attest a signature on any document, especially one as significant as a Power of Attorney. The result of this was that the document was invalid as it had not been properly executed. This was an obvious example of a failure to act in Client A's best interests or to provide a proper standard of service. This was bound to diminish the trust the public placed in him and in the provision of legal services. The Tribunal found the breaches of Principles 2, 4, 5 and 6 and the failure to achieve Outcomes 1.2 and 1.5 proved on the balance of probabilities.

Dishonesty

22.6 The Tribunal found that the Respondent was aware of the requirements for the proper execution of the deed. In particular he was aware that he had to witness Client A's signature before endorsing that fact - this was reflected in the words "in the presence of". The Respondent had obviously been aware that he had not witnessed a signature and that he was not in the presence of Client A. Instead, the Respondent had consciously sent the client a pre-signed document in which he asked the client to sign it despite knowing he was not going to be in his presence when he did so. The purported attestation was therefore a fiction.

22.7 The Tribunal found that the Respondent's actions would be considered dishonest by the standards of ordinary decent people and therefore found the allegation of dishonesty in relation to Allegation 1.4 proved on the balance of probabilities.

23. **Allegation 1.5**

Applicant's Submissions

23.1 Mr Cook submitted that the two letters the Respondent had sent to Client A were misleading and intended to mislead as they included untruths as to why the Firm could not account to the client for his money. The Respondent had made improper withdrawals and used the client's money for his own benefit but the letters would have given the client a misleading impression as to the reality of the situation. Mr Cook submitted that it was likely, given the client's status as a serving prisoner, to have

resulted in Client A not making enquiries on the matter for some time. Mr Cook submitted that this demonstrated a lack of integrity as well as a breach of Principle 6.

23.2 In relation to dishonesty, Mr Cook's submissions as to the Respondent's state of knowledge are included above under the submissions relating to Allegation 1.1.

The Tribunal's Findings

23.3 The Tribunal reviewed both letters and the particular statements referred to in the Rule 12 statement. The Tribunal noted that both letters contained the Respondent's signature and were sent on the Firm's headed notepaper. The suggestion by the Respondent to the FIO that he knew nothing about the letters and his denial that he had sent them was implausible. The Respondent had implied that the letterhead could be easily forged and had made reference to a former employee who had taken files and computers when they left. The Tribunal rejected these suggestions as fanciful and entirely unsupported by any evidence. The notion that a disgruntled former employee would steal files, forge headed notepaper and write false letters to a client for no apparent reason was nonsensical.

23.4 As to the contents of the letters, the Tribunal could only describe them as a series of lies. The statements the Respondent had made were demonstrably false and the Respondent could not have thought otherwise. The Tribunal found the factual basis of Allegation 1.5 proved on the balance of probabilities.

Principles 2 and 6

23.5 The Tribunal found the breaches of both these principles proved on the balance of probabilities on the grounds that writing letters to clients containing false information demonstrated a blatant lack of integrity and was entirely inconsistent with maintaining the trust the public placed in him and in the profession.

Dishonesty

23.6 The Tribunal considered the Respondent's state of knowledge at the time of sending the letters. The matters that he was referring to were all matters that would have been within his personal knowledge. The Respondent would have known full well that his bank accounts had not been frozen. The Tribunal noted that the preparation of a Firm's end of year accounts would not result in bank accounts being frozen. The Respondent would also have known that the accounts had not been frozen "pending investigation" by HMRC, the Legal Aid Agency or the Police. The Firm had plainly not been intervened into and he had full control of the bank accounts. The Respondent also knew that his client was a serving prisoner who would find it harder to verify, and therefore challenge, the information contained in these letters than someone who was not.

23.7 The Tribunal had already rejected the Respondent's suggestion that he had not sent these letters and therefore the situation was that the Respondent had known he was sending letters to Client A that contained false statements. The Tribunal had no hesitation in concluding, on the balance of probabilities, that sending letters containing deliberate lies to a client would be considered dishonest by the standards of ordinary decent people.

23.8 The Tribunal found the allegation of dishonesty proved in relation to Allegation 1.5.

24. **Allegation 1.6**

Applicant's Submissions

24.1 Mr Cook submitted that the Respondent had failed to comply with Principle 7 or achieve Outcomes 10.6, 10.8 or 10.9, which required a solicitor to comply with their legal and regulatory obligations and to deal with their regulators and ombudsmen in an open, timely and co-operative manner and to produce documents and explanations in a timely manner. The Respondent had partially, and inadequately sought to comply with one of the notices and failed to comply with the other two at all.

The Tribunal's Findings

24.2 The Tribunal reviewed the three Production Notices and the FI report which detailed the Respondent's response, to the extent that there was one, to each of them. At best the Respondent had provided an inadequate response to one of the notices. In the case of the other two he had provided none. The Respondent had clearly therefore failed to comply with his legal and regulatory obligations arising out of each of the Production Notices.

24.3 The Tribunal found this Allegation proved on the balance of probabilities including the breach of Principle 7 and Outcomes 10.6, 10.8 and 10.9.

Previous Disciplinary Matters

25. There was no record of any previous disciplinary findings by the Tribunal.

Mitigation

26. The Respondent had not engaged with the SRA and had not offered any mitigation.

Sanction

27. The Tribunal had regard to the Guidance Note on Sanctions (December 2020). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

28. In assessing culpability, the Tribunal identified the following factors:

- The Respondent had been motivated by personal, financial gain;
- The misconduct had been planned and had continued over a period of many months;
- The Respondent had acted in breach of a position of trust as his client was in prison and so less able to challenge the veracity of what he was being told;
- The Respondent had complete control and responsibility for circumstances giving rise to the misconduct.

29. The Tribunal concluded that the Respondent had a very high level of culpability.

30. In relation to the harm caused, the Tribunal found that there was significant harm to the client who was incarcerated. There had been harm caused by the misuse of client monies, which were not protected as they should have been. The Tribunal found that the reputation of the profession was significantly damaged by the Respondent's conduct.

31. The misconduct was aggravated by the following factors:

- The Respondent's dishonesty was a serious aggravating feature of this case;
- The misconduct was deliberate, calculated and repeated;
- Client A was a vulnerable person by reason of his status as a serving prisoner;
- The Respondent had sought to conceal matters by telling lies to his client and had also sought to blame others by implying that a disgruntled former employee was in some way responsible;
- The Respondent knew that he was in material breach of his professional obligations.

32. The Tribunal was unable to identify any mitigating factors in this case.

33. As recorded above, the matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

34. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off on the basis that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a strike-off. The protection of the public and of the reputation of the profession demanded nothing less.

35. The Tribunal had regard to Sharma. The circumstances in which such a sanction was not imposed were exceptional, described in Sharma as "a small residual category where striking off will be a disproportionate sentence in all the circumstances...".

36. The Tribunal identified no exceptional circumstances and therefore ordered that the Respondent be struck off.

Costs

37. Mr Cook applied for the Applicant's costs based on the schedule served in advance of the hearing. Taking account of the fact that the hearing had taken less time than it had

been listed for, Mr Cook told the Tribunal that he had reduced the claim by £325 to £23,707.50.

38. The Tribunal queried an allocation of 33 hours for "Other". Mr Cook told the Tribunal that this was where times that did not fit into another category would be allocated. He told the Tribunal that the initial FIO had sadly passed away and so a replacement FIO had taken over. Mr Cook told the Tribunal that he was "not strongly attached" to the 33 hours referred to.

The Tribunal's Decision

39. The Tribunal considered that the costs were reasonable and proportionate overall, save for the times claimed under "Other", where it was not entirely clear what they related to. The Tribunal understood that the initial FIO had passed away and that this would have necessitated some additional work in order for the matter to be reallocated. The Tribunal was sympathetic to those circumstances but was also mindful to ensure that the Respondent was not financially disadvantaged by them. The Tribunal therefore decided to reduce the 33 hours under "Other" by 20 hours, still leaving a reasonable sum for the unavoidable additional work required.

40. The reduction brought the total to £21,827.50. The Respondent had served no statement of means and therefore there was no basis to reduce this further on account of the Respondent's personal financial circumstances.

Statement of Full Order

41. The Tribunal Ordered that the Respondent, GEOFFREY RUSHTON, 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 £21,827.50.

Dated this 16th day of November 2021
On behalf of the Tribunal

W Ellerton
Chair