SOLICITORS DISCIPLINARY TRIBUNAL

<u>IN THE MATTER OF THE SOLICITORS ACT 1974</u> <u>Case No. 12244-2021</u>

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

MONTAGUE FRANKEL Respondent

Before:

Miss H Dobson (in the chair)
Mr S Tinkler
Mrs S Gordon

Date of Hearing: 07 September 2021

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent, were that, whilst in practice as a solicitor at DWFM Beckman (previously known as DF&M Beckman and Davis Frankel & Mead ("the Firm"):

1.1. Between March 2004 and October 2019, the Respondent caused or allowed payments in the total sum of about £1,167,061.97 to be made into and out of the Firm's client account other than in respect of an underlying legal transaction or part of his normal regulated activities. In doing so, the Respondent provided banking facilities through the Firm's client account, such conduct being in breach of accounts rules, obligations to act in a way as to maintain public trust and obligations as to proper business management, namely:

Period of Time	Accounts Rules	Maintenance of Public Trust	Business Management obligations
March 2004 to 1 July 2007	Rule 15 of the Solicitors Accounts Rules 1998	Rule 1 (d) Solicitors Practice Rules 1990	Rule 13 Solicitors Practice Rules 1990
1 July 2007 to 5 October 2011	Rule 15 of the Solicitors Accounts Rules 1998	Rule 1.06 Solicitors Code of Conduct 2007	Rule 5 Solicitors Code of Conduct 2007
5 October 2011 to October 2019	Rule 14.5 of the SRA Accounts Rules 2011	Principles 6 SRA Code of Conduct 2011	Principles 8 SRA Code of Conduct 2011

1.2. On or around 28 January 2021, the Respondent submitted a letter to the SRA which was false and misleading in that it was dated December 2014 and purported to be from the Respondent's clients at that date when it had been created by the Respondent on 21 January 2021. In doing so breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019.

2. For the avoidance of doubt, it is alleged at allegation 1.2 above that the Respondent acted dishonestly (i.e. in breach of Principle 4). However, proof of dishonesty is not a requirement for any of the allegations of misconduct.

Documents

3. The Tribunal had before it documents including:

- Application for an Agreed Outcome dated 3 September 2021
- Statement of Agreed Facts and Proposed Outcome dated 3 September 2021 signed by both parties
- Agreed Outcome Bundle

- Statement of Agreed Facts and Proposed Outcome with page 8 updated signed for the Applicant

Factual Background

4. The Respondent was admitted to the Roll on 1 November 1971.

5. The Respondent had retired from practice and had no practising Certificate. He remained on the Roll. In 2007, he resigned from equity partnership and was employed as a consultant. The Respondent was no longer employed and retired from the Firm in July 2019. The Respondent's last practising certificate expired on 31 October 2019.

6. The conduct giving rise to the Applicant's investigation and to allegation 1.1 above arose from the Respondent's use of the client account of the Firm for the purposes of making and receiving payments on behalf of or in relation to Company A, a client of the Firm, between March 2004 and October 2019. The Firm managed the rental income of Company A through its client account ledger. The Respondent had sole conduct of the matter.

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

7. The parties invited the Tribunal to deal with the Allegations against the Respondent in accordance with the Statement of Agreed Facts and Proposed Outcome annexed to this Judgment. The parties submitted that the outcome proposed was consistent with the Tribunal's Guidance Note on Sanctions.

Findings of Fact and Law

8. The Applicant was required to prove the allegations to the standard applicable in civil proceedings (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.

9. The Tribunal reviewed all the material before it and was satisfied to the required standard that the Respondent's admissions were properly made. Prior to the Tribunal's consideration it was noted that at Paragraph 32 of the Statement of Agreed Facts and Proposed Outcome in two places information was indicated by "xx". Capsticks for the Applicant provided a corrected version of the document showing at the first of these places a paragraph number "19" and at the other, the word "such" before the word "funds".

10. The Tribunal considered the Guidance Note on Sanctions (December 2020). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. As to culpability the Tribunal considered the Respondent's motivation. In creating the misleading letter, which he submitted to the regulator (allegations 1.2 and 2), the Respondent was acting in his personal interests, seeking to conceal his other wrongdoing of providing the banking facility (allegation 1.1). In respect of all the allegations, the Respondent was in direct control of and responsible for the circumstances giving rise to the misconduct. He was

a very experienced solicitor. As to the harm resulting from the Respondent's misconduct particularly the dishonesty, in misleading the regulator he seriously damaged the reputation of the profession and failed to maintain the trust the public would place in him and in the profession. There were several aggravating factors. Dishonesty was alleged and admitted. The misconduct was deliberate, and in the case of the banking facility continued over a considerable period of years. The Tribunal also considered that the Respondent had taken advantage of a vulnerable person in procuring the signature of his clients to the false letter. In the Statement of Agreed Facts and Proposed Outcome the Respondent was reported as agreeing: "The client [Mr A] was elderly and was not a "sophisticated client." The client had limited access to and understanding of information technology. The Respondent said: "I've got to hold this client's hand throughout, and he certainly is incapable of doing any of this management and administration himself but that's why we [the Firm] have in this specific case to do it." The Tribunal also considered that while the Respondent admitted the allegations in the Mitigation section of the Statement of Agreed Facts and Proposed Outcome, he demonstrated limited insight into what he had done. The Tribunal reviewed all possible sanctions. The Respondent admitted the allegations; one of these, providing a banking facility would not have merited strike off but the second allegation involved dishonesty. It related to submitting to his regulator a false and misleading document which he had created in January 2021 and to which he had procured the signature of his clients, purporting it to have been signed in December 2014. The Guidance Note on Sanctions set out that the most serious conduct involved dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved would almost invariably lead to striking off, save in exceptional circumstances. The Tribunal noted that the Respondent was permanently retired and did not hold a practising certificate and felt that significantly reduced the extent to which there was a need to protect the public. However, the seriousness of what he had done was in the Tribunal's view such that particularly for the protection of the reputation of the profession the sanction of a fine would not be sufficient and a lesser penalty was clearly inappropriate. The Respondent's dishonesty in seeking to mislead the regulator by creating a false document and involving a vulnerable client in doing so placed his misconduct at the highest level such that a lesser sanction than strike off but more serious than a fine, for example, a suspension would be inappropriate. The Respondent had not advanced a case for exceptional circumstances, and the Tribunal found there to be none. It therefore agreed that strike off would be a reasonable and proportionate sanction in this case.

Costs

11. The parties had agreed costs in the amount of £15,000.00 which the Tribunal considered to be reasonable and proportionate.

Statement of Full Order

12. The Tribunal Ordered that the Respondent, MONTAGUE FRANKEL, 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 agreed sum of £15,000.00.

Dated this 21st day of September 2021
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
22 SEPT 2021

H Dobson
Chair

[Case No. 12244-2021]

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

MONTAGUE FRANKEL

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

Introduction

By a statement made by Hannah Pilkington on behalf of the Solicitors Regulation Authority (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 25 August 2021, the SRA brings proceedings before the Tribunal making allegations of misconduct against the Respondent. Definitions and abbreviations used herein are those set out in the Rule 12 Statement.

Admissions

1. The Respondent admits that:

1.1. Between March 2004 and October 2019, the Respondent caused or allowed payments in the total sum of about £1,167,061.97 to be made into and out of the Firm's client account other than in respect of an underlying legal transaction or part of his normal regulated activities. In doing so, the Respondent provided banking facilities through the Firm's client account, such conduct being in breach of accounts rules, obligations to act in a way as to maintain public trust and obligations as to proper business management, namely:

Period of Time	Accounts Rules	Maintenance of Public Trust	Business Management obligations

March 2004 to 1 July 2007	Rule 15 of the Solicitors Accounts Rules 1998	Rule 1 (d) Solicitors Practice Rules 1990	Rule 13 Solicitors Practice Rules 1990
1 July 2007 to 5 October 2011	Rule 15 of the Solicitors Accounts Rules 1998	Rule 1.06 Solicitors Code of Conduct 2007	Rule 5 Solicitors Code of Conduct 2007
5 October 2011 to October 2019	Rule 14.5 of the SRA Accounts Rules 2011	Principles 6 SRA Code of Conduct 2011	Principles 8 SRA Code of Conduct 2011

1.2. On or around 28 January 2021, the Respondent submitted a letter to the SRA which was false and misleading in that it was dated December 2014 and purported to be from the Respondent's clients at that date when it had been created by the Respondent on 21 January 2021. In doing so breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019.

2. For the avoidance of doubt, it is alleged at allegation 1.2 above that the Respondent acted dishonestly (i.e. in breach of Principle 4). However, proof of dishonesty is not a requirement for any of the allegations of misconduct.

Agreed Facts

Background

3. The Respondent joined the Firm as one of its founding partners in 1973. In 2007, he resigned from equity partnership and was employed as a consultant. The Respondent is no longer employed and retired from the Firm in July 2019.

4. The conduct giving rise to the Applicant's investigation and to allegation 1.1 above arise from the Respondent's use of the client account of DWFM Beckman ("The Firm") (previously DF&M Beckman and Davis Frankel & Mead) for the purposes of making and receiving payments on behalf of or in relation to Company A, a client of the Firm, between March 2004 and October 2019. The Firm managed the rental income of Company A through its client account ledger. The Respondent had sole conduct of the matter.

Information received

5. On 17 July 2019, the Firm reported to the SRA that it had been alerted to an incident of fraud on its client account. The fraud concerned the cloning of six cheques, with a total value of £281,888.00, by an unidentified party. This fraud was not related to the Respondent and does not give rise to the allegations set out above.

6. The relevant matter ledger for Company A showed that between 21 March 1997 to 31 October 2019, the Firm managed the rental income for Company A through its client account.
7. A Forensic Investigation took place with the report ("FIR") dated 28 August 2019.

8. Between 21 March 1997 to 31 October 2019, the Firm received and paid out £1,623,417.13 in respect of the rental collection and property management for Company A. The scope of allegation 1.1 above is limited to those transactions between March 2004 and 31 October 2019.

9. The Firm issued rental and insurance demands to the relevant tenants with instruction to pay the rents and insurance funds into the Firm's client account, and thereafter paid out the receipts to Company A on a quarterly basis. All payments to Company A were authorised by the Respondent.

10. These receipts and payments were for the management of rental income for Company A and were therefore not in compliance with the Accounts Rules because it represented the provision of a banking facility.

11. During the Applicant's investigation, the Respondent submitted a document which purported to be a letter from Company A dated from 2014. It was created by the Respondent in January 2021.

Background and Facts Relied Upon

Allegation 1.1

12. Following notice being given to the Firm, the forensic investigation started on 16 July 2020 by way of an online interview. During the investigation, the FIO reviewed the matter file documents and matter ledger for the Company A matter under the Firm's reference 15423.1 and the matter ledgers for 11 other Company A matter files.

13. The Respondent acted on behalf of Company A from approximately 1997. The Respondent undertook work relating to Company A's portfolio of property. According to

Companies House, the nature of business for Company A concerned commercial investments, including buying and selling of real estate.

14. Between 21 March 1997 to 31 October 2019, the Firm received and paid out £1,623,417.13 in respect of the rental collection and property management for Company A including deductions made of £114,011.11 (net) in respect of the Firm's costs. For the purposes of allegation 1.1 above, the transactions in breach of accounts rules between March 2004 and October 2019 were in the region of £1,167,061.97.

15. The table below sets out the yearly breakdown of payments in and out between 2004 and 2019, being transactions within the scope of allegation 1.1 above:

Year	Firm's Cost	Payments	Receipts	Transactions in the scope of allegation 1.1
2004	£2,653.72	£28,632.55	£26,529.23	£23,875.51
2005	£2,859.04	£38,388.73	£44,658.73	£41,799.69
2006	£3,505.16	£38,703.93	£38,512.42	£35,007.26
2007	£3,794.42	£68,844.66	£65,831.93	£62,037.51
2008	£5,704.52	£79,354.51	£83,409.79	£77,705.27
2009	£5,704.41	£93,867.20	£93,965.66	£88,261.25
2010	£8,545.20	£88,500.31	£87,750.93	£79,205.73
2011	£8,036.65	£97,729.28	£98,727.69	£90,691.04
2012	£7,500.00	£115,927.97	£124,056.12	£116,556.12
2013	£5,700.00	£94,932.69	£84,297.48	£78,597.48
2014	£7,450.00	£87,428.31	£92,443.03	£84,993.03
2015	£8,000.00	£77,784.53	£87,330.37	£79,330.37
2016	£6,463.30	£97,643.51	£97,352.55	£90,889.25
2017	£6,930.54	£81,154.53	£69,244.35	£62,313.81
2018	£5,783.48	£99,218.51	£109,283.40	£103,499.92
2019	£7,046.54	£82,000.29	£59,345.27	£52,298.73
Total	**£95,676.98**	**£1,270,111.51**	**£1,262,738.95**	**£1,167,061.97**

16. The file for the Company A matter 15423.1 consisted of four paper folders with a description stating, "Management File-Various Properties". The matter documents primarily consisted of credit receipts and credit advice in respect of rental income received, rent and insurance demands to tenants, and communications to the relevant insurer. Additionally, there were invoices to Mr A of Company A regarding the Firm's costs.

17. The matter file included a matter ledger form 21 March 1997 to 31 October 2019. The Firm's invoices to Mr A for its services were included. These included charges made for "rent collection" and "general administration."

18. Council tax was paid by the Firm on behalf of Company A and payments from tenants regarding maintenance work, were received by the Firm. Rent and insurance demands including property insurance premiums were issued by the Firm to relevant tenants.

19. The Firm therefore issued rent and insurance demands on behalf of Company A, and paid insurance premiums for the Company A properties. The Firm received rental income from the various Company A tenants and periodically paid the funds to Company A, using a paying in book, having made payments for property insurance and deductions for the Firm's costs.

20. The Respondent agrees that:
    20.1. he had acted for Company A for over "25 years" and helped build the property portfolio in terms of "acquisitions and disposal financing and refinancing.";
    20.2. the Firm was asked "informally at the outset to deal with all management aspects including dealing with rent collection and insurance premium." And that this was not set out in a client care letter;
    20.3. "management aspects were dealt with under the management file under investigation." being matter 15423.1;
    20.4. the Firm's arrangement with Company A was to "account for the bulk of rent collected quarterly as and when rents were received retaining a small amount for expenses and minor payments to professional advisers."
    20.5. the client [Mr A] was elderly and was not a "sophisticated client." The client had limited access to and understanding of information technology. The Respondent said "I've got to hold this client's hand throughout, and he certainly is incapable of doing any of this management and administration himself but that's why we [the Firm] have in this specific case to do it";
    20.6. "It's only because I know this client and he was a close personal friend as well as everything else that I agreed to do it, but I've never done it for anybody else and I don't believe that the Firm is doing this for anybody else either".

21. During interview the Respondent described the Firm's arrangement by saying "we [the Firm] weren't acting as a bank, we were acting purely and simply as a collection agency for the convenience of the client".

22. When asked whether the rents and insurance premiums could have been paid into the bank account in the name of Company A, the Respondent stated: "I think that would have meant an enormous amount of extra work because for me, but every time we

received any money in we would have to pay it into that bank account and I would have had to charge him excess charges for that. Because like this we had to do it once in a quarter. If we had to do that every time we got any insurance or any rent in and put it into the account then it means extra work for us and my staff because they would have to go to the bank and pay it in and it wouldn't have been appropriate and he wouldn't have wanted that either."

The SRA's Rules and Warning Notices

23. The Law Society warning card 'Warning To All Solicitors Money Laundering' dated 2 September 2002, alerted solicitors and Firms that they should not provide a banking facility "if you do not undertake any related legal work" for a client.

24. In December 2003 the Tribunal's judgment in Wood v Burdett (Case No: 8669/2002) was handed down. The Tribunal stated that it was not a proper use of a solicitors client account to allow it to be used by clients and/or members of staff as a bare banking facility. The proper use of a solicitors client account was to hold money and disburse it as required in connection with a client matter of which the solicitor has conduct on behalf of that client. Further, the Tribunal's judgment stated that it was not a proper part of a solicitors everyday business or practice to operate a banking facility for third parties whether they are clients of the Firm or not. To operate client account in such a way would be likely sooner or later to be subject to the attentions of the unscrupulous and the solicitor concerned might well find himself laundering money without being aware that he and his banking arrangements were being utilised for such nefarious purpose.

25. In March 2004, Note [xi] to Rule 15 of the Solicitors Account Rules 1998 was amended to read: "In the case of Wood and Burdett (Case No: 8669/2002 filed on 13 January 2004) the Solicitors Disciplinary Tribunal said that it is not a proper part of a solicitors everyday business or practice to operate a banking facility for third parties, whether they are clients of the Firm or not. Solicitors should not, therefore, provide banking facilities through a client account. Further, solicitors are likely to lose the exemption under the Financial Services and Markets Act 2000 if deposit is taken in circumstances which do not form part of a solicitors practice. It should also be borne in mind that there are criminal sanctions against assisting money launderers."

26. The SRA warning notice 'Warning! Money laundering' dated May 2009, advised Firms and solicitors that they should not accept "instructions to act as a banking facility" .The notice highlighted note (ix) of rule 15 of the Solicitors' Accounts Rules 1998, regarding the acceptance of instructions to act as a banking facility, especially in cases where Firms and solicitors do not undertake any "related legal work."

27. The SRA warning notice 'Improper use of a client account as a banking facility' dated 18 December 2014, as updated on 6 August 2018, reminded solicitors and Firms about the key issues and risks in respect of using their client account as a banking facility.

28. The December 2014 Warning Notice highlighted rule 14.5 of the SRA Accounts Rules 2011. That is, payments into and out of the client account must be in respect of an "underlying transaction" or form part of their "normal regulated activities." included the following [emphasis added]:

""There must be a reasonable connection between the underlying legal transaction and the payments

Whether there is a reasonable connection is likely to depend on the facts of each case but where the legal services are purely advisory, it will clearly be more difficult to show a reasonable connection. The fact that you have a retainer with a client does not give you licence to process funds freely through client account on the client's behalf. Throughout a retainer, you should question why you are being asked to receive funds and for what purpose. You should only hold funds where necessary for the purpose of carrying out your client's instructions in connection with an underlying legal transaction or a service forming part of your normal regulated activities. <u>You should always ask why the client cannot make the payment him or herself. The client's convenience is not the concern and, if the client does not have a bank account in the UK, this considerably increases the risks. You should be prepared to justify any decision to hold or move client money to us where necessary."</u>

…

You should be aware that criminals often target solicitors' client accounts to lend credibility to fraudulent schemes or to launder the proceeds of their criminal activity. You must not allow money to move through client account unless it is in connection with a genuine transaction about which you are providing legal services. You should ensure that you undertake proper due diligence before accepting any funds into client account and you should not act if you do not fully understand the transaction on which you are advising."

29. The Respondent during interview confirmed his awareness of the SRA Warning Notices, confirming:
    29.1. he "kept up to date with what was generally" required;
    29.2. he understood the reason behind the warning notices and agreed "100%" that the " use of the client account as a bank account for the client is not appropriate and I know the reasons why this, I know all about the, I read all

the stories and everything else which has happened and the temptations etc which clients get into but in this particular case it's totally different";

29.3. that he understood Rule 14.5 and the warning notices, and "understood that these notices were primarily directed not at the sort of work that I was doing but in circumstances where there might have been shall we say irregularities";

29.4. he thought the notices were "primarily intended for money laundering".

30. The Firm confirmed during the forensic investigation that the Warning Notices were "well known" within the Firm and had sent out emails to all staff members warning them about the use of the client account as a banking facility.

31. During interview and the forensic investigation the Respondent took the view that the receipts (rents and insurance premiums) into the client account and payments to Company A was part of the legal work that the Firm was engaged to undertake.

32. The receipt and payment out of funds as described at paragraph 19 above were not a necessary corollary to the provision of the services described at paragraphs 19 above; the services provided were not an "underlying transaction" relating to the holding of such funds, and the provision of such services were not part of the Respondent's or the Firm's normal regulated activities. The arrangements for receipt and payment out of rent and other property management expenses were motivated by the Client's preferred administrative arrangements and convenience as well as a reduction of cost to the client.

Allegations 1.2 and 2

33. On 28 January 2021 the Respondent provided representations to the SRA in response to the Notice served on 7 December 2020. The Respondent did not make admissions in relation to the allegations contained in the Notice. In support of his representations the Respondent emailed copies of a confirmatory letter dated December 2014 signed by his client Company A regarding this retainer. The emailed documents were provided as a Microsoft Word document named "[COMPANY A] COMMERCIAL INVESTMENTS LIMITED-retainer" and a jpeg image file named "[COMPANY A] RETAINER".

34. Both documents were copies of a letter dated December 2014 sent on behalf of Company A to the Firm confirming the details of the Firm's retainer. The letter referenced the legal work that would be carried out by the Firm and how it would be charged. Both the word document and image file were identical in content other than the jpeg image file being signed by Mr and Mrs A – the Directors of Company A. This letter had not previously been considered within the Forensic Investigation Report and had not previously been disclosed by the Respondent or the Firm.

35. During the Investigating Officer's review of the word document, it was discovered that the metadata showed that the document had been created on 21 January 2021 at 19.52 under the user account of "Monty Frankel" (being the name of the Respondent) and not in 2014.

36. On 1 February 2021, the Investigating Officer emailed the Respondent and referred him to creation date of the word document. The Investigating Officer asked the Respondent to clarify when this letter was sent from the client and when the client had signed it. In his response of the same date, the Respondent wrote "I could not locate the original signed letter, so I retyped a copy of it and asked Company A to re- sign currently by way of confirmation of the original".

37. The Investigating Officer emailed the Respondent the same day and asked him to clarify whether he had retyped this letter from memory or from a copy of another document. In his response dated 2 February 2021, the Respondent stated that while drafting his comments, he reviewed the papers but could not locate the original December 2014 letter. He therefore asked Company A if it held a copy. Company A did not have a copy but recalled the contents when Mr Frankel described the subject matter to them and the reasons why it was needed. The directors of Company A subsequently agreed they would sign a contemporaneous re-confirmatory letter along the lines of the original and this was what he provided with his representations.

38. The Respondent was dishonest when creating a letter in January 2021 which he dated 2014 and relied upon as being a letter created and signed in 2014. On or around 28 January 2021 when seeking to rely upon the letter in support of his representations the Respondent took no steps to inform the SRA of information which would be relevant including the fact that it was created:
    38.1. in 2021 despite being dated 2014;
    38.2. by the Respondent based upon the alleged recollections of the Directors of Company A as to a letter sent in 2014;
    38.3. following the Respondent informing the Directors of Company A (who were personal friends of the Respondent) of the subject matter of the alleged 2014 letter and the reasons why it was needed.

Mitigation

39. The following mitigation, which is not agreed by the SRA, is put forward by the Respondent. The Respondent:

    39.1. In the course of my practice as a solicitor I had agreed to a request from an established client who had a history of issues with its tenants that my firm

could receive the rent from its tenants and, after paying certain of its property-related expenses, would remit the balance promptly to the client.

39.2. Within my firm, I had been doing this for some 25 years without complaint from my fellow partners who were well aware of this activity.

39.3. I had not considered this to be providing a banking service. Rather I considered it to be a property management service for a specific client with difficult tenants. However, it appears that this was my misunderstanding and that I was wrong. Nevertheless, such misunderstanding could be avoided by others in the future if the SRA made it clear that property management as above was a prohibited activity.

39.4. The collection and remittance of rent as above was self-reported by my firm to the SRA.

39.5. No complaint has ever been made to the SRA by any client or other person regarding this activity.

39.6. No money-laundering concerns arose because this activity was limited to this one long-established client.

39.7. I admit that I was wrong to submit a letter to the SRA signed by my client which was dated December 2014 but had actually been created by me on 21 January 2021. However, that letter was genuinely signed by the client because it accurately reflected what the client had orally agreed in December 2014.

39.8. The forensic investigation by the SRA into my practice has failed to uncover any other misconduct.

39.9. I am now 75 years old and retired from practice in 2019 with no intention of returning to practice.

39.10. I offered at an early stage and before Capsticks was instructed, to the sanction of being removed from the roll of solicitors.

39.11. I apologise to the Law Society, the SRA and the SDT for my misconduct.

Penalty proposed

40. The Respondent agrees:

    40.1. That his name be struck from the Roll;

    40.2. To pay costs to the SRA agreed in the sum of £15,000.

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

41. The sanction outlined above is considered to be in accordance with the Tribunal's sanctioning guidance.

42. For the purposes of these proceedings, the Respondent has admitted dishonesty as alleged at Allegation 1.2 and 2 above in addition to having admitted the misconduct and breaches giving rise to allegation 1.1 in the context of use of a client account as a banking facility.

43. The admitted allegation at 1.1 above in relation to the use of client account as a banking facility relate to the conduct of transactions where the Respondent was the only solicitor acting in those transactions, and was therefore in a position of trust and authority.

44. The Respondent was a solicitor of significant qualification and experience. It was incumbent upon him to understand his regulatory obligations to comply with them.

45. In *Fuglers & Others v SRA* [2014] EWHC 197 (Admin) QB the Court identified that:

    45.1.1. Operating a banking facility would in effect be trading on the trust and reputation which he acquired through his status as a solicitor in circumstances where such trust would not be justified;

    45.1.2. it carries an obvious risk of money laundering – a risk which had been specifically highlighted by the Solicitors Disciplinary Tribunal in decided cases;

46. With regards to the admission to allegations 1.2 and 2 above the Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (8th edition), at paragraph 51, states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see* ***Solicitors Regulation Authority v Sharma*** ***[2010] EWHC 2022 (Admin)****).*"

47. In **<u>Sharma</u> [2010] EWHC 2022 (Admin) at [13]** Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:

> *"(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll … That is the normal and necessary penalty in cases of dishonesty…*
>
> *(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances …*
>
> *(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary … or over a lengthy period of time … whether it was a benefit to the solicitor … and whether it had an adverse effect on others…"*

48. The Respondent admits dishonesty in relation to allegations 1.2 and 2 in submitting a letter to the SRA which was false and misleading. The misconduct and dishonesty clearly placed at risk the reputation of the Respondent and the broader profession.

49. Reference is made to the points of mitigation raised by the Respondent at paragraphs 39 above.

50. The nature of the misconduct, the need to protect both the public, and the reputation of the legal profession, and the fact that the case plainly does not fall within the small residual category where striking off would be a disproportionate sentence confirms that the fair and proportionate penalty in this case is for the Respondent to be struck off the Roll of Solicitors.

51. The level of culpability in respect of the allegations above is high due to the admitted dishonesty in the Respondent's engagement with his Regulator:

52. The principal factors that aggravate the seriousness of the Respondent's misconduct:

    52.1. Given his length of qualification and experience, the Respondent ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

53. As to the principal factors which mitigate the seriousness of the Respondent's misconduct, the Tribunal is referred to those statements made by the Respondent at paragraph 39 above.

54. The Parties consider that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter which is in the public interest.

Daniel Purcell, Solicitor, Partner, Capsticks LLP

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On behalf of the Solicitors Regulation Authority

Date: 3 September 2021

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Montague Frankel

Date: