

The Respondent appealed the Tribunal's decision dated 14 November 2023 to the High Court (Administrative Court). The appeal was heard by Mr Justice MacDonald on 26 June 2025 and Judgment was handed down on 30 July 2025. The appeal was dismissed. [Cottam v SRA \[2025\] EWHC 1965 \(Admin\)](#)

## SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12336-2022

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

HARRY FRANCIS COTTAM

Respondent

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Before:

Mrs L Boyce (in the Chair)  
Mrs L Murphy  
Mr A Pygram

Date of Hearing: 24 October 2023

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### Appearances

Victoria Sheppard-Jones, barrister of Capsticks LLP for the Applicant.

Adam Richardson, barrister of One Essex Court for the Respondent.

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## JUDGMENT

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## Allegations

1. The Allegations against the Respondent, Harry Francis Cottam, made by the SRA were that, while in practice as a Solicitor and Sole Director at Cottams Solicitors Limited (“the Firm”):
  - 1.1 Between May 2016 and May 2018, he caused or allowed improper transfers of monies from the client account to the office account, as set out in Schedule 1 to the Rule 12 statement, and in doing so he breached Rule 20.1 of the SRA Accounts Rules 2011, and Principles 2, 4, 6 and 10 of the SRA Principles 2011. [PROVED](#)
  - 1.2 Between May 2016 and May 2018, he prepared or caused to be prepared, false invoices in respect of improper client account to office account transfers, as set out in Schedule 1 and in doing so he thereby breached Principles 2 and 6 of the SRA Principles 2011. [NOT PROVED](#).
2. In addition, both allegations 1.1 and 1.2, were advanced on the basis that Mr Cottam’s conduct was dishonest. Dishonesty was alleged as an aggravating feature of his misconduct but was not an essential ingredient in proving the allegations. [PROVED IN RELATION TO ALLEGATION 1.1 ONLY](#)

## Executive Summary

3. Mr Cottam was alleged to have caused or allowed improper transfers from client to office account to take place on two files and to have prepared or caused to be prepared, false invoices. Mr Cottam accepted that the transfers were improper and that the invoices were false, but he denied any knowledge of either of those matters at the time they occurred, stating that it was his bookkeeper TN who was personally responsible.
4. The Tribunal found that Mr Cottam had caused the improper transfers to take place but did not find that he prepared the invoices or caused them to be prepared. The Tribunal further found that Mr Cottam had acted dishonestly in relation to the transfers.

## Sanction

5. Mr Cottam was [struck off the Roll](#) and ordered to pay £4,000 in costs.

## Documents

6. The Tribunal considered all the documents in the case, which were contained in an agreed electronic bundle.

## Preliminary Matters

7. Application for anonymisation of the Cause List and of the Respondent and Non-Publication.
  - 7.1 Mr Richardson applied for the Cause List to remain anonymised and for the “proceedings” to be anonymised, including the anonymisation of the Respondent and non-publication of the Tribunal’s written Judgment. Mr Richardson relied on the

medical reports of Dr White and Dr Wilkins and submitted that the test of exceptional hardship and exceptional prejudice was met by the contents of those reports. He noted that the medical evidence was unchallenged and that the applications as a whole, were not opposed by the SRA.

7.2 The following reports were before the Tribunal:

- Dr White – 12 June 2020, 28 October 2021, 3 January 2023, 24 February 2023
- Dr Wilkins – 22 September 2023.

7.3 Mr Richardson made particular reference to Dr White’s report of 3 January 2023 and Dr Wilkins’ report.

7.4 Dr White had stated:

“[REDACTED]”

7.5 In his report of 24 February 2023, Dr White had stated:

“[REDACTED]”

7.6 Dr Wilkins had stated:

*“a) What, if any, effect there would be on Mr Cottam's health, if the SRA decided the referral of Mr Cottam to the SDT on their website.*

“[REDACTED]”

*“c) What, If any, effect there would be on Mr Cottam's health, if the SDT proceedings were to be heard in public.*

“[REDACTED]”

*“d) Are there any steps that the SDT can take to mitigate any such risks.*

*i) Again, the only way in which I could see that the SDT could mitigate these risks would be to hold the hearing in private and to not allow the admission of the public. [REDACTED]*

*ii) [REDACTED].”*

*“e) What, if any, effect there would be on Mr Cottam's health, if the SDT was to publish their findings (if any) and a copy of their judgement on their website.*

*The concerns expressed above in relation to the publication of the SRA's decision to refer Mr Cottam to the SDT and the implications of the hearing being heard in public are very similar to those factors that seem relevant in relation to the SDT publishing their findings and posting a copy of their judgement on the SDT website. [REDACTED]”*

*“f) Are there any steps that the SDT can take to mitigate any such risks.*

*The only way in which I could envisage that the SDT could mitigate these risks would be not to publish the findings on the website. I cannot see any other way in which these risks could be mitigated and it will be for the SDT to weigh the competing factors in a way that meets the requirements of regulatory bodies.*

*g) If there is likely to be an adverse impact on Mr Cottam's health as a result of publication/a public hearing, whether there is any prospect of this improving in the future (for example, If publication of a judgement was delayed).*

*[REDACTED]”*

### Application for the hearing to take place in private

7.7 Linked to the application above, Mr Richardson applied for the substantive hearing to take place in private, for the same reasons already outlined.

### The Tribunal’s Decision

7.8 The relevant sections of Rule 35 of the SDPR 2019 were as follows:

*“35.—(1) Subject to paragraphs (2), (4), (5) and (6), every hearing of the Tribunal must take place in public.*

*(2) Any person who claims to be affected by an application may apply to the Tribunal for the hearing of the application to be conducted in private on the grounds of—*

*(a) exceptional hardship; or*

*(b) exceptional prejudice*

*to a party, a witness or any person affected by the hearing.*

*(5) The Tribunal may, before or during a hearing, direct without an application from any party that the hearing or part of it be held in private if—*

*(a) the Tribunal is satisfied that it would have granted an application under paragraph (2) had one been made; or*

*(b) the Tribunal considers that a hearing in public would prejudice the interests of justice.*

*(8) Save in exceptional circumstances, where the Tribunal disposes of proceedings following a hearing held in private, it must announce its decision in a public session.*

*(9) The Tribunal may make a direction prohibiting the disclosure or publication of any matter likely to lead to the identification of any person whom the Tribunal considers should not be identified.”*

7.9 The Tribunal noted the starting point was the requirement for open justice as affirmed in SRA v Spector [2016] EWHC 37 (Admin) and in Lu v SRA [2022] EWHC 1729 (Admin) at [138]. The Tribunal had to balance that with a Respondent’s ECHR rights, in this case particularly Articles 2, 6 and 8.

### Anonymisation of the Cause List and sitting in private

- 7.10 The Tribunal carefully considered the medical evidence, which it noted was unchallenged. [REDACTED].
- 7.11 [REDACTED]. The Tribunal was under a duty, pursuant to Mr Cottam's Article 6 rights and the Tribunal's overriding objective, to ensure a fair hearing and this was unlikely to be possible if Mr Cottam was anxious that at any moment someone might join the hearing who knew him. It had the potential to make it difficult for him to give his best evidence (if he chose to give evidence).
- 7.12 Taking all the relevant factors into account, the Tribunal was narrowly persuaded that there could be exceptional harm and exceptional prejudice caused to Mr Cottam by the hearing taking place in public and the Cause List containing his name.
- 7.13 The Tribunal therefore directed that the Cause List remain anonymised for the remainder of the hearing and that the hearing itself would take place in private.

### Publication of the written Judgment

- 7.14 The Tribunal was not persuaded, when considering the matter at the outset of the hearing, that publishing the Judgment would cause exceptional harm or exceptional prejudice to Mr Cottam. The medical evidence on this point was even less definitive on this point than on those relating to sitting in private. [REDACTED].
- 7.15 There was a strong public interest in the Tribunal's decision and reasons being published in full, with anonymisation of a Respondent being an exceptional step. That, of course, had to be balanced [REDACTED] in this application. The Tribunal considered that the appropriate time to conduct this balancing exercise would be at the end of the hearing. By that point the Tribunal would have made its findings and could then weigh the nature of those findings in the decision on this point.
- 7.16 The Tribunal informed the parties that it would hear further submissions on this point at the end of the hearing.

### 8. Anonymity for RCG, JB and TN

- 8.1 Ms Sheppard-Jones invited the Tribunal to anonymise RCG, DMG and JB in the hearing and the Judgment, all of whom were clients and protected by Legal Professional Privilege (LPP), which had not been waived.
- 8.2 Ms Sheppard-Jones also sought a direction for anonymity for TN, the former employee of Mr Cottam. TN was not a regulated individual and had not provided a witness statement. Mr Cottam blamed her for the misconduct. This was a serious allegation that she had not been able to comment on and which was not accepted by SRA. Ms Sheppard-Jones that it would be wholly unfair to name her in those circumstances. Lu had rejected a blanket approach to anonymity and that was not what Ms Sheppard-Jones was seeking. The balancing exercise fell in favour of anonymising TN.
- 8.3 Mr Richardson was neutral on this application.

### The Tribunal's Decision

- 8.4 The Tribunal agreed to anonymise the clients on the basis of LPP.
- 8.5 As regarded TN, the Tribunal noted that she was not a witness and had not played any part in the investigation. She was not able to refute the allegations made against her by Mr Cottam and she may not even have been aware of them. The Tribunal considered that open justice was not diminished by anonymising her and was balanced by the matters outlined above. The Tribunal therefore granted this application.

### 9. Further Submissions relating to the written Judgment

- 9.1 The Tribunal heard these submissions after announcing its findings but before it had announced its decision on sanction and costs.
- 9.2 Mr Richardson acknowledged that the starting point was that Judgments should be published in the usual way as this was an important function of the Tribunal. However, in this case he urged the Tribunal to either not publish the Judgment or to anonymise Mr Cottam in any Judgment that was published. He relied on his earlier submissions and the medical evidence previously referred to. Mr Richardson reminded the Tribunal that Mr Cottam was not practising and was no danger to the public. [REDACTED].
- 9.3 Mr Richardson reminded the Tribunal that Mr Cottam had been a solicitor for his entire career and based his identity on that role. Mr Richardson told the Tribunal that Mr Cottam would feel like a “non-person” if he could not practise. [REDACTED].
- 9.4 Ms Sheppard-Jones told the Tribunal that the SRA was neutral on this point.

### The Tribunal's Decision

- 9.5 The Tribunal decided this matter having made, but not yet announced, its decision on sanction and costs.
- 9.6 The Tribunal had found one of the Allegations proved including the element of dishonesty and had decided that Mr Cottam should be struck off the Roll. The Tribunal recognised that those decisions would be a significant blow to Mr Cottam, [REDACTED]. The public interest in the reporting of these matters remained high. It might have been less so had the Tribunal found all the Allegations not proved.
- 9.7 The Tribunal had the medical evidence in mind, having reviewed it a number of times at various stages of the hearing. Its analysis of the medical evidence on this point is set out above. As previously noted, the medical evidence on the point about publication was more speculative than definitive. The Tribunal was not persuaded that there was a clear and present risk of harm such as to meet the high bar of ‘exceptional’.
- 9.8 The Tribunal therefore refused the application for non-publication or for anonymity for Mr Cottam in that document.

- 9.9 The Tribunal did, however, agree to redact from the Judgment the specific details of Mr Cottam's health issues, as open justice did not require that level of intrusion into his private medical matters.
- 9.10 Further, the Tribunal decided that the Judgment will not be published for a period of 21 days following its delivery to the parties. This gives Mr Cottam the opportunity to challenge the Tribunal's decision to refuse his application for the Judgment to be anonymised, either by way of a statutory appeal or by seeking injunctive relief. Should Mr Cottam lodge such a challenge, the Judgment will then not be published pending the outcome of that challenge/appeal.

### **Factual Background**

10. Mr Cottam was admitted to the Roll on 15 August 1991. At the material time he was the sole director, manager, COLP, COFA and company secretary of Cottams Solicitors Limited ("the Firm"). At the time of the conduct, Mr Cottam held a practising certificate free from conditions. This was suspended on 18 October 2018 and as at the date of the hearing he did not hold a practising certificate.
11. The SRA commenced a 'without notice' forensic inspection of the Firm on 1 October 2018. This was conducted by Mr Cassini, the Forensic Investigation Officer ("FIO"). Mr Cassini reviewed the Firm's client account reconciliation as at 31 August 2018, which revealed a client account shortage.
12. The client ledger on matter RCG showed debit balances as a result of transfers from the client account to the office account for purported costs.
13. The Interim Forensic Investigation Report ("Interim FIR"), dated 10 October 2018, identified a cash shortage on the client account of £137,388.12, in relation to the improper transfers on the matter of RCG, of which £804.20 had been repaid by the date of the report. Following the Interim FIR, the Firm was intervened into on 16 October 2018.
14. The Final FIR, dated 13 March 2019, identified a further matter, JB, on which transfers had been made from the client account to the office account. The file did not contain any copies of bills or written notification of costs sent to the client relating to the transfers and there appeared to be no evidence on the client file of the work undertaken in relation to the transfers. There were however invoices on this file, which did not appear to have been sent to the client, and did not reflect any work undertaken. The total value of those client account transfers was £37,727.32.
15. The total value of the improper transfers across the client matters of RCG and JB, was £175,115.44.

### **RCG matter**

16. This was a probate matter in which the Firm had been instructed to deal with the conclusion of the administration of the estate.

17. On 18 May 2018, Mr Cottam had emailed the executor and enclosed the estate accounts and an invoice dated 17 May 2018, for costs due to the Firm in the sum of £7,229.88 including VAT. On 4 June 2018, the Firm paid £249,714.29 from the client account to those representing the beneficiary. However, at the date of the payment, the balance on the client account was £112,326.17, resulting therefore in a debit balance on the account of £137,388.12. The client ledger showed that, between 28 November 2016 and 17 April 2018, the Firm made sixteen transfers, referenced as invoices, from the client account to the office account, totalling £144,618.00. Each transfer was given an invoice number and a corresponding invoice was located on the file.
18. The invoices bore the initials ‘HC’, as the fee earner. There did not appear to be any supporting evidence on the client file explaining the nature of the work undertaken, that the client was sent the invoices or a bill of costs reflecting the same, or had authorised the payment of those costs. There was also no reference to them in the estate accounts.
19. A typed memo, dated 17/05/2018, showing as from “Harry” to “[TN]” in relation to client matter RCG, stated:
- “I would be grateful if you would do credit notes for invoice nos. 5583, 5664a, 5807, 5959, 6038, 6110, 6118, 6152, 6179, 6232, 6245, 6256, 6290, 6326, 6369, 6400 respectively.”*
20. Those invoice numbers matched the invoices raised for the sixteen transfers referred to above. Mr Cottam told Mr Cassini in interview that he asked TN to create the credit notes because the transfers should not have been undertaken in the first place. No such credits were made back to the client account. Taking account the legitimate invoice for £7,229.88 the total net value of the improper transfers was £137,388.
21. In his interview with Mr Cassini on 2 October 2018, Mr Cottam had stated as follows:
- “in 2015 the firm suffered a catastrophic fire um which meant that um we had to relocate premises for six months uh we were under-insured in relation to contents uh we had no business disruption cover um and consequently we suffered very heavy losses um and as a result also the client account didn’t um contain, it wasn’t, it wasn’t kept as it had always been for the last twenty odd years, had always been kept meticulously there had never been any real problems with the client account um it’s, it’s um it, it started to develop problems whether it be the record keeping because of the disruption caused by the fire um and also um there, there was also for the, for the last few years there has been um a cashflow problem, a considerable amount um of money at each, very often each month um and I’ve been um at a loss to know what to do about it um and consequently I uh deducted client funds inappropriately on (RCG).... Um and um I know of, no other matters as far as I am aware of substance um and uh um I, I accept that it was inappropriate, I accepted it was in breach of the uh it was a basic breach of the client account rules eh it’s led to a deficit on the client account um and uh consequently um uh it is a large def... it’s a deficit which, which I am hope I am still hopeful I can repay in full um but I recognise the seriousness of my, my position and the firm’s position.”*

22. In relation to the credit notes, Mr Cassini asked Mr Cottam why he had asked TN to issue these. Mr Cottam responded:

*“Um because the invoices clearly were inappropriate to have rendered in the first place, they have they would uh, uh they, they, they served no use whatsoever, I mean they, they were clearly inappropriate they shouldn’t have been raised in the first place*

*SC Do you accept that you were not entitled to deal with all the amounts that you did*

*HC Yeah”*

23. Mr Cottam denied acting dishonestly, on the basis that *“dishonesty is an intention to permanently deprive another of monies I have no and have no such intention and I’ve always intended to put the monies back”*
24. Mr Cottam’s case in these proceedings was that he admitted that the transfers were improper, but that TN had undertaken them without his knowledge or approval.

#### JB matter

25. The client ledger for JB was opened in February 2015. The Firm was instructed to act for JB in relation to the sale of a property.
26. The client ledger recorded two payments on account of £100 each, dated 10 May and 13 May 2016. On 19 May 2016, a transfer of £200 from the client account to the office account in respect of invoice 5300, was recorded on the client ledger, reducing the client balance to zero. There was no evidence on the client file that the client had been provided with the invoice, or had authorised the payment. Following the sale of the property on 29 March 2018, the client ledger recorded that the client account was credited with £110,000.00. Estate agent fees and a debt due to Birmingham City Council were paid and an invoice dated 3 April 2018 was sent to the client in the sum of £651.00. That invoice bore the initials ‘SP’, who was the fee earner. The client ledger showed the sum of £651.00 as having been transferred from the client to the office account the same day.
27. Between 19 May 2016 and 10 May 2018 the client ledger recorded a further five transfers from the client account to the office account totalling £37,727.32. Mr Cassini also found three invoices on the client file totalling £95,472.68. Unlike the invoice that had been sent to the client, these invoices bore the initials of Mr Cottam. Mr Cassini found no evidence on the file that the purported work had been carried out, that the invoices had been sent to the client or that the client was aware of the invoices or had authorised payment of the same.
28. Mr Cottam did not wish to have a further recorded interview with Mr Cassini in relation to this client matter, but he did agree to discuss it at a meeting on 16 October 2018. An agreed contemporaneous note was taken of this meeting, at which Mr Cottam had stated:

*“Already brought them to your attention last week and that they are addition to (RCG) and we went through them I had already established the balances which is a pretty similar pattern and very sad and unfortunate that there should have been done. The non-legitimate invoices were not sent to clients and client were not aware. The funds were transferred to office a/c from client a/c and there were improper transfers and in breach of Rule 1, 17 & breached Principles 1,2,4,5,6 & 10..”*

29. During that meeting, Mr Cottam said that on 5 and 8 October 2018, he had made payments in an attempt to rectify the previous transfers out of the client accounts. These payments totalled £63,262.19, but they were made out of the Firm’s client account not the office account. Mr Cottam told Mr Cassini that:

*“There were insufficient funds available as at overdraft limit. Bank would not allow further o/d. Do not have personal funds.”*

30. The result was that the shortage moved from one client to another and did not in fact reduce the overall client account shortage.

### **Witnesses**

31. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

32. Mr Cassini

- 32.1 Mr Cassini confirmed that the contents of his reports were true to the best of his knowledge and belief. He made some minor clarifications and corrections to those reports and relied on them as his evidence. Mr Richardson did not cross-examine Mr Cassini.

33. Mr Cottam

- 33.1 Mr Cottam told the Tribunal that he relied on his witness statements dated 21 April 2023 and 1 June 2023 and that they were true to the best of his knowledge and belief.

- 33.2 In cross-examination, Mr Cottam told the Tribunal that he had never really been “hands on” when it came to the finances of the Firm. In 2015 the Firm had suffered an arson attack, against which the Firm was under-insured for loss of business. Mr Cottam described the devastating effect this had on the financial position, requiring him to be more involved in the finances, although he explained that “the less I had to do with it the better” and that he “never felt comfortable” dealing with finances.

- 33.3 The consequences of the fire included cash flow problems, with difficulties paying wages, bills, VAT and salaries as well as death threats. It was a worrying time and Mr Cottam felt he had a significant responsibility. Ms Sheppard-Jones put to Mr Cottam that it was against this background that he had decided to make the improper transfers. Mr Cottam denied making the improper transfers. He told the Tribunal that his references to “I” in his interview meant the Firm, not him personally. Mr Cottam accepted that he was responsible in the sense that it was his Firm and he was therefore responsible for anything that went wrong. However he had not personally transferred those monies and would never have contemplated doing so as he was aware of the regulatory consequences of such actions. It was not until May 2018 that he became aware that there was a serious problem.
- 33.4 Ms Sheppard-Jones asked Mr Cottam whether he had been provided with client reconciliations. Mr Cottam did not recall being presented with monthly reconciliations but would be at the end of each year. He agreed that he had full access to all client matters and all financial information, but told the Tribunal that he did not take much interest in the latter.
- 33.5 Mr Cottam described TN’s role in the Firm and confirmed that she had originally been a secretary before becoming a cashier. He had worked with TN for over 20 years and had considered her a friend. Mr Cottam disagreed with Ms Sheppard-Jones’ suggestion that she was not an ultimate beneficiary of the Firm’s income. Mr Cottam told the Tribunal that in a small, High Street firm, everyone who worked there was dependent on that firm’s income.
- 33.6 Mr Cottam accepted that having, on his case, discovered the transfers in May 2018, he had not suspended her or dismissed TN, whom he claimed was responsible, and she was still working at the Firm in October 2018. Mr Cottam told the Tribunal that the failures were down to his illness [REDACTED]. In those circumstances he did not consider it right to remove TN. Mr Cottam told the Tribunal that he had believed at the time he could rectify the problem by selling the premises, which he put on the market in May 2018. Events had, however, overtaken him and the intervention in October 2018 led to his bankruptcy. Mr Cottam accepted that he had not informed the SRA when he found out about the transfers.
- 33.7 Ms Sheppard-Jones put to Mr Cottam that, in circumstances where he had to authorise the payments, it was “inconceivable” that he would not have looked at the client ledgers. Mr Cottam insisted that this was the case and that due to the way he operated, he would “never look unless absolutely necessary”. Mr Cottam maintained that TN had created the entries on the ledger and the corresponding invoices.
- 33.8 Ms Sheppard-Jones took Mr Cottam to an invoice on the RCG matter dated 28 November 2016 which contained Mr Cottam’s initials, but not those of TN. Mr Cottam denied that he had created the invoice or instructed that it be created.
- 33.9 Ms Sheppard-Jones referred Mr Cottam to the Memo he had sent to TN regarding credit notes and put to him that it was an example of him giving an instruction to TN and her following it. Mr Cottam agreed that on that occasion, “ultimately I was the boss”.

- 33.10 In relation to the invoices, Mr Cottam agreed that all the false invoices contained his initials and none contained TN's initials or that of any other fee earner.
- 33.11 Mr Cottam accepted that he had signed the lists of transfers, including improper transfers, written out by TN. He told the Tribunal that he had not identified a problem with them when he was doing so. If he had seen a large transfer then he would have immediately realised there was a problem. Ms Sheppard-Jones put to Mr Cottam that he was making his evidence up as he went along, which he denied.
- 33.12 Ms Sheppard-Jones put to Mr Cottam that TN was "an easy scapegoat" that he had only decided to mention a year after the intervention. Mr Cottam did not accept this characterisation, telling the Tribunal that in his interview with Mr Cassini he had taken responsibility for TN's actions. Mr Cottam accepted that there was no evidence of TN's purported confession to him.
- 33.13 Ms Sheppard-Jones took Mr Cottam to his interview with Mr Cassini and put to him that he had been perfectly capable of handling the interview as well as declining a second one. Mr Cottam accepted that he sounded very calm in the interview but he was under a lot of stress and had been in tears that day. Mr Cottam told the Tribunal that his health had deteriorated rapidly that evening. In the interview itself, however, he had 'switched gear'.
- 33.14 Ms Sheppard-Jones noted that Mr Cottam had described his interview as "gibberish" but put to him that he had answered some questions in detail and accurately. Mr Cottam told the Tribunal that simple questions such as one about the final bill on RCG were ones he was able to answer accurately but that overall he had been emotional and had not been thinking about his answers. In retrospect, he told the Tribunal, he should have been clear that the transfers were made by the Firm, not by him personally.
- 33.15 Mr Cottam accepted that as a result of his failure to mention TN in his interview, the investigation did not take a different line of enquiry. He told the Tribunal that he had assumed that TN would be called as a witness.
- 33.16 Ms Sheppard-Jones put to Mr Cottam that the truth of the matter lay in his answers in the interview and that he had only decided to blame TN once the severity of his position had become clear. Mr Cottam denied this and maintained that he was aware from the outset as to the seriousness of the situation. He maintained that TN had made the transfers without his knowledge or authority.
- 33.17 In re-examination Mr Cottam was taken to instances in the interview where he was unable to provide information. Mr Cottam told the Tribunal that this was because he had been unaware of the answer to Mr Cassini's question.

### **Findings of Fact and Law**

34. 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 Mr Cottam'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.

**35. Allegations 1.1 and 1.2**

Applicant's Submissions

- 35.1 Ms Sheppard-Jones relied on Mr Cottam having told Mr Cassini that he was the only person who could authorise transfers, along with his admissions and the handwritten transfer instructions, in support of her case, which she had put in detail to Mr Cottam as summarised above. Ms Sheppard-Jones submitted that the evidence was that Mr Cottam had knowingly caused or allowed the improper transfers to take place.
- 35.2 In respect of RCG, the false invoices matched the improper transfers. Ms Sheppard--Jones submitted that the purpose of the false invoices was to make it look as though the Firm was entitled to the monies. In respect of JB, although the false invoices did not match the improper transfers Ms Sheppard-Jones submitted that the same intention existed.
- 35.3 Ms Sheppard-Jones submitted that Mr Cottam's account that TN was responsible was inconsistent with his interview and the information provided to Mr Cassini during the investigation. Ms Sheppard-Jones submitted that there would have been no reason for TN to have made the transfers without Mr Cottam directing her to do so, as he was the sole principal of the Firm with responsibility for its financial management. Ms Sheppard-Jones invited the Tribunal to infer that there would have been no need for the handwritten instructions to have been drafted if Mr Cottam was being kept in the dark over the transfers.
- 35.4 Ms Sheppard-Jones further submitted that Mr Cottam had been dishonest in accordance with the test in Ivey v Genting Casinos [2017] UKSC 67.
- 35.5 In relation to Allegation 1.1 she submitted that he must have known that transferring client monies from the client account to the office account, over a significant period of time, to the value of over a hundred thousand pounds, which he was not in a position to refund, was dishonest. As an experienced solicitor he should have known that he was not entitled to the money and therefore in transferring it to the office account it was dishonest, even if he intended to return it at a later date. Ms Sheppard-Jones referred the Tribunal to Bultitude v Law Society [2004] EWCA Civ 1853 and submitted that ordinary, decent people would consider it dishonest for a solicitor to take money from client accounts that they were not entitled to.
- 35.6 In relation to Allegation 1.2, Ms Sheppard-Jones submitted that as the sole director of the Firm and an experienced solicitor, Mr Cottam must have known that preparing or causing to be prepared, false invoices in respect of costs that did not exist, in order to justify improper transfers from the client account to the office account, was dishonest and would be considered to be so by the standards of ordinary, decent people.

### Respondent's Submissions

- 35.7 Mr Richardson submitted that the SRA's case was entirely based on inference. TN was not a witness and so had not been present to explain her actions or what was in her mind. He reminded the Tribunal of Mr Cottam's evidence that the invoices and transfers were created and undertaken without his knowledge.
- 35.8 Mr Richardson reminded the Tribunal that the reconciliation invoices were not written by Mr Cottam and did not contain his signature. Mr Richardson told the Tribunal that Mr Cottam accepted that what had taken place was his fault. At the material time, following the arson attack and its consequences, he had not been functioning properly and if he had been, this would not have happened. He had buried his head in the sand and had totally disconnected. He had no specific knowledge of the transfers or the invoices as a result. Mr Richardson highlighted what he submitted were fundamental differences between the genuine invoices and the false invoices.
- 35.9 Mr Richardson submitted that the only link between these matters and Mr Cottam were his comments in the interview, from which Mr Cottam now sought to resile. Mr Richardson accepted that this was an "unattractive position" but submitted that parts of the interview did not make sense. Mr Richardson submitted that Mr Cottam had been answering as the Firm, not on his own behalf. In doing so he had been attempting to take responsibility for something he did not do at a very stressful time, in an interview he had not expected. He was not rational and settled at the time, as his health demonstrated.
- 35.10 Mr Richardson submitted that Mr Cottam had not been dishonest and had not lacked integrity. He reminded the Tribunal that Mr Cottam had tried to sell the premises to make good the shortfall on the client account. He submitted that these were not the actions of a dishonest man.

### The Tribunal's Findings – Allegation 1.1

- 35.11 There was no dispute between the parties that each of the transfers were improper and the Tribunal was satisfied that this was borne out by the evidence. Mr Cottam was the sole director, as well as the COLP and COFA of the Firm. The Tribunal was therefore satisfied that Mr Cottam had allowed the transfers in the sense that he was responsible for them by reason of his role. Mr Cottam had not disputed that analysis.
- 35.12 The central question for the Tribunal was whether Mr Cottam's involvement in it went beyond that and whether he had caused the improper transfers to take place.
- 35.13 The Tribunal reviewed the medical evidence about Mr Cottam's health at the time of these events, between 2016-2018. The following sections were of particular relevance:

*"[REDACTED]" (Dr White, 12 June 2020)*

*"[REDACTED]" (Dr White, 3 January 2023)*

*"[REDACTED]" (Dr White, 3 January 2023)*

*“(h) Comment on Mr Cottam's health and state of mind at the time of the alleged misconduct, if able to do so.*

*[REDACTED].” (Dr Wilkins, 22 September 2023)*

*(i) Comment on Mr Cottam's health and state of mind at the time of the interview with the FIO dated 2nd October 2018 (a transcript of which is included), and whether he was fit for interview, if able to do so.*

*It is impossible to be certain about Mr Cottam's state of mind at the time of the FIO interview on 2nd October 2018. I certainly can't say with authority whether he was fit for interview but Mr Cottam's account was that he was not and he should not have been interviewed immediately after the relevant matters came to light. [REDACTED]. For instance, Mr Cottam seems to have had command of the details of the property sale (pages AP73 and AP74 refer) and was able to recall sums of money without difficulty. In my opinion, the FIO could not have been expected to recognise that Mr Cottam was under any more stress than any other person in similar circumstances.” (Dr Wilkins, 22 September 2023).*

35.14 [REDACTED].

35.15 The Tribunal further noted that Mr Cottam continued to work throughout this period. He had advised and acted for clients and had been involved in dealing with the financial consequences of the fire in 2015. The Tribunal entirely accepted that this fire had a devastating impact on Mr Cottam and that it would undoubtedly have been a highly stressful and anxious time for him as he dealt with the wide-ranging consequences of that criminal act. However, while his judgment may have been impaired, there was no evidence that he was unable to function to the extent that had been suggested on his behalf. The improper transfers took place over a period of more than 18 months and on many occasions. There was no evidence that he was unable to function on all those occasions or continuously throughout that period of time. Mr Cottam was, on his own evidence, more involved in the finances after 2015, albeit reluctantly, as he worked to try to manage the serious situation caused by the fire. It was implausible that he had not properly looked at the ledgers or reconciliations for such an extended period of time.

35.16 The Tribunal was entitled to take account of Mr Cottam's actions after May 2018 when, on his account, he did become aware of the transfers. The obvious course of action would have been to immediately report the matter to the SRA, in line with his duties as a solicitor and as COLP and COFA of the Firm. There had been serious breaches of the SAR and the duty to notify the SRA was obvious and clear. Mr Cottam had not done so and there was no evidence that he was not well enough to have done so. Another obvious step would have been to suspend or dismiss TN if, as Mr Cottam now asserted, she had committed those serious breaches without his knowledge. Mr Cottam had told the Tribunal that he was aware at the time of the severe consequences of breaches of the SAR, particularly when it came to client monies and so he would have fully understood the importance of complying with his duty to report TN's alleged actions to the SRA.

- 35.17 The Tribunal found that the absence of a report to the SRA and the retention of TN was more consistent with Mr Cottam having known about the transfers and having authorised them, than it was with him being unaware until May 2018.
- 35.18 The Tribunal further noted that in his interview with Mr Cassini, he had admitted making the transfers and had not mentioned the role of TN until a year later. There was no evidence that Mr Cottam was unfit to be interviewed. Again, the medical evidence that was produced only went back as far as June 2020, almost two years after the interview. Mr Cottam's position on whether it should have been obvious to Mr Cassini that he was unfit to be interviewed had evolved from that set out in his witness statement to his evidence before the Tribunal. Mr Cassini had not been cross-examined on this point (or at all). The acceptance that Mr Cottam had made the transfers came, not in response to a question or at the end of a long interview, rather it was made as part of an introductory statement at the beginning of the interview. At no point during the remainder of the interview did Mr Cottam clarify or qualify his comment. He did not correct it at any point between the interview and his subsequent meeting with Mr Cassini 15 days later.
- 35.19 The Tribunal further noted that Mr Cottam had given clear and detailed answers to many of Mr Cassini's questions. While there were some matters to which he did not know the answer, the Tribunal did not consider his interview to amount to "gibberish". Mr Cottam sought to rely on some parts of his interview in this regard but not others. The Tribunal found that Mr Cottam had given a truthful and accurate account in his interview and that the failure to mention TN was consistent with that. The Tribunal rejected Mr Cottam's evidence that he had been talking about the Firm as a whole when he had described to Mr Cassini what had taken place. Had he been doing so, he would have mentioned TN as, on his case, she had a central role in what had taken place.
- 35.20 There was no plausible reason for TN to have decided to move significant sums of money out of the client account and to keep Mr Cottam in the dark about it. Taking all the evidence into account, the Tribunal found that Mr Cottam was at the very least aware of the improper transfers taking place and that, by allowing them to continue, he had caused those transfers to occur. The Tribunal therefore found the factual basis of Allegations 1.1 proved on the balance of probabilities.
- 35.21 It followed as a matter of logic from that finding that the breaches of Principles 4, 6 and 10 and the breach of Rule 20.1 of the SAR were also proved on the balance of probabilities, having regard to the vital importance of protecting client monies and the consequent impact on trust in the profession when this did not happen.

## Principle 2

- 32.22 In considering whether Mr Cottam had lacked integrity, the Tribunal 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”.*

32.23 At [101], the Court gave some examples of what may constitute acting without integrity, and making improper transfers out of the client account was listed among them.

32.24 The Tribunal noted that the medical evidence, taken at its highest, did not suggest that Mr Cottam was not responsible for his actions. As referred to in Wingate, the ethical standards of the profession were clear about how client money should be handled. Mr Cottam had caused those monies to be improperly transferred on repeated occasions over an extended period. He had done so in order to keep the business afloat. The Tribunal was satisfied on the balance of probabilities that Mr Cottam had lacked integrity.

### Dishonesty

32.25 The test for considering the question of dishonesty was that set out in Ivey [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.”*

32.26 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 Mr Cottam’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.

32.27 In relation to Mr Cottam’s state of knowledge, the Tribunal found that he was aware of the severe financial difficulties brought about by the arson attack. He was aware that there was a cashflow issue and that paying bills and overheads was challenging. Mr Cottam was also aware of the SAR and his responsibilities to ensure they were complied with. It was clear from Mr Cottam’s evidence that he understood the financial and accounting procedures at the Firm. Against that background, Mr Cottam was also

aware, for the reasons set out above, that the transfers were taking place and that they were improper.

- 32.28 The Tribunal was satisfied on the balance of probabilities that causing those transfers to take place would be considered dishonest by the standards of ordinary decent people on the basis that he had used client monies to bolster the financial position of the Firm. The Tribunal therefore found the allegation of dishonesty proved in relation to Allegation 1.1.

#### The Tribunal's Findings – Allegation 1.2

- 32.29 It was common ground that the invoices were false. The question for the Tribunal was, again, whether Mr Cottam prepared them or caused them to be prepared.
- 32.30 The evidence on this Allegation was not as clear as it was in relation to the transfers. Whereas the transfers could not happen without Mr Cottam's knowledge, the invoices were not something that required Mr Cottam's input. The invoices matched the RCG transfers and provided a narrative that sought to justify them but they were not a necessary ingredient of the process of making the transfers.
- 32.31 Mr Cottam had not made an admission to creating the invoices in his interview with Mr Cassini. The fact that his initials appeared on the false invoices was not sufficient to prove that he had created them.
- 32.32 The Tribunal was not satisfied on the balance of probabilities that the SRA had discharged the burden of proof to show that Mr Cottam had either prepared or caused to be prepared the false invoices. The Tribunal found this Allegation not proved.

#### **Previous Disciplinary Matters**

33. None.

#### **Mitigation**

34. Mr Richardson reminded the Tribunal that until now, Mr Cottam had an unblemished career and was of good character in all respects. He had been the victim of arson and death threats, all of which had led to the circumstances in which he was before the Tribunal. These factors had impacted on his health and his judgment. Mr Richardson submitted that Mr Cottam had made admissions about the transfers and had attempted to make good the shortfall. He had put his business premises up for sale and had offered to sell the family home. He had engaged with the proceedings throughout.
35. Mr Richardson invited the Tribunal to take account of the fact that the Firm was a "one man band" and not a large Firm.
36. Mr Richardson submitted that all of the factors outlined above amounted to exceptional circumstances. Mr Cottam's illness did not arise from pressures of work but from the criminal offences of which he was a victim.

## Sanction

37. The Tribunal had regard to the Guidance Note on Sanctions (June 2022). The Tribunal assessed the seriousness of the misconduct by considering Mr Cottam's culpability, the level of harm caused together with any aggravating or mitigating factors.
38. The Tribunal found a high level of culpability. Mr Cottam's motivation was to prop up the Firm and address the cashflow issues. The misconduct was planned, even if might have initially been spontaneous. Mr Cottam was in a position of trust as a solicitor and custodian of client monies. He had direct control and responsibility as sole director, COLP and COFA. He was an experienced solicitor throughout. The Tribunal acknowledged that Mr Cottam had co-operated with the SRA during the investigation.
39. The harm caused by the misconduct was evident in the shortfall on the client account. This was likely to be met by the SRA Compensation Fund, although there was no evidence either way on this point. The harm to the reputation of the profession was significant.
40. Mr Cottam's misconduct was aggravated by his dishonesty. The improper transfers were deliberate, calculated and repeated and continued over a significant period of time. Mr Cottam had, a year into the investigation, sought to blame TN for the improper transfers. Mr Cottam knew that he was in material breach of his obligations.
41. The misconduct was mitigated to a limited extent by Mr Cottam's repayment of approximately £804 and his attempts to sell the premises. The Tribunal was unable to find genuine insight into the extent of his misconduct as he had tried to avoid responsibility by blaming TN. He had made admissions to the improper nature of the transfers at an early stage and had admitted his responsibility for them, but had subsequently resiled from this.
42. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off, a reprimand, fine or suspension being insufficient to reflect the seriousness of the misconduct. 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 ...*".
43. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis of which question of exceptional circumstances was assessed:

*"First, although it is well-established that what may amount to exceptional circumstances is in no sense prescribed and depends upon the various factors and circumstances of each individual case, it is clear from the decisions in Sharma, Imran and Shaw, that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation is the nature and extent of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty."*

44. In Sharma, factors to consider included 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.
45. The Tribunal considered whether the circumstances in this case were exceptional, having regard to James and Sharma.
46. The Tribunal considered carefully whether the arson and the consequent health problems, which in turn led to the improper transfers, amounted to exceptional circumstances.
47. The Tribunal had already noted that notwithstanding the undoubted impact on Mr Cottam, he continued to work throughout the period with no apparent negative impact on the quality of his representation of clients. In all other respects he was running his business effectively. He did not seek any medical help for his health issues until December 2019, some four years after the arson attack, three years after the improper transfers began and a year after the SRA investigation commenced.
48. A significant difficulty with establishing exceptional circumstances was the number of improper transfers and the period of time over which they occurred. The misconduct was not momentary, there was a benefit to Mr Cottam in that the Firm he owned stayed afloat and it had an adverse effect on clients, whose money was no longer protected as it ought to have been.
49. The Tribunal sympathised with the difficulties faced by Mr Cottam following the fire and did not take them lightly. However, taking all the above factors into account, the Tribunal did not find exceptional circumstances applied in this case. The only appropriate sanction was that Mr Cottam be struck off the Roll.

### **Costs**

50. Ms Sheppard-Jones sought costs in the sum of £32,082.13. This was comprised of £9,982.13 for the investigation costs, £18,500 fixed fee for Capsticks conduct of the proceedings and VAT on the latter. Ms Sheppard-Jones told the Tribunal that Dr Wilkins report and half of Dr White's report had been paid for by the SRA and that this had come out of the fixed fee.
51. The work undertaken amounted to around 320-323 hours, which created a notional hourly rate of approximately £40.
52. Mr Richardson referred to Mr Cottam's statement of means and noted that he was a recently discharged bankrupt. He was of limited means and struggled to make ends meet. In response to a question from the Tribunal as to whether the figures in the statement of means, served in February, were still up to date, having regard to changes to energy prices and interest rates, Mr Richardson told the Tribunal that the figures remained broadly correct.
53. Mr Richardson submitted that some of the Case Management Hearings had gone in Mr Cottam's favour and further that some of the hours claimed appeared disproportionate and ought to be reduced.

### The Tribunal's Decision

54. The Tribunal was satisfied that the costs claimed were reasonable, particularly having regard to the disbursements coming out of the fixed fee. The Tribunal did consider that a reduction was appropriate to reflect the fact that the hearing had not taken the whole of the third day and that one of the two Allegations had not been proved. The result of those reductions brought the total to £20,000.
55. The Tribunal then considered Mr Cottam's means, having regard to Barnes v Solicitors Regulation Authority [2022] EWHC 677 (Admin) and the importance of making a "reasonable assessment of the current and future circumstances" in relation to Mr Cottam's ability to pay. At [46], Cotter J stated:

*"[46] The courts have held for a long time that the guiding principle is that fines, costs and compensation should be capable of being paid off within a reasonable time if imposed in circumstances such as this (i.e. not in ordinary civil litigation). The decision of the tribunal on the reasonable assumption that she had an entitlement to half the monthly surplus would mean that the Appellant would never pay off the debt, on the then current level of remuneration at the time of the hearing (i.e. before she lost her job). I accept, as Mitting J set out, that the Solicitors Regulation Authority does not have the aim of pursuing impecunious solicitors against whom orders have been made and who cannot pay. However, I cannot see how the Authority or the profession is in any way better off leaving to the Enforcement Unit a debt that can never be paid, save in exceptional circumstances. The exceptional circumstances provision can be dealt with by what is known as "a football pools" order. That description may not now be understood by a number of younger people. I believe "a lottery order" would be more widely understood."*

56. At [48] he stated:

*"[48] No proper exercise of discretion under the Rules could, produce an order for costs that will never be satisfied and will remain a burden on a party for life. I reject Ms Culleton's submission to the contrary i.e. that that is a proper order open to the tribunal even given the exercise of its generous discretion. Nor, as I have stated, can it be correct to leave what is effectively an unrecoverable debt to the Recovery Unit in the hope that it will then take a reasonable view. The tribunal itself is the one with the regulatory requirement to consider means and the Unit should only be required to recover debts which the tribunal considered to be properly recoverable."*

57. Mr Cottam's means had not been challenged by the SRA. He was a recently discharged bankrupt and had significant outgoings. The Tribunal assessed that a reasonable timeframe to pay the costs would be approximately three years and his financial position enabled him to pay around £110 per month. The Tribunal therefore decided to reduce the costs to £4,000. The Tribunal emphasises that details of instalments and timescales for payment do not form part of the Tribunal's Order and this will be a matter for Mr Cottam and the SRA to arrange.

**Statement of Full Order**

58. The Tribunal ORDERED that the Respondent, HARRY FRANCIS COTTAM 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 £4,000.00.

Dated this 14<sup>th</sup> day of November 2023

On behalf of the Tribunal

**JUDGMENT FILED WITH THE LAW SOCIETY**

**14 NOV 2023**

*L Boyce*

L Boyce

Chair