

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12339-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

BRIAN SARNEY

Respondent

Before:

Mrs C Evans (in the chair)

Mr G Sydenham

Ms E Keen

Date of Hearing: 28 September 2022.

Appearances

Andrew Bullock, counsel, of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent, Mr Brian Sarney, by the SRA are that, while in practice as the Recognised Sole Practitioner and Owner of Roger Dean & Co, whose head office address was 134a Main Road, Biggin Hill, Westerham, TB16 3BA (the Firm):

Allegation 1

- 1.1 Between 4 October 2017 and 18 June 2021, by making or allowing to be made improper withdrawals totalling £200,247.86 from two client matters ledgers, resulting in a shortage on the Firm's client account in that sum, he breached all or any of:

For the period up to 25 November 2019

- 1.1.1 Principle 2 of the SRA Principles 2011;
- 1.1.2 Principle 6 of the SRA Principles 2011;
- 1.1.3 Principle 10 of the SRA Principles 2011;
- 1.1.4 Rule 1.2 (a) of the SRA Accounts Rules 2011;
- 1.1.5 Rule 1.2 (c) of the SRA Accounts Rules 2011;
- 1.1.6 Rule 20.1 of the SRA Accounts Rules 2011;
- 1.1.7 Rule 20.3 of the SRA Accounts Rules 2011;

For the period from 25 November 2019

- 1.1.8 Principle 2 of the Principles;
- 1.1.9 Principle 4 of the Principles;
- 1.1.10 Principle 5 of the Principles; and
- 1.1.11 Rule 5.1 of the Accounts Rules.

- [Allegation 1.1 was found PROVED in its entirety.](#)

- 1.2 Between 6 October 2017 and 20 December 2018, by making or causing to be made improper transfers totalling £55,521.50 from the client matter ledger for Client C, resulting in a shortage on the Firm's client account in that sum, he breached any or all of:

- 1.2.1 Principle 2 of the SRA Principles 2011;
- 1.2.2 Principle 6 of the SRA Principles 2011;
- 1.2.3 Principle 10 of the SRA Principles 2011;
- 1.2.4 Rule 1.2 (a) of the SRA Accounts Rules 2011;
- 1.2.5 Rule 1.2 (c) of the SRA Accounts Rules 2011;
- 1.2.6 Rule 20.1 of the SRA Accounts Rules 2011;
- 1.2.7 Rule 20.3 of the SRA Accounts Rules 2011;

- [Allegation 1.2 was found PROVED in its entirety.](#)

- 1.3 By causing or allowing a minimum shortage of £232,341.59 as at 31 August 2021 to occur in respect of the Firm's client account he breached any or all of:

- 1.3.1 Principle 2 of the Principles;
 - 1.3.2 Principle 4 of the Principles; and
 - 1.3.3 Principle 5 of the Principles;
- [Allegation 1.3 was found PROVED in its entirety.](#)
- 1.4 By failing to remedy the minimum cash shortage of £232,341.59 on client account as at 31 August 2021 promptly or at all, he breached all or any of:
- 1.4.1 Principle 2 of the Principles;
 - 1.4.2 Principle 4 of the Principles;
 - 1.4.3 Principle 5 of the Principles; and
 - 1.4.4 Rule 6.1 of the Accounts Rules.
- [Allegation 1.4 was found PROVED in its entirety.](#)
- 1.5 From 7 August 2020 at the latest, by providing incorrect information to the beneficiaries of the estate of Client A which were untrue and misleading and which he knew to be untrue and misleading at the time, he breached all or any of:
- 1.5.1 Principle 2 of the Principles;
 - 1.5.2 Principle 4 of the Principles; and
 - 1.5.3 Principle 5 of the Principles.
- [Allegation 1.5 was found PROVED in its entirety.](#)
- 1.6 From 16 June 2016, by failing to provide full and accurate information to the residuary beneficiary of Estate B he breached any or all of:

For the period up to 25 November 2019

- 1.6.1 Principle 2 of the Principles 2011;and
- 1.6.2 Principle 6 of the Principles 2011;

For the period from 25 November 2019

- 1.6.3 Principle 2 of the Principles;
 - 1.6.4 Principle 4 of the Principles; and
 - 1.6.5 Principle 5 of the Principles.
- [Allegation 1.6 was found PROVED in its entirety.](#)

Allegation 2

2. In addition, dishonesty is alleged as an aggravating feature of allegations 1.1, 1.2 and 1.6 up to 25 November 2019 but is not an essential ingredient in proving those allegations.
- [Allegation 2 was found PROVED in its entirety.](#)

Executive Summary

Sanction

3. Mr Sarney was struck from the Roll of Solicitors and Ordered to pay the Applicant's costs of £21,205.30.

Documents

4. The Tribunal considered all of the documents in the case which included:
 - Rule 12 Statement dated 31 May 2022 and Exhibit ECP1.
 - Mr Sarney's Answer to the Rule 12 Statement dated 10 August 2022 in which admissions to the facts alleged and breaches were admitted. Dishonesty was denied.
 - Mr Sarney's email to the Applicant dated 26 September 2022 timed at 11:57am in which he stated:

“... After careful consideration I accept that it would be appropriate for me to be struck off the Roll of Solicitors...”

Factual Background

5. Mr Sarney was admitted to the Roll of Solicitors on 1 December 1977. In May 1998 he began trading on his own account as the Recognised Sole Practitioner and Owner of the Firm. Mr Sarney was the Firm's Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance Administration (COFA). As at the time of the substantive hearing Mr Sarney did not hold a Practising Certificate. His Practising Certificate for the year 2021-2022 was suspended on 10 January 2022 following a Decision by an Adjudication Panel of the SRA to intervene into the Firm.
6. The Firm employed an individual called Mr Simon Innes as a trainee solicitor between 10 May 2014 and 9 December 2015, and from 16 January 2016 he was employed as an Associate Solicitor. Mr Innes worked from the Firm's office at 423 – 425 Crofton Road, Orpington, BR6 8NL under the trading name of McNair Wilson Innes & Co, The Firm also employed two unadmitted members of staff.
7. On or around 23 November 2020 the Firm's accountants (DAS) produced a qualified accountant's report for the Firm, for the period 1 May 2019 – 30 April 2020 (the Accountant's Report). The Accountant's Report identified a number of breaches of the SRA Accounts Rules including a shortage on client account of £13,419.89 on 31 January 2020 and a shortage on client account of £15,054.75 on 30 April 2020.
8. The Accountant's Report was received by the Applicant in June 2021. As a result of the concerns raised in the Accountant's Report, the Investigation & Supervision Department of the SRA commissioned a forensic investigation into the Firm.

9. On 28 September 2021 a forensic investigation officer of the SRA (“the FIO”) commenced an inspection of the books of accounts and other documents of the Firm, pursuant to that commission at the Firm’s head office (“the Inspection”) which culminated in a forensic investigation report (“the FIR”) dated 26 November 2021.
10. The Respondent was the sole signatory on the client bank account and was the only person who could operate the Firm’s online banking system. He also maintained the Firm’s books of accounts, wrote up the client cash book and posted to client ledger accounts. Cheques and manual CHAPs payments were authorised by the Respondent’s signature.
11. The FIO could not determine the full extent of the Firm’s liabilities to clients due to the unreliability of the Firm’s books of account, however the FIR reports a minimum client cash shortage of £232,341.59 as at the extraction date of 31 August 2021.
12. The FIO was able to determine a shortage of £200,427.86 on the Firm’s client account was caused by improper payments and inter-ledger transfers made from two probate matters, relating to the estates of Client A and Client B, for which the Respondent was the sole executor. The FIO also identified a further shortage of £31,913.73 was caused by improper payments which were charged to conveyancing matters on behalf of Client C.
13. The FIO further identified other issues relating to the files for the estates of Client A and Client B.
14. On 10 January 2022 a Decision was made by a Panel of Adjudicators of the SRA to intervene into the practice of the Respondent and the Firm on the grounds of reason to suspect dishonesty by the Respondent in connection with his practice as a solicitor, and his failure to comply with rules made by the SRA (“the Decision”).
15. The Firm was closed as a consequence of the intervention on 12 January 2022.

Witnesses

16. The written 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. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read or consider that evidence.
17. For the avoidance of doubt, no oral evidence was advanced by either the Applicant or Mr Sarney.

Findings of Fact and Law

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

the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

19. Allegation 1.1: Improper withdrawals totalling £200,247.86 regarding Clients A and B

Applicant's Case

Estate A

- 19.1 Mr Sarney was the sole executor of Estate A in respect of which eight beneficiaries were named in Client A's will.
- 19.2 The FIR identified that between 4 October 2017 and 18 June 2021 five transfers were improperly made from the client matter ledger relating to Estate A to unrelated client matters. The largest of those transfers was £50,000.00 on 4 October 2017 and the smallest was £1,675.00 on 18 June 2021.
- 19.3 None of the transfers were made to the beneficiaries of Client A's Will.
- 19.4 On 4 October 2017, £50,000 was transferred from the ledger for Estate A to an unconnected client ledger, Client D. On that same day Client D had written to the Respondent confirming that it would repay the sum of £50,000 plus interest, following which the sum of £50,000 was transferred to Client D's bank account. Prior to the transfer of £50,000 from Estate A, there was insufficient funds on the Client D matter ledger to fund the payment to Client D.
- 19.5 Client D was dissolved on 26 February 2019.
- 19.6 When asked about the £50,000 'loan' payment during interview by the FIO on 4 November 2021, Mr Sarney stated that he hadn't asked Client D for the loan to be paid, but:
- “...I don't think that the estate would ever be at risk because if we can't get the money back from the company then I'll have to pay it myself. But the estate won't lose out...”
- 19.7 Notwithstanding that assertion, there was no record of Client D having repaid the loan.
- 19.8 Transfers for £4,685.00 and £5,130.19 were improperly made from the client matter ledger for Estate A to pay Stamp Duty Land Tax fees on two separate and unconnected client matters, for Clients E and G.
- 19.9 Further transfers of £3,415.09 and £1,675.00 were improperly made to a further two totally unconnected client matters from the ledger for Estate A, to pay outstanding legal fees owing to separate solicitors in respect of Client F and to rectify an error on a completion statement in respect of Client H.

19.10 None of those payments were to, or for the benefit of, the beneficiaries named in Client A's Will, and to whom the monies received into Estate A were due.

Estate B

19.11 Mr Sarney was the sole executor of Estate B in respect of which there were two charitable beneficiaries named in Client B's Will.

19.12 After all assets had been collected, and a number of liabilities connected with the administration of the Estate had been paid, including a payment of £2,000 to the first beneficiary of Estate B as provided for in Client B's Will, there was an outstanding balance of £185,689.62 on the client ledger for Estate B up to 1 June 2017.

19.13 Between 18 September 2018 7 May 2021 seven payments transactions totalling £135,522,58 were improperly withdrawn from the client matter ledger relating to Estate B. The largest of those transfers was £45,275.01 on 24 July 2019 and the smallest was £11454.91 on 7 May 2021.

19.14 Two of those transfers were distributions made to two of the beneficiaries of Estate A, which was totally unconnected to Estate B. (Payments were subsequently transferred back to the ledger for Estate B in respect of these two payments). Four of these transfers were used to pay Stamp Duty Land Tax fees on unconnected client matters. One transfer was used to minimise improper transfers made from ledgers relating to Client C1 and another was used to make payments to Client C2.

19.15 During his interview with the FIR on 4 November 2021, Mr Sarney stated that where money was transferred from the ledgers of Estate A and Estate B to fund external payments there was generally a need for expediency. However, he accepted that:

“on reflection it [using monies from one client ledger to fund external payments on an entirely unconnected and separate client matter] wasn't [the right thing to do], no”

19.16 When asked by the FIR during interview Mr Sarney accepted that he had not been acted in the best interests of Estate B to in using monies held for the benefit of that estate to pay the Firm's tax liabilities.

19.17 When asked whether he viewed himself as dishonest Mr Sarney stated:

“I wouldn't say I'm dishonest. I think I've struggled to keep the practice afloat at times. But as I say, the intention has always been to pay the money back and it will be paid back at some point” and that at the time “I knew it wasn't the right thing to do”

SRA Accounts Rules 2011 and 2019

19.18 Rules 1.2(a) and (c) of the 2011 Rules required Mr Sarney to keep client money separate from money belonging to the Firm. He failed to do so by using client money for transactions beyond the remit of the client matter. Mr Bullock submitted that in so doing he breached Rules 1.2(a) and (c).

19.19 Rule 20.1 and 20.3 of the 2011 Rules and Rule 5.1 of the 2019 Rules govern the permitted circumstances in which client money and office money can be withdrawn from the client account. The transactions undertaken in relation to Client A and Client B's estates were outwith the permitted circumstances. Mr Bullock therefore submitted that Mr Sarney breached Rules 20.1 and 20.3.

Principle Breaches

19.20 Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles required Mr Sarney to act with integrity. In Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366 Jackson L.J determined that integrity (i.e., moral soundness, rectitude and steady adherence to an ethical code) connoted adherence to the ethical standards of one's own profession.

19.21 Mr Bullock submitted that a solicitor of integrity would understand that money held on client account belonged to his clients and was therefore to be treated as sacrosanct. He would be astute to ensure that sums were not transferred from the ledger of one client into the ledger of another, or into office account otherwise than for the purposes of a payment properly due to the solicitor. Under no circumstances would such a solicitor transfer money into office account otherwise than for the purpose of such a payment, nor would he transfer monies between unconnected client ledgers without a proper reason to do so.

19.22 By making unauthorised withdrawals from two client ledgers to other unconnected client ledgers, or for the benefit of his Firm in settling its tax liability to HM Revenue & Customs, he failed to act with integrity, and in doing so breached Principle 2 of the SRA Principles 2011 for the period up to 25 November 2019 and Principle 5 of the Principles for the period thereafter.

19.23 Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles required Mr Sarney to behave in a way that maintained public trust in them and in the provision of legal services.

19.24 Mr Bullock submitted that the public expected solicitors to ensure that money held on client account was only used for legitimate purposes in connection with that client's matter. A solicitor transferring or withdrawing monies in circumstances other than those permitted by the SRA Accounts Rules into unrelated client matter ledgers, or for the benefit of the Firm itself, leaving a shortage on the Firm's client account, would necessarily impair the good repute of, and diminish the trust the public placed in, him and in the legal profession.

19.25 Mr Bullock further submitted that by making or causing to be made such withdrawals, the Respondent failed to behave in a manner which maintained the trust the public placed in him and in the provision of legal services, and in doing so breached Principle 6 of the SRA Principles 2011 for the period up to 25 November 2019. He also failed to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons and therefore breached Principle 2 of the Principles for the period from 25 November 2019.

- 19.26 Principle 10 of the SRA Principles 2011 required Mr Sarney to protect client money and assets.
- 19.27 Mr Bullock submitted that by failing to ensure that the monies held in respect of Estates A and B were used solely for the benefit of the beneficiaries of those two estates, the Respondent failed to protect clients' money and assets, and therefore breached Principle 10.
- 19.28 Mr Bullocks' submissions regarding breach of Principle 4 (dishonesty) is addressed below at §25.1 - §25.5.

Respondent's Position

- 19.29 Mr Sarney admitted the factual matrix of Allegation 1.1, breach of Principles 2, 8 and 10 of the 2011 Principles, breach of Rule 1.2(a), 1.2(c), 20.1 and 20.3 of the 2011 Accounts Rules, breach of Principles 2, 4 and 5 of the 2019 Principles, breach of Rule 5.1 of the 2019 Accounts Rules and dishonesty as an aggravating feature prior to 25 November 2019.

The Tribunal's Decision

- 19.30 The Tribunal noted that Mr Sarney had admitted the factual matrix and breaches alleged throughout the Tribunal proceedings. The Tribunal considered that those admissions were properly made and accepted the same. The Tribunal further noted that, prior to his email of 26 September 2022, Mr Sarney had denied that his conduct was dishonest. At the outset of the hearing, the Tribunal sought clarification from Mr Sarney as to his position in that regard. Mr Sarney stated that, having considered the authorities relied upon by the Applicant (predominantly Ivey), he accepted that his conduct was dishonest. The Tribunal considered Mr Sarney's position and determined that his admission to dishonesty was properly made thus accepted the same.
- 19.31 The Tribunal therefore found, on the evidence before it and the admissions made, Allegation 1.1 proved in its entirety. The Tribunal's findings with regards the aggravating feature of dishonesty is set out below at §25.7.

20. Allegation 1.2: Improper withdrawals totalling £55,521.50 regarding Client C

Applicant's Case

- 20.1 The Firm was instructed by Client C, an employee of the Firm, in connection with multiple property transactions all of which were recorded in one ledger. There are no completion statements on the client file relating to Client C's matters.
- 20.2 The client matter ledger for Client C showed that between 4 September and 23 October 2017 nine transactions occurred on this matter. Two of these payments were used to pay the salary of Client C. One of these payments was replaced with a transfer from the Firm's business account, which left a shortage of £8,000.00 on the ledger.

20.3 Further activity on the ledger for Client C showed that six further transactions occurred between 12 December 2017 and 29 November 2018. One of those payments was for £20,000.00 to pay the Firm's tax liability. Mr Sarney confirmed in interview with the FIO that this payment related to the Firm's tax liabilities and asserted that:

“... the tax people were pressing for paymentI think it was just a question of we had a cash flow difficulty at the time and it was just a question of the money needed to be paid...”

20.4 Four further payments were made from the client matter ledger for Client C in respect of his own salary on 28 November, 30 November and two payments on 20 December 2018 totalling £27,521.50.00.

20.5 A total of £55,521.50 was therefore improperly transferred from Client C's matter. A payment of £23,607.77 was improperly transferred to Client C's matter from monies being held on the unconnected matter of Client B, leaving a shortage of £31,913.73 being left in respect of Client C's matter.

20.6 Client C confirmed that it did not authorise the Respondent to make salary payments from the monies held on its client matter ledger.

20.7 When asked about that by the FIO, Mr Sarney stated that he:

“... wouldn't think it's an appropriate thing to do. I can't recall the precise circumstances of why it was done...”

20.8 He further stated that he made the payment for £20,000 in respect of PAYE on 10 July 2018 because:

“... I think just the tax people were pressing for payment so we needed to make a payment to them” and “we had a cash flow difficulty at the time...”

SRA Accounts Rules 2011

20.9 Mr Bullock submitted that by making or causing to be made such unauthorised withdrawals from Client C's client matter ledger, in circumstances other than those permitted by the rules, Mr Sarney breached Rules 20.1 and 20.3 of the SRA Accounts Rules 2011.

20.10 Mr Bullock submitted that by using money belonging to Client C to pay the Firm's tax liabilities, and its salary commitments, Mr Sarney failed to keep other people's money separate from money belonging to the Firm and failed to use client's money for that client's matters only, and therefore also breached Rules 1.2 (a) and (c) of the SRA Accounts Rules 2011.

Principle Breaches

20.11 Mr Bullock submitted that a solicitor of integrity would understand that money held on client account belonged to his clients and was therefore to be treated as sacrosanct. He would be astute to ensure that sums were only used for the benefit of that client and not

used for the benefit of the Firm and would only transfer monies from the client ledger into the Firm's office account for the purposes of a payment properly due to the solicitor. Under no circumstances would such a solicitor use those monies to pay the Firm's tax liabilities or salary payments.

- 20.12 By making unauthorised withdrawals from Client C's client ledger for the benefit of his Firm in settling its tax liability to HM Revenue & Customs, and in respect of Client C's salary, Mr Sarney failed to act with integrity, and in doing so breached Principle 2 of the 2011 Principles.
- 20.13 Mr Bullock submitted that the public would expect a solicitor to ensure that money held on client account was only used for legitimate purposes in connection with that client's matter. A solicitor transferring or withdrawing monies in circumstances other than those permitted by the SRA Accounts Rules 2011 for the benefit of the Firm itself, leaving a shortage on the Firm's client account, would necessarily impair the good repute of, and diminish the trust the public placed in, him and in the legal profession.
- 20.14 By making or causing to be made such withdrawals, Mr Sarney failed to behave in a manner which maintained the trust the public placed in him and in the provision of legal services, and in doing so breached Principle 6 of the 2011 Principles.
- 20.15 Mr Bullock submitted that by failing to ensure that the monies held in respect of Client C were used solely for that client's benefit the Respondent failed to protect clients' money and assets, and in doing so breached Principle 10 of the 2011 Principles.
- 20.16 Mr Bullocks' submissions regarding the aggravating feature of dishonesty is addressed below at §25.1 - §25.5.

Respondent's Position

- 20.17 Mr Sarney admitted the factual matrix of Allegation 1.2, breach of Principles 2, 6 and 10 of the 2011 Principles, breach of Rule 1.2(a), 1.2(c), 20.1 and 20.3 of the 2011 Accounts Rules.

The Tribunal's Decision

- 20.18 The Tribunal noted that Mr Sarney had admitted the factual matrix and breaches alleged throughout the Tribunal proceedings. The Tribunal considered that those admissions were properly made and accepted the same. The Tribunal further noted that, prior to his email of 26 September 2022, Mr Sarney had denied that his conduct was dishonest. At the outset of the hearing, the Tribunal sought clarification from Mr Sarney as to his position in that regard. Mr Sarney stated that, having considered the authorities relied upon by the Applicant (predominantly Ivey), he accepted that his conduct was dishonest. The Tribunal considered Mr Sarney's position and determined that his admission to dishonesty was properly made thus accepted the same.
- 20.19 The Tribunal therefore found on the evidence before it and the admissions made, Allegation 1.2 proved in its entirety. The Tribunal's findings with regards the aggravating feature of dishonesty is set out below at §25.7.

21. Allegation 1.3 - Causing or allowing a minimum cash shortage of £232,341.59

Applicant's Case

- 21.1 Due to the paucity of the Firm's accounting records, the FIO was unable to calculate the full extent of the Firm's liabilities to clients. He was however able to determine that a minimum cash shortage of £232,341.59 existed on the Firm's client account, in respect of the Client matter ledgers for Clients A, B and C as at the extraction date of 31 August 2021.
- 21.2 During his interview with the FIO, Mr Sarney accepted that the sum of £232,341.59 was missing from the Firm's client bank account.

Principle Breaches

- 21.3 Mr Bullock submitted that the public would expect a solicitor to ensure that he complied with proper and sound financial principles and rules imposed by his regulator, in order to protect monies entrusted to him by his clients in respect of the matters in which he was instructed and that he ensured that client monies were only used to make legitimate payments relating to that client's matter. The public would not expect a solicitor to allow a cash shortage to occur on his Firm's client account.
- 21.4 By allowing a minimum cash shortage of £232,341.59 to occur as at 31 August 2021 Mr Sarney failed to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons and therefore breached Principle 2 of the 2019 Principles.
- 21.5 Mr Bullock submitted that a solicitor of integrity, acting in accordance with the high ethical standards of the solicitors' profession, would understand that money held on client account belonged to others and was therefore to be treated as sacrosanct. He would ensure that under no circumstances would monies to be transferred out of client account in circumstances other than those permitted by Rule 5.1 of the Accounts Rules (2019) and which would result in a cash shortage occurring on that client account.
- 21.6 By allowing such a shortage to occur, with a minimum value of £232,341.59 the Respondent failed to act with integrity and therefore breached Principle 5 of the 2019 Principles.
- 21.7 Mr Bullocks' submissions regarding breach of Principle 4 (dishonesty) is addressed below at §25.1 - §25.5.

Respondent's Position

- 21.8 Mr Sarney admitted the factual matrix of Allegation 1.3, breach of Principles 2, 4 (dishonesty) and 5 of the 2019 Principles.

The Tribunal's Decision

- 21.9 The Tribunal noted that Mr Sarney had admitted the factual matrix and breaches alleged throughout the Tribunal proceedings. The Tribunal considered that those admissions

were properly made and accepted the same. The Tribunal further noted that, prior to his email of 26 September 2022, Mr Sarney had denied that his conduct was dishonest. At the outset of the hearing, the Tribunal sought clarification from Mr Sarney as to his position in that regard. Mr Sarney stated that, having considered the authorities relied upon by the Applicant (predominantly *Ivey*), he accepted that his conduct was dishonest. The Tribunal considered Mr Sarney's position and determined that his admission to dishonesty was properly made thus accepted the same.

21.10 The Tribunal therefore found on the evidence before it and the admissions made, Allegation 1.3 proved in its entirety.

22 Allegation 1.4: Failure to promptly remedy the shortage on client account

Applicant's Case

22.1 During interview with the FIO on 4 November 2021, Mr Sarney had not replaced the minimum cash shortage of £232,341.59 notwithstanding his acceptance that the sum was missing from the Firm's client bank account. He stated that:

“... [he] had struggled to keep the practice afloat at times. But, as I say, the intention has always been to pay the money back and it will be paid back at some point...”

22.2 Mr Sarney had not replaced the minimum shortage on the Firm's client account by the time the Firm was intervened into by the SRA on 12 January 2022.

SRA Accounts Rules 2019

22.3 Rule 6.1 required Mr Sarney to correct any breaches of those rules promptly upon discovery, with any money that is improperly withdrawn from a client account being immediately replaced.

22.4 Mr Bullock submitted that by failing to remedy the minimum cash shortage of £232,341.59 on the Firm's client account, promptly on discovery or at all, Mr Sarney breached Rule 6.1.

2019 Principles

22.5 Mr Bullock submitted that A the public would expect a solicitor to ensure that steps were taken as soon as possible to remedy any shortage that occurred on a firm's client account, in order to protect all client monies held by him.

22.6 Mr Bullock submitted that by failing to take any steps to remedy the minimum cash shortage of £232,341.59 that had occurred on the Firm's client account Mr Sarney failed to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. He therefore breached Principle 2.

22.7 Mr Bullock submitted that a solicitor of integrity would understand that money held on client account belonged to others and was therefore to be treated as sacrosanct. He would therefore ensure that under no circumstances would a shortage be allowed to

occur on client account and if such a shortage were to occur, he would ensure that steps were made to remedy that shortage as soon as possible.

- 22.8 Mr Bullock submitted that by failing to take any steps to promptly rectify that shortage, Mr Sarney lacked integrity and breached Principle 5.
- 22.9 Mr Bullocks' submissions regarding breach of Principle 4 (dishonesty) is addressed below at §25.1 - §25.5.

Respondent's Position

- 22.10 Mr Sarney admitted the factual matrix of Allegation 1.4, breach of Principles 2, 4 (dishonesty) and 5 of the 2019 Principles and breach of Rule 6.1 of the 2019 Accounts Rules.

The Tribunal's Decision

- 22.11 The Tribunal noted that Mr Sarney had admitted the factual matrix and breaches alleged throughout the Tribunal proceedings. The Tribunal considered that those admissions were properly made and accepted the same. The Tribunal further noted that, prior to his email of 26 September 2022, Mr Sarney had denied that his conduct was dishonest. At the outset of the hearing, the Tribunal sought clarification from Mr Sarney as to his position in that regard. Mr Sarney stated that, having considered the authorities relied upon by the Applicant (predominantly Ivey), he accepted that his conduct was dishonest. The Tribunal considered Mr Sarney's position and determined that his admission to dishonesty was properly made thus accepted the same.
- 22.12 The Tribunal therefore found on the evidence before it and the admissions made, Allegation 1.4 proved in its entirety.

23. Allegation 1.5 - Providing untrue and misleading information

Applicant's Case

- 23.1 Client A died on 19 July 2016 and probate was granted on 11 November 2016. Client A's Will, dated 6 June 2014, bequeathed the residue of Client A's estate to eight beneficiaries in equal shares, five of whom were relatives. The remaining three were charitable beneficiaries. Various payments were made to the individual and charitable beneficiaries.
- 23.2 During the investigation, Mr Sarney provided the FIO with an undated set of Estate Accounts which he stated were the most up to date set of estate accounts. Those accounts did not accurately reflect the transactions that had been recorded on the ledger up to the point that those accounts were created. The most significant discrepancies included a receipt from HSBC for £13,099.98 that was not included, two payments of £22,483.04 that were included in the estate accounts for Estate A but were recorded on the client ledger for Estate B and transfers totalling £58,100.09 that were improperly made from the ledger for Estate A but not recorded in the estate accounts.

- 23.3 From 8 October 2020 there were additional transactions on the ledger for Estate A which were not reflected in the estate accounts, or any updated estate accounts which included three payments received from Legal & General totalling £100,477.05, a payment of £2,483.84 to a beneficiary under the Will, which had been included in the estate accounts before it had been paid, transfers to the ledger of Client B to replace the two transfers of £22,483.04 made from that ledger to the beneficiaries of Estate A and various improper transfers totalling £6,805.19 made to other ledgers.
- 23.4 The estate accounts only referred to two payments of £156,466.83 and £159.02 from Legal & General. However, the Firm had also received payments totalling £100,477.05 which were referred to as 'Legal & General' in the client matter ledger, but not included in the estate accounts.
- 23.5 Similarly, a total of £17,074.13 was received by the Firm from HSBC, but only £3,974.15 was included in the accounts for Estate A. The Firm also received a letter on 1 July 2021 which suggested that there is £30,181.43 in assets which has not yet been called in.
- 23.6 When asked in interview by the FIO whether the transfers to other ledgers should have been included in the estate accounts for Estate A Mr Sarney replied:
- “... Yes, I think on reflection they ought to have been included, yes...”
- 23.7 He further stated that he had not made the beneficiaries aware of the monies received, which are in excess of £100,000, after the last distributions were made in September 2020.
- 23.8 With regards to providing misleading estate accounts to the beneficiaries in respect of Estate A Mr Sarney admitted that he took a decision not to include the three improper transfers to other ledgers in the estate accounts.
- 23.9 As the file holder, and the sole executor, the Respondent was aware that the transfers that he was making, or causing to be made, from the client matter ledger for Estate A were being improperly made to completely unconnected client matter ledgers. He was also aware of the payments that were being received by the Firm in respect of Estate A, some of which were not being correctly recorded in the estate accounts which were subsequently sent to the beneficiaries of Estate A.
- 23.10 Further, Mr Sarney would have been aware that the beneficiaries did not have this knowledge, and that they would rely on the information contained in the estate accounts that he prepared and sent to them, despite his knowing that they did not accurately reflect the true position regarding the monies received on behalf of Client A's estate.

Principle Breaches

- 23.11 Mr Bullock submitted that the public would expect a solicitor to be truthful in all of his dealings with his client and other individuals. Public trust and confidence in Mr Sarney, in the solicitors' profession and in legal services provided by authorised persons was likely to be undermined by a solicitor providing untrue and misleading information to beneficiaries of his client's estate.

- 23.12 Mr Bullock therefore submitted that Mr Sarney failed to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons and therefore breached Principle 2.
- 23.13 Mr Bullock submitted that a solicitor of integrity would ensure that all information that he gave to his clients, or any other parties is strictly true and accurate. He would not provide them with untrue or misleading information.
- 23.14 Mr Bullock further submitted that Mr Sarney knew, or at least should have realised, that providing the beneficiaries with such untrue information, and failing to notify them of additional payments received by the Firm, might mislead them into thinking that they had received all of the monies to which they were entitled, when this was not the case. By doing so he failed to act with integrity and therefore breached Principles 5 of the Principles.
- 23.15 Mr Bullock's submissions regarding breach of Principle 4 (dishonesty) is addressed below at §25.1 - §25.5.

Respondent's Position

- 23.16 Mr Sarney admitted the factual matrix of Allegation 1.5 and breach of Principles 2, 4 (dishonesty) and 5 of the 2019 Principles.

The Tribunal's Decision

- 23.17 The Tribunal noted that Mr Sarney had admitted the factual matrix and breaches alleged throughout the Tribunal proceedings. The Tribunal considered that those admissions were properly made and accepted the same. The Tribunal further noted that, prior to his email of 26 September 2022, Mr Sarney had denied that his conduct was dishonest. At the outset of the hearing, the Tribunal sought clarification from Mr Sarney as to his position in that regard. Mr Sarney stated that, having considered the authorities relied upon by the Applicant (predominantly Ivey), he accepted that his conduct was dishonest. The Tribunal considered Mr Sarney's position and determined that his admission to dishonesty was properly made thus accepted the same.
- 23.18 The Tribunal therefore found on the evidence before it and the admissions made, Allegation 1.5 proved in its entirety.

24. Allegation 1.6: Failure to provide full and accurate information

Applicant's Case

- 24.1 Mr Sarney was the sole executor of Estate B. There were two charitable beneficiaries to Client B's will, with one due to receive £2,000 and the second to receive the residuary balance (the Residuary Beneficiary).
- 24.2 After all assets had been collected, and a number of liabilities connected with the administration of the Estate had been paid, including a payment of £2,000 to the first beneficiary of Estate B, there was an outstanding balance of £185,689.62 on the client ledger for Estate B up to 1 June 2017.

- 24.3 Between 18 September 2018 7 May 2021 seven transactions totalling £135,522,58 were improperly made from the client matter ledger relating to Estate B. The largest of these was a payment of £45,275.01 on 24 July 2019 and the smallest was a transfer to another ledger and subsequent payment of £1,454.91 on 7 May 2021.
- 24.4 None of those payments or transfers were made to the residuary beneficiary. The FIO could find no evidence that the residuary beneficiary had even been contacted by Mr Sarney.
- 24.5 When asked why he had not notified the residuary beneficiary to advise it that it was the residuary beneficiary of Estate B, Mr Sarney stated that they normally only notify beneficiaries once they were in a position to distribute, but that there wasn't "any particularly valid reason" for the delay in finalising the estate, which he estimated would have taken about half a day.
- 24.6 As the file holder, and the sole executor, Mr Sarney was aware of the transfers that he was making, or causing to be made, from the client matter ledger for the estate of Client B, and that several of these transfers were being improperly made to completely unconnected client ledgers. He was also aware that Client B had named a residuary charitable beneficiary, which was entitled to a significant sum of money, but had failed to either notify that residuary beneficiary of its entitlement, or to forward the sums owing to it.
- 24.7 Mr Sarney was also aware that he was using the funds that were due to the residuary beneficiary to transfer to other client matters to rectify mistakes and/or for the benefit of other clients or the Firm itself.
- 24.8 Mr Bullock submitted that Mr Sarney would have clearly known that the Residuary Beneficiary did not have this knowledge, and that the only way it would be aware of the monies left to it by Client B would be for Mr Sarney to notify it.

Principle Breaches

- 24.9 Mr Bullock submitted that Mr Sarney knew, or at least should have realised, that his failure to notify the residuary beneficiary of the monies it was due to receive from Estate B, would either (a) mislead it into thinking that Client B had not in fact left them any money, or (b) would mean that they never realised that it was due to receive a significant sum from the estate of Client B, when this was not the case.
- 24.10 Mr Bullock further submitted that a solicitor of integrity was always careful to ensure that it provides its client and others with full and honest information. By failing to advise the residuary beneficiary of Estate B, who should be treated as a client of the Firm, of its entitlement to a significant sum of money left to it when he was fully aware of Client B's wishes in that regard Mr Sarney failed to act with integrity and therefore breached Principle 2 of the SRA Principles 2011 for the period up to 25 November 2019 and Principle 5 of the Principles thereafter.
- 24.11 Mr Bullock contended that the public expected a solicitor to be truthful in all of their dealings with clients and others. Public trust and confidence in Mr Sarney, in the solicitors' profession and in legal services provided by authorised persons was likely to

be undermined by a solicitor failing to provide full information to the residuary beneficiary of their client's estate.

24.12 Mr Bullock further averred that Mr Sarney failed to behave in a manner which maintained the trust the public placed in him and in the provision of legal services, and in so doing breached Principle 6 of the SRA Principles 2011 for the period up to 25 November 2019. He also failed to act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons and therefore breached Principle 2 of the Principles for the period from 25 November 2019.

24.13 Mr Bullocks' submissions regarding the aggravating feature of dishonesty and subsequent breach of Principle 4 (dishonesty) is addressed below at §25.1 - §25.5.

Respondent's Position

24.14 Mr Sarney admitted the factual matrix of Allegation 1.6, breach of Principles 2 and 6 of the 2011 Principles, breach of Principles 2, 4 and 5 of the 2019 Principles, breach of Rule 5.1 of the 2019 Accounts Rules and dishonesty as an aggravating feature prior to 25 November 2019.

The Tribunal's Decision

24.15 The Tribunal noted that Mr Sarney had admitted the factual matrix and breaches alleged throughout the Tribunal proceedings. The Tribunal considered that those admissions were properly made and accepted the same. The Tribunal further noted that, prior to his email of 26 September 2022, Mr Sarney had denied that his conduct was dishonest. At the outset of the hearing, the Tribunal sought clarification from Mr Sarney as to his position in that regard. Mr Sarney stated that, having considered the authorities relied upon by the Applicant (predominantly Ivey), he accepted that his conduct was dishonest. The Tribunal considered Mr Sarney's position and determined that his admission to dishonesty was properly made thus accepted the same.

24.16 The Tribunal therefore found on the evidence before it and the admissions made, Allegation 1.6 proved in its entirety. The Tribunal's findings with regards the aggravating feature of dishonesty is set out below at §25.7.

25. Dishonesty: Alleged as an aggravating factor prior to 25 November 2019 (Allegations 1.1, 1.2 and 1.6) or as a breach of Principle 4 thereafter (Allegations 1.3, 1.5 and 1.5)

Applicant's Case

25.1 Mr Bullock made plain that dishonesty was alleged in relation to the entirety of Mr Sarney's conduct namely all of the allegations. The manner in which it was alleged with regards to Allegations 1.1, 1.2 and 1.6 was that it constituted an aggravating feature to the underlying conduct. The manner in which it was alleged with regards to Allegations 1.1, 1.3, 1.4, 1.5 and 1.6 was that it constituted a breach of Principle 4 under the 2019 Principles which states that solicitors "must act with honesty".

25.2 Mr Bullock relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

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

25.3 Mr Bullock submitted that at all material times Mr Sarney (a) made transfers and withdrawals from ledgers relating to the matters for Estate A, Estate B and Client C, (b) the transfers and withdrawals were for the benefit of other unconnected clients as well as the Firm, (c) Mr Sarney knew such withdrawals and transfers ought not to be made, (d) his conduct caused a significant shortage to occur on the Firm’s client account, (e) he failed to remedy that shortage promptly or at all, (f) he provided untrue and misleading information to beneficiaries of Estate A, and (g) failed to provide any information to the residuary beneficiary of Estate B, in circumstances when he knew or believed that:-

- The funds which he was transferring belonged to Estate A, Estate B and Client C, not to the Firm or other clients of the Firm.
- The funds had come into his hands in the course of his practice as a solicitor. Mr Bullock reminded the Tribunal that solicitors should be trusted “to the ends of the earth”.
- The funds were client money within the meaning of the SRA Accounts Rules and he was therefore under a professional obligation only to deal with them in a manner permitted by those Rules.
- Additionally, he held the funds in a fiduciary capacity and was subject to equitable duties to account to his clients (including beneficiaries of Estates A and B) for them.
- He had been entrusted to look after significant sums of client money.
- His clients expected him to deal with the funds in accordance with his professional duties.
- Making the transfers and withdrawals referred to above in circumstances other than those permitted by the SRA Solicitors Accounts Rules 2011 for the period up to 25 November 2019 and the Accounts Rules for the period thereafter would result in a cash shortage on the Firm’s client account.

- As a consequence of the withdrawals, a significant shortage occurred on the Firm's client account, such that the Firm would not have been able to meet its liabilities as they fell due.
- He had no intention of replacing the money which he had transferred out of client account.
- The financial position of the Firm meant that he was unlikely to be able to replace those money.
- He was not entitled to use client money to "prop up" the Firm or make transfers to unconnected client matters in order to rectify errors that had occurred on those unconnected matters.
- Due to his failure to create or update accurate estate accounts in respect of Estate A and Estate B it would have been unclear to the beneficiaries of those estates the quantum of money due to them, nor would they have been aware that money had been improperly used for the benefit of other unconnected clients and/or the Firm.
- On reflection Mr Sarney thought the transfers made from the client matter ledger relating to Estate A should have been included in the estate accounts for Estate A but that it was a deliberate decision on his part not to include them.
- His failure to advise the residuary beneficiary of its bequest from Estate B would mean that the former would not expect to receive monies from that estate, which had already been improperly transferred by Mr Sarney.
- He was using money belonging to Client C to pay Client C's salary to him without his knowledge.

25.4 Mr Bullock therefore submitted that, given the state of knowledge and belief set out above, Mr Sarney acted dishonestly by the standards of ordinary decent people who would consider it dishonest for a solicitor:

- To make unauthorised transfers of withdrawals out of his client account.
- To use monies held in his Firm's client account for the benefit of specific clients in circumstances other than those permitted by its regulator's accounts rules, for the benefit of unconnected clients or the Firm itself to allow a significant shortage to occur on his Firm's client account in respect of being held solely on behalf of his clients, and to make not attempts to remedy that shortage.
- To fail to give full and accurate information, and to make misleading statements, to his clients and beneficiaries of his clients, which he knew or ought to have known were misleading, and which he knew or ought to have known would cause those individuals to not be aware of monies that were rightfully due to them.

- 25.5 Mr Bullock reminded the Tribunal that Mr Sarney stated in interview that making the offending withdrawals and interledger transfers “wasn’t the right course of action” and that he knew it “wasn’t the right thing to do” at the time it was being done. Mr Bullock contended that these comments could be relied upon on as an admission of dishonesty.

Respondent’s Position

- 25.6 Mr Sarney admitted the factual matrix of Allegation 1.1, breach of Principles 2, 8 and 10 of the 2011 Principles, breach of Rule 1.2(a), 1.2(c), 20.1 and 20.3 of the 2011 Accounts Rules, breach of Principles 2, 4 and 5 of the 2019 Principles, breach of Rule 5.1 of the 2019 Accounts Rules and dishonesty as an aggravating feature prior to 25 November 2019.

The Tribunal’s Decision

- 25.7 The Tribunal noted that, prior to his email of 26 September 2022, Mr Sarney had denied that his conduct was dishonest. At the outset of the hearing, the Tribunal sought clarification from Mr Sarney as to his position in that regard. Mr Sarney stated that, having considered the authorities relied upon by the Applicant (predominantly Ivey), he accepted that his conduct was dishonest. The Tribunal considered Mr Sarney’s position and determined that his admission to dishonesty was properly made thus accepted the same.
- 25.8 The Tribunal therefore found, on the evidence before it and the admissions made, Allegation 2 PROVED as an aggravating feature to Allegations 1.1, 1.2 and 1.6.

Previous Disciplinary Matters

26. None.

Mitigation

27. Mr Sarney stated that he “had no wish to raise any matters” and that he “stated [his position] fully in interview with the forensic investigation officer”.

Sanction

28. Mr Bullock sought to address the Panel “with regards to Mr Sarney’s concession [to dishonesty] on sanction”.
29. The Tribunal expressed its concern in the Applicant expressing a view on sanction. It was an experienced Tribunal well aware of the long-established authorities in relation to cases of proven dishonesty. The Tribunal was not aware of any recent authority which displaced the well-established position unless Mr Bullock could advise otherwise.
30. Mr Bullock stated that there was not and that he relied upon the principles promulgated in SRA v Sharma [2010] EWHC 2022 (Admin) and SRA v James and others [2018] EWHC (Admin) with regards to “exceptional circumstances” and Bolton v The Law Society [1994] 1 WLR 512 CA with regards to general sentencing principles.

31. The Tribunal referred to its Guidance Note on Sanctions (10th Edition: June 2022) when considering sanction. The admitted misconduct which was found proved amounted to six allegations of dishonesty which was repeated over a four-year period. That misconduct was predicated on Mr Sarney making transfers and withdrawals from ledgers relating to Estate A, Estate B and Client C for the benefit of other unconnected clients as well as the Firm itself. Mr Sarney was well aware that the transfers ought not to have been made and further that it resulted in a shortfall on the client account exceeding £200,000.00 which he failed to remedy. The dishonest conduct was exacerbated by the fact that Mr Sarney failed to notify a residual beneficiary of its entitlement at all thereby depriving it of the legacy properly due to it
32. Given the seriousness of the repeated dishonest conduct, having applied the Tribunal's Guidance Note on Sanctions as well as the well-established jurisprudence in relation to cases of dishonesty, the Tribunal determined that no Order, a reprimand, a financial penalty, a restrictions order nor a period of suspension was proportionate in all the circumstances. NO exceptional circumstances were advanced by Mr Sarney and none were apparent on the papers. The only sanction which would meet the public interest (namely the protection of the public, the declaration and upholding of proper standards within the profession and maintenance of public confidence in the regulatory system) was one Striking Mr Sarney from the Roll of Solicitors.

Costs

33. Mr Bullock referred the Tribunal to the Applicant's Statement of Costs dated 26 September 2022 which sought a sum of £22,635.30. Mr Bullock stated that figure included his presence at a two-day hearing. Given that the hearing had concluded in three hours, he accepted that the 14 hours claimed for the hearing should be reduced accordingly.
34. Mr Sarney did not oppose the application for costs. When asked by the Tribunal what the position was regarding his residential status he replied that he "had sold his property in April 2022 and was living in rented accommodation. The balance of the funds from the house sale was sent to the SRA in addition to the money it held on the client account".

The Tribunal's Decision

35. The Tribunal carefully considered the submissions made. The Tribunal determined that the costs claimed by the Applicant were reasonable and proportionate. It was plain from the Schedule of Costs that the majority of the costs were incurred during the forensic investigation all of which was necessary. The costs incurred as a consequence of the hearing which had been reduced by Mr Bullock, amounted to £1,430.00 which was eminently reasonable.
36. The Tribunal considered the Personal Financial Statement of Mr Sarney dated 30 August 2022 in which he stated:

"... All of my funds are held by the SRA (£232,341.59) payment may be deducted from these (*sic*)..."

37. The Tribunal therefore Ordered that Mr Sarney pay costs in the sum of £21,205.30 which reflected the reduction in hours claimed for the hearing from 14 to 3.

Statement of Full Order

38. The Tribunal Ordered that the Respondent, BRIAN SARNEY, 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 £22,635.30.

Dated this 6th day of October 2022
On behalf of the Tribunal



JUDGMENT FILED WITH THE LAW SOCIETY
06 OCT 2022

C Evans
Chair