SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12357-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

Respondent

JAMES THOMAS HAIGH

Before:

Mr P Jones (in the chair)
Mr U Sheikh
Ms J Rowe

Date of Hearing: 28 November 2022

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations made against Mr Haigh by the Solicitors Regulation Authority Limited ("SRA") were that, whilst a Partner and practising as a solicitor at Taylors Solicitors ("the Firm"), he:

1.1 On or around 22 February 2016, caused the transfer of £15,000 of client money, belonging to Client D and Client E, to Firm F, without the clients' consent, and in doing so breached any or all of Rule 1.2(c) and 20.1 of the SRA Accounts Rules 2011 ("the Accounts Rules") and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the Principles").

1.2 On or around 21 March 2016, caused the transfer of £15,000 of client money, belonging to Client H, to Person I, without the client's consent, and in doing so breached any or all of Rule 1.2(c) and 20.1 of the Accounts Rules and Principles 2, 4, 5, 6 and 10 of the Principles.

1.3 On or around 4 October 2016, caused the transfer of £4,800 of client money, belonging to Client K, to Firm L, without the client's consent, and in doing so breached any or all of Rule 1.2(c) and 20.1 of the Accounts Rules and Principles 2, 4, 5, 6 and 10 of the Principles.

1.4 On or around 13 October 2016, caused the transfer of £1,250 of client money, belonging to Client N, to Firm O, without the client's consent and in doing so breached any or all of Rule 1.2(c) and 20.1 of the Accounts Rules and Principles 2, 4, 5, 6 and 10 of the Principles.

1.5 On or around 25 October 2016, caused the transfer of £1,420 of client money, belonging to Client R, to Firm O, without the client's consent, and in doing so breached any or all of Rule 1.2(c) and 20.1 of the Accounts Rules and Principles 2, 4, 5, 6 and 10 of the Principles.

1.6 On or around 3 May 2017, caused the transfer of £10,000 of client money, belonging to Client K, to Company J, without the client's consent, and in doing so breached any or all of Rule 1.2(c) and 20.1 of the SRA Accounts Rules and Principles 2, 4, 5, 6 and 10 of the Principles.

1.7 On or around 3 May 2017, created a false time entry recording suggesting that he had discussed with Client K the transfer of £10,000 to Company J, when that was not the case, and in doing so breached any or all of Principles 2, 4, 5 and 6 of the Principles.

1.8 Between 23 June 2017 and 30 January 2018, on the following specific occasions, he provided false and/or misleading information to Client S, which suggested that a claim had been brought against Person U, when that was not the case:

1.8.1 In an email, dated 23 June 2017;
1.8.2 In an e-mail, dated 16 August 2017;
1.8.3 In a meeting on 16 November 2017; and
1.8.4 In an e-mail, dated 30 January 2018

and in doing so breached any or all of Principles 2, 4, 5 and 6 of Principles, and failed to achieve Outcome 4.2 of the SRA Code of Conduct 2011 ("the Code").

1.9 On 30 October 2017, he provided false and/or misleading information to Client P, which suggested that their claim against Person Q had been given a trial window, when that was not the case and in doing so breached any or all of Principles 2, 4, 5 and 6 of the Principles, and failed to achieve Outcome 4.2 of the Code.

2. In addition, allegations 1.1 to 1.9 above were advanced on the basis that Mr Haigh's conduct was dishonest. Dishonesty was alleged as an aggravating feature of Mr Haigh's misconduct, but proof of dishonesty was not required to establish the allegations or any of their particulars.

3. Mr Haigh admitted all of the allegations, including that his conduct had been dishonest.

Documents

4. The Tribunal had before it the following documents:-

- Rule 12 Statement and Exhibit HVL1 dated 27 July 2022
- Statement of Agreed Facts and Proposed Outcome dated 28 November 2022

Background

5. Mr Haigh was admitted to the Roll in September 2008. At the time of these allegations, he was employed by the Firm and was based in their Manchester office. He held an unconditional Practising Certificate. Since 25 April 2022, Mr Haigh has been registered at Companies House as "Director of Legal Affairs" at both Buckingham Bridge Finance Corp Ltd and Murrayfield & Co Ltd.

6. The allegations related to Mr Haigh's misuse of client money from February 2016 to May 2017 and the provision of false and misleading information to various companies in 2017.

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

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

Findings of Fact and Law

8. The Applicant was required to prove the allegations 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.

9. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.

10. The Tribunal considered the Guidance Note on Sanction (10th Edition – June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. Mr Haigh was an experienced solicitor having been admitted to the Roll in 2008. He was solely responsible for his misconduct. He had misused client monies on several occasions, created false records and had provided misleading information to his clients as regards the progression of their cases. The Tribunal found that Mr Haigh's repeated departure from expected standards was serious. He had admitted that his conduct had been dishonest in respect of each of the allegations. The Tribunal determined that given the nature of the misconduct, the only appropriate and proportionate sanction was to strike Mr Haigh off the Roll of Solicitors. Such a sanction had been agreed by the parties. Accordingly, the Tribunal approved the application for the matter to be dealt with by way of an Agreed Outcome.

Costs

11. The parties agreed that Mr Haigh should pay costs in the sum of £44,770.74. The Tribunal found the agreed costs to be proportionate and reasonable in the circumstances. Accordingly, the Tribunal ordered that Mr Haigh pay costs in the agreed sum.

Statement of Full Order

12. The Tribunal Ordered that the Respondent, JAMES THOMAS HAIGH, 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 £44,770.74.

Dated this 9th day of December 2022
On behalf of the Tribunal

P Jones
Chair

Case number: 12357-2022

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)

B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

JAMES THOMAS HAIGH

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

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1. By its application dated 27 July 2022, and the statement made pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority Limited ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making the following allegations of misconduct against Mr Haigh ("the Respondent").

The Allegations

2. The allegations against the Respondent, made by the SRA within that statement were that: whilst a Partner and practising as a solicitor at Taylors Solicitors ("the Firm"), he:

   1.1. On or around 22 February 2016, caused the transfer of £15,000 of client money, belonging to Client D and Client E, to Firm F, without the clients' consent, and in doing so breached any or all of Rule 1.2(c) and 20.1 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011

1.2. On or around 21 March 2016, caused the transfer of £15,000 of client money, belonging to Client H, to Person I, without the client's consent, and in doing so breached any or all of Rule 1.2(c) and 20.1 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011

1.3. On or around 4 October 2016, caused the transfer of £4,800 of client money, belonging to Client K, to Firm L, without the client's consent, and in doing so breached any or all of Rule 1.2(c) and 20.1 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011

1.4. On or around 13 October 2016, caused the transfer of £1,250 of client money, belonging to Client N, to Firm O, without the client's consent and in doing so breached any or all of Rule 1.2(c) and 20.1 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011

1.5. On or around 25 October 2016, caused the transfer of £1,420 of client money, belonging to Client R, to Firm O, without the client's consent, and in doing so breached any or all of Rule 1.2(c) and 20.1 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011

1.6. On or around 3 May 2017, caused the transfer of £10,000 of client money, belonging to Client K, to Company J, without the client's consent, and in doing so breached any or all of Rule 1.2(c) and 20.1 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011

1.7. On or around 3 May 2017, created a false time entry recording suggesting that he had discussed with Client K the transfer of £10,000 to Company J, when that was not the case, and in doing so breached any or all of Principles 2, 4, 5 and 6 of the SRA Principles 2011

1.8. Between 23 June 2017 and 30 January 2018, on the following specific occasions, he provided false and/or misleading information to Client S, which suggested that a claim had been brought against Person U, when that was not the case:

1.8.1. In an email, dated 23 June 2017;

1.8.2. In an e-mail, dated 16 August 2017;

1.8.3. In a meeting on 16 November 2017; and

1.8.4. In an e-mail, dated 30 January 2018

and in doing so breached any or all of Principles 2, 4, 5 and 6 of SRA Principles 2011, and failed to achieve Outcome 4.2 of the SRA Code of Conduct 2011

1.9. On 30 October 2017, he provided false and/or misleading information to Client P, which suggested that their claim against Person Q had been given a trial window, when that was not the case and in doing so breached any or all of Principles 2, 4, 5 and 6 of SRA Principles 2011, and failed to achieve Outcome 4.2 of the SRA Code of Conduct 2011

3. In addition, the allegations above are advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but proof of dishonesty is not required to establish the allegations or any of their particulars.

4. The Respondent admits each of these allegations. He also admits that his conduct in acting as alleged was dishonest.

Agreed Facts

5. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraphs 2 and 3 of this statement, are agreed between the SRA and the Respondent.

Background summary

6. The Respondent is a solicitor (SRA ID: 411313) who was admitted to the Roll on 15 September 2008. At the time of these allegations, the Respondent was employed by the Firm (SRA ID: 636645) and was based in their Manchester office.

7. These allegations relate to the Respondent's alleged misuse of client money from February 2016 to May 2017 and the provision of false and misleading information to various companies in 2017.

Initial complaint

8. Concerns about the Respondent's conduct were first reported to the Applicant by the Firm on 19 July 2018. The concerns raised related directly to the matters that now feature as allegations 1.3 and 1.6. As can be seen from the letter, the Firm apparently pressed the Respondent for an explanation for his conduct, but he failed to provide a satisfactory explanation. The letter also confirmed that, as a result of these concerns, the Respondent had been expelled from the Firm.

9. On 23 July 2018, the Firm wrote to the Applicant again, confirming that further potential breaches of the Solicitors Accounts Rules had been identified in relation to the Respondent's cases. This letter contained the first reporting of the matters that now feature as allegation 1.2. The letter also confirmed that the Respondent had been expelled from the Firm on 19 July 2018.

10. The review of the Respondent's files by the Firm appeared to continue, as further letters were sent to the Applicant identifying new matters on the following dates:

    10.1. 10 September 2018;

    10.2. 13 September 2018;

    10.3. 2 November 2018; and

    10.4. 19 December 2018.

SRA's Investigation

11. As a result of the concerns raised by the Firm, an investigation into the Respondent's conduct by a Forensic Investigation Officer ("FIO"), Mr Howells, commenced on 14 July 2020. He produced a report, dated 14 November 2021. The FIO's investigation included interviewing the Respondent on 5 August 2021.

Allegation 1.1 – Transfer of £15,000 of client money on or around 22 February 2016

12. In 2012, whilst working at his former employer, Linda Myers LLP, the Respondent was instructed by Client A and Client B in relation to a claim for professional negligence against Firm C. When the Respondent joined the Firm, the conduct of this claim transferred with him.

13. On 8 June 2015, a Part 36 offer was made to Client A and Client B in the sum of £15,000. A 29 September 2015 Court Order indicates that the 8 June 2015 Part 36 offer was accepted. A £15,000 payment was made into the Firm's client account on 5 November 2015 to satisfy the 29 September 2015 Order. This took the balance on the client ledger to £16,500.

14. On 5 January 2016, Firm F wrote to the Respondent, enclosing signed authorities from Client A and Client B, indicating that they were now instructed by Client A and

Client B. The signed authorities requested the transfer to Firm F of any money held on the clients' behalf.

15. On 8 January 2016, £3,900 was transferred from the client account to the office account for the Firm to cover the Firm's costs in relation to the matter of Client A and Client B, leaving £12,600 on the client ledger.

16. On 22 February 2016, the Respondent's secretary sent an e-mail to the Firm's accounts department, attaching a payment requisition form for £15,000 to be paid to Firm F. The subject title of this e-mail was, *"61253_1 Sale of [Property G]."* This file number and property reference related to a matter in which the Respondent had acted for Client D and Client E.

17. Anthony Catterall, the Firm's Compliance Officer for Financial Administration ("COFA") has confirmed that he recognises the handwriting on the payment requisition form as that of the Respondent's.

18. It follows from the £3,900 payment made on 8 January 2016 (referred to paragraph 15 above) that as of 22 February 2016 there were insufficient funds on the client ledger for Client A and Client B to meet a £15,000 payment to Firm F.

19. The client ledger for Client D and Client E and the Firm's client account recorded a £15,000 transfer to Firm F on 22 February 2016.

20. The FIO reviewed the files in relation to Client D and Client E regarding the sale of Property G, the Firm's case management system, and also the Respondent's e-mail account. The FIO was unable to identify (i) any authorisation from Client D and Client E to make a payment to Firm F; and (ii) any connection between Clients D and E and Clients A and B.

Firm's enquiries

21. The Firm's 27 January 2020 letter to the SRA referred to their enquiries with the Respondent about this matter back in September 2017. The letter makes reference to a written report received from the Respondent in which he claimed that the £15,000 transfer from Clients D and E to Firm F was, *"monies due to a contractor who had undertaken work on behalf of [Client D] and [Client E] in respect of planning issues prior to the sale of Redrow and Barratt"*.

22. It was therefore the Firm's understanding that this payment was a legitimate application of the funds of Clients D and E to a person involved in the development scheme of Property G.

23. In 2019, the Firm issued a claim against Clients D and E for outstanding legal fees and other matters. In their Defence, Clients D and E asserted that they had no knowledge of monies being due from them to a client of Firm F's.

24. As a result, the Firm sent an e-mail to Firm F on 20 January 2020 seeking clarity of their understanding of the £15,000 payment made to them on 22 February 2016. Firm F responded on 24 January 2020 to confirm that they understood this payment to be in relation to the claim that had been settled by the Firm on behalf of Clients A and B.

Interview with FIO

25. In his 5 August 2021 interview with the FIO, the Respondent was asked about this £15,000 transfer to Firm F. His responses can be summarised as follows:

    25.1. He could not recall if he requisitioned the £15,000 payment to Firm F;

    25.2. He could not understand how he could have sent money from the wrong ledger to the wrong person given the Firm's procedures;

    25.3. He could not recall a Part 36 Offer in the matter of Clients A and B, but he could recall it settling very close to the trial; he was dealing with this at home as his wife was due to give birth;

    25.4. He could not recall the transfer of £15,000 to Clients A and B's new solicitors;

    25.5. He could not recall the name of a particular contractor for Property G, but he did know that Client D owed money to a lot of people; and

    25.6. He accepted that for the £15,000 transfer to Firm F to have been legitimate, it would have had to have been connected to Property G.

<u>Allegation 1.2 – Transfer of £15,000 of client money on or around 21 March 2016</u>

26. As referred to above in relation to Allegation 1.1, the Respondent acted for Clients D and E in relation to the sale of Property G; land that was intended for development. The company set up by Client D for the initial purchase of this land was Company J.

27. The Respondent also acted for Clients D and E in relation to a claim brought against them as guarantors. The client ledgers for these two separate matters (61253.1 and 61253.2), on the FIO's view, appear to have been used interchangeably.

28. Person I was a minor investor in Company J's property development and was known to be a business associate of Client D's.

29. The balance on the client ledger 61253.1 for Clients D and E was zero as of 19 March 2016. The balance on the client ledger 61253.2 was at zero on 19 February 2016, and following a costs and VAT bill totalling £900, was £900 in debit as of 29 February 2016 up until 31 March 2016.

30. Had it not been for the £15,000 payment to Firm F on 22 February 2016, the client ledger 61253.1 would of course have contained that £15,000.

31. On 21 March 2016, a £15,000 payment was made from the Firm's client account to Person I. This payment was charged to the client ledger of Client H (reference number 61222.3). The description recorded in the client ledger is, *"[Person I] Payment of costs."*

32. The payment requisition form relating to this transaction was sent by e-mail to the Firm's accounts department on 21 March 2016. The title of the e-mail was, *"CHAPS from James"*. The requisition form is annotated with the reference number for the client ledger of Client H.

33. Mr Catterall has confirmed that he recognises the handwriting on this requisition form to be that of the Respondent's.

34. The FIO conducted a review of the hard copy files for Client H, the Firm's case managements system and also the Respondent's e-mail account; he was unable to locate any authorisation from Client H for this payment, or any link between Client H and Person I.

Firm's enquiries with Respondent

35. Following his expulsion from the Firm, the Firm's COLP, Mr Livesey, spoke to the Respondent on 23 July 2018. In the course of that conversation, the COLP referred to the fact that they were investigating a transfer from Client H to Person I. The Respondent's response was recorded as, *"who the hell is [Person I]"*.

36. The COLP went onto inform the Respondent that they identified Person I as an individual who was threatening legal action against Client D. The Respondent confirmed that he could not remember anything about this payment.

Interview with the FIO

37. In the course of the 5 August 2021 interview with the FIO, the Respondent was asked about this matter. His account can be summarised as follows:

    37.1. He appeared to accept that it was his handwriting on the payment requisition form, with the exception of the handwritten annotation that referenced the client ledger for Client H;

    37.2. That he would have sought requisition for payment of £15,000 to Person I for the Company J development;

    37.3. He could not understand why he would have sought to make payment to Person I when there was no money on the client ledger for Clients D and E; he would usually have told the clients that they needed to make a payment;

    37.4. He was not aware of any link between Client H and Person I; and

    37.5. He believed that Client H and Client D knew each other, but not to the extent that could explain the £15,000 payment.

<u>Allegation 1.3 – Transfer of £4,800 of client money on or around 4 October 2016</u>

38. The Respondent acted for Client M in their efforts to recover a debt from Person V. Person V had acted as a guarantor for Company W in a finance facility extended to it by Client M. Firm L represented Person V. Following a hearing relating to costs in the matter, an Order (dated 20 September 2016) was made at Bolton County Court that Client M were to pay £4,800 costs (including VAT) by 5 October 2016. The Order was made on consent, with both parties having agreed the terms.

39. The FIO's review of this matter was unable to locate any correspondence from Client M confirming that they agreed to this Order, nor any request from the Respondent to Client M asking to be put in funds to meet this Order.

40. The balance on the client ledger for Client M was zero as of 20 September 2016.

41. On 4 October 2016, £4,800 was transferred from the Firm's client account to Firm L. The reference number given for this transaction (61486.1) related to Client K; another client for whom the Respondent had also acted.

42. The £4,800 payment was charged to the client ledger for Client K.

43. In the Firm's 19 December 2018 letter to the SRA, they confirmed that there was no known connection between Client K and Client M.

44. On the 4 October 2016, the date of this £4,800 payment, the Respondent e-mailed his secretary and asked her to print a CHAPS form.

45. The completed CHAPS payment request form for this transaction clearly requests payment of £4,800 to Firm L and the reference number provided for that payment relates to Client K. The document has been signed to confirm that written instructions have been received from the client to make this payment.

46. Mr Catterall, in his 28 September 2021 Witness Statement, confirmed that it was the Respondent's handwriting on this document.

47. The FIO conducted a review of the Firm's hard copy files in relation to Client M's claim against Person V, and in relation to Client K. He also reviewed the Firm's case management system and the Respondent's e-mail account. He was unable to locate a connection between Client K and Client M, nor was he able to locate any authorisation from Client K for this payment to be made.

48. The FIO was able to locate an e-mail exchange between the Respondent and Client K in late September to early October 2016, in which the Respondent was attempting to speak to Client K. No reference was made in these e-mails to a payment to Firm L and the e-mail on 6 October 2016 suggested that the two had not yet spoken.

49. On 28 September 2021, Client K provided a Witness Statement. In the course of that Statement, Client K confirmed that he had no knowledge of this £4,800 payment, nor had he authorised it, and that he had no connection with Client M.

Firm's enquiries

50. The Firm's COLP, Mr Livesey, had cause to look at the file for Client K following a complaint from the client. On 12 July 2018, the Firm's COLP spoke to the Respondent on the telephone. This conversation included the £4,800 payment to Firm L. The account provided by the Respondent was that he could not recall why a payment had been made to Firm L. In a further conversation with the Respondent on

the same day, the Respondent was asked to look back at the history so that he was in a position to provide Mr Livesey with an explanation for the payment.

51. Two further conversations took place between the Respondent and the Firm's COLP on 13 July 2018. In the first of those, the Respondent stated that, *"…he really could not remember why this had happened."* In the second, the COLP recorded the following comments:

> *"JH said that he had looked at the file. He could not understand why a payment had been made to [Firm L]. As far as he was aware [Firm L] were not involved on any of the other matters he was dealing with at that time. AJL pointed out that JH had written out the TT request and had specifically referred it to that file. Why would JH do that in the absence of an instruction from the client and evidence of why it was to be paid? JH said he simply could not recall it happening"*

52. The conversations between the Respondent and the Firm's COLP were followed by an e-mail to the Respondent, inviting him to provide a written explanation for the payment once he had considered the position.

53. The Respondent replied to say that he would revert to the COLP after the weekend. On 15 July 2018, the Respondent e-mailed the Firm's COLP and made the following comment: *"The payment to [Firm L] is clearly an error. I cannot recall any connection to this file and [Firm L]. If there was it would be clearly recorded on the file"*.

54. On 16 July 2018, the Firm's COLP sent a further e-mail to the Respondent asking him to consider whether the payment to Firm L could have been related to work provided by Firm L to Client K's wife.

55. On 17 July 2018, a further conversation took place between the Respondent and the Firm's COLP. It was raised in this conversation that Firm L had been asked for their understanding of the £4,800 payment, but a response had not yet been received. It was repeated to the Respondent that he needed to provide an explanation in writing, and he agreed to do so.

56. In an 18 July 2018 letter to the Respondent, it was confirmed that Firm L had responded and confirmed that the £4,800 payment related to the proceedings between Client M and Person V. Furthermore, the COLP went onto state that he was unable to locate any correspondence with Client M in which they were advised either of the outcome of the 20 September 2016 hearing, nor their liability to meet a costs

order. It was also stated that the COLP had been unable to locate any basis for Client K's funds being used to meet a liability owed by Client M.

57. Following delivery of that letter to the Respondent, a further conversation took place between the Respondent and the COLP on 18 July 2018. In the course of this conversation, the Respondent repeated that the payment was a mistake and confirmed that he would provide a response in writing. The Respondent also commented that that he obtained legal advice, and it had been recommended that he self-report to his regulator.

58. That same day, the 18 July 2018, the Respondent e-mailed the Firm's COLP and made the following comment:

> *"The payment to [Firm L] is, as I have previously said, an error on my part. I cannot see how it can be construed in any other manner and there is no benefit to me in that payment being made. The only explanation I can give is that I managed to somehow confuse the two files. I would certainly have reported the outcome of the hearing on 25 August 2016 to the client… …following the approval of the Order. I recollect being stood outside Court in Bolton doing so. I accept that there is no apparent note or other record on the file relating to this. I will address this with [Client M]"*

Interview with FIO

59. The Respondent was questioned about this matter by the FIO in the 5 August 2021 interview. The Respondent's answers can be summarised as follows:

    59.1. He recalled informing Client M of the agreed Order to pay £4,800;

    59.2. He confirmed that it was his handwriting on the CHAPS payment request form;

    59.3. He was not aware of any connection between Client K and Client M, and the inclusion of Client K's reference number on the form may have been an error;

    59.4. He believed he would have obtained verbal instructions from Client M to make a payment on their behalf; and

    59.5. He repeated that the inclusion of Client K's reference number on the form must have been a mistake, and suggested that he may have been looking at the wrong client file on his screen.

Allegation 1.4 – Transfer of £1,250 of client money on or around 13 October 2016

60. The Respondent acted for Client P in relation to its claim against Person Q. Person Q was represented by Firm O.

61. On three separate dates in 2016, Client P was made subject to three separate Costs Orders in relation to this matter:

    61.1. £750 Costs Order on 26 August 2016;

    61.2. £1,920 Wasted Costs Order on 23 September 2016, to be paid by 7 October 2016; and

    61.3. £735 Wasted Costs Order on 2 November 2016, to be paid by 16 November 2016.

62. The FIO was unable to locate any evidence to suggest that the Respondent had informed Client P of the adverse Costs Orders on either 23 September 2016 or 2 November 2016.

63. On 7 October 2016, £750 was received from Client P and was credited to the client ledger account. The entry made on the client ledger for this entry was, *"on account of costs order."* This sum remained on the client account until 15 November 2016, when £735 was paid out to Firm O.

64. All other monies were transferred to the Firm's office account in part payment of the Firm's costs. It follows that there were insufficient funds on the client ledger to meet the Costs Orders of 26 August 2016 and 23 September 2016, totalling £2,670.

65. The Firm's client bank account statement records a payment to Firm O of £1,250 on 13 October 2016.

66. An internal e-mail within the Firm, dated 31 August 2016, referred to receipt of a cheque from the Official Receiver. The cheque was for £1,250. The subject matter for the e-mail contains the file reference number for Client N; another one of the Respondent's clients.

67. Prior to the receipt of this cheque for £1,250, the client ledger for Client N had been at zero. Client N's file had in fact been archived, following a request from the Respondent on 15 July 2016. The client ledger suggests that Client N's file had to be re-opened following the receipt of the £1,250 cheque on 31 August 2016.

68. On 5 October 2016, the Respondent was e-mailed by the Firm's accounts department to see if the £1,250 needed to be returned to Client N. The Respondent

replied immediately to say: *"No it is going to pay some costs – will sort this week. Thanks"*.

69. On 13 October 2016, the Respondent e-mailed his secretary to ask her to print off a telegraphic transfer form. That same morning, he e-mailed the Firm's accounts department with a faster payment request for £1,250 to be paid to Firm O. The reference number inserted on the form was that of Client N's; 61654.1.

70. The accounts department e-mailed the Respondent, asking him for the reason for this payment. The Respondent replied simply to say, *"Costs thanks".*

71. The description recorded on the client ledger for Client N for this £1,250 payment to Firm O on 13 October 2016 is, *"*[Firm O] *client account payment of costs as per JH email 13.10.16"*.

72. The FIO reviewed the hard copy files for both Clients N and P, the Firm's case management system and the Respondent's e-mail account; he could not identify any authorisation from Client N for this payment to be made, nor any connection between Clients N and P.

Interview with the FIO

73. The matter was discussed in the 5 August 2021 interview with the FIO. The Respondent's comments can be summarised as follows:

    73.1. He could not remember telling Client P about the adverse Costs Orders, but that they *"wouldn't have batted two eyelids about a couple of thousand quid in costs"*;

    73.2. That in relation to Client N, he would ordinarily expect a payment such as the cheque for £1,250 to be returned automatically to the client;

    73.3. That the handwriting in the main body of the payment form appeared to be his, with the possible exception of the date and the writing at section 5; and

    73.4. That this had not occurred deliberately, and he could only put this down to human error; either his error or someone else's.

<u>Allegation 1.5 – Transfer of £1,420 of client money on or around 25 October 2016</u>

74. Allegation 1.5 relates to a further payment made to Firm O; the circumstances of Firm O requiring payment have been set out above.

75. The payment of £1,250 made to Firm O on 13 October 2016 and the payment of £735 on 15 November 2016 accounted for all but £1,420 of the Costs Orders referred to at paragraph 61 above.

76. On 25 October 2016, Firm O wrote to the Respondent indicating that as payment had not been received in relation to the Costs Orders it had issued an application seeking an Order that Client P's claim be struck out unless payment was made in full on the Costs Orders within seven days.

77. The Respondent replied, that same date, indicating that £1,250 was paid on 13 October 2016, and that receipt of the same had been confirmed. The Respondent went onto assert: *"I am told that a further payment of £1,420 was returned to us on that date and accordingly a cheque in that sum has been put in tonight's post"*.

78. The FIO was unable to locate any evidence to suggest that an effort had been made to pay £1,420, which had then been returned.

79. A cheque for £1,420 was indeed sent to Firm O by the Respondent on 25 October 2016. This cheque cleared on 28 October 2016. There were insufficient funds on the client ledger for Client P to meet this payment.

80. This £1,420 payment to Firm O was instead posted to the client ledger account for Client R; another of the Respondent's clients. The Respondent had acted for Client R in a Winding Up Petition against another company.

81. The client ledger for Client R records an incoming payment of £1,550 on 13 October 2016, representing the return of a court fee and the Official Receiver's deposit.

82. The client account cheque request form (for the £1,420 cheque that was sent to Firm O) clearly relates to a £1,420 payment to Firm O from Client R.

83. On 31 October 2016, the Firm sent a request to the Respondent's secretary for a copy of the cheque that had been issued to Firm O. The Respondent's secretary replied: *"We don't have a copy of the cheque because James did it himself. It was on 61274.1 – payable to [Firm O]"*.

84. The FIO conducted a review of the hard copy files for both Clients P and R, and also the Firm's case management system. The FIO also conducted a review of the Respondent's e-mail account. The FIO was unable to locate any authorisation from Client R for the payment of £1,420 to Firm O, nor could he locate any connection between Client R and Client P.

85. Furthermore, as previously stated, the FIO was unable to locate any evidence of the Respondent informing Client P of the adverse Costs Orders on 23 September 2016 and 2 November 2016. On 26 October 2016, when Firm O had written to the Respondent about both the Costs Orders and a settlement offer, the Respondent chose to forward onto Client P the letter relating to the settlement offer only.

Interview with the FIO

86. In the 5 August 2021 interview with the FIO, in relation to this £1,420 payment to Firm O, the Respondent acknowledged the following:

86.1. That he wrote the cheque for £1,420 himself;

86.2. That he could not understand why this payment would be debited from Client R's ledger;

86.3. That he believed he had disclosed the adverse Costs Orders to Client P; and

86.4. As with the £1,250 payment, the inputting of the ledger reference for Client R for this payment must have been due to error.

<u>Allegation 1.6 and 1.7 – Transfer of £10,000 of client money on or around 3 May 2017 and the creation of a false time entry recording</u>

87. Clients D and E were clients of the Respondent's, as set out in relation to Allegations 1.1 and 1.2 above.

88. On 21 April 2017, Client D sent a request to the Respondent for £30,000 to be transferred to Barclays. This was followed up with a further e-mail on 30 April 2017, making a similar request.

89. At the time of these requests, there were insufficient funds on the client ledgers for Clients D and E to meet this request. The balance on client ledger 61253.2 was £20,105 and the balance on client ledger 61253.1 was zero.

90. On 2 May 2017, £20,000 was transferred from the Firm's client account to Company J and charged to ledger 61253.2. This left a balance of £105 across the two ledgers for Clients D and E.

91. On 3 May 2017, a further £10,000 was transferred from the Firm's client account to Company J. The justification for this transfer was based on the faster payment form sent by the Respondent to the Firm's accounts department on 3 May 2017. The

payment request referred to the £10,000 transfer to Company J being linked to file reference number 61486.1; the file reference for Client K; another of the Respondent's clients. The Respondent signed the form to confirm that he had obtained written instructions from the client and that he had called the client back to confirm those instructions.

92. The accounts department responded to the Respondent's 3 May 2017 e-mail seeking confirmation that the Respondent had obtained Client K's written consent. The FIO was unable to locate a response to this e-mail from the accounts department. However, a short time after the accounts department sent the e-mail to the Respondent, a further e-mail was sent by the accounts department to Mr Andrew Livesey, the Firm's Compliance Officer for Legal Practice ("COLP"). The e-mail was entitled, *"RE: Faster Payment please* – [Client K/Client D]*"* and stated:

> *"It was all agreed on the phone.*
>
> *This money has to reach* [Client D] *by noon, JH has left* [Client K] *a voicemail and he is going to dictate a note of their agreements made on the phone last night.*
>
> *Is this OK to go on that basis?"*

93. The Firm's COLP replied to confirm that the payment could proceed on the basis that the Respondent had in fact confirmed specific agreement.

94. The FIO reviewed the hard copy files for Client K and Clients D and E, along with the Firm's case management system. The FIO also conducted a review of the Respondent's e-mail account. He was unable to locate any authorisation from Client K for this payment of £10,000 to Company J, nor was he able locate any connection between (i) Client K and Clients D and E; or (ii) Client K and Company J.

95. The FIO did locate, though, a time recording entry on Client K's matter, dated 3 May 2017. The entry, made by the Respondent, reads as follows: *"Leaving* [Client K] *a voicemail re the transfer of £10k to* [Company J] *and for him to confirm in writing to me as per the previous discussions."*

96. The 3 May 2017 £10,000 transfer to Company J is recorded on Client K's ledger, with both Company J and Client D referred to in the entry. The entry also includes the phrase, *"Ground Rents."*

Firm's enquiries with Respondent

97. As with Allegation 1.3, the Firm's COLP spoke to the Respondent on 12 July 2018 about the £10,000 payment to Company J from Client K's funds. The Respondent stated that he could not recall anything in relation to this payment. In the second conversation on 12 July 2018, the Respondent was advised to consider this issue so it could be discussed again on Friday morning.

98. In the meeting with the Firm's COLP on 13 July 2018, the Respondent stated that he could not remember why this payment had happened. In that meeting, the COLP stated that it appeared to him from the paperwork that the Respondent was suggesting (at the time the payment was made) that Client K had agreed to make this payment on behalf of Client D. However, the COLP was unable to locate any written confirmation from Client K, nor was he able to locate file notes relating to that transaction or the terms of that transaction. Furthermore, there was no paperwork relating to any arrangement to ensure that Client K was repaid. The record of the Respondent's reply to these points is as follows: *"JH said that there was no connection between* [Client K] *and* [Client D]*. He could not remember having discussed the matter with* [Client K] *and could not offer any explanation why monies had been paid out in relation to* [Client D]*".*

99. The Respondent was asked to review the files carefully to determine why the payment had been made.

100. In the second exchange between the Respondent and the COLP on 12 July 2018, the COLP expressed his concerns as to whether any agreement that Client K would lend funds to Client D was either appropriate or a prudent transaction. The COLP indicated that he found the lack of records relating to any such agreement to be concerning. The Respondent was asked to provide a detailed response to why this transaction occurred by the end of the day. This request was repeated in writing in an e-mail sent at 13:53 that same day.

101. As referred to previously, the Respondent did not provide an explanation until 15 July 2018. In that e-mail, he stated: *"In terms of the* [Company J] *payment I remain entirely puzzled, having thought about it significantly since our discussion on Friday. If you have any further information to assist in aiding my recollection that would be very much appreciated."*

102. In a further discussion with the COLP on 17 July 2018, the Respondent agreed to provide a response in writing, but stated that he would not have deliberately used client money for Client D's benefit.

103. In an e-mail to the Respondent, dated 16 July 2018, the Firm's COLP detailed his concerns with the alleged arrangement between Client K and Client D, and went on to make the following point: *"On the basis that the arrangements between* [Client K] *and* [Company J/Client D] *were to say the least unusual I am at a loss why you cannot clearly remember events from May 2017. Given that you provided the specific explanations to Olivia at the time then I would have thought that the notes would have aided your memory."*

104. The Respondent's reply to this e-mail, on 17 July 2018 at 12:06, made the following point: *"…I cannot recall having that conversation with* [Client K] *or why he would be willing to remit monies to another client. However, on the basis of the note on the file I must have done and obtained the authorisation"*.

105. The Firm's COLP responded to this e-mail on 18 July 2018, and made the following point: *"I have also spoken to* [Client K] *with respect to the payment made to* [Client D] *as detailed in my previous correspondence.* [Client K] *told me that he has no connection with* [Client D] *and was not aware of any loan arrangement."*

106. Following the 18 July 2018 e-mail, the Respondent and COLP spoke to each other that same day. The Respondent confirmed that he would provide an explanation in writing.

107. This conversation was followed by an e-mail from the Respondent to the COLP, in which he made the following comment about the payment to Company J: *"In terms of the payment of £10,000.00 I have already set out the extent of my recollection of the circumstances giving rise to that payment in my email to you of 17 July 2018 at 12:06. There is nothing more I can add to that"*.

108. The Respondent referred again, in that e-mail, to the fact that he was considering whether he was obliged to self-report his breaches to the SRA[1].

Interview with FIO

109. In his 5 August 2021 interview with the FIO, this £10,000 payment to Company J was discussed. The Respondent's account can be summarised as follows:

    109.1. There had been some discussion between Client K and Client D about the purchase of ground rent;

[1] Despite the Respondent asserting on two occasions that he was considering self-reporting to the SRA, no such report was received

109.2. Client D owned a number of freehold sites for which he was selling off the ground rent charged to various people. The Respondent introduced him to Client K on that basis;

109.3. The Respondent was not instructed to produce any paperwork relating to the arrangement between Client K and Client D; they were working on a *"gentleman's handshake"*.

109.4. The Respondent confirmed that it was his handwriting on the faster payment form, with the possible exception of section 5, where the file number had been written;

109.5. When asked about whether he had dictated a note of the agreement (as referenced in the 3 May 2017 e-mail from the accounts department), the Respondent replied that he could not recall, but that he had made a file note following leaving a voicemail for Client K; and

109.6. When it was put to the Respondent that the Firm had contacted Client K and he had denied any knowledge of or agreement to pay £10,000 to either Client D or Company J, the Respondent replied that he would have expected Client K to call him about this.

Enquiries with Client K

110. The letter from the Firm to the SRA dated 19 July 2018 refers to the £10,000 payment to Company J. The letter indicates that the Firm's COLP had spoken to Client K who, *"stated that he had no recollection of the discussion with Mr Haigh or being asked to agree a loan to* [Client D] *or* [Company J].

111. On 28 September 2021, Client K provided a witness statement to the SRA regarding his work with the Respondent and the Firm. The final paragraph of his witness statement confirms that he had no knowledge of the £10,000 payment to Company J and that he certainly did not authorise it. Furthermore, Client K confirms that he had no knowledge of, nor any relationship with, either Client D or Company J.

<u>Allegation 1.8 – Provision of false information to Client S</u>

112. The Respondent acted for Client S; the company that were the Joint Administrators of Company T. In May 2017, the Respondent was instructed to pursue a number of potential antecedent transactions (claims for preference or transactions at

undervalue) under ss.238 or 239 of the Insolvency Act 1986 against directors of Company T or their associates, which included Person U.

113. On 10 May 2017, the Respondent sent a letter before action to Person U in relation to payments that he had received from Company T, totalling £160,000.

114. On 17 May 2017, the Respondent sent an e-mail to Client S, informing them that demand letter to Person U was due to expire that day, and querying whether the client would want a further letter to be sent or proceed straight to making an application.

115. That same day, 17 May 2017, Client S responded indicating that the Respondent should proceed to making an application against Person U (and others).

116. On 23 June 2017, the Respondent sent an e-mail updating Client S as to the progress in relation to Company T. The e-mail contained the following claim: *"*[Person U] *has still not been in touch and I await a return date for the s.238/239 application".*

117. On 15 August 2017, Client S e-mailed the Respondent, seeking an update in relation to the proceedings against Person U. The exact phrase used was as follows: *"Please can you confirm at what stage the proceedings are at as regards* [Person U]*. Our file shows nothing as regards any proceedings and this is a concern. Please provide by return a copy of the claim, confirmation for the benefit of the file of the current position, next steps and anticipated costs."*

118. On 16 August 2017, the Respondent replied to Client S, via e-mail, and made the following points in relation to Person U:

> *"I will scan to you separately the Application in respect of [Person U], for repayment of the £160,000 he received shortly before the Company entered Administration. On the basis he failed to respond to my attached letter, it was agreed that the Application would be issued. You mentioned to me whether there was a risk of adverse costs on this Application. Whilst that is the case in all Applications, I would consider the risk in this Application to be low. Should [Person U] now advance a position which makes the Application look likely to fail, I believe there to be a very strong argument that he should pay your costs of the Application, given his late disclosure. This is an issue which can be addressed if it arises. It may be prudent however to make a Part 36 at a level at which you would consider to be an appropriate settlement, to add further protection on costs."*

119. Client S replied on 17 August 2017, requesting a scan of the application against Person U. This request to the Respondent for a copy of the application against Person U was repeated on 21 August 2017 and 29 August 2017.

120. On 17 November 2017, Client S sent an e-mail to the Respondent, referencing a meeting that had taken place yesterday (16 November 2017) with the Respondent. The e-mail contained the following phrase: *"You confirmed yesterday that hearing for the claim against [Person U] has been listed for 6/7 December. Please could you let me have copies of the application for my file and a copy of the order for adjournment from the hearing in September or whatever order/directions were made at that hearing."*

121. It is apparent from the content of this e-mail that at some point prior to 17 November 2017 the Respondent had also told Client S that there was a hearing in relation to Person U in September 2017[2].

122. On 12 December 2017, Client S e-mailed the Respondent seeking an update on the outcome of the hearing "scheduled for 6/7 December" 2017.

123. The Joint Administrators' Progress Report, dated 12 January 2018, and issued by Client S, which provides an update on the Administration of Company T, contains the following phrase: *"We can confirm that proceedings have been issued against one of the parties concerned and at that date of this report these proceedings are ongoing. A Part 36 Offer for settlement has been made by the Joint Administrators which we understand is beneficial in terms of costs"*.

124. The Respondent's representations to Client S appear therefore to have satisfied them that proceedings were on-going in relation to Person U.

125. On 30 January 2018, the Respondent sent the following update to Client S in relation to the proceedings against Person U:

> *"The protective Part 36 in respect of [Person U] remains in place. The court have informed me that he wrote to the Court in December 2017 stating that he was unwell and unable to deal with proceedings at present, requesting an adjournment. I have asked for a copy of this correspondence from the Court, as it was not copied to me, nor am I aware of any medical evidence provided. He has been Ordered to provide a update to the Court by 9 February 2018 so*

[2] It is the Applicant's position that there was no such hearing in September, given the Firm's investigation of the court file (see paragraph 132 below)

that it can be re-listed. For the purposes of your report I would suggest you state the proceedings are ongoing and an appropriate protective offer of settlement has been made by the Administrators which will be beneficial in terms of costs".

126. Concerns relating to this matter were first communicated to the SRA in the 10 September 2018 letter from the Firm. That letter makes the claim that, contrary to the Respondent's assertions to Client S, *"It appears from the file that no claim was ever issued"* against Person U.

127. The Firm's COLP, in his 7 February 2017 witness statement, makes the following point in relation to these alleged proceedings against Person U:

> *"On reviewing the file I was unable to find any evidence of any application having been prepared or issued, nor could I find any evidence of a Part 36 offer (or indeed any offer to settle) having been made. On examining the financial ledger for the file…I could not see any evidence of Court issue fees having been paid. On that basis I arranged for an inspection of the Court file to be undertaken and on that inspection we were unable to see any evidence of proceedings having been issued. There is nothing on the file to show that proceedings were served or any correspondence with other parties to the proceedings. On that basis I advised the client that notwithstanding the terms of the earlier correspondence proceedings against [Person U] had not in fact been issued"*.

128. The client ledger for this matter does not record any Court fee disbursements until 13 December 2017, and those were in relation to the wider Administration matter.

129. The Respondent's secretary confirmed that no disbursements had been incurred on this matter in a 9 August 2017 e-mail to the Respondent, into which Client S was copied.

130. The FIO reviewed the Firm's hard copy files in relation to the administration of Company T, along with the Firm's case management system and the Respondent's e-mail account. He could not identify any evidence that would suggest a claim had been issued or progressed against Person U, nor could he find any correspondence from a Court that would explain the Respondent's assertions in his 30 January 2018 e-mail to Client S.

Interview with FIO

131. In the 5 August 2021 interview with the FIO, the Respondent was questioned about this matter. The Respondent made the following comments:

131.1. That he could not imagine a position where he would claim he had made an application when he had not done so;

131.2. That as far as he could recall, he had issued and served the application;

131.3. That he could not recall this matter going to a final hearing, but he could not recall withdrawing the proceedings; and

131.4. That if he had not done something that Client S had asked him to do, *"…they'd go absolutely ballistic"*.

Allegation 1.9 – Provision of false information to Client P

132. As referred to in relation to Allegation 1.4 above, the Respondent acted for Client P in relation to its claims against Person Q.

133. On 21 April 2017, a Case Management Conference in this case was adjourned to 29 June 2017 by District Judge Hassall at Manchester County Court.

134. On 29 June 2017, neither party attended court, and so Client P's claim was stayed on the basis it was presumed it had settled. The Order from the Court was stamped as having been received by the Firm on 7 July 2017.

135. Despite the Order on 29 June 2017, the Respondent appears to have continued attempting to negotiate a settlement with Person Q's representatives in July 2017. The last of these "negotiation" e-mails appears to have been sent on 18 July 2018.

136. On 10 October 2017, the Respondent was sent an e-mail by a representative from Client P, querying the case progress:

> *"Are we getting any feed back* [sic] *from her solicitor?*
>
> *I would hope we have a court date by now as fall back if not progressing to settling."*

137. It can be reasonably inferred from this e-mail that Client P was unaware that their claim had been stayed on 29 June 2017.

138. The 10 October 2017 e-mail from Client P would seem to have prompted the Respondent to communicate with Person Q's representatives again, as a further e-mail was sent on 11 October 2017.

139. Person Q's representatives responded on 13 October 2017. In the course of that e-mail, the following point was made: *"You will, of course, be aware that the claim would need to be reinstated given the last Court Order."*

140. The Respondent replied to this e-mail on 18 October 2017, which included the following comment: *"My client is quite prepared to lift the stay which the Court unilaterally imposed if necessary."*

141. On 23 October 2017, Client P sent a further e-mail to the Respondent, asking if the court had issued dates for the hearing.

142. That same day, 23 October 2017, the Respondent replied to say the following: *"What dates are to be avoided? It will not do any harm to send these off".*

143. To which, Client P replied, *"Surely we require the date set by the court for this hearing?"*

144. On 30 October 2017, the Respondent sent an e-mail to Client P in the following terms: *"The Court have confirmed a Trial Window of 1 December 2017 to 15 January 2018".*

145. A Telephone Attendance Note, dated 25 January 2018, records the following conversation: *"Speaking to [Client P] and explaining my email to Blackstone – he agreed with the approach and the proposed settlement. He was happy to go to Court if necessary".*

146. On 9 February 2018, Client P e-mailed the Respondent, discussing the terms of the settlement. The e-mail concluded with the following phrase: *"If we do not get £11000.00 by next Friday and five further payments of £1000.00 on 1st March, April, May, June and July then we will proceed to recover all costs plus interest etc via the courts. Have you been given a date yet as this too seems to be forever?"*

147. The FIO, as with the other Allegations, reviewed the hard copy files for Client P's case, along with the Firm's case management system and the Respondent's e-mail account. He was unable to locate any evidence of either (i) Client P being told that the claim had been stayed and that it would need to be re-instated; or (ii) the proceedings relating to Client P's claim continuing after the stay in June 2017.

148. In the 7 February 2019 Witness Statement from the Firm's COLP, Mr Livesey, he stated that Manchester County Court were contacted in relation to this matter, and they confirmed that the last event on the court file for this matter was the stay ordered in June 2017.

Interview with FIO

149. The account provided by the Respondent can be summarised as follows:

149.1. That he did not recall this claim being stayed;

149.2. That he maintained that the 30 October 2017 e-mail providing a trial window would have been correct, but he had no idea if it was in fact listed for trial; and

149.3. He did not recall the case going to trial and does not recall the court issuing further directions after 30 October 2017.

Allegations and Breaches of Principles and the Code of Conduct

Allegations 1.1 – 1.6 – Misuse of client funds

150. On six separate occasions between 22 February 2016 and 3 May 2017, the Respondent caused the transfer of client funds to third parties, in the absence of any authorisation or consent from the client relating to that transfer. The total value of the transfers is £47,470.

151. On each of these six occasions, money was due to these third parties from the Respondent's clients. However, for varying reasons, the Firm held insufficient funds for those clients that owed the money to meet their liabilities. Rather than requesting additional funds from the clients that owed the money, the Respondent chose instead to divert funds belonging to other clients to meet these liabilities.

152. The exception to this is, of course, Allegation 1.1; in that instance, Clients A and B requested a transfer of their case and funds to new solicitors, and their client ledger held insufficient funds to be able to transfer the totality of the payment they received following the acceptance of a Part 36 offer. The diversion of funds from Clients D and E to Firm F, to the benefit of Clients A and B, then created the shortfall on the client ledger for Clients D and E that meant there were insufficient funds to make the payment from them in respect of the £15,000 that was due in relation to Allegation 1.2. Therefore, it was the conduct in Allegation 1.1 that created the need to divert funds from Client H in relation to Allegation 1.2.

153. Furthermore, in Allegations 1.3 – 1.5 the two clients that owed the money (Clients M and P) did so as a result of adverse Court Orders. It is of note that in these Allegations, there was no correspondence located by the FIO relating to the

Respondent informing those clients of the monies owed as a result of these adverse Orders. It follows that certainly in relation to these three Allegations, the Respondent may have had a motive to divert funds from a different client to meet these adverse Court Orders, namely that he did not want to disclose to the client that they had been the subject of such an Order.

154. In the course of his exchanges with the Firm in 2018 and in his interview with the FIO on 5 August 2021, the Respondent provided responses to these Allegations which included (i) not being able to recall these transactions; (ii) that the transaction had come about due to a mistake on his part; and (iii) in relation to Allegation 1.6, that Client K had in fact provided his consent to the transfer.

155. The frequency and volume of these transactions over a fifteen month period belie any suggestion that they occurred only due to a mistake. In relation to Allegation 1.6, it is of significance that there is no written confirmation from Client K confirming this consent (as required by the Firm's procedures) and, as noted by the Firm's COLP during his exchanges with the Respondent in 2018, there is no documentation relating to the alleged arrangement between Clients K and D for this loan to take place.

156. In any event, Client K has confirmed that he did not consent to this transaction and that he has no knowledge of, or arrangement in place with, Client D.

157. It is the Applicant's case that the Respondent deliberately diverted funds from clients that did not owe the money to avoid either (i) having to request further funds from the clients that did owe the money; (ii) having to explain to the client why there were insufficient funds on their client ledger to meet the request (Allegation 1.1); or (iii) having to disclose to clients that they had been subject to adverse Court Orders and requesting funds from them to meet those Orders.

158. Using a client's money for matters that did not relate to them represents a breach of Rule 1.2(c) of the Solicitors Accounts Rules 2011 ("the Accounts Rules"). On any view, therefore, Allegations 1.1 – 1.6 represent a breach of Rule 1.2(c).

159. Rule 20.1 of the Accounts Rules states that withdrawals may only be made be made from the client account when they are properly required for a payment on behalf of the client, or are in accordance with written instructions from the client or in accordance with instructions that were subsequently confirmed in writing. Again, regardless of the Respondent's state of mind at the time of these transactions, these transfers occurred in the absence of written instructions and/or written confirmation,

and were not required for a payment on behalf of the client for whom the money was being held. It follows that all six of these Allegations represent a breach of Rule 20.1.

160. Again, regardless of the Respondent's state of mind at the time these transactions occurred, he diverted funds belonging to clients to meet liabilities that were not owed by them. These actions clearly represent a failure to act in the best interests of the client, a failure to provide a proper standard of service, and also a failure to protect client money. For those reasons, it is asserted that these Allegations represent breaches of Principles 4, 5 and 10 of the SRA Principles 2011 ("the Principles").

161. Furthermore, this was not an isolated, on-off incident. It occurred six times in fifteen months, and totalled £47,470. Whether or not this was deliberate (as alleged by the Applicant) or as a result of repeated mistakes by the Respondent in terms of managing his clients funds, this conduct would damage the trust the public placed in the Respondent and in the provision of legal services. Therefore, it is asserted that this conduct represents a breach of Principle 6.

162. As set out at paragraph 157 above, it is the Applicant's case that the Respondent chose deliberately to misuse client funds. In *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession. A solicitor acting with integrity (i.e. with moral soundness, rectitude and steady adherence with an ethical code[3]) would not have not used funds belonging to one client to meet the debts of (or money owed to) another client. Furthermore, making improper payments from the client account is one of the six examples identified in *Wingate*[4] for what would constitute a lack of integrity. It is therefore alleged that this conduct represents a breach of Principle 2 of the SRA Principles.

Dishonesty in relation to Allegations 1.1 – 1.6

163. The Applicant relies upon the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67 which applies to all forms of legal proceedings, 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*

[3] *Hoodless & Anor v Financial Services Authority* [2003] UKFSM FSM007
[4] See para 101 of *Wingate v SRA v Malins* [2018] EWCA Civ 366

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."

164. Each of the transfers of client money which are the subject of Allegations 1.1 – 1.6 were authorised by the Respondent in circumstances where he knew that he was authorising the payment of client money to persons who were not properly entitled to them. Such conduct is necessarily dishonest by the standards of ordinary decent people.

Allegation 1.7 – Creating a false time entry recording

165. On 3 May 2017, the Respondent created a time entry recording suggesting that he left a voicemail for Client K regarding the transfer of £10,000 to Company J, and asking Client K to confirm in writing as per their previous discussions.

166. As set out above, it is the Applicant's case that Client K was unaware of the transfer of £10,000 of his money to Company J, and that this had taken place without his consent. Furthermore, Client K maintains, in his 28 September 2021 Witness Statement, that he has no knowledge of, nor any relationship with, Client D or Company J.

167. Given this, the time entry recording created by the Respondent on 3 May 2017 must be false. Bearing in mind the 3 May 2017 e-mail from the Firm's accounts department, it appears that the Respondent had asserted to the Firm that he had obtained Client K's agreement for this transfer, and referred to the fact that he had left him a voicemail. The creation of this time recording entry, therefore, would appear simply to be an effort on the part of the Respondent to create a false trail to support the false account he had provided.

168. Creating a false time entry recording suggesting that the transfer of client funds had been discussed with that client when it had not represents a failure to act in that client's best interests, and also a failure to provide a proper standard of service to

that client. The creation of a false time entry note designed to lend weight to a false account provided to an accounts department undoubtedly represents conduct which would undermine the trust the public placed in the Respondent and in the provision of legal services. For those reasons, a breach of Principle 6 is alleged.

169. A solicitor acting with integrity would not, under any circumstances, have created a false time entry recording that suggested they had discussed with a client the transfer of their funds, when that had not in fact taken place. It follows that a breach of Principle 2 is also alleged.

Dishonesty in relation to Allegation 1.7

170. The creation of this entry must have taken place dishonestly. The only alternative explanation for such a false recording to have been made is one of accident or mistake on the part of the Respondent's. It would be a truly extraordinary situation for the Respondent mistakenly to believe that such an exchange had occurred with Client K, when it had not in fact happened. As identified by the Firm's COLP in his 2018 exchanges with the Respondent, any such arrangement between Client K and Client D would be, *"…to say the least unusual.."*. This would not be the type of communication, therefore, that a solicitor may be inclined to believe must have happened simply because they always communicate with their clients in those terms; this was a highly specific and unusual arrangement.

171. Knowingly creating a false entry, with the obvious benefit of lending support to the false assertion given to the Firm's accounts department, would undoubtedly be viewed as dishonest by the standards of ordinary and decent people.

<u>Allegation 1.8 – Provision of false and/or misleading information to Client S</u>

172. On four separate occasions, the Respondent provided information to Client S which suggested that a claim had been brought against Person U when that was not the case.

173. The key evidence in relation to this Allegation is the evidence that no application was made against Person U. That can be seen in:

    173.1. The COLP's review of the court file;

    173.2. The absence of an expenditure for the court fees on the client ledger;

173.3. The Respondent's failure to provide Client S with a copy of the application made against Person U, despite repeated requests; and

173.4. The FIO's review of the hard copy files, Firm's case management system and Respondent's e-mail account.

174. If the Tribunal concludes that based on this evidence that no claim had in fact been brought against Person U, it follows that any assertions from the Respondent which suggested the opposite must have been false and/or misleading.

175. Those assertions can be seen on the following occasions:

175.1. The 23 June 2017 e-mail, in which he claims he is awaiting a return date for the s.238/s.239 application;

175.2. The 16 August 2017 e-mail, in which he claims that (a) he would provide a copy of the application against Person U; and (b) that there would be a strong argument for Person U to pay the costs of the application;

175.3. In the 16 November 2017 meeting with Client S, given Client S' reference to the Respondent's assertions in that meeting that the claim had been listed for 6/7 December; and

175.4. The 30 January 2018 e-mail, in which the Respondent claimed that Person U had written to the court in December 2017 requesting an adjournment and that Person U had been ordered to provide an update to the court by 9 February 2018.

176. In providing false and/or misleading information about the status of a claim to a client, the Respondent failed to achieve Outcome 4.2 of the SRA Code of Conduct 2011, in that he failed to inform his client of information of which he had personal knowledge.

177. In falsely representing to Client S that a claim had been brought against Person U, when it had not been, despite Client S instructing the Respondent to bring that claim, the Respondent has failed to act in the client's best interests or provide a proper standard of service. For those reasons, breaches of Principles 4 and 5 of the Principles are alleged.

178. The public expect and trust solicitors and the legal profession in general to provide correct and accurate information, particularly in connection with the commencement or progress of legal proceedings. In providing false and/or misleading information, which clearly resulted in Client S operating on the basis that a claim had been

brought, the Respondent has failed to maintain that trust. For that reason, a breach of Principle 6 is alleged.

179. A solicitor acting with integrity would have taken steps to ensure that their client was provided with accurate and correct information about whether a claim had in fact been issued. Instead, the Respondent provided false and/or misleading information on four separate occasions, even going to the lengths of fabricating a date for a hearing and Person U obtaining an adjournment of that hearing. On this basis, it is alleged that the Respondent breached Principle 2 of the Principles.

Dishonesty in relation to Allegation 1.8

180. On each of the four separate occasions specified in Allegation 1.8, the Respondent must have known that the information he was providing was false and / or misleading when he communicated it to Client S; it is inconceivable that this information could be false, but the Respondent did not know it was.

181. The obvious inference in this case is that this false information had been provided to Client S in an attempt to conceal the fact that the Respondent had not issued a claim against Person U, as he had been instructed to do.

182. The deliberate provision of false information to a client about the status of a claim against debtor, presumably done in order to conceal inactivity, would be considered to be dishonest by the standards of ordinary decent people.

<u>Allegation 1.9 – Provision of false and/or misleading information to Client P</u>

183. Following the stay of the client's claim, , the Respondent continued to communicate with the client as if the claim was on-going, even going so far as suggesting in a 30 October 2017 e-mail that the case had been placed in a trial window.

184. The principal evidence that the 30 October 2017 e-mail contained false and/or misleading information emanates from the Firm's contact with Manchester County Court, who confirmed that the last event on the court file was claim being stayed in June 2017. This in turn is supported by the FIO's review of the hard copy files, the Firm's case management system and the Respondent's e-mail account, which failed to unearth any evidence that would suggest that (i) Client P had been informed of the stay of the proceedings; or (ii) that the claim against Person Q was in fact continuing, so would have been assigned a trial window.

185. In providing false and/or misleading information about the status of a claim to a client, the Respondent failed to achieve Outcome 4.2 of the SRA Code of Conduct 2011, in that he failed to inform his client of information of which he had personal knowledge.

186. The evidence suggests that the Respondent chose not to communicate the fact that the claim had been stayed to Client P. Instead, when Client P was contacting the Respondent for updates in relation to the case's progress, the Respondent chose instead to claim falsely that the case had been allocated a trial window. Failing to engage accurately and truthfully with a client about the status of a claim they were bringing undoubtedly represents a failure to act in that client's best interests and a failure to provide a proper standard of service. For those reasons, it is asserted that this amounts to a breach of both Principles 4 and 5.

187. The public expect and trust solicitors and the legal profession in general to provide correct and accurate information about the status of legal claim. Failing to do that, and instead fabricating a trial window for that case, represents behaviour that would damage that trust. On this basis, a breach of Principle 6 is alleged.

188. A solicitor acting with integrity would have taken steps to ensure that their client was provided with accurate and correct information about their claim. Instead, the Respondent chose to communicate to his client a false claim that the case had been allocated a trial window, presumably to conceal the fact that (i) the case had been stayed; and (ii) that the Respondent had chosen not to communicate this fact to the client at the time it occurred. This behaviour represents a departure from the ethical standards of the profession, and for that reason a breach of Principle 2 is alleged.

Dishonesty in relation to Allegation 1.9

189. As with Allegation 1.8, the Respondent knew that the information which he provided to Client P on 30 October 2017 was false when he communicated it; it is difficult to envisage a set of circumstances in which the Respondent could have mistakenly communicated this information in the genuine belief that the court had allocated the case a trial window, when that was not in fact the case.

190. Such conduct would be considered to be dishonest by ordinary and decent people.

Non-Agreed Mitigation

191. The Respondent advances the following points by way of mitigation, but their inclusion in this document does not amount to acceptance or endorsement of such points by the SRA:

191.1. At no time was the Respondent a signatory on any Office or Client Account in the name of the Firm;

191.2. The Respondent does not accept that the handwriting on each requisition for payment was his;

191.3. The only individuals entitled to sign off upon a transaction from Office or Client Account were the Firm's Equity Partners. The Respondent had no authority in the Firm to do this, other than to initially requisition the payment for approval. The Firm's Equity Partners were responsible for supervising each transaction and subsequently authorising it to be processed by the Accounts Department;

191.4. At the relevant time the Respondent was suffering significant family stress, given that his wife had recently had twins, having already had their first son thirteen months earlier. The Respondent's mental health was suffering as a result of this and together with the pressures of work, this affected the Respondent's ability to carry out his day to day duties.

192. However, the Respondent does not contend that the mitigation set out above amounts to exceptional circumstances which would justify the Tribunal in making any order other than that he be struck off the Roll.

Penalty proposed

193. It is therefore proposed that the Respondent should be struck off the Roll of Solicitors.

194. With respect to costs, it is further agreed that the Respondent should pay the SRA's costs of this matter agreed in the sum of £44,770.74.

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

195. The Respondent has admitted twelve separate acts of dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (10th edition, June 2022), at paragraph 51, states that: "*Some of the most serious misconduct involves*

dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see ***Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin)****).*"

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

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

197. These Allegations span a nearly two-year period, running from February 2016 to January 2018. Whilst it cannot be stated that the Respondent benefitted personally from his conduct, the Allegations, as set out above represent:

197.1. The misuse of client money to meet a debt owed by another client;

197.2. The creation of a false document/false time recording entry in order to try and conceal misuse of client money; and

197.3. False declarations to clients as to the progress of their case

198. Whilst these actions may not have resulted in a direct financial benefit to the Respondent, they did result in the Respondent not having to deal with his clients and the Firm in relation to his mismanagement of funds and cases. The obvious detriment to his clients was the misuse of their funds and not being given accurate information as to the progress of their cases.

199. Given the extended period of time over which these actions occurred and the impact upon the Respondent's clients, this case plainly does not fall within the small residual category where striking off would be a disproportionate sentence. Accordingly, the fair and proportionate penalty in this case is for the Respondent to be struck off the Roll of Solicitors.

Signed:

Mark Rogers

Partner, Capsticks Solicitors LLP, for and on behalf of the SRA

Date: 28 November 2022

Signed:

James Thomas Haigh

Date: 25 November 2022