SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12364-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

NIGEL CHRISTOPHER BROTHERS Respondent

Before:

Mr R Nicholas (in the Chair)
Ms T Cullen
Mrs C Valentine

Date of Hearing: 05 December 2022

Appearances

Victoria Sheppard-Jones, Counsel, employed by Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR instructed by the Solicitors Regulation Authority Ltd of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant

Geoffrey Williams KC of Farrar's Building, Temple, London EC4Y 7BD instructed by Murdochs Solicitors, 45 High Street, Wanstead London E11 2AA for the Respondent Mr Brothers who was present

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JUDGMENT ON AN AGREED OUTCOME
HELD VIRTUALLY

Allegations

1. The allegations against the Respondent, Nigel Brothers, made by the SRA are that, while in practice as a Solicitor and Partner at NC Brothers & Co ("the Firm"):

1.1 Between November 2013 and February 2019, he caused or allowed the facilitation of private loans to clients from monies held on behalf of other clients, without the prior written authority of both clients, and in doing so, he thereby breached Rule 27.2 of the SRA Accounts Rules 2011 ("the SARs 2011") and Principle 6 of the SRA Principles 2011.

1.2 Between December 2013 and May 2019, he caused or allowed inter-ledger transfers between clients in order to cover overdrawn client ledgers, and in doing so, he thereby breached Rule 1.2(c) of the SARs 2011 and all or any of Principles 6 and 10 of the SRA Principles 2011.

1.3 Between November 2013 and February 2019, by accepting and holding funds in the client account for Mr PD for the purpose of making investments on his behalf, he allowed the use of the client account as a banking facility and thereby breached Rule 14.5 of the SARs 2011 and Principle 6 of the SRA Principles 2011

1.4 As at 31 August 2019, he caused or allowed a client account shortage of £1,594.77 and, in doing so, he thereby breached Rule 1.2(a) of the SARs 2011 and any or all of Principles 6 and 10 of the SRA Principles 2011.

Documents

2. The Tribunal had before it documents in an electronic bundle agreed between the parties.

Preliminary Matters

<u>Application for leave to apply for an Agreed Outcome out of time</u>

3. This matter was listed for substantive hearing on 5 and 6 December 2022. On 2 December 2022, the Applicant the SRA Ltd ("the SRA") applied jointly with the Respondent Mr Brothers for consideration and approval of an Agreed Outcome.

4. Rule 25 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR") provides that:

> "(1)The parties may up to 28 days before the substantive hearing of an application (unless the Tribunal directs otherwise) submit to the Tribunal an Agreed Outcome Proposal for approval by the Tribunal."

Practice Direction 1 states:

> "For applications made less than 28 days before the hearing the parties will need to apply for leave to submit the Agreed Outcome application…"

The application included the following:

> "…We note that that this application for an Agreed Outcome is made less than 28 days prior to the listed hearing. No discourtesy is intended to the Tribunal. The basis for the proposed sanction is set out in the Agreed Statement of Facts and Outcome. The Applicant and the Respondent consider that the Agreed Outcome provides for a proportionate and reasonable outcome to these proceedings. We respectfully request approval of the application by the Tribunal on the papers, however the parties would be pleased to assist in answering any questions the Tribunal may have."

5. The Tribunal decided that it would consider the application for leave on 5 December 2022 and asked that the parties be on standby to answer any questions which the Tribunal might have. The Tribunal did not look at the Agreed Outcome prior to considering the application for leave.

6. The Tribunal noted that the application for an Agreed Outcome had been filed considerably out of time within 3 days of the substantive hearing and invited submissions from the parties on that point.

7. For the SRA, Ms Sheppard-Jones submitted that it was understood that the application for an Agreed Outcome should have been filed 28 days prior to the hearing. This was a joint application to dispense with that rule pursuant to Rule 6 of the SDPR which permits the Panel to regulate its own procedure. It was regrettable that the written application did not provide any detail as to why the written application was submitted so late. This was a learning point which she would indicate to those instructing her; that any written applications should be fuller from the outset. The reasons for late submission were as follows: Both parties agreed that there had been no dragging of feet at all. In the last two months both parties had been very actively engaged in trying to reach this proposed Agreed Outcome. There had been very careful consideration by both parties of this rather complex set of facts.

8. Miss Sheppard-Jones detailed the timeline of the case: The Rule 12 application had been lodged on 12 August 2022. The Respondent served an Answer on 5 October 2022. Between those dates there were early indications that the case might be suitable for an Agreed Outcome but it was not a particularly straightforward case and it was not until the Answer was received on 5 October 2022 that proper without prejudice discussions began. For that period of 8 weeks from 5 October until the previous Friday there had been discussions between the parties as to the most proportionate and appropriate way of dealing with this case so far as the parties were concerned. The facts and proposed sanction level had been agreed over a week ago. Left outstanding was the final element - costs. That took a slightly longer period and those discussions had taken place the previous week.

9. Miss Sheppard-Jones informed the Tribunal that the final document was agreed between both parties the previous Thursday evening after close of business and then the signed document was lodged the previous Friday. The matter had not been left to the last minute; the parties just ran out at time. It took eight weeks to get to that position. It was uncertain that they would, and they worked very hard to do that. It was the parties' submission without pre-judging the outcome of the application that for the

Panel to consider this proposed Agreed Outcome would be a proportionate and efficient use of the Panel's time.

10. For Mr Brothers, Mr Williams KC submitted that the time between Mr Brothers filing his Answer and the substantive listing was quite short by recent standards. At no stage during that time had the matter gone to sleep. Mr. Williams had come into it relatively late but he had seen the toing and froing between Mr Trevette who instructed him and those representing the SRA. He apologised for the late delivery of the proposed Agreed Outcome document. He was instructed that at some stage during the 8 week period the case handler at the SRA had been on leave which shut the matter down for a week or so. It was a fact that the SRA did not sanction the release of an agreed outcome document until everything was agreed and so there was no working draft available which might have speeded the matter along, but they still would have been tight for time given the limits imposed by the rule.

11. Mr Williams submitted that both parties had tried very hard to bring this matter to agreement since the Answer had been filed. There was not much either party could do prior to that stage. Some out of hours working was involved by both parties. He accepted that the late filing had involved a degree of inconvenience to the Panel for which he apologised but Mr. Williams supported the submission made by Ms Sheppard-Jones that dealing with the matter as they proposed was in the interests of justice, was proportionate and was in pursuit of the proper aims of the Tribunal when the Agreed Outcome process was put into effect. Mr Williams concluded by submitting that it was in the interests of justice for the Tribunal to consider the proposed Agreed Outcome at this morning's hearing.

Determination of the Tribunal upon the application to submit an Agreed Outcome out of time

12. The Tribunal considered the submissions on behalf of the parties. It was regrettable that the proposed Agreed Outcome had not been submitted for consideration in accordance with the time limits set in the SPDR as Tribunal time had been wasted as a result. However, the Tribunal noted the particular circumstances in this case with the fairly short window for discussion between when the Answer had been filed and the date listed for the substantive hearing in addition to the complexity of the matter and the need to have the matter completely agreed between the parties before submission of the proposed Agreed Outcome document. The Tribunal accepted that out of hours working had taken place in order to submit the document before the substantive hearing was listed to begin. In all the particular circumstances of this case the Tribunal was prepared to grant leave for the parties to submit the proposed Agreed Outcome out of time.

Factual Background

13. The Respondent was admitted to the Roll on 15 January 1983. At the time of the misconduct, Mr Brothers was the Manager and Partner of the Firm. The Firm was a partnership, with one other Partner.

14. At the material time, Mr Brothers held the roles of Compliance Officer for Legal Practice ("COLP"), Compliance Officer for Finance and Administration ("COFA") and Money Laundering Reporting Officer ("MLRO").

15. The Firm practised in Immigration and Conveyancing Law, with some residual work in Litigation, Probate and Matrimonial matters.

16. The Firm ceased to operate on 15 May 2022.

17. The misconduct came to the attention of the SRA by way of a qualified accountant's report for the year 2017/2018. The report identified that:

> "There were a number of client to client transfers which represented private loans between clients. Such inter-client loans would be a breach of Rule 27 unless expressly authorised in writing by both clients in advance of the transactions."

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

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

Findings of Fact and Law

19. The SRA was required to prove the allegations to the standard applicable in civil proceedings (the balance of probabilities). The Tribunal had due regard to Mr Brother'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.

20. The Tribunal reviewed all the material before it and was satisfied to the required standard that Mr Brothers' admissions were properly made. The Tribunal considered the Guidance Note on Sanctions (June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal agreed overall with the analysis of culpability and harm set out in the proposed Agreed Outcome document. Mr Brothers was wholly responsible for what occurred and it was clear from the document that he felt entitled to deal with client money as he did. As to the harm caused, fortunately no client money was lost. The Tribunal agreed that the misconduct fell within the Indicative Fine Band assessed as more serious and that a fine at the top of that Band was a proportionate sanction. The Tribunal also felt that the restrictions proposed necessary and appropriate. They were an important safeguard for the public and they constituted a key element in the Tribunal's decision to approve the Agreed Outcome.

Costs

21. The parties had agreed costs in the fixed amount of £30,000.

Statement of Full Order

22.1. The Tribunal Ordered that the Respondent, NIGEL CHRISTOPHER BROTHERS solicitor, do pay a fine of £15,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the agreed sum of £30,000.00.

22.2. The Respondent shall be subject to conditions imposed by the Tribunal as follows:

22.2.1 The Respondent may not:

22.2.1.1 practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body;

22.2.1.2 be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;

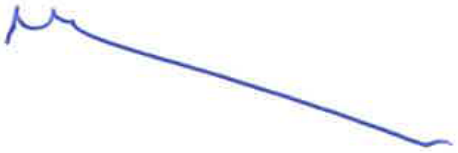
22.2.1.3 be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

22.2.1.4 hold client money apart from the disposal of funds held in the client account of his former practice;

22.2.1.5 be a signatory on any client account except to deal with the funds held on the client account of his former practice.

22.3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at Paragraph 22.2 above.

Dated this 13th day of January 2023
On behalf of the Tribunal



R Nicholas
Chair

IN THE SOLICITORS DISCIPLINARY TRIBUNAL

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

AND THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

NIGEL BROTHERS

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

Introduction

1. By statement made by Ian Brook, on behalf of the Solicitors Regulation Authority Limited (the "SRA"), pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019, dated 12 August 2022, the SRA brought proceedings before the Tribunal making allegations of professional misconduct against the Respondent.

2. The Tribunal issued Standard Directions on 16 August 2022. The Substantive Hearing is currently listed in person on 5 and 6 December 2022.

3. This document sets out the agreed facts, and the proposed outcome advanced by the parties, for the Tribunal's consideration.

4. The references included herein relate to the exhibit IWB1 to the Rule 12 statement.

Allegations

5. The allegations against the Respondent, Nigel Brothers, made by the SRA are that, while in practice as a Solicitor and Partner at NC Brothers & Co ("the Firm"):

1.1 Between November 2013 and February 2019, he caused or allowed the facilitation of private loans to clients from monies held on behalf of other clients, without the prior written authority of both clients, and in doing so, he thereby breached Rule 27.2 of

the SRA Accounts Rules 2011 ("the SARs") and Principle 6 of the SRA Principles 2011 ("the Principles").

1.2 Between December 2013 and May 2019, he caused or allowed inter-ledger transfers between clients in order to cover overdrawn client ledgers, and in doing so, he thereby breached Rule 1.2(c) of the SARs and all or any of Principles 6 and 10 of the Principles.

1.3 Between November 2013 and February 2019, by accepting and holding funds in the client account for Mr PD for the purpose of making investments on his behalf, he allowed the use of the client account as a banking facility and thereby breached Rule 14.5 of the SARs and Principle 6 of the Principles.

1.4 As at 31 August 2019, he caused or allowed a client account shortage of £1,594.77 and, in doing so, he thereby breached Rule 1.2(a) of the SARs and any or all of Principles 6 and 10 of the Principles.

Agreed Facts

6. The Respondent was admitted to the Roll on 15 January 1983.

7. At the time of the misconduct, the Respondent was the Manager and Partner of the Firm. The Firm was a partnership, with Mr Kuldeep Sethi, as the only other Partner.

8. At the material time, the Respondent held the roles of Compliance Officer for Legal Practice ("COLP"), Compliance Officer for Finance and Administration ("COFA") and Money Laundering Reporting Officer ("MLRO").

9. The Firm practised in Immigration and Conveyancing Law, with some residual work in Litigation, Probate and Matrimonial matters.

10. The Firm ceased to operate on 15 May 2022.

11. The misconduct came to the attention of the SRA by way of a qualified accountant's report for the year 2017/2018. The report identified that,

"*There were a number of client to client transfers which represented private loans between clients. Such inter-client loans would be a breach of Rule 27 unless expressly authorised in writing by both clients in advance of the transactions.*" (IWB1, p. 564).

12. The SRA authorised a forensic investigation. The forensic investigation report ("FIR") confirmed that the Firm had facilitated a number of loans between clients, in circumstances where some of the loans were not evidenced by written loan agreements (IWB1, p. 19-22). Save for one payment made directly to the borrowers,

all the loans were effected by way of inter-ledger transfers (IWB1, paragraph 13 of p. 21). The FIR also noted that the Firm had effected inter-ledger transfers between client accounts in order to correct overdrawn client ledgers (IWB1, p. 19).

13. The loans and transfers were made from funds held on the following four client matters:
    1. Mr PD
    2. Estate of Mrs EB
    3. Mr NN
    4. Estate of Mr JAB

14. Forty-seven loans (comprised of both documented and undocumented loans), with a total value of £1,788,910.85, were made across all four matters. Thirty-two of which were made without prior written agreement (IWB1, p. 20-21). The total value of the undocumented loans was £774,414.75.

15. Forty-seven inter-ledger transfers, to correct overdrawn ledger balances, were also made across Mr PD, Mrs EB and Mr NN's matters. The total value of the inter-ledger transfers was £53,231.08 (IWB1, p. 21).

16. The Respondent failed to obtain security for the loans or keep a centralised record of the loans and transfers. The fact of which does not give rise to a separate allegation but aggravates the misconduct.

17. All the loans have been repaid.

Allegations 1.1 and 1.2

Client Mr PD

18. On 27 June 2012, Mr PD granted the Respondent Power of Attorney (IWB1, p. 356). In a letter dated 12 October 2019, Mr PD advised that he did so in order that the Respondent could "*invest my money and lend it to clients of his firm on such terms as in his discretion he considered appropriate in the circumstances.*" (IWB1, p. 357-359).

19. Between 1 November 2013 and 19 February 2019, forty-six inter-ledger transfers were made from PD's account to other clients of the Firm, to a total value of £961,587.36.

20. On the basis of information provided by the Respondent in a schedule to the FIO, of the forty six transfers, thirty-two represented loans to a total value of £922,611.16 and

fourteen represented transfers to correct overdrawn client ledgers, to a total value of £38,976.20 (IWB1, paragraph 46 of p. 28 and p. 76-93).

21. Of the thirty-two loans, the Respondent produced loan agreements in relation to ten of the loans. For the remaining twenty-two loans there were no such written loan agreements. The total value of the undocumented loans was £436,115.06 (IWB1, p. 21).

22. In a letter dated 12 October 2019, PD has stated that he has seen a summary of loans made since November 2013, "*all of which fall within the scope of the authority given to* [the Respondent]." PD further advised that he was "*aware that there is not a written agreement in respect of every payment/loan. I do not have a problem with that, since bookkeeping should take care of these transactions.*" (IWB1, p. 357).

Client Mrs EB

23. The Respondent was appointed, along with his three siblings, as the Co-Executor of his late mother's estate. The estate was to be shared equally amongst Mrs EB's four children (IWB1, paragraphs 137-138 of p. 51, p. 472-474).

24. Between 15 August 2016 and 1 May 2019, thirty-eight inter ledger transfers were made to thirty-three different clients, to a total value of £89,054.57 (IWB1, paragraphs 141-142 of p. 52 and p. 481-483).

25. On the basis of information provided by the Respondent, thirty-two transfers represented transfers to correct overdrawn client ledgers and six represented loans. The loans to other clients were in the total sum of £75,799.69 and the transfers to cover overdrawn balances were in the total sum of £13,254.88 (IWB1, paragraphs 143-144 of p. 52 and p. 481-483).

26. There were no written loan agreements for any of the loans.

27. Where inter-ledger transfers were made to correct overdrawn client ledgers, some of the transfers were backdated such that the recipient ledger did not always record that the client ledger had in fact been overdrawn (IWB1, paragraph 166 of p. 56).

28. The value of the estate was £365,289.00 (IWB1, paragraph 139 of p. 51 and p. 474). After legacies to grandchildren, the total sum due to each sibling was £91,448.50. The value of the transfers made by the Respondent did not at any point exceed the sum calculated as potentially distributable to the Respondent (IWB1, paragraph 148-151 of p. 53 and p. 481-483). However, the transfers were not made to the Respondent, but were transferred directly from the ledger for the estate to the other clients, without the prior written agreement of either the Respondent's siblings, who were the Co-Executors and beneficiaries of the estate, or the recipient clients.

Client Mr NN

29. From 2013, Mr NN was a client of the Firm. In a letter dated 30 September 2019, Mr NN stated that he and the Respondent had a very good professional and personal relationship and that in March 2014, he received a call from the Respondent asking if he could borrow £42,500.00. Mr NN agreed to the loan, which was repaid on 25 June 2014 (IWB1, p. 507).

30. Mr NN further advised that he lent a sum of £20,000.00 to the Respondent in early November 2014, which was repaid in February 2015 (IWB1, p. 507).

31. Two transfers in the sums of £42,500.00 and £20,000.00 were made to other client accounts in March 2014 and late October 2014. A third transfer, not mentioned in the letter from NN, in the sum of £1,000.00 was made from Mr NN's ledger to a further client ledger on 15 October 2014 (IWB1, p. 508-512). The third transfer was effected to cover a debit balance on the recipient client ledger. As the transfers were to other client ledgers and not to the Respondent or the office account, they represented loans to those clients via the Respondent (IWB1, paragraph 195-199 on p. 62).

32. There was no written authority or loan agreement in relation to the three transfers (IWB1, paragraphs 191-192 on p. 61).

Client Mr JB

33. The Firm acted for the estate of Mr JB. The Respondent was the fee earner and he and Mr JB's wife were the executors and trustees of the estate. The net value of the estate was £1,646,570.00 (IWB1, paragraph 221 on p. 68).

34. The will of Mr JB included a provision that the trustees,

"*...may invest or apply any money liable to be invested under this will in the purchase of any investment...whatsoever...to the intent that my trustees shall have the same full and unrestricted powers of making and transposing investments in all respects as if they were absolute beneficial owners....*" (IWB1, paragraph 223 on p. 68).

35. Mr JB's wife authorised the Respondent to lend monies to clients of the Firm. (IWB1, paragraphs 230-231 on p. 69).

36. Between 1 November 2017 and 1 February 2019, three loans by way of direct payments to the borrower and four further loans by way of inter-ledger transfers to other clients had been made (IWB1, paragraphs 223-224 on p. 68 and p. 538-542).

37. There were written loan agreements in respect of the loans made by way of inter-ledger transfer (IWB1, paragraph 228 on p. 69 and p. 168).

38. However, there were no written loan agreements for two of the loans made by way of direct payment to the borrower. The total value of those loans was £200,000.00.

Admissions in relation to allegations 1.1 and 1.2

39. The Respondent admits allegations 1.1 and 1.2.

40. The Respondent admits that he thereby breached Rules 27.2 (allegation 1.1) and 1.2(c) (allegation 1.2) of the SARs.

41. The Respondent admits that such conduct undermined the trust the public has in him as a solicitor and in the legal profession. Whilst no loss was caused to the clients in relation to the loans, the failure of the Respondent to comply with the SARs exposed those clients to the risk of loss, in relation to significant sums of money. That risk was heightened by the Respondent's failure to obtain security for the loans or keep a centralised record of the loans and transfers. Public confidence would be undermined by the Respondent's conduct in handling client money in this way, and accordingly the Respondent admits that he has breached Principle 6 of the Principles, in relation to allegations 1.1 and 1.2.

42. The Respondent admits that his conduct in relation to allegation 1.2 failed to protect client money. By transferring funds from a client ledger for the sole purpose of covering a deficit on an unrelated matter, the Respondent created a shortage on the lender client ledger and therefore put that client money at risk. The Respondent admits that he thereby breached Principle 10 of the Principles in respect of allegation 1.2.

Allegation 1.3

43. As set out at paragraph 18 above, Mr PD granted the Respondent Power of Attorney, in order that he could "*invest my money and lend it to clients of his firm on such terms as in his discretion he considered appropriate in the circumstances.*" (IWB1, p. 357).

44. Pursuant to the Power of Attorney, the Respondent lent Mr PD's money to other clients of the Firm. The original source of funds from Mr PD was paid into the Firm's client account.

45. The manner in which the Respondent "invested" PD's monies, by way of making largely undocumented loans to other clients and transferring monies to correct overdrawn ledger balances, was not in respect of instructions relating to an underlying transaction nor did it form part of the Firm's normal regulated activities.

Admissions in relation to allegation 1.3

46. The Respondent admits allegation 1.3 and thereby admits breaching Rule 14.5 of the SARs.

47. He further admits that such conduct undermined the trust the public has in the Respondent as a solicitor and in the provision of legal services. Operating a client account as a banking facility puts the client account at risk of being used inappropriately. A solicitor maintains a client account to protect client money, which is held in connection with professional work undertaken by him on behalf of that client. The public expects that solicitors hold client money in the client account in accordance with the strict framework set out in the SARs. The Respondent admits that his conduct thereby breached Principle 6 of the Principles.

Allegation 1.4

48. As at 31 August 2019, the Firm's liabilities to client totalled £1,566,193.47. Client cash available in the client bank accounts totalled £1,564,888.70, resulting in a cash shortage on the client account of £1,304.77 (IWB1, paragraph 32 on p. 25). This shortage had arisen as a result of payments from the client account exceeding funds held for individual clients (IWB1, paragraph 36 on p. 26).

49. The payments included:

    i. Payments for Counsel's fees when there was a zero balance on the client ledger.

    ii. Payments to the office account in relation to bills when there were insufficient funds on the client account.

iii. Payment in relation to a conveyancing matter when there was a zero balance on the client ledger (IWB1, p. 334-341).

50. The FIO noted that there were additional client liabilities relating to four client matters, whereby funds had been incorrectly held in the Firm's office account, to the total of £290.00. That increased the client account shortage to £1,594.77 (IWB1, paragraph 33 on p. 25 and p. 342-355).

51. The shortage of £1,304.77 was replaced in full by the commencement of the Forensic Investigation in September 2019. However, the further shortage of £290.00 remained outstanding as at the date of the FIR (IWB1, paragraphs 34-35 on p. 26). These monies were replaced in full by March 2020, after the shortage had been identified by the FI as being outstanding

Admissions in relation to allegation 1.4

52. The Respondent admits allegation 1.4.

53. By incorrectly holding £290 of client money in the office account, the Respondent admits that he breached Rule 1.2(a) of the SARs.

54. By causing or allowing a shortage on the client account to occur, the Respondent admits that he failed to protect client money. Client money going into the client account would be placed at risk of being used to rectify overdrawn balances in a deficient client account. Client money is sacrosanct and the Respondent admits that he had duties not only as Partner; but COLP, COFA and MLRO, to ensure that client money was handled appropriately. The Respondent therefore breached Principle 10 of the Principles.

55. The Respondent further admits that such conduct undermines the trust the public placed in him as a solicitor and in the provision of legal services and thereby breaches Principle 6 of the SRA Principles 2011. The public expects that client money is kept safe and in adherence with the relevant rules and regulations. Public trust is undermined by the Respondent's actions in causing or allowing a cash shortage to occur on the client account, as such conduct fails to adhere to that expectation.

Mitigation

56. The following points are advanced by way of mitigation on behalf of the Respondent but their inclusion in this document does not amount to adoption or endorsement of such points by the SRA:

56.1 It is the Respondents submission that there has been no complaint from any client, the loans have all been repaid and no client suffered any loss. Of paramount importance, the Respondent made no personal profit from any of the alleged allegations. Prior to making the loans the Respondent did carry out a risk assessment, which is why security was put in place in respect of a number of the loans. He was of the opinion that security was not necessary for the other loans as the clients to whom the money was being lent were of good standing and had sufficient assets to enable them to repay the loans. In relation to paragraph 28, It should be noted that all of the executors had agreed to distribute the monies from the sale of the property and payments were made to the Respondents siblings. The money due to the Respondent had remained in the client account, it is his case that he believes he was entitled to draw upon this or deal with this money without any approval or consent from his siblings and Co-executors

Proposed Agreed Outcome

57. The Respondent agrees:

57.1 to pay a financial penalty in the sum of £15,000.00

57.2 to pay costs to the SRA in the sum of £30,000.00

58. In light of the nature of the misconduct, it is further agreed that it is necessary to impose a Restriction Order for an indefinite period. The proposed terms of the Order are that the Respondent may not:

i. practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body

ii. be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body

iii. be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration

iv. hold client money apart from the disposal of funds held in the client account of his former practice

v. be a signatory on any client account except to deal with the funds held on the client account of his former practice

59. The parties submit that the proposed outcome represents the appropriate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanctions 10th Edition.

60. In assessing the seriousness of the misconduct, the parties have considered the Respondent's culpability, the harm caused, and the existence of aggravating and mitigating factors.

61. In relation to culpability, the parties have identified the following factors:

    i. The actions were planned

    ii. The Respondent had direct control over the circumstances that gave rise to the misconduct

    iii. The Respondent was an experienced solicitor, partner, COLP and COFA of the Firm

62. In the circumstances, the parties submit that the culpability of the Respondent is relatively high.

63. In terms of harm, no client suffered any loss and all of the loans were re paid. However, the loans and transfers were made over 5 years and involved significant sums of money. The risk of harm associated with the Respondent's misconduct was therefore material.

64. In terms of aggravating factors, the parties submit that the following are present:

    i. The misconduct occurred over a period of 5 years

    ii. The misconduct involved significant sums of money

    iii. The misconduct involved a number of breaches of the SARs as well as the Principles.

65. In terms of mitigating factors, the parties submit the following:

    i. All the loans have been repaid

    ii. The lender clients were content with the loans that had been advanced

    iii. The Respondent has made full admissions

66. Bearing in mind the level of the Respondent's culpability, the time over which the conduct occurred, the sums of money involved and the number of breaches of the SARs and Principles, the parties submit that neither No Order nor a Reprimand would be appropriate.

67. The parties submit that a financial penalty would reflect the seriousness of the misconduct. In light of the high culpability, and the aggravating factors, the parties submit that the conduct ought to be assessed at the top end of the "*more serious*" band.

68. In the circumstances, it is submitted that the proposed sanction of a fine of £15,000.00 is the appropriate outcome in this case.

Signed by the parties:

Dated: 2nd December 2022

Signed by the parties:

Ian Brook (on behalf of the Applicant)

Dated: 2 December 2022