SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12370-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

IAN CAUNT WILSON Respondent

Before:

Mr M N Millin (in the chair)
Mr U Sheikh
Dr S Bown

Date of Hearing:
19 – 20 December 2022

Appearances

Victoria Sheppard-Jones, Counsel, of Capsticks LLP, 1 St George's Road, London, SW19 4DR, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, made by the SRA are that, while in practice as a solicitor and sole equity partner of Lyons Wilson Solicitors ("the Firm"):

1.1 Between October 2016 and January 2020, having received settlement monies from the defence in personal injury matters, failed to pay outstanding professional disbursements, resulting in a shortfall of between £74,733.86 and £148,593.86, on the client account, and in doing so he breached all or any of the following:

So far as the conduct predated 25 November 2019, Rules 7.1 and 17(1)(b) of the SRA Accounts Rules 2011 and Principles 2, 6, 8 and 10 of the SRA Principles 2011.

So far as the conduct occurred on or after 25 November 2019, Principles 2 and 5 of the SRA Principles.

PROVED

1.2 Between October 2016 and January 2020, he failed to run the Firm with effective systems and controls and in accordance with sound financial and risk management principles, resulting in unpaid liabilities of £233,191.64, which included monies owed for professional disbursements and business liabilities, which the Firm had insufficient funds to settle, and in doing so he thereby breached all or any of the following:

So far as the conduct pre dated 25 November 2019, Principles 6 and 8 of the SRA Principles 2011.

So far as the conduct occurred on or after 25 November 2019, Paragraphs 2.1 and 2.4 of the Code of Conduct for Firms and Principle 2 of the SRA Principles.

PROVED

1.3 Between October 2016 and January 2020, in his capacity as the Firm's Compliance Officer for Legal Practice and Compliance Officer for Finance and Administration he failed to ensure, or take adequate steps to ensure, compliance with the Firm's regulatory obligations and he thereby breached all or any of the following:

So far as the conduct pre dated 25 November 2019, Rule 8.5 (c) and (e) of the SRA Authorisation Rules 2011.

So far as the conduct occurred on or after 25 November 2019, Paragraphs 9.1 and 9.2 of the SRA Code of Conduct for Firms.

PROVED

1.4 Between March and May 2022, he failed to co-operate with the SRA during the Intervention into the Firm and thereby breached all or any of Paragraphs 7.3 and 7.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs and Paragraphs 3.2 and 3.3 of the SRA Code of Conduct for Firms.

PROVED

Executive Summary

2. The allegations were predicated on three reports made to the Applicant with regards to the financial management of the Firm. One report was made anonymously. The other two reports were essentially "whistleblowing" by a salaried Partner in the Firm, Ms Johnson. As a consequence of the reports a forensic investigation commenced which revealed the mismanagement of client money, failures in relation to the governance and management of the Firm and the subsequent failure of Mr Wilson to co-operate with the Applicant when intervention proceedings commenced.

3. Mr Wilson did not attend the hearing and did not file an Answer to the Rule 12 Statement.

4. The Tribunal found all matters proved on a balance of probabilities.

Sanction

5. Mr Wilson was struck from the Roll of Solicitors and Ordered to pay the Applicant's costs in the sum of £33,000.00.

Documents

6. The Tribunal considered all the documents contained in an electronic hearing bundle which included:

- Rule 12 Statement dated 30 August 2022 and Exhibit IWB1.
- Applicant's Statement of Costs as at the Substantive Hearing dated 12 December 2022.

Preliminary Matters

7. Application to proceed in the Respondent's absence

7.1 Ms Sheppard-Jones submitted that notice of the Substantive Hearing had been properly served in accordance with Rule 36 in that:

- On 1 September 2022, the Tribunal emailed Mr Wilson at an iCloud address advising him that proceedings had been issued. Standard Directions were attached to that email which set out the date of the Substantive Hearing as well as a Case Management Hearing ("CMH") on 24 October 2022. No acknowledgement or response was received.

- On 11 October 2022, the Applicant sent a letter to Mr Wilson by email to the iCloud address, First Class post and Special Delivery. That email reiterated the dates for the Substantive Hearing and the CMH. The Special Delivery letter was signed for by "Wilson" on 14 October 2022. No acknowledgement or response was received.

- Mr Wilson did not attend the CMH. The memorandum from that hearing was emailed to him at the iCloud address by the Tribunal on 1 November 2022. That memorandum reiterated the date of the Substantive Hearing. Mr Wilson was also made subject to an UNLESS Order in that should he not file an Answer to the Rule 12 Statement by 7 November 2022 he would be debarred from so doing without leave of the Tribunal. No acknowledgement or response was received.

- On 17 November 2022 the Applicant filed at the Tribunal and served on Mr Wilson (via email to the iCloud address) its Certificate of Readiness and Hearing Timetable. No acknowledgement or response was received.

- On 25 November 2022, the Applicant applied for the Substantive Hearing to be convened remotely as opposed to in person. Mr Wilson's response to the application was sought via email to the iCloud address. No acknowledgement or response was received and the application was granted. Mr Wilson was advised of the Tribunal's decision via email to the iCloud address on 5 December 2022. No acknowledgement or response was received.

- On 12 December 2022, the Applicant notified Mr Wilson via email to the iCloud address, First Class post and Special Delivery of the joining details for the remote Substantive Hearing on 19 – 20 December 2022. Attached to that email was the Applicant's Statement of Costs, the Substantive Hearing bundle index and the joining details for the remote Substantive Hearing. No acknowledgement or response was received.

- On 14 December 2022, Mr Wilson emailed the Applicant from his iCloud address in the following terms:

  > "… ..*(sic)* just aware your hearing is next week .. *(sic)*Xmas week ..*(sic)* ..*(sic)* I would respectfully request an adjournment to try and prepare and narrate my response to the allegations in question .. *(sic)*although I am only aware of the generality of them ... *(sic)*my mental health has been destroyed by the conduct and actions of the parties in question, that has resulted in the destruction of my firm .. *(sic)*at my age and health, and after fifty years as a solicitor and over forty years of the firm ..*(sic)* I have been left with absolutely nothing ..*(sic)* bankruptcy .. *(sic)*and only a state pension ...*(sic)* I was intending to retire in 2022 with an orderly rundown and all matters covered .. but not so .. *(sic)*that was not meant to be with the behaviour and conduct in question that prevented me from so doing ..*(sic)* .I believe I have a complete and clear response to any, and all such allegations against me created by the SRA, all of which are emphatically denied .. ..*(sic)* all of this was unnecessary and avoidable .. *(sic)*arguably the SRA should have informed me in May 2019 of the allegations of Geoff Hyman ... *(sic)*why was I not informed .. *(sic)*I would have investigated and identified what was happening and if appropriate paid

off any outstanding disbursements .. *(sic)*why did the SRA not tell me .. *(sic)*I appreciate clients are not involved but I was!!*(sic)*and third parties .. *(sic)*and although the SRA wouldn't know that any such alleged practice had ceased, the*(sic)* SRA were prepared to let the alleged practice continue until March of 2020 .. *(sic)*extraordinary .. *(sic)*why did the SRA do that .. *(sic)*everything would have been different otherwise ... .. *(sic)*further if the SRA had the decency to notify me in May 2019 it may have affected the employment tribunal litigation between Geoff Hyman and myself,such *(sic)*litigation that he had to withdraw as he was unable to establish I knew what he and the accounts department were doing, nor that he ever brought it to my attention,or *(sic)*otherwise discussed with me ... *(sic)*his failure to receive money from me led to the alleged phone call to the SRA, reporting,in *(sic)*effect, his own behaviour .. *(sic)*and behaviour that I wasn't aware of, and had I been so aware, it would inevitable have been dealt with, not perpetuated .. *(sic)*it should be noted perhaps all the people involved in this had gone by May of 2019 ...*(sic)* and particularly, as in or about July 2019 the Bank returned over £110k in overcharged fees .. *(sic)*all went into Office account .. *(sic)*I did not benefit directly at all, no personal withdrawals .. *(sic)*all went to pay invoices .. *(sic)*I was advised to repay my wife who was and is I believe the highest creditor of the firm having advanced over £1m over the years .. *(sic)*but not so .. *(sic)*as it wasn't the right thing to do ... *(sic)*and I have placed a major part of my pension into the firm .. *(sic)*none of this is conduct and a mentality consistent, and conducive, with the SRA allegations .. *(sic)*myself and the family always acted in the best interests of the firm and the staff and their families .. *(sic)*impossible for us to do otherwise ... *(sic)*conduct and a state of mind that looks quite sad and pathetic and unjustified .. *(sic)*a complete betrayal of our support and dedication over forty years ... .. *(sic)*my response to all of this, if I am allowed to create it, will,I *(sic)*hope, elaborate and particularise on all the relevant detail behind all of this extraordinary and unique state of affairs .. *(sic)*a situation I have never heard of before, yet it has happened to me, and I am required to live through it .. *(sic)*and at a time of the pandemic coinciding with all of this, and having to remain away from the office since the 18th of March 2020 for health reasons as a consequence thereof ... *(sic)*and as directed by my Professor at The Christie Hospital .. *(sic)*may I also mention, as perhaps above,that *(sic)*the sequence of events, and destruction of the firm etc, has had a profound affect upon me,has ruined my mental health .. *(sic)*cannot function or cope with anything connected there with, or indeed anything ... *(sic)*in such circumstances it is interesting and disturbing, that the SRA would seek to in any way allege I have any responsibility for sorting out the consequences created by the destruction of my firm .. *(sic)*that is not,and *(sic)*cannot be my responsibility, but that of the SRA anyway .. *(sic)*but in any event my mental health is such that it would be, and is, impossible for me to address such matters .. *(sic)*and in so saying please do not suggest otherwise .. *(sic)*nor refer to "public interest" .. *(sic)*a subject I hope to refer to later, as to the conduct of the SRA, in the context of this rather unique state of affairs ..*(sic)*

.. *(sic)*the creation of this correspondence has taken a significant period of time and at some cost to my health .. *(sic)*it is inevitably a "snapshot" and generalised overview of the situation and I hope I will be allowed to elaborate

> on all of this in due course .. .. *(sic)*at the moment just trying to survive mentally and physically .. *(sic)*and would appreciate a stay to try and absorb and understand all of this .. *(sic)*something I am having great difficulty in coming to terms with .. .. *(sic)*yours Ian C Wilson…"

7.2 The Applicant responded on the same date by way of email to Mr Wilson's iCloud address. Attached to that email was the application notice for Mr Wilson to apply in the prescribed form to adjourn the Substantive Hearing if he chose to do so as well as the Tribunal's Guidance Note on Health. No acknowledgement, response or application was received.

7.3 Ms Sheppard-Jones averred that, given the facts set out above, the Tribunal could be satisfied that notice of the hearing had been served in accordance with Rule 44.

7.4 Ms Sheppard-Jones referred the Tribunal to the seminal authorities regarding the exercise of discretion to proceed in a Respondent's absence (which are fully set out below). Ms Sheppard-Jones submitted that in applying the principles promulgated in those authorities, the Tribunal could be satisfied that Mr Wilson had voluntarily absented herself. Ms Sheppard-Jones therefore invited the Tribunal to exercise its discretion and proceed in Mr Wilson absence on the grounds that:

- An adjournment was unlikely to secure Mr Wilson's attendance. He had been given advice and the opportunity as to making a formal application to adjourn on health grounds but had failed to do so. He had been given the joining details for the Remote Hearing but chose not to attend to make an oral application to adjourn.

- Mr Wilson had demonstrably failed to engage in the investigation (in that only partial answers were given by him), the intervention and the Tribunal proceedings. It was plain that he had a history of non-compliance.

- The public interest in determining serious allegations predicated on conduct between 2016 – 2019 required expeditious disposal of the same. The public interest outweighed any prejudice to Mr Wilson who had been given numerous opportunities to engage yet failed to do so.

- The ill health that Mr Wilson set out in his only email of the proceedings on 14 December 2022 lacked specificity and was not supported by medical evidence.

<u>The Tribunal's Decision</u>

7.5 The Tribunal applied the two-stage test required of it when determining applications to proceed in a Respondent's absence. Firstly, the Tribunal considered whether notice of the substantive hearing had been given in accordance with Rule 44 namely:

> "44.—(1) Any document to be sent to the Tribunal or any other person or served on a party or any other person under these Rules, a practice direction or a direction given under these Rules must be—

(a) sent by pre-paid first class post or by document exchange, or delivered by hand, to the Tribunal's or other person's office or as the case may be the address specified for the proceedings by the party (or if no such address has been specified to the last known place of business or place of residence of the person to be served); or

(b) sent by email to the email address specified by the Tribunal or other person or specified for the proceedings by a party (or if no such address has been specified to the last known place of business or place of residence of the person to be served); or

(c) sent or delivered by such other method as the Tribunal may direct.

(2) Subject to paragraph (3), if a party specifies an email address for the electronic delivery of documents the Tribunal and other parties will be entitled to serve (and service will be deemed to be effective) documents by electronic means to that email address, unless the party states in writing that service should not be effected by those means.

(3) If a party informs the Tribunal and every other party in writing that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to send documents to that party, that form of communication must not be used…"

7.6 The Tribunal proceeded to consider whether or not notice of the substantive hearing had been properly served.

7.7 In circumstances where Mr Wilson had been notified of the substantive hearing date in writing on six occasions via email, First Class post and Special Delivery post, and given the fact that the only communication from Mr Wilson referred to the Substantive Hearing date, the Tribunal was satisfied that notice had been effected in accordance with Rule 44.

7.8 The Tribunal's secondly considered whether or not to exercise its discretion to proceed in Mr Wilson's absence. The power to proceed in absence was vested in the Solicitors (Disciplinary Proceedings) Rules 2019 Rule 36 which provides:

> "… If a party fails to attend and is not represented at the hearing and the Tribunal is satisfied that notice of the hearing was served on the party in accordance with these Rules, the Tribunal may hear and determine any application and make findings, hand down sanctions, order the payment of costs and make orders as it considers appropriate notwithstanding that the party failed to attend and is not represented at the hearing…"

7.9 The principles applied by the Tribunal when exercising its discretion whether to proceed in Mr Wilson's absence were promulgated in R v Hayward, Jones and Purvis [2001] QB, CA in which Rose LJ at §22(5) held:

> "… fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case namely:
>
> (1) A defendant has, in general, a right to be present at his trial and a right to be legally represented.
>
> (2) These rights can be waived, separately or together, wholly or in part, by the defendant himself. They may be wholly waived if, knowing, or having the means of knowledge as to when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him. They may be waived in part if, being present and represented at the outset, the defendant, during the course of the trial, behaves in such a way as to obstruct the course of proceedings and/or withdraws his instructions from those representing him.
>
> (3) The trial judge has a discretion as to whether a trial should take place or continue in the absence of the defendant and/or his legal representatives.
>
> (4) The discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
>
> (5) In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case, in particular;
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
>
> (ii) …
>
> (iii) the likely length of such an adjournment;
>
> (iv) …
>
> (v) …

(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;

(vii) …

(viii) the seriousness of the offence, which affects defendant, victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

(x) …

(xi) …"

7.10 The Tribunal further applied GMC v Adeogba [2016] EWCA Civ 162, in which Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a Respondent. At §19 he held:

> "… It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when the practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed…"

7.11 Leveson P went on to state at §23 that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interest of the public also taken into account."

7.12 The Tribunal determined that Mr Wilson was plainly aware of the Substantive Hearing date. Moreover, he was advised by the Applicant of the application procedure to adjourn the same if he so wanted. He was also provided by the Applicant with the Tribunal's Guidance Note on Health and adjournments. Mr Wilson had elected not to make an application in the prescribed form, not to provide any further particulars in relation to his health and not to provide any medical evidence to support the same.

7.13 The Tribunal was required to adjudicate upon allegations levelled against solicitors in order to serve the overarching public interest. The public interest comprised of (a) protection of the public from harm, (b) the declaration and upholding of proper standards within the profession and (c) maintenance of public confidence in in the regulatory system. The public interest required the expeditious adjudication of allegations particularly serious allegations concerning the mismanagement of client money. In considering the competing right of Mr Wilson to be present at the substantive hearing and the requirement to act in the public interest, the Tribunal

determined that the public interest prevailed in circumstances where Mr Wilson had voluntarily absented himself.

7.14 The Tribunal therefore GRANTED the application.

Factual Background

8. Mr Wilson was admitted to the Roll in November 1969. He set up the Firm as an equal partnership with Anthony Lyons in 1979. From 1982, he ran the Firm as a sole practitioner holding 100% equity and all of the compliance roles for the Firm. As at the date of the substantive hearing Mr Wilson did not hold a Practising Certificate.

9. Ms Johnson undertook her training contract with the Firm and was appointed assistant solicitor upon qualification. In 2013, she was promoted to salaried partner. As a salaried partner, she did not receive any share of the profits. On 2 July 2021, following the forensic investigation into the Firm, Ms Johnson made a report to the Applicant regarding the financial position of the Firm. She resigned on 2 February 2022 and made a further report about the Firm's financial stability to the Applicant on 7 February 2022.

10. As at November 2020, the Firm employed one other legally qualified fee earner and eleven non-legally qualified individuals.

11. According to the Firm's 2020/2021 renewal form filed with the Applicant, its main practice areas were:

    i. Personal injury – 70%
    ii. Employment – 10%
    iii. Residential conveyancing – 12.2%
    iv. Commercial property – 3.10%
    v. Wills and estate administration – 2.5%

12. The Firm had an Accounts Department that was managed by Angela Flanagan from a date unknown up until her departure in July 2019. She was replaced by Joanne Murphy. The Firm also had an Office Manager, Geraldine McArdle, who was in role from a date unknown up until December 2018.

13. Mr Wilson and Ms Johnson could authorise cheque payments. The Firm operated online banking, which only Mr Wilson and the Accounts Manager could operate.

14. The conduct giving rise to the allegations came to the attention of the Applicant on 8 May 2019, when it received an anonymous report dated 29 April 2019. The report stated that following the settlement of personal injury claims, the Firm received monies from the defendants' insurers to settle costs and disbursements. Cheques were then written to the disbursement providers, along with covering letters, and entered onto the relevant client ledgers as having been paid. However, the letters and attached cheques were placed in a locked cabinet and not sent out to the providers. The amounts on the cheques appeared on a list of unpresented cheques, to make it look as though they had been sent out but not drawn down.

15. The Applicant commissioned a Forensic Investigation into the Firm, which commenced on 25 February 2020. A Forensic Investigation Report ("FIR") was produced on 2 November 2020. During the investigation, a significant number of cheques, with covering letters attached were found in a filing cabinet in the Mr Wilson's office. A sample of the same were reviewed by the Forensic Investigation Officer (FIO).

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16. In interview with the FIO, Mr Wilson denied knowledge of the practice of keeping cheques in a cabinet until it was brought to his attention at the beginning of 2019, "maybe March/April/May just before [Angela Flanagan] left." He said that he understood the cheques were put in the cabinet by Ms Flanagan without his notice, conduct which he described as "disgraceful".

17. The FIO found a shortfall on the client account of £148,593.86 as at 31 January 2020. That client account shortfall had arisen due to funds for the payment of professional disbursements being transferred or paid into the office account and the Firm then failing to pay the professional disbursements due or failing to transfer the monies back to the client account, as required by Rule 17.1 of the SRA Accounts Rules 2011. Those Rules were in force until 25 November 2019, and as at that date the total unpaid professional disbursements, which constituted client money for the purposes of the Rules, totalled £161,648.06.

18. Between 25 November 2019 and 31 January 2020, the Firm paid a total of £13,054.30 to settle part of the disbursements owed. Therefore, the client account shortfall was reduced to £148,593.86.

19. As at 2 November 2020, the client account shortage had been further reduced in that a total of £73,860.00 had been paid to settle outstanding professional disbursements. Consequently the shortage on the client account was £74,733.86 as at the date of the FIR report.

20. The office bank account reconciliation as at 31 January 2020, revealed unpresented items totalling £233,191.64, which consisted of 743 cheques dating between 3 October 2016 and 31 January 2020. The cheques on the unpresented items list related to:

    i. £152,966.66 (479 cheques) in relation to unpaid professional disbursements (largely medical providers and counsels' fees) both pre and post 25 November 2019.

    ii. £80,194.98 (264 cheques) in relation to unpaid business liabilities.

21. The financial accounts for the Firm showed that the financial position of the Firm had deteriorated from 2018 and the office bank account revealed that had the cheques been sent out and drawn down, the Firm would not have been in a position to meet the payments.

22. The Applicant intervened into the practice of Mr Wilson and the Firm on 31 March 2022.

Witnesses

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

Findings of Fact and Law

24. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

25. **Allegation 1.1 Failure to pay professional disbursements**

The Applicant's Case

25.1 The FIO reviewed nine personal injury client matters. Each file followed the same pattern in respect of the receipt and payment of professional disbursements.

25.2 The Firm received monies from the defendant insurer for costs and disbursements. Any settlement monies received were paid into the client bank account and paid to the client. Monies for professional disbursements and costs due to the Firm were paid into the client account or office account. If they were paid into the client account, they would be transferred to the office account. Cheques for the payment of professional disbursements were written up and signed by either Ms Johnson or the Mr Wilson, as the only people in the Firm with authority to authorise the same. Letters were drafted to the providers with the cheques enclosed. The relevant client ledgers were updated to record that payment for professional disbursements had been made from the office bank account. The cheques then appeared on the unpresented cheques list as not having been drawn down by the third party. However, the cheques located in the cabinet in Mr Wilson's office revealed that in fact neither the letters nor the cheques were ever sent.

25.3 During a meeting with Mr Wilson on 26 February 2020, he told the FIO that a large amount of unsent cheques and letters were in a filing cabinet in his office. The FIO located at least two drawers in the filing cabinet full of unsent cheques and letters. The FIO reviewed a sample of the same.

25.4 Due to the amount of cheques in the cabinet, the FIO was unable to reconcile each cheque in the drawer with a client file or an entry on the unpresented cheques list. However, from the sample of client files and samples of cheques from the cheque drawer, the FIO was able to establish the practice that had been identified in the anonymous report to the Applicant. Ms Sheppard-Jones submitted that it could

therefore be inferred from the significant amount of cheques in the cabinet, and the value of the unpresented cheques list, that the practice of filing unsent cheques occurred across at least a 3 year period.

25.5 The FIO reviewed the office account reconciliations as at 31 January 2020, which showed an amount for unpresented items. An unpresented items list detailed those items, which established that £152,996.66 related to unpaid professional disbursements on personal injury matters.

25.6 From the sample review of the client files, the cabinet of letters and associated cheques, and the unpresented items list, that payment was not being made to third party providers for professional disbursements, but rather purported payment by way of cheque was being kept in Mr Wilson's office, and the unpresented items list was being maintained to make it look as though the cheque had been sent but the provider had not presented the cheque. Ms Sheppard-Jones submitted that had that been the case, one would have expected the money to still have been available in the office account or to have been transferred back to the client account.

25.7 When the FIO reviewed the office account reconciliations and the bank statements, it revealed that the monies that ought to have been available for the disbursements were in fact spent on running the Firm, including the payment of office expenses, staff salaries and drawings.

25.8 In interview on 11 June 2020, Mr Wilson confirmed to the FIO that he had oversight of the account reconciliations and that Ms Johnson's role, as the only other partner in the Firm, was to head up and manage the Personal Injury Department. Ms Johnson stated in her interview with the FIO that the accounts department reported to Mr Wilson as equity partner and that she was not involved in the financial management of the Firm.

25.9 Mr Wilson's Personal Assistant between 2014 and 2019, Joanne McDonnell, confirmed that Mr Wilson received daily and monthly account reconciliations, including the unpresented cheques list. She further confirmed that only Mr Wilson received that information and that Ms Johnson was not involved in the financial management of the Firm. Ms McDonnell was aware of the practice of filing cheques in the cabinet in Mr Wilson's room. It was a practice that went on for a long time, and one that she believed Mr Wilson was aware of, due to his financial management of the Firm, which included oversight of the account reconciliations and the unpresented cheques list.

25.10 Evidence from the three largest third-party providers of professional disbursements, confirmed that the Firm owed significant debts to all three for non-payment of invoices namely:

- Doctors Chambers (UK) Limited outstanding payments amounted to £85,201.00 as at March 2022.

- Speed Medical Examination Services outstanding payments amounted to £59,964.00 total account balance and £33,040.20 over contract terms (which

stipulated that payment be made within 18 or 24 months of invoice) as at June 2022.

- Premex Services outstanding payments amounted to £8,648.40as at August 2022.

25.11 Ms Sheppard-Jones submitted that the above demonstrably showed that the practice had been ongoing for some time. The final financial position of the Firm was never ascertained by the FIO in circumstances where Mr Wilson was unable to provide a full response. The only firm conclusion reached was that circa £73,000.00 was repaid in respect of the outstanding payments owed to third parties.

SRA Accounts Rules 2011 breaches

25.12 **Rule 17.1** provides:

> "… When you receive money paid in full or part settlement of your bill (or other notification of costs) you must follow one of the following five options:
>
> (a) ….
>
> (b) ascertain that the payment comprises only office money and/or out-of-scope money, and/or client money in the form of professional disbursements incurred but not yet paid, and deal with the payment as follows:
>
> (i) place the entire sum in an office account at a bank or building society branch (or head office) in England and Wales; and
> (ii) by the end of the second working day following receipt, either pay any unpaid professional disbursement, or transfer a sum for its settlement to a client account…"

25.13 **Rule 7.1** provides that any breaches of the Accounts Rules must be remedied "promptly upon discovery."

25.14 Ms Sheppard-Jones submitted that in circumstances where Mr Wilson was the managing partner and sole equity partner of the Firm and he was responsible for ensuring compliance with the Accounts Rules. Mr Wilson confirmed in interview with the FIO that it was his responsibility at the Firm to sign off both the client and office account reconciliations, which would have included the unpresented cheques.

25.15 Ms Sheppard-Jones contended that for a significant period of time between 2016 and 2019, Mr Wilson breached Rule 17.1 by failing to pay for professional disbursements or failing to transfer the sum back to the client account.

25.16 Ms Sheppard-Jones averred that, despite being aware of the issue by July 2019, the problem still had not been resolved prior to the commencement of the Applicant's investigation in February 2020. That failure demonstrably breached Rule 7.1.

Principle Breaches 2011 and 2019

25.17 Ms Sheppard-Jones submitted that **Principles 2 and 5 of the SRA Principles 2011 and 2019** respectively imposed a duty on Mr Wilson to act with integrity.

25.18 Mr Wilson was the sole equity partner of the Firm. He had responsibility for the oversight of the financial management of the Firm, which included consideration and sign off on the client and office account reconciliations. The unpresented cheques list was provided as part of that process.

25.19 For at least three years payments were not being made to third party providers of professional disbursements. The unsent letters and cheques were being stored in the cabinet in Mr Wilson's office. Ms McDonnell, his PA, stated that:

> "… Mr Wilson would have seen the office accounts as only he reviewed the bank reconciliations; I believe he must have known about the cheques as the unpresented cheques would have been on the bank reconciliations. Mr Wilson was the only partner who had meetings with the external accountants, the Bank and financial adviser recommended by the Bank.

25.20 Mr Wilson sought to blame his accounts department for the practice of filing cheques and for the non-payment of disbursements. Ms Sheppard-Jones submitted that, as the sole equity partner of the Firm, Mr Wilson was responsible for compliance with the Solicitors Accounts Rules. Ms Sheppard-Jones further submitted that he was fully aware of the financial position of his Firm and had a financial interest in ensuring the Firm could continue to trade. The FIO's analysis of the financial position of the Firm was that it was in difficulty.

25.21 Ms Sheppard-Jones contended that it was disingenuous for Mr Wilson to suggest that the accounts department set up a practice of non-payment to third party providers of their own volition, particularly in circumstances whereby the cheques were being placed in a cabinet in Mr Wilson's office and the value of the cheques were being added to an unpresented cheques list that he saw on a regular basis. Such a practice would have been only too obvious to him.

25.22 Ms Sheppard-Jones averred that either Mr Wilson was aware of the practice or he had such a woeful disregard to the financial management of his Firm, that he effectively turned a blind eye to it. The practice of filing unsent cheques continued for at least three years, and involved 743 cheques totalling £233,191.64, of which £152,996.66 related to professional disbursements. Mr Wilson was a very experienced solicitor who ought to have made enquiries with his accounts team upon seeing the unpresented cheques list, and upon being chased for payments by third parties. The evidence obtained from the third-party providers shows that monies for professional disbursements was still outstanding as the date of intervention.

25.23 Ms Sheppard-Jones contended that Mr Wilson's conduct therefore lacked integrity i.e., moral soundness, rectitude and steady adherence to an ethical code. 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. By either condoning the practice of filing unsent cheques and adding them to an

unpresented cheques list to make it look as though the providers had not cashed them, or by taking a woeful approach to the financial management of his Firm for at least four years.

25.24 Given the circumstances set out above, Ms Sheppard-Jones submitted that Mr Wilson breached Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles.

25.25 **Principle 8 of the SRA Principles 2011** required Mr Wilson to run the Firm effectively and in accordance with proper governance and sound financial risk management principles. Mr Wilson was responsible for the financial management of the Firm. He should have ensured that an effective financial system was in place so that monies paid to the Firm for the purposes of settling third party providers for professional disbursements, were paid to those third-party providers.

25.26 Ms Sheppard-Jones submitted that the fact that the Firm had an accounts department did not mitigate the responsibility of the Mr Wilson as the sole equity partner, COLP and COFA of the Firm. Had an effective system been in place, the non-payment of professional disbursements would not have occurred over a period of at least four years.

25.27 Ms Sheppard-Jones submitted that by virtue of the Accounts Rules breaches and the circumstances set out above, Mr Wilson breached Principle 8 of the SRA Principles 2011.

25.28 **Principle 10 of the SRA Principles 2011** required Mr Wilson to protect client money. Prior to 25 November 2019, professional disbursements were characterised as client money. Ms Sheppard-Jones submitted that, in failing to either pay the professional disbursements or transfer the sum back to the client account, such that a shortfall existed on the client account, Mr Wilson failed to protect client money and accordingly breached Principle 10 of the SRA Principles 2011.

25.29 **Principles 6 and 2 of the SRA Principles 2011 and 2019 respectively** required Mr Wilson to act in a manner that upheld public trust in him and in the solicitors profession. Ms Sheppard-Jones submitted that Mr Wilson breached the Accounts Rules, which resulted in the non-payment of professional disbursements over the course of at least three years. Ms Sheppard-Jones averred that conduct undermined the trust the public was entitled to hold in Mr Wilson and the profession.

25.30 The non-payment of disbursements occurred over a significant period and resulted in a shortfall to the client account just short of £150,000, which had not fully been replaced to date. The public expected solicitors to handle money appropriately and to pay third-party providers when payments fall due.

25.31 Ms Sheppard-Jones therefore submitted that Mr Wilson breached Principles 6 and 2 of the SRA Principles 2011 and 2019 respectively.

The Respondent's Position

25.32 Mr Wilson provided no response to Allegation 1.1 (by way of an Answer to the Rule 12 Statement) but had made representations in interview with the FIO on 11 June 2020.

25.33 With regards to the cheques found in the filing cabinet in his room, Mr Wilson stated:

> "…
>
> [FIO] … we are aware that the cheques are banked and the ledger records that a cheque has 35 been drawn in favour of the barrister or the medical provider. However, the firm adopts a practice of placing the cheque with a letter to the payee, which is then signed by one of the partners.
>
> [IW] Yeah.
>
> [FIO] But the letters are not sent out with the cheque, and they're locked away in a filing cabinet.
>
> [IW] Yeah, I believe so.
>
> [FIO] The filing cabinet's in your room Mr Wilson?
>
> [IW] Yes …
>
> [FIO] … when did the cheques and cover letters enter your office? When did they get placed in that filing cabinet? Have they always been there?
>
> [IW] It's a very good question. I do not actually know the answer to that question. I understand that they were put in there, without my knowledge, by Angela Flannagan, who is in charge of accounts, and I just didn't know about it… Crazy, isn't it, disgraceful…"

25.34 Mr Wilson accepted that he signed the bank reconciliations and that he should perhaps have paid more attention to the amount of unpresented items. However, he did not specifically recall seeing a list of unpresented items until the FIO brought it to his attention despite the fact that his signature appeared on the document which he accepted.

25.35 Mr Wilson stated that the accounts department were responsible for managing cheques and the accounts, and that although it was his firm he was not involved in that aspect of it.

25.36 Mr Wilson asserted that he first became aware of the issue when "somebody" went into his room to get something and he saw what was going on. He wasn't sure of the date. He was told that Ms Flanaghan had been putting cheques there. He did not say who told him that. However, he said that a stop was put to the practice and he made sure that disbursements were paid going forward.

25.37 Mr Wilson averred that "they" had been trying to resolve the issue for many months and that it "did not occur" to him to report the same to the Applicant.

25.38 Mr Wilson accepted that the office account did not have the funds to resolve all of the outstanding payments.

25.39 When asked what the monies that had remained in the office account had been used for, Mr Wilson was unable to say.

25.40 Mr Wilson stated that the accountants used to liaise with Ms Flanaghan and Ms McArdle. After they left, an accountant came in house to the Firm. As far as he could recall, the accountants had not raised this issue with him.

25.41 In his response to the "Notice recommending referral to the Tribunal" dated 4 June 2021, Mr Wilson accepted that monies were not being paid to providers for professional disbursements but asserted that (a) he was unaware of that at the time and (b) he did not intentionally utilise money for other purposes or cause a shortfall on the client account.

25.42 He further stated in that response that:

- As managing partner and COFA, he accepted a breach of Rule 6.1 of the Accounts Rules 2011 but denied using the monies "for anything other than their proper purposes."

- He acted "unknowingly, due to lack of knowledge and understanding on his part, rather than deliberate acts, a client account shortage incorrectly occurred" thus he denied having lacked integrity contrary to Principle 2 (2011 Principles) and 5 (2019 Principles) respectively.

- He accepted that by "incorrectly permitting … a shortage on the client account and failing to replace it promptly this *may* (emphasis added) represent breach of Principle 10 (2011 Principles) and Rules 7.1, 7.2 and 17.1 (2011 Accounts Rules) and Rule 6.1 (2019 Accounts Rules)" but he was "remedying the breach as promptly and quickly as he is able" thus he denied the breaches alleged.

- He accepted "something has gone wrong, which he very much regrets … [and] recognises now, with the benefit of hindsight, that the systems and procedures should have been better … [but] he has only ever behaved in a way which would maintain the trust the public places in him … the profession ... the provision of legal services". He therefore denied having breached Principles 6 (2011 Principles) and Principle 2 (2019 Principles).

- Principle 10 (2011 Principles) required "knowledge and involvement of the individual" which he did not have at the material time therefore he denied having breached the same.

The Tribunal's Decision

25.43 The Tribunal carefully considered the unchallenged evidence advanced by the Applicant (a) with regards to the positions held by Mr Wilson within the Firm, (b) the settlement monies received by the Firm during the relevant period, (c) the failure to pay professional disbursements and (d) the consequential shortfall on the client account ascertained by the FIO at the conclusion of the investigation.

25.44 Notwithstanding the fact that Mr Wilson failed to file an Answer to the Rule 12 Statement, the Tribunal considered the representations he had made during his interview with the FIO and in response to the Notice of Referral to the Tribunal. In broad terms, Mr Wilson appeared to accept the factual matrix of Allegation 1.1 but asserted that (a) he was unaware of the position at the material time and (b) the failures were those of his "trusted and respected" staff.

25.45 The Tribunal found Mr Wilson's assertions to be disingenuous and lacking in credibility in circumstances where he was the sole equity partner, he was the COLP and COFA, the filing cabinet where the unpresented cheques were stored was in his office, he would have seen the Firm's bank statements for the office and client account, he was shown and signed the monthly lists of unpresented items and he was corresponding with the third party provider chasing outstanding payments, he dealt with the Firm's accountants.

25.46 The Tribunal rejected Mr Wilson's assertions.

25.47 The Tribunal accepted the submissions advanced by Ms Sheppard-Jones with regards to the breach of Rules 7.1 and 17(1)(b) of the SRA Accounts Rules 2011 and Principles 2, 6, 8 and 10 of the SRA Principles 2011and Principles 2 and 5 of the SRA Principles 2019 as set out above at 25.25-25.29.

25.48 The Tribunal therefore found Allegation 1.1 PROVED, on a balance of probabilities, in its entirety.

26. **Allegation 1.2- Mismanagement of the Firm**

The Applicant's Case

26.1 As set out above, £80,194.98 of the unpresented items related to business expenses, which consisted of 264 cheques dated between 3 October 2016 and 31 January 2020**.**

26.2 The unpaid business expenses related to the following:

i. £55,091.46 for Irwin Mitchell in relation to a fee sharing agreement in respect of personal injury clients where Irwin Mitchell could not act due to a conflict of interest.

ii. £18,666.30 for Iron Mountain, the Firms' storage provider.

iii. £2,760.00 for Hatherlows', the Firm's accountants.

iv. £3,677.22 miscellaneous expenses.

26.3 Bruce MacMillan, General Counsel and COLP for Irwin Mitchell, Neil Westwood, UK Credit Manager for Iron Mountain and Angela Harrington, Office Manager of Heatherlows' provided a witness statement in which they set out the extent of the liabilities owed to them by the Firm as at the conclusion of the intervention in 2022.

26.4 Mr MacMillan stated:

> "… In October 2021, Mr Watson negotiated with Mr Wilson, senior partner and owner of Lyons Wilson to receive a payment of £40,000 in settlement of costs and disbursements on these cases. The payment was received in October 2021 and was applied to clear the disbursements on 131 matters and the remaining sum, which was a contribution to our costs, was apportioned equally between the matters…
>
> … have around 400 matters which are still open and with Lyons Wilson. We understand that Lyons Wilson is now in administration and therefore IMe Law are not able to make any further recovery of funds from them…"

26.5 Mr Westwood stated:

> "… This account is currently with our external solicitors, Beswick Legal. They have written to the Mr Wilson with our proposal to go down the bankruptcy route. The court has issued the Bankruptcy Petition against Mr Wilson, and a Notice of Hearing has been received from the County Court at Stockport for 31 May 2022. The outcome was that a Bankruptcy Order was granted against Ian Wilson…"

26.6 Ms Harrington spoke of the general practice of the Firm in the following terms:

> "… We would discuss our concerns formally at meetings with Mr Wilson and Geraldine McArdle. These meetings would be held on the Firm's premises, normally at least six- monthly…
>
> …Monthly management accounts were sent to (i) Geraldine McArdle (from December 2008 to December 2018), (ii) Abi Wilson (from January 2019 to March 2019) and (iii) Mr. Wilson from April 2019 to February 2020. Annual financial statements would be issued to Mr. Wilson at the time of preparing and issuing his self-assessment tax return.
>
> … The quantum of the unpresented cheques and items was not evident from sample reviews of office and client account postings until 2019…
>
> … The unpresented cheques and items were noted when providing bookkeeping support in June and July 2019 and hence when preparing management accounts around the same time…
>
> … At that time, the view was that the Firm should take prompt action to identify the substance of each item and implement a clear and immediate

> strategy to rectify the issue by clearing all outstanding items. The Firm was advised of this view…
>
> … When the Firm was able to make our payments, we received these upon request from the incumbent cashier or, more recently, from Mr Wilson. Payment was originally received by cheque and from 2019 by electronic transfer…"

26.7 The total of the unpresented cheques list included the professional disbursements (both pre and post 25 November 2019) and the business expenses, to a total of £233,191.64.

26.8 The Firm's overdraft limit was £350,000.00. The FIO reviewed the office bank account reconciliations and bank statements from August 2019, which revealed that had the cheques been presented, the Firm would have had insufficient funds during that period to meet the payments**.**

26.9 The bank statements further revealed that the monies that were supposed to have been utilised for the payment of the liabilities were absorbed by the office account in the running of the Firm, including for staff and partner salaries.

26.10 The FIO's review of the Firm's Practice Accounts showed that the profits had reduced significantly from 2018 to 2019. Furthermore, the Firm had an outstanding loan for £85,714.32.

26.11 Ms Johnson provided the FIO with an "Action Plan" which the Firm intended to implement in order to resolve the outstanding liabilities. The plan set out that the Firm intended to focus on clearing the unpresented cheques. However, aside from £30,000.00 which was due on a probate matter and suggested office savings, there was no information in the plan as to how the Firm would generate the money owed to meet the liabilities, particularly in light of the reducing profits.

26.12 Ms Sheppard-Jones submitted that, in circumstances where Mr Wilson was the managing partner, sole equity partner and held all of the compliance roles at the Firm, he was responsible for ensuring that the Firm was run effectively, which included having sound financial systems in place, that enabled the Firm to meet its liabilities.

26.13 Mr Wilson was provided with the annual accounts and therefore knew what the financial position of the Firm was. Furthermore, he conducted the account reconciliations, and could see the list of unpresented items.

26.14 Ms Sheppard-Jones contended that had Mr Wilson undertaken his roles properly, it would have been obvious to him that the office account did not have sufficient funds to meet the liabilities of the Firm. Furthermore, the evidence from the providers of business expenses shows that he was aware of the outstanding payments due to them and should've put him on notice to conduct further enquiries.

Principle Breaches 2011 and 2019

26.15 **Principle 8** of the 2011 Principles required Mr Wilson to run the Firm and / or carry out his roles in the business effectively and in accordance with proper governance and sound financial and risk management principles.

26.16 Ms Sheppard-Jones submitted that, by failing to run the Firm effectively and reaching a position where the Firm could not meet its liabilities, Mr Wilson breached Principle 8, so far as the conduct predated 25 November 2019.

26.17 **Principles 6 and 2** of the SRA Principles 2011 and 2019 respectively required Mr Wilson to act in a manner that maintained public confidence in him and in the provision of legal services.

26.18 Ms Sheppard-Jones submitted that the public was entitled to expect solicitors' firms to pay their liabilities. Mr Wilson's failure to do so could not be described as a short-term issue which the public may have sympathy for. Conversely, his conduct was repeated over a protracted period of time and involved considerable sums so money in order to prop up his Firm. Mr Wilson only equity partner thus it was to his benefit that the Firm continued to trade.

26.19 Ms Sheppard-Jones contended that public confidence was undermined by firms accruing debts to third parties that they could not meet. In so doing, Mr Wilson breached Principles 6 and 2 of the 2011 and 2019 Principles respectively.

Breaches of SRA Code of Conduct for Firms 2019

26.20 **Paragraphs 2.1 and 2.4** set out the obligations of the Firm to have "effective governance structures, arrangements, systems and controls in place" and to "actively monitor your financial stability and business viability". Mr Wilson was responsible for compliance with those Rules and was the only partner with conduct of the financial aspect of the Firm.

26.21 Ms Sheppard-Jones submitted that the evidence demonstrably showed Mr Wilson's failures to monitor the financial position of the Firm and failures to put systems in place that ought to have prevented the situation arising whereby the Firm could not meet its liabilities. His failures resulting in the deployment of monies due to third parties for use on the Firm's expenditure. Ms Sheppard-Jones therefore submitted that Mr Wilson breached paragraphs 2.1 and 2.4 so far as the conduct occurred on or after 25 November 2019.

<u>The Respondent's Position</u>

26.22 Mr Wilson provided no response to Allegation 1.2 (by way of an Answer to the Rule 12 Statement) but in his response to the "Notice recommending referral to the Tribunal" dated 4 June 2021, Mr Wilson accepted that he ultimately bore the responsibility for the failure to comply with the Accounts Rules in that regard because he was the managing partner and held the compliance roles**.** However, he had sought to remedy the problem as soon as he became aware of it in or around July 2019.

26.23 Mr Wilson maintained that he "was not informed of the position at the material time by the Accounts departments, was not provided with information regarding the unpresented cheques, and was not aware that the office account did not hold sufficient funds to meet them".

26.24 Mr Wilson therefore denied having breached Principles 2, 6, 8 and 10 (2011 Principles) and Principles 2 and 5 (2019 Principles). He further denied having breached paragraph 2.1 of the Code of Conduct for Firms 2019.

26.25 With regards to paragraph 2.4 of the Code of Conduct for Firms 2019, Mr Wilson accepted that "he was in breach of the first sentence … in that he did not actively monitor the position but denie[d] that he [was] in breach of the second sentence as the firm was not ceasing to operate and therefore effecting an orderly wind-down would not be relevant".

26.26 Mr Wilson had not informed the SRA of the issues when he became aware of them because he "did not believe that it was".

The Tribunal's Decision

26.27 The Tribunal carefully considered the unchallenged evidence advanced by the Applicant and in so doing accepted the evidence provided by the FIO, Mr MacMillan, Mr Westwood and Ms Harrington.

26.28 The Tribunal rejected Mr Wilson's assertions that he was not aware of the issues concerning the unpresented items and did not consider that any issues needed to be raised with the Applicant at the material time. It was plain on the evidence that Mr Wilson allowed a situation whereby more than 700 unpresented cheques over a three year period amounting to unpaid liabilities, which the Firm could not settle, in the region of £233,000.00 were stored in a filing cabinet in his office. It was not credible for Mr Wilson to suggest that he was unaware of the position at the material time or that he did not consider it to be an issue which the Applicant should be notified of.

26.29 It was abundantly clear to the Tribunal that, had there been effective systems and controls in place in accordance with sound financial and risk management principles, there would not have been unpaid liabilities of the age and extent that the FIO found.

26.30 The Tribunal accepted the submissions advanced by Ms Sheppard-Jones with regards to the breach of Principles 6 and 8 and 10 of the SRA Principles 2011, Principle 2 of the SRA Principles 2019 and paragraphs 2.1 and 2.4 of the Code of Conduct for Firms 2019 as set out above at 26.15.

26.31 The Tribunal therefore found Allegation 1.2 PROVED, on a balance of probabilities, in its entirety.

27. **Allegation 1.3- Failures as COLP and COFA**

The Applicant's Case

27.1 The SRA Authorisation Rules 2011 and the Code of Conduct for Firms set out the responsibilities of the COLP and COFA of a firm.

27.2 Mr Wilson held both of those roles during the relevant period relating to the alleged misconduct.

27.3 The evidence contained within allegations 1.1 and 1.2 set out above showed that Mr Wilson did not take all reasonable steps to comply with the responsibilities of those roles.

27.4 Mr Wilson was regularly provided with both the client and office account reconciliations, which included a copy of the unpresented cheques list. Between at least 2016 and 2020, the value of that unpresented cheques list grew significantly, and reached £233,191.64 as at 31 January 2020.

27.5 Mr Wilson's account in interview to the FIO was that he did not raise any queries regarding these unpresented cheques, and yet given the value of the items, they would have posed a risk to the financial management of the Firm.

27.6 Mr Wilson either knew or ought to have known that the Firm had outstanding liabilities to third parties for both professional disbursements and for business expenses from seeing that unpresented list and from communications with those creditors. Even on his account, by mid-2019 Mr Wilson was fully aware of the extent of the issues with the unpaid cheques, and yet he failed fully to replace the client account shortage or pay the liabilities due by the date of the Applicant's intervention.

27.7 Ms Sheppard-Jones submitted that Mr Wilson didn't raise any query regarding the unpresented items. Given the value of the unpresented items, Ms Sheppard-Jones averred that it would and could have been obvious to Mr Wilson that the unpresented items posed a risk to the Firm. Given his positions as COLP and COFA, Ms Sheppard-Jones contended that he should have been dealing with it in circumstances where he knew or ought to have known of liabilities to third parties, because of the unpresented list and communications between the third parties and the Firm, and he should have reported it to the Applicant.

27.8 Ms Sheppard-Jones submitted that, in relation to conduct prior to 25 November 2019, Mr Wilson's failure to pay for professional disbursements or to transfer the monies back to the client account breached Rule 17.1 of the Accounts Rules 2011. He also failed to record the failure and / or report it to the Applicant.

Breaches of the Authorisation Rules 2011 and the Code of Conduct for Firms 2019

27.9 Rule 8.5 of the Authorisation Rules 2011 and Paragraphs 9.1 and 9.2 of the Code of Conduct for Firms, set out the responsibilities of the COLP and COFA of firms, which include ensuring compliance with the Accounts Rules, recording any failures to comply and reporting any such failures to the Applicant.

27.10 Ms Sheppard-Jones submitted that it would have been obvious to Mr Wilson that the value of the unpresented cheques list posed a significant risk to the financial viability to the Firm, and yet he did not manage the risk or report any such risk to the Applicant.

27.11 Given his failings, Ms Sheppard-Jones submitted that Mr Wilson's conduct breached Rule 8.5 (c) and (e) of the Authorisation Rules 2011 and Paragraphs 9.1 and 9.2 of the Code of Conduct for Firms.

The Respondent's Position

27.12 Mr Wilson provided no response to Allegation 1.3 (by way of an Answer to the Rule12 Statement) but had made representations in interview with the FIO on 11 June 2020 namely:

> "…
>
> [IW] We don't have designated an individual who actually, daily, in a sense, supervises the work the accounts do.
>
> [FIO] Do you think as your role as, as COLP and COFA that this is something that falls under those brackets?
>
> …
>
> [IW] For me, personally, I mean I'd have to look at that to identify exactly what the responsibilities of such a person would be in an office like mine.
>
> [FIO] So, what do you consider the responsibilities of the COLP and COFA are?
>
> [IW] Well, somebody's got to do the job obviously, and you've got to in a way, see that everything's ok as best you can, and at the moment that's down to me, isn't it, with everything else I have to do and be responsible for.
>
> [FIO] And do you think with the issues that have, have arisen, you've fulfilled your duties as COLP and COFA?
>
> [IW] Well, it's an interesting question where responsibility lies here. You know whatever's happened here is not my fault. I have not done it. Whether I am responsible for it in any sense of that word is a completely different and another matter. I, I …"

27.13 Ms Sheppard-Jones submitted that what Mr Wilson stated in interview with the FIO was essentially that he did not know what his responsibilities as COLP and COFA were. If that was true then Mr Wilson, she submitted, essentially held the roles in name only and paid no regard to the implications of holding the same. Ms Sheppard-Jones contended that such an attitude revealed a complete disregard for the regulatory safeguards that those roles are intended to protect.

27.14 In his response to the Notice dated 4 June 2021, Mr Wilson stated that at all times in his management of the Firm he relied upon experienced individuals and the Firm's accountants in dealing with financial matters and compliance with the Accounts Rules.

27.15 Mr Wilson acknowledged in his response to the Notice that he had failed in his duties as compliance officer but denied that it was intentional or deliberate. He accepted having breached paragraph 8.4(e) of the Authorisation Rules 2011 and paragraph 9.2 of the Code of Conduct for Firm's 2019 "as a result of his lack of knowledge".

The Tribunal's Decision

27.16 The Tribunal noted that Mr Wilson accepted that he held the roles of COLP and COFA within the Firm.

27.17 The Tribunal was astounded at Mr Wilson's position in interview with the FIO that he was not fully aware of his responsibility as COLP and COFA to ensure that the Firm operated in accordance with the regulatory framework. The Tribunal rejected Mr Wilson's assertions that he could abdicate responsibility in that regard to other members of staff.

27.18 The Tribunal accepted the submissions advanced by Ms Sheppard-Jones with regards to the breach of paragraphs 8.5(c) and (e) of the Authorisation Rules 2011 and paragraphs 9.1 and 9.2 of the Code of Conduct for Firms 2019 as set out above at 26.9.

27.19 The Tribunal therefore found Allegation 1.3 PROVED, on a balance of probabilities, in its entirety.

28 **Allegation 1.4- Failure to co-operate with the Applicant**

The Applicant's Case

28.1 On 2 July 2021, the Applicant received a report from Ms Johnson about the Firm. She raised the following concerns:

- the Firm was in financial difficulty;
- there was no proper management of the client account, file closures or archiving;
- there was inadequate supervision of the conveyancing department;
- staff numbers were reducing and client interest may suffer as a results;
- she did not have the expertise or experience to deal with the running of the Firm; and
- live conveyancing files were still on desks at the office premises.

28.2 An Investigation Officer ("IO") employed by the Applicant corresponded with Mr Wilson on those issues between 6 July and 8 October 2021. Mr Wilson engaged with the IO sporadically but did not provide a substantive response to Production Notices issued pursuant to s44B of the Solicitors Act 1973 dated 26 July 2021 and 12 August 2021.

28.3 On 7 February 2022, the Applicant received a second report via Ms Johnson's representatives. She raised the following further concerns;

- clients wills and deeds remained in the office;
- archiving of 162 boxes of files had not been completed;
- there was approximately £50,000 remaining in the client account;
- the firm's emails were not being monitored;
- arrangements needed to be made for the post that was still arriving at the firm;
- live conveyancing files were still on the desks at the office premises and needed to be dealt with.

28.4 The Applicant commissioned a further forensic investigation. However, despite the FIO's attempts to contact Mr Wilson via correspondence on 11 February 2022, 15 February 2022 and 16 February 2022. The FIO also sent Mr Wilson a further Production Notice dated 16 February 2022. Mr Wilson did not respond.

28.5 On 16 February 2022, the FIO attended at the Firm's offices. In a memo dated 22 February 2022, the FIO reported that:

- The office appeared closed and no one was there.
- There was unopened post outside the office.
- The FIO could see archive boxes and bags of paper in the office through the glass panel on the door.

28.6 Consequently, on 28 March 2022, an Adjudication Panel at the Applicant decided to intervene into the practice of Mr Wilson, practising at Lyons Wilson.

28.7 The Applicant sent Mr Wilson a letter dated 29 March 2022, addressed to the Firm's office address, which advised him that the Applicant had decided to intervene into his practice at the Firm. The letter set out "What this means", which explained to Mr Wilson that he was required to provide "all practice documents" to the Applicant. The letter stated that the Applicant's appointed agent would attend the Firm's offices at 10 a.m. on 31 March 2022. The letter warned Mr Wilson that if he did not provide the documents the Applicant could apply to the Court for an Order and that he may be committing a criminal offence. The letter also set out the process by which Mr Wilson could challenge the decision should he so wish.

28.8 At 10 a.m. on 31 March 2022, the intervention agent (Sean Joyce and Hayley Mercer) and the Interventions Project Officer (Dhavinder Dhatt) from the Applicant, attended the Firm, Lyons Wilson, Victoria Buildings, Albert Square, 1-7 Princess Street, M2 4DF. Mr Wilson was not in attendance and the office was locked. Intervention agent, Sean Joyce, attempted to contact Mr Wilson on his mobile telephone number but there was no answer. Mr Joyce left a voicemail.

28.9 The intervention agents sought to contact Ms Johnson's legal representatives in the absence of Mr Wilson. She was on holiday at the time, but upon her return she provided a set of keys to the Firm's office, which were received by the agents on 14 April 2022.

28.10 Due to the failed attempt to intervene on 31 March 2022, the agents wrote to Mr Wilson by way of letter dated 4 April, which was sent by email to iancw@icloud.com and iancw@me.com. A hard copy was also sent by recorded delivery on 8 April 2022 to the Mr Wilson's home address. The letter set out all efforts that had been made to contact him and further stated:

> "… I need to urgently agree with you a date and time for a meeting between us so that I can explain more about the SRA's powers, discuss the intervention process and answer any questions that you may have. I also need to gain access to all practice papers relating to Lyons Wilson and your practice at Lyons Wilson. Please will you contact me as a matter of urgency to make these arrangements…"

28.11 That letter was signed for by "Wilson". Mr Wilson did not reply to the same nor did he make any contact with the agents or the Applicant.

28.12 The intervention agents attended upon the Firm's office on 20 and 21 April 2022 to undertake the intervention. Mr Wilson was not advised of the dates, as the agents had the keys for the office by that stage. Mr Wilson was not in attendance.

28.13 The intervention agents wrote to Mr Wilson via email and special delivery to his home address in the following terms:

> "… Further to previous correspondence, I can confirm that we have now attended your offices in Manchester and have uplifted all files and paperwork. I write to inform you that a large number of personal files were also uplifted (regarding the lease to the building, staff payroll information etc) that will need to be collected from our offices at your earliest convenience. Alternatively, we can arrange delivery of these to your personal address, if this is more suitable for you.
>
> Please can you contact me to discuss this further…"

28.14 The letter was signed for on 5 May 2022 by "Wilson". That letter was signed for by "Wilson". Mr Wilson did not reply to the same nor did he make any contact with the agents or the Applicant.

Breaches of the Code of Conduct for Solicitors 2019 and Code of Conduct for Firms 2019

28.15 Paragraph 7.3 of the Code for Solicitors and Paragraph 3.2 of the Code for Firms provides:

> "You cooperate with the SRA, other regulators, ombudsmen, and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services."

28.16 Paragraph 7.4 of the Code for Solicitors Paragraph 3.3 of the Code for Firms provides:

> "You respond promptly to the SRA and:

(a) Provide full and accurate explanations, information and documents in response to any request or requirement; and
(b) Ensure that information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services is available for inspection by the SRA."

28.17 Ms Sheppard-Jones submitted that the Applicant and its intervention agents made numerous attempts to engage Mr Wilson prior to and during the intervention. Mr Wilson did not reply to that correspondence or otherwise make contact with either.

28.18 Ms Sheppard-Jones drew the Tribunal's attention in particular to the letter dated 29 March 2022 which clearly set out that Mr Wilson was obliged to comply with the intervention. He did not comply and did not challenge the intervention by way of application to the High Court. It was only as a consequence of receiving keys from Ms Johnson that the intervention agents gained access the Firm's office.

28.19 Ms Sheppard-Jones therefore submitted that, by virtue of his conduct, Mr Wilson breached Paragraphs 7.3 and 7.4 of the SRA Code of Conduct for Solicitors, RELs and RFLs and Paragraphs 3.2 and 3.3 of the SRA Code of Conduct for Firms.

The Respondent's Position

28.20 Given the Respondent's failure to file an Answer to the Rule 12 Statement, his position with regards to Allegation 1.4 was not known.

The Tribunal's Decision

28.21 The Tribunal accepted the unchallenged documentary evidence advanced by Ms Sheppard-Jones of the numerous attempts that had been made by the Applicant to engage Mr Wilson in the intervention proceedings. The Tribunal accepted the submissions made by Ms Sheppard-Jones that no response was received and Mr Wilson effectively disengaged and did not cooperate in the process.

28.22 Mr Wilson's failures were a flagrant disregard of paragraphs 7.3 and 7.4 of the Code of Conduct for Solicitors 2019 and paragraphs 3.2 and 3.3 pf the Code of Conduct for Firms 2019.

28.23 The Tribunal therefore found Allegation 1.4 PROVED, on a balance of probabilities, in its entirety.

Previous Disciplinary Matters

29. None.

Mitigation

30. None.

Sanction

31. The Tribunal referred to its Guidance Note on Sanctions (Tenth Edition: June 2022) when considering sanction.

32. With regards to culpability, the Tribunal found Mr Wilson's conduct to have been self-serving, financially motivated and intended to keep the Firm operating which was to his benefit as sole equity partner. His conduct was planned and repeated over a protracted period of time. Mr Wilson had complete and direct control. He was solely responsible given the fact that he was COLP, COFA and Managing Partner. Mr Wilson was an extremely experienced solicitor having been admitted to the Roll of Solicitors in 1969. He was highly culpable for the misconduct found.

33. With regards to harm, the Tribunal found that the public were directly harmed given the unpaid liabilities owed to third parties which were ultimately instructed to settle personal injury claims. Significant and direct harm was caused to the reputation of the profession by Mr Wilson's persistent, planned and repeated misconduct. The harm caused was entirely foreseeable. Third parties, Irwin Mitchell and medical providers, were directly impacted by the non-payment of disbursements over a significant period of time amounting to significant sums which would have required additional resources to chase payment/enforcement of debts which undoubtedly had a financial impact. The Tribunal determined that Mr Wilson's misconduct represented a grave departure from the standards expected of a solicitor, particularly one of 50 years' experience.

34. With regards to aggravating features, the Tribunal found that the misconduct was deliberate, calculated and repeated over a protracted period of three years. It represented an abuse of power on Mr Wilson's part in his position as Managing Partner and Sole Practitioner. He sought to conceal his misconduct by concealing the unpresented cheques in a filing cabinet in his office and seeking to blame others throughout the forensic investigation.

35. The Tribunal did not find any mitigating features.

36. Weighing all of the factors set out above, the Tribunal classified the misconduct as very high. Mr Wilson misappropriated and failed to safeguard significant amounts of client monies in the sacrosanct client account. His departure from the required standards of integrity, probity and trustworthiness was very serious.

37. The Tribunal paid significant regard to the principle promulgated by Bingham LCJ in Weston v Law Society [1998] Times, 15th July namely:

> "….the tribunal had been at pains to make the point, which was a good one, that the solicitors' accounts rules existed to afford the public maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording that protection and assuring the public that such protection was afforded, an onerous obligation was placed on solicitors to ensure that those rules were observed"

38. In so doing, the Tribunal determined that the misconduct found was so serious that imposing no order, a reprimand, a financial penalty, a restriction order or a suspension order would not adequately meet the public interest.

39. The public interest comprised of the need to protect the public from harm, the declaration and upholding of proper standards within the profession and maintenance of public confidence in the regulatory system. The Tribunal considered that an Order Striking Mr Wilson from the Roll of Solicitors was required to meet the overarching public interest.

Costs

The Applicant's Application

40. Ms Sheppard-Jones applied for costs in the sum of £38,916.00 as particularised in the Schedule of Costs dated 12 December 2022.

The Respondent's Position

41. Mr Wilson did not file a Statement of Means.

The Tribunal's Decision

42. The Tribunal granted the application for costs in principle but reduced the quantum on the basis that (a) the preparation time claimed appeared excessive, (b) the number of fee earners who had conduct of the matter would have inevitably resulted in duplication and (c) the substantive hearing concluded in 1.5 as opposed to 4 days.

43. The Tribunal therefore awarded costs to the Applicant in the sum of £33,000.00.

Statement of Full Order

44. The Tribunal Ordered that the Respondent, IAN CAUNT WILSON, 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 £33,000.00.

Dated this 20th day of January 2023
On behalf of the Tribunal

M N Millin
Chair