SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12409-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

DAVID BERENS First Respondent
OLIVER JOHN ANTHONY HANRAHAN Second Respondent

Before:

Miss H Dobson (in the Chair)
Ms H Appleby
Ms L Hawkins

Date of Hearing: 9 March 2023

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The Allegations made against the First Respondent, David Anthony Berens, were that, whilst practising as a solicitor and a manager at Fuglers (in association with David Berens & Co) LLP ("the Firm"), he:

1.1 On or around 15 August 2017, caused or allowed the transfer of £129,827.22 of client money, belonging to Client A and Client B, to pay the SDLT owed by Client C, without the consent of Clients A and B and in doing so breached any or all of Rules 1.2(c) and 20.1 of the SRA Accounts Rules 2011 ("the 2011 Accounts Rules") and Principles 4, 6 and 10 of the SRA Principles 2011 ("the 2011 Principles").

1.2 Upon discovering that money belonging to Clients A and B had been used to pay the SDLT owed by Client C, failed to notify Clients A and B promptly and in doing so breached any or all of Outcome 7.11 of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019 ("the 2019 Code") and Principles 2 and 7 of the SRA Principles 2019 ("the 2019 Principles).

1.3 On or around 3 August 2015, caused or allowed the transfer of £95,012 from the Firm's client account to Clients F and G, when they were not entitled to those funds and in doing so breached any or all of Rules 1.2(c) and 20.1 of the SRA Accounts Rules 2011 ("the 2011 Accounts Rules") and Principles 4, 6 and 10 of the SRA Principles 2011 ("the 2011 Principles").

1.4 Between May 2012 and April 2017, failed to manage the Firm's bank accounts in accordance with the Solicitors Accounts Rules 2011 and in doing so breached any or all of Rules 1.2(a), 1.2(c), 14.3, 17.2, 17.3, 18.3, 20.1, 20.3 and 29.12 of the 2011 Accounts Rules and Principles 4, 6 and 10 of the 2011 Principles.

2. The Allegations against the Second Respondent, Oliver John Anthony Hanrahan, made by the SRA were that, whilst practising as a solicitor at Fuglers (in association with David Berens & Co) LLP ("the Firm), he:

2.1 On or around 15 August 2017, caused or allowed the transfer of £129,827.22 of client money, belonging to Client A and Client B, to pay the Stamp Duty Land Tax ("SDLT') owed by Client C, without the consent of Clients A and B and in doing so breached any or all of Rules 1.2(c) and 20.1 of the SRA Accounts Rules 2011 ("the 2011 Accounts Rules") and Principles 4, 6 and 10 of the SRA Principles 2011 ("the 2011 Principles").

2.2 On or around 10 January 2018, received £10,800 in his personal bank account from Client C in circumstances in which he knew or ought to have known that he was not entitled to receive it and in doing so breached any or all of Principles 2 and 6 of the 2011 Principles.

Application for approval of the proposed Agreed Outcome

3. The parties invited the Tribunal to approve the Agreed Outcome on the basis of the Statement of Agreed Facts and Proposed Outcome appended to this Judgment ("the Agreed Outcome"). In that document both Respondents made full admissions to all the Allegations.

4. 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 Respondents' 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.

5. The Tribunal was satisfied that the admissions made by each Respondent were properly made and supported by the evidence.

6. In considering sanction, the Tribunal referred to its Guidance Note on Sanctions (10th Edition – June 2022). It considered the seriousness of the misconduct in each case, having regard to the culpability and harm caused together with any aggravating and mitigating factors.

7. The Tribunal was satisfied that the parties had correctly identified all the relevant factors present in the misconduct. The sanction proposed against Mr Berens was a fine of £7,501 together with the imposition of conditions on his practice. The sanction proposed against Mr Hanrahan was that he be struck off the Roll.

8. The Tribunal was satisfied that Mr Berens' misconduct fell within the range where a financial penalty was appropriate. It had correctly been identified as "more serious" and so the level of fine was appropriate. The Tribunal agreed that the conditions that were proposed were necessary for the protection of the public and that they were proportionate in all the circumstances.

9. In respect of Mr Hanrahan, the Tribunal agreed that the only appropriate sanction in this case was that he be struck off the Roll. No exceptional circumstances had been advanced and the Tribunal identified none from its careful consideration of the material before it. The Tribunal took note of the fact that he had already been struck off in Ireland.

10. The Tribunal did not consider it necessary to resolve the relatively minor disagreement between the Respondents in mitigation. Whichever way that would have been resolved would have made no material difference to the sanction that the Tribunal considered appropriate.

11. The Tribunal was content to approve the sanctions proposed in respect of each Respondent.

Anonymisation and Redaction

12. The Agreed Outcome had anonymised the names of clients and also contained redactions in respect of personal sensitive information relating to Mr Hanrahan. The Tribunal was invited to append this redacted version of the Agreed Outcome to this Judgment.

13. The Tribunal noted that the starting point was one of open justice. The Tribunal also had regard to the right to privacy for clients and for the Respondents. The Tribunal was

satisfied that the reader of this Judgment and the appended Agreed Outcome would easily be able to follow the case and the Tribunal's reasoning, notwithstanding the anonymisation and redactions contained therein. The Tribunal was further satisfied that the anonymisation and redactions were proportionate and did not go further than necessary.

Costs

14. The Tribunal was content with the agreed arrangements as to costs.

Statement of Full Order

15. David Berens

1. The Tribunal Ordered that the Respondent, DAVID BERENS, solicitor, do pay a fine of £7,501.00, 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 sum of £7,500.00.

2. The Tribunal further Ordered that the Respondent, David Berens, be subject to the following restrictions on practice for an indefinite period:

2.1 Mr Berens shall not act as a manager or owner of any authorised body;

2.2 Mr Berens may not act as a Compliance Officer for Legal Practice (COLP) or Compliance Officer for Finance and Administration (COFA) for any authorised body, or Head of Legal Practice (HOLP) or Head of Finance and Administration (HOFA) in any authorised non-SRA firm;

2.3 Mr Berens does not hold, receive, or have access to client money, or does not act as a signatory to any client or office account, or have the power to authorise electronic transfers from any client or office account.

3. The parties have liberty to apply to vary or discharge the conditions.

16. Oliver John Anthony Hanrahan

1. The Tribunal Ordered that the Respondent, Oliver John Anthony Hanrahan, 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 £10,000.00.

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

H Dobson
Chair

Case no. 12409-2022

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

DAVID ANTHONY BERENS

1st Respondent

And

OLIVER JOHN ANTHONY HANRAHAN

2nd Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

1. By a statement made by Ian William Brook on behalf the Solicitors Regulation Authority Limited ("SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 25 November 2022, the SRA brings proceedings before the Tribunal making allegations of misconduct against the Respondents. Definitions and abbreviations used herein are those set out in the Rule 12 Statement. The Tribunal made Standard Directions on 30 December 2022. There is a substantive hearing listed for 21 to 24 March 2023. On 15 February 2023, at a Case Management Hearing, the Tribunal extended the time in which an Agreed Outcome proposal could be submitted to 7 March 2023.

2. There is a factual dispute between the First and Second Respondents. The First Respondent does not accept as accurate the point advanced by way of mitigation on behalf of the Second Respondent at paragraph 74.2.2 below. All parties agree, however, that it would be neither proportionate, nor in the public interest, to resolve

this factual dispute, given that it is highly unlikely it would make a material difference to the proposed sanctions within this document.

Admissions

3. The First Respondent, David Anthony Berens, admits all Allegations made against him in the Rule 12 Statement, namely:

"1. The Allegations made against the First Respondent, David Anthony Berens, are that, whilst practising as a solicitor and a manager at Fuglers (in association with David Berens & Co) LLP ("the Firm"), he:

1.1. On or around 15 August 2017, caused or allowed the transfer of £129,827.22 of client money, belonging to Client A and Client B, to pay the SDLT owed by Client C, without the consent of Clients A and B

and in doing so breached any or all of Rules 1.2(c) and 20.1 of the SRA Accounts Rules 2011 ("the 2011 Accounts Rules") and Principles 4, 6 and 10 of the SRA Principles 2011 ("the 2011 Principles")

1.2. Upon discovering that money belonging to Clients A and B had been used to pay the SDLT owed by Client C, failed to notify Clients A and B promptly

and in doing so breached any or all of Outcome 7.11 of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019 ("the 2019 Code") and Principles 2 and 7 of the SRA Principles 2019 ("the 2019 Principles")

1.3. On or around 3 August 2015, caused or allowed the transfer of £95,012 from the Firm's client account to Clients F and G, when they were not entitled to those funds

and in doing so breached any or all of Rules 1.2(c) and 20.1 of the SRA Accounts Rules 2011 ("the 2011 Accounts Rules") and Principles 4, 6 and 10 of the SRA Principles 2011 ("the 2011 Principles")

1.4. Between May 2012 and April 2017, failed to manage the Firm's bank accounts in accordance with the Solicitors Accounts Rules 2011

and in doing so breached any or all of Rules 1.2(a), 1.2(c), 14.3, 17.2, 17.3, 18.3, 20.1, 20.3 and 29.12 of the 2011 Accounts Rules and Principles 4, 6 and 10 of the 2011 Principles"

4. The Second Respondent, Oliver John Anthony Hanrahan, admits all Allegations made against him in the Rule 12 Statement, namely:

"2. The Allegations against the Second Respondent, Oliver John Anthony Hanrahan, made by the SRA are that, whilst practising as a solicitor at Fuglers (in association with David Berens & Co) LLP ("the Firm"), he:

2.1. On or around 15 August 2017, caused or allowed the transfer of £129,827.22 of client money, belonging to Client A and Client B, to pay the Stamp Duty Land Tax ("SDLT") owed by Client C, without the consent of Clients A and B

and in doing so breached any or all of Rules 1.2(c) and 20.1 of the SRA Accounts Rules 2011 ("the 2011 Accounts Rules") and Principles 4, 6 and 10 of the SRA Principles 2011 ("the 2011 Principles")

2.2. On or around 10 January 2018, received £10,800 in his personal bank account from Client C in circumstances in which he knew or ought to have known that he was not entitled to receive it

and in doing so breached any or all of Principles 2 and 6 of the 2011 Principles"

Agreed Facts

First Respondent

5. The First Respondent is a solicitor (SRA ID: 138825) who was admitted to the Roll on 1 March 1988. At the time of these Allegations, the Respondent was working at the

Firm (SRA ID: 441833) as a manager, the Compliance Officer for Legal Practice ("COLP") and the Compliance Officer for Finance and Administration ("COFA").

6. SRA records indicate that the Firm became an LLP in April 2006. The First Respondent had worked at the organisation, prior to it becoming an LLP, from August 1998 through to the Firm's closure in December 2019.

7. The First Respondent currently holds a practising certificate free from restrictions and according to SRA records has worked as a consultant for Protopapas LLP (SRA ID: 649883) since 9 December 2019.

8. On 7 January 2013, the First Respondent was fined £20,000 and ordered to pay £15,000 costs by the Tribunal for his role in allowing the Firm's client account to be used as a banking facility between 5 October 2009 and 8 February 2010. This decision was upheld on appeal; *Fuglers & Ors v SRA* [2014] EWHC 179 (Admin). The First Respondent's regulatory background is relevant in that it demonstrates that he must have known the importance of managing the client account appropriately, and ensuring that all payments in and out of the account were ones that could properly be made.

9. None of the Allegations the First Respondent admits involve (i) dishonesty; and/or (ii) a lack of integrity. Nor did any of these Allegations result in a financial loss for any of the clients.

Second Respondent

10. The Second Respondent is a solicitor (SRA ID: 166864) who was admitted to the Roll on 1 December 1994. SRA records indicate that the Second Respondent held the following positions at the Firm:

Role	**Date**
Assistant	10 February 2011 – 28 February 2013
Consultant	1 March 2013 – 30 April 2014
Non-member partner	1 May 2014 – 20 June 2016

Consultant	21 June 2016 – 6 February 2018

11. At the time of the Allegation 2.2, the Second Respondent's Practising Certificate was subject to the following conditions:

    11.1. That he practise only in employment approved by the SRA;

    11.2. That he must be supervised by a named partner in the firm;

    11.3. That he must not give undertakings; and

    11.4. That he must inform any actual or prospective employer of these conditions.

12. Following the Second Respondent's departure from the Firm in 2018, SRA records indicate that he worked at Raymond Saul & Co LLP (SRA ID: 598836) as a consultant from 6 February 2018 to 6 December 2019.

13. The Second Respondent did not renew his Practising Certificate following the expiration of his 2018 – 2019 Certificate. On 7 September 2020, the Second Respondent informed the SRA that he had retired.

Background

14. Concerns in relation to the Second Respondent's conduct were first reported to the SRA by the First Respondent on 9 December 2019 in relation to the Clients A and B matter. The First Respondent made a further self-report on 16 June 2020 in relation to the Clients F and G matter.

15. As a result of the first report by the First Respondent, the SRA conducted a forensic inspection of the Firm**,** carried out by a Forensic Investigation Officer ("FIO"). The FIO's interim report was concluded on 22 July 2020.

16. The FIO's final report was concluded on 25 January 2021.

Allegations 1.1 – 1.2 and 2.1 – 2.2 – The Clients A and B/Client C matter

17. The self-report from the First Respondent on 9 December 2019 contained the following comments:

> *"I have concluded an investigation of a matter involved [sic] the unpaid Stamp Duty Land Tax on the purchase of a property by* [Client A and Client B] *and why the sum of £129,827.22 has been sent from* [Client A and Client B]*'s file to pay the SDLT of another client* [Client C] *in respect of the purchase of another property.*
>
> *My investigations were hampered by the fact that the fee earner that dealt with both matters Oliver Hanrahan has recently* [redacted]*. I was only able to speak to him on Friday and again over the weekend.*
>
> *I have been informed by Mr Hanrahan there were two errors – firstly with the calculation and collection of the SDLT amount and secondly in returning the funds to* [Client C] *instead of being returned to* [Client A and Client B]*'s ledger.*
>
> *I have been further informed by Mr Hanrahan that* [Client C] *will repay the sum of £71,648.73 returned to him in error and that Mr Hanrahan will make good the shortfall caused by his failure to calculate the SDLT correctly. Both sums will be paid by the end of this week."*

18. The Firm acted for Clients A and B in their purchase of Property D. The Firm also acted for Client C in his purchase of Property E. The Second Respondent had conduct of both matters.

19. During the FIO's investigation, the FIO was informed that it was unable to find the client matter files for either of these conveyancing transactions. As a result, the FIO was unable to review those files during his investigation.

20. The matter ledger for Clients A and B reveals that £1,546,900.99 was received as a credit for the clients on 11 August 2017. Following receipt of these funds, £1,260,000 was transferred out on 14 August 2017. Significantly, the ledger then records

£129,827.22 being transferred out on 15 August 2017, with the narrative provided for this transaction as, *"HMRCS DLT TT"*.

21. This out-going transaction of £129,827.22 on 15 August 2017 was a payment to HMRC for SDLT. However, in either October 2019 or November 2019, the Firm were contacted and informed that SDLT had not been paid for the purchase of Property D by Clients A and B.

22. As indicated above, in the First Respondent's report to the SRA on 9 December 2019, he stated that this transfer of £129,827.22 had been used instead to pay the SDLT on Property E, which had been purchased by Client C.

23. The matter ledger for Client C reveals two outgoing payments to *"HMRCS DLT TT"*:

    23.1. A payment for £75,000 on 14 June 2017; and

    23.2. A payment for £50,000 on 25 July 2017.

24. This total payment of £125,000 to HMRC for SDLT on the purchase of Property E falls some way short of the £451,950 owed in total for SDLT on this purchase, and also falls short of the £252,800 identified as the amount that would be paid with the SDLT return.

25. On 6 March 2017, the Second Respondent e-mailed Client C, indicating that £461,542.17 was required in order to complete this purchase. The SDLT due was identified as £323,950.

26. On 14 March 2017, the Second Respondent e-mailed Client C and updated the figures due based on a mistake made by the Second Respondent as the amount of Client C's funds that were being held by the Firm.

27. The same day as the £129,827.22 belonging to Clients A and B had been used to pay a portion of the SDLT owed by Client C, the 15 August 2017, the Second Respondent sent to Client C an e-mail which simply read:

> *"Please see attached bank details.*
> *Give me a call when you have a moment"*

28. Attached to this e-mail were the details of a Metro Bank account held in the Second Respondent's name.

29. On 17 August 2017, a further e-mail was sent to Client C by the Second Respondent, which stated:

> *"Correct Bank details now attached (only change is account number)*
> *Send me a text when payment has been made."*

30. Attached to this 17 August e-mail was indeed updated bank account information in the name of the Second Respondent.

31. On 10 January 2018, the Second Respondent received a payment of £10,800 from Client C. The payment was made into the bank account for which the Second Respondent had provided details on 17 August 2017. The reference for this payment included the phrase:

> *"HSK 4.01 STAMPDUTY"*

32. 4.01 is the flat number for Property E; the property purchased by Client C.

33. On 8 December 2019, the day before the First Respondent reported this matter to the SRA, the issue was clearly discussed between the First Respondent and the Second Respondent. The Second Respondent e-mailed the First Respondent and stated:

> *"Essentially there are a couple of errors – firstly with the calculation and collection of SDLT amount and secondly in returning the funds to the client.*
>
> *The solution is for the client to return the funds and make up the shortfall. I am trying to arrange this at present given that the error is mine I will make up any shortfall that does not come from the clien* (sic)*. I expect that we can get this concluded by Wednesday and will confirm to you in the morning.*
>
> *There have been no inappropriate payments and no thefts of money.*
>
> *If we need to self report this matter to the SRA then we should do so with the advisory that steps were taken to resolve the matter as soon as it came to light"*

34. The exchange continued between the First Respondent and the Second Respondent, with the Second Respondent sending a further e-mail on 9 December 2019 at 08:11:

"I refer to our previous e-mails. I will come back to you later today on exactly when you will have funds to remedy the breach. I have spoken with [Client C] *and as ever there are delays in getting funds out of Malaysia. It will however be within seven days. We will endeavour to shorten this as much as possible. It maybe that I will need to provide some funds from another source in the meantime.*

I cannot help on how the payment came to be made from the incorrect ledger. We would have assumed we had sufficient funds on [Client C] *and it maybe we were doing the two payments at the sane* (sic) *time – we certainly had some funds on* [Client C] *so I do not understand why these funds were not used"*

35. The First Respondent replied to this e-mail later on the same day, stating:

"Please can I have confirmation as to the exact amounts that is going to be repaid.

I have now made the self-report to the SRA. Clearly time is now of the essence and I really do need to be in funds by Wednesday"

36. The e-mail dialogue between the Respondents continued, with the Second Respondent e-mailing the First Respondent again on 10 January 2020:

"As previously indicated [Client C] *is keen to see this matter resolved as soon as possible. Given the nature of some of the allegations being made it is important that a solution is found that brings finality to the matter and* [Client C] *will be concerned to ensure this.*

The following suggestion has been made.

An amount of SDLT has been paid to HMRC and credited to [Client C]*'s account. This was incorrect as the funds were not for his account. The appropriate course therefore must be for HMRC to re allocate those funds to the correct tax payer. (Having spoken with HMRC, I understand that this is possible). The effect of this would be that the SDLT paid would be correctly allocated and that* [Client C]*'s account would be showing as partially*

outstanding. It would then be for [Client C] *to pay the outstanding SDLT to HMRC together with the penalties that will almost certainly be imposed.*

The advantage of this approach is that the original error will be corrected and any penalties that are payable will fall to the correct taxpayer.

Can you please confirm that you will ask HMRC to re allocate the previous payment and let me have the UTR for [Client C]*'s transaction so that he can get in contact with HMRC"*

37. The First Respondent replied the same day, informing the Second Respondent:

"I don't think that there is any point in me contacting HMRC without having an authority from [Client C]*. Please can you draft something appropriate for him to sign and send it to me once signed"*

38. On 13 January 2020, the Second Respondent sent to the First Respondent a proposed draft authority for Client C to sign. The First Respondent replied on 14 January 2020, providing the correct date and amount for the transaction that had been made using funds belonging to Clients A and B.

39. On 20 January 2020, the Second Respondent e-mailed Client C in the following terms:

"I have been trying to contact you over the last week or so. We urgently need to correct the error made in relation to the payment of SDLT on HSK. I have prepared the draft letter below.

Can we please have an urgent telephone call in the morning?"

40. This was followed up by a further e-mail on 21 January 2020 from the Second Respondent to Client C:

"I refer to our telephone conversation this morning. Due to poor signal at my location I have been unable to get through to you since. I will call you tomorrow morning as early as I can.

We are having a serious issue regarding the SDLT payment for HSK. You may recall an individual called Gordon Cook who was the person agitating regarding your service charge at HSK and, as you will recall, he was threatening to forfeit your lease.. Well it appears that he was also doing some work for Fuglers and has raised issues regarding the SDLT payment on HSK. He has made a complaint to my regulatory body and he has also threatened to report me to the police. I am not sure what that complaint would be.

The gist of his complaint is that when Fuglers made the final payment they were not holding sufficient funds as you had not paid over the correct amount. He has also suggested that the duty payable was much higher than it actually was.

It is going to be necessary to unravel the payment so that the payment that was made to HMRC is correctly allocated. I have sent you a draft letter dealing with the matter. I had wanted to discuss this with you while you were still in London but could not get hold of you. It is now mega urgent. We need to get this letter sent tomorrow. Can you please print, sign and scan back to me.

I will then arrange to come and see you in a couple of weeks so that we can sort the remaining aspects"

41. On 27 January 2020, at 15:06, the Second Respondent e-mailed the First Respondent in the following terms:

"As I feared I have not heard from [Client C] *over the weekend or indeed today. The Chinese New Year is taken fairly seriously in Malaysia.*

I have sent him a further message this afternoon.

I have no doubt but that he will perform his obligations on this matter but he can be slow. I am unaware as to where you are with HMRC on this and what if anything they have been told. At the end of the day the responsibility for paying SDLT rests with the taxpayer (in this case [Client C]*) and not with the agent.*

I would suggest that if HMRC have not yet been advised of the error that they be advised as soon as possible. They should be asked to reallocate the payment that has been made thus resolving the [Client A and Client B] *matter.*

They should also be advised that the outstanding SDLT is payable by [Client C]. *Presumably that would cause them to send a demand to* [Client C] *for the outstanding amount. That I imagine would prompt a fairly speedy response from* [Client C]*"*

42. The First Respondent replied to the Second Respondent at 17:24 on that same day, 27 January 2020:

"Unfortunately, your email is not helpful at all. As you very well aware, HMRC will not take action without a written authority from [Client C]*, which you told me you were arranging. As* [Client C]*s solicitor please be advised that I am now going to take formal action to recover the money and recover the costs of doing so"*

43. On 3 February 2020, the First Respondent sent an e-mail to the Second Respondent in the following terms:

"In the absence of restitution by either yourself or [Client C] *I have today sent the attached letter, which has been settled by Counsel, to* [Client C]*"*

44. The letter attached to this e-mail, dated 3 February 2020, made the following claims:

44.1. That Client C and the Second Respondent had colluded together to arrange for the funds belonging to another client to be used to pay the SDLT owed by Client C;

44.2. That Client C had been informed by the Second Respondent on 14 March 2017 that he needed to provide £397,542.17 in funds in order to complete the purchase of Property E, yet had only transferred £161,955 to the Firm;

44.3. That following additional payments to the Firm on 25 July 2017, 14 August 2017, 15 August 2017 and 17 August 2017, totalling £125,000, this still left a shortfall of £110,587.17;

44.4. That the Firm required an explanation from Client C as to why the Second Respondent had sent him his personal bank account details on 15 and 17 August 2017;

44.5. That the Firm required immediate repayment of the £129,827.22 (the sum belonging to Clients A and B which had been used to pay the SDLT owed by Client C) and that a failure to do so would lead to the Firm issuing proceedings against Client C and the Second Respondent; and

44.6. A response was requested by no later than 5pm (GMT) on 5 February 2020.

45. The Second Respondent replied to the First Respondent on 5 February 2020 in the following terms:

> *"*[Client C] *has your letter*
>
> *He has concerns regarding allegations made and will respond in due course.*
>
> *He is travelling this week and away from KL. The time afforded by your letter was short in the circumstances and given his travel schedule he needs additional time. He will revert by close of business a week today.*
>
> *Given the above the issue of proceedings at this point would be premature and is unlikely to speed up a final resolution of this matter. Please confirm that you will not issue proceedings until you hear from* [Client C] *next week"*

46. The First Respondent sent an e-mail in reply on 7 February 2020:

> *"I have received a delaying letter from his Solicitors on Wednesday.*
>
> *Unfortunately, it is all too late. Both he and you have had ample time to deal with it, make restitution or provide the letter of authority"*

47. On 20 February 2020, at 09:41am, the Second Respondent e-mailed Client C in the following terms:

"Further to my previous email I have again reviewed the letter from Mr Berens. As I have saide (sic) *it represents a considerable distortion of facts and would also appear to be designed to drive a wedge between us. The allegations are outrageous. It is the case that an error has been made here and will need to be dealt with.*

I do not know if you have heard any further from Mr Berens or indeed if you have sent a response. I have not heard further and my relationship with him appears to have completely broken down.

I am concerned by the threat of proceedings and would like to get this matter resolved in early course. There are risks for all concerned in allowing the matter to proceed any further. There is also a considerable exposure to costs.
The easiest way of dealing with the central point in Mr Berens letter is to have the SDLT error reversed. This requires an authority to HMRC to reallocate the payment. I will send you a revised form of authority a little later as this cannot be done without your authority. This would deal with Mr Berens letter and the threat of litigation.

We can then sit down and go through the payments and work a solution"

48. This 20 February 2020 e-mail to Client C was followed up short time later, at 10:25am, with a further e-mail from the Second Respondent:

"Further to my earlier email I now attach the draft form of authority. AS (sic) *I mentioned the effect of this would be to reverse the error made"*

49. On 27 February 2020, the Firm's client account was credited with £129,827.22; the same amount that had been used from funds belonging to Clients A and B to pay SDLT owed by Client C.

50. The explanation for this payment into the Firm's client account was given by the First Respondent in his letter to Clients A and B, dated 21 August 2020. In the course of that letter, the First Respondent made the following points:

50.1. That the Firm had closed on 29 December 2019, but prior to its closing notification had been received from HMRC that SDLT had not been paid on the purchase of Property D;

50.2. As a result of this information, the First Respondent conducted an audit of their file. During the course of this audit, the First Respondent noted that Clients A and B had been sent a Completion Statement showing that the SDLT due was £146,250. Clients A and B had been informed of this figure as the calculation had been made based on rules from 1 April 2016, when in fact their SDLT should have been calculated using the pre-1 April 2016 rule; this would have led to a SDLT figure of £99,750 on their purchase;

50.3. Following transfer of funds from Clients A and B of £1,546,900.99 in order to complete the purchase, £129,827.22 of that was used to pay the SDLT owed by another client;

50.4. *"As soon as I was alerted to the fact that this happened a claim was made on the firm's professional indemnity insurance policy and the sum was repaid."*

50.5. As a result, on 28 February 2020, the First Respondent was able to pay the SDLT owed for the purchase of Property D and also a SDLT penalty of £7,697.91. £47,607 was currently being held for Clients A and B and could be transferred to them upon presentation of their bank account details; and

50.6. There had been a delay in writing to Clients A and B as *"…shortly after the SDLT was paid I went into isolation due to the Covid-19 pandemic and I have been unwell."*

Explanations from Respondents

51. On 1 September 2020, following production of an Intervention report by the SRA, Murdochs provided representations in response to that report. In the course of these representations, various points were made about the First Respondent's health and personal circumstances that would have affected his ability to respond to matters in the latter part of 2019 and the first half of 2020.

52. On 19 October 2020, the First Respondent was interviewed by the FIO, in the presence of his solicitor. The following comments were made by the First Respondent in relation to this matter:

52.1. The First Respondent was unable to comment on whether he was fit or unfit to undertake the interview, but the FIO was aware of the First Respondent's diagnoses. The First Respondent stated that he would indicate if he felt he was unable to continue;

52.2. That the caseworker for both Clients A and B and Client C was the Second Respondent;

52.3. The process for payments within the Firm was that *"…the fee earner would provide the paperwork to the accounts department. The accounts department would the payments* (sic) *on the system. I would check it and make the payment. I was the sole signatory to the client account and the only person that could make payments from the client account"*;

52.4. When asked if he had checked that the 15 August SDLT payment was going to the right account, the First Respondent replied, *"Yes, I checked it. On the face of it, it looked as if there was sufficient money to pay Stamp Duty"*;

52.5. The First Respondent did not check the rate of Stamp Duty that had been calculated and would have relied on the fee earner to check that;

52.6. When asked why he had not communicated with Clients A and B when he became aware of the issue in either November or December 2019, the First Respondent stated: *"I dealt with it as soon as I could, bearing in mind my personal circumstances"*; and *"I, I communicated and acted on advice from our insurers as to how to handle it"*;

52.7. That the First Respondent was not aware at the time that the Second Respondent had provided his personal bank account details to Client C, and that had only come to light subsequently; and

52.8. That the First Respondent was unaware of any reason as to why a consultant at the Firm would provide their personal bank account details to a client.

53. On 15 June 2022, Mills & Reeve submitted representations on behalf of the First Respondent in response to the SRA's Notice recommending referral to the Tribunal. As far as whether the First Respondent's conduct amounted to breaches of the relevant Principles and Rules, the following comments were made:

53.1. That it was accepted that in failing to prevent the transfer of funds belonging to Clients A and B, the First Respondent was in breach of Rules 1.2(c) and 20.1(a) and (c) of the Solicitors Accounts Rules 2011 and that such failings were likely to amount to a breach of Principle 10 of the 2011 Principles; and

53.2. In relation to the delay in notifying Clients A and B, it was stated: *"The uncontested evidence is that as soon as Mr Berens became aware of the transaction he self-reported and made his insurers aware. Thereafter, he followed their instructions. It should be noted that whilst in interview, Mr Jaja appears to conflate the notification to the clients of the issue with "prompt remedy". The requirement under the Rule was for Mr Berens to correct any breaches promptly upon discovery. Mr Berens did that. He also replaced the money as soon as he was able, having instituted the insurance claim right away. The Rule did not require him to inform the client promptly"*

54. The Second Respondent did not attend an interview with the FIO but responded to correspondence from the FIO on 7 September 2020 and 14 October 2020 (through legal representatives). The Second Respondent's assertions in relation to this matter in the 7 September 2020 e-mail can be summarised as follows:

54.1. That he believes the use of funds belonging to Clients A and B to pay Client C's SDLT most likely came about due to an error on his part; he believes that he erroneously put a reference for Client A when requesting the payment be made on behalf of Client C. If that was the error, then he takes responsibility for it;

54.2. That he did speak to the First Respondent when this issue was identified, and told him that he would try and have the matter resolved. He spoke to Client C and it was agreed that they would discuss the matter further when Client C was next in London. Client C then became very difficult to contact over the Christmas period;

54.3. That he would have the requested that this payment was made in the normal way, and then this payment would have been placed on the accounts system by the accounts team in readiness for authorisation and payment. The Second Respondent did not at any time have any authority to make payments and the payment would ultimately have required the authorisation of the First Respondent;

54.4. That he had provided Client C with his bank details in order for a 'bonus' payment to be made to made to him. Client C confirmed with the Firm that he had made a £10,800 payment to the Second Respondent. This was the only payment he had received from Client C;

54.5. As far as the Second Respondent was aware, the first the First Respondent knew of this bonus payment was when Client C responded to the First Respondent's 3 February 2020 letter. The First Respondent then spoke to the Second Respondent, and the Second Respondent explained it to him. The First Respondent stated that the bonus payment should have gone to the Firm. As a result, the Second Respondent was taking steps to arrange for those funds to be returned to Client C.

55. In the 14 October 2020 e-mail, further information was provided on behalf of the Second Respondent in relation to the £10,800 payment from Client C:

55.1. *"Mr Hanrahan undertook a lot of extra work for* [Client C] *in the particular matter in question, including travelling to Malaysia to meet with him, as well as meeting with him on a number of occasions outside office hours. It was because of the 'above and beyond' nature of the service that Mr Hanrahan provided to* [Client C] *that a bonus payment was discussed.*

Mr Hanrahan accepts that the payment should properly have been disclosed to the firm at the time.

The point has been raised and discussed briefly between Mr Hanrahan and Mr Berens and it has been agreed that (as between Mr Hanrahan and the firm), the matter is not being pursued at this time"; and

55.2. That the funds to repay Client C had not been specifically set aside, but would be made available when required and after the Second Respondent has had an opportunity of discussing the matter further with the Firm and Client C.

56. The Second Respondent has never provided any evidence to show that he has repaid the funds to Client C.

57. The Second Respondent provided representations in response to the SRA's Notice recommending referral to the Tribunal on 20 June 2022. The following comments of note were made:

57.1. In relation to the Clients A and B and Client C matter: *"In summary I have to accept, and have done from the outset, that this was my fault. I will have requested the payment from accounts but appear to have done so on the incorrect file reference. This was an error and one that was not brought to my attention until November 2019. I was not in position to do anything to resolve the matter at the time as I had left the firm and was in fact* [redacted] *. It was however my fault and I must accept that. At the time I told Mr Berens that a report should be made to the SRA"*; and

57.2. In relation to the payment from Client C: *"There was a payment of £10,800 made by* [Client C] *direct to me. I have explained that this was a fee that I charged* [Client C] *for dealing with the matter. The matter was long and protracted and involved me going to Malaysia to meet with him. At the time I did not think it inappropriate to receive this fee. I now accept that it poses certain difficulties. I have always said that the money would be repaid on request and that remains my position"*

Allegation 1.3 – The Clients F and G matter

58. On 16 June 2020, the First Respondent made a further self-report to the SRA in relation to the Clients F and G matter. In the course of this e-mail, the First Respondent stated:

"Unfortunately, the sum of £95,012 was paid twice in error to the above client in respect of a deposit that was being held on their behalf. The deposit was to be returned to them when agreement was reached to terminate the contract.

There is no evidence as to why the payment was made twice other than in administrative error.

Despite requests from the former clients for the sum to be repaid repayment has not been forthcoming. The former clients have returned to live in Singapore, and it is believed that [Client F] *works for a Government Agency and there is no reason to believe that if proceedings are issued against him, he will not pay. Indeed, we have taken preliminary advice from Taylor Vinters Via LLC in Singapore to this effect.*

I have also reported the loss to our PI insurers and requested reimbursement of the sum as well as requesting costs to cover the initial legal costs of Taylor Vinters.

I am also investigating replacement of funds by the firm itself"

59. The Firm had acted for Clients F and G in relation to their purchase of Property H. The Second Respondent had conduct of this matter. The firm held a deposit for these clients, which was then returned when the purchase was aborted.

60. The matter ledger for Clients F and G reveals that an outgoing payment of £95,012 took place on both 30 July 2015 and 3 August 2015.

61. In the Interim Report, produced by the FIO, this second payment of £95,012 to Clients F and G featured in his identification of a shortage in the client.

62. On 25 June 2020, the First Respondent made a claim on the Firm's professional indemnity insurance in relation to this matter. The £95,012 was replaced by the insurer on 10 August 2020.

63. On 5 August 2020, in relation to this matter, the First Respondent sent an e-mail to which he attached a 16 March 2017 letter and made the following claims in the e-mail:

    63.1. That the Second Respondent had written the March 2017 letter; and

    63.2. The matter had not been drawn to his attention in March 2017 by the Second Respondent.

64. The 16 March 2017 letter appears to be the Second Respondent's attempt to recover the over-payment of £95,012 to Clients F and G. The letter requests the recipient reply to *"oliverh@fuglers.co.uk"* and the reference for the matter is given as *"OJH/38135."*

Explanations from the Respondents

65. In representations provided on behalf of the First Respondent on 1 September 2020, it was asserted that the First Respondent had not become aware of the shortage of £95,012 as, *"…it was on a file that had previously been covered by client balances held by another client"*.

66. In his 19 October 2020 interview with the FIO, the First Respondent stated:

    66.1. That he did not recall why he did not notice that the ledger was overdrawn in relation to this matter, but it may have been because it was covered by credit balances for other clients;

    66.2. That following notification by HMRC of the problem with the Clients A and B and Client C matter, he checked back on his records and discovered the problem in relation to Clients F and G;

    66.3. That he had made this discovery in or around November 2019; and

    66.4. That he believed the matter file for Clients F and G had been transferred to another firm of solicitors.

67. In his response to the SRA's Notice, the First Respondent provided a factual narrative as to what had occurred in relation to this duplicate payment. The First Respondent went onto acknowledge that in his role as COFA and failing to prevent this transaction, he had breached Rule 1.2 (c) and 20.1 of the 2011 Accounts Rules, and that such failing were likely to amount to a breach of Principle 10 of the 2011 Principles.

68. In the Second Respondent's 7 September 2020 e-mail to the SRA, he stated:

> *"I do not know why this payment was made twice. I did not have any authority to make any payments. I understand and believe that the double payment was either an accounting or an administrative error. I believe that I will have*

requisitioned one payment of £95,012 and sent it to accounts to be put on the system. Mr Berens will then have authorised the payment. I do not know how the payment was sent twice. There is no suggestion that the payment was requisitioned a second time and I do not know whether the error occurred internally or at the bank".

69. In his 20 June 2022 representations on the Notice, the Second Respondent stated:

"It is the case that I requested the accounts department via Mr Berens to make a refund to [Client F] *as he was no longer proceedings with the transaction. He had instructed new solicitors and they requested the return of his deposit. I did the initial request for the payment and passed it to accounts/Mr Berens for payment. That was the end of my involvement with the payment. At some later date that I do not recall I was told that the payment was sent twice. I do not know how that happened and I clearly requested the payment only once. It occurred to me that it must have been a bank error or a processing error by Mr Berens. I was told at the time that the client account deficit had been rectified and for that reason I did not think there was any need to take the matter further"*

Allegation 1.4 – Management of Firm's bank accounts

70. As identified in the Final Report from the FIO, Qualified Accountant's Reports were submitted for the following periods, indicating the following breaches of the Accounts Rules:

Accounting Period	**Identified Breaches**
1.5.12 – 30.4.13	Client to office account transfers were made outside the 14 days period. Debit balances amount to £50,313 and £36,240 as at 30 April 2013 and 31 October 2012

1.5.13 – 30.4.14	Client to office account transfers were made outside the 14 days period. Debit balances amount to £28,643.50 and £52,200.99 as at 30 April 2014 and 31 October 2013
1.5.14 – 30.4.15	Client to office accounts transfers were made outside the 14 days period. Debit balances amount to £21,003 and £30,331 as at 30 April 2015 and 31 October 2014 respectively
1.5.15 – 30.4.16	Transfer from client account to office account without issuing a bill with 14 days. Client account had debit balances. The three-way bank client account reconciliation had not been completed. Client funds not promptly returned after conclusion of their matters.
1.5.16 – 30.4.17	Transfer from client account to office account without issuing a bill 14 days. Client funds not promptly returned after conclusion of their matters. Client funds held in the office account. Client account had debit balances (shortages)

Explanations from First Respondent

71. During the FIO's interview with the First Respondent on 19 October 2020, the First Respondent was specifically asked about the conclusions in the Qualified Accountant's Report covering the period 1 May 2015 to 30 April 2016. The following relevant comments were made by the First Respondent:

    71.1. That the Firm used an antiquated accounts programme;

    71.2. That the First Respondent accepted what was said in that report;

71.3. That he believed the observations about the three-way bank reconciliation either related to them not being performed in a timely fashion or the First Respondent not signing them;

71.4. The bank reconciliations would ordinarily have been performed by a bookkeeper and then sent to the First Respondent for checking;

71.5. The Firm used a *"top fifty"* firm of accountants; and

71.6. The First Respondent believed the reasons for the Reports being qualified were clear, but there might have been dialogue or correspondence with the accountants as to the reasons for it being qualified.

72. In the First Respondent's response to the SRA's Notice, the following comments were made in relation to the Qualified Accountant's Reports:

> *"Between 2012 and 2017 the Firm's accountants issued five Qualified Accountant's Reports ('QARs'). In each case the qualifications identified breaches of Rules 17.3, 14.3, 29.12, 17.2, 18.3 and 20.3 of the Solicitors Accounts Rules 2011. In each case the accountants reported that the breaches had been rectified within the year in question. To that extent Mr Berens accepts he failed to abide by the Rules set out above for a period limited to no more than the year in question. In so saying Mr Berens does not seek to minimise the fact of the breaches and apologises to the SRA for allowing such breaches to go undetected in the relevant periods.*
>
> *As a result of the breaches identified above, Mr Berens accepts he breached Rules 1.2(c) and 20.1 of the Solicitors Accounts Rules, 2011"*

Mitigation

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

73.1. Relating to Allegation 1.1:

a. The First Respondent was not responsible for initiating the transfer of money. As soon as the First Respondent became aware of the transaction, he self-reported the issue and immediately made his PI Insurers aware in line with his professional obligations;

b. Neither Clients A nor B suffered any loss as the First Respondent remediated the position once he was aware of the transfer if money; and

c. The fine payable for late SDLT was covered and paid by the Firm's PI policy.

73.2. Relating to Allegation 1.2:

a. The First Respondent took advice from his PI insurers as to how to handle the matter and followed their advice;

b. The First Respondent understood the relevant rule to mean that he had to correct any breaches promptly upon discovery. This is what the First Respondent focussed on and attained by replacing the money as soon as he was physically able to, while having instituted the insurance claim immediately;

c. The First Respondent experienced and was experiencing some very sensitive and personal family health related issues very shortly after the SDLT was repaid on 27th February 2020. [redacted];

d. Owing to these events and combined with the SRA's investigation, the First Respondent was diagnosed as suffering from anxiety and depression. The First Respondent struggled mentally and emotionally to come to terms with the celerity at which his life changed. Unfortunately, these drastic changes affected the First Respondent's

judgement of the rules and the extent at which he felt physically able to remain focussed on the SRA's investigation and professional situation (Points 73.2.c and 73.2.d should read as affecting the First Respondent from February 2020 onwards and thereafter cumulatively); and

e. Neither Clients A nor B ever complained about the situation as both had been swiftly compensated in full which included repayment of the fine levied by HMRC for late payment of SDLT.

73.3. Relating to Allegation 1.3:

a. The transfer was on a file which had been offset by client balances held by another client. The First Respondent is not aware as to why he did not notice the ledger was overdrawn but speculates that it could have been because it was covered by credit balances for other clients;

b. The Firm's Accountants never drew attention to the existence of an overdrawn ledger, potentially for the reason noted in 73.3.a. The First Respondent relied on and was comforted by the Firm's Accountant in respect of this; and

c. The First Respondent ensured that the amount in respect of the transfer was recovered in full under the Firm's PI policy

73.4. Relating to Allegation 1.4:

a. No breaches of Rule 2.4.3 were allowed to subsist beyond the end of the accounting year after they were picked up out of quality assurance reviews by the Firm's accountants;

b. In each case the Firm's accountants were able to confirm that the identified qualifications had been promptly rectified and any shortfalls were repaid by the First Respondent;

c. The accountants did not raise any issue at that time with how the First Respondent was conducting himself and his duties as COFA;

d. The First Respondent took action to address and subsequently rectify any identified issues as soon as he became aware of them; and

e. The First Respondent's actions causing this allegation were in no way pre-planned or pre-meditated. They arose out of honest but regrettable misunderstandings and confusion.

73.5. Miscellaneous mitigation:

a. The First Respondent has suffered extreme stress and anxiety notwithstanding this he has accepted responsibility;

b. None of the First Respondent's clients have suffered any financial loss;

c. The First Respondent has spent a significant amount of his own money (£30,875.36) indemnifying clients and fixing the client account shortfall and will suffer financially for some time in payment of the fine and costs;

d. While the First Respondent has appeared at the SDT previously, this was on an entirely different basis. As such the facts and outcome should remain generally separate and be considered as two wholly distinct matters;

e. The fact the First Respondent has almost compliantly closed his practice and his subsequent actions in completing the closure are a proportionate response given the history of the breaches and should act as strong mitigation;

f. There has been no allegation of dishonesty or lack of integrity against the First Respondent;

g. The First Respondent's wife is still being treated [redacted]. The SRA are already aware of this;

h. Despite the First Respondent's difficult personal circumstances, he cooperated with the SRA's investigation in full and throughout;

i. While the First Respondent does accept strict liability for Allegations 1.1 and 1.3, the Second Respondent is culpable as he initiated the payments[1]; and

j. Strenuous efforts were made by the First Respondent to repay the sums due to Clients A and B and to recover the transfer of £95,012, including the contribution of his own personal funds.

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

74.1. The Second Respondent did not decline to be interviewed by the FIO. For a combination of reasons there was some difficulty in trying to arrange a suitable time and venue for the interview. The Second Respondent's representative, Mr Greensmith spoke with the FIO on 6 November 2020 regarding the interview. The FIO indicated that he wanted the interview to take place by 25 November 2020 and asked that the Second Respondent provide dates on which he would be available. The Second Respondent provided dates to Mr Greensmith by email dated 9 November 2020. There was no further communication on the matter;

74.2. The Second Respondent has accepted from the outset that the initial request for the payment will have been initiated by him. However, it is the case that:

74.2.1. The Second Respondent did not have any facility or authority to make any payment; and

74.2.2. Following the initial payment request there were at least two further steps in the payment process and the Second Respondent was not involved in any of these steps. Any error in the payment process should have been identified during one of these steps and the payment stopped[2].

[1] Whilst the First Respondent makes this point by way of mitigation, the SRA have not brought an Allegation against the Second Respondent in relation to the payment that is the subject matter of Allegation 1.3.

[2] As indicated above, the First Respondent does not accept the factual accuracy of this assertion.

74.3. The Second Respondent ceased practice in November 2019 following a serious health issue.

Agreed Outcome

75. The First Respondent admits all of Allegations 1.1. to 1.4 above and agrees:

75.1. To pay a financial penalty in the sum of £7,501.00;

75.2. To pay costs to the SRA agreed in the sum of £7,500.00

75.3. That he be made subject to the following restrictions on practice for an indefinite period (with liberty to apply to vary or discharge the conditions), namely that:

a. Mr Berens shall not act as a manager or owner of any authorised body[3];

b. Mr Berens may not act as a Compliance Officer for Legal Practice (COLP) or Compliance Officer for Finance and Administration (COFA) for any authorised body, or Head of Legal Practice (HOLP) or Head of Finance and Administration (HOFA) in any authorised non-SRA firm; and

c. Mr Berens does not hold, receive, or have access to client money, or does not act as a signatory to any client or office account, or have the power to authorise electronic transfers from any client or office account[4].

[3] The SRA's Standards and Regulation and published Guidance (https://www.sra.org.uk/solicitors/guidance/authorisation-approval-role-holders/) confirms that "*manager*" means "*the sole principal in a recognised sole practice; a member of a UK limited liability partnership; a director of a company; a partner in a partnership that is not a body corporate; or, in relation to any other body, a member of its governing body*." According to the SRA's records, Mr Berens is not a manager of any authorised body.

[4] Protopapas LLP (Mr Beren's current employer) have confirmed to the SRA that these restrictions will not affect DB's employment in his current role.

76. The costs set out above include a reduction for the case having concluded by way of an Agreed Outcome and is an apportioned amount of the overall SRA costs incurred in total.

77. The Second Respondent admits all of Allegations 2.1. and 2.2 above and agrees:

77.1. To be struck off the Roll of Solicitors; and

77.2. To pay costs to the SRA agreed in the sum of £10,000.00

78. The costs set out above include a reduction for the case having concluded by way of an Agreed Outcome and is an apportioned amount of the overall SRA costs incurred in total.

Explanation as to why such an order would be in accordance with the Tribunal's Sanction Guidance (10th edition)

79. The parties consider and submit that in light of the admissions set out above and taking due account of the mitigation put forward by the First and Second Respondents, the proposed outcome represents a proportionate resolution of the matter, consistent with the Tribunal's Guidance Note on Sanction (10th edition).

80. It is agreed that:

80.1. The seriousness of the misconduct is such that a reprimand is not sufficient for the protection of the public and the protection of the reputation of the profession;

80.2. Neither the protection of the public nor the protection of the reputation of the legal profession justifies suspension from or striking off the Roll for the First Respondent. However, due to the aggravating factors discussed below in relation to the Second Respondent, striking off is appropriate;

80.3. Considering the facts above and the aggravating and mitigating factors discussed below, the seriousness of the misconduct giving effect to the purpose of the sanction, this case falls in a bracket in which a fine and

restrictions are appropriate for the First Respondent, particularly when having regard to the absence of both dishonesty and a lack of integrity, and the fact that the Allegations did not lead to a financial loss for the clients; and

80.4. Considering the facts above and the aggravating and mitigating factors discussed below, the seriousness of the misconduct giving effect to the purpose of the sanction, this case falls in a bracket in which a strike-off is appropriate for the Second Respondent. Public confidence in the legal profession demands no lesser sanction.

81. In respect of the level of culpability and harm for the First Respondent:

81.1. In relation to Allegation 1.1, the First Respondent allowed the payment of £129,827.22 to be made. The use of client funds belonging to Client A and B to pay a debt owed by another client is a failure to act in the best interest of clients and is a failure to protect client money. This type of conduct damages the public's trust in the First Respondent and the provision of legal services;

81.2. In relation to Allegation 1.2, the First Respondent became aware that £129,827.22 belonging to Clients A and B had been used to pay SDLT owed by Client C, leaving the SDLT owed by Clients A and B unpaid. He became aware of this in November or December 2019 and did not notify Clients A and B until 21 August 2020. It is acknowledged that Clients A and B eventually did not suffer a loss as a claim was made against the Firm's insurance to recover their funds and the penalty for later payment of SDLT. Clients A and B were not notified by the First Respondent until at least eight months after he became aware of the matter. This failure damages the public trust and confidence in the solicitors' profession and demonstrates that he did not act in the Clients' best interest;

81.3. In relation to Allegation 1.3, the sole individual responsible for authorising payments from the client account was the First Respondent. Therefore he must have been responsible for authorising the duplicate payment of £95,012 on or around 3 August 2015 to Clients F and G. This failure damages the public trust and confidence in the solicitors' profession and demonstrates that failed to protect the clients' monies; and

81.4. In relation to Allegation 1.4, the First Respondent held the responsibility for COFA for the Firm. In this role he failed to manage the Firm's bank accounts in accordance with the Accounts Rules. The failure to manage client money correctly within the client account represents a failure to act in the best interests of the clients whose money was mismanaged and also a failure to protect client money. This failure damages the public trust and confidence in the solicitors' profession and demonstrates that he did not act in the clients' best interest.

82. In respect of the level of culpability and harm for the Second Respondent:

82.1. In relation to Allegation 2.1, the Second Respondent has accepted that this payment, of £129.827.22 belonging to Client A and B for payment of Client C's SDLT, most likely came about due to an error on his part as the fee earner with conduct of the cases for both Clients A and B and also Client C. This failure damages the public trust and confidence in the solicitors' profession and demonstrates that he did not act in the Clients' best interest and he failed to protect client monies.

82.2. In relation to Allegation 2.2, the Second Respondent received £10,800 in his personal bank account from Client C. The Second Respondent, in receiving this money did not disclose the payment to the Firm, and represents a lack of integrity and demonstrates behaviour which would damage the public's trust in both him and the provision of legal services

83. In respect of aggravating features which aggravate the seriousness of the misconduct of the First Respondent:

83.1. The First Respondent has previously appeared before the Tribunal in relation to mismanagement of payments in and out of a client account (see paragraph 7 above)

84. In respect of aggravating features which aggravate the seriousness of the misconduct of the Second Respondent:

84.1. The conditions placed on the Second Respondent's Practising Certificate (see paragraph 12 above) were as a direct result of his regulatory history in Ireland. On 26 January 2015, the Second Respondent was struck-off the Roll of Solicitors for Ireland as a result of:

84.1.1. Failing to comply with an undertaking within a reasonable time or at all;

84.1.2. Failing to respond to correspondence sent by the Complainant on eight occasions;

84.1.3. Failing to comply with the directions of three meetings of the Complaints and Client Relations Committee; and

84.1.4. Failing to respond to correspondence sent by the Law Society of Ireland on nine occasions

84.2. The fact that the Second Respondent's conduct occurred relatively shortly after he had been struck-off the Roll in Ireland operates as significant aggravating feature in this case.

85. In respect of mitigating features, the First Respondent's mitigation is set out at paragraph 73 above and the Second Respondent's mitigation is set out at paragraph 74 above.

86. The parties consider that in light of the admissions set out above and taking due account of the mitigation put forward by the First and Second Respondent, the proposed outcome represents a proportionate resolution of the matter, which is in the public interest.

Ian Brook, Partner, Capsticks Solicitors LLP
On behalf of the Solicitors Regulation Authority Limited
Date: 7 March 2023

David Anthony Berens (First Respondent)
Date: 7th March 2023

……
Oliver John Anthony Hanrahan (Second Respondent)
Date: