

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12426-2023

## BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

ALEX RICHARD GUY

Respondent

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Before:

Ms A Kellett (in the chair)

Mrs L Boyce

Mr R Slack

Date of Hearing: 16 May 2023

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## Appearances

David Hopkins, barrister of 39 Essex Chambers, instructed by Capsticks LLP for the Applicant

The Respondent was self-represented.

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## JUDGMENT ON AN AGREED OUTCOME

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## **Allegations**

1. The Allegations contained in the Rule 12 Statement were as follows:
  - 1.1 Between 11 December 2013 and 8 January 2014, the Respondent, while acting as RPH's deputy, transferred £252,070.07 from RPH's bank account into accounts in his own name, and thereby he breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011 and Rules 1.2(a) and 14.1 of the SRA Accounts Rules 2011.
  - 1.2 Between 31 March 2017 and 28 September 2019, the Respondent, while acting as JH's deputy, raised bills of costs for work which was not undertaken and/or was not properly chargeable and improperly transferred the sum of £272,917.68 from monies held on behalf of JH to Switalskis' office account in respect of the said bills, and thereby he breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011 and Rule 20.1 of the SRA Accounts Rules 2011.
  - 1.3 Between 28 February 2018 and 29 March 2018, the Respondent, while acting as AS's deputy, raised bills of costs for work which was not undertaken and/or was not properly chargeable and improperly transferred the sum of £58,759.91 from monies held on behalf of AS to Switalskis' office account, and thereby he breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011 and Rule 20.1 of the SRA Accounts Rules 2011.
  - 1.4 On or around 17 October 2019, the Respondent purchased products from an Apple store to the value of £3,113.00 using JR's money and kept products to the value of £2,275.00 for himself, and thereby he breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011.
  - 1.5 Between 18 November 2019 and 27 November 2019, the Respondent, while acting as JR's deputy, transferred £662,571.65 from JR's bank account into accounts in his own name, and thereby he breached any or all of:
    - 1.5.1 Principles 2,6 and 10 of the SRA Principles 2011;
    - 1.5.2 Rules 1.2(a) and 14.1 of the SRA Accounts Rules 2011; and/or
    - 1.5.3 Principles 2, 4, and 5 of the SRA Principles (2019) and paragraphs 4.2 and 4.3 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019).
  - 1.6 Between 2 January 2018 and 12 July 2019, the Respondent provided the Office of the Public Guardian with information which was untruthful or apt to mislead, and thereby he breached any or all of Principles 2 and 6 of the SRA Principles 2011.
2. Allegations 1.1-1.6 were advanced on the basis that Mr Guy's conduct was dishonest. Dishonesty was alleged as an aggravating feature of his misconduct but was not an essential ingredient in proving the allegations.

## Documents

3. The Tribunal considered all of the documents in the case, which were included in an agreed electronic bundle.

## Application for leave to submit a proposed Agreed Outcome out of time

4. The substantive hearing of this matter was listed for 16 May 2023. On 15 May 2023 at 14.55 the Tribunal received an application for leave to submit a proposed Agreed Outcome out of time, together with the proposed Agreed Outcome itself.
5. Rule 25(1) of the SDPR 2019 stated as follows:

“25.—(1) The parties may up to 28 days before the substantive hearing of an application (unless the Tribunal directs otherwise) submit to the Tribunal an Agreed Outcome Proposal for approval by the Tribunal.”
6. The parties had clearly not submitted this application more than 28 days before the hearing and so an application was required for permission to have the proposed Agreed Outcome considered.
7. At the request of Mr Hopkins, the Tribunal heard this application in private on the basis that there was an application for an embargo on publication of this Judgment, which was dealt with below. In order to preserve the position on the application for an embargo, the Tribunal heard this application in private. For the reasons set out below, however, the application for an embargo was refused and so the details of the applications can be set out in full.
8. Mr Hopkins told the Tribunal that he apologised for the lateness of the application. He submitted that the parties had expedited the discussions about an Agreed Outcome as far as possible, but it had not been possible to agree a final text until the day before the substantive hearing. This was due in part to the ongoing criminal investigation, which Mr Guy was the subject of.
9. Mr Hopkins reminded the Tribunal that under Rule 6(2) of the SDPR 2019, it could dispense with time limits where it was just to do so. Mr Hopkins submitted that it was just to do so in this case because approving the proposed Agreed Outcome was the most sensible way to dispose of the case in a way that was consistent with the overriding objective.
10. Mr Hopkins submitted that as part of the proposed Agreed Outcome, Mr Guy made admissions to Allegations 1.2, 1.3, 1.6 and part of 1.4. He had further admitted that his conduct was dishonest and he had agreed to be struck off the Roll. There was no greater sanction that could be imposed and so even if the hearing took place, it would not alter the outcome. The same rationale applied to the application to withdraw the unadmitted Allegations.
11. Mr Hopkins further noted that Mr Guy had already admitted Allegations 1.2 and 1.3 in his Answer and submitted that the likely result would be a strike off in relation to those admissions alone, in circumstances where £330,000 was involved.

12. Mr Hopkins submitted that there was a clear practical benefit in saving cost and time if this application was allowed.
13. Mr Guy also apologised for the lateness and confirmed that he agreed with Mr Hopkins' submissions.

#### The Tribunal's Decision

14. The Tribunal was dismayed by the lateness of the application. While it did not seek to trespass into areas of 'without prejudice' correspondence between the parties, there was no obvious good reason why this position could not have been reached sooner. By the time the application had been lodged the previous day, the Tribunal had been fully prepared to hear the case and had read the papers, which ran to approximately 1,500 pages. Three days of Tribunal time had been set aside to hear the case, much of which would now be wasted.
15. The Tribunal was, as always, mindful of the overriding objective. In the proposed Agreed Outcome Mr Guy had made admissions to dishonesty and had not advanced any exceptional circumstances. Although the Tribunal was, at this stage, only considering the question of whether to grant leave, it would have been artificial to ignore the reality that refusing to entertain the Agreed Outcome and proceeding with a hearing would have been highly likely to result in the same position being reached at the conclusion of the hearing. That would not be a proportionate use of Tribunal resources and would increase costs for both parties unnecessarily.
16. In all the circumstances the Tribunal agreed to consider the proposed Agreed Outcome out of time.

#### **Application for approval of the Agreed Outcome**

17. The parties invited the Tribunal to dispose of the matter as set out in the Statement of Agreed Facts and Outcome appended to this Judgment.
18. In summary, Mr Guy admitted Allegations 1.2, 1.3, 1.6 and part of Allegation 1.4, together with dishonesty in relation to each of those Allegations. The SRA applied to amend Allegation 1.4 to reflect the admission and to withdraw Allegations 1.1 and 1.5. The parties agreed that the only appropriate sanction in this matter was that Mr Guy be struck off the Roll and that he pay the SRA's costs, fixed in the sum of £17,000.
19. The SRA 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 Mr Guy's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

20. The Tribunal was satisfied that Mr Guy's admissions were properly made and supported by the evidence. In those circumstances, given the seriousness of the admitted Allegations, the Tribunal was content to grant permission for the unadmitted Allegations to be withdrawn, including the amendment to Allegations 1.4. This was on the basis that the severity of the misconduct proved against Mr Guy would not be materially increased by a hearing on the unadmitted matters, if they were proved.
21. The Tribunal had regard to the Guidance Note on Sanctions (June 2022). The Tribunal assessed the seriousness of the misconduct by considering Mr Guy's culpability, the level of harm caused together with any aggravating or mitigating factors. Mr Guy had made admissions to serious Allegations involving dishonesty at the highest level. Only exceptional circumstances could justify a sanction other than a strike-off. No such circumstances were advanced and the Tribunal identified none from the material before it. The Tribunal was satisfied that the only appropriate sanction was that Mr Guy be struck off the Roll.

### **Application for embargo of this Judgment**

22. Mr Guy applied for the Tribunal to exercise its discretion to temporarily embargo the publication of the Statement of Agreed Facts and Outcome and the Tribunal's Judgment for a period of six months, with liberty to apply. The basis of this application was the ongoing criminal investigation. The Tribunal was told that the investigation was concerned with the same or similar matters to those dealt with in this Judgment. The Tribunal was further informed that the matter had not yet been sent to the Crown Prosecution Service for a charging decision, but this was anticipated by Mr Guy.
23. Mr Guy told the Tribunal that he was concerned about putting information into the public domain ahead of any trial on the basis that his acceptance of matters in these proceedings could be prejudicial to him in future proceedings. The Police were fully aware of the SRA matters.
24. Mr Hopkins told the Tribunal that the SRA did not oppose the application for an embargo.

### **The Tribunal's Decision**

25. The starting point was open justice and the public interest in having knowledge of proceedings before the Tribunal, the nature of allegations faced by Respondents and the ability to read and follow the Tribunal's reasoning. The default position was that Judgments were published as soon as practicable following the conclusion of proceedings. In order to depart from that, the Tribunal would need to be satisfied that exceptional prejudice or exceptional harm could arise from the Tribunal following its usual procedure.
26. In this case, criminal proceedings were speculative and not yet under way. The Crown Prosecution Service had not yet been asked to make a charging decision, and so there was no realistic prospect of proceedings commencing in the near future. It was also not known what charges Mr Guy would face if proceedings did take place.

27. If proceedings did commence and the matter went to trial, there were safeguards as to the circumstances in which the Tribunal's findings could be adduced in evidence against Mr Guy at any trial. The Crown Prosecution Service would need to make an application under the 'bad character' provisions of the Criminal Justice Act 2003.
28. Taking all those factors into account, the Tribunal saw no exceptional prejudice or exceptional harm that could be caused by publication of this Judgment without delay. There was therefore no basis to depart from the principle of open justice and therefore Mr Guy's application was refused.

### **Costs**

29. The parties had agreed that Mr Guy pay £17,000 in costs and the Tribunal was content to order he pay costs in that sum.

### **Statement of Full Order**

30. The Tribunal Ordered that the Respondent, ALEX RICHARD GUY, 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 £17,000.00.

Dated this 22<sup>nd</sup> day of May 2023

On behalf of the Tribunal



A Kellett  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**22 MAY 2023**

### **ADDENDUM**

**The Tribunal notes that whilst no formal application to withdraw the unadmitted allegations had been made, those allegations were dismissed so as to definitively deal with those, no evidence having been offered by the SRA.**

**IN THE SOLICITORS DISCIPLINARY TRIBUNAL  
AND IN THE MATTER OF THE SOLICITORS ACT 1974**

**Case No: 12426-2023**

**BETWEEN:**

**SOLICITORS REGULATION AUTHORITY LIMITED      Applicant**

**v**

**ALEX RICHARD GUY      Respondent**

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**STATEMENT OF AGREED FACTS AND OUTCOME**

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1. By a statement made by Hannah Pilkington on behalf of the Applicant, the Solicitors Regulation Authority Limited (the "SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 13 January 2023 ("the Rule 12 statement"), the SRA brought proceedings before the Tribunal making allegations of misconduct against the Respondent, including allegations of dishonesty.
2. The Respondent's Answer to the Rule 12 Statement was served on 15 February 2023. It contained limited admissions to allegations 1.2, 1.3, and 1.4. Further clarification of the Respondent's case was provided by email dated 8 March 2023. The matter is currently listed for remote substantive hearing on 16 to 18 May 2023.
3. Having reviewed his position as set out in his Answer and email dated 8 March 2023, the Respondent is now prepared to make additional admissions to the allegations and facts pleaded in the Rule 12 Statement, including in respect of dishonesty. The admissions are set out at paragraphs 7 and 8 below. Subject to the Tribunal's approval, the Respondent is also prepared to submit to a striking-off order.
4. The SRA has considered the admissions being made and whether those admissions, and the outcomes proposed in this document, meet the public interest having regard to the gravity of the matters alleged. For the reasons explained in more detail below, and subject to the Tribunal's approval, the SRA is satisfied that the admissions and outcome do satisfy the public interest.
5. The parties very much regret that this document is being submitted after the deadline provided for in Rule 25 and recognise that they therefore require the

Tribunal's permission to proceed as proposed herein. The parties are not of course able to disclose details of their without prejudice discussions; however, the SRA can say that it would not have entered into this proposal absent admissions of dishonesty from the Respondent and his agreement to the ultimate sanction. It is also fair to say that negotiations to this point have been complicated by the existence of a collateral criminal investigation, in relation to which the Respondent has appropriately required advice.

6. As to the criminal investigation, the Respondent understands that, under Rule 25(3), *"If the Tribunal approves the Agreed Outcome Proposal in the terms proposed it must make an Order in those terms. The case must be called into an open hearing and the Tribunal must announce its decision"*. For the avoidance of doubt, the Respondent does not object to the Tribunal announcing any Order in open court as required by Rule 25(3). However, the Respondent is subject to an ongoing criminal investigation in which he expects the case to be submitted to the Crown Prosecution Service for a decision as to charge. That investigation includes consideration of matters giving rise to the allegations made by the SRA. In order to avoid any possible perception of prejudice to those proceedings (in which his liberty is at stake), the Respondent respectfully asks the Tribunal temporarily to embargo (i) this document and (ii) any Judgment giving reasons for approving it, until the expiry of 6 months from approval of this proposal, with the Respondent having liberty to apply to the Tribunal to extend that time period. Provided that there is no embargo on the Tribunal's Order (temporary or otherwise), the SRA has no objection to this request.

## ADMISSIONS

- 7 The Respondent admits that while in practice as a solicitor:
  - 7.1 Between 31 March 2017 and 28 September 2019, the Respondent, while acting as JH's deputy, raised bills of costs for work which was not undertaken and/or was not properly chargeable and improperly transferred the sum of £272,917.68 from monies held on behalf of JH to Switalskis' office account in respect of the said bills, and thereby he breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011 and Rule 20.1 of the SRA Accounts Rules 2011.
  - 7.2 Between 28 February 2018 and 29 March 2018, the Respondent, while acting as AS's deputy, raised bills of costs for work which was not undertaken and/or was not properly chargeable and improperly transferred the sum of £58,759.91 from monies held on behalf of AS to Switalskis' office account, and thereby he breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011 and Rule 20.1 of the SRA Accounts Rules 2011.

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- 7.3 On or around 17 October 2019, the Respondent purchased products from an Apple store to the value of £3,113.00 using JR's money and kept products to the value of £1,698 for himself, and thereby he breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011.
- 7.4 Between 2 January 2018 and 12 July 2019, the Respondent provided the Office of the Public Guardian with information which was untruthful or apt to mislead, and thereby he breached any or all of Principles 2 and 6 of the SRA Principles 2011.
- 8 In addition, the Respondent admits that the admitted conduct above was dishonest. As to the conduct at paragraph 7.1 above, dishonesty is alleged and admitted at all times up to and including 24 November 2019. From and including 25 November 2019 onward, the SRA alleges and it is admitted that the Respondent's conduct breached Principle 4 of the SRA Principles (2019).

**ASPECTS NOT ADMITTED**

- 9 The Respondent does not admit the following allegations made in the Rule 12 statement:
- 9.1 [Allegation 1.1] Between 11 December 2013 and 8 January 2014, the Respondent, while acting as RPH's deputy, transferred £252,070.07 from RPH's bank account into accounts in his own name, and thereby he breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011 and Rules 1.2(a) and 14.1 of the SRA Accounts Rules 2011.
- 9.2 [Allegation 1.5] Between 18 November 2019 and 27 November 2019, the Respondent, while acting as JR's deputy, transferred £662,571.65 from JR's bank account into accounts in his own name, and thereby he breached any or all of:
- 9.2.1 Principles 2, 6 and 10 of the SRA Principles 2011;
- 9.2.2 Rules 1.2(a) and 14.1 of the SRA Accounts Rules 2011; and/or
- 9.2.3 Principles 2, 4, and 5 of the SRA Principles (2019) and paragraphs 4.2 and 4.3 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019).
- 9.3 The Respondent's admission of allegation 1.4 is limited to the purchase of an Apple iPhone and Apple Care for the iPhone from an Apple store to the value of £1,698 using JR's money and keeping those products for himself. He denies the allegation of purchasing and keeping

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products to the value of £3,113.00 using JR's money and keeping those product to the value of £2,275.00 for himself.

- 10 The Applicant considers that the above allegations remain properly brought but in light of the admissions made and the sanction agreed between the Parties, it is not proportionate to seek determination of the allegations not admitted and asks the Tribunal to approve this Agreed Outcome on this basis. It considers in all the circumstances that the proposed Agreed Outcome provides a proportionate resolution to the proceedings, and provides an effective sanction.

**A AGREED FACTS**

- 11 The Respondent (SRA ID: 393003) was admitted to the Roll of Solicitors on 15 September 2008. He does not hold a current Practising Certificate.

***Background***

- 12 The Respondent commenced employment at HLW Keeble Hawson (now Keebles LLP) ("**Keebles**") as a trainee in 2006, later becoming an associate and then a non-member partner. He left Keebles on 30 November 2016 and joined Switalskis Solicitors Limited t/a Switalskis Solicitors ("**Switalskis**") when Switalskis acquired Keebles' Court of Protection ("**CoP**") department. As part of the acquisition, Keebles' existing CoP files were transferred to Switalskis. The Respondent became a director of Switalskis, and head of its CoP department.
- 13 During an internal investigation conducted by Switalskis' COLP, Stephen Dibb, in April 2020, Switalskis identified concerns regarding the Respondent's conduct. Switalskis identified the following concerns:
- 13.1 The Respondent had raised bills of costs for work which had not been undertaken;
  - 13.2 The Respondent had raised bills of costs on deputyship matters without assessment by the Senior Courts Cost Office ("**SCCO**");
  - 13.3 The Respondent had failed to provide annual reports to the Office of the Public Guardian ("**OPG**"); and
  - 13.4 The Respondent had failed to conduct CoP matters in accordance with the Professional Standards of the OPG.
- 14 On 4 June 2020, Switalskis suspended the Respondent with immediate effect. Switalskis reported its concerns about the Respondent's conduct to the SRA on the same day. In light of this report, the SRA commenced an investigation. The investigation was conducted by Lindsey Barrowclough, a Forensic

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Investigation Officer (“**FIO**”). The results of her investigation are set out in the FI Report.

- 15 Switalskis also reported its findings to:
  - 15.1 The OPG. The CoP subsequently discharged the Respondent as deputy on all matters where he was deputy and appointed new deputies in his place; and
  - 15.2 The police. The police investigation into the Respondent is ongoing.
- 16 The Respondent was dismissed, effective as of 31 July 2020, by way of a written Settlement Agreement with Switalskis.

***The Respondent's bank accounts***

- 17 At all material times, the Respondent held the following bank accounts:
  - 17.1 NatWest, Instant Saver, sort code 01-00-XX, account number XXXX5438 (“**The Respondent's Instant Saver Account**”);
  - 17.2 NatWest, Select Account, sort code 56-00-XX, account number XXXX9131;
  - 17.3 NatWest, e-Savings account, sort code 50-42-XX, account number XXXX1001;
  - 17.4 National Savings & Investment (“**NS&I**”), Direct Saver, account number XXXX18895 (“**The Respondent's Direct Saver Account**”);
  - 17.5 NS&I, Income Bonds account, account number XXXX17926 (“**The Respondent's Income Bonds Account**”).
- 18 In respect of each of the accounts referred to in para 17 above:
  - 18.1 The account was in only the Respondent's name;
  - 18.2 The Respondent was the sole signatory for the account, the sole person with access to the account's online banking facilities, and/or otherwise the sole person able to control the account; and
  - 18.3 The Respondent was, ostensibly, the sole legal and beneficial owner of the monies deposited in the account.
- 19 On 11 January 2021, in respect of the Respondent's Direct Saver Account and the Respondent's Income Bonds Account, in response to a query raised by a

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Deputy appointed after the concerns about the Respondent's conduct had come to light, NS&I expressly stated:

*"Our records show that account number(s) XXXX8895 and XXXX7926 are registered in the name(s) of Mr Alex Richard Guy.*

*Please ask Mr Alex Richard Guy to write to this office about his Investment(s)."*

**Fixed costs in the Court of Protection**

20 Further to the provision made in the CoP's order for costs, Practice Direction B – Fixed Costs in the Court of Protection, as then in force, set out the following at paras 5–10:

*"5. The court order or direction will state whether fixed costs or remuneration applies, or whether there is to be a detailed assessment by a costs officer. Where a court order or direction provides for a detailed assessment of costs, professionals may elect to take fixed costs or remuneration in lieu of a detailed assessment.*

**Payments on account**

*6. Where professional deputies elect for detailed assessment of annual management charges, they may take payments on account for the first three quarters of the year, which are proportionate and reasonable taking into account the size of the estate and the functions they have performed. Interim quarterly Bills must not exceed 20% of the estimated annual management charges - that is up to 60% for the whole year. Interim bills of account must not be submitted to the Senior Courts Costs Office. At the end of the annual management year, the deputy must submit their annual bill to the Senior Courts Costs Office for detailed assessment and adjust the final total due to reflect payments on account already received*

**Solicitors' costs in court proceedings**

7. *The fixed costs are as follows:*

*An amount not exceeding*

*Category I Work up to and including the date £850 (plus upon which the court makes an VAT) order appointing a deputy for property and affairs.*

[...]

8. *The categories of fixed costs, above will apply as follows:*

- Category I to all orders appointing a deputy for property and affairs made on or after 1 February 2011.*

[...]

**Remuneration of solicitors appointed as deputy for P**

9. *The following fixed rates of remuneration will apply where the court appoints a solicitor to act as deputy:*

*An amount not exceeding*

*Category III Annual management fee where the court appoints a professional deputy for property and affairs, payable on the anniversary of the court order*

*(a) for the first year: £1,500 (plus VAT)*

*(b) for the second and subsequent £1,185 (plus VAT) years:*

[...]

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*Category V Preparation and lodgement of the £235 (plus annual report or annual account to VAT) the Public Guardian*

10. *The categories of remuneration, above will apply as follows:*

- *Category III and IV to all annual management fees for anniversaries falling on or after 1 February 2011.*
- *Category V to reports or accounts lodged on or after 1 February 2011."*

21 Practice Direction B subsequently became Practice Direction 19B:

21.1 Paragraphs 5–6 remain materially the same, save that in respect of interim billing para 6 now provides: "[...] *Interim quarterly bills must not exceed 25% of the estimated annual management charges - that is up to 75% for the whole year. [...]*"

21.2 From 1 January 2017 onward, Category III(a) costs are now an amount not exceeding £1,670 plus VAT and Category III(b) costs £1,320 plus VAT.

21.3 From 1 April 2017 onward, Category V costs are now an amount not exceeding £265 plus VAT.

**RPH**

**THE DEPUTYSHIP**

22 On 8 October 2012, the CoP ordered that the Respondent be appointed as deputy for property and affairs for RPH. The order provided, among other things:

*"UPON the court being satisfied that [RPH] lacks capacity to make various decisions for herself in relation to a matter or matters concerning her property and affairs, and that the purpose for which this order is needed cannot be as effectively achieved in a way that is less restrictive of her rights and freedom of action.*

**IT IS ORDERED that:**

**1. Appointment of deputy**

- (a) *Alex Richard Guy of Keeble Hawson Solicitors, Old Cathedral Vicarage, 7-15 St. James Row, Sheffield S1 1XA is appointed as deputy (“the deputy”) to make decisions on behalf of [RPH] that she is unable to make for herself in relation to her property and affairs, subject to any conditions or restrictions set out in this order.*

[...]

**2. Authority of deputy**

- (a) *The court confers general authority on the deputy to take possession or control of the property and affairs of [RPH] and to exercise the same powers of management and investment, including purchasing, selling and letting property, as she has as beneficial owner, subject to the terms and conditions set out in this order.*

[...]

- (e) *For the purpose of giving effect to any decision the deputy may execute or sign any necessary deeds or documents.”*

- 23 Following his appointment, the Respondent opened, or caused to be opened, a current account with NatWest in the name of “*Mr Alexander Richard Guy as deputy for Ms [RPH]*” with sort code 56-00-XX and account number XXXX8777 (“**RPH’s Deputy Account**”).

**THE CLINICAL NEGLIGENCE CLAIM**

- 24 Prior to the deputyship, in around 2008–2010, RPH, acting by her litigation friend, her mother, had instructed Keebles to issue proceedings against Nottingham University Hospitals NHS Trust. RPH’s claim<sup>1</sup> was issued in the High Court of Justice, Queen’s Bench Division. RPH’s claim was for damages for personal injury arising out of the defendant’s clinical negligence.
- 25 The claim was settled and, on 12 March 2012, Mackay J ordered by consent that the defendant was to pay damages in a total amount of £2,500,000 to RPH. £2,300,000 was to be paid into court pending the appointment of a deputy and £200,000 was to be paid to Keebles in respect of damages to be held on trust for RPH’s parents in respect of gratuitous past care.

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<sup>1</sup> Claim Number is confirmed in the anonymisation schedule below

- 26 On 13 July 2012, £600,000 was withdrawn from RPH's Court Funds Office ("CFO") account to purchase a property into which RPH and her parents moved to live.
- 27 On 31 October 2012, the Respondent, following his appointment as RPH's deputy, withdrew the remaining funds from RPH's CFO account to RPH's Deputy Account.

**JH**

**THE DEPUTYSHIP**

- 28 On 27 September 2011, the CoP ordered that the Respondent be appointed as joint and several deputy for property and affairs for JH together with JH's sister, KH. The order (the "**JH Deputyship Order**") provided, among other things:

*"UPON the court being satisfied that [JH] lacks capacity to make various decisions for himself in relation to a matter or matters concerning his property and affairs, and that the purpose for which this order is needed cannot be as effectively achieved in a way that is less restrictive of his rights and freedom of action.*

**IT IS ORDERED that :**

**1. Appointment of joint and several deputies**

- (a) *Alex Richard Guy of Keeble Hawson Solicitors Old Cathedral Vicarage St James Row Sheffield S1 1XA and [KH] of [address] are appointed jointly and severally as deputies ("the deputies") to make decisions on behalf of [JH] that he is unable to make for himself in relation to his property and affairs, subject to any conditions or restrictions set out in this order.*

[...]

**2. Authority of joint and several deputies**

- (a) *The court confers general authority on the deputies to take possession or control of the property and affairs of [JH] and to exercise the same powers of management and investment, as he has as beneficial owner, subject to the terms and conditions set out in this order.*

[...]

**4. Costs and expenses**

- (a) *The deputies are entitled to be reimbursed for reasonable expenses incurred provided they are in proportion to the size of [JH]'s estate and the functions performed by them.*
- (b) *Any professional deputy is entitled to receive fixed costs in relation to this application, and to receive fixed costs for the general management of [JH]'s affairs. If the professional deputy would prefer the costs to be assessed, this order is to be treated as authority to the Senior Courts Costs Office to carry out a detailed assessment on the standard basis."*

29 Following his appointment, the Respondent opened, or caused to be opened, a current account with NatWest for JH with the Respondent as deputy and with sort code 56-00-XX and account number XXXX1868 ("**JH's Deputy Account**").

**THE CLINICAL NEGLIGENCE CLAIM**

30 In around 2013, JH, acting by his litigation friend, KH, instructed Keebles to issue proceedings against the Yorkshire and Humber Strategic Health Authority. JH's claim was issued in the High Court of Justice<sup>2</sup>, Queen's Bench Division. JH's claim was for damages for personal injury arising out of the defendant's clinical negligence.

31 The claim was settled and, on 12 March 2015, Dingemans J ordered by consent that the defendant was to pay JH damages by way of a lump sum of £1,500,000 inclusive of interim payments of £500,000 and, thereafter, annual periodical payments, as set out in the schedule to the order. Part 2 of the schedule provided for an annual payment in respect of deputyship fees of £8,000, thereafter adjusting with inflation. £900,000 of the lump sum and all of the annual payments were to be made to JH's Deputy Account.

32 Dingemans J's order also provided:

*"(2) **AND IT IS FURTHER ORDERED** that the Defendant do pay the Claimant's costs of this action on the standard basis such costs to be the subject of a Detailed Assessment if not agreed.*

*(3) **AND IT IS FURTHER ORDERED** that BY 9 April 2015 the Defendant do pay the Claimant's solicitors a further payment on account of costs in the sum of £100,000.00*

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<sup>2</sup> Claim Number is confirmed in the anonymisation schedule below

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*(one hundred thousand pounds) bringing the total paid on account of costs to £200,000.00 (two hundred thousand pounds)”*

**A.1.1 BILLS RENDERED BY THE RESPONDENT ON JH IN RESPECT OF THE DEPUTYSHIP**

33 Between 31 March 2017 and 7 March 2019, the Respondent rendered or caused to be rendered on JH the following four bills, totalling £102,732.00, purportedly in respect of fees charged for professional deputy services under the deputyship:

<b>Date</b>	<b>Bill Number</b>	<b>Narrative</b>	<b>Amount inc. VAT</b>
31 Mar 2017	21878	<i>“To our Interim Professional charges relating to the appointment of Deputies at the Court of Protection, and including all work up to and including the first annual management period 27 September 2011 to 26 September 2012, 27 September 2012 to 26 September 2013, 27 September 2013 to 26 September 2014, 27 September 2014 to 26 September 2015 and 27 September 2015 to 26 September 2016. Fixed costs as determined by the Fixed Costs Practice Direction.”</i>	£9,918.00
30 Jun 2017	25155	<i>“This is Deputyship Fees in accordance with the High Court Order dated 28.08.2015 [sic] for December 2015 and December 2016.”</i>	£48,000.00

Sensitivity: General

<b>Date</b>	<b>Bill Number</b>	<b>Narrative</b>	<b>Amount inc. VAT</b>
31 May 2018	37202	<i>"Professional Deputyship Fees in accordance with the High Court Order dated 28.08.2015 [sic] for December 2015, December 2016 and December 2017."</i>	£28,800.00
7 Mar 2019	47048	<i>"To our Interim Professional charges relating to the appointment of Deputies at the Court of Protection and a second order to secure Power to Purchase a Property, and including all work up to and including the first annual management period 27 September 2011 to 26 September 2012, 27 September 2012 to 26 September 2018. Fixed costs as determined by the Fixed Costs Practice Direction."</i>	£16,014.00
			<b>£102,732.00</b>

- 34 Reference is made to paras 20–21 above in respect of Fixed Costs in the Court of Protection.
- 35 None of the costs in the bills set out above had been assessed by the SCCO. The Respondent was therefore not permitted, under the JH Deputyship Order or the relevant CoP Practice Direction, to charge JH for professional deputyship services in amounts exceeding the fixed costs prescribed by the CoP Practice Direction.
- 36 Bill Nr 21878 correctly charges at the rates set out in the relevant CoP Practice Direction, save that it appears erroneously to include one additional amount of Category V costs at £235 plus VAT. If JH had not previously been charged these fees, this bill would be acceptable save for that error.

Sensitivity: General

- 37 The amounts charged by way of Bill Nrs 25155 and 37202 were impermissible in that:
- 37.1 The costs had not been assessed by the SCCO;
  - 37.2 Bill Nr 25155 covered periods already charged under Bill Nr 21878 and Bill Nr 37202 partly covered the same periods; and
  - 37.3 In any event, if the bills were interim bills, the amounts they charged were not proportionate and reasonable taking into account the size of the estate and the functions that the Respondent had performed. The time ledger records for JH's matter indicate that between 6 December 2010 and 7 July 2020, the Respondent worked for 65 hours and 12 minutes on JH's file, as follows:
    - 37.3.1 While at Keebles, a total of 33 hours and 42 minutes working on JH's file between 6 December 2010 and 17 November 2016, at rates of between £210 and £250 per hour plus VAT<sup>3</sup>; and
    - 37.3.2 While at Switalskis, a total of 31 hours and 30 minutes working on JH's file between 17 November 2016 and 7 July 2020, at rates of between £201 and £220 per hour plus VAT<sup>4</sup>.
- 38 The amount charged by way of Bill Nr 47048 was impermissible in that it covered, in part, periods already charged under Bill Nr 21878. Assuming the costs were to be charged by way of fixed costs, then the correct amount to charge would have been for the periods 2016–2017 and 2017–2018 not already charged under Bill Nr 21878. This would comprise two Category III(b) fees and two Category V fees, at the new rates, totalling £3,170 plus VAT.
- 39 Notwithstanding that the vast majority of the amounts charged by the bills were not properly chargeable by Switalskis or payable by JH, in respect of each bill, around the time it was raised and rendered on JH, or shortly thereafter, the Respondent transferred or caused to be transferred the amount charged by the bill from JH's Switalskis' client account to Switalskis' office account, to settle the purported fees. Switalskis subsequently reversed all of these transfers to JH's client account.

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<sup>3</sup> Assuming 34 hours and £250 + VAT per hour gives a total of  $34 \times 250 = £8,500 + \text{VAT}$ .

<sup>4</sup> 31.5 hours all at £220 + VAT per hour gives a total of  $31.5 \times 220 = £6,930 + \text{VAT}$ .

**BILLS RENDERED BY THE RESPONDENT ON JH IN RESPECT OF THE CLINICAL NEGLIGENCE CLAIM**

- 40 Between 30 April 2018 and 28 September 2018, the Respondent rendered or caused to be rendered on JH the following six bills, totalling £170,185.68, purportedly in respect of fees charged for JH's clinical negligence claim:

<b>Date</b>	<b>Bill Number</b>	<b>Narrative</b>	<b>Amount inc. VAT</b>
30 Apr 2018	36071	<i>"Interim Invoice No 1 to cover outstanding Clinical Negligence Costs transferred from hlw Keeble Hawson"</i>	£48,985.68
30 Jun 2018	38265	<i>"Interim Invoice No 2 to cover outstanding Clinical Negligence Costs transferred from hlw Keeble Hawson"</i>	£21,200.00
31 Jul 2018	39481	<i>"Interim Invoice No 3 to cover outstanding Clinical Negligence Costs transferred from hlw Keeble Hawson"</i>	£25,000.00
31 Aug 2018	40575	<i>"Interim Invoice No 4 to cover outstanding Clinical Negligence Costs transferred from hlw Keeble Hawson"</i>	£25,000.00
21 Sep 2018	41133	<i>"Interim Invoice No 5 to cover outstanding Clinical Negligence Costs transferred from hlw Keeble Hawson"</i>	£27,000.00
28 Sep 2018	41531	<i>"Final Invoice to cover outstanding Clinical Negligence Costs transferred from hlw Keeble Hawson"</i>	£23,000.00
			<b>£170,185.68</b>

Sensitivity: General

- 41 In respect of all of the bills set out above:
- 41.1 They were marked with the same reference number (ARG/336532/0001) as JH's professional deputyship matter, rather than the reference number for JH's clinical negligence claim.
  - 41.2 The Respondent was not the fee-earner for JH's clinical negligence claim.
  - 41.3 The narrative section began with the words "*Professional Deputyship*" in bold.
  - 41.4 The Respondent rendered them on JH more than three years after Dingemans J's order of 12 March 2015 in the clinical negligence claim (see paras 31–32 above). Among other things, Dingemans J's order:
    - 41.4.1 Ordered the defendant to pay JH's costs, to be the subject of detailed assessment if not agreed; and
    - 41.4.2 Records that £100,000 had already been paid by the defendant on account of costs and ordered the defendant to pay a further £100,000 on account of costs by 9 April 2015.
- 42 During its investigation into the Respondent's conduct, Switalskis "*established that there were no outstanding fees payable for the clinical negligence claim*" and commented "*If there were any outstanding costs, they would not have been billed from the Court of Protection matter, they would have been billed by the relevant firm/department and sent to the deputy for payment from the client's funds*".
- 43 In these circumstances, none of the amounts charged by any of the bills set out above were properly chargeable.
- 44 Notwithstanding that the amounts charged by the bills were not properly chargeable by Switalskis or payable by JH, in respect of each bill, around the time it was raised and rendered on JH, or shortly thereafter, the Respondent transferred or caused to be transferred the amount charged by the bill from JH's Switalskis' client account to Switalskis' office account, to settle the purported fees. Switalskis subsequently reversed all of these transfers to JH's client account.

**THE RESPONDENT'S REPORTING TO THE OPG**

- 45 On or around 2 January 2018, as part of his annual report to the OPG on JH, the Respondent submitted a form OPG105 in respect of the fees charged to JH for professional deputy services in the period 27 September 2016 to 26

## Sensitivity: General

September 2017. The Respondent stated in the form, among other things, at section 2:

45.1 He had charged assessed costs for his deputy services in the year ending 26 September 2017; and

45.2 The total costs for work carried out in the period were £4,500<sup>5</sup>, comprising £4,000 for general management and £500 for the completion of the annual report.

46 The information that the Respondent provided to the OPG above was untruthful or apt to mislead because:

46.1 During the period 27 September 2016 to 26 September 2017:

46.1.1 On 31 March 2017, the Respondent had raised Bill Nr 21878 in the amount of £9,918 inc. VAT purportedly in respect of professional deputyship fees by way of fixed costs from inception of the deputyship, and transferred money out of JH's client account to discharge this bill.

46.1.2 On 30 June 2017, the Respondent had raised Bill Nr 25155 in the amount of £48,000 inc. VAT purportedly in respect of professional deputyship fees to be assessed, and transferred money out of JH's client account to discharge this bill.

46.2 The Respondent did not refer to either of these bills in the information that he gave to OPG as part of his annual report on JH.

47 On or around 22 November 2018, as part of his annual report to the OPG on JH, the Respondent submitted a form OPG105 in respect of the fees charged to JH for professional deputy services in the period 27 September 2017 to 26 September 2018. The Respondent stated in the form, among other things, at section 2:

47.1 He had charged assessed costs for his deputy services in the year ending 26 September 2017; and

47.2 The total costs for work carried out in the period were £3,000, comprising £2,500 for general management and £500 for the completion of the annual report.

48 The information that the Respondent provided to the OPG above was untruthful or apt to mislead because:

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<sup>5</sup> All fees stated by the Respondent in the forms OPG105 are taken to be exclusive of VAT.

## Sensitivity: General

- 48.1 During the period 27 September 2017 to 26 September 2018, on 31 May 2018, the Respondent had raised Bill Nr 37202 in the amount of £28,800 inc. VAT purportedly in respect of professional deputyship fees to be assessed, and transferred money out of JH's client account to discharge this bill.
- 48.2 The Respondent did not refer to this bill in the information that he gave to OPG as part of his annual report on JH.
- 49 Finally, in 2019:
- 49.1 On 13 June 2019, the Respondent wrote to the OPG. The letter was headed "*Court of Protection Professional Deputyship Mr [JH]*" (para breaks removed). In the letter, the Respondent stated: "*We can also confirm that the costs have been taken by way of fixed costs for this annual period*";
- 49.2 On 25 June 2019, the OPG replied, stating, in part: "*We do still however, require the Final Costs Certificates for the other reporting years as requested in my colleague's letter acknowledging your annual report*";
- 49.3 On 12 July 2019, the Respondent replied: "*We can confirm that fixed costs have been taken for all outstanding years*".
- 50 The information that the Respondent provided to the OPG above was untruthful or apt to mislead because:
- 50.1 The Respondent had raised Bills Nrs 25155 and 37202, which both purported to be in respect of professional deputyship fees to be assessed (rather than by way of fixed costs), and transferred money out of JH's client account to discharge these bills.
- 50.2 The Respondent did not refer to either of these bills in his letters to the OPG noted above.

## AS

### THE DEPUTYSHIP

- 51 On 16 July 2014, the CoP ordered that the Respondent be appointed as deputy for property and affairs for AS. The order (the "**AS Deputyship Order**") provided, among other things:

*"UPON the court being satisfied that [AS] lacks capacity to make various decisions for herself in relation to a matter or matters concerning her property and affairs, and that the purpose for*

*which this order is needed cannot be as effectively achieved in a way that is less restrictive of her rights and freedom of action.*

**IT IS ORDERED that :**

**1. Appointment of deputy**

- (a) *Alex Richard Guy of Hlw Keeble Rawson Solicitors, Old Cathedral Vicarage, St James' Row, Sheffield, S1 1XA is appointed as deputy ("the deputy") to make decisions on behalf of [AS] that she is unable to make for herself in relation to her property and affairs, subject to any conditions or restrictions set out in this order.*

[...]

**2. Authority of deputy**

- (a) *The court confers general authority on the deputy to take possession or control of the property and affairs of [AS] and to exercise the same powers of management and investment, including [selling and]<sup>6</sup> letting property, as she has as beneficial owner, subject to the terms and conditions set out in this order.*

[...]

- (h) *For the purpose of giving effect to any decision the deputy may execute or sign any necessary deeds or documents.*

[...]

**4. Costs and expenses**

*The deputy is entitled to receive fixed costs in relation to this application, and to receive fixed costs for the general management of [AS]'s affairs. If the deputy would prefer the costs to be assessed, this order is to be treated as authority to the Senior Courts Costs Office to carry out a detailed assessment on the standard basis."*

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<sup>6</sup> The words "[selling and]" in square brackets immediately preceding this footnote are present as such in the original.

**BILLS RENDERED BY THE RESPONDENT ON AS IN 2018**

52 On 28 February 2018 and 29 March 2018, the Respondent rendered or caused to be rendered on AS the following two bills, totalling £58,759.91, purportedly in respect of fees charged for AS's clinical negligence claim:

<b>Date</b>	<b>Bill Number</b>	<b>Narrative</b>	<b>Amount inc. VAT</b>
28 Feb 2018	33892	<i>"Interim Invoice to cover outstanding Clinical Negligence Costs transferred from hlw Keeble Hawson."</i>	£29,379.96
29 Mar 2018	35022	<i>"Interim Invoice No 2 to cover outstanding Clinical Negligence Costs transferred from hlw Keeble Hawson."</i>	£29,379.95

53 In respect of both the bills set out above:

53.1 They were marked with the same reference number (ARG/336502/0001) as AS's professional deputyship matter, rather than the reference number for AS's clinical negligence claim.

53.2 The Respondent was not the fee-earner for AS's clinical negligence claim.

53.3 The narrative section began with the words "*Professional Deputyship*" in bold.

54 During its investigation into the Respondent's conduct, Switalskis, "*established that there were no outstanding fees payable for the clinical negligence claim*" and commented "*If there were any outstanding costs, they would not have been billed from the Court of Protection matter, they would have been billed by the relevant firm/department and sent to the deputy for payment from the client's funds*".

55 In these circumstances, none of the amounts charged by any of the bills set out above were properly chargeable.

56 Switalskis subsequently discovered that, on 23 May 2020, after he had been notified of Switalskis' concerns about his conduct, the Respondent had amended the bills' narratives to read "*Interim invoice*".

Sensitivity: General

- 57 The SRA refers to paragraphs 20-21 above in respect of Fixed Costs in the Court of Protection.
- 58 None of the costs in the bills set out above had been assessed by the SCCO. The Respondent was therefore not permitted, under the AS Deputyship Order or the relevant CoP Practice Direction, to charge AS for professional deputyship services in amounts exceeding the fixed costs prescribed by the CoP Practice Direction.
- 59 Accordingly, if the bills were bills for professional deputyship fees, the amounts charged in them were impermissible as:
- 59.1 The amounts charged far exceeded the fixed costs permissible under the relevant CoP Practice Direction; and
- 59.2 In any event, if the bills were interim bills, the amounts they charged were not proportionate and reasonable taking into account the size of the estate and the functions that the Respondent had performed.
- 60 Notwithstanding that the amounts charged by the bills were not properly chargeable by Switalskis or payable by AS, in respect of each bill, around the time it was raised and rendered on AS, or shortly thereafter, the Respondent transferred or caused to be transferred the amount charged by the bill from AS's Switalskis' client account to Switalskis' office account, to settle the purported fees. Switalskis subsequently reversed all of these transfers to AS's client account.

**THE RESPONDENT'S REPORTING TO THE OPG**

- 61 On or around 18 September 2018, as part of his annual report to the OPG on AS, the Respondent submitted a form OPG105 in respect of the fees charged to AS for professional deputy services in the period 16 July 2017 to 15 July 2018. The Respondent stated in the form, among other things, at section 2:
- 61.1 He had charged assessed costs for his deputy services in the year ending 15 July 2018; and
- 61.2 The total costs for work carried out in the period were £5,000, comprising £4,500 for general management and £500 for the completion of the annual report.
- 62 The information that the Respondent provided to the OPG above was untruthful or apt to mislead because:
- 62.1 During the period 16 July 2017 to 15 July 2018, the Respondent had raised Bills Nrs 33892 and 35022, in the total amount of £58,759.91 inc. VAT, purportedly in respect of professional deputyship fees to be

assessed, and transferred money out of AS's client account to discharge this bill.

- 62.2 The Respondent did not refer to either of these bills in the information that he gave to OPG as part of his annual report on AS.

**JR**

**THE DEPUTYSHIP**

- 63 On 30 March 2016, the CoP ordered that the Respondent be appointed as deputy for property and affairs for JR. The order provided, among other things:

***“UPON** the court being satisfied that [JR] lacks capacity to make various decisions for himself in relation to a matter or matters concerning his property and affairs, and that the purpose for which this order is needed cannot be as effectively achieved in a way that is less restrictive of his rights and freedom of action.*

[...]

**1. Appointment of deputy**

- (a) *Alex Richard Guy of HLW Keeble Rawson Solicitors, Old Cathedral Vicarage, St James Row, Sheffield, S1 1XA is appointed as deputy (“the deputy”) to make decisions on behalf of [JR] that he is unable to make for himself in relation to his property and affairs, subject to any conditions or restrictions set out in this order.*

[...]

**2. Authority of deputy**

- (a) *The court confers general authority on the deputy to take possession or control of the property and affairs of [JR] and to exercise the same powers of management and investment, including purchasing selling and letting property, as he has as beneficial owner, subject to the terms and conditions set out in this order.*

[...]

- (e) *For the purpose of giving effect to any decision the deputy may execute or sign any necessary deeds or documents.”*

- 64 Following his appointment, the Respondent opened, or caused to be opened, a current account with NatWest in the name of "*Mr Alexander Richard Guy as deputy for Mr [JR]*" with sort code 01-00-85 and account number XXXX0071 ("**JR's Deputy Account**").

**THE CLINICAL NEGLIGENCE CLAIM**

- 65 At the time the Respondent was appointed as JR's deputy, JR had an outstanding claim in clinical negligence against Sheffield Teaching Hospitals NHS Foundation Trust. The claim had been commenced on 4 July 2013 as in the High Court of Justice<sup>7</sup>, Queen's Bench Division. Judgment was entered in favour of JR on 23 November 2015 with damages to be assessed.

- 66 In 2017, following a trial before William Davis J<sup>8</sup>, JR was awarded damages as follows:

66.1 A lump sum of £6,870,974.65, paid into JR's Deputy Account on 22 June 2017;

66.2 Following a successful appeal<sup>9</sup>, a further lump sum of £800,000.00, payable by 15 November 2017;

66.3 In addition to the lump sums, annual periodical payments, initially in the sum of £293,117.00 and subsequently being adjusted for inflation each year. These annual payments were paid into JR's Deputy Account each year on 15 December from December 2018;

**APPLE PRODUCTS PURCHASED BY THE RESPONDENT WITH JR'S MONEY AND RETAINED BY THE RESPONDENT**

- 67 A witness statement made in support of an application to the Crown Court at Leeds for a restraint order under s 41 of the Proceeds of Crime Act 2002 by a police financial investigator involved in the police's investigation into the Respondent states as follows:

*"17. One such vulnerable client was [JR]. GUY had deputy access over [JR]'s bank accounts. On the 17<sup>th</sup> of October 2019, GUY attended the Apple store at Meadowhall Shopping Centre and purchased the following items:*

*a. Iphone 11 Pro max £1,499.00*

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<sup>7</sup> Claim number is included in the anonymisation schedule below

<sup>8</sup> [2017] EWHC 1245 (QB); [2017] 1 WLR 4847.

<sup>9</sup> [2017] EWCA Civ 2077.

Sensitivity: General

b.	<i>Apple Care iphone 11 Pro</i>	<i>£ 199.00</i>
c.	<i>Apple Watch S5</i>	<i>£749.00</i>
d.	<i>Apple care (for watch)</i>	<i>£ 89.00</i>
e.	<i>iPad Mini</i>	<i>£ 549.00</i>
f.	<i>Apple Care iPad Mini</i>	<i>£ 55.00</i>
	<b>Total price</b>	<b>£3,113.00</b>

18. *GUY paid via chip and pin and used the account of [JR].*

19. *When GUY was interviewed he admitted to purchasing the 3 Apple products (plus warranty's [sic]). He states he purchased them for his client [JR] just before [JR] moved into his new house in October 2019. He admitted he purchased them using [JR]'s own money that he had control over using the debit card he had in his possession. He stated he had never intended to keep them for himself.*

20. *West Yorkshire Police have been informed by the mother of [JR] that GUY stated the watch presented to [JR] was a present from Switalskis and didn't tell [JR] that the products had been purchased using [JR]'s own money.*

21. *GUY states that he purchased the item and didn't intend to keep them, however began to use own the iphone 11 himself after his phone had broken. When GUY was arrested on the 2<sup>nd</sup> of October, GUY handed this very phone over to PC Reilly. The iPad was located at GUY's address during the subsequent house search."*

68 A debit of £3,113.00 in favour of "Apple Store R153 Sheffield GB", further to a card transaction on 17 October 2019 can be seen in a bank statement for JR's Deputy Account.

69 In response to this allegation, the Respondent stated prior to referral:

“• *The items referred to were purchased after discussion with [JR]'s family and members of his therapy team. The items were purchased prior to when [JR] moved into the property, it was at that point that there was no use for the iPhone or iPad to be used.*

Sensitivity: General

- *The items then remained at my office for several months. Discussion was made to utilise the iPad whilst he was in bed and a new mount would be required for this purpose, but this did not materialise, likely due to the pandemic.*
- *The iPad was retrieved by the Police from my home; however, I believe this was within the items returned from my office when I left Switalskis. The iPad was still fully sealed and unused.*
- *I accept the iPhone allegation but wish to stress the purchase was not of the motives I am accused of. The items were purchased with the intention and purpose in mind for [JR]. I intended to reimburse [JR] for the phone but did not get round to do so for which I regret.*

[...]

*The items were purchased for client and declared to the OPG. After many months the situation changed, and I accept I utilised the iPhone but I did not use the other 2 products.”*

(Emphasis added.)

#### **NON-AGREED MITIGATION**

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

70.1 he sincerely apologises to all involved and while there were personal circumstances that affected his decision making he is ashamed of his actions and thoroughly embarrassed.

#### **PROPOSED SANCTION INCLUDING EXPLANATION OF WHY SUCH ORDER WOULD BE IN ACCORDANCE WITH THE TRIBUNAL'S GUIDANCE NOTE ON SANCTION**

71 Subject to the Tribunal's approval, it is agreed that the Respondent should be struck off the Roll of Solicitors. Absent exceptional circumstances, this is the “normal and necessary penalty in cases of dishonesty”: SRA v Sharma [2010] EWHC 2022 (Admin), per Coulson J at [13]. There are no exceptional circumstances here.

Sensitivity: General

- 72 The sanction outlined above are considered to be in accordance with the Tribunal's sanctioning guidance (10th edition) taking into account the guidance set out in *Fuglers and Others v Solicitors Regulation Authority* [2014] EWHC 179 (as per Popplewell J) and as set out in the guidance at paragraph 8.
- 73 The misconduct giving rise to the allegations is very serious and of the highest level. The seriousness of the misconduct is such that neither a Restriction Order, Reprimand, Fine or Suspension would be a sufficient sanction or in all the circumstances appropriate. There is a need to protect both the public and the reputation of the legal profession from future harm from the Respondent by removing their ability to practise. The protection of the public and the protection of the reputation of the legal profession justifies striking off the Roll.
- 74 This assessment takes into account that the level of the Respondent's culpability in respect of the allegations above is high as:
- 74.1 The Respondent acted in a way to provide a benefit to himself;
- 74.2 The conduct cannot be described as spontaneous;
- 74.3 The Respondent acted in breach of a position of trust;
- 74.4 The Respondent had direct control of or responsibility for the circumstances giving rise to the misconduct;
- 74.5 The Respondent was a very experienced solicitor, with significant experience and was aware of the relevant Rules and Principles.
- 75 As to the harm caused, the admitted failures and breaches of the Accounts Rules, Code and Principles placed client money at risk and caused loss and harm to vulnerable people who had placed trust in the Respondent and caused the Court of Protection to be misled or created a risk of misleading the Court. In addition, it is considered that there was significant harm to the reputation of the profession as a result. Further, the harm was entirely foreseeable.
- 76 As to the principal factors which aggravate the seriousness of the misconduct:
- 76.1 The Respondent's conduct was dishonest;
- 76.2 The misconduct was deliberate, occurred over a period of time, and was repeated;
- 76.3 The conduct took advantage of vulnerable persons;
- 76.4 The Respondent ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

## **PUBLICATION OF THIS PROPOSAL AND ANY JUDGMENT APPROVING IT**

77 As already noted above, the Respondent understands that under Rule 25(3), *“If the Tribunal approves the Agreed Outcome Proposal in the terms proposed it must make an Order in those terms. The case must be called into an open hearing and the Tribunal must announce its decision”*. The Respondent does not seek to object to the ordinary application of Rule 25(3). He does however ask the Tribunal to exercise its discretion temporarily to embargo this document and any written judgment approving it for a period of 6 months (with liberty to apply) given the ongoing criminal investigation. This is to minimise any perception of risk of prejudice to the criminal proceedings. The SRA does not necessarily share the Respondent's concerns in this regard but understands the Respondent's anxieties in circumstances where his liberty is at stake. More importantly, were the Respondent to be immediately struck off, the public interest in knowing about the fact of and detail of the SDT proceedings themselves is less urgent. Accordingly, the SRA does not object to a temporary embargo of this document and any judgment approving it. For the avoidance of doubt, the SRA does not agree to any embargo of the Tribunal's Order. Further the SRA would, in the usual way, publish the outcome of this Agreed Outcome which would reflect the terms of the Order.

78 The SRA's stance on publication described above is contingent upon execution and approval of this Agreed Outcome Proposal. In the event that it is refused, or the matter otherwise proceeds to substantive hearing, the SRA would seek to proceed in public in the ordinary way, in accordance with the open justice principle.

## **COSTS**

79 Subject to the approval of this Agreed Outcome Proposal, The parties have agreed that the Respondent will make a financial contribution to the SRA's costs in the sum of £17,000. The SRA is satisfied that this is a reasonable and proportionate contribution by the Respondent in all the circumstances.

Signed:

Mark Rogers, Partner, Capsticks Solicitors LLP  
On behalf of the SRA

Dated: 15 May 2023

Sensitivity: General

Alex Richard Guy

Respondent

Dated 15.5.23