SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12431-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

ANDREW STEVENSON First Respondent
JANET STEVENSON Second Respondent

Before:

Mr R Nicholas (in the chair)
Mr W Ellerton
Mr B Walsh

Date of Hearing: 25 May 2023

Appearances

Michael Collis, barrister of Capsticks LLP for the Applicant.

The Respondents both attended by telephone and represented themselves.

JUDGMENT

Allegations

1. The Allegations made against the First Respondent, Andrew Stevenson, were that whilst a manager, owner, Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA") of Prime & Co ("the Firm"), he:

1.1 Between approximately 1 May 2000 and October 2021, caused or permitted the improper retention of client money within the Firm's client account, in respect of matters which had concluded,

and in doing so breached any or all of the following:

From 1 May 2000 to 5 October 2011:

Rule 15.3 of the SRA Accounts Rules 1998 ("the 1998 Accounts Rules")

From 6 October 2011 to 24 November 2019:

Rules 6.1 and 14.3 of the SRA Accounts Rules 2011 ("the 2011 Accounts Rules) and Principles 4, 6 and 7 and of SRA Principles 2011 ("the 2011 Principles").

On or after 25 November 2019:

Rules 1.2 and 2.5 of the SRA Accounts Rules 2019 ("the 2019 Accounts Rules"), Rule 9.2(a) of the SRA Code of Conduct for Firms 2019 ("the Firm Code") and Principles 2 and 7 of the SRA Principles 2019 ("the 2019 Principles").

1.2 Between approximately 1 May 2000 and 24 November 2019, failed to notify clients that their money was being retained following completion of their matter, and in doing so breached any or all of the following:

From 25 July 1998 to 5 October 2011:

Rule 15.4 of the 1998 Accounts Rules,

From 6 October 2011 to 24 November 2019:

Rules 6.1 and 14.4 of the 2011 Accounts Rules and Principles 4, 6 and 7 of the 2011 Principles.

1.3 Between approximately November 2014 and November 2020, failed to obtain an accountant's report for the Firm and in doing so breached any or all of the following:

Prior to 25 November 2019:

Rules 6.1 and 32A.1 of the 2011 Accounts Rules and Principles 2, 6, 7 and 8 of the 2011 Principles.

On or after 25 November 2019:

Rules 1.2 and 12.1 of the 2019 Accounts Rules, Paragraph 9.2(a) of the Firm Code and Principles 2 and 5 of the 2019 Principles.

1.4 Between approximately November 2014 and August 2021, failed to remedy promptly, upon discovery, breaches of the Solicitors Accounts Rules, and in doing so breached any or all of the following:

Before 25 November 2019:

Rule 7.1 of the 2011 Accounts Rules and Principles 4, 6, 7 and 8 of the 2011 Principles.

On or after 25 November 2019:

Rule 6.1 of the 2019 Accounts Rules, Paragraph 9.2(a) of the 2019 Firm Code and Principles 2 and 7 of the 2019 Principles

1.5 Between approximately November 2014 and August 2021, failed to report breaches of the Solicitors Accounts Rules to the SRA, and in doing so therefore breached any or all of the following:

Before 25 November 2019:

Outcomes 10.1 and 10.3 of the SRA Code of Conduct 2011 ("the 2011 Code") and Principles 6 and 7 of the 2011 Principles.

On or after 25 November 2019:

Rule 9.2(b) of the Firm Code, Paragraphs 7.7 and 7.8 of the SRA's Code of Conduct for Solicitors, RELs and RFLs 2019 ("the 2019 Code") and Principle 2 of the 2019 Principles.

1.6 Between approximately November 2014 and August 2021, failed promptly to notify the SRA that the Firm was in serious financial difficulty, and in doing so breached any or all of the following:

Before 25 November 2019:

Outcome 10.3 of the 2011 Code and Principles 6 and 7 of the 2011 Principles.

On or after 25 November 2019:

Rules 9.1(e) and 9.2(c) of the Firm Code and Principle 2 of the 2019 Principles.

2. In addition, Allegations 1.1 and 1.2 were advanced on the basis that the First Respondent's conduct was manifestly incompetent. Manifest incompetence was alleged as aggravating features of the First Respondent's misconduct but was not an essential ingredient in proving the Allegations.

Second Respondent

3. The Allegations made against the Second Respondent, Janet Stevenson, were that whilst a manager and owner of the Firm, she:

3.1 Between approximately 1 May 2000 and October 2021, caused or permitted the improper retention of client money within the Firm's client account, in respect of matters which had concluded, and in doing so breached any or all of the following:

From 1 May 2000 to 5 October 2011:

Rule 15.3 of the 1998 Accounts Rules.

From 6 October 2011 to 24 November 2019:

Rules 6.1 and 14.3 of the 2011 Accounts Rules and Principles 4, 6 and 7 and of the 2011 Principles.

On or after 25 November 2019:

Rules 1.2 and 2.5 of the 2019 Accounts Rules and Principles 2 and 7 of the 2019 Principles.

3.2 Between approximately 1 May 2000 and 24 November 2019, failed to notify clients that their money was being retained following completion of their matter, and in doing so breached any or all of the following:

From 25 July 1998 to 5 October 2011:

Rule 15.4 of the 1998 Accounts Rules.

From 6 October 2011 to 24 November 2019:

Rules 6.1 and 14.4 of the 2011 Accounts Rules and Principles 4, 6 and 7 of the 2011 Principles:

3.3 Between approximately November 2014 and November 2020, failed to obtain an accountant's report for the Firm, and in doing so breached any or all of the following:

Prior to 25 November 2019:

Rules 6.1 and 32A.1 of the 2011 Accounts Rules and Principles 6, 7 and 8 of the 2011 Principles.

On or after 25 November 2019:

Rules 1.2 and 12.1 of the SRA Accounts Rules 2019 ("the 2019 Accounts Rules") and Principle 2 of the 2019 Principles.

3.4 Between approximately November 2014 and August 2021, failed to remedy promptly, upon discovery, breaches of the Solicitors Accounts Rules, and in doing so breached any or all of the following:

Before 25 November 2019:

Rule 7.1 of the 2011 Accounts Rules and Principles 4, 6, 7 and 8 of the 2011 Principles.

On or after 25 November 2019:

Rule 6.1 of the 2019 Accounts Rules and Principles 2 and 7 of the 2019 Principles

3.5 Between approximately November 2014 and August 2021, failed to report breaches of the Solicitors Accounts Rules to the SRA, and in doing so therefore breached any or all of the following:

Before 25 November 2019:

Outcomes 10.1 and 10.3 of the 2011 Code and Principles 6 and 7 of the 2011 Principles.

On or after 25 November 2019:

Paragraphs 7.7 and 7.8 of the SRA's Code of Conduct for Solicitors, RELs and RFLs 2019 ("the 2019 Code") and Principle 2 of the 2019 Principles

3.6 Between approximately November 2014 and 24 November 2019, failed promptly to notify the SRA that the Firm was in serious financial difficulty, and in doing so breached any or all of Outcome 10.3 of the 2011 Code and Principles 6 and 7 of the 2011 Principles.

4. In addition, Allegations 2.1 and 2.2 were advanced on the basis that the Second Respondent's conduct was manifestly incompetent. Manifest incompetence was alleged as aggravating features of the Second Respondent's misconduct was not an essential ingredient in proving the Allegations.

Executive Summary

5. The Respondents committed multiple breaches of the Accounts Rules over a period of many years, as set out above and described below. The Respondents admitted all the Allegations. The First Respondent's admissions included lack of integrity and manifest incompetence. The Second Respondent's admissions included manifest incompetence. The Tribunal found all Allegations proved and assessed the First Respondent as the more culpable on account of his role as COLP and COFA at the Firm.

Sanction

6. The First Respondent was suspended for 18 months and the Second Respondent was suspended for 6 months.

7. The Tribunal made no order as to costs, solely on account of the Respondents' means. The Tribunal would otherwise have ordered costs in full, to be apportioned such that the First Respondent would have paid two-thirds and the Second Respondent would have paid one-third.

Documents

8. The Tribunal considered all the documents in the case were contained in an agreed electronic bundle.

Factual Background

9. Prime & Co ("the Firm") was a partnership between the First and Second Respondents, with an equal division of equity.

10. The First Respondent was admitted to the Roll of Solicitors on 1 September 1979. At the material time he was the also a manager and was COLP and COFA of the Firm. At the time of the hearing, he held a Practising Certificate which was free from conditions.

11. The Second Respondent was admitted to the Roll of Solicitors on 15 November 1976. At the material time she was also registered as a manager of the Firm. She also held a Practising Certificate which was free from conditions.

12. An investigation into the Firm, carried out by the SRA's FIO, commenced on 9 August 2021. This included the interview of both Respondents on 1 October 2021. The investigation culminated with the completion of the Forensic Investigation Report ("FIR") on 15 October 2021.

<u>Client monies left in client account and failure to notify clients (</u>
<u>Allegations 1.1, 1.2, 1.4, 3.1., 3.2 and 3.4)</u>

13. The FIO was provided with a copy of the client bank reconciliation for 24 May 2021, completed by the Second Respondent and with client matters listings, along with a schedule of office credits. These documents indicated that the Firm held a balance in matters with the last transaction date as long ago as 17 May 1984 and so the FIO asked the Second Respondent to review all the client ledgers and compile a list of all the client matters where there had been no recorded movement since 24 May 2020. This was provided on 23 August 2021 and the overall balance retained by the Firm in relation to client matters that had been dormant for more than twelve months was stated to be £121,270.23.

14. Mr Collis made clear that it was not the SRA's case that the total sum went back to 1984.

15. In her interview, the Second Respondent confirmed that she had been carrying out the bank reconciliations since 2002 and, since March-April 2020 was carrying out the day-to-day bookkeeping. The Second Respondent was surprised by the old balances, having become aware of them since taking over the books. The Second Respondent was unable to explain why she had not addressed them and was not aware of the clients having been contacted. The Second Respondent had confirmed that she was aware of the requirement under the Accounts Rules to notify clients if a balance was being held on their behalf.

16. In his interview, the First Respondent stated that the Accountant's Reports had never mentioned the outstanding client balances. He was aware that there were dormant client ledgers, but was surprised that the last movement dates on some of them went back to the 1980s. The First Respondent had said that that he was not aware that there were credit balances on the office side of client ledgers that went back to the early 1990s. He had explained that these issues had not been addressed earlier due to "overwork, lack of time, endless hours fighting Customs and Excise or HMRC…". The First Respondent accepted that as COFA he should have picked up these issues and that he was aware of the duty to notify clients if the Firm were holding a balance, something that had not happened.

Failure to obtain Accountant's Reports (Allegations 1.3 and 3.3), failure to report breaches to the SRA (Allegations 1.5 and 3.5) and failure to remedy breaches (Allegations 1.4 and 3.4

17. An Accountant's Report for the Firm, covering the period 25 November 2012 to 24 November 2013, was signed off by its author on 20 June 2014. This was the last Accountant's Report before the SRA investigation commenced almost eight years later.

18. On 31 October 2014, the 2011 Accounts Rules changed so that an Accountant's Report only had to be submitted to the SRA if it were qualified, though the requirement to obtain such a report still existed.

19. On 29 September 2021, the First Respondent provided a signed written account to the FIO. In this document, the First Respondent provided detail as to a long-running dispute between the Firm and HMRC in relation to VAT, as well as matters pertaining to his health. In addition, he stated:

> "From 2008 onwards the various difficulties mentioned resulted in a continuation of the financial problems created by HMRC, made worse by the economic recession. It was necessary to pare overheads to the minimum. One of the overheads I pared in 2014 was the payment of accountants to prepare annual accountants reports. Mrs Stevenson kept at an eagle eye on the client account ledger, carrying out the monthly reconciliations required by the Rules, and I knew that she would never allow anything untoward. Although we were both aware of the financial problems I fear that I rather bullied her into the decision not to obtain accountants reports. The cost cutting measures were intended only to be short term but, in the event, they lasted longer than I would have wished. They have succeeded because the firm is now in a better position, the credit card debts have reduced and the last of the personal loans is almost repaid.

> I deeply regret that this situation has been achieved at the expense of compliance with then Accounts Rules. I apologise unreservedly but I am, to a degree, unrepentant. It was the failure of others (i.e. HMRC) to follow their own rules that created the awful situation by the firm between 1994 and 2014….
>
> …. In seeking to remedy the damage caused and to preserve the firm from financial catastrophe not of its own making I felt that saving costs by a breach of the requirement to obtain an accountants certificate was a justifiable short term measure. All I can say is that the decision was a considered and deliberate decision on my part, reached in desperate circumstances, rather than a careless disregard of the Rules."

20. The Second Respondent provided a signed written account to the FIO on 29 September 2021. The statement endorsed the historical narrative provided by the First Respondent, and also stated that:

> "We have tried to ensure that we have dealt with all rule changes and comply with all requirements... (sic) I acknowledge that I have not managed that in respect of the Accountants Reports. I have a tendancy (sic) to worry about anything and everything cannot really explain why I was not more forceful when Mr. Stevenson took decision not to deal with them. As ever I buried myself in my work.
>
> I note Mr. Stevenson has said in his statement (page 5 para 3) "Although we were both aware of the financial problems I fear that I bullied her into the decision not to obtain accountants reports" I know that as a partner ensuring all rules are followed is just as much my responsibility as Mr Stevenson's and I have failed in that I did not insist in the reports being dealt with."

21. In his interview, when asked why that was the last time one had been prepared, the First Respondent had stated:

> "The firm was facing very significant financial pressure. We were working on the basis that basically one year's income would pay the previous year's bills, 'robbing Peter to pay Paul', and I looked at it and thought 'well, if we are going to survive, one of the things that will help us to survive is not to have any accountant's report this year and do it next year'".

22. The First Respondent had accepted that he did not tell the SRA that, due to financial problems, he had not obtained an Accountant's Report, as it had never crossed his mind to do so. He accepted that as COLP and COFA he had a responsibility to refer such matters to the SRA. The First Respondent had further accepted that it was not possible to reconcile the duty to remedy breaches promptly with the decision not to obtain an Accountant's Report.

23. The First Respondent informed the FIO on the morning of the interview that he had now engaged an accountant to complete the outstanding Accountant's Reports.

24. In her interview, the Second Respondent had confirmed that the Firm had attempted to pare back on expenditure, but she acknowledged that she should have insisted that an Accountant's Report was prepared. The Second Respondent stated that there had been no discussion between her and the First Respondent about making the SRA aware of the lack of an accountant. The Second Respondent had accepted that she was unable to reconcile the duty to remedy breaches promptly with the decision not to engage an accountant.

25. On 4 October 2021, the First Respondent sent an e-mail to the FIO, in which he stated as follows:

> "One of the questions you asked me on Friday was whether my decision in 2014 not to obtain an accountant's report was influenced by the rule change requiring a report to be lodged only if it was qualified. I think I said "No" but on reflection that cannot have been right. I kept no written record of my thinking at the time, and it would have been less that [sic] clear thinking given the [redacted due to health references], but it would have made no sense not to lodge a report if one were compulsory in any event. It only makes sense to withhold a report if its withholding would not start alarm bells ringing so I must have had the rule change in mind.
>
> I know, of course, that the recorded statement cannot be altered but I do not want anyone thinking that I am being less than open, hence this email".

26. Mr Collis told the Tribunal that the SRA accepted that the initial decision not to obtain an accountant's report may have been a short-term solution, but one that ended up lasting over seven years.

Failure to notify the SRA of financial problems
(Allegations 1.6 and 3.6)

27. Outcome 10.3 of the 2011 Code required prompt reporting to the SRA of any serious financial difficulty. The Firm was facing economic pressure to the extent that the Respondents chose not to obtain an Accountant's Report in order to save money. The SRA's case was that it followed that the Firm must have been experiencing the level of financial difficulty that should have led to a report being made to the SRA.

28. Rules 9.1(e) and 9.2(c) of the Firm Code imposed a specific obligation on the First Respondent as COLP and COFA to inform the SRA promptly of any facts or matters that they reasonably believed should be brought to the SRA's attention, so that it may investigate whether a serious breach of its regulatory arrangements had occurred or otherwise exercise its regulatory powers.

Manifest incompetence
(Allegations 2 and 4)

29. The SRA further alleged manifest incompetence and Mr Collis referred the Tribunal to SRA v Iqbal [2012] EWHC 3251 (Admin) which established the following, in the judgment of Sir John Thomas [then President of the Queen's Bench Division]:

> "It seems to me that Trustworthiness also extends to those standards which the public are entitled to expect of a solicitor, including competence. If a solicitor exhibits manifest incompetence, as, in my judgment, the Appellant did, then it is impossible to see how the public can have confidence in a person who has exhibited such incompetence. It is difficult to see how a profession such as the medical profession would countenance retaining as a doctor someone who had showed himself to be incompetent. It seems to me that the same must be true of the solicitors' profession. If in a course of conduct a person manifests incompetence as, in my judgment, the Appellant did, then he is not fit to be a solicitor. The only appropriate remedy is to remove him from the Roll. It must be recalled that being a solicitor is not a right, but a privilege. The public is entitled not only to solicitors who behave with honesty and integrity, but solicitors in whom they can impose trust by reason of competence".

30. It was the SRA's case that the Respondents' retention of client monies in breach of the Accounts Rules, and the failure to notify the clients of the same, represented manifest incompetence.

Findings of Fact and Law

31. 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.

32. The Respondents admitted all the Allegations against each of them in full, including manifest incompetence. The Tribunal was satisfied that the admissions were properly made and were supported by the evidence placed before it.

Previous Disciplinary Matters

33. The First Respondent had previously appeared before the Tribunal on 13 July 2006. He had admitted the following allegations:

> "1. The Respondent acted in breach of Rule 1 of the Solicitors Practice Rules 1990 in that he failed in the circumstances here set forth to act in the best interests of his clients and had failed to adhere to a Solicitor's proper standard of work;
>
> 2. He failed, alternatively failed with reasonable expedition, to reply to correspondence and enquiry addressed to him by clients and/or clients' solicitors;
>
> 3. He failed to notify clients of the existence of circumstances which might have led to a claim in negligence or otherwise, to notify the Solicitors' Indemnity Fund thereon and to advise the client to seek independent advice;

> 4. He failed to honour the terms of an undertaking given in the course of practice as a solicitor within a reasonable time.;
>
> 5. By virtue of each and all of the aforementioned had been guilty of conduct unbefitting a solicitor"

34. The Tribunal had made the following Order:

> "The Tribunal ORDERS that the Respondent, ANDREW STEVENSON [address redacted], solicitor, do pay a fine of £1,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £12,000.00."

35. There were no previous findings in respect of the Second Respondent.

Mitigation

36. The First Respondent told the Tribunal that the Firm was closed. There were some deeds and wills to be returned to clients, and he and the Second Respondence were in correspondence with the SRA about the orderly wind-down of matters, including the small number of instances where the Firm still held client money for clients who could not be traced.

37. The First Respondent told the Tribunal that all other balances had been cleared and the office premises was being cleared for sale. The First Respondent stated that he was "too old, too ill and too disillusioned" to continue in practise, and referenced his recent health issues in this regard.

38. The First Respondent told the Tribunal that no sanction could "exceed the torment of seeing a lifetimes work come to nothing due to what has been inflicted on me" – a reference to his dispute with HMRC since 1996. The First Respondent apologised to the Tribunal, the SRA and the Second Respondent for the breaches and the decisions he had made.

39. The Second Respondent told the Tribunal that she endorsed what the First Respondent had said, and she added that although the First Respondent considered himself fully responsible, she should have been more forceful. She had not realised the ongoing effect on the First Respondent of his health issues and his ability to run the Firm. The Second Respondent confirmed that they were closing the Firm in an orderly manner and that she would not be seeking further work as a solicitor. It was a disappointment to her to find herself before the Tribunal after a 45-year career, and she apologised.

Sanction

40. The Tribunal had regard to the Guidance Note on Sanctions (June 2022). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

First Respondent

41. In assessing culpability, the Tribunal took account of the fact that the First Respondent held the roles of COLP and COFA, which placed particular responsibilities on him to ensure compliance with the relevant Rules. The Tribunal concluded that his motivation was the financial survival of the Firm and it noted that he had made a deliberate decision, albeit in desperate circumstances, not to obtain an accountant's report. There was therefore an element of planning. The Tribunal further noted that he had sought to influence the Second Respondent to an extent.

42. The First Respondent had direct control and responsibility for the breaches. He was a highly experienced solicitor and was fully culpable. The Tribunal acknowledged that he had not misled the SRA.

43. In assessing harm, the Tribunal found that there was always harm caused to the reputation of the profession when there were persistent and long-running breaches of the Accounts Rules, which were in place ultimately to protect the public. The Tribunal had not heard any evidence of loss to individual clients or claims on the Compensation Fund and so the harm in this case was reputational rather than direct.

44. The misconduct was aggravated by the fact that it continued over a period of time and was, to an extent, deliberate calculated and repeated. The First Respondent knew or ought to have known that he was in material breach of his obligations.

45. There was one previous Tribunal finding against the First Respondent. The Tribunal attached little weight to this as the origins of the misconduct being addressed here pre-dated the 2006 matter.

46. The misconduct was mitigated by the First Respondent's genuine remorse and insight. He had made full, open and frank admissions at an early stage and had taken full responsibility. He was in the process of making good the breaches and was winding his Firm down in a responsible and orderly manner.

47. The Tribunal did not consider a reprimand or a fine to be a suitable sanction in light of the admissions to lack of integrity and manifest incompetence. The Tribunal had regard to Iqbal and concluded that no lesser sanction than a suspension was appropriate to protect the public and the reputation of the profession. Taking all the above factors into account, the appropriate sanction was a suspension of 18 months.

Second Respondent

48. The factors relevant to culpability were largely the same as for the First Respondent, save for the fact that she had not been the COLP or COFA. She had allowed herself to be persuaded by the First Respondent in relation to the accountant's report. She had not lacked integrity but had been manifestly incompetent. The Second Respondent's culpability was therefore less than the First Respondent's.

49. The harm caused by her misconduct was the same as that caused by the First Respondent.

50. The aggravating factors identified in relation to the First Respondent also applied to the Second Respondent, save that she had no previous findings against her. This was a minor difference given the limited relevance of the First Respondent's previous matter for the reasons set out above.

51. The Second Respondent had also shown genuine insight and contrition. Although the First Respondent had suggested that he had bullied her, she had not agreed.

52. As with the First Respondent, a reprimand or fine was not a sufficient sanction. The finding of manifest incompetence in itself required a suspension. However, in light of her reduced culpability and the absence of a lack of integrity, the appropriate length of suspension was 6 months.

53. There was discussion with the parties about the timing of the commencement of any suspension, as the Tribunal did not want to undermine the process of the orderly wind-down of the Firm. Mr Collis took instructions from the SRA on this point and confirmed that the Respondents would be able to continue winding down the Firm as the suspension would not prevent them from accessing the office account. The Tribunal was therefore satisfied that both suspensions should take effect immediately.

Costs

54. Mr Collis applied for costs in the total sum of £23,965.20. He told the Tribunal that the fixed fee had been reduced from £18,500 to £13,875 in light of the admissions made by each Respondent. Although it had not proved possible to reach an Agreed Outcome, the 25% reduction had still been applied. Mr Collis told the Tribunal that the equivalent hourly rate in this case worked out at £126.71.

55. The Respondents had each served a detailed statement of means. The First Respondent clarified that the run-off premium was £29,000, not £55,000 and that it covered the whole period of the run-off.

56. The First Respondent told the Tribunal that he was concerned at the level of costs sought, noting that full admissions had been made from the outset. It had always been clear that the Respondents' intentions were to close and retire. In terms of the ability to pay costs, this was set out in the statement of means. The First Respondent told the Tribunal that after payment of liabilities there would be no surplus and the Respondents would be left with credit card debts. Any order for costs would be likely to result in bankruptcy.

57. The Second Respondent endorsed these submissions.

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

58. The Tribunal was satisfied that the costs claimed were reasonable in the circumstances of this case. There were a number of breaches spanning many years and the equivalent hourly rate of £126.71 was not excessive.

59. The Tribunal considered the principle of apportionment with regard to the overall culpability of each Respondent. The Tribunal determined that the First Respondent would, in principle, be liable for two-thirds of the costs and the Second Respondent liable for one-third.

60. The Tribunal had regard to Barnes v Solicitors Regulation Authority [2022] EWHC 677 (Admin) and the importance of making a "reasonable assessment of the current and future circumstances" in relation to a Respondent's ability to pay. At [46], Cotter J stated:

> *[46] The courts have held for a long time that the guiding principle is that fines, costs and compensation should be capable of being paid off within a reasonable time if imposed in circumstances such as this (i.e., not in ordinary civil litigation). The decision of the tribunal on the reasonable assumption that she had an entitlement to half the monthly surplus would mean that the Appellant would never pay off the debt, on the then current level of remuneration at the time of the hearing (i.e., before she lost her job). I accept, as Mitting J set out, that the Solicitors Regulation Authority does not have the aim of pursuing impecunious solicitors against whom orders have been made and who cannot pay. However, I cannot see how the Authority or the profession is in any way better off leaving to the Enforcement Unit a debt that can never be paid, save in exceptional circumstances. The exceptional circumstances provision can be dealt with by what is known as "a football pools" order. That description may not now be understood by a number of younger people. I believe "a lottery order" would be more widely understood."*

61. At [48] he stated:

> *"[48] No proper exercise of discretion under the Rules could, produce an order for costs that will never be satisfied and will remain a burden on a party for life. I reject Ms Culleton's submission to the contrary i.e., that that is a proper order open to the tribunal even given the exercise of its generous discretion. Nor, as I have stated, can it be correct to leave what is effectively an unrecoverable debt to the Recovery Unit in the hope that it will then take a reasonable view. The tribunal itself is the one with the regulatory requirement to consider means and the Unit should only be required to recover debts which the tribunal considered to be properly recoverable*."

62. The Tribunal reviewed the statement of means provided by each Respondent. It was clear that once the Firm had been fully wound-up, there would be no money left over. The main asset was the commercial premises, in which each Respondent held a share worth approximately £68,750. Those shares would have to be spent meeting the liabilities set out in the statement of means. The First Respondent was on the title deeds of a residential property but did not actually hold any beneficial interest in the property. The Second Respondent had £93,000 equity in her residential property, but no other assets and, were she required to sell that share to pay the costs, she could find herself homeless. The Tribunal did not consider that to be consistent with Barnes as it would, effectively, be a burden for life.

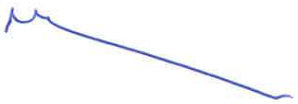
63. In all the circumstances the Tribunal concluded that there was no order for costs against either Respondent that had a realistic prospect of being paid within a reasonable timeframe. In the circumstances the Tribunal reduced the costs order that it would have made, which would have been costs in full, apportioned as set out above, to zero in respect of each Respondent.

Statement of Full Order

64. The Tribunal ORDERED that the Respondent, ANDREW STEVENSON, Solicitor, be suspended from practice for the period of EIGHTEEN MONTHS to commence on the 25th day of May 2023 and it further Ordered that there be NO ORDER as to costs.

65. The Tribunal ORDERED that the Respondent, JANET STEVENSON, solicitor, be suspended from practice for the period of SIX MONTHS to commence on the 25th day of May 2023 and it further Ordered that there be NO ORDER as to costs.

Dated this 21st day of June 2023
On behalf of the Tribunal



JUDGMENT FILED WITH THE LAW SOCIETY
21 JUNE 2023

R Nicholas
Chair