SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12445-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

Respondent

ANDREW HUGH BUTLER

Before:

Mr W Ellerton (in the chair)
Mr R Nicholas
Mr D Kearney

Date of Hearing: 14 April 2023

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations made against Mr Butler by the Solicitors Regulation Authority ("SRA") were that while in practice as a solicitor and subsequently a self-employed consultant at Worthingtons ("the Firm") he:

1.1 Between 2012 and 2018 improperly transferred £19,289.54 from the client account, by creating or causing to be created three invoices which were not notified to the clients in writing or at all and which did not accurately reflect costs due including being for costs which had already been invoiced and in so doing he acted in breach of:-

1.1.1 SRA Accounts Rules 2011("the 2011 Accounts Rules") - Rules 17.2 and 20

1.1.2 SRA Principles 2011("the Principles") - Principles 2 and/or 4 and/or 5 and/or 6 and/or 10

1.1.3 SRA Code of Conduct 2011 ("the Code") - Outcome 1.2

1.2 Between 1993 and 2018, he failed to bank/present for payment, and to account to those he should have under the Estate of SJC, dividend cheques for shareholdings and other

	Date	**Applicable Rules/Code of Conduct**	
1.2.1	1993 – 1998	The Solicitors Practice Rules 1990	Rule 1(a)
1.2.2	1993 – 1998	The Solicitors Accounts Rules 1991	Appendix 2a – Rule 3
1.2.3	1998 to 5 October 2011	The Solicitors Accounts Rules 1998	Annex 28(B) – Rule 1(a); 1(c); 15(1)
1.2.4	1 July 2007 to 5 October 2011	Solicitors Code of Conduct 2007	Rules 1.02; 1.04; 1.05; 1.06
1.2.5	After 6 October 2011	The SRA Accounts Rules 2011	Rule 1.1; 6.1; 14.1
1.2.6	After 6 October 2011	The SRA Code of Conduct 2011	Principle 2, 4, 5, 6 and 10 Outcome 1.5

remittances valued at around £70,000 and in so doing he acted in breach of:

2. In addition, Allegation 1.1 was advanced on the basis that Mr Butler's conduct was dishonest. Dishonesty was alleged as an aggravating feature of his misconduct but was not an essential ingredient in proving the allegation.

3. Mr Butler admitted the allegations, including that his conduct was dishonest.

Documents

4. The Tribunal had before it the following documents:-

- Rule 12 Statement and Exhibit LC1 dated 14 March 2023
- Statement of Agreed Facts and Outcome dated 4 April 2023

Background

5. Mr Butler was admitted to the roll in December 1981. He was a Senior Partner and Manager at the Firm specialising in conveyancing and probate. He retired from the Firm's partnership on 31 July 2017 but stayed on as a party-time self-employed consultant to finalise the administration of a number of outstanding probate matters and remained working in such a capacity up to the matters alleged came to the attention of the Firm and were reported to the SRA in May 2019. He did not hold a current practising certificate.

6. Mr Butler was also the Compliance Officer for Finance and Administration (COFA) and the Money Laundering Reporting Officer (MLRO) from 22 January 2013 to 31 July 2017.

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

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

Findings of Fact and Law

8. The Applicant was required to prove the allegations 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 Butler's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

9. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Mr Butler's admissions were properly made.

10. The Tribunal considered the Guidance Note on Sanction (June 2022/10th Edition). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed. The Tribunal noted that Mr Butler knew that invoices created did not reflect the work undertaken and were thus unjustifiable. He had admitted that he had knowingly duplicated charges, and that he had transferred monies to the Firm to which the Firm was not entitled and in breach of the Accounts Rules. He had also admitted that such conduct was dishonest.

11. The Tribunal found that sanctions such as a Reprimand, Fine or Suspension did not adequately reflect the seriousness of the misconduct. The Tribunal found that given the admission of dishonesty, the only appropriate and proportionate sanction was to strike Mr Butler off the Roll of solicitors. The Tribunal did not find that there were any exceptional circumstances such that striking Mr Butler off the Roll would be disproportionate. Accordingly, the Tribunal approved the sanction agreed by the parties.

Costs

12. The parties agreed that Mr Butler would pay costs in the sum of £16, 650. The Tribunal determined that the agreed amount was reasonable and proportionate. Accordingly, the Tribunal ordered Mr Butler to pay costs in the agreed sum.

Statement of Full Order

13. The Tribunal Ordered that the Respondent, ANDREW HUGH BUTLER, 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 £16,650.00.

Dated this 26th day of April 2023
On behalf of the Tribunal

W Ellerton
Chair

CASE NO: 12445-2023

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

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

B E T W E E N:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

ANDREW HUGH BUTLER

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

1. By a statement made by Louise Culleton on behalf of the Solicitors Regulation Authority Limited ("SRA") pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 25 November 2022, the SRA brings proceedings before the Tribunal making allegations of misconduct against the Mr Andrew Butler, ("the Respondent").
2. Definitions and abbreviations used herein are those set out in the Rule 12 Statement.

Admissions

3. The Respondent admits all Allegations made against him in the Rule 12 Statement, and the associated breaches of the Accounts Rules, Principles and Codes of Conduct referred to as applicable to the time periods in question, namely that:

    1. *While in practice as a Solicitor and subsequently a self-employed consultant at Worthingtons ("the Firm"), he:*

1.1 Between 2012 and 2018 improperly transferred £19,289.54 from the client account, by creating or causing to be created three invoices which were not notified to the clients in writing or at all and which did not accurately reflect costs due including being for costs which had already been invoiced and in so doing he acted in breach of:-

1.1.1	*SRA Accounts Rules 2011*	*Rules 17.2 and 20*
1.1.2	*SRA Principles 2011*	*Principles 2 and/or 4 and/or 5 and/or 6 and/or 10*
1.1.3	*SRA Code of Conduct 2011*	*Outcome 1.2*

1.2 Between 1993 and 2018, he failed to bank/present for payment, and to account to those he should have under the Estate of C, dividend cheques for shareholdings and other remittances valued at around £70,000 and in so doing he acted in breach of:

	Date	*Applicable Rules/Code of Conduct*	
1.2.1	*1993 – 1998*	*The Solicitors Practice Rules 1990*	*Rule 1(a)*
1.2.2	*1993 – 1998*	*The Solicitors Accounts Rules 1991*	*Appendix 2a – Rule 3*
1.2.3	*1998 to 5 October 2011*	*The Solicitors Accounts Rules 1998*	*Annex 28(B) – Rule 1(a); 1(c); 15(1)*
1.2.4	*1 July 2007 to 5 October 2011*	*Solicitors Code of Conduct 2007*	*Rules 1.02; 1.04; 1.05; 1.06*
1.2.5	*After 6 October 2011*	*The SRA Accounts Rules 2011*	*Rule 1.1; 6.1; 14.1*
1.2.6	*After 6 October 2011*	*The SRA Code of Conduct 2011*	*Principle 2, 4, 5, 6 and 10 Outcome 1.5*

4. Dishonesty, in respect of Allegation 1.1 is also admitted. In addition, Allegation 1.1 is advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegations. For further particulars of dishonesty, please see paragraph 36 below.

Agreed Facts

The Respondent

5. The Respondent was admitted to the Roll on 1 December 1981. He was a Senior Partner and Manager at the Firm specialising in conveyancing and probate. He retired from the Firm's partnership on 31 July 2017 but stayed on as a part-time self-employed consultant to finalise the administration of a number of outstanding probate matters and remained working in such a capacity up to the matters alleged came to the attention of the Firm and were reported to the SRA in May 2019. He does not hold a current practising certificate.

6. He was also the Compliance Officer for Finance and Administration (COFA) and the Money Laundering Reporting Officer (MLRO) from 22 January 2013 to 31 July 2017.

Background

7. The conduct in this matter came to the attention of the SRA when the SRA received a report from Rhona Jardella, a partner at the Firm, on 7 May 2019. She reported that in respect of an estate that the Respondent had responsibility for (the estate of SJC) which included a large share portfolio, they had discovered a number of dividend cheques and vouchers addressed to the executors, ranging over a period of 25 years, from 1993 to 2019, that had not been presented for payment. The Respondent had failed to account for the cheques that formed part of the estate, the monies of which would be have been due to the beneficiaries, and it thus appeared that the estate had been wound up without the shares being sold or the dividends accounted for.

8. Further details were provided to the SRA by Mrs Jardella on 16 May 2019, where she indicated that in a meeting that they had held with the Respondent to discuss the matter on 10 May 2019, he had acknowledged that he had not presented a large number of dividend cheques for payment over many years, his explanation being the "*pressure of work"*.

9. Mrs Jardella indicated to the SRA that they wished to retain the Respondent in a limited way to work to resolve the situation under supervision.

10. On 30 May 2019, Mrs Jardella provided more information. She indicated that at the meeting on 10 May 2019 with the Respondent, he had acknowledged that there had been an ongoing problem for many years for which he accepted responsibility and that this was due to the pressure of work compounded by the subsequent death of the executors of the estate. At the meeting, the Respondent said that he had not applied for a new deed of appointment to replace the executors or sold some of the shareholdings. When asked

whether he was aware of any other problems on other client files he indicated that there was none that he was aware of. The Respondent also signed a Schedule which set out the supervision measures under which he would conduct the work and asked him to repay £70,000 as an interim measure in respect of the unpresented dividend cheques. He agreed to signing the schedule and to make a payment once he was able to verify the exact amount of unpresented dividend cheque payments.

11. Mrs Jardella provided a further update on 6 June 2019 indicating that on that date the Respondent had agreed to pay the £70,000 and to provide an action plan and summary on the relevant files.

12. Thereafter, Mrs Jardella continued to provide the SRA with updates and further information relating to matters which the Respondent had been working on.

13. A Forensic Investigation Officer ("FIO") at the SRA, conducted a forensic investigation and set out her investigation and its findings in a Forensic Investigation Report ("FIR") dated 3 March 2021. As part of the investigation, the FIO liaised with Mrs Jardella and Barry Keating, another partner at the Firm, to seek clarification on matters, particularly regarding Schedules which the Firm provided in respect of the unpresented dividend cheques. Further Schedules were provided by the Firm in response, seeking to clarify and confirm the amounts of unpresented dividend cheques in question.

14. As well as this issue of the SJC estate and unpresented dividend cheques, the FIO discovered that in respect of two other probate matters (AGM and PRA), there was a cash shortage not shown by the Firm's books of account which totalled £19,289.54.

15. This had been caused by client to office account transfers made where no written notification of costs had been sent by the Respondent and when the administration of the estates had been substantively concluded some considerable years prior to the bills being raised. The effect of the bills was to eliminate the remaining monies held to the credit of the ledgers and included value element charges. The FIO states that the Firm was not entitled to these amounts because the value elements had already been charged; the transfers were thus improper.

<u>The allegations</u>

Allegation 1.1 – The improper transfer of £19,289.54 from the client account for invoices which were not properly notified to the clients and did not accurately reflect costs due.

16. The legal framework is set out at paragraphs 19 to 21 of the Rule 12 Statement.

The Estate of AGM

17. Mr AGM died on 15 January 2000 and the Firm were instructed to handle his estate. Following the final distribution of the estate in June 2005, two further invoices appeared on file, were posted to the ledger and costs transferred to the office bank account for a total of £17,447.54. This comprised of the following invoices:-
    17.1. An invoice dated 28 September 2012 for £6,000 plus £1,200 VAT. This was indicated to be for professional charges in relation to the further administration of the estate from 23 April 2004. No calculation of costs was identified on file to show how this round-sum invoice was calculated. The file did show that some further work was done after the final distribution.
    17.2. An invoice dated 31 October 2018 for £8,539.62 plus £1,707.92 VAT. This was indicated to be for professional charges for the final administration of the estate "being value element of 1.5% of personality of £569,831.72 = £8,547.47 but say £8,539.62.

18. The FIO explains that her investigation identified that both invoices post-dated the death of the personal representatives of the estate, there was no evidence of replacement personal representatives being appointed and there was no evidence of the invoices (or other written costs notification) being issued to any party (for example, in the absence of personal representatives, beneficiaries).

19. Furthermore, the second of the bills raised (£10,247.54) was for the value element of the estate and cleared the ledger balance, but the value element had previously been taken. The figure of £569,831.72 for personality shown on the invoice does not tie back to the estate accounts. So even if the first invoice (£7,200) was legitimately for work undertaken as the Respondent stated (see below), the second bill was not justified.

The Estate of PRA

20. Mr PRA died on 31 March 2006 and the Firm were instructed to handle his estate. Following the final distribution of the estate in June 2008, a small sum was retained for a liability and further funds were subsequently received. A small part of the further funds received was paid to the personal representative.

21. A further invoice dated 22 February 2012, appeared on file, was posted to the ledger and costs transferred for £1,842.00 (£1,535 + £307 VAT). The invoice indicated that this was for professional charges from 10 June 2008 to date. The FIO states that a supporting manual calculation showed that this invoice comprised fees for time spent and for part of the value element of the Firm's fees (timed costs of £570 = VAT and an unbilled value element of £965.00 + VAT).

22. However, the value element had already been taken.

23. Part of the matter file was not available, but the file produced was for the time period after the estate accounts were sent and final distribution was made and no letter sending the invoice to the client was seen. The FIO confirmed with the personal representative that she had not seen the invoice of 22 February 2012 and could not recall if she had been told verbally that further fees would be billed.

Respondent's response of 12 January 2021

24. On 12 January 2021, the Respondent responded to the invitation to an interview and questions posed by the FIO in a letter dated 7 December 2020.

25. In relation to the FIO's question posed about the size and round-sum of the penultimate invoice, noting that this was said to be for work done after the estate had been distributed, the Respondent indicated that in 2012 a MRI scan revealed that he had a brain tumour and he stated that he "*recklessly thought at the time that the estate billing was not up to date and I submitted the interim bill*".

26. In relation to the £10,247.54 bill on the AGM matter, the Respondent confirmed that the bill was not sent out (that he did not send the bill out because there was no one to send it to as the executors had died). He confirmed that the final bill absorbed the ledger balance and stated that when he had come to wind the matter up he had discovered a share documents file that had never been costed. The Respondent further stated the following:-

    "*I costed this and recklessly revisited the earlier cost calculations at current charging rates to 'justify' taking the whole reserve as costs to enable the file to be closed. I accept the value element was duplicated as it had already been charged previously. I knew the bill was not justifiable, but I raised it and the money was transferred to pay it. I did this knowing it was wrong and I was dishonest. I took no benefit from the final bill…. As I was no longer a partner*".

27. He indicated that his former partners Mr Keating and Mrs Jardella had no part to play in the matter and were "*completely blameless*" and stated that he was arranging to pay the £17,447.54 back to the Firm to enable them to credit the estate. He stated – "*I am full of remorse for acting so disgracefully in breach of even the lowest standards of the profession*" and asked to be referred to the Solicitors Disciplinary Tribunal.

28. In respect of the PRA matter, the Respondent said that he told the personal representative verbally that he would be raising a further invoice for the further work done but accepted that the invoice was not sent to her or anyone else.

29. He said that to send it would have involved updating the estate accounts as well as writing out to the other beneficiaries who were all in dispute but accepted that in the absence of a written notification of costs being sent, the transfer was improper.

30. He also accepted that the value element of the bill was improperly included to clear the ledger balance. He stated: -

    "*At the time my caseload was unmanageable, and I did not have the time to prepare supplemental estate accounts for everyone and to do this work for nothing especially when I had already not been paid in dealing with the additional work carried out during the previous four years. I had been diagnosed with a brain tumour and lost all proper judgement and confirm underbilled value element of £965 was dishonestly made up to clear the ledger*".

Interview of the Respondent with the FIO

31. The Respondent was interviewed on 15 January 2021. He confirmed that none of the three invoices detailed above, nor any written notification of costs, were sent to any party.

32. In respect of the AGM matter he stated that he was aware both personal representatives had died. As far as the £7,200.00 invoice from September 2012 was concerned, it was not sent out to any party as the personal representatives had died. He said that as they had died and as he thought the bill was justified, he thought at the time that it was proper to take the monies to satisfy the bill. In respect of the round figure of £7,200, the Respondent said he could not recall how it was calculated without seeing the file but he believed at the time that it was justified in terms of the time expended. He accepted that he didn't send the bill out because both executors had died and that he was aware that he needed to

deliver a written notification of costs but that he had not done so. He indicated that in theory where there were deceased representatives the bill would go to the executors, and he accepted that it was not sent out to them (as he didn't know who they were) and that the bill had not been sent out to anyone. When asked whether he was entitled to take the bill in circumstances where there wasn't someone to deliver to, he agreed with the FIO that he shouldn't have done it.

33. In respect of the final invoices, he stated that some further fees were justified but not to the extent of the value of the bill, he knew the bill was not going to be delivered so he did not see the need to try to itemise what had been done, the invoice was raised to clear the ledger balance and close the file down. The Respondent agreed in interview that the monies should not have been taken without written notification being sent. He indicated that he had had a MRI scan in 2012 which revealed that he had a brain tumour and he "*recklessly thought at the time that the estate billing was not up to date*" and he therefore submitted the interim bill.

34. He agreed with the FIO's proposition that both of the final invoices were improper because even if some of the time was permissible it wouldn't have amounted to the total raised by the invoice and for the value element none of that was permissible, and that neither had been delivered to anybody.

35. As far as the PRA matter was concerned, the Respondent stated that the time element of the bill was correct, but the value element was not and that the bill was raised in this sum to clear the ledger balance and to have done so was dishonest. He accepted that his position as set out in his email of 12 January 2021, was that the £965.00 of the final invoice was dishonestly made up to clear the ledger. He accepted that he had not sent out written notification to the personal representative as he should have done, but stated that he had informed her verbally during a meeting that he had had with her about a statutory declaration, but accepted that the failure to notify her in writing made the whole bill improper, hence why he had refunded the whole of it.

Dishonesty

36. Applying the applicable test for dishonesty, such conduct as alleged, was dishonest, as the Respondent himself admits; he was knowingly raising invoices and transferring money from the client account corresponding to those invoices without having notified the necessary individuals, and therefore without their authorisation, and in respect of the value

elements of the costs for both estates knowing that that amount had already been paid to the Firm and that they were thus a duplication and that those charges were not due to the Firm.

Allegation 1.2 – the failure to bank/present, and to account to those to whom he should have under the estate, dividend cheques and other remittances in respect of Estate C from 1993 to 2019

37. The legal framework which applied across the period in question is set out at paragraphs 50 to 57 in the Rule 12 Statement.

Facts

38. The testator died in 1993 and created a life-tenancy for his wife, which included a right to share income. She died in 2005 (according to the Respondent) and the estate was finalised and distributed, but without certain shareholdings being sold or dividends being accounted for.

39. The latest schedule provided by the Firm to the FIO on 5 January 2021 indicates that some 418 cheques covering the period of 1993 to 2018 with the approximate value of £62,922.96, plus $2,588.22USD and remittances of a value of £3,464.37 were not presented/banked. This was on the basis that 2019 items would not have been stale and so any such dividend cheques from 2019 and any of them where the date was unclear from the Schedule were not included and re-ordered by the FIO.

40. Whilst the Respondent paid £70,000 to the Firm to cover the unpresented items in July 2019 (as an interim amount pending clarification), he has stated that some cheques were reissued and banked, and others could be reclaimed – to his estimated value of £30,456.05. Nonetheless the fact remains that the Respondent failed to present/bank – as he should have done – the quantity of cheques over some twenty-five years amounting to approximately £70,000 (taking into account amounts in Australian dollars also) and which of course does not include the interest that would have amounted over the years also.

41. The FIO relied on the schedules provided by the Firm as well as some supporting documents provided by them.

42. As set out above, the Respondent has accepted that he failed to present/bank dividend cheques as alleged but appears to take issue with the precise amount. This was on the basis of the first lot of schedules provided by the Firm (in 20 August 2020).

43. The Respondent should have promptly banked the cheques and accounted to whomever was due the money. Furthermore, he should have disposed of the holdings as soon as possible after the Grant of Probate was issued, sold the underlying shares and distributed the proceeds with the estate. As the life tenant was entitled to the share income until her death in July 2005, before that time the share income belonged to her and cheques should have been banked and paid to her. After July 2005, the share income was due to the residue of the estate and the shares should have been sold as part of the estate finalisation and the funds realised distributed with the estate. Dividends should have been banked in the interim or if they could not be steps taken by the Respondent so they could be. The funds from the cheques and other remittances were client monies and should have been deposited into the Firm's client account and noted on the client ledger.

44. Following the Firms discovery of the unpresented/unbanked cheques, as the executors had died, alternatives had to be identified and a suitable grant obtained from the court. This was required in order to collect the outstanding estate assets and distribute the estate. It was anticipated that duplicate cheques could then be obtained for any which were less than ten years old. The letter from the Firm to the FIO providing the schedule on 5 January 2021 also sets out the progress the Firm was making at that stage in respect of trying to resolve the situation at that time. Two replacement executors had been met, the whereabouts of the beneficiaries except one had been identified, the grant had not been issued and when it was they could then start *'take steps to obtain information from all the Company Registrars as to the position with regard to the Dividends and indeed the Shareholdings. At the present time, as there is no valid Grant in existence, the Registrars will not provide information to me, both as to issuing replacement Dividend cheques or not as the case may be and/or with regard to information regarding the Share Holdings.'* They had applied for a Grant on 11 August 2020 and a Grant of Letters of Administration with Will was issued to Worthingtons Solicitors (Ref BGK.PRS.Copping) on 22 January 2021.

The Respondent's responses and account in interview with the FIO

12 January 2021 response

45. The Respondent indicated that there was a master spreadsheet as well as those provided by the Firm which listed the companies in alphabetical order which he had explained to Mrs Jardella was required in order to identify the income due to the life tenant for (a) the period from 8 April 1993 to 7 July 2007 and (b) for the period of 8 July 2007 to date for the residuary beneficiaries. He stated that he had calculated in that spreadsheet that £30,456.05 was still recoverable as being dividends paid into the HSBC account of £12,975.84 plus dividends of £17,480.21 recoverable from the company registrars which had been confirmed in their replies to his letters. He stated that this 'master spreadsheet' was unfinished as he had been unable to complete it before being asked not to attend the office anymore.

46. He provided background to the matter and said that "*due to the pressure of work the dividend cheques file got put to one side and the longer they were left the harder it became to salvage especially after the death of [Trustee TH]*". He stated that it was always his intention to claim then when he could.

47. He stated that spreadsheets which he had compiled for each individual shareholding itemising the dividend cheques which the Firm's account manager had totalled plus further ones that he had recorded from correspondence with the company's registrar should be used to establish the correct amounts of unpresented dividend cheques.

48. He also provided two attachments relating to the Firm's 20 August 2020 schedules, commenting on them and recording as agreed items totalling £25,114.69 plus US $2,481.22 and Australian $61.64.

Interview of 15 January 2021

49. In interview the Respondent indicated that he considered that there were still errors in the Firm's latest January spreadsheets, for example items which should be in Australian dollars rather than US dollars and amounts which had not been added up correctly.

50. He indicated that anything within the last 12 years should be able to be reclaimed, which the spreadsheet provided by the Firm had not taken into account. He further said that the Firm had also not taken into account some dividends which had been paid into the trustee account, so the estate had already in fact had that money.

51. In response to the FIO's question about why the cheques had repeatedly not been presented over such a long period of time, the Respondent stated that initially "*they became stale*" after which they just got put in the file ready to claim at some stage but then one of the executors had died and there was then no way of paying them in. He stated that the cheques weren't payable to the Firm, but to the executors personally. The Respondent said he "*had a bit of a mental block*" once he could not cope with dealing with the money coming in and so the cheques just ended up being filed away. He had not told anyone at the Firm about the situation. He reiterated that it was never his intention not to claim the money.

52. The Respondent indicated that the death of TH in 2002, one of the trustees, was a complicating factor as after the trustee account could not be used, however cheques were not banked or presented prior to that going back to 1993 and subsequently up to 2018.

53. When asked by another FIO present at the interview, what should have happened to the cheques once the last remaining executor had died, the Respondent stated that from a practical point of view they should have got the company registrars to give dividend mandate forms and to have got the trustees to sign those and then register them with the company registrars, so that all the companies would then have paid the share dividends directly into a bank account of the Firm or a trustee account. Later in the interview he stated that another way of paying them in would have been to get the trustees to endorse the cheques and to make them payable to the Firm and to then pay them in to the client account, but that he had not gone down that route either.

54. The Respondent agreed that the Accounts Rules (which had obviously changed throughout the extensive period for which this issue had arisen) required that client monies be banked without delay which would apply to the dividend cheques. He confirmed that the dividend cheques should have been paid into the Firm's client bank account or to the trustee account at HSBC which was an account opened and administered by the Firm.

55. He said that it had always been in the back of his mind that he had not dealt with it properly but that it had got to a stage where he had got so far behind with it, that "*it was the skeleton in the cupboard*".

Non-Agreed Mitigation

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

57. The Respondent has throughout recognised the gravity of his conduct and has repeatedly made prompt and full admissions from the outset of the investigation. He did this in his interview with the SRA on 15 January 2021 and thereafter in writing. He admitted he had acted dishonestly and he did so to speed up the inevitable regulatory process and to make it as easy as possible for the SRA to pursue its case against him and to keep its costs down.

58. [redacted]

59. The Respondent has otherwise had an unblemished professional career over 42 years.

60. The Respondent has repaid his former firm Worthingtons all money that is the subject of these proceedings, and no one has lost financially. He has assisted the firm as fully as possible.

61. The Respondent is sincerely remorseful for his conduct and fully regrets his actions which have let down his family, his clients and the staff and former partners of Worthingtons.

62. The Respondent has not worked as a solicitor since May 2019 and does not hold a current practising certificate.

Agreed Outcome

63. The Respondent admits all of Allegations 1.1, 1.2 and 2 above and agrees:

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

    63.2. To pay costs to the SRA agreed in the sum of £16,650.00

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

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

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

66. It is agreed that:

66.1. The seriousness of the misconduct is such that neither a reprimand, nor a fine, nor a suspension is sufficient for the protection of the public and for the protection of the reputation of the legal profession;

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

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

67.1. In relation to Allegation 1.1: In raising invoices, parts of which were for costs already paid to the firm, and which had not been notified in writing to the relevant individuals, the Respondent was not acting with integrity. He knew the invoices did not accurately reflect the work undertaken and knew they were not justifiable. He transferred monies from the client account without authorisation from his clients. His conduct was contrary to acting in the best interests of his clients and he did not protect client money.

67.2. In relation to Allegation 1.2: In not banking or dealing with the dividend cheques and other remittances, in a timely manner, the Respondent failed to act with integrity. He failed to administer the estate properly by causing funds to the estate to not be available to the estate and its beneficiaries. His conduct was contrary to acting in the best interests of his clients by not protecting client money and thus causing a loss to the estate by not presenting the cheques in a timely manner.

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

68.1. In relation to Allegation 1.1, the Respondent has admitted to acting dishonestly. The Respondent accepts that he was knowingly raising invoices and transferring money from the client account corresponding to those invoices without having notified the necessary individuals, and therefore without their authorisation, and in respect of the value elements of the costs for both estates knowing that that amount had already been paid to the Firm and was thus a duplication and that those charges were not due to the Firm.

68.2. In relation to Allegation 1.2, the Respondent retained dividend cheques and other remittances for an extensive period of time (some twenty-five years). In so doing he failed to protect client money and assets and failed to take the necessary action, no matter what pressures of work existed, to present the cheques and remittances. He caused a significant loss to the beneficiaries of the estate.

69. In respect of mitigating features, the Respondent's mitigation is set out at paragraphs 56 to 62 above.

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

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Mark Rogers, Partner, Capsticks Solicitors LLP
On behalf of the Solicitors Regulation Authority Limited
Date:

[redacted]

Andrew Butler (Respondent)
Date: 31st March 2023