SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12452-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

GLENN CHARLES HURSTFIELD Respondent

Before:

Mr R Nicholas (in the chair)
Mr E Nally
Mr G Gracey

Date of Hearing: 27 June 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 Hurstfield by the Solicitors Regulation Authority LTD ("SRA") were that:

1.1 On or around November 2013, he prepared or caused to be prepared an amended and back dated Declaration of Trust that changed the operative provision from irrevocable to revocable. In doing so, he breached any or all of Principles 2 and 6 of the SRA Principles 2011 ("the Principles").

1.2 On 16 March 2016 and 24 May 2016, he authorised loans of £40,000.00 on each occasion, to be made from Client B, of which he was a Trustee, to Client C, of which he was a Director, without the authorisation of his Co-trustee and without documenting the loans. In doing so, he thereby breached any or all of Principles 2, 3 and 10 of the Principles, and/or Rule 27.2 of the SRA Accounts Rules 2011 ("the Accounts Rules") and/or failed to achieve Outcome 3.5 of the Code of Conduct 2011 ("the Code").

1.3 On 6 November 2015, he made or authorised a transfer of £112,000.00 from the client account of Client Ca into his personal bank account for a purported loan repayment, in relation to which there were no records on the client file for the purported loan. In doing so, he thereby breached any or all of Principles 3 and 10 of the Principles and/or Rule 29.1 of the Accounts Rules and/or failed to achieve Outcome 3.4 of the Code.

1.4 Between 2015 and 2018, whilst acting for Clients C, D and E, he caused or allowed payments to be made through the client accounts which did not relate to underlying legal transactions. In doing so, he breached Rule 14.5 of the Accounts Rules and/or Principle 6 of the SRA Principles.

2. In addition, allegation 1.1 was advanced on the basis that Mr Hurstfield'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 Hurstfield admitted all of the allegations, including that his conduct as regards allegation 1.1 had been dishonest.

Documents

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

- Rule 12 Statement and Exhibit JTC1 dated 24 March 2023
- Respondent's Answer dated 21 April 2023
- Statement of Agreed Facts and Proposed Outcome dated 21 June 2023
- Testimonials on behalf of the Respondent dated June 2023

Background

5. Mr Hurstfield was admitted to the Roll in November 1984. He did not hold a current practising certificate. He last held a practising certificate for 2018/19. He was a beneficial owner of Berkeley Law Limited. In November 2014, Irwin Mitchell LLP acquired 100% of the shareholding of Berkley Law Limited. Mr Hurstfield became an

employee of the rebranded entity in June 2017. On 15 August 2018, Mr Hurstfield was suspended following an investigation by Irwin Mitchell LLP into his conduct following internal audits. In September 2018, Mr Hurstfield resigned. Enclosed with his letter of resignation was a cheque in the sum of £147,500.00 to reinstate any funds (together with interest) that might be interpretated as improper withdrawals of client money.

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

6. The parties invited the Tribunal to deal with the Allegations against Mr Hurstfield in accordance with the Statement of Agreed Facts and Proposed 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

7. 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 Hurstfield'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.

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

9. The Tribunal considered the Guidance Note on Sanction (10th edition/June 2022). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

10. The Tribunal found Mr Hurstfield's conduct fell far below the standards of integrity, probity and trustworthiness expected of a solicitor. He knew that the original Declaration of Trust was binding and knew that the second Declaration of Trust could not replace the original and had no real legal value. Despite this, he did not advise his client of the true position. Further, he had knowingly amended a legal document, without lawful authority to do so, to the detriment of the beneficiary. He had failed, in his duty as a Trustee, to discharge his duty of care and to act in accordance with the provisions of the Trust.

11. The Tribunal determined that given the very serious nature of the misconduct, the lesser sanctions that the Tribunal was able to impose were disproportionate. The Tribunal determined that striking Mr Hurstfield off the Roll of Solicitors was commensurate with his admitted misconduct. Accordingly, the Tribunal approved the sanction proposed by the parties.

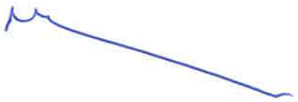
Costs

12. The parties agreed costs in the sum of £52,282.62. This represented a reduction in the costs that would have been claimed had the matter proceeded to a substantive hearing. The Tribunal determined that the agreed costs were reasonable. Accordingly, the Tribunal ordered that Mr Hurstfield pay costs in the agreed amount.

Statement of Full Order

13. The Tribunal Ordered that the Respondent, GLENN CHARLES HURSTFIELD, 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 agreed sum of £52,282.62.

Dated this 5th day of July 2023
On behalf of the Tribunal



R Nicholas
Chair

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL **Case No: 12452-2023**

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED ("SRA")

Applicant

and

GLENN CHARLES HURSTFIELD

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

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1. By an application dated 24 March 2023, and the statement made pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the SRA brought proceedings before the Solicitors Disciplinary Tribunal making four allegations of misconduct against the Respondent, Glenn Charles Hurstfield.

The allegations

2. The allegations against the Respondent, made by the SRA within that statement are that:

   1.1 On or around November 2013, he prepared or caused to be prepared an amended and back dated Declaration of Trust that changed the operative provision from irrevocable to revocable. In doing so, he breached any or all of Principles 2 and 6 of the SRA Principles 2011 ("the Principles").

   1.2 On 16 March 2016 and 24 May 2016, he authorised loans of £40,000.00 on each occasion, to be made from Client B, of which he was a Trustee, to Client C, of which he was a Director, without the authorisation of his Co-trustee and without documenting

the loans. In doing so, he thereby breached any or all of Principles 2, 3 and 10 of the Principles, and/or Rule 27.2 of the SRA Accounts Rules 2011 ("the Accounts Rules") and/or failed to achieve Outcome 3.5 of the Code of Conduct 2011 ("the Code").

1.3 On 6 November 2015, he made or authorised a transfer of £112,000.00 from the client account of Client Ca into his personal bank account for a purported loan repayment, in relation to which there were no records on the client file for the purported loan. In doing so, he thereby breached any or all of Principles 3 and 10 of the Principles and/or Rule 29.1 of the SRA Accounts Rules 2011 ("the Accounts Rules") and/or failed to achieve Outcome 3.4 of the Code.

1.4 Between 2015 and 2018, whilst acting for Clients Ca, D and E, he caused or allowed payments to be made through the client accounts which did not relate to underlying legal transactions. In doing so, he breached Rule 14.5 of the Accounts Rules and/or Principle 6 of the SRA Principles.

3. 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.

4. The Respondent admits each of these allegations in full, including that his conduct as alleged in allegation 1.1 was dishonest.

Agreed Facts

5. The following facts and matters, which are relied upon by the SRA in support of the allegations set out within paragraphs 2 and 3 of this statement, are agreed between the SRA and the Respondent.

Background

6. The Respondent, who was born on 27 June 1957, is a solicitor having been admitted to the Roll on 1 November 1984. He does not currently hold a practising certificate. He last held a practising certificate for 2018/2019.

7. From 2010, he was a beneficial owner of Berkeley Law Limited (holding 25% of shares in the Firm) which specialised in domestic and international estate and tax planning for individuals, including trusts, wills and related schemes.

8. On 5 November 2014, Irwin Mitchell LLP acquired 100% of the shareholding of Berkeley Law Limited. The two firms were amalgamated in May 2016 and Berkeley Law Limited was rebranded as Irwin Mitchell's London Tax, Trusts and Estates Practice ("TTE"), which operated as a separate department of Irwin Mitchell with a separate office. The Respondent signed a contract of employment with TTE on 22 June 2017.

9. On 15 August 2018, the Respondent was suspended by Irwin Mitchell whilst the firm undertook an investigation into his conduct, after concerns arose during the course of internal audits of TTE in July and September 2017.

10. On 28 September 2018, the Respondent resigned from TTE and declined to attend a meeting that had been arranged to discuss Irwin Mitchell's concerns.

11. The Respondent enclosed a cheque with his resignation letter made out to Irwin Mitchell in the sum of £147,500.00. The resignation letter stated that the cheque was intended to,

"..enable Irwin Mitchell to reinstate the funds which the auditors have suggested might be interpreted as a potentially inappropriate withdrawal of client money due to insufficient explanation or lack of documentary evidence... This includes interest at 3% per annum to ensure there is absolutely no financial loss either to the client or to Irwin Mitchell. Many of the entries I have already tried to justify and explain; others I genuinely cannot recall as too much time has gone by. Nonetheless, I prefer to leave with a clear conscience that nobody is out of pocket as a result of any technical or procedural breaches on my part."

12. The letter did not identify which client matters the money ought to be allocated. The Applicant understands that the Respondent reviewed the matter with Irwin Mitchell and subsequently concluded that the money should be allocated to Clients Ca, D and E.

13. The conduct in this matter came to the attention of the SRA on 24 October 2018, when Irwin Mitchell informed it of their concerns about the Respondent's conduct that had been identified during the internal audits.

14. Irwin Mitchell instructed Herbert Smith Freehills to conduct an investigation in relation to the issues identified by the internal audits.

15. Upon completion of Irwin Mitchell and Herbert Smith Freehills investigations, the SRA commenced a with notice forensic investigation on 25 February 2020.

16. A forensic investigation report was produced on 26 May 2021, which confirmed the following issues on the Respondent's client files, which had been identified in the Herbert Smith Freehills report;

i. In the matter of Client A, a Declaration of Trust had been backdated and amended so as to change it from irrevocable to revocable.
ii. In the matter of Client B, a Trust, loans were instigated from the Trust to Client C, a charity, which were not authorised.
iii. A personal payment had been made to the Respondent from Client Ca (an account linked to Client C) of £112,000.00 in respect of purported loans that the Respondent had made to Client C.
iv. In respect of Clients Ca, D and E, the client account had been used as a banking facility.

Allegation 1.1 – prepared or caused to be prepared an amended and back dated Declaration of Trust that changed the operative provision from irrevocable to revocable

17. Whilst a Director of Berkeley Law Limited, the Respondent acted for Client A in respect of a number of personal matters.

18. By way of letter dated 9 May 2012 to Client A and his wife, the Respondent enclosed a Declaration of Trust for signature.

19. A signed copy of the Declaration of Trust, dated 14 May 2012, was received by the Respondent on 17 May 2012. The Declaration of Trust set out that Client A and his wife were the Trustees and legal owners of Property A. The Operative Provision of the Trust stated that,

"*The Trustees, whilst retaining the legal title to the Property, hereby irrevocably declare that, from the date of this deed, they shall hold the equitable interest in the Property and the money, investments and other assets from time to time deriving from the Property, upon trust for their son [Person A] absolutely.*"

20. On 25 June 2013, another solicitor at Berkeley Law Limited, Mr Claude Alleston, emailed the Respondent and advised him that he had received a call from Client A's in house lawyer who had wished to discuss the position with the Trust and Property A. It transpired during the call that Client A and his wife had concerns that their son was intending to leave an interest in the property to someone in his Will.

21. In the email, Mr Alleston told the Respondent that,

"I'm afraid that because the house is held on bare trust, it is effectively [their son's]. The only "control" that [Client A] and [his wife] have is that [their son] could not sell or charge the property without their consent."

22. By email of the same date, the Respondent replied,

"Absolutely correct Claude.

The whole idea was that the house should not be in [Client A] and [his wife's] estate for IHT purposes but that they should be able to retain control over [their son's] ability to sell/mortgage/gift it while he was alive."

23. Mr Alleston replied the same day to thank the Respondent and advise that he would explain the position to the client's in house lawyer and that "*hopefully, [Client A] won't be too disappointed.*"

24. On 28 June 2013, Mr Alleston emailed the Respondent to advise that he had spoken to Client' A's in house lawyer and told her that Property A was,

"*..effectively [the Client's son's] (albeit held on bare trust for him), and how he was entitled to include a legacy of his interest in the house to someone in his Will and that there was nothing that [Client A/his wife] could do to prevent this.*"

25. By way of letter dated 14 October 2013, the Respondent wrote to Client A in respect of his wife's will, a part of which related to Property A. The Respondent explained that he understood the concerns regarding the property. However, he advised that,

"*part of the procedure we adopted was to remove the value of [the Property] from your estate for inheritance tax purposes and hence why you retained only the legal title but not*

the value element subject of course to you and [your wife] surviving for the usual seven year period. To make sure the seven year clock began to run, we could not make the gift revocable or conditional and as a result it is not possible to resile from the arrangement."

26. The Respondent wrote to Client A again by way of letter dated 29 November 2013. He referred to a meeting held with Client A "*earlier this month*" and went on to say that the "*most pressing matter I believe is to revoke the Declaration of Trust which you and [your wife] entered into regarding [Property A] with the intention that I will now amend your Wills to allow [your son] to occupy the property during his lifetime but so that there is nothing for him to leave in his Will when he goes.*"

27. The Respondent enclosed with the letter a ""*replacement" Declaration of Trust and the Revocation.*"

28. The amended Declaration of Trust was enclosed with the letter. It was backdated to 14 May 2012, the same date as the original Declaration of Trust and was the same, save for the word "*irrevocably*" in the original document had been changed to "*revocably*".

29. That amended and backdated document was signed by Client A and his wife and on 3 December 2013, they signed a letter which set out their "*formal revocation*" of the Declaration of Trust so that "*both the legal and beneficial ownership of [Property A] return to us.*"

30. By way of letter dated 13 December 2013, the Respondent acknowledged receipt of the "*revised*" Declaration of Trust and revocation. He advised the client that he would make the necessary amendments to his and wife's Wills.

31. The Respondent further wrote to Client A on 30 December 2013 in which he confirmed that "*we have revoked the Declaration of Trust*".

<u>Allegations 1.2 and 1.3 – unauthorised loans from Client B to Client C and transfer of £112,000.00 from the client account of Client C into his personal bank account</u>

32. Client B was a Trust, of which the Respondent was a Trustee. His colleague, Mr Wood was Co-trustee until his death in autumn 2015, whereupon Mr Alleston was appointed as Co-trustee on 19 October 2015.

33. The Trust Deed stated that decisions of the Trust were exercisable by a "*decision of the majority of the Trustees present and voting at any duly constituted meeting*".

34. Client C was a charity and a client of Berkeley Law Limited. The Respondent was also a Director of the charity.

35. On 19 June 2015, a loan of £150,000 was made from Client B to Client C. That loan was provided with the consent and approval of the Respondent's Co-trustee, Mr Wood and a loan agreement was executed between the parties.

36. On 6 November 2015, a payment of £112,000.00 was transferred from the client account of Client Ca (a linked account to Client C) to the Respondent's personal account with the reference "*loan repayment*". The balance on the client ledger at the date of the payment was £175,872.68.00. At the time the payment was made, the Respondent's bank account was overdrawn by £113,706.20.

37. There was an email dated 5 November 2015, on the client file of Client C from Client Ca, the Founder and a Director of the charity Client C, to the Respondent which stated,

"*Thank you for the generous loans to [Client C] in 2014 and 2015. I wish that you would reimburse the "112,000 you are owed from available funds in the [Client C] account we have with you at Berkeley Law.*"

38. There appeared to be no evidence on the client file or client ledger for Client C of the loans purportedly made by the Respondent to Client C.

39. On 16 March 2016 and 24 May 2016, two further payments of £40,000 each, referred to as "*donations*" in correspondence, were made from Client B to Client C. However, there appeared to be no loan agreement on the client file in respect of these loans and no evidence of approval from either Mr Wood, who was Co-Trustee up to autumn 2015 or Mr Alleston, as Co-trustee thereafter.

40. In a letter to Irwin Mitchell dated 9 January 2020, Mr Alleston stated that he was appointed a Co-trustee on 19 October 2015. He advised that as such he was not aware, nor party to the agreement to loan £150,000 to Client C. However, he was a Trustee at the time of the two further payments but he recognised neither payment nor did he recall approving the same.

41. Mr Alleston provided a witness statement dated 25 January 2022, confirming the contents of his letter to Irwin Mitchell.

42. On 17 September 2018, Client Ca wrote to Irwin Mitchell acknowledging the loans from Client B to Client C. She enclosed a repayment schedule with the letter and a cheque in the sum of £269,099.00 which comprised the original loan, plus the two additional loans and interest. The cheque was made out from the personal account of the Respondent.

43. On 10 May 2019, during Irwin Mitchell's investigation into the Respondent, Client Ca wrote to Irwin Mitchell and confirmed that the Respondent had made personal loans to Client C and that the payment of £112,000.00 was due back to him. These appeared to be informal and undocumented loans across a number of years. Client Ca also clarified that the client accounts of Client C and her account (Client Ca) were linked because there was difficulty setting up a bank account for Client C and so in the interim the client account of Ca was used.

Allegation 1.4 – payments through client account without any underlying legal transaction

Client Ca

44. Between 2015 and 2018, donations and loans were paid into the client bank account. In particular, between 9 June 2017 and 2 January 2018, ten payments totalling £154,534.78 were made from the client bank account that did not appear to relate an underlying legal transaction.

Client D

45. The Respondent acted for Client D as her Property and Financial Affairs Attorney. In April 2018, the client account of Client D received €6,750.000.00 which represented the proceeds of a house sale. However, the Respondent was not instructed to act in the sale of the property.

46. On 5 April 2018, a transfer of £2,000,000.00 was made from Client D's client account to her daughter's account. That payment did not relate to an underlying legal transaction.

Client E

47. The Respondent acted for Client E as her Property and Financial Affairs Attorney from October 2016.

48. The following payments were made from the client account which did not appear to relate to an underlying transaction:

    a. £100,000.00 to Sunrise UK from 2017 to 2018
    b. £3,303.00 to AXA PPP from 2017 to 2018
    c. £1,900.00 to Belsize Synagogue from 2017 to 2018.

Non-Agreed Mitigation

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

Allegation 1.1

50. When Client A's wife came to see me in October 2013, she told me in confidence that she was ill and wanted to be sure her Will and affairs were in order. She also told me about the concerns she had about her son, Person A, a recovering drug addict, and his re-establishing contact after many years with his half sister, herself at the time a current drug user. She asked me to confirm that the Declaration of Trust she and her husband, Client A, had signed in 2012 dealing with the house next to their own and occupied by their son as his home meant he could not sell, mortgage or gift Property A. I explained the effect of the Declaration of Trust and she became very agitated and upset. She felt she had not fully understood the effect of the Declaration and had assumed that as legal owners, this allowed her and her husband to take back Property A if they felt this was in their son's best interests. I set this out in my subsequent letter to Client A dated 14th October 2013. Client A then came to see me in person in November 2013 and asked if there was anything which could be done regarding Property A, bearing in mind his wife's health, her obvious distress and the fact she had been mistaken as to the effect of the Declaration of Trust. It was at this point I suggested the replacement of the original irrevocable Declaration of Trust with the revocable version of the same date which Client A and his wife subsequently revoked. Client A's wife died of her illness in January 2016 and I believe Property A which Person A continued to occupy throughout was subsequently gifted to him under Client A's Will. Being a member of a very wealthy

family and a beneficiary of his parents' Wills as well as a potential beneficiary of various substantial family trusts, I felt Person A would not suffer any real detriment or change in his status quo. I truly believed I was acting in the best interests of the clients who in turn believed they were acting in the best interests of their son.

51. Client A's wife in particular was a hugely compassionate woman and during the course of her marriage to Client A, the couple fostered and adopted a large number of children, one of which was Person A. Both he and his adoptive brother were damaged children but Client A and his wife were not deterred and brought them up with even greater love, care and understanding. Although a high profile and inspirational family, they are very normal people and given they were facing massive grief due to the wife's premature death and the wife's obvious distress in wishing to do all she could before she died to protect Person A, I realise I acted as a compassionate human being first and a solicitor second although with no intention of being dishonest. Nevertheless, I accept this was not the correct professional decision.

Mitigation in relation to Allegation 1.2

52. The FIO was not able to find in Irwin Mitchell's files the Addendum document drawn up by my colleague, Mr Wood, by which the draw down facility was increased to £250,000.00 on the same terms as the original Loan Agreement dated 19th June 2015 but with an additional year's repayment period. Therefore, I cannot prove the Addendum exists and hence why I have no choice but to admit the Allegations. However, as I told the FIO, I distinctly recall signing such a document at the home of Mr Wood shortly before he died. Although seriously ill, Mr Wood retained full capacity until the very end and worked entirely from home, taking delivery of and retaining the original files in his study. This can be confirmed by his wife and also his PA. My colleague, Claude Alleston, who had also worked closely with Mr Wood at Berkeley Law, was appointed as Trustee to replace Mr Wood soon after Mr Wood died. As both the original Loan Agreement and the Addendum had been approved by Mr Wood while he was alive and before Mr Alleston was appointed Trustee, I assumed I had the power to draw on the agreed Loan facility without further authority. However, I accept this may not have been sufficient fully to meet the Principles referred to above. Nevertheless, Mr Alleston was made aware of the Loan Agreement and in his letter of 9th January 2020 to Irwin Mitchell, he confirmed he recalled the loan arrangement and the grounds on which it was made. He goes on to say that although he does not recognise the additional loan payments themselves and cannot recall approving them, his comments "are based upon my best recollection of events and so given the amount of time that has passed, may not be entirely accurate".

53. The loans from Client B to Client C were at rates of interest greater than the yield from standard investments and represented a relatively small proportion of the overall assets

of Client B. There was therefore significant benefit to Client B as well as the security of the Loan Agreement and my personal assurance to Mr Wood that I would make good on any part of the loans/interest which remained unpaid. The loans and all accrued interest have subsequently been repaid in full.

Allegation 1.3

54. The loans made by myself and Client Ca to Client C arose in the early days of the charity and were very much on an ad hoc basis. We both knew that, as with many arts charities which do not benefit from Government funding, there was a real risk that our loans may not be paid in full or at all. This is the reason they were informal, unsecured and interest free and hence why there was no formal documentation on file. Any risk was therefore ours alone and not the charity's. Once it was clear the charity would survive and grow and with additional funding arising annually from an increasing number of patrons (excluding the Loans from Client B referred to in Allegation 1.2), it was agreed our personal loans could be repaid. The sums due to me and to Client Ca were I believe calculated by Client C from their bank statements. My loans were acknowledged and the repayment thereof explicitly approved by Client Ca, not only in her email of 5th November 2015 but also in greater detail in her letter to Irwin Mitchell of 10th May 2019. In that letter Client Ca also explained the background to the loans. Reference is also made in the Allegation to the fact that at the time the loan was repaid to me, my overdraft at C.Hoare & Co stood at a similar figure. I state again this was entirely coincidental. At the time, I had a secured overdraft of £250,000.00 which was used from time to time to acquire investment property so there was still plenty of headroom in the facility even before the loan was repaid. I nevertheless accept why this could be viewed as a potential conflict of interests.

55. As stated earlier, the loans which I and Client Ca had made to Client C were interest free and entirely unsecured and given we had from the start accepted they may never be repaid in full or at all, there was no risk to the charity; further, adequate funding from other patrons and supporters was from 2016 onwards not in doubt. However, as with all performing charities, there are pinch points where the income budgeted for is not actually received until much later in the financial year (for example the lucrative Theatre Production Tax Credits) and therefore, immediately after the performance season ends (in the case of Client C, August/September), there is often a cash flow problem. This has to be met either by bank loans or personal loans from patrons/the Board. However, there is little risk the charity would be unable to pay its debts as the annual budget is worked out in considerable detail and always with an eye to caution.

Allegation 1.4

56. The new Rules originally came into force during the currency of Berkeley Law. Until the firm was acquired by Irwin Mitchell, Berkeley Law was independently audited on a monthly basis but although many of my files were audited, I cannot recall ever being advised that a payment made into or from the client account had breached the Rule against using it as a bank account unless there was an underlying transaction. In a number of cases, I had acted for the client/client family for nearly 40 years and on an ongoing basis, sometimes with weekly contact. Although some were indeed transactional, due to the nature of private client work, sometimes crossing generations, there were invariably ongoing/underlying matters. The auditor repeatedly stated my client care was of the highest standard.

57. In her letter to Irwin Mitchell dated 10th May 2019, Client Ca explained the background to the authorised use of her client account as a temporary banking facility. This does not excuse the breach but I genuinely thought I was acting in the best interests of the client and as I had also advised on her personal tax position in conjunction with her accountants, there was little or no risk of tax evasion or money laundering.

58. I had acted for Client D for many years while she was living in the UK and continued to do so after she moved permanently to Ibiza where she acquired a domicile of choice. When she moved from Ibiza to Barbados and sold the Spanish property, she wanted to make a gift to her daughter but to avoid (legitimately) the gift coming onshore and thereby being subject to the 7 year survivorship rule, the funds were transferred from the lawyers in Ibiza to Irwin Mitchell's offshore account and the gift was made from there at the request and with the approval of Client D. This does not excuse the breach but again I believed I was acting in the best interests of the client in that had the funds been brought into the UK and the gift made from here, there was a significant risk (given the client's age) that a substantial inheritance tax liability could have arisen when it could have been legally averted.

59. I had acted for Client E for nearly 40 years and on an ongoing basis. In that time she had become almost like a member of my family. She had no family of her own other than a niece and nephew living in Israel and so when she went into care a few years before she died, they were unable to help. Client E had given me her LPA and although she retained full capacity until her death just short of her 93rd birthday, she was not mobile due to severe arthritis and nor was she capable of performing the task of internet banking. With regard to the transactions referred to, it was impossible to put these on standing orders/direct debits. The care home fees fluctuated monthly depending on the number of days in the month and the "extras" incurred by the client in the preceding month. Similarly, the annual private medical insurance premium changed annually as she aged as did the contributions to her synagogue. This does not excuse the breach but, again, I genuinely believed I was acting in the best interests of my client and as I

had an in depth knowledge of her financial affairs, there was no risk of tax evasion or money laundering.

60. The Respondent does not contend that the mitigation set out above amounts to exceptional circumstances which would justify the Tribunal in making any order other than that he be struck off the Roll.

Penalty proposed

61. The Respondent admits Allegations 1.1 to 1.4 in their entirety. The parties therefore agree and propose that the Respondent should be struck off the Roll of Solicitors.

62. With respect to costs, it is further agreed and proposed that the Respondent should pay the SRA's costs of this matter agreed in the sum of £52,282.62.

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

Explanation as to why such an order would be in accordance with the Tribunal's sanctions guidance

64. The Respondent has admitted dishonesty in relation to Allegation 1.1. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (10th edition), at paragraph 51, states that: "*The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see* ***Solicitors Regulation Authority v Sharma*** *[2010] EWHC 2022 (Admin)).*"

65. In **Sharma [2010] EWHC 2022 (Admin) at [13]** Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:

"(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty...

(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...

(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others..."

66. In relation to Allegation 1.1, the Respondent has accepted that at the time of preparing (or causing to be prepared) the original Declaration of Trust he was aware that it was irrevocable and binding on both Client A and his wife. The Respondent was aware of the limited ways that a Declaration of Trust could be legitimately amended, and that this did not include preparing and backdating a new Declaration to replace the original. Despite this, the Respondent prepared (or caused to be prepared) a secondary Declaration of Trust, which he then backdated and provided to Client A and his wife. The Respondent advised Client A and his wife that the second Declaration of Trust could replace the original. The Respondent knew that the second Declaration could not replace the original Declaration (and had no real legal value) but failed to advise Client A and his wife of this. The Respondent was also aware of the detrimental impact that the amended Declaration of Trust could have to the beneficiary's entitlement to Property A but failed to advise Client A and his wife of this.

67. This was a serious act of dishonesty and the case plainly does not fall within the small residual category where striking off would be a disproportionate sentence. Accordingly, the fair and proportionate penalty in this case is for the Respondent to be struck off the Roll of Solicitors.

68. In all the circumstances of the case, it is therefore proportionate and in the public interest that the Respondent should be struck from the Roll of Solicitors.