

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12459-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

RESPONDENT AD

Respondent

Before:

Ms H Dobson (in the Chair)

Ms B Patel

Ms J Rowe

Date of Hearing: 7 September 2023

Appearances

Suzanne Jackson, solicitor in the employ of the Solicitors Regulation Authority Ltd of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Susanna Heley, solicitor of Weightmans, The Hallmark Building, 105 Fenchurch Street, London, EC3M 5JG, for the Respondent.

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. By its application dated 17 April 2023, and the statement made pursuant to Rule 12 (2) of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority Ltd (“the SRA”) brought proceedings before the Solicitors Disciplinary Tribunal making two allegations of misconduct against [SOLICITOR AD].
2. The allegations were that: -
 - 2.1 While in practice as a Partner/owner manager at (“the Firm”):
 - 2.2 He misappropriated estate monies on the matters of:
 - (i) OH in the sum of £100,000 2019
 - (ii) RH in the sum of £100,000 2019

Causing a shortage on client account, in the total sum of £200,000.00 which he failed to replace promptly and in doing so he breached:

 - (i) any or all of Principles 2, 6 and 10 of the SRA Principles 2011 ("the 2011 Principles") and any or all of Rules 7.1 and 20.1 of the SRA Accounts Rules 2011 ("the 2011 Accounts Rules")
 - 2.3 He overcharged on the estates of:
 - (i) Estate of OH - between 2019 and 2019 an overcharge of £62,305.38
 - (ii) Estate of RH - between 2018 and 2019 an overcharge of £83,238.24
 - (iii) Estate of (EB) - between 2016 and 2018 an overcharge of £26,028.51
 - (iv) Estate of (JM) - between 2019 and 2020 an overcharge of £21,540.96
 - (v) Estate of (JTW) - between 2017 and 2018 an overcharge of £3,756.80
 - (vi) Estate of (AMB) - between 2017 and 2019 an overcharge of £1,487.65

and in doing so:

 - 2.3.1 insofar as such conduct took place on or after 9 November 2016 but before 25 November 2019, acted in breach of any or all of Principles 2, 6 and 10 of the 2011 Principles
 - 2.3.2 insofar as such conduct took place on or after 25 November 2019, acted in breach of any or all of Principles 2, 4 and 5 of the 2019 Principles and Paragraph 4.2 of the Code of Conduct for Solicitors, RELs and RFLs 2019 ("the 2019 Code for Solicitors)
3. In addition, the SRA alleged that, where the conduct took place before 25 November 2019, the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct.

4. The allegations were admitted by Respondent AD. Respondent AD also admitted that their conduct was dishonest.

Documents

5. The Tribunal had before it the following documents:-
 - Rule 12 Statement and Exhibit SEJ1 dated 17 April 2023
 - Statement of Agreed Facts and Outcome dated 7 September 2023

Background

6. The Respondent was admitted to the Roll on 15 January 1976. At all relevant times a partner/owner - manager in the Firm and held the roles of Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA).

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

7. The parties invited the Tribunal to deal with the Allegations against the Respondent 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 the Respondent'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 the Respondent'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.
11. The Tribunal noted that the Respondent admitted all the allegations including dishonesty and lack of integrity.
12. The Respondent raised no matters in mitigation save for ill-health and 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, and the absence of exceptional circumstances the only appropriate and proportionate sanction was to strike the Respondent off the Roll of solicitors.
13. Accordingly, the Tribunal approved the sanction agreed by the parties.

14. At the heart of the allegation was misappropriation of client monies and overcharging. The victims were the dead and beneficiaries. A solicitor handling such work is entrusted by those who can no longer speak for themselves to carry out their final wishes with professionalism and care and not for the purpose of unwarranted self-enrichment. Irrespective of experience and longevity in the profession there can be no place within it for those who abuse the trust placed in them.

Costs

15. The parties agreed that the Respondent would pay costs in the sum of £1,000.00. The Tribunal determined that the agreed amount was reasonable and proportionate. Accordingly, the Tribunal ordered the Respondent to pay costs in the agreed sum.

Statement of Full Order

16. The Tribunal Ordered that Respondent AD 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 £1,000.00.

Dated this 25th day of September 2023

On behalf of the Tribunal

H Dobson

H Dobson
Chair

JUDGMENT FILED WITH THE LAW SOCIETY

25 SEPT 2023

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY LTD

Applicant

And

SOLICITOR AD

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

Preamble

The Respondent is making an application for anonymity and a reporting restrictions order on the basis of confidential medical evidence. [REDACTED]

1. By its application dated 17 April 2023, and the statement made pursuant to Rule 12 (2) of the Solicitors (Disciplinary Proceedings) Rules 2019 which accompanied that application, the Solicitors Regulation Authority Ltd ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal making two allegations of misconduct against [SOLICITOR AD].

The allegations

2. The allegations against [Solicitor AD] made by the SRA within that statement were that: -

2.1 While in practice as a Partner / owner manager at [REDACTED]

[REDACTED] (“the Firm”):

2.2 He misappropriated estate monies on the matters of:

(i) OH in the sum of £100,000 [REDACTED] 2019

(ii) RH in the sum of £100,000 [REDACTED] 2019

Causing a shortage on client account, in the total sum of £200,000.00 which he failed to replace promptly and in doing so he breached:

Allegation 2.2 (i)

any or all of Principles 2, 6 and 10 of the SRA Principles 2011 (“the 2011 Principles”) and any or all of Rules 7.1 and 20.1 of the SRA Accounts Rules 2011 (“the 2011 Accounts Rules”)

Allegation 2.2 (ii)

any or all of Principles 2, 4 and 5 of the SRA Principles 2019 (“the 2019 Principles”), Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs (“the 2019 Code for Solicitors”) and any or all of Rules 5.1 and 6 of the SRA Accounts Rules 2019 (“the 2019 Accounts Rules”)

2.3 He overcharged on the estates of:

(i) Estate of OH – between [REDACTED] 2019 and [REDACTED] 2019 an overcharge of £62,305.38

(ii) Estate of RH – between [REDACTED] 2018 and [REDACTED] 2019 an overcharge of £83,238.24

(iii) Estate of (EB) – between [REDACTED] 2016 and [REDACTED] 2018 an overcharge of £26,028.51

- (iv) Estate of (JM) – between [REDACTED] 2019 and [REDACTED] 2020 an overcharge of £21,540.96
- (v) Estate of (JTW) – between [REDACTED] 2017 and [REDACTED] 2018 an overcharge of £3,756.80
- (vi) Estate of (AMB) – between [REDACTED] 2017 and [REDACTED] 2019 an overcharge of £1,487.65

and in doing so:

2.3.1 insofar as such conduct took place on or after 9 November 2016 but before 25 November 2019, acted in breach of any or all of Principles 2, 6 and 10 of the 2011 Principles

2.3.2 insofar as such conduct took place on or after 25 November 2019, acted in breach of any or all of Principles 2, 4 and 5 of the 2019 Principles and Paragraph 4.2 of the Code of Conduct for Solicitors, RELs and RFLs 2019 (“the 2019 Code for Solicitors)

3. In addition, the SRA alleged that, where the conduct took place before 25 November 2019, the Respondent’s conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent’s misconduct.

Admissions

4. The Respondent admits each of these allegations. He also admits that his conduct in acting as alleged was dishonest.

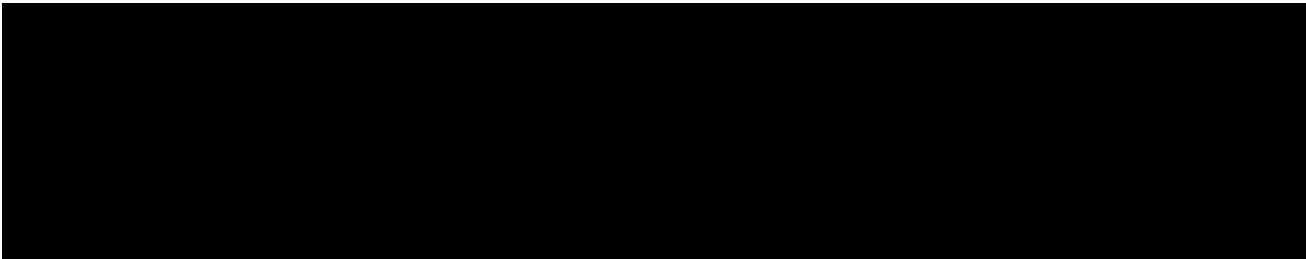
Agreed Facts

5. Professional Details

5.1 The Respondent was at all relevant times a partner / owner – manager in the Firm and held the roles of Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA). [REDACTED]

[REDACTED]

5.2 The Respondent had been a partner [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] who is referred to below, was also a solicitor owner / manager in the Firm and had been so since 2017. [REDACTED]
[REDACTED] The Firm predominately undertook conveyancing (79%) and probate (21%) work.



5.4 The Respondent left the Firm [REDACTED]
[REDACTED]

5.5 The Respondent is still on the Roll of Solicitors but no longer holds a PC. His last PC was for the year 2020/2021.

The facts and matters relied upon in support of the allegations

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

6.1 A duly authorised officer of the Applicant, a Forensic Investigations Officer (the “FIO”) commenced a Forensic Investigation of the Firm on [REDACTED]. The inspection culminated in a report (the FI Report) dated [REDACTED] with attachments. The extraction date used by the FIO was [REDACTED]. This was the date the FIO used to conduct a comparison of the firm’s client liabilities against client money held.

6.2 The FI report revealed a number of serious issues on probate files which the Respondent was handling. This included misappropriation of client monies and overcharging. The books of account were not in compliance with the Accounts Rules and there was a shortage on client account [REDACTED] as at [REDACTED] 2020. [This was due to the full replacement of the £200,000,00 misappropriated not having been replaced

in full at this time. [REDACTED]

6.3 As at the extraction date, [REDACTED] 2020, only the Respondent [REDACTED] could authorise payments from the client and office accounts. An accounts clerk at the Firm operated the online banking, [REDACTED] and three other individuals at the Firm could access it, but not the Respondent. The Firm had an overdraft facility of £30,000.00 on its office account.

6.4 The Firm's procedures in respect of cheque payments from client account was:

1. Those who wanted cheques completed chits which they passed to the Accounts Department.
2. On receipt of the chits, the Accounts Clerk drafted the cheques and brought them to [REDACTED] on a daily basis, for signing.
3. [REDACTED] checked the drafted cheques before signing them.

6.5 [REDACTED] signed all cheques as the cheque book was held in a safe room at the [REDACTED]

Allegation 1.1 – Misappropriation of estate monies and shortage

6.6 The Respondent misappropriated £200,000 from two estates on which he was working.

(i) Estate of OH

6.7 The Respondent was the sole executor of the OH Estate. OH died on [REDACTED] and probate was granted on [REDACTED]. One of the residuary beneficiaries under the will was [a charity] [REDACTED]

6.8 The client care letters, which were not on the client file, included a letter to [REDACTED] [REDACTED] which explained the basis upon which the work would be carried out, together with the charges. The year date on the letter [REDACTED] was incorrectly stated as 2018 instead of 2019.

6.9 [REDACTED] the client side of the ledger was debited with a cheque numbered [REDACTED] for £100,000.00 with the description “*ch to Nationwide – [charity]*”.

6.10 [REDACTED] the above cheque showed as a presented item on the client bank account statement.

6.11 [The charity] in an email dated 30 November 2020 to the FIO stated;

“I have reviewed my file and also double checked with our finance team and we have not received a payment on this matter.”

This was confirmed by letter dated 3 February 2021.

6.12 [The Charity] provided the FIO with copies of correspondence between them and the Firm. The Respondent had not provided any of this correspondence to the FIO. The correspondence was not on the client file.

6.13 [The Charity] had not heard from the Firm until [REDACTED] 2019, being after [The Charity] writing to the Firm (on [REDACTED] 2019) stating that [The Charity] thought it had an interest. The email confirmed that the Firm was acting in the administration of the Estate, and that there was a property to sell, which was still on the open market.

6.14 The Firm’s response did not mention the client care letter to The Charity dated [REDACTED] [REDACTED] 2018 [2019] nor did it mention the cheque for £100,000.00 dated [REDACTED] 2019 which showed as a presented item on the client bank account and on the ledger as a ch to Nationwide – [the Charity]

6.15 On [REDACTED] 2019, [The Charity] in an email to the Firm asked to be provided with “*a copy of the will and a copy of the schedule of the assets and liabilities in the estate as declared for probate, once available.*” The Firm provided [The Charity] with a copy of the will in a letter dated 6 November 2019. The Firm did not mention the payment by cheque of £100,000.00. The Firm listed the assets of the estate in an email dated 3 March 2020, which amounted to over £645,000.00.

6.16 The chit relating to cheque number [REDACTED] requested payment of £100,000.00 to “*Nationwide B/S*” in respect of ledger account “*H... dec’d.*” The Respondent had signed the chit.

6.17 The cheque, provided by the Firm's bank, and dated [REDACTED] 2019 was in the name of "(Nationwide) and then the Respondent's name". [REDACTED] who had signed the cheque, explained at interview with the FIO, that the cheque he signed [had been amended after signature] [REDACTED]

6.18 The information provided confirmed the details of the recipient account, [REDACTED] [REDACTED] The details also gave a further reference as [REDACTED] which is a Nationwide account.

6.19 On 30 May 2022, Nationwide provided bank statements for two accounts operated by the Respondent. Nationwide confirmed that the Respondent was the sole signatory to both accounts:

[REDACTED]

6.20 The statement for account [REDACTED] shows receipt of £100,000 into the account on 10 June 2019 by 'CQ'. The Respondent was the sole signatory to this Nationwide account. From this account, four transfers in the total sum of £97,000.00, were then made as follows:

- 13 June 2019 – £40,000
- 20 June 2019 – £15,000
- 27 June 2019 – £30,000
- 12 July 2019 – £12,000

6.21 The transfers were made to a Lloyds account, [REDACTED] [REDACTED] a business account in the name of the Respondent. (This was not an account operated by the Firm) The Respondent was the sole signatory of the account.

6.22 Substantial payments were made into the firm's office account at around the same time of the four transfers into the Respondent's Lloyds account. The payments were

either from a personal account the Respondent held at Lloyds Bank [REDACTED] or recorded as a loan from the Respondent.

6.23 There had been a previous attempt to make a Bacs payment to an account the Respondent claimed was called “*nationwide – [the Charity]*” on [REDACTED]. The chit in respect of this bank transfer request was dated [REDACTED] and was signed by the Respondent. It was identical to the chit that was provided in respect of the cheque request with regard to cheque number [REDACTED]. It instructed the payment of £100,000.00 to ‘NATIONWIDE B/S’. [REDACTED] explained that prior to the issuing of the cheque, payment by bank transfer had been attempted but the monies had been returned. [REDACTED]

Shortage on Client Account

6.24 The misappropriation of the £100,000.00 caused a shortage on client account of £100,000.00.

Replacement of Shortage

6.25 The shortage was replaced, 549 days later, by a payment of £100,000.00 from office to client account on [REDACTED] 2020.

(ii) Estate of RH

6.26 The Respondent was the sole executor of the RH Estate. RH died on [REDACTED] 2018 and probate was granted on [REDACTED] 2019. One of the residuary beneficiaries under the will was due to receive a third of the residuary estate.

6.27 An undated deed of variation which the residuary beneficiary had not signed, recorded the desire for his share of the Estate to be distributed in three equal shares to other named individuals. The residuary beneficiary’s full share was distributed to three other individuals as listed in the deed of variation.

Cheque number: [REDACTED]

6.28 In addition to this the ledger showed a distribution to the residuary beneficiary in the sum of £100,000 on [REDACTED] 2019, by cheque number [REDACTED]. There was nothing on the file provided by the Respondent to explain this.

6.29 The cheque was presented on [REDACTED] and was payable to the Respondent.

6.30 The Respondent told the Accounts Clerk he was: *'unable to pay the cheque into the bank on behalf of (the residuary beneficiary) and asked that the cheque be reissued and made out to himself as he was an executor to the estate and would be able to pay it into the trustee bank account on behalf of the beneficiary.'* [REDACTED] therefore signed the cheque on the basis that *'[the Respondent] could pay a cheque made payable to himself into the bank for the benefit of (the residuary beneficiary).'*

6.31 The stub for the cheque is dated [REDACTED] 2019 and identified the Respondent and *"H... Decd [REDACTED]"*

6.32 The cheque was paid into a business account of the Respondent held with Lloyds Bank [REDACTED] on 20 December 2019. This was a personal account of the Respondent's and was not an account operated by the Firm.

6.33 The Respondent held the following bank accounts at Lloyds Bank:

- Business account [REDACTED] with bank statements provided for the period 1 December 2019 to 31 December 2020. The Respondent was the sole signatory to this account.
- Personal account [REDACTED] with bank statements provided for the period 1 December 2019 to 31 December 2020. The statement shows transactions to Tesco, Amazon, Sainsburys, Netflix, Post Office, and Santander mortgage payments.

6.34 The total payment into the Business Account at Lloyds on 20 December 2019 was £132,698.96. The payment reference is titled 'Deposits of paper clearing,' which is the total of mixed payments made into the account on 20 December 2019, which included cheque [REDACTED] for £100,000.

6.35 The money from the estate of RH was transferred from the Respondent's business account at Lloyds to his personal account at Lloyds (with a subsequent transfer for the same amount or a lesser amount to the Firm's office account) or direct to the Firm's office account.

6.36 Most of the transfers into the Firm's office account were made when the Firm's office account was overdrawn. Some of the transfer references indicate that the Respondent was making a personal loan to the firm's office account. Drawings which the Respondent and another owner were taking at this time could not have been taken without the Respondent putting the misappropriated monies into the Firm's office account, due to it being regularly overdrawn during this period.

Cheque number: [REDACTED]

6.37 The ledger also showed a previous attempt to pay £100,000.00 to the same residuary beneficiary by cheque number [REDACTED] on [REDACTED] 2019, with the money being returned on [REDACTED] 2019. In respect to this cheque:

(a) The chit requested payment of £100,000 to 'NATIONWIDE BUILDING SOCIETY' and had been signed by the secretary to the Respondent.

(b) The copy of the cheque provided by the Firm's bank showed it to be in the name of '(Nationwide Building Society) followed by the name of the Respondent. When [REDACTED] signed cheque number [REDACTED]; however, it did not contain the name of the Respondent.

(d) The cheque stub was in the name of Nationwide and contained the Firm's reference for the RH estate.

(e) The Respondent asked for the cheque to be sent down to the [REDACTED] to be attached to a letter addressed to Nationwide Building Society saying 'RE: R H Deceased..... We enclose herewith cheque in the sum of £100,000 which kindly deposit in the Trust Account in relation to the above.'

(f) The bank rejected the cheque due to the signature on the cheque not matching the signature held by the bank. The rejected cheque was recorded in the ledger as a £100,000.00 credit dated 18 December 2019 with reference to cheque number '£100,000.00' and the description 'Cancel Chq'

Shortage on Client Account

6.38 The misappropriation of £100,000.00 from client account by way of cheque (number [REDACTED]) dated [REDACTED] 2019 caused a shortage of £100,000.00.

6.39 A cheque for [REDACTED] from the account of the Respondent's – Business A/C" dated [REDACTED] 2020 was deposited into client account on [REDACTED] 2020. The cheque was signed by the Respondent. The originating account was not one belonging to the Firm. The ledger shows two credits to the estate on [REDACTED] 2020 totalling [REDACTED] both recorded as 'ch from Lloyds – bal due to estate'.

Replacement of Shortage

6.40 The remaining [REDACTED] of the £100,000 was returned to the client account, 463 days later on [REDACTED] 2021. This was done by way of transfer from office to client account.

Allegation 1.2 – Overcharge on estates

6.41 As part of the inspection the FIO reviewed 16 client files where the Respondent had been the fee earner. The FIO instructed Mr Marc Banyard, an independent costs draftsman with over nineteen years' experience as a Costs Draftsman, to examine six of the probate files the FIO had reviewed and to prepare a report on the sums charged by the Respondent. The files included the estates of OH and RH as detailed in Allegation 1.1. Mr Banyard found overcharging of £198,357.54 across the six probate matters.

6.42 In preparing the Reports, Mr Banyard examined the Firm's full file of papers on each matter.

6.43 The Respondent had a propensity to front load the value-element charge of administering the estate rather than at the conclusion of the administration, which is not what ordinarily would be expected.

(1) Estate of OH – between 3 February 2019 and 3 May 2019 an overcharge of £62,305.38.

6.44 The Respondent was the sole executor. Between [REDACTED] 2019 and [REDACTED] 2019, 5 invoices had been raised to the estate in the total sum of £71,082.00 inclusive of VAT. The Grant of Probate detailed the gross value of the estate to stand at £665,500.

6.45 In addition to the Firm's full file of papers, Mr Banyard was forwarded a pdf of documents which had been removed from the file. This included the ledger, all invoices raised, all client care documentation, the Grant of Probate (which was also on file), the late OH's will and a handwritten schedule of costs.

6.46 The conclusions reached by Mr Banyard were that:

- A charge calculated on the basis of the Firm's stated terms of £300.00 per hour plus 3% of the value of the estate is so egregiously excessive as to inevitably give rise to an overcharge.
- As at 22 March 2019 the Firm charged a total of £67,782.00 for work undertaken, when in accordance with its own terms, they would be entitled to no more than £28,062.00.
- On an invoice by invoice analysis, the Firm has demonstrably overcharged for each invoicing period even calculating costs in accordance with its own terms.
- Conveyancing costs in respect of the property in the estate have been charged when they were not at the time due as the property had not been sold and the relevant work could not have been done.
- There was no evidence of any work on the file concerning the surrender of a tenancy so it is unclear whether the invoice concerning this is properly due.
- Costs to 8 October 2020 (the last work on file) on a quantum meruit basis stand at £8,776.62, which would represent a 'fair and reasonable sum'
- The difference between this figure and the costs actually invoiced, represent a considerable overcharge.
- The overcharge stands at £62,305.38

- The amount invoiced by the Firm does not represent a fair and reasonable sum.

(2) Estate of RH – between 5 April 2018 and 5 December 2019 an overcharge of £83,238.24

6.47 The Respondent was appointed the sole Executor of the Estate on [REDACTED] Between [REDACTED] 2018 and [REDACTED] 2019, 8 invoices had been raised to the estate in the total sum of £114,615.84 inclusive of VAT.

6.47 In addition to the full file of papers Mr Banyard was forwarded a PDF of documents which had been removed from the file which included: the ledger, all invoices raised, all client care documentation, the Grant of Probate, the late deceased's Will, and a handwritten schedule of costs (recorded on a running basis.)

6.48 The conclusions reached by Mr Banyard were that:

- That a charge calculated on the basis of the Firm's stated terms of £200.00 per hour plus 3% of the value of the estate is so egregiously excessive as to inevitable give rise to an overcharge. This becomes more so once the firm start charging at £300.00 per hour.
- Even on the basis of its own terms, the Firm has overcharged for work undertaken to 5 December 2019, having charged a total of £114,615.84, when in accordance with its own terms and their own time recordings, it would be entitled to no more than £71,864.40 (plus notional costs for the preparation of the Deed of Variation which was not recorded on file).
- On 5 of the 8 invoices, the Firm overcharged, even calculating costs in accordance with the Firm's own terms.
- Properly chargeable costs to date on a quantum meruit basis stand at £31,377.60. This figure would represent a 'fair and reasonable' sum.
- The amount invoiced to the estate represents a considerable overcharge and does not represent a 'fair and reasonable sum'

- The overcharge stands at £83,238.24.

(3) Estate of (EB) – between 9 November 2016 and 2 March 2018 an overcharge of £26,028.51.

6.49 EB died on [REDACTED] 2016. The Respondent was not the Executor in this estate. He did act in its administration. Two lay executors were appointed on [REDACTED] [REDACTED] 2017. Between [REDACTED] 2016 and [REDACTED] 2018, the Respondent raised 8 invoices in the total sum of £52,479.60 inclusive of VAT. A credit note in the sum of £6,153.20 was raised on [REDACTED] 2019.

6.50 The terms of business provided a costs estimate stating that the Firm's fees will be 'in the region of' £3,500.00 plus VAT and disbursements. The sum ultimately charged exceeded the estimate by almost 15 times.

6.51 The ultimate value of the estate was £1,048,491.00. The appropriate value element in accordance with the firm's own terms would be £10,484.91 plus VAT.

6.52 Mr Banyard was provided with the Firm's full file of papers, which consisted of one bundle of loose papers.

6.53 The conclusions reached by Mr Banyard were that:

- That a charge calculated on the basis of the Firm's stated terms of £200 per hour plus 1% of the value of the estate is one that is fair and reasonable in this case.
- However, on the face of the Firm's own invoices, the Firm unilaterally departed from the same both in charging at a rate which exceeds £200.00 and in charging a value element based on 3% of the value of the estate. There is no evidence that the clients were informed of this revision and the Firm could not legally unilaterally vary its charging terms as a matter of basic contract law.
- Fees have been charged to which the Firm has no entitlement under their retainer at all: being an additional fee of £500 for 'preparing and submitting tax claim' on the

invoice dated 3 January 2017 (a charge for the preparation of Inheritance Tax forms had been made elsewhere) and an annual retainer fee (in an unspecified amount) on the invoice dated 2 March 2018.

- Even on the basis of the Firm's own terms, the Firm has clearly overcharged for work undertaken in this administration, having charged £52,479.60 to 2 March 2018, when, in accordance with its own terms and on the basis of the handwritten schedule of costs on file, it would be entitled to no more than £21,413.89 for the entire administration.
- Even with the re-credit to the estate in January 2019, the amount charged stands at £46,326.40 as against the aforementioned figure of £21,413.89.
- There had been demonstrably overcharging on six out of the eight invoices.
- Properly chargeable costs in the estate would stand at £20,297.89, which would be a fair and reasonable sum.
- Given the extent of the difference between this figure and the costs actually invoiced, the figure invoiced to the estate represents a considerable overcharge.
- The overcharge stands at £26,028.51 (allowing for the re-credit in January 2019)
- The sum invoiced by the Firm does not represent a 'fair and reasonable' sum.

(4) Estate of (JM) – between 8 October 2019 and 27 March 2020 an overcharge of £21,540.96

6.54 JM died on [REDACTED] 2019. The Respondent was appointed as sole Executor on [REDACTED] [REDACTED] 2019. Between [REDACTED] 2019 and [REDACTED] 2020, the Respondent raised 5 invoices to the estate in the total sum of £35,091.92 inclusive of VAT.

6.55 The gross estate value was £241,200.00 as taken from the IHT205. In accordance with the Firm's own terms, the chargeable value element (3%) would be £7,236.00 plus VAT.

6.56 In addition to the Firm's full file of papers, (one small bundle of loose papers) Mr Banyard was forwarded pdf of documents which had been removed from the file. This included the ledger, all invoices raised, all client care documentation, the Grant of Probate and the late JM's will (which were also on file), and a handwritten schedule of costs.

6.57 The conclusions reached by Mr Banyard were that:

- That a charge calculated on the basis of the Firm's terms of £300.00 per hour plus 3% of the value of the estate is egregiously excessive as to inevitably give rise to an overcharge.
- That an appreciable amount of the work being charged for was actually undertaken by an apparently unqualified fee earner but had been charged at the Respondent's charging rate of £300.00 per hour.
- Even on the basis of the Firm's own terms, the Firm had overcharged for work undertaken in this administration, having charged £26,899.20 to 27 March 2020 (not taking into account the invoice dated 14 January (a 'Re invoice for a Credit Note relating to work done on a separate retainer when JM was alive), and invoice dated 28 February 2020 ('Retainer for disputed claim with JM Jr') when, in accordance with its own terms, the Firm would be entitled to no more than £14,419.20.
- The Firm has demonstrably overcharged on two of the five invoices even calculating costs in accordance with its own terms.
- The invoice dated 14 January 2020 appears to represent a re-charge to the estate of monies previously re-credited to JM during his lifetime.
- The invoice dated 28 February 2020 represents a 'retainer' fee in respect of apparent litigation with the late JM's son when there is no evidence on file of any such work and where the decision to charge on this basis is questionable.
- Properly chargeable costs in the estate on a quantum meruit basis stand at £5,358.24. This figure would represent a 'fair and reasonable' sum.

- Given the extent of the difference between this figure and the costs actually invoiced, the figure invoiced to the estate represents a considerable overcharge.
- The overcharge by the Firm stands at £21,540.96 (disregarding the invoices of 14 January and 28 February 2020).
- The figure invoiced by the firm does not represent a 'fair and reasonable' sum.

(5) Estate of (JTW) – between [REDACTED] 2018 and [REDACTED] 2018 an overcharge of £3,756.80.

6.58 JTW died on [REDACTED] 2017. The Respondent was not the executor of the estate but dealt with its administration. Between [REDACTED] 2018 and [REDACTED] 2018, 4 invoices had been raised to the estate in the total sum of £25,289.60 inclusive of VAT.

6.59 At the conclusion of the administration on 29 October 2018, the ledger showed that the Firm effected a credit back to the estate in the sum of £14,188.80.

6.60 The estate was valued at £219,000.00, of which £78,000.00 represented the value of JTW's residence.

6.61 The full file of papers was provided to Mr Banyard (one bundle of loose papers) together with pdfs of the client care letter and ledger, which were also on the file.

6.62 The conclusions reached by Mr Banyard were that:

- The amount to which the Firm's terms and conditions in this matter exceed those recommended in Law Society Guidance is not sufficiently egregious as to constitute an overcharge.
- Even on the basis of the Firm's own terms, the Firm has overcharged for work undertaken in the administration. Having charged £11,100.80 (after allowing for the recredit of £14,188.80 on 29 October 2018) when, in accordance with their own terms, it would be entitled to no more than £7,536.00.

- The Firm has overcharged on each invoice even in accordance with its own terms. (albeit that there had been a subsequent recredit of some of these costs)
- Properly chargeable costs in the estate stand at £7,344.00 which would represent a 'fair and reasonable' sum.
- Given the extent of the difference between this figure and the costs actually invoiced the figure invoiced to the estate represents an overcharge.
- The overcharge by the Firm stands at £3,756.80.
- The figure invoiced by the Firm does not represent a 'fair and reasonable' sum.

(6) Estate of (AMB) – between 30 October 2017 and 30 October 2019 an overcharge of £1,487.65.

6.63 AMB died intestate on [REDACTED]. The Respondent was not the Administrator of the estate but did carry out the administration of it.

6.64 Between [REDACTED] 2017 and [REDACTED] 2018, 4 invoices had been raised to the estate in the total sum of £40,806.34 inclusive of VAT.

6.65 One of the invoices, dated [REDACTED] 2018, was erroneously charged to the estate, and was re-credited in full on [REDACTED] 2018. (in the sum of £9,591.60) Between [REDACTED] 2018 and [REDACTED] 2019, 4 further credit notes had been raised to the estate in the total sum of £16,977.09 inclusive of VAT.

6.66 The full file of papers relating to this matter was provided to Mr Banyard (one bundle of loose papers) together with pdfs of the invoices and credit notes which were missing from the file itself (the credit note dated [REDACTED] 2018 remains missing and is not in Mr Banyard's possession) and a pdf of the ledger, which is also on the file.

6.67 The conclusions reached by Mr Banyard were that:

- A charge calculated on the basis of the Firm's stated terms of £200.00 per hour plus 1% of the value of the estate is one that is fair and reasonable in this case.

- Even on the basis of its own terms, the Firm has overcharged on each invoice in comparison with the charges it was entitled to raise at each juncture. The value charge (£10,800.00) stated on the invoice dated [REDACTED] 2017 significantly exceeds the value charge to which the Firm is entitled under the retainer.
- Even after the various recredits have been actioned, the Firm have charged more by way of costs than that to which they are entitled in line with their terms and conditions and the schedule of times on file.
- The properly chargeable costs in this estate in line with the firm's own terms stand at £12,750.00. This would have represented a 'fair and reasonable' sum.
- Given the difference between this figure and the costs actually invoiced, the figure invoiced to the estate represents an overcharge albeit a relatively modest one in overall terms given the recredits.
- The overcharge by the firm stands at £1,487.65 (allowing for the recredits). The figure invoiced by the Firm does not represent a 'fair and reasonable' sum, albeit, only by a relatively modest amount.

6.68 There had been overcharging on all six estates. There was a considerable overcharge in four of the estates. (OH, RH, EB and JM) In the two remaining estates (JTW and AMB) there was an overcharge and a modest overcharge. Nevertheless, the costs still were found not to represent a 'fair and reasonable' sum.

6.69 The FIO on the estates of OH and RH compared the fees taken for invoices with the Firm's office account. The Firm's overdraft facility at the time was £30,000.00.

6.70 On the Estate of OH the FIO concluded that the Firm transferred a total of £71,982.00 (inclusive of VAT) from client to office bank account in relation to the five invoices on this matter.

6.71 The office bank account was overdrawn prior to each transfer. Prior to two of the transfers the overdraft was over £29,500.00, and prior to three of the transfers, the overdrawn balance exceeded the firm's £30,000.00 overdraft facility.

6.72 On the Estate of RH the Firm transferred a total of £114,615.84 (inclusive of VAT) from client to office bank account in relation to the eight invoices on this matter.

6.73 The office bank account was overdrawn prior to each transfer and prior to two of the transfers, the overdrawn balance exceeded the firm's £30,000.00 limit.

Non-Agreed Mitigation

7. The Respondent does not put forward any mitigation on grounds of his health.

Penalty proposed

8. It is therefore proposed that the Respondent should be struck off the Roll of Solicitors.

9. The SRA has considered the admissions made by the Respondent and has considered, in light of those admissions, whether the outcome proposed in this document is in the public interest having regard to the seriousness of the matters alleged. The SRA is satisfied that the admissions and outcome proposed are in the public interest and that it is a proportionate and appropriate way of resolving this matter. It is agreed that the necessary and proportionate sanction to protect the public interest and reputation of the profession is for the Respondent to be struck off the Roll of Solicitors

10. With respect to costs, it is further agreed that the Respondent is unable to pay the Respondent's costs in full. The Respondent agrees to pay £1,000 plus VAT towards the Applicant's costs.

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

11. The Respondent has admitted dishonesty. The Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (5th edition), at paragraph 47, 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)**).*

12. 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...”

13. The Respondent misappropriated a total of £200,000 from two estates that he was administering. The Respondent falsified account records and payment documentation in order to achieve this and hide the fact that the payment was made to him. He also provided [REDACTED] with false information to succeed in this. Much of the money was eventually paid back into the office account through a convoluted route, when the account was overdrawn or over its overdraft facility limit, to assist with the running of the Firm and to pay the Respondent’s drawings. The Respondent also overcharged on six estates he was administering in the sum of £198,357.54. The Respondent did this dishonestly to maximise the Firm’s income so that it stayed within the limits of its Overdraft facility, and to assist with the running of the Firm. The sum due to any beneficiary would have therefore been depleted. These were serious acts of dishonesty committed over an extended period which benefitted the Respondent to the detriment of beneficiaries 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.

14. In light of the misconduct identified and having considered the Solicitors Disciplinary Tribunal’s Guidance Note on Sanctions, the SRA contends, and the Respondent

accepts, that the proper penalty in this case is an Order that the Respondent be struck off the Roll of Solicitors.

.....
Oliver Sweeney
Head of Legal and Enforcement

.....
Susanna Heley, Weightmans LLP
Representative for [Solicitor AD], duly authorised to sign on his behalf.