The Tribunal's decision dated 1 June 2026 is subject to an appeal (factual findings and costs) by the Respondent to the High Court (Administrative Court). The Order remains in force pending the High Court's determination of the appeal.

SOLICITORS DISCIPLINARY TRIBUNAL

<u>IN THE MATTER OF THE SOLICITORS ACT 1974</u> <u>Case No. 12472-2023</u>

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

JAMES SWEAD First Respondent

JOHN SZEPIETOWSKI Second Respondent

Before:

Mr W Ellerton (in the chair)
Ms M Cole
Mr B Walsh

Dates of Hearing:
27 April–1 May 2026, 5–8 May 2026; 28–29 May 2026; and 1 June 2026.

Appearances

Benjamin Tankel, barrister, Thirty Nine Essex Chambers, 81 Chancery Lane, London WC2A 1DD (instructed by the Applicant).

Darren Snow, barrister, Libertas Chambers, 20 Old Bailey, London EC4M 7AN (instructed by the First Respondent).

Simon Russell-Flint KC, Millennium Chambers, 3 Paper Buildings, Lower Ground Floor, Temple, London EC4Y 7EU (instructed by Audley Chaucer Solicitors, Bewley House, Park Road, Esher, Surrey KT10 8NP) for the Second Respondent.

JUDGMENT

(Reporting Restriction Order in force)

Allegations

<u>The First Respondent</u>

1. The allegations against the First Respondent, James Swead, made by the Solicitors Regulation Authority (“SRA”) are that, while practising as a solicitor:

1.1 On or around 3 July 2017, he caused or permitted a payment totalling £94,738.89 to be deducted from the client account ledger for a commercial conveyancing matter for Client A without the client’s authority,

and in doing so breached any or all of Rules 1.2(c) and 20.1 of the Solicitors Accounts Rules 2011 (“the Solicitors Accounts Rules”) and Principles 2, 4, 6 and 10 of the SRA Principles 2011 (“the 2011 Principles”).

1.2 On or around 5 July 2017, he caused or permitted AAG Legal Services (subsequently Eldons Berkeley Limited) (“the Firm”) to improperly withdraw monies in the sum of £8,700.00 from the Firm’s client account,

and in doing so breached any or all of Rules 17.2, 20.1 and 20.3 of the Solicitors Accounts Rules and Principles 2, 4, 6 and 10 of the 2011 Principles.

1.3 He provided information to the court during proceedings concerning a winding up petition by Ms Lesley Morgan dated 28 August 2020 in respect of the Firm, which was untrue, including by.

1.3.1 in a witness statement dated 28 September 2020, including statements about the Firm’s borrowing with Arbuthnot Latham and/or evidence of the director’s loans Ms Morgan alleged to have made to the Firm which he knew, or ought to have known, to be untrue; and/or

1.3.2 during the court proceedings, sought to assert that there was no evidence of the director’s loans Ms Morgan alleged to have made to the Firm when he knew, or ought to have known, that to be untrue.

and in doing so, breached any or all of Principles 1, 2, 4 and 5 of the SRA Principles 2019 ("the Principles 2019") and Paragraph 1.4 of the Code of Conduct for Solicitors, RELs and RFLs.

1.4 On or around 28 September 2020, he agreed contract terms with Funding Circle to secure a business loan for the Firm without disclosing information which he knew, or ought to have known, was material to the application for the loan,

and in doing so breached any or all of Principles 2, 4 and 5 of the Principles 2019 and Paragraph 1.4 of the Code of Conduct for Solicitors, RELs and RFLs (the Code).

1.5 In addition, allegations 1.1 and 1.2 above are advanced on the basis that the First Respondent’s conduct was dishonest. Dishonesty is alleged as an aggravating feature of the First Respondent’s misconduct but is not an essential ingredient in proving the allegations.

The Second Respondent

2. The Allegations against the Second Respondent, John Szepietowski, made by the SRA are that whilst in practice as a solicitor:

2.1 On or around 3 July 2017, he caused or permitted a payment totalling £94,738.89 to be deducted from the client account ledger for a commercial conveyancing matter for Client A without the client's authority,

and in doing so breached any or all of Rules 1.2(c) and 20.1 of the Solicitors Accounts Rules and Principles 2, 4, 6 and 10 of the 2011 Principles.

2.2 In addition, allegation 2.1 is advanced on the basis that the Second Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Second Respondent's misconduct but is not an essential ingredient in proving the allegation.

Executive Summary

3. The matter arose following a referral to the Solicitors Regulation Authority ("the SRA") by RPC, who acted for the Firm's professional indemnity insurers. The referral itself arose out of a claim brought against the Firm by a former client ("Client A") alleging unauthorised deductions from client account monies in connection with a commercial conveyancing transaction.

4. Upon receipt of RPC's report, the SRA commenced an investigation into the conduct of the First and Second Respondents. Following the conclusion of that investigation, the SRA decided to bring disciplinary proceedings before the Tribunal.

5. At the material time, the Respondents were solicitors practising as AAG Legal Services Limited (later Eldons Berkeley Limited) ("the Firm"). The First Respondent was a director of the Firm and held compliance roles. The Second Respondent was also a director of the Firm for part of the relevant period.

6. The events giving rise to the allegations arise out of the Firm's involvement in a number of interconnected matters, including litigation conducted on behalf of a commercial client ("Client D"), a dispute concerning an alleged entitlement to part of the Firm's fees by a third party, Mr Mark Berman ("Mr Berman"), and a commercial conveyancing transaction undertaken for Client A relating to the sale of a property ("Property E").

7. Following completion of the conveyancing transaction in respect of Property E, monies held to the credit of Client A's client account were utilised to make (i) a payment to Mr Berman, and (ii) a further payment representing additional costs said to have been incurred by the Firm. It is the propriety of those payments, and the Respondents' respective involvement in them, which form the core of the allegations before the Tribunal.

8. Broadly stated, the SRA alleged that the Respondents caused or permitted client monies held for Client A to be used to satisfy liabilities of the Firm without Client A's authority, in breach of the Solicitors Accounts Rules and applicable Principles. In the case of the

First Respondent, the SRA further alleged that additional client monies were withdrawn in respect of costs without proper notification.

9. The First Respondent denied acting dishonestly and disputed that he caused or permitted the improper use of client monies. He maintained that the payment to Mr Berman was the result of actions taken by others and that, in respect of the additional costs, there was a legitimate basis for recovery. He further disputed the allegations concerning statements made in later court proceedings and the loan application.

10. The Second Respondent also denied acting dishonestly and contended that he believed any payment made to Mr Berman would be met from the Firm's own funds rather than client monies. He maintained that he did not authorise, and was not aware of, the use of Client A's monies held in the Firm's client account.

11. The Tribunal sat for 12 days. It heard oral evidence from both Respondents and five other witnesses and considered substantial documentary material.

12. Both Respondents were found to have participated in the misconduct forming Allegations 1.1 and 2.1, and the associated breaches were proved. The Tribunal also found the remaining allegations and associated breaches against the First Respondent proved, save for Allegation 1.3.2, which was not proved. In light of its findings, the Tribunal directed that both Respondents be struck off the roll.

Sanction

13. The First Respondent was struck off the Roll of Solicitors.

14. The Second Respondent was struck off the Roll of Solicitors.

The Tribunal's reason on Sanction can be found [here].

Documents

15. The Tribunal considered the full documentary record in the case including:

(a) The Applicant's Rule 12 Statement dated 21 June 2023.

(b) The First Respondent's Answer to the Rule 12 Statement dated 19 April 2024.

(c) The First Respondent's Witness Statement dated 14 June 2024.

(d) The Second Respondent's Answer to the Rule 12 Statement dated 19 April 2024.

(e) The Applicant's Reply to the Answer of the Respondents, undated, received by the Tribunal on 10 May 2024.

(f) The Applicant's opening note dated 24 April 2026.

(g) The Applicant's statement of costs dated 24 April 2026.

Preliminary Matters

16. At the outset of the hearing, it became apparent that the continued use of anonymised descriptors, as previously set out in the anonymisation schedule to the Rule 12 Statement, would make the conduct of the proceedings unduly difficult given the complexity of the factual matrix and the number of overlapping individuals and entities involved. With the agreement of the parties, the hearing therefore proceeded by reference to the actual names of those individuals and entities.

17. During opening submissions, the Applicant orally applied for a reporting restriction pursuant to Rule 35(9) of the Solicitors (Disciplinary Proceedings) Rules 2019. No party objected to that application.

18. The Tribunal was satisfied that such a direction was appropriate and proportionate and applying the principles set out in *Williams v SRA* [2023] EWHC 2151 (Admin) and accordingly made a reporting restriction prohibiting the publication or disclosure of matters likely to lead to the identification of certain non-Respondent persons and entities. To give effect to that direction, the Tribunal directed that neutral descriptors would be used in the published judgment and any other publicly available case-related material.

Factual Background

19. The First Respondent was admitted to the Roll of Solicitors on 16 February 2009. At the material time, he practised as a solicitor at AAG Legal Services Limited (later known as Eldons Berkeley Limited) ("the Firm").

20. He became a director of the Firm on 10 June 2015 and remained a director until the Firm ceased trading on 29 October 2020.

21. He was appointed as the Firm's Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA") on 4 May 2017 and held those roles until the Firm ceased trading.

22. Following the closure of the Firm, the First Respondent joined Alpha Omega Solicitors Limited on 29 October 2020 as an owner and manager. That firm ceased trading on 30 June 2021 after it was unable to secure professional indemnity insurance.

23. At the time of these proceedings, the First Respondent was employed as a consultant at Spencer West LLP.

24. The First Respondent's practising certificate for 2024/2025 is subject to the following conditions:

    (a) He shall not act as a manager or owner of any authorised body.

    (b) He may act as a solicitor only as an employee and only where that employment has first been approved by the SRA.

(c) He may not act as a signatory to any client account and does not have the power to authorise payments or transfers from any client account.

(d) He may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body or head of legal practice (HOLP) or head of finance and administration (HOFA) in any authorised non-SRA firm.

25. The Second Respondent was admitted to the Roll of Solicitors on 1 December 1995.

26. At the material time, he practised as a solicitor and was a director of the Firm. He was a director of the Firm from May 2015 until November 2017, including the period relevant to the allegations.

27. Following his departure from the Firm, the Second Respondent became involved with Audley Chaucer Limited. He has been a beneficial owner of that firm since 19 January 2018 and has served as a director since 2018.

28. The Second Respondent's practising certificate for 2025/2026 is subject to the following conditions:

(a) He may not have sole responsibility for authorising client account payments or transfers.

(b) He may not act as a Compliance Officer for Legal Practice (COLP) or Compliance Officer for Finance and Administration (COFA) for any authorised body, or Head of Legal Practice (HOLP) or Head of Finance and Administration (HOFA) in any authorised non-SRA firm.

<u>Background Facts</u>

29. The background to the allegations involves a series of complex related professional relationships, client matters, and financial arrangements spanning several years. The following account sets out that background in neutral and chronological terms.

The origins of the relevant client matters

30. In or around 2013, a company, Client D, instructed Lorrells LLP to act on its behalf in litigation against a commercial bank ("the Litigation"). At that time, Lorrells LLP was headed by Mr Mark Lorrell ("Mr Lorrell"), who was a dual-qualified solicitor and barrister. On 28 May 2014, Lorrells LLP entered into a damages-based agreement ("the DBA") with Client D, under which Lorrells LLP would be entitled to receive a percentage of any damages recovered in the litigation, subject to a cap.

31. In May 2015, Lorrells LLP entered into a deed of assignment with Person B, under which a substantial proportion of the benefit of the DBA, 90% of the fees received under the DBA, was assigned to him. The assignment was understood to relate to financial support that Person B had provided to Lorrells LLP during a period of financial difficulty.

32. By September 2015, the Litigation was approaching settlement. On 10 September 2015, Lorrells LLP was voluntarily wound up and liquidators were appointed.

Transfer of matters to the Firm

33. Following the winding up of Lorrells LLP, a number of personnel and matters transferred to the Firm, an alternative business structure founded in 2012. Among the matters transferred was the Litigation. Mr Lorrell joined the Firm as a consultant and continued to have involvement in the conduct of the Litigation.

34. As part of the transfer of the Litigation, on 1 September 2015, the Firm entered into a new DBA with Client D, on materially similar terms to the earlier agreement with Lorrells LLP ("the Second DBA").

35. On 11 September 2015, the First Respondent gave a written undertaking to Person B, under which 90% of any fees received by the Firm under the DBA would be paid to him, with the Firm retaining the remaining portion.

36. On or about 17 November 2015, the Litigation settled for a sum of approximately £7 million, giving rise to fees under the DBA.

The claim of Mr Berman

37. Following settlement of the Litigation, a dispute arose concerning an asserted entitlement to part of the Firm's fees. Mr Berman claimed entitlement to payment of £75,000 ("the Claim"), which was disputed by the Firm.

38. During 2016, correspondence took place between the Firm and Mr Berman (through Mr Berman's representatives) concerning that asserted entitlement. The Firm disputed liability for the claimed payment and did not accept that it was obliged to make such a payment from its own funds.

39. At the same time, the Firm sought to rely upon a written indemnity previously provided by Person B, under which he undertook to indemnify the Firm against third-party claims arising in connection with the DBA arrangements.

40. In August 2016, Person B died. Thereafter, responsibility for his business affairs passed to his son, Person F. The dispute concerning Mr Berman's entitlement continued following Person B's death.

The sale of Property E and the Firm's involvement

41. In April 2017, the Firm was instructed to act on behalf of Client A, a corporate entity connected with the family of Person B, in relation to the sale of a commercial property known as Property E, located in Welwyn Garden City. The solicitor with day-to-day conduct of that transaction was Mr Norman Heriz-Jones.

42. Completion of the sale of Property E took place in June 2017, following which the proceeds of sale were held by the Firm in its client account.

Proceedings brought by Mr Berman

43. On or about June 2017, Mr Berman issued proceedings against the Firm in relation to the Claim. The Firm initially indicated an intention to defend those proceedings, and preliminary procedural steps were taken in that regard.

44. The basis of Mr Berman's claim was a purported agreement made between Mr Lorrell, then acting as a consultant solicitor for the Firm in the Client D litigation, and Mr Berman, following the mediation of that litigation, whereby Mr Berman was alleged to be entitled to payment of £75,000 from the costs recovered by the Firm. The First Respondent's case on behalf of the Firm was that Mr Lorrell had no authority to enter into such an agreement on the Firm's behalf and that it was not binding on the Firm.

45. Around the same period, the Second Respondent had recently joined the Firm and became involved in discussions concerning Mr Berman's claim. Meetings and correspondence took place between the Respondents, Mr Berman, and others concerning the potential resolution of that claim.

Events in late June and early July 2017

46. Between 30 June and 5 July 2017, a series of events took place that gave rise to the central allegations in these proceedings. During that period:

    (a) a payment of the sum of £94,738.89 was made to Mr Berman's solicitors in settlement of the Claim.

    (b) a further sum of £8,700 was transferred from the Firm's client account to its office account.

    (c) those sums were recorded as deductions from the proceeds of sale held on Client A's ledger.

    (d) a revised completion statement was produced and sent to Client A following the transfers.

Subsequent events

47. In April 2018, Client A issued civil proceedings against the Firm, alleging that deductions had been made from its client account in connection with the sale of Property E. The matter was subsequently notified to the Firm's professional indemnity insurers.

48. By letter dated 21 November 2018, RPC, acting on behalf of the Firm's indemnity insurers, reported the circumstances of the matter to the Solicitors Regulation Authority ("the SRA"). The SRA commenced an investigation into the conduct of the Respondents on 21 March 2021.

49. During the course of that investigation, the SRA examined not only the circumstances surrounding the client-account deductions but also additional matters that came to light, including issues arising from the winding-up proceedings involving the Firm and

representations made in connection with a loan obtained from Funding Circle. Those matters form the factual basis of Allegations 1.3 and 1.4 against the First Respondent.

50. Following the conclusion of the investigation, the SRA, on 11 October 2022, decided that the conduct of the Respondents should be referred to the Solicitors Disciplinary Tribunal. These proceedings arise from that referral.

Witnesses

51. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties.

52. The following witnesses gave evidence during the hearing:

(a) Alice Evans, called by the Applicant.

(b) Percival Norman Heriz-Jones, called by the Applicant.

(c) Ian Lake, called by the Second Respondent.

(d) Person F, called by the Second Respondent; and

(e) Mark Lorrell, called by the Second Respondent.

53. Alice Evans (called by the Applicant) gave evidence over 27 and 28 April 2026. All other witnesses gave evidence on a single hearing day.

Findings of Fact and Law

54. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings namely the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998.

55. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all the witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

The Approach of the Tribunal

56. Where issues of credibility and reliability arose, the Tribunal considered those matters carefully, giving primary weight to the consistency of each witness's account with contemporaneous documents, in line with the approach endorsed in *R (Dutta) v GMC* [2020] EWHC 1974 (Admin). The Tribunal reminded itself that demeanour is an unreliable guide to truthfulness and that documentary evidence generally provides a more secure foundation for findings of fact.

57. The Tribunal reminded itself that each allegation must be determined separately on its own evidence, and that findings on one allegation do not dictate the outcome of any other. The Tribunal also considered the position of each Respondent separately, recognising that although the factual matrix overlapped, the allegations against the First Respondent (Allegations 1.1) and the Second Respondent (Allegations 2.1) required distinct assessment in respect of each Respondent, including the question of dishonesty.

58. The Tribunal's findings in relation to Allegations 1.1 and 2.1 arose out of a common factual matrix and were therefore considered together initially by reference to the events of 30 June to 5 July 2017. The Tribunal addressed separately the position, conduct, knowledge, and state of mind of each Respondent in relation to those allegations before turning to the remaining allegations against the First Respondent alone.

59. Where dishonesty fell to be determined, the Tribunal applied the test set out by the Supreme Court in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67. The Tribunal noted the conceptual relationship between dishonesty and integrity, while applying each test separately.

60. Where dishonesty was not found but the Tribunal was required to consider whether conduct amounted to a breach of the applicable Principles or Rules, it had regard to the guidance of the Court of Appeal in *Wingate v Solicitors Regulation Authority* [2018] EWCA Civ 366 in respect of integrity.

61. In considering each allegation, the Tribunal first determined whether the underlying facts were proved. It then considered whether any established conduct was sufficiently serious to amount to professional misconduct, applying the approach in *Dentons UK and Middle East LLP v SRA Ltd* [2026] EWCA Civ 508. Only where that threshold was met did the Tribunal go on to consider breach of the Principles and, if appropriate, sanction.

62. **The Tribunal's Findings: 30 June–5 July 2017 (Allegations 1.1, 1.2 and 2.1)**

62.1 These findings concern Allegations 1.1 and 1.2 (in respect of the First Respondent) and Allegation 2.1 (in respect of the Second Respondent), which arise out of the same sequence of events occurring between 30 June and 5 July 2017 and culminating in the payment of £94,738.89 from the Firm's client account and a further subsequent deduction of £8,700 on 5 July 2017.

62.2 Given the substantial factual overlap between those allegations, the Tribunal considered it appropriate to address the relevant factual chronology in a single, unified account, before applying those findings separately to each Respondent and each allegation. The Tribunal makes clear that, while the factual background is common, findings of responsibility, belief, and dishonesty (where alleged) were considered distinctly and on their own evidential basis.

62.3 The Tribunal commenced by setting out the factual sequence as established by the contemporaneous documentary evidence and matters not in dispute. These findings are set out in discrete propositions for clarity before summarising the accounts given by the witnesses in relation to those events.

62.4. The Tribunal found the following facts:

(a) On 30 June 2017, correspondence was exchanged between the Firm and Mr Berman's solicitors concerning the proposed settlement of Mr Berman's claim against the Firm. A draft consent order and notice of discontinuance were circulated, and reference was made to a payment being made in resolution of the Claim.

(b) Later that day, further correspondence indicated that the initial sum proposed did not account for Mr Berman's legal costs and interest. In response, an increased figure of £94,738.89 was communicated as the sum proposed to be paid, subject to confirmation.

(c) By the close of business on 30 June 2017, no defence had been filed in the proceedings brought by Mr Berman, and no extension of time for doing so had been agreed.

(d) On the same date, funds arising from the completion of the sale of the property at Property E were held by the Firm in its client account on behalf of Client A.

(e) On the morning of 3 July 2017, internal communications took place within the Firm concerning the payment of £94,738.89 to Mr Berman's solicitors.

(f) On 3 July 2017, a payment in the sum of £94,738.89 was processed from the Firm's client account, debited against the client ledger relating to Client A, and transferred to Mr Berman's solicitors.

(g) At the time that payment was made, no document recorded any express authority from Client A consenting to the use of its client money to meet the Firm's liability to Mr Berman.

(h) Later on, 3 July 2017, Client A requested information from the Firm relating to the balance of funds held in client account following completion and payment of costs.

(i) On 4 July 2017, an amended completion statement was prepared which included a deduction described as an "overpayment following assignment" in a sum corresponding to the payment made to Mr Berman.

(j) On or around 5 July 2017, a further sum of £8,700 was transferred from the Firm's client account to its office account in respect of costs claimed by the Firm.

62.5 Having set out the factual sequence arising between 30 June and 5 July 2017, the Tribunal summarises below the respective cases advanced by the Applicant and the Respondents in relation to those events, before setting out its findings to the individual allegations.

The Applicant's Case Against the First Respondent (Allegations 1.1; 1.2 and 1.5)

62.6 The Applicant's case in respect of the allegations is set out in the Applicant's Rule 12 Statement. The Rule 12 Statement is available [here].

The First Respondent's Position and Evidence

62.7 The First Respondent's position and response in respect of the allegations against him are set out in the First Respondent's Answer to the Rule 12 Statement dated 19 April 2024.

62.8 In addition, the First Respondent gave evidence during the hearing. In summary he stated the following:

Allegations 1.1, 1.2 and 1.5

(a) His position throughout was that the Claim advanced by Mr Berman was disputed and should be defended unless, and until, liability was properly established. He said that, up to at least mid-June 2017, his intention was that no payment would be made to Mr Berman.

(b) He acknowledged that discussions were taking place between others in June 2017 concerning the Claim, but he said that he was not involved in negotiating any settlement and did not understand any binding settlement to have been concluded with his knowledge or authority at that time.

(c) He denied authorising, or intending to authorise, the use of Client A monies to satisfy the Claim. He said that he understood client money and office money to be distinct, and that payment of a third-party liability required proper authority and compliance with accounting controls. He stated that he believed safeguards were in place and that payment could not be made without his express approval.

(d) He accepted that he authored the email and text message relied upon by the Applicant in support of Allegation 1.1. However, he denied that either communication was intended to authorise payment to Mr Berman or to approve the use of the Client A monies. He explained that the messages were sent in a context of urgency and were poorly framed, but that he understood them to be procedural in nature, directed to whether settlement documentation had been received and what steps might follow. He said that, when sending the communications, he believed that safeguards remained in place and that no payment could be made without his express approval.

(e) He maintained that he did not consider Client A monies to be available for use in discharging the Firm's liabilities. He said that, if liability to Mr Berman were ultimately established, payment would need to be addressed either through the Firm's own resources or through indemnity arrangements involving Client A or Person B's estate.

(f) In relation to the payment of approximately £94,738.89 made on 3 July 2017, he became aware of the payment only after it had occurred. He described being alarmed on learning of the payment and said that he believed a faster payment could not be reversed. He maintained that he did not authorise, effect, or knowingly permit the payment to be made from the client account.

(g) He accepted that he later amended the completion statement to include a deduction described as an "overpayment following assignment" and forwarded that completion statement to the client. He said that this was intended to account for what had occurred rather than to conceal matters and accepted that the covering email did not expressly draw attention to the deduction. He accepted that, with hindsight, he could have been clearer in explaining the deduction to the client.

(h) In relation to the withdrawal of £8,700, the First Respondent said that the sum related to an internal invoice raised for work undertaken in connection with the Claim. He accepted that he was responsible for creating or approving the invoice entry. He stated that, at the time, he believed the sum represented fees properly chargeable under the indemnity. He further maintained that the invoice had been raised as part of a process of quantifying and discussing the amount said to be recoverable and was not intended to result in any transfer from client account to office account. He denied that the withdrawal was intended to reimburse or conceal the earlier £94,738.89 payment.

(i) He accepted that the use of client money to make the £94, 738.89 payment was wrong and amounted to a breach of the Accounts Rules, and that, with hindsight, he could have done more to prevent or address what occurred. However, he denied acting dishonestly, stating that his acceptance of wrongdoing was directed to the outcome rather than his own conduct or state of mind at the time. He denied that he knowingly misled Client A, the court, or any third party, and said that later acknowledgements of fault reflected retrospective understanding rather than contemporaneous dishonest intent.

Allegations 1.3 and 1.4

(j) In relation to the winding-up proceedings brought by Ms Lesley Morgan, he denied intending to mislead the court. He accepted that he made a witness statement dated 28 September 2020 in those proceedings, which addressed, among other matters, the Firm's borrowing arrangements with Arbuthnot Latham and the existence and status of an alleged director's loan.

(k) At the time he made that witness statement, he believed that the Firm remained subject to the subordination arrangements relating to the Arbuthnot Latham banking facility and that the position concerning any director's loan was genuinely in dispute. He said that he did not believe the overdraft facility had been fully discharged at that point.

(l) He accepted that, with hindsight, certain statements made in his witness evidence to the court were inaccurate, including statements concerning the repayment of the Arbuthnot facility and the evidential basis for Ms Morgan's alleged director's loan. However, he denied that those inaccuracies were deliberate, stating that he was not aware, at the time he signed the statement of truth, that the borrowing had been repaid or that the debenture had been released. When it was put to him that a judge had been critical of his evidence, he did not accept that criticism insofar as it suggested that he had knowingly misled the court. He maintained that the inaccuracies arose from mistake and lack of knowledge, albeit accepting that his evidence could and should have been clearer.

(m) He explained that he was working remotely during this period and said that he had not seen the relevant correspondence from the bank confirming repayment of the facility before the date of his witness statement. He stated that, once the true position became clear to him, he took steps to correct the position by updating his evidence.

(n) As regards the position he advanced during the winding-up proceedings that there was no evidence supporting the alleged director's loan, he stated that this reflected his understanding at the time, based on his belief that no documentary proof of the loan had been produced. He denied knowingly putting forward a case that he knew to be untrue.

(o) Turning to the Funding Circle loan, he accepted that on or around 28 September 2020 he entered into contractual arrangements with Funding Circle on behalf of the Firm in order to secure a business loan under the Coronavirus Business Interruption Loan Scheme. He accepted that those arrangements included information declarations and ongoing disclosure obligations.

(p) At the time he entered into the Funding Circle loan agreement, he did so in his capacity as a director of the Firm and did not believe that he was required to disclose the matters later relied upon by the Applicant. He said that he did not consider the existence of the winding-up petition or the Firm's broader financial difficulties to amount to information that was material to the loan application within the meaning of the agreement.

(q) He denied knowingly providing false information or omitting material information when agreeing the Funding Circle loan. He accepted that, with hindsight, further disclosure could or should have been made but maintained that any failures in disclosure were the result of mistake or misjudgement rather than dishonesty.

The Applicant's Case Against the Second Respondent (Allegation 2.1 and 2.2)

62.9 The Applicant's case in response to the allegations is set out in the Applicant's Rule 12 Statement.

The Second Respondent's Position and Evidence

62.10 The Second Respondent's position in respect of the allegations against him is set out in the Second Respondent's Answer to the Rule 12 Statement dated 19 April 2024.

62.11 In addition, the Second Respondent gave evidence during the hearing concerning his involvement in the matters giving rise to Allegations 2.1 and 2.2. In summary, he stated the following:

(a) He became involved in matters relating to the Claim at the request of others within the Firm, with the intention of assisting in exploring whether the dispute could be resolved and litigation avoided. He said that he had brought his own caseload into the Firm and was not otherwise acting on the Firm's client matters. His involvement in dealing with the Claim was limited to a negotiating or facilitative role rather than having conduct of the case.

(b) At the material time, his understanding was that the Firm was exposed to a liability of £75,000 arising from an undertaking given in favour of Mr Berman. He did not understand the Firm's exposure to be limited to £7,500 and did not recall being told that the Firm's liability was subject to a 90/10 split or otherwise materially reduced.

(c) He described attending two meetings with Mr Berman in June 2017. Following the first meeting, he reported that Mr Berman was unwilling to compromise. At a later meeting, he explored the possibility of staged payments, but Mr Berman insisted on being paid in a single tranche. He did not recall a specific conversation in which the First Respondent expressly changed his position from defending the Claim to settling it.

(d) He said that the email sent to Mr Berman's solicitors on or about 30 June 2017, which reflected a decision to proceed by way of settlement, did not originate from his own decision-making, but reflected the position which had been adopted by the First Respondent. He stated that he sent the email either at the First Respondent's direction or following discussions in which that course was endorsed, and that he did not regard himself as having determined the settlement position.

(e) In explanation about the absence of any express reference in his email to the source of the £94, 738.89 payment, he said that it did not occur to him that funds held in the client account would be used, and that in his understanding an office-account payment did not require identification of a specific client account. He stated that an accounts clerk would not independently decide to debit client funds, and that any such step would have required express instruction.

(f) He stated that he did not discover immediately that the payment had been made from Client A's client account. He believed he became aware of that sometime later, possibly a week or two afterwards, in the context of communications between the First Respondent and Person B. When he raised the issue, he was assured by the First Respondent that matters had been resolved and were in hand, and he accepted those assurances.

(g) He denied that he had acted dishonestly. He maintained that he believed the Firm was obliged to meet the Claim, that payment would be made from the Firm's office account, and that he did not appreciate until later that client account funds had been used. He said that he relied on assurances given by the First Respondent once he became aware of that issue.

The Tribunal's Further Findings on the Events of 30 June–5 July 2017

62.12 The Tribunal now turned to its evaluation of those facts for the purposes of determining liability in respect of Allegations 1.1 and 1.2 (in relation to the First Respondent) and Allegation 2.1 (in relation to the Second Respondent).

62.13 The Tribunal was satisfied, on the basis of the factual findings set out at paragraph 62.4 that client money belonging to Client A was used to meet a liability of the Firm to Mr Berman, and that such use of client money was not lawfully authorised, whether expressly or impliedly, by or on behalf of Client A.

62.14 The payment of £94,738.89 on 3 July 2017 was relevant to Allegations 1.1 and 1.2. The subsequent deduction of £8,700 on or around 5 July 2017 formed the basis of allegation 1.2 against the First Respondent alone.

62.15 The Tribunal found that both transactions constituted improper uses of client money within the meaning of the Solicitors Accounts Rules.

62.16 Throughout this judgment monies held by the Firm on behalf of Client A including monies later utilised to make the payment to Mr Berman are referred to as "Client A monies" to preserve anonymisation.

62.17 The Tribunal accordingly proceeded to consider whether, and if so how, responsibility for that improper use fell to be attributed to each Respondent in respect of Allegations 1.1 and 2.1 respectively, and, if so, whether either Respondent honestly believed that such use was authorised. The Tribunal then considered separately whether the subsequent deduction forming the subject matter of Allegation 1.2 was caused or permitted by the First Respondent.

Allegation 1.1 (The First Respondent)

62.18 The Tribunal considered whether, and if so to what extent, responsibility for that improper use of client money fell to be attributed to the First Respondent.

62.19 In reaching its finding in respect of Allegation 1.1 the Tribunal was satisfied of the following matters:

(a) The First Respondent was at all material times a principal of the Firm and held the positions of COLP and COFA, with responsibility for oversight of client money and compliance with the Solicitors Accounts Rules.

(b) Although the First Respondent had initially adopted the position that the Claim should be defended, by 30 June 2017 he had changed that position and had become a willing participant in the settlement of the Claim.

62.20 The Tribunal attached significant weight to the following matters:

(a) The contemporaneous email at B247 in which the First Respondent referred to forwarding the Client A monies once the settlement documentation had been signed. The Tribunal concluded that this reference was to monies already held by the Firm on behalf of Client A within the Firm's client account. The First Respondent's explanation that this was merely a poor choice of words was rejected. In the Tribunal's view, the wording of the email was clear contemporaneous evidence that the First Respondent understood that the settlement payment would be met from monies held on behalf of Client A.

(b) The text message at X293 in which the First Respondent requested that confirmation be given that "the money" could be sent to Mr Berman that day was cogent evidence that this was a reference to the same client monies referred to in the earlier email at B247.

(c) The client account payment request form at X530. The Tribunal did not accept the First Respondent's explanation that this document had only been printed after the payment had occurred or that his name appeared on it merely through an auto-population process. The Tribunal concluded that the document was consistent with a pre-existing intention on the part of the First Respondent to cause the payment to be made from the client account.

62.21 The Tribunal further found that at the material time, the First Respondent knew that the Firm's office account did not contain sufficient funds to meet the settlement payment of £94,738.89. In those circumstances, the First Respondent appreciated that any payment made on 3 July 2017 would necessarily be funded from monies held on behalf of Client A.

62.22 The actions of the First Respondent following the transfer were inconsistent with his account that he was shocked by an unauthorised payment and was thereafter engaged solely in a damage-limitation exercise. In particular:

(a) The First Respondent did not seek the return of the funds from Mr Berman's solicitors, did not raise any complaint with the bank concerning any purported breach of a banking mandate, and did not take any prompt steps to reverse or remediate the payment.

(b) The First Respondent proceeded to amend the completion statement relating to the transaction and sought to account for the deduction within the completion documentation subsequently sent to Client A.

The Tribunal rejected the First Respondent's evidence that he had reported any defalcation by the Second Respondent to an SRA investigator present at the Firm's offices at the relevant time.

62.23 In reaching these findings, the Tribunal considered carefully the First Respondent's oral evidence and the manner in which it was given. Whilst the First Respondent gave evidence in a calm and measured manner, the Tribunal did not find significant parts of his account to be reliable when tested against the contemporaneous documents. Where there was conflict between the First Respondent's recollection and the documentary record, the Tribunal preferred the contemporaneous documents, which the Tribunal considered provided a more reliable guide to the true factual position.

62.24 Accordingly, the Tribunal found Allegation 1.1 proved.

62.25 The Tribunal considered the nature and circumstances of the First Respondent's conduct in respect of Allegation 1.1 and concluded that it crossed the threshold of seriousness required to constitute professional misconduct. The improper use of client money, caused or permitted by the First Respondent in the circumstances found, amounted to a serious breach of the Solicitors Accounts Rules, and fell well below the standards expected of a competent and reputable solicitor, particularly given his responsibilities as COLP and COFA. Viewed in the round, the Tribunal was therefore satisfied that the conduct amounted to professional misconduct.

<u>Breaches</u>

62.26 Accordingly, the Tribunal found that the First Respondent had breached the following:

(a) Rules 1.2(c) and 20.1 of the Accounts Rules 2011 which require that client money is used only for that client's matter and that withdrawals from client account are made only for a proper or authorised purpose.

(b) Principles 2, 4, 6 and 10 of the 2011 Principles namely acting with integrity, acting in the client's best interests, maintaining public trust in the profession, and protecting client money and assets.

Allegation 1.5 – Dishonesty (in relation to Allegation 1.1)

62.27 The Tribunal next considered whether dishonesty was an aggravating feature of the First Respondent's misconduct. In doing so, it applied the test set out by the Supreme Court in *<u>Ivey v Genting Casinos (UK) Ltd t/a Crockfords</u>* [2017] UKSC 67.

62.28 The Tribunal was satisfied that, at the relevant time, when the First Respondent caused or permitted the deduction of £94,738.89 from the client account ledger for Client A, he knew or believed that the payment was being made to Mr Berman in settlement of a claim against the Firm; that the payment would be met from money held by the Firm on behalf of Client A; and that Client A had not authorised its money to be used for that purpose. The Tribunal also found that the First Respondent appreciated that using Client A's money in this way would amount to a misuse of client funds and a breach of the Solicitors Accounts Rules.

62.29 In light of its findings, the Tribunal concluded that ordinary decent people would regard it as dishonest for a solicitor to knowingly cause or permit the misuse of client money, without the client's authority, in order to settle a liability of his own firm.

62.30 The Tribunal therefore found that dishonesty was established as an aggravating feature of the First Respondent's misconduct in respect of Allegation 1.1.

Allegation 2.1 (The Second Respondent)

62.31 In considering Allegation 2.1 against the Second Respondent, the Tribunal relied upon the factual findings already set out above in relation to the events of 30 June to 5 July 2017. The Tribunal proceeded to consider whether, in light of those findings and the Second Respondent's own evidence, he caused or permitted the improper use of Client A's monies and whether he did so dishonestly.

62.32 In reaching its finding in respect of Allegation 2.1 the Tribunal was satisfied of the following matters:

(a) The Second Respondent joined the Firm only shortly before the events of late June and early July 2017 and initially knew little of the background to the underlying dispute involving Mr Berman.

(b) The Second Respondent was not a signatory on the Firm's bank mandate at the material time and did not himself possess authority to authorise payments from the Firm's bank accounts.

(c) Although the Second Respondent presented himself as the Firm's managing partner, he involved himself in settlement discussions concerning substantial liabilities without adequately reviewing the underlying documentation or investigating the basis upon which the Claim by Mr Berman was said to arise.

(d) The Second Respondent was significantly influenced by Mr Lorrell and, during the relevant events, acted in a manner which the Tribunal considered to be weak and insufficiently inquisitive reflecting his lack of inquiry and lack of independence.

(e) The contemporaneous email at B247, in which the First Respondent referred to forwarding Client A monies once the settlement documentation had been signed, was not questioned by the Second Respondent. The Tribunal was satisfied that the wording of that email clearly referred to monies already held on behalf of Client A within the Firm's client account.

(f) The Second Respondent's explanation that he interpreted the reference to Client A monies as meaning the Firm's office account payment later recoverable pursuant to an indemnity arrangement was rejected. The Tribunal did not consider that explanation to be credible when tested against the contemporaneous documents.

62.33 The Tribunal did not accept the Second Respondent's evidence that he telephoned the First Respondent on the morning of 3 July 2017 to confirm that the settlement payment would be made from the Firm's office account. The Tribunal was satisfied that the chronology of the text messages did not support the existence of such a call.

62.34 The Tribunal attached significant weight to the email sent by the Second Respondent to Janet Jarrett requesting that the payment of £94,738.89 be made to Mr Berman's solicitors. Whilst the email did not specify the source account for the payment, the

Tribunal did not accept that this omission arose because the Second Respondent assumed that office monies would be used.

62.35 The Tribunal determined that, had the Second Respondent genuinely believed that the payment was to be made from the Firm's office account, he would have expressly stated that in his email to Janet Jarrett. The Tribunal considered it inherently unlikely that a payment of this magnitude would be processed by a bookkeeper without clarity as to the source of funds. This was a payment of nearly £100,000 which, on the Second Respondent's own evidence to the SRA, would have been difficult or impossible for the Firm to fund from its office account. Janet Jarrett was a bookkeeper within the Firm and not a person whose role would extend to determining the source of the funds without clear instruction.

62.36 The Tribunal further considered that, if the First Respondent had truly intended unilaterally to misuse client monies without the knowledge of the Second Respondent, he would have been unlikely to involve the Second Respondent in the payment process on the morning of 3 July 2017.

62.37 The Tribunal noted that, following a request from Client A for confirmation of the remaining funds, Mr Swead informed the Second Respondent that there remained approximately £1.59 million in the Client A account and sought confirmation to proceed with payment of those funds. The Tribunal found that this figure in fact reflected the position after the deduction of the Claim settlement sum and the further sum of £8,700. The Second Respondent responded by instructing that no action be taken until they had spoken, and his evidence was that he found the request for approval unusual. In those circumstances, the Tribunal considered that the contents of the email chain at X534–535, and the Second Respondent's response within it, were difficult to reconcile with a genuine belief that no client funds had been utilised.

62.38 Viewed cumulatively, the contemporaneous documents raised significant difficulties for the Second Respondent's account that he believed throughout that the settlement payment would be made from the Firm's office account.

62.39 In reaching its findings in respect of the Second Respondent, the Tribunal carefully considered his oral evidence and the evidence of the witnesses upon whom he relied, including Mr Lake and Mr Lorrell. Whilst that evidence provided limited context, the Tribunal did not consider that it supported the Second Respondent's account in any material respect. In certain respects that evidence was inconsistent with the Second Respondent's own evidence. The Tribunal further found that aspects of the Second Respondent's account were inconsistent with the contemporaneous documentary record. In those circumstances, the Tribunal attached limited weight to the evidence of the Second Respondent and the material on which he relied.

62.40 The Tribunal was satisfied that, whilst the Second Respondent was the less significant participant in the events of 30 June to 5 July 2017, he nevertheless understood by 30 June 2017 that client monies belonging to Client A would be used to fund the settlement with Mr Berman and that such use of client money had not been authorised by Client A.

62.41 Accordingly, the Tribunal found Allegation 2.1 proved.

62.42 The Tribunal considered the nature and circumstances of the Second Respondent's conduct in respect of Allegation 2.1 and concluded that it crossed the threshold of seriousness required to constitute professional misconduct. While the Second Respondent's role was more limited, he nevertheless knowingly participated in the improper use of client money held on behalf of Client A in order to facilitate the settlement of a liability owed by the Firm. Such conduct amounted to a serious breach of the Solicitors Accounts Rules and fell well below the standards expected of a competent and reputable solicitor. Viewed in the round, the Tribunal was therefore satisfied that the conduct amounted to professional misconduct.

Breaches

62.43 Accordingly, the Tribunal found that the Second Respondent had breached the following:

(a) Rules 1.2(c) and 20.1 of the Accounts Rules 2011 which require that client money is used only for that client's matter and that withdrawals from client account are made only for a proper or authorised purpose

(b) Principles 2, 4, 6 and 10 of the 2011 Principles namely, acting with integrity, acting in the client's best interests, maintaining public trust in the profession, and protecting client money and assets.

Allegation 2.2 – Dishonesty

62.44 The Tribunal next considered whether dishonesty was an aggravating feature of the Second Respondent's misconduct. In doing so, it applied the test set out by the Supreme Court in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67.

62.45 The Tribunal was satisfied that, at the material time, the Second Respondent knew or believed that the payment of £94,738.89 to Mr Berman would be made from client monies belonging to Client A held within the Firm's client account, and that Client A had not authorised the use of those monies for that purpose.

62.46 Although the Second Respondent was the less significant participant in the events of 30 June to 5 July 2017, the Tribunal concluded that he nevertheless knowingly participated in facilitating the misuse of those client funds in order to settle a liability of the Firm. The Tribunal was satisfied that the Second Respondent knew or believed that the payment of £94,738.89 to Mr Berman would be made from client monies belonging to Client A held within the Firm's client account and that Client A had not authorised the use of those monies for that purpose.

62.47 In light of its findings, the Tribunal concluded that ordinary decent people would regard it as dishonest for a solicitor knowingly to cause or permit the misuse of client money, without the client's authority, in order to settle a liability of his own firm.

62.48 Accordingly, the Tribunal found that dishonesty was established as an aggravating feature of the Second Respondent's misconduct in respect of Allegation 2.1.

Allegation 1.2 (The First Respondent)

62.49 In considering Allegation 1.2, the Tribunal relied upon the factual findings already made in relation to the events following the payment of £94,738.89 from Client A's monies on 3 July 2017.

62.50 The Tribunal attached significant weight to the evidence concerning the preparation and processing of the invoice dated 5 July 2017 in the sum of approximately £8,700 relating to costs purportedly incurred in connection with the Claim. The Tribunal was satisfied that the First Respondent had prepared or caused the preparation of that invoice and that he knew it was connected to the earlier improper deduction from Client A's monies.

62.51 The Tribunal rejected the First Respondent's explanation that the invoice was raised merely to facilitate discussions concerning how the position might be resolved and was not intended to result in any transfer from client account to the Firm's office account. The contemporaneous documents, including the completion statement and associated accounting entries, did not support that account.

62.52 The Tribunal was satisfied that the subsequent deduction of £8,700 from Client A's monies was caused or permitted by the First Respondent and was not authorised by Client A.

62.53 Accordingly, the Tribunal found Allegation 1.2 proved.

62.54 The Tribunal considered the nature and circumstances of the First Respondent's conduct in respect of Allegation 1.2 and concluded that it crossed the threshold of seriousness required to constitute professional misconduct. The improper transfer of client monies to the Firm's office account in the circumstances found amounted to a serious breach of the Solicitors Accounts Rules and fell well below the standards expected of a competent and reputable solicitor.

<u>Breaches</u>

62.55 Accordingly, the Tribunal found that the First Respondent had breached the following:

(a) Rules 17.2, 20.1 and 20.3 of the Accounts Rules 2011 which require that withdrawals from client account are made only for a proper or authorised purpose, and that office money may only be withdrawn from client account for payment of costs where a bill or other written notification of costs has first been given or sent to the client or paying party.

(b) Principles 2, 4, 6 and 10 of the 2011 Principles, namely acting with integrity, acting in the client's best interests, maintaining public trust in the profession, and protecting client money and assets.

Allegation 1.5 – Dishonesty (in relation to Allegation 1.2)

62.56 The Tribunal considered whether dishonesty was an aggravating feature of the First Respondent's misconduct in relation to Allegation 1.2. In doing so, it applied the test set out by the Supreme Court in _Ivey v Genting Casinos (UK) Ltd t/a Crockfords_ [2017] UKSC 67.

62.57 The Tribunal was satisfied that, at the material time, the First Respondent knew or believed that approximately £8,700 was being transferred from Client A's monies to the Firm's office account in purported payment of costs associated with the Berman matter, notwithstanding that Client A had not authorised the use of its monies for that purpose and had not first been provided with a bill or other written notification.

62.58 In light of its findings, the Tribunal concluded that ordinary decent people would regard it as dishonest for a solicitor to knowingly cause or permit client monies to be transferred to the Firm's office account in payment of costs in circumstances where the client had not authorised the deduction and had not first been provided with an appropriate bill or written notification of costs.

62.59 The Tribunal therefore found dishonesty established as an aggravating feature of the First Respondent's conduct in respect of Allegation 1.2.

Remaining Allegations Against the First Respondent

63. The Tribunal next considered Allegations 1.3 and 1.4, which concerned separate factual circumstances and related solely to the conduct of the First Respondent. The Tribunal considered each allegation separately by reference to the contemporaneous documents, the First Respondent's explanations, and the applicable legal principles.

64. **Allegation 1.3 – Misleading the Court**

64.1 In considering Allegation 1.3, the Tribunal relied upon the contemporaneous documents relating to the winding up proceedings issued by Ms Morgan against the Firm, the witness statements prepared by the First Respondent in those proceedings, and the explanations advanced by the First Respondent during the hearing before the Tribunal.

Misleading Statements in Relation to the Overdraft Facility

64.2 In relation to this allegation, the Tribunal was satisfied of the following matters in relation to allegation 1.3:

(a) By early August 2020, the Firm had repaid the overdraft facility with Arbuthnot Latham.

(b) The bank had confirmed that it no longer relied upon the debenture and deed of priority previously in place.

(c) In his witness statement dated 28 September 2020 filed in the winding up proceedings, the First Respondent stated that the Firm was continuing to take steps to deal with repayment of the overdraft facility and that, until the relevant security arrangements were discharged, the Firm could not make payment to Ms Morgan.

(d) On 23 October 2020, the First Respondent filed a further witness statement acknowledging that the Company had received confirmation from Arbuthnot in early August 2020 that the bank was no longer relying upon the debenture.

64.3 The Tribunal attached significant weight to the terms of the witness statement dated 28 September 2020 and was satisfied that the statement created the clear impression that the relevant banking security arrangements remained operative as at that date.

64.4 The Tribunal considered the First Respondent's explanation that, due to the effects of the COVID-19 pandemic and remote working arrangements, he had not seen the letter dated 4 August 2020 from Arbuthnot Latham before preparing the witness statement of 28 September 2020. The Tribunal accepted that the First Respondent may not personally have reviewed correspondence at that stage.

64.5 However, the Tribunal was satisfied that, irrespective of whether he had seen that correspondence, the First Respondent knew that the overdraft facility had been repaid prior to 28 September 2020. The Tribunal attached weight to the First Respondent's acceptance in evidence that he knew the overdraft had been repaid prior to September 2020. In those circumstances, his assertions that the Firm was continuing to take steps to repay the overdraft facility were inaccurate and would have been known by the First Respondent to be inaccurate when made. The Tribunal considered that those assertions conveyed the clear impression that the overdraft facility remained in place when it had already been discharged.

64.6 Accordingly the Tribunal found Allegation 1.3.1 proved.

Breaches

64.7 The Tribunal found that the First Respondent had breached the following in respect of Allegation 1.3.1:

(a) Principles 1, 2, 4 and 5 of the SRA Principles 2019, namely upholding the constitutional principle of the rule of law and the proper administration of justice, acting in a way that upholds public trust and confidence in the solicitors' profession, acting with integrity, and acting honestly; and

(b) Paragraph 1.4 of the Code, which requires solicitors not to mislead or attempt to mislead the court or others.

Misleading Statements in Relation to the Director's Loan

64.8 The Tribunal was satisfied of the following matters in relation to Allegation 1.3.2:

(a) The First Respondent had previously signed accounts on behalf of the Firm which recorded monies owing by the Company to its directors.

(b) The accounts included sums said to be owed to Ms Morgan by way of director's loans or advances.

(c) In the course of the winding up proceedings, the First Respondent asserted that Ms Morgan had not provided evidence of the alleged director's loans and maintained that there was insufficient evidence establishing those liabilities.

(d) The First Respondent nevertheless accepted before the Tribunal that the signed accounts recorded liabilities said to be owed to directors.

(e) The Tribunal further accepted that the First Respondent disputed the legal enforceability, repayment terms, and extent of any alleged liability owed to Ms Morgan.

64.9 The Tribunal attached significant weight to the fact that the First Respondent's signed accounts constituted documentary evidence capable of supporting the existence of liabilities owed to directors, including liabilities said to be owed to Ms Morgan.

64.10 The Tribunal accepted that the First Respondent was entitled to dispute whether the alleged director's loans had been sufficiently particularised or evidenced by Ms Morgan within the winding up proceedings. The Tribunal accepted the First Respondent's evidence that his references to there being no evidence of the alleged loans were directed to the absence of supporting material such as bank statements or equivalent documentary proof.

64.11 The Tribunal also accepted that the First Respondent had previously signed company accounts recording liabilities said to be owed to directors, including Ms Morgan. However, the Tribunal did not consider this to be inconsistent with the position advanced by the First Respondent within the litigation, namely that the alleged loans nevertheless required proper evidential substantiation.

64.12 Accordingly, the Tribunal was not satisfied that the allegation concerning misleading statement in relation to the director's loans was proved.

64.13 The Tribunal was satisfied that the conduct proved in respect of Allegation 1.3.1 amounted to serious misconduct falling below the standards expected of a competent solicitor.

64.14 In light of its findings the Tribunal did not proceed to consider the breaches alleged against the Respondent in respect of Allegation 1.3.2.

65. **Allegation 1.4 – Failing to Disclose Material Information**

65.1 In considering Allegation 1.4, the Tribunal relied upon the contemporaneous documents relating to the CBILS loan application, the terms and conditions governing the facility, the First Respondent's witness evidence and interviews, and the surrounding evidence concerning the Firm's financial position, the winding up proceedings, and the difficulties experienced in obtaining professional indemnity insurance.

65.2 The Tribunal was satisfied of the following matters:

(a) On 28 September 2020, the First Respondent signed documentation in relation to a CBILS loan application on behalf of the Firm.

(b) At the time the application documentation was signed, the First Respondent was aware that a winding up petition had been presented against the Firm by Ms Morgan.

(c) The First Respondent was also aware that the Firm had experienced significant difficulties in obtaining professional indemnity insurance and that concerns existed regarding the Firm's financial position and cash flow.

(d) The terms and conditions governing the loan facility required disclosure of matters including the presentation of a winding up petition and material adverse changes affecting the borrower's financial condition or business prospects.

(e) The First Respondent did not disclose the existence of the winding up petition or the difficulties concerning professional indemnity insurance before signing the loan documentation.

65.3 The Tribunal attached significant weight to the evidence concerning the Firm's difficulties in securing professional indemnity insurance and the First Respondent's own evidence concerning deteriorating cash flow and financial uncertainty affecting the Firm during that period.

65.4 The Tribunal considered the First Respondent's explanation that he regarded the loan approval process as having substantially concluded prior to the presentation of the winding up petition and that, at the point of signing the documentation, he did not consider there to be any obligation to make further disclosure.

65.5 The Tribunal rejected the First Respondent's explanation.

65.6 The Tribunal attached significant weight to the fact that, at the material time, the First Respondent was intimately involved in the management and financial affairs of the Firm and was actively dealing with multiple matters concerning the Firm's financial stability, including the winding up proceedings, cash flow difficulties, staffing concerns, and the Firm's inability to secure professional indemnity insurance. The Tribunal was satisfied that the First Respondent was well aware of the significance of those matters to the Firm's viability and therefore understood that they were material to the lender's assessment of the risk associated with the loan application.

65.7 Viewed cumulatively, the Tribunal was satisfied that the First Respondent failed to disclose material information relevant to the CBILS loan application.

65.8 Accordingly, the Tribunal found Allegation 1.4 proved.

65.9 The Tribunal was satisfied that the conduct proved in respect of Allegation 1.4 amounted to serious misconduct falling below the standards expected of a competent and reputable solicitor. The First Respondent knowingly failed to disclose matters materially relevant to the lender's assessment of the Firm's financial position and viability.

Breaches

65.10 Accordingly, the Tribunal found that the First Respondent had breached the following in respect of Allegation 1.4:

(a) Principles 2, 4 and 5 of the SRA Principles 2019, namely, acting in a way that upholds public trust and confidence in the solicitors' profession, acting with honesty and acting with integrity; and

(b) Paragraph 1.4 of the Code, which requires solicitors not to mislead or attempt to mislead others by their own acts or omissions.

65.11 The Tribunal was further satisfied that, in failing to disclose the matters identified above, the First Respondent acted dishonestly. He was aware of the existence of the winding up proceedings and the Firm's financial difficulties and understood that those matters were material to the lender's assessment of the loan application. In those circumstances, the Tribunal concluded pursuant to the test set out in *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] UKSC 67 that the First Respondent's failure to disclose that information would be viewed as dishonest by the standards of ordinary decent people.

Previous Disciplinary Matters

66. The First Respondent has an unblemished regulatory record.

67. The Tribunal noted the Second Respondent had one previous regulatory finding dating from 2003. However, the matter was historic, did not involve dishonesty, and resulted in a financial penalty only. In those circumstances, the Tribunal treated the Second Respondent as being of effectively good regulatory character.

Mitigation

68. The First Respondent

The Tribunal considered the mitigation advanced on behalf of the First Respondent as follows:

(a) The First Respondent had no previous regulatory findings or disciplinary history prior to the matters giving rise to the present proceedings.

(b) The events relating to Allegations 1.1 and 1.2 occurred in 2017, and the remaining allegations in 2020. The First Respondent had continued to practise subject to restrictions and there had been no evidence before the Tribunal of any further regulatory concerns arising since that time.

(c) The conduct concerning Allegations 1.1 and 1.2 arose within the context of an unusual and longstanding relationship between the Firm, Client A, Person B, Person F, and Mr Lorrell. That relationship involved complex financial arrangements which blurred the distinction between the Firm and client interests. It was not a conventional solicitor-client relationship and that these circumstances materially affected the First Respondent's judgment.

(d) In respect of Allegations 1.3 and 1.4, the First Respondent was at the relevant time operating the Firm during the COVID-19 pandemic under significant professional and financial pressures, including litigation, cash flow difficulties, and professional indemnity insurance issues.

(e) The First Respondent had derived no direct personal financial benefit from the misconduct found proved.

(f) The First Respondent had practised for a significant period whilst subject to restrictions imposed upon his practising certificate and had complied with those restrictions without difficulty. This demonstrated that the First Respondent was capable of safe and compliant practice within an appropriately supervised environment.

(g) Testimonial evidence provided by the First Respondent's current employer described him as a competent, hardworking, and capable solicitor who had practised appropriately whilst subject to conditions upon his practising certificate.

69. The Second Respondent

The Tribunal considered the mitigation advanced on behalf of the Second Respondent as follows:

(a) The Second Respondent had practised as a solicitor since 1994. He had one previous regulatory finding dating from 2003 which did not involve dishonesty and resulted in a financial penalty. Save for that matter, and since the conduct giving rise to the present proceedings in 2017, there had been no further regulatory concerns.

(b) The Second Respondent had derived no personal financial benefit from the misconduct found proved.

(c) The Second Respondent's involvement in the events giving rise to Allegations 2.1 and 2.2 occurred over a relatively short period following his arrival at the Firm.

(d) The Second Respondent had complied with the restrictions imposed upon his practising certificate by the regulator.

(e) The Second Respondent had cooperated with the regulator during the investigation, including by providing documentary material which was relied upon within the proceedings.

(f) The evidence concerning the Second Respondent's health included a medical episode which occurred during the hearing.

Sanction

70. The Tribunal referred to its Guidance Note on Sanctions (11th Edition, February 2025) when considering sanction and the proper approach to sanctions as set out in *Fuglers and others v SRA* [2014] EWHC 179. In determining the appropriate sanction, the Tribunal assessed the culpability and harm identified, together with the aggravating and mitigating factors applicable to each Respondent.

71. In determining sanction, and applying the required "bottom up" approach, the Tribunal gave careful consideration to the submissions advanced on behalf of both Respondents that the public interest and the maintenance of confidence in the profession could properly be met by a sanction short of strike off. The Tribunal gave particular consideration, in the case of the Second Respondent, to the submission made on his behalf that his case fell within the small residual category of cases to which exceptional circumstances applied.

72. The Tribunal reminded itself that, in cases involving dishonesty, the normal and necessary sanction is a strike off unless exceptional circumstances exist. In assessing whether such circumstances arise, the Tribunal had regard to the guidance in *SRA v Sharma* [2010] EWHC 2022 (Admin) at [13], which identifies as relevant the nature, scope, and extent of the dishonesty, whether it was momentary or prolonged, whether it was motivated by personal gain, and whether it caused harm to others. The Tribunal also noted the emphasis in *SRA v Sovani Ramona James* [2018] EWHC 3058 (Admin) at [117] that the most important factor is the nature and extent of the dishonesty and the degree of culpability. A similar approach was taken in *SRA v Imran* [2015] EWHC (Admin) at [24], where the Court stressed that the factor carrying the greatest weight in any assessment of exceptional circumstances is the degree of culpability and the extent of the dishonesty, given its bearing on public confidence.

73. The Tribunal carried out a balancing exercise in respect of each Respondent, weighing in each case the proven misconduct, the nature and extent of the dishonesty, and the degree of culpability, against the personal mitigation advanced on behalf of each Respondent. In doing so, the Tribunal had regard to the relevant paragraphs of its Guidance Note on Sanctions, in particular paragraph 29.

74. The First Respondent

74.1 In assessing sanction in respect of the First Respondent, the Tribunal considered the misconduct proved against him both individually and cumulatively.

74.2 The Tribunal found that dishonesty was a feature of every allegation proved against the First Respondent. The dishonesty was not isolated to a single act or momentary lapse of judgment but extended across multiple allegations occurring in different factual contexts between 2017 and 2020.

74.3 The Tribunal assessed the First Respondent's culpability as high. He exercised direct control and responsibility in respect of the circumstances giving rise to the misconduct. In relation to Allegations 1.1 and 1.2, the First Respondent deliberately caused or permitted the unauthorised use of client money belonging to Client A in order to settle liabilities unrelated to that client.

74.4 The Tribunal considered that the misconduct caused material harm. In particular, the First Respondent's conduct resulted in the unauthorised loss of a substantial sum of money from Client A's client ledger. The Tribunal also considered that the misconduct caused significant reputational harm to the profession and undermined public trust in solicitors entrusted with the handling of client money.

74.5 The Tribunal regarded as aggravating that the First Respondent was aware that his conduct involved material breaches of his professional obligations and that the misconduct was repeated over a period of time. The Tribunal also took into account that the proven misconduct extended beyond the misuse of client money and included dishonest conduct towards both the Court and a commercial lender.

74.6 The Tribunal took into account the mitigation advanced on behalf of the First Respondent but concluded that those matters were insufficient to displace the strong public interest in maintaining public confidence in the profession and upholding proper professional standards in cases involving repeated dishonesty and the misuse of client money.

74.7 Accordingly, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as a reprimand, suspension, or restrictions. The Tribunal determined that the only appropriate and proportionate sanction was therefore to direct that the First Respondent be struck off the Roll of Solicitors.

75. <u>The Second Respondent</u>

75.1 In assessing sanction in respect of the Second Respondent, the Tribunal considered the misconduct proved against him, together with the aggravating and mitigating features arising from that conduct. The Tribunal considered the nature and extent of the dishonesty and the Second Respondent's degree of culpability.

75.2 The Tribunal found that the Second Respondent had acted dishonestly in respect of Allegation 2.1.

75.3 The Tribunal carefully considered the submissions advanced on behalf of the Second Respondent that his case fell within the small residual category of cases in which exceptional circumstances existed such as to justify a sanction short of strike off.

75.4 The Tribunal accepted that the Second Respondent had derived no direct personal financial benefit from the misconduct proved.

75.5 In relation to the scope and extent of the Second Respondent's dishonesty proved in respect of Allegation 2.1, the Tribunal further accepted that the proven misconduct arose from a single short-lived course of conduct. The Tribunal also accepted that the Second Respondent was not the primary architect of the wider circumstances giving rise to the misconduct.

75.6 The Tribunal also took account of the factors advanced on the Second Respondent's behalf in mitigation, including the Second Respondent's longstanding practice, the limited nature of his previous regulatory history, his cooperation with the regulator, his compliance with practising certificate restrictions, and the evidence concerning his health.

75.7 The Tribunal considered that notwithstanding the mitigation advanced, the misconduct remained serious and the Respondent's culpability was high. The Second Respondent knowingly participated in the unauthorised use of a substantial sum of client money belonging to Client A; he was an extremely experienced solicitor and was aware that the conduct involved a material breach of fundamental professional obligations. The misconduct caused material harm both through the loss caused to Client A and through the reputational harm caused to the profession by undermining public confidence in solicitors entrusted with the handling of client funds. As articulated in *Bolton v Law Society* [1994] 1WLR 12, a solicitor entrusted with client funds must be capable of being trusted "to the ends of the earth", and any failure in that regard strikes at the heart of the protections the regulatory framework is designed to secure. The Second Respondent had abused his position of trust, and his misconduct had been deliberate.

75.8 The Tribunal also noted that the conduct was denied by the Second Respondent throughout the proceedings and was only established following contested findings of fact by the Tribunal, which it considered to be a relevant factor in its assessment of the nature and extent of the dishonesty, the degree of culpability and sanction.

75.9 Having considered all matters individually and cumulatively; the Tribunal did not consider the Second Respondent's case to fall within the small residual category of cases in which a sanction short of strike off was justified.

75.10 The Tribunal considered and rejected the lesser sanctions within its sentencing powers such as a reprimand, suspension, or restrictions. Accordingly, the Tribunal determined that the only appropriate and proportionate sanction was to direct that the Second Respondent be struck off the Roll of Solicitors.

Costs

76. Mr Tankel, on behalf of the Applicant, sought recovery of the Applicant's costs of £94,581.50, as set out in the costs schedule dated 24 April 2026. He confirmed that the Applicant sought apportioned costs orders against each of the Respondents as the Tribunal saw fit.

77. On behalf of the First Respondent, submissions were made concerning the level of the Applicant's costs following the adjournment of the proceedings and the subsequent instruction of external counsel. It was submitted that the original hearing had been intended to proceed with in-house representation for the Applicant and that additional costs during the current hearing had thereby been incurred unnecessarily. Submissions were also made concerning the First Respondent's limited financial circumstances and ability to satisfy any substantial costs order.

78. There was no opposition in principle to an order for costs in favour of the Applicant.

79. On behalf of the Second Respondent, it was submitted that any costs order should properly reflect the more limited scope of the allegations found proved against him and the fact that substantial parts of the hearing related exclusively to the allegations against

the First Respondent. Submissions were also made concerning the likely financial consequences of strike off upon the Second Respondent.

80. The Tribunal was guided by Rule 43(4) of the Solicitors (Disciplinary Proceedings) Rules 2019 which provides that after deciding whether it should make an order for costs it must consider all relevant matters which in this case included:

(a) whether time spent, rates and disbursements were proportionate and reasonable.

(b) the paying parties' means; and

(c) the conduct of the parties.

81. The Tribunal accepted that the proceedings were of significant factual complexity, involving multiple allegations, the substantial volume of documentary evidence, preparatory work, and lengthy witness evidence over the course of the hearing. The Tribunal was also satisfied that the instruction of external counsel by the Applicant following the adjournment of the proceedings was neither unreasonable nor disproportionate in the circumstances.

82. In determining costs, the Tribunal took into account the documentary financial information provided by the First Respondent and noted that the Second Respondent did not file documentary evidence of his means. In the absence of documentary evidence of the Second Respondent's means, the Tribunal was not satisfied that there was any evidential basis upon which to reduce the costs otherwise payable by him on grounds of inability to pay. Oral submissions made on behalf of both Respondents concerning means and proportionality were noted.

83. Having considered all relevant circumstances, including the appropriate apportionment of the Applicant's costs between the Respondents and the information available concerning their respective means, the Tribunal determined that the appropriate and proportionate costs orders were:

(a) That the First Respondent pay costs in the sum of £9,000; and

(b) That the Second Respondent pay costs in the sum of £39,553.40.

Statement of Full Order

The First Respondent

84. The Tribunal ORDERED that the Respondent, JAMES SWEAD, 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 £9,000.

The Second Respondent

85. The Tribunal ORDERED that the Respondent, JOHN SZEPIETOWSKI, 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 £39,553.40.

Reporting Restriction

86. The Reporting Restriction made pursuant to Rule 35(9) of the Solicitors (Disciplinary Proceedings) Rules 2019 remains in force. No report of these proceedings may publish or disclose any information likely to lead to the identification of any person, entity, or property whose identity has been anonymised within this judgment.

87. Neutral descriptors have been used throughout this judgment to give effect to that restriction.

88. The reporting restriction does not apply to the Respondents or to any individual expressly named within this judgment.

Dated this 20th day of July 2026
On behalf of the Tribunal

W. Ellerton

W Ellerton
Chair