

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12588-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD

Applicant

and

RESPONDENT AN

Respondent

Before:

Ms A Banks (in the Chair)

Ms C Rigby

Mr P Hurley

Date of Hearing: 10 October 2024

Appearances

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

JUDGMENT ON AGREED OUTCOME

Allegations

The allegations against Respondent AN, (“the Respondent”), made by the SRA are that, while in practice as a Solicitor.

1. On 6 May 2021, the Respondent asked Client A to pay the sum of £292.50 to his personal bank account and by doing so the Respondent:
 - (i) breached all or any of Principles 2, 4, 5 and 7 of the SRA Principles 2019 (“the Principles”)
 - (ii) (ii) breached either or both of paragraphs 1.2 and 1.4 of the Code of Conduct for Solicitors, RELs and RFLS (“the Code for Solicitors”)
2. On or around 16 April 2021, the Respondent created an invoice, which was never provided to Mr and Mrs Client B, in the sum of £924, whereas actual costs due were £474, and by doing so the Respondent:
 - (i) breached all or any of Principles 2, 4, 5, and 7 of the Principles
 - (ii) breached either or both paragraphs 1.2 and 1.4 of the Code for Solicitors
3. On or around April or May 2021, the Respondent received £450 in cash in relation to Mr and Mrs Client B.s matter, without providing any receipt or record of such payment, and by doing so the Respondent:
 - (i) breached all or any of Principles 2, 4 and 5 of the Principles
 - (ii) breached either or both paragraphs 1.2 and 1.4 of the Code for Solicitors
4. On or around 5 May 2021, the Respondent asked Client C to pay £200 to his personal bank account and by doing so the Respondent:
 - (i) breached all or any of Principles 2, 4, 5 and 7 of the Principles
 - (ii) breached either or both paragraphs 1.2 and 1.4 of the Code for Solicitors
5. **WITHDRAWN**

Allegations 1 – 4 [Proved]

6. The Applicant applied to withdraw Allegation 5, which had included dishonesty as an aggravating feature of the conduct described at Allegations 1 – 4. Instead, the Applicant sought to amend Allegations 1 – 4 to add in and incorporate a breach of Principle 4 to those allegations. It was noted by the Tribunal that there was no prejudice arising from this application to Respondent AN who was legally represented. The Tribunal granted the application.

Documents

7. The Tribunal had, amongst other things, the following documents before it: -
 - The Form of Application from Applicant dated 3 October 2024
 - Rule 12 Statement dated 9 April 2024 and exhibits
 - Agreed Outcome dated 3 October 2024
 - The Form of Application from Respondent and supporting bundle dated 3 October 2024

Background

8. Respondent AN was admitted as a solicitor, prior to this, he had been working as a conveyancer for three years. Respondent AN commenced employment at the Firm as a solicitor. Respondent AN is not currently practising as a solicitor and does not have a current practising certificate. He does not currently work within the legal profession.

9. Anonymity Application

- 9.1 Respondent AN applied for anonymity inviting the Tribunal to anonymise the Agreed Outcome documentation, any Order/s and any online publication of his name on its website arising from the proceedings. The application was not opposed by the Applicant.
- 9.2 The application was founded upon the risk arising to Respondent AN's health from any such publication. In support of the application was medical evidence from Dr Wilkin, a Consultant General Adult and Forensic Psychiatrist. Dr Wilkin's report was dated 29 February 2024 and an addendum report was dated 13 May 2024.
- 9.3 The Tribunal considered the application documentation and the medical evidence with great care. The Tribunal determined that publication of the Judgment in an un-anonymised format would significantly violate Respondent AN's Article 2 rights, such that a departure from the usual principles of open justice was necessary. Accordingly, the Tribunal ordered that the Judgment be anonymised.

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

10. 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. The application was granted for the reasons set out below.

Findings of Fact and Law

11. 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.

12. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Respondent AN's admissions were properly made including the admission of dishonesty.
13. The Tribunal considered the Guidance Note on Sanction (10th Edition). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
14. In the circumstances where dishonesty had been admitted and no exceptional circumstances were put forward in mitigation this was not a case where the Tribunal could reach any decision on sanction other than the one set out in the document with which it had been presented.

Costs

15. There was no application for costs and as such the Tribunal made No Order as to the costs of and incidental to the proceedings.

Statement of Full Order

16. The Tribunal ORDERED that RESPONDENT AN solicitor, be STRUCK OFF the Roll of Solicitors. The Tribunal made NO ORDER for costs.

Dated this 25th day of October 2024

On behalf of the Tribunal

A Banks

Ms A Banks
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
25 OCTOBER 2024

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

CASE NO: 12588-2024

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

- and -

RESPONDENT AN

Respondent

STATEMENT OF AGREED FACTS AND PROPOSED OUTCOME

1. By its application dated 9 April 2024, and the statement made pursuant to Rule 12(2) of the Solicitors (Disciplinary Proceedings) Rules 2019 ("**Rule 12 Statement**") which accompanied that application, the Solicitors Regulation Authority Limited ("**the SRA**") brought proceedings before the Solicitors Disciplinary Tribunal, initially making five allegations of misconduct against ("**the Respondent**"). Those allegations have subsequently been reduced to four, with the permission of the Tribunal as the allegation of dishonesty need not be set out as a freestanding allegation and should instead be included as an alleged breach of Principle 4 of the SRA Principles 2019 ("**the Principles**").
2. Definitions and abbreviations used herein are those set out in the Rule 12 Statement.

The Allegations

3. The allegations against the Respondent, are that:

While in practice as a Solicitor at ("**the Firm**"):

- 3.1. On 6 May 2021, the Respondent asked Client A to pay the sum of £292.50 to his personal bank account and by doing so the Respondent:

3.1.1. breached all or any of Principles 2, 4, 5 and 7 of the Principles

3.1.2. breached either or both of paragraphs 1.2 and 1.4 of the Code of Conduct for Solicitors, RELs and RFLS (“the Code for Solicitors”)

3.2. On or around 16 April 2021, the Respondent created an invoice, which was never provided to Mr and Mrs Client B, in the sum of £924, whereas actual costs due were £474, and by doing so the Respondent:

3.2.1. breached all or any of Principles 2, 4, 5, and 7 of the Principles

3.2.2. breached either or both paragraphs 1.2 and 1.4 of the Code for Solicitors

3.3. On or around April or May 2021, the Respondent received £450 in cash in relation to Mr and Mrs Client B’s matter, without providing any receipt or record of such payment, and by doing so the Respondent:

3.3.1. breached all or any of Principles 2, 4 and 5 of the Principles

3.3.2. breached either or both paragraphs 1.2 and 1.4 of the Code for Solicitors

3.4. On or around 5 May 2021, the Respondent asked Client C to pay £200 to his personal bank account and by doing so the Respondent:

3.4.1. breached all or any of Principles 2, 4, 5 and 7 of the Principles

3.4.2. breached either or both paragraphs 1.2 and 1.4 of the Code for Solicitors

4. Dishonesty is alleged as a breach of Principle 4 of the Principles in relation to the allegations set out at paragraph 3.1 to 3.4.

Admissions and Sanction

5. The Respondent admits the allegations as set out at paragraph 3 of this statement in their entirety and admits that he acted dishonestly.

6. The Respondent accepts that he should be struck off the roll of solicitors.

Agreed Facts

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

8. References to certain individuals and entities have been anonymised as per the attached schedule.

Summary

9. This matter concerns conduct between April and May 2021, whilst the Respondent was employed by the Firm and conducting legal work including that which related to the sale and conveyance of property. The Respondent attempted to obtain money from Client A and Client C respectively for his own benefit by misleading them into transferring funds into his personal bank account, and he took possession of cash from Client B, for his own benefit, although it had been provided as payment for fees due to the Firm. In addition, he created a false invoice for sums allegedly due from Mr and Mrs Client B which was never provided to them. Such conduct is dishonest, and it goes to the heart of the relationship of trust between a solicitor and their client, upon which the legal profession is based.

Professional Details

10. The Respondent is a solicitor, having been admitted to the Roll of Solicitors on 2019. Prior to this, the Respondent had been working as a Conveyancer for three years.

11. The Respondent commenced employment at the Firm as a solicitor on

12. The Respondent does not have a current practising certificate, and does not currently work within the legal profession.

Background

13. On 7 May 2024, , the founding Director and Managing Director of the Firm, received a complaint from Client A which alleged that the Respondent asked her to make

a payment to his personal bank account for an aborted property sale fee. , who is also the Firm's Compliance Officer for Legal Practice ("COLP") and the Compliance Officer for Finance and Administration ("COFA"), investigated Client A's complaint by interrogating the Firm's case management system and the Respondent's computer hard drive, utilising IT support. In doing so, as well as confirming the issue reported by Client A, discovered additional concerns relating to payments made or received in respect of Client B and Client C respectively.

14. reported "*multiple breaches*" of the Code for Solicitors by the Respondent to the SRA on 24 May 2021. The Respondent was notified that the SRA had commenced an investigation on 29 July 2021. On 27 August 2023 a Notice recommending referral to the Tribunal ("the Notice") was sent to the Respondent. On 9 November 2023 an Authorised Officer of the SRA decided to refer the conduct of the Respondent to the Tribunal, which then led to this Application being lodged with the Tribunal on 9 April 2024.

Allegation 1 (requested payment of £292.50 from Client A into a personal bank account)

15. Client A had appointed the Respondent as her solicitor to deal with the sale of her property.
16. A standard condition in the Firm's terms of engagement ("ToE") to Client A states, under the heading "*Failure to complete*", that the Firm "*reserves the right to charge an abortive fee*" if a transaction has not completed. The ToE states that the charging of an abortive fee depends upon what stage the work had to be aborted.
17. The completion date for the sale of Client A's property was 6 May 2021, and on that day, the Respondent contacted Client A on a few occasions to confirm the proceeds of the sale was in the Firm's account, however, according to the Respondent, Client A had a previous open file upon which there was an outstanding amount of fees that needed to be paid to the Firm. has since confirmed in a supplemental statement that

"As the Managing Director of , I have the discretion to waive the abortive fee. [Client A] is a long-standing client of . She has instructed us in a number of matters over many years. She is also known to me as the friend of another friend of mine. In this context, in respect of the matter assisted [Client A] with in April 2021, I would have used my discretion to waive the abortive fee."

18. Client A received two to three telephone calls in an hour on 6 May 2021 from the Respondent, asking for a payment to be made to a bank account in the Respondent's name.

19. The following emails were exchanged between the Respondent and Client A on 6 May 2021:

19.1. At 14:07, from Client A to the Respondent:

Sorry but can you send me ur bank details over again for the payment left home in a rush and not taken the paper with me...many thanks [sic]

19.2. At 14:22pm, from the Respondent to Client A:

"Hi, Please call me to discuss the completion arrangements and I will go through the bank details with you as I am ready to complete the matter. For security, email is not as secure."

19.3. At 14:07, from Client A to the Respondent:

"Meeting due to end any moment and I will return you call many thanks [sic]"

19.4. At 14.49pm, from the Respondent to Client A:

"Bank details for abortive.

Halifax

S/C: [number provided]

A/C: [number provided]

Amount: £292.50

Ref:

Let me know once you have transferred and call me to further confirm your bank details for security as I now hold the sale proceeds on my end"

20. The Respondent sent the following text message to Client A, as received to Client A's telephone at 17:06 on 6 May 2021:

"This is a follow up text message further to my call earlier.

I can confirm funds have been sent to your Barclays account via CHAPS which you should have received by now.

Please can you confirm safe receipt and confirm you have made payment on your end too?

You may reply to this message as this is a work mobile line.”

21. Client A did not actually make the payment of £292.50 that the Respondent had attempted to cause her to make. Client A brought the matter to attention on 7 May 2021 by forwarding to him emails exchanged with the Respondent, including the email at 14:49pm on 6 May 2021. However, when then looked at the Firm’s case management system and the hard drive of the Respondent’s computer, whilst he found some of the emails with Client A, he could not find that which was sent at 14:49pm on 6 May 2021.
22. then instructed the Firm’s IT supplier, , to interrogate the Respondent’s email account to retrieve deleted emails and conduct searches. The IT supplier then retrieved the email to Client A of 6 May 2021 at 14:49pm containing the Respondent’s sort code and bank account details, and noted that it had been deleted from the Respondent’s sent items and his deleted items folder of his email account.
23. Upon checking a “Bills” folder on the Respondent’s computer, located a copy of the invoice relating to the sale of Client A’s property. He also located a further invoice addressed to Client A, which was not located within Client A’s file, which related to the fee for the abortive sale. The client ledger made no reference to any costs being generated in relation to the abortive sale.
24. On 10 May 2021, the Respondent attended a meeting with and (a colleague at the Firm), at which he was questioned about matters relating to the case. When the Respondent was questioned about the complaint received from Client A, he initially denied “everything”, but then later admitted that he had attempted to obtain funds from Client A into his personal bank account.
25. The Respondent therefore accepts:
- 25.1. He attempted to charge Client A an abortive fee.
- 25.2. He falsely represented to Client A in his email of 6 May 2021 that:
- 25.2.1. she owed a debt of £292.50 to the Firm, as a fee for an earlier

aborted sale of her property;

25.2.2. The payment of £292.50 should be paid into his personal bank account. This was contrary to the Firm's practices or expectations.

25.3. His email of 6 May 2021, which asked Client A to make a payment into his bank account:

25.3.1. was an abuse of his position of trust as a solicitor, in that it was an effort to take unfair advantage of Client A;

25.3.2. was misleading as he knew that Client A did not owe an abortive fee of £292.50, and that no funds should be paid to a bank account held in his name.

25.4. To conceal his conduct, the Respondent was responsible for the deletion of the key e-mail communications of 6 May 2021 from his email account's sent and deleted items folders, and he did not save the same to the Firm's case management system for Client A's matter.

25.5. He did not include a copy of an invoice for £292.50 on Client A's file, which is poor governance / file management.

25.6. His actions of 6 May 2021 were intended to allow him to obtain £292.50 from Client A, for his own benefit, to which he knew he was not entitled and was not in the best interests of Client A.

25.7. By his conduct, the Respondent breached Principles 2, 4, 5 and 7 of the Principles, and paragraphs 1.2 and 1.4 of the Code.

Allegation 2 (created an invoice for £924 when costs were lower which was never provided to Client B)

26. The Respondent was instructed by Client B to transfer their equity in a property they owned to their relative, Individual D.

27. There is no record on Client B's file of any estimate of fees provided by the Respondent at the start of the retainer.

28. When he examined the Respondent's computer on 7 May 2021 and considered the Bills folder, noted two invoices for Mr and Mrs Client B had been created four days apart with differing amounts. The two invoices were both dated 12 April 2021 and related to professional costs and disbursements in the sum of:

28.1. £474 ("the first invoice"); and

28.2. £924 ("the second invoice").

29. The reason for the second invoice did not "make any sense" to , as profit costs in the sum of £474, in accordance with the first invoice, had recently been transferred from the client account to the office account on Client B's file.

30. On 8 April 2021, at the request of the Respondent, Client B and Individual D attended the Firm and gave directly to the Respondent a cash payment in the sum of £450 (the circumstances of this payment are the subject of Allegation 3).

31. The Respondent emailed Mr and Mrs Client B at 12.36pm on 12 April 2021 to request "a balance of funds" in the sum of £474, but no invoice in that sum was attached to the email.

32. Individual D emailed the Respondent on 14 April 2021 at 10.50am to confirm that she had transferred the remaining balance of £474 to the account provided by the Respondent, and she required an invoice for "both" payments for Mr Client B's record. The use of the word "both" suggests the Respondent had not provided an invoice or receipt for the sum of £474 transferred by Mr and Mrs Client B, nor the cash payment made by Mrs Client B in the sum of £450.

33. Although both invoices found on the Respondent's computer on 7 May 2021 by were dated 12 April 2021, the metadata of the second invoice confirm it was created on 16 April 2021, and the last person to save it was the Respondent.

34. On 16 April 2021, the Respondent wrote to Mr and Mrs Client B by letter to confirm that the transfer was completed on 12 April 2021, and he had received all monies to settle the Firm's professional legal fees and disbursements. The letter stated that it enclosed a copy of an invoice and marked it as "Paid," but no invoice was enclosed.

35. During the meeting with the Respondent on 10 May 2021, requested an explanation from the Respondent for the two invoices. Initially, the Respondent said that he had made a mistake, however he subsequently admitted that he had "*split the*

legitimate invoice between work that had been completed and for money he paid into his personal bank account. The money that he took...totalled £450".

36. It is noted that £474 (the amount stated within the first invoice), paid by transfer by Client B; plus £450, the amount paid in cash by Client B directly to the Respondent; is equal to £924, the amount stated within the second invoice.
37. There is no record on the relevant file that Mr and Mrs Client B were asked by the Respondent to pay £450 in addition to the £474. No invoice was ever supplied to Mr and Mrs Client B, certainly none that reflected fees and disbursements amounting to the £924 stated within the second invoice.
38. The Client Account Statement for Client B dated 14 September 2022, which was prepared by _____, reflects that two payments were received on Mr and Mrs Client B's account, in the amounts of £474 and £450 respectively, but only a withdrawal of £474 was made on the account. This indicates that a lower sum of £474 and not £924 was legitimately due from Mrs and Mrs Client B.
39. The Respondent therefore accepts that:
- 39.1. He did not adequately explain the level of fees that may be incurred by Client B.
 - 39.2. He did not record any discussion regarding fees that he had with Client B at the start of the retainer.
 - 39.3. When he requested Client B pay fees in excess of £474, he knew that Client B did not have to pay such fees, which was both misleading and an abuse of his position of trust as a solicitor. This was also a failure to act in the best interests of Client B.
 - 39.4. He did not provide an invoice or receipt to cover the payments he requested and received from Client B, in the sum of £450 in cash, and £474 via transfer.
 - 39.5. He wrote to Mr and Mrs Client B on 16 April 2021 with the intention of creating an impression that an invoice for their records with the "Paid" stamp would be provided, but no invoice was actually provided.
 - 39.6. The second invoice is a false document, created on or around 16 April 2021 by

the Respondent, in the sum of £924, when the Respondent knew that no fees in excess of £474 were payable by Client B to the Firm.

- 39.7. The second invoice was not sent to Client B, and was not saved to the Firm's file for Client B.
- 39.8. His actions were intended to permit him to retain the £450 cash payment he received from Client B, for his own benefit, to which he knew he was not entitled.
- 39.9. By his conduct, he breached Principles 2, 4, 5 and 7 of the Principles, and paragraphs 1.2 and 1.4 of the Code.

Allegation 3 (receiving £450 cash payment from Client B without providing a receipt or record of payment)

40. The Respondent accepts that he received a cash payment for £450 directly from Mrs Client B when she attended at the Firm on 8 April 2021.
41. In the transcript of the meeting at the Firm between the Respondent, and on 10 May 2021, the Respondent admitted to taking receipt of cash in relation to Mr and Mrs Client B's matter because of "money struggles".
42. As above, there is no record on Mr and Mrs Client B's file of any estimate of fees provided by the Respondent at the start of the retainer for the transfer of equity matter.
43. The letter of dismissal sent to the Respondent of 17 May 2021 indicates that, "[the Respondent] *was made aware during [his] induction when [his] employment commenced that any payment received in person had to be receipted. Any cash payments over the sum of £20 had to be counter signed by a colleague as well as being receipted.*" There is no record on the Firm's file for Mr and Mrs Client B of £450 being received by the Respondent and no evidence of a counter signature by a colleague or a receipt.
44. further confirmed in the letter of dismissal of 17 May 2021 that, "[Mr Client B] *said that he had questioned you as to why no receipt was being given for the cash payment. You apparently advised him that there was no receipt book which is factually incorrect...*".
45. The Client Account Statement dated 14 September 2022, reflects that a payment of £450 was received in relation to Mr and Mrs Client B's file in May 2021. However, this is

not a contemporaneous record of the payments received by the Respondent at the time, it was prepared at a later stage.

46. During the meeting with [redacted] and [redacted] on 10 May 2021, the Respondent admitted he had split a legitimate invoice between the work that had been completed and for money that he paid into his personal bank account. “*The money that he took from [Mr and Mrs Client B] totalled £450*”.
47. Following his dismissal from the Firm, the Respondent made a payment of £450 to the Firm’s client account. By inference, the Respondent was aware that he ought not to have received payment on behalf of the Firm from Mr and Mrs Client B without providing proof of receipt.
48. The Respondent therefore accepts that:
- 48.1. He did not record any discussion regarding fees that he had with Client B at the start of the retainer, and did not adequately explain the same to Client B.
- 48.2. When he received £450 cash from Client B, he misled Client B into believing the money was owed to the Firm for outstanding fees, and that the money would be used to settle the same, when instead such fees were not owed and the money was instead for the Respondent’s own benefit. This was also an abuse of the position of trust as a solicitor.
- 48.3. He received £450 in cash from Client B, without providing a countersigned receipt, nor any other record relating to receipt of the payment on Client B’s file. He did not pay this into the Firm’s client account.
- 48.4. When he told Client B that there was no receipt book, he knew that there was in fact one, and thus made a false and misleading statement.
- 48.5. He did not inform [redacted], at the relevant time, that the cash payment had been received from Client B.
- 48.6. By his conduct, he breached Principles 2, 4, and 5 of the Principles, and paragraphs 1.2 and 1.4 of the Code.

Allegation 4 (requested £200 payment from Client C into personal bank account)

49. The Firm was instructed on or around 12 April 2021 to act for Client C to deal with a

transfer of 50% equity in relation to Client C's partner's property to Client C. The matter was referred to the Firm by

50. On 5 May 2021, the Respondent emailed Client C with payment instructions and an invoice to settle the fees position. The invoice showed a breakdown of costs totalling £838.80 (which included a deposit of £100 and a search indemnity fee of £90).
51. The search indemnity fee of £90 (which was not incurred) and the deposit payment of £100 was deducted from the costs payable. It was therefore the case that as at 5 May 2021, Client C had accrued total fees due to the Firm in the sum of £748.80 (£838.80 minus £90), and Client C needed to settle £648.80 (after the £100 deposit was deducted).
52. In the email of 5 May 2021, Client C was told by the Respondent to call and speak to him before payment was made, because the Respondent needed to confirm the "details" to which Client C should send the payment.
53. A telephone call then took place on 5 May 2021 between Client C and the Respondent, during which the Respondent requested Client C split the fees due to the Firm across two bank accounts. Client C was asked to pay £200 to the Respondent's personal bank account, and £448.80 to the Firm's bank account, making a total of £648.80.
54. Client C thought that splitting the fees across two separate accounts was unusual, but she did not question the Respondent as she regarded him as professional. In her statement, Client C stated,
- "I had no previous experience of dealing with solicitors so to me everything seemed all right"; and "I did find it somewhat unusual that he requested I send funds to two separate accounts, however I did not question it; he was professional, so I had no issues and no reason not to trust him. I assumed it was business account, and that this was the arrangement between him and the agency for him to deduct his fees."*
55. Later on 5 May 2021, Client C made the two payments as requested by the Respondent. Client C then emailed the Respondent on the same date to confirm that £200 had been paid to the Respondent's personal bank account, and £448.80 to the Firm's bank account. The Respondent's personal bank statement for the relevant period confirms that on 5 May 2021, Client C made a payment of £200 into his account.
56. It is noted that there is an invoice on Client C's file, dated 6 May 2021 (the day after

Client C had made payments of £200 and £448.80 totalling £648.80), in respect of the Firm's fees for Client C's matter, in the sum of £548.80.

57. The difference between £748.80, which is the amount that the Respondent informed Client C was payable to the Firm, and £548.80, the amount stated on the invoice on Client C's file dated 6 May 2021, is £200. This is the same amount that the Respondent caused Client C to pay into his own bank account.
58. During the meeting on 10 May 2021 at the Firm, the Respondent admitted to that he provided his personal bank details to Client C, and split the funds between himself and the Firm in relation to Client C's matter. Following his dismissal from the Firm, the Respondent made a payment of £200 to the Firm's client account. By inference, the Respondent was aware that he ought not to have received the payment of £200.
59. The Respondent therefore accepts that:
- 59.1. The true amount in fees incurred by Client C to the Firm was £748.80, taking into account the £90 search indemnity fee which was not incurred.
- 59.2. After the £100 paid on account by Client C was taken into consideration, Client C needed to pay the balance of £648.80 in fees to the Firm.
- 59.3. His request on 5 May 2021, that Client C contact him so that he could confirm the details of how she should settle the outstanding fees owed to the Firm, was contrived by the Respondent as an opportunity for him to be able to directly provide his own personal bank account to Client C. The Respondent knew at the time of his request that Client C had to pay all the outstanding fees of £648.80 to the Firm's bank account, for the sole benefit of the Firm, so his discussion with Client C to the contrary was false and misleading. This was a failure to act in Client C's best interests.
- 59.4. On 5 May 2021, he misled Client C into paying £448.80 to the Firm's bank account, and £200 to his own personal bank account, on the basis that collectively these two payments would settle the outstanding fees owed by Client C to the Firm in the sum of £648.80. In doing so the Respondent also breached the position of trust as a solicitor in that it was an effort to take unfair advantage of Client C.

- 59.5. He is responsible for the content of the invoice of 5 May 2021, which is a false representation of the fees owed to the Firm, as it refers to fees totalling £548.80, which is £200 less than the correct amount of £748.80.
- 59.6. His actions deprived the Firm of £200 which was rightfully due for work undertaken on Client C's file.
- 59.7. He exposed Client C to the risk of being indebted to the Firm, as it had received £200 less than the total outstanding fees owed to it of £648.80.
- 59.8. A false and misleading audit trail was created by the Respondent in respect of the information available on Client C's file, in that the:
- 59.8.1. The only invoice saved to Client C's file was in the sum of £548.80;
 - 59.8.2. The invoice sent to Client C on 5 May 2021 in the sum of £838.80 was not saved to Client C's file; and
 - 59.8.3. £200 received in the Respondent's own bank account was not accounted for on Client C's file, or the Firm's office account.
60. The Respondent therefore accepts that, by his conduct, he breached Principles 2, 4, 5 and 7 of the Principles, and paragraphs 1.2 and 1.4 of the Code.

Non-Agreed Mitigation

61. The following mitigation is advanced by the Respondent (it is not endorsed by the Applicant):
- 61.1. The Respondent offers his genuine, and sincere, apology for his conduct.
 - 61.2. The funds misappropriated, the subject of the allegations, have been repaid.
 - 61.3. The period for which the misconduct took place was short, and for a limited period of around 3 weeks in April and May 2021.
 - 61.4. There has been no repetition of the misconduct, the subject of the allegations.
 - 61.5. Prior to the matters, the subject of the proceedings, the Respondent is a

person of hitherto exemplary and unblemished character and regulatory and disciplinary history.

61.6. The Respondent has co-operated with the SRA investigation and within the SDT proceedings.

61.7. The events giving rise to the allegations can be described as historical, taking place approximately 3 ½ years ago. The Respondent has suffered significantly with his mental health which will be noted by the Tribunal in the medical evidence provided.

61.8. The Respondent accepts, to his credit, based upon the matters set out within this document, responsibility for the breaches and that he acted as alleged, and dishonestly.

Proposed Sanction

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

63. Upon reflection, the Applicant is no longer minded to seek an order against the Respondent for the costs it has incurred in respect of this Application, on the basis of the limited current financial means of the Respondent (for which evidence has been served upon the Applicant by the Respondent) and the nature of the proposed sanction sought.

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

64. The parties consider and submit that, in light of the admissions set out above, and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a fair and proportionate resolution to the matter consistent with the Solicitors Disciplinary Tribunal's "Guidance Note on Sanction" (10th edition), which states at paragraph 47:

"The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances (see Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin))."

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

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

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

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

66. By the (objective) standards of ordinary decent people, the Respondent's overall conduct was dishonest. It is submitted that the Respondent's conduct is properly categorised as serious dishonesty in breach of Principle 4 of the 2019 Principles as follows:

66.1. The dishonest conduct was premeditated, as evidenced by the careful and considered way in which it was conducted by the Respondent. Each instance involves repeated email or telephone contact with Clients, with the intention of diverting payments to the Respondent that, in relation to Client C, should have been to be paid to the Firm in settlement of fees or in relation to Client A (aborted fee) and Client B (£450 in cash) should not have been charged or paid into his personal bank account.

66.2. Efforts were undertaken to conceal the conduct by deleting email communications (Client A), creating false invoices (Client B), failing to provide full information about prospective charges to each of Client A, Client B and Client C, and omitting to include key email documents or invoices within client files.

66.3. The Respondent stood to benefit financially from all occasions where he requested Client A, Client B and Client C pay funds into his personal bank account, to the detriment of the Firm and his Clients.

- 66.4. At the heart of the conduct was the Respondent's manipulation of the client / solicitor relationship of trust. He directly lied to his Clients, either about the total fees they owed to the Firm, and / or how the same should be settled. All of the relevant clients were affected by what they were told by the Respondent, a solicitor, and Client B and Client C, in particular, relied upon this to their detriment.
67. Members of the public should be able to place their trust in solicitors. The Respondent failed to act in a way which maintained the trust placed upon him and in the provision of legal services. Any behaviour in charging fees that are not due or not applying client funds to legitimately incurred charges, and taking receipt of client funds into a personal bank account undermines that trust. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by such conduct in breach of Principle 2 of the Principles.
68. Solicitors are held in high regard. Members of the public would not expect a solicitor to falsify invoices for either work undertaken or not undertaken or to mislead clients by giving them an impression that a fee was due or higher fees were due when they were not. They also would not expect a solicitor to request clients make any payments into the personal bank account of the solicitor by abusing their position of trust as a solicitor. Accordingly, the Respondent failed to act in his Clients best interests in breach of Principle 7 of the Principles and he also breached paragraphs 1.2 and 1.4 of the Code for Solicitors.
69. The Respondent's conduct is aggravated by the following:
- 69.1. He knew or ought reasonably to have known that his conduct was in material breach of obligations to protect the public and reputation of the profession.
 - 69.2. His misconduct resulted in him acting without integrity
 - 69.3. The misconduct was not an isolated lapse it occurred on three occasions with three different Clients.
70. As a consequence of his conduct, the Respondent admits that he failed to act with integrity in breach of Principle 5 of the Principles. It is well established that the word 'integrity' connotes moral soundness, rectitude and a steady adherence to an ethical

code¹. In *Wingate & Evans v SRA v Malins* ([2018] EWCA Civ 366, [2018] P.N.L.R. 22) the Court of Appeal held that *“integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty.”*

71. In terms of the harm risked / caused:

- 71.1. Client A did not make the payment of £292.50 that the Respondent requested she make.
- 71.2. The Firm reimbursed the £450 cash payment paid by Client B to the Respondent, but after his dismissal the Respondent transferred £450 to the Firm in respect of the same.
- 71.3. The Firm lost £200 in fees rightfully due to it when Client C, at the Respondent’s request, transferred it to the Respondent’s bank account as opposed to the Firm’s, but after his dismissal the Respondent transferred £200.00 to the Firm to remedy the position.

72. The Respondent admits all of the allegations including that his conduct was dishonest.

When conducting an overall balancing exercise, the SDT should consider the repeated and premeditated nature and extent of the Respondent’s dishonesty (in that it affected three different Clients in the relevant period) and his degree of culpability in the conscious and deliberate actions the Respondent undertook. It is submitted that notwithstanding the alleged mitigation (health issues/workplace pressures) as referred to above at paragraph 61, there are no exceptional circumstances in this case that would justify a lesser sanction or a departure from the inevitable consequence of a strike off².

¹ See, for example, *Hoodless & Blackwell v FSA* [2003] FSM T 007. Lack of integrity is capable of being identified as present or not by an informed tribunal by reference to the facts of a particular case, see *Newell Austin v SRA* [2017] EWHC 411 (Admin). Lack of integrity and dishonesty are not synonymous. A person may lack integrity even though not established as being dishonest.

² The case of *SRA v James* [2018] EWHC 3058(Admin) established that *“exceptional circumstances were required to justify a departure from the almost invariable sanction of striking off for any dishonesty; that what could amount to exceptional circumstances would depend on the various factors and circumstances of each individual case but the most significant factor, and the primary focus in the evaluation, was the nature and extent of the dishonesty and the degree of culpability; that exceptional circumstances could include matters of personal mitigation including mental health issues and workplace pressures, and an assessment of the nature and extent of the dishonesty and the degree of culpability would involve an examination of the solicitor’s state of mind, including whether the solicitor was suffering from mental health issues and the workplace environment, as part of the overall balancing exercise; that, however, where the tribunal concluded that, notwithstanding any mental health issues or work or workplace-related pressures, the solicitor’s misconduct was dishonest, the weight to be attached to those mental health and working environment issues in assessing the appropriate sanction would inevitably be less than was attached to other aspects of the dishonesty found, such as the length of time for which it was perpetrated, whether it was repeated and the harm which it caused; that in a case where the tribunal had found dishonesty, as opposed to some lesser professional misconduct, the fact that the solicitor suffered from mental health issues, specifically stress and depression suffered by as a consequence of work*

These were serious acts of dishonesty and the case plainly does not fall within the small residual category of cases where strike off would be a disproportionate outcome.

73. In all the circumstances, the Applicant considers that, in the context of the admitted conduct, an immediate strike off is the only fair, reasonable and proportionate sanction that would have an appropriate effect on public confidence in the legal profession and adequately reflects the serious misconduct.

74. Accordingly, the appropriate penalty in this case is for the Respondent to be struck off the Roll of Solicitors.

Dated: 3 October 2024

Annabel Joester
For and on behalf of the SRA

Dated: 03 October 2024

RESPONDENT AN
Respondent in these proceedings

conditions or other matters, could not without more amount to exceptional circumstances justifying a lesser sanction than striking off; that pressure of work, or of working conditions, while potentially excusing carelessness or a lapse of concentration or making a mistake, could never justify dishonesty by a solicitor, which was a serious matter involving conscious and deliberate wrongdoing;"