

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12319-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

SEAN MICHAEL CALLAGHAN

Respondent

Before:

Mr P Jones (in the chair)

Ms A E Banks

Dr S Bown

Date of Hearing: 20 June 2022

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations made against the Respondent were that:
 - 1.1 Between February 2003 and April 2019, whilst in practice as a solicitor at BTMK Solicitors Limited, he misappropriated monies belonging either to BTMK or their clients

and insofar as the conduct took place during the period from February 2003 but before 6 October 2011, he acted in breach of Rules 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007 and Rule 22 of the Solicitors Accounts Rules 1998;

and insofar as the conduct took place during the period from 6 October 2011 to April 2019, he acted in breach of Principles 2, 6 and 10 of the SRA Principles 2011 and Rules 1.2 and 20.1 of the SRA Accounts Rules 2011.
 - 1.2 Between May 2019 and March 2020, whilst in practice as a solicitor at Palmers Solicitors he misappropriated monies belonging either to Palmers or their clients

and insofar as the conduct took place during the period from May 2019 but before 25 November 2019, he acted in breach of Principles 2, 6 and 10 of the SRA Principles 2011 and Rules 1.2 and 20.1 of the SRA Accounts Rules 2011;

and insofar as the conduct took place on or after 25 November 2019, he acted in breach of Principles 2, 4 and 5 of the SRA Principles 2019 and Rule 5.1 of the SRA Accounts Rules 2019.
2. Allegations 1.1 and 1.2 were advanced on the basis that the Respondent's conduct was dishonest.

Admissions

3. The Respondent admitted the above allegations.

Documents

4. The Tribunal considered all the documents contained within an electronic bundle prepared and agreed by the parties.

Background

5. For over sixteen years, the Respondent misappropriated funds belonging to his employers' clients or his employers. In several instances, he provided false information to his employer and the clients. The Respondent held part-time judicial office as a Deputy District Judge during the relevant period.

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

6. 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.

7. The proposed sanction was that the Respondent be struck off the Roll of Solicitors.

Findings of Fact and Law

8. The SRA 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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
9. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.
10. The Tribunal considered the Guidance Note on Sanction (10th Edition/June 2022) ("the Sanctions Guidance"). In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.
11. The admitted misconduct involved dishonestly misappropriating client and/or employer funds which struck at the heart of what the public would expect of a solicitor, namely that they "*may be trusted to the ends of the earth*" as per Bolton v Law Society [1994] 1 WLR 512.
12. The Sanction Guidance states at [51] that: "*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)).*" The Tribunal did not consider there were exceptional circumstances present such that a lesser sanction was warranted and none were advanced by the parties in the Statement of Agreed Facts and Outcome.
13. For the reasons set out in the Statement of Agreed Facts and Outcome, the Tribunal determined that the protection of the public and public confidence in the profession and the reputation of the profession required no lesser sanction than that the Respondent be removed from the Roll. The Tribunal found that the proposed sanction of striking the Respondent from the Roll was appropriate, proportionate and in accordance with the Sanctions Guidance

Costs

14. The parties agreed that the Respondent should pay costs in the sum of £1,500. The Tribunal determined that the agreed amount was reasonable and appropriate, taking into account the information about the Respondent's financial means as set out in the Statement of Agreed Facts and Outcome. Accordingly, the Tribunal ordered that the Respondent pay costs in the agreed sum.

Statement of Full Order

15. The Tribunal ORDERED that the Respondent, SEAN MICHAEL CALLAGHAN, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £1,500.

Dated this 29th day of June 2022

On behalf of the Tribunal

A handwritten signature in black ink, appearing to read 'P. Jones', written in a cursive style.

JUDGMENT FILED WITH THE LAW SOCIETY
29 JUN 2022

P. Jones
Chair

**BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL
IN THE MATTER OF THE SOLICITORS ACT 1974 (as amended)
B E T W E E N:**

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

and

SEAN MICHAEL CALLAGHAN

Respondent

STATEMENT OF AGREED FACTS AND OUTCOME

Introduction

By statement made by John Henry Tippet-Cooper on behalf of the SRA pursuant to Rule 12 of the Solicitors (Disciplinary Proceedings) Rules 2019 dated 28 March 2022, the SRA brought proceedings before the Tribunal making allegations of misconduct against Mr Sean Michael Callaghan ("the Respondent"). Definitions and abbreviations used herein are those set out in the Rule 12 Statement and page references are to the Exhibit JTC/1 filed with the Rule 12 Statement.

Allegations

1. The allegations against the Respondent made by the SRA, are that:
 - 1.1. Between February 2003 and April 2019, whilst in practice as a solicitor at BTMK Solicitors Limited ("BTMK"), he misappropriated monies belonging either to BTMK or their clients

and insofar as the conduct took place during the period from February 2003 but before 6 October 2011, acted in breach of Rules 1.02, 1.04 and 1.06 of the Solicitors' Code of Conduct 2007 and Rule 22 of the Solicitors Accounts Rules 1998;

and insofar as the conduct took place during the period from 6 October 2011 to April 2019, acted in breach of Principles 2, 6 and 10 of the SRA Principles 2011 and Rules 1.2 and 20.1 of the SRA Accounts Rules 2011.

- 1.2. Between May 2019 and March 2020, whilst in practice as a solicitor at Palmers Solicitors, he misappropriated monies belonging either to Palmers Solicitors or their clients

and insofar as the conduct took place during the period from May 2019 but before 25 November 2019, acted in breach of Principles 2, 6 and 10 of the SRA Principles 2011 and Rules 1.2 and 20.1 of the SRA Accounts Rules 2011;

and insofar as the conduct took place on or after 25 November 2019, acted in breach of Principles 2, 4 and 5 of the SRA Principles 2019 and Rule 5.1 of the SRA Accounts Rules 2019.

Dishonesty

2. In addition, allegations 1.1 and 1.2 above are advanced on the basis that the Respondent's conduct was dishonest. Save for where a breach of Principle 4 of the SRA Principles 2019 is alleged, dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegations.

Admissions

3. The Respondent admits the above allegations.

Agreed Facts

4. The following facts and matters, which are relied upon by the SRA in support of the allegations are agreed between the SRA and the Respondent.

Respondent's interests in third party companies

5. These allegations involve, in certain instances, money being transferred into bank accounts held in company names and/or the firms for which the Respondent worked providing services to companies. The details of those companies are set out below.
6. The Respondent was a director of Company A from 1 December 2010 until 17 June 2020. The company was incorporated on 13 November 1998 and the nature of its business is recorded at Companies House as, "*Other transportation support activities*".

7. The Respondent was also the sole director of Company B from 17 April 2015 until it was dissolved on 15 August 2017. The nature of Company B's business was recorded as, "*Management consultancy activities other than financial management*".
8. Whilst different from the examples provided above, it is also of note that the Respondent held a HSBC bank account (sort code 40-23-33, account number 51494082) with the account name, "*Mr Sean M Callaghan T/AS [Company C]*".

Allegation 1.2 – Funds misappropriated from Palmers and its clients

9. The Respondent started working at Palmers as Head of Commercial Property on 15 April 2019.
10. On 21 May 2020, Palmers' Compliance Officer for Legal Practice ("COLP") wrote to the SRA alerting them to their concerns in relation to the Respondent. These concerns related to the fact that:
 - 10.1. The Respondent had provided an invoice to a Palmers' client, from which Palmers' bank account details had been removed;
 - 10.2. The invoice provided to this client had not been raised on Palmers' case management system;
 - 10.3. The invoice contained a bill number relating to a different client and matter; and
 - 10.4. When the client requested bank account details in order to make payment, the Respondent provided a bank account which was not held by Palmers and which was believed to be a bank account in the name of the Respondent.
11. The letter confirmed that a Zoom video conference had been conducted with the Respondent on 19 May 2020 to discuss these issues. During this conference, the Respondent had not sought to deny the allegations and had concluded matters by offering an apology.
12. Palmers dismissed the Respondent on 19 May 2020.
13. On 8 June 2020, an Investigation Officer ("IO") at the SRA, e-mailed the COLP at Palmers requesting clarification of a number of the points raised in the 21 May 2020 letter.
14. The response sent to the SRA on 10 June 2020 which included a number of attachments, confirmed the following points:

- 14.1. The client to whom the Respondent had sent the “doctored” invoice was Company A. A copy of the invoice was provided which requested payment of £2,200, plus a purported VAT amount of £540;
 - 14.2. On 30 December 2019, the Finance Director at Company A e-mailed the Respondent requesting an invoice. The Respondent replied on 25 February 2020, attaching the “doctored” invoice, and stated, *“If this is kay [sic] I will let you have account details”*;
 - 14.3. The Finance Director replied that same day, 25 February 2020, to confirm that the invoice would be paid, and the Respondent replied within the hour to provide a HSBC account number (sort code 40-23-33, account number 51494082);
 - 14.4. Palmers’ enquiries on 18 May 2020 revealed that this HSBC account was held in the name of “Callaghan”;
 - 14.5. The sort code for this HSBC account matched the sort code for the HSBC account into which the Respondent’s salary was paid;
 - 14.6. During the Zoom conference on 19 May 2020, the Respondent appeared to accept that this HSBC bank account was his; and
 - 14.7. In a 20 May 2020 telephone call with the Chairman of Company A, it was confirmed that Company A had paid this invoice
15. On 12 June 2020, Palmers’ COLP sent further communication to the SRA, alerting them to further issues they had identified with the Respondent’s conduct at Palmers. These concerns can be summarised as follows:
- 15.1. In anticipation of bringing a civil claim against the Respondent, Palmers had written to the Respondent and requested disclosure of his bank statements for the time period in which he was employed by Palmers;
 - 15.2. The Respondent had disclosed statements for two bank accounts; a sole account in his name at HSBC Basildon, ending ****4082, and a joint account, with his wife, ending ****991;
 - 15.3. An attempt had been made to redact the statements for the joint account, with the explanation being given that there were unrelated expenses shown which would be of no interest to Palmers;

- 15.4. The un-redacted statements from the sole bank account revealed that a cheque for £2,300 had been cashed on 18 June 2019 and a cheque for £4,200 had been cashed on 26 February 2020;
- 15.5. Two payments had been made from Palmers' client account into the sole HSBC account; (i) £6,000 on 28 May 2019; and (ii) £18,748.65 on 26 June 2019;
- 15.6. The attempt at redacting the joint account statements had not been successful. As a result, Palmers were able to match payments into the joint account from Company C with payments being made into the joint account from the sole HSBC account, ending 4082. Palmers were therefore able to deduce that the 4082 HSBC bank account, held by the Respondent, also carried the name of Company C;
- 15.7. Palmers interpreted the attempts to redact the joint account statements as an attempt to conceal the link between the Respondent and Company C;
- 15.8. Armed with that information, Palmers had searched their system for payments from either their client account or office account to Company C. They had identified three payments from the client account to Company C, totalling £27,048.65, (made on 28 May, 18 June and 26 June 2019), all marked as "commission";
- 15.9. Palmers located a separate payment from a different client account their firm held; £4,200 had been paid from this client account to Company C on 20 February 2020 and was marked as, "contract balance"; and
- 15.10. Palmers were continuing their search for further payments to the bank accounts in question, but they believed that they had identified the full extent of the issue.
16. On 23 July 2020, an IO at the SRA, e-mailed the COLP at Palmers requesting further information.
17. The COLP replied on 13 August 2020 confirming the clients from whom it was believed that the Respondent had misappropriated funds. The letter also provided the reference number provided by Essex Police/Action Fraud, following the firm's reporting of the matter.

SRA investigation - Palmers

18. On 29 September 2020, following notice being given to Palmers, the SRA commenced its investigation at the firm. The investigation was conducted by a Forensic Investigation Officer (“FIO”). The FIO produced a report, summarising his findings, on 11 November 2020.
19. The FIO’s investigation identified that £24,748.65 worth of transfers had been made from the Palmers’ client account to a bank account in the name of Company C. Palmers had replaced this shortfall by way of an office account to client account transfer on 30 September 2020.
20. In addition, two cheque payments from the client bank account had been made to Company C, totalling £6,500. This shortfall in the client account had been replaced by Palmers prior to 31 August 2020.
21. In addition, a payment for £3,500 had been made from the firm’s client bank account, linked to Company D, to an unrelated third party; Person AG.
22. These figures are in addition to the £2,740, which was the total requested in the “doctored” invoice that was sent to Company A.

The total amount misappropriated by the Respondent between May 2019 and 25 February 2020 from either Palmers or its clients is therefore £37,488.65.

Allegation 1.1 – Funds misappropriated from BTMK and its clients

23. Following Palmers’ discovery of the “doctored” invoice that was sent to Company A, they alerted the Respondent’s former employer, BTMK as they had located documents which suggested that the Respondent’s conduct may have affected BTMK’s clients as well as their own.
24. Palmers sent to BTMK an invoice purporting to emanate from BTMK that they had located on their computer system, dated 28 April 2019, requesting £2,520 (including VAT). Accompanying the invoice was an e-mail exchange between the Respondent and a representative from Company A on 18 April 2019, involving a query from Company A as to whether any money was owed.
25. On 8 May 2019, the Respondent e-mailed Company A, attaching the invoice in question, and requesting that payment was made direct to his personal bank account.

26. BTMK have identified that this invoice was not an invoice that had been authorised or properly raised by the firm for its client, Company A:
- 26.1. The invoice was not addressed properly;
 - 26.2. The invoice did not include an invoice number; and
 - 26.3. The invoice did not include BTMK's bank details.
27. As a result of the letter they received from Palmers, BTMK e-mailed the Respondent on 22 May 2020, inviting him to attend a meeting on 26 May 2020.
28. The 28 May 2020 Attendance Note indicates that this meeting was changed to 28 May. The Respondent did not attend, but instead sent a document to BTMK purporting to account for his actions. This document contains the following assertions:
- 28.1. the Respondent had been a Director of Company A for a number of years and the money was intended to remunerate him for that; it was never money that was intended for BTMK;
 - 28.2. Company A's account manager had asked him to provide an invoice by the end of the month. As a result of that conversation, he had prepared the invoice and dated it before the month end. It was a "*...stupid and unnecessary thing to do*";
 - 28.3. at the time the Respondent did this, he was not himself, and was not functioning properly. The Respondent phrased it in the following way:

"I was in shock and pressing a self-destruct button again – I had been asked for an invoice and in the fog that was my state of mind I simply said yes and did it. I was leaving – I knew it was wrong and indeed unnecessary, but I just did it. My mind was in turmoil at this point in time."
 - 28.4. the Respondent described himself as "*..having a breakdown*"
 - 28.5. this discovery had led to the Respondent leaving BTMK, but whilst at Palmers "*...the pain, the turmoil and the anguish would come rushing back...*"; and
 - 28.6. the Respondent described behaving in the same way at Palmers: "*I did the same at Palmers. Complete stupidity – same scenario – creating a problem where there was none. Pushing a self-destruct button.*"

29. The Respondent has not provided medical evidence relating to the assertions above at paragraph 28 about his mental health.
30. Following receipt of this document, BTMK arranged to speak with the Respondent via telephone. The Attendance Note from this conversation [on 28 May 2019] records that the following comments were made:
 - 29.1. The Respondent was asked if this was an isolated incident or whether there had been any other transactions of a similar nature. He replied that he often met with Company A out of working hours, and they often wanted to pay the Respondent directly for his time;
 - 29.2. The Respondent confirmed that he had been a director for Company A and "*other corporate clients*" for a number of years, and he had always refused to take payment for his services;
 - 29.3. The Respondent denied that payment for the 28 April 2019 invoice sent to Company A was due to BTMK, and maintained that this money was due to him;
 - 29.4. When it was pointed out to the Respondent that he was not permitted to accept fees 'on the side' when working for a solicitors' firm, he eventually accepted this;
 - 29.5. The Respondent asserted that he had been living a lie for a number of years and felt that his "*life was crumbling around him...*";
 - 29.6. The Respondent claimed that he had never received any other direct payment from Company A or any other client; and
 - 29.7. The Respondent asserted that "*he had been a 'rabbit in the headlights' and that whilst he recognised he shouldn't have done what he did, he felt it was an act of sabotage.*"
45. On 3 June 2020, BTMK alerted the SRA to the matter to which Palmers had drawn their attention and the update they had received from the Respondent on 28 May 2020.
46. On 5 June 2020, Mr Trevette from Murdochs Solicitors informed the SRA that he was representing the Respondent.
47. On 19 June 2020, BTMK commenced a civil claim against the Respondent, arising out of "*(i) fraud (ii) making secret profits; (iii) unlawful interference (iv) breach of fiduciary duty (v) breach of contract and (vi) negligence*". The Claim Form specified that the value

of the claim was in excess of £200,000. As set out in paragraph 23 of BTMK's Particulars of Claim, the majority of this claim related to funds that it was alleged that the Respondent had caused to be transferred from BTMK, either to an account controlled by the Respondent or to a third party for the benefit of the Respondent.

48. On 25 June 2020, the Compliance Officer for Finance and Administration ("COFA") for BTMK sent a further e-mail to the SRA. This e-mail asserted that as part of BTMK's ongoing investigation into the Respondent's conduct they had identified a number of outgoing payments from the firm's client account which were a cause for concern. The firm had transferred £59,095.91 to the client account from the office account in order to replace any missing funds caused by these payments.
49. On 16 July 2020, as a result of the civil claim commenced by BTMK, the Respondent made a payment of £104,776.64 to them.
50. On 23 July 2020, the SRA e-mailed BTMK seeking further information in relation to their enquiries into the Respondent's conduct. On the same day, 23 July 2020, the SRA wrote to the Respondent and his representative, Mr Trevette, seeking a response to what was known (at that stage) of the allegations arising from both Palmers and BTMK.
51. On 10 August 2020, Mr Trevette replied to the 23 July 2020 letter from the SRA. The e-mail contained the following passages:

"We can advise you that Mr Callaghan is not presently employed within the regulated sector (we do not believe he is engaged in any gainful employment at the moment)

As far as the other matters are concerned we have been in correspondence with BTMK and a payment in excess of £100,000 has already been made to them from Mr Callaghan as an interim payment in respect of monies that he has accepted were made from client account to accounts controlled by him.

We will provide a full response to the matters you have raised once a full calculation has been undertaken and agreed between the parties..."

52. On 12 August 2020, BTMK replied to the SRA's 23 July 2020 queries. As well as updating the SRA as to the state of their investigation and on steps they had taken to replace funds in the client account, the letter confirmed that a report had been made to the police and a meeting between BTMK and the Essex Police Fraud Team had taken place on 31 July 2020.

53. On 1 September 2020, Mr Trevette sent a further e-mail to the SRA regarding the Respondent. In reply to the request to provide a response to the allegations emanating from Palmers and BTMK, the e-mail contained the following passage:

“In principal Mr Callaghan accepts the assertions that have been made and realises this is an acceptance of serious conduct issues. As we have previously informed you there is litigation between Mr Callaghan and BTMK and in that regard he has already sent funds in excess of £100,000 prior to a final agreement as to the exact figure, this is under negotiation.

As far as Palmers is concerned, Mr Callaghan is making arrangements to repay them the monies that they are owed.”

SRA investigation - BTMK

54. Following an SRA investigation, on 11 November 2020, an FIO report was finalised that identified that £248,102.73 worth of out-going transactions had left BTMK’s client account, with the recipient being either (i) the bank account held by the Respondent in the name of Company C; (ii) Company B (one of the companies for which the Respondent went on to become a director) or its employees; (iii) Company F (a company which had conducted building work for the Respondent in his personal capacity); or (iv) a third party, unrelated to the client to whom the payment had been linked.
55. The sum of £248,102.73 added to the £2,520 obtained through the “doctored” 28 April 2019 invoice, gives rise to a total of £250,622.73.

Respondent’s engagement with the SRA

56. On 9 October 2020, the FIO wrote to Mr Trevette, the Respondent’s representative, in relation to his client attending an interview.
57. It would appear that reservations were subsequently expressed about the Respondent attending for interview on 6 November 2020, as had been arranged with the FIO and Mr Trevette.
58. On 4 November 2020, Mr Trevette e-mailed the FIO to inform him that the Respondent would not be attending the 6 November 2020 interview on the basis that it may prejudice his position in respect of the ongoing criminal investigation to which he was subject. Mr Trevette confirmed:

Mr Callaghan has always accepted that his conduct whilst at both Palmers and BTMK is such that it is inevitable he will be struck from the Roll of Solicitors

once this matter has been referred to the SDT. In seeking to assist as much as he can, we provide the pre-interview disclosure from Essex Police together with Mr Callaghan's pre-prepared statement that he signed. In that statement he accepts in unequivocal terms that he misappropriated monies from both office and client accounts which will form the basis of the undoubted allegations that will cause his conduct to be referred to the SDT. We are instructed and confirm that it will be his intention to seek an Agreed Outcome, once this matter has been certified at the SDT, on the basis of a Strike from the Roll of solicitors for the serious allegations that he will undoubtedly face which will include those of acting Dishonestly."

59. As set out in the e-mail, the pre-interview disclosure from Essex Police and the Respondent's pre-prepared statement were attached. In that pre-prepared statement, the Respondent accepted making unauthorised payments totalling £299,834.33 whilst at BTMK, and totalling £35,848.65 whilst at Palmers.

60. On 4 May 2021, a first version of the Notice recommending referral to the SDT was sent to the Respondent. On 27 May 2021, the Respondent acknowledged receipt of this Notice and stated:

"I am reviewing but as previously advised I have admitted my conduct and I do not anticipate any change to that position".

61. Following a further query as to whether he wished to provide representations in response to the SRA's Notice, the Respondent e-mailed on 10 June 2021:

"There is no excuse for my conduct so please proceed"

62. A subsequent Notice, dated 20 October 2021, was provided to the Respondent. No representations were received in response to that.

Allegation 1.1

63. Between May 2009 and April 2019, the Respondent misappropriated monies belonging to BTMK (his employer) and/or their clients using the following methods:

- 63.1. Submission of a "doctored" invoice to a client, and then requesting that payment be made to him personally;
- 63.2. Under-reporting monies due to clients and then transferring the surplus into bank accounts controlled by him;

- 63.3. Over-stating the amount a client owed by way of Stamp Duty and then transferring the surplus into bank accounts controlled by him;
 - 63.4. Transfers from the client account to Company F in order to fund building works being carried out on the Respondent's home address;
 - 63.5. Over-stating the amount a client was required to pay to settle litigation and then transferring the surplus into bank accounts controlled by him;
 - 63.6. Withholding the full amount of BTMK's fees for acting in a matter and then transferring the remainder into bank accounts controlled by him;
 - 63.7. Transferring monies that had been paid into the client account for the benefit of a client into accounts controlled by him;
 - 63.8. Billing a client for Stamp Duty on a transaction then transferring those funds into the bank account of Company B; a company for which he was the sole director and shareholder;
 - 63.9. Conducting inter-ledger transfers between various client ledger accounts, and then transferring funds to the bank account of Person W; an employee of Person B; and
 - 63.10. Transfer of funds from the firm's client bank account to third parties who had no connection to the client, and for which the client had not provided authorisation
64. For a little more than sixteen years, the Respondent was able to cipher off funds belonging either to his employer's clients or his employer, and make payments either (i) into bank accounts controlled by him; or (ii) for his benefit. The majority of this misappropriation took place through the 33 separate transactions between 2003 to 2018. Not only was the Respondent prepared to misappropriate funds belonging either to his employer or their clients with such frequency, he was also, in a number of instances, willing to provide false information to his employer and the clients. This was presumably done in an attempt to ensure that neither his employer nor the clients became aware of his misconduct.
65. Whilst this conduct would be viewed as deplorable for any solicitor, it is submitted that the Respondent's conduct was particularly egregious given his holding of a part-time judicial office as a Deputy District Judge.

Pre-6 October 2011 conduct

66. In so far as this conduct occurring before 6 October 2011 is concerned, these actions represent significant and serious breaches of the Solicitors Code of Conduct 2007 ("the 2007 Code").
67. Rule 1.02 of the 2007 Code required solicitors to act with integrity. In *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession. A solicitor acting with integrity (i.e. with moral soundness, rectitude and steady adherence with an ethical code) would under no circumstances have misappropriated substantial sums of money belonging to their clients and/or their employer.
68. Given that the Respondent's conduct, in many instances, damaged the financial interests of his clients, it is submitted that he failed to act in their best interests, as required by Rule 1.04 of the 2007 Code.
69. The public places a great deal of trust in the solicitors' profession, both in terms of the level of service they expect and entrusting solicitors with their funds. In misappropriating client money, the Respondent has undoubtedly diminished the trust the public placed in him and the legal profession, and on that basis a breach of Rule 1.06 of the 2007 Code is alleged.
70. Rule 22 of the Accounts Rule 1998 imposed limits on the use that could be made of funds held within a client account. The Respondent's misappropriation of client money held in the client account represents a significant and serious breach of these limits.

Post-6 October 2011 conduct

71. Likewise with the post-6 October 2011 conduct, the Respondent's misuse of client money held in the client account represents breaches of Rules 1.2 and 20.1 of the Accounts Rules 2011.
72. Rule 1.2(b) of the Accounts Rules 2011 requires solicitors to keep other people's money safely in a client account. Rule 1.2(c) requires that client money is used for that client's matters only. As set out above, the Respondent freely misappropriated money belonging to his firm's clients from the client bank account and made payments either to himself or for his own benefit. The withdrawal of client money from the client account, in those circumstances, does not fall within any of the permitted circumstances identified in Rule 20.1.

73. The Respondent accepts that the very misuse and misappropriation of client money represents a failure to protect client money and assets, and for that reason accepts a breach of Principle 10 of the SRA Principles 2011 (“the 2011 Principles”)
74. The Respondent accepts that, as asserted in relation to the pre-6 October 2011 conduct, the misappropriation of both client and employer money clearly demonstrated a failure to act with integrity and would serve to damage the public’s trust in the Respondent and in the provision of legal services. For those reasons, the Respondent accepts his conduct breached Principles 2 and 6 of the 2011 Principles are alleged.

Allegation 1.2 – Misappropriation of monies from Palmers Solicitors and its clients

75. Between May 2019 and March 2020, the Respondent misappropriated monies belonging to Palmers Solicitors (his employer) and/or their clients using the following methods:
 - 75.1. Submission of a “doctored” invoice to a client, and then requesting that payment be made to him personally;
 - 75.2. Transfer of money out of the client account via either electronic payment or cheque to a bank account controlled by him; and
 - 75.3. Transfer of money out of the client account via electronic payment to a third party, unrelated to the client
76. Notwithstanding the shorter timeframe over which these misappropriations occurred, and the smaller sums of money involved, it is submitted that the Respondent’s conduct at Palmers is as deplorable as that seen during his time at BTMK.
77. Furthermore, the Respondent accepts that the attempt to carry out “redactions” on the bank statements submitted to Palmers was an attempt to conceal the full extent of his misappropriations from Palmers when they commenced their investigation into the matter.

Pre-25 November 2019 conduct

78. As with the post-6 October 2011 conduct at BTMK, for the misappropriation that occurred at Palmers prior to the 25 November 2019, the Respondent’s misuse of client money held in the client account represents breaches of Rules 1.2 and 20.1 of the Accounts Rules 2011.

79. The Respondent accepts that the very misuse and misappropriation of client money represents a failure to protect client money and assets, and for that reason accepts he breached of Principle 10 of the SRA Principles 2011 ("the 2011 Principles").
80. The Respondent accepts that the misappropriation of both client and employer money clearly represents a failure to act with integrity and would serve to damage the public's trust in the Respondent and in the provision of legal services. For those reasons, the Respondent accepts his conduct breached of Principles 2 and 6 of the 2011 Principles are alleged.

Post-25 November 2019 conduct

81. For the misappropriation that occurred after the 25 November 2019, the SRA Accounts Rules 2019 ("the 2019 Accounts Rules") and the SRA Principles 2019 ("the 2019 Principles") would apply.
82. As with the earlier timeframe, Rule 5.1 of the 2019 Accounts Rules imposes limits on the circumstances in which withdrawals can be made from the client account. The transfers by the Respondent represent an unauthorised misappropriation of monies belonging to the firm's clients. Transfers of such nature do not fall within any of the permitted scenarios identified in Rule 5.1.
83. The Respondent accepts that, as asserted in relation to the pre-25 November 2019 conduct, the misappropriation of both client and employer money clearly represents a departure from the ethical standards of the profession and would serve to damage the public's trust in the Respondent and in the provision of legal services. For those reasons, the Respondent accepts his conduct breached Principles 2 and 6 of the 2011 Principles are alleged.

Dishonesty and Principle 4 of the 2019 Principles

84. The Applicant relies upon the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67 which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief

as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

85. The Respondent’s conduct involved long-term and high value misappropriation of monies belonging both to his employers and their clients. These misappropriations, in terms of the money taken whilst the Respondent was working at BTMK, involved the Respondent making false representations to his clients in order to create a “surplus” in the client account.
86. At the time the Respondent was transferring money from his firms’ client bank accounts, he knew that he was not authorised to make these transfers either by the clients or the firms themselves. Such knowledge was demonstrated by the steps the Respondent took to conceal the misappropriation, either by deceiving the clients as to the money they owed or were due, or by deceiving his employer as to the money they were due from the client.
87. The Respondent accepts and admits that his conduct was dishonest.

Mitigation

88. The Respondent acknowledges that there can be no excuse for his conduct and apologises to all concerned.

Penalties proposed

89. The Respondent agrees:
- a. To be struck off the Roll of Solicitors
 - b. To pay costs to the SRA agreed in the sum of £1,500 (inclusive of VAT). This sum has been reduced significantly in the light of the Respondent’s evidence in respect of his means. The Respondent is bankrupt, has a limited income and cares for his elderly father. He has approximately £35 per month of surplus income and the above costs sum would take 3.5 years to repay at a rate of £35 per month.
90. The sanction outlined above is considered to be in accordance with the Tribunal’s sanctioning guidance (9th edition) taking into account guidance set out in *Fuglers and Others v Solicitors Regulation Authority* [2014] EWHC 179 (as per Popplewell J) and as set out in the guidance at paragraph 8.

91. The misconduct giving rise to the allegations is very serious. The seriousness of the misconduct is such that neither a Restriction Order, Reprimand nor a Fine is a sufficient sanction or in all the circumstances appropriate. There is a need to protect both the public and the reputation of the legal profession from future harm from the Respondent which requires the Respondent's name to be struck off the Roll of Solicitors.
92. The assessment takes into account the level of the Respondent's culpability in respect of the allegation above is very serious due to:
- 92.1 The conduct caused financial loss to clients of the firms and loss of financial benefit for the firms in terms of costs paid and was dishonest;
 - 92.2 The conduct cannot be described as spontaneous and continued for a period of time;
 - 92.3 The Respondent acted in breach of his position of trust as a Deputy District Judge and as Head of Commercial Property at Palmers;
 - 92.4 The Respondent was a very experienced solicitor and was aware of the relevant Rules and Principles.
93. As to the harm caused, the admitted breaches of the Accounts Rules, Codes and Principles caused harm to clients, BTMK and Palmers by over-stating amounts due by clients and causing significant financial loss to both firms. The Respondent's departure from complete integrity, probity and trustworthiness, further exacerbated by providing false information to his employer at BTMK and their clients, is extensive and it is therefore considered that there was significant harm to the reputation of the legal profession.
94. As to the principal factors which aggravate the seriousness of the misconduct:
- 94.1. The conduct was dishonest;
 - 94.2. The conduct involved the commission of a fraudulent, criminal offence;
 - 94.3. The conduct occurred over a significant period of time and was repeated;
 - 94.4. The Respondent concealed the wrongdoing in the context of accounts breaches;

94.5. The Respondent ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

95. The Tribunal is referred to the factors raised in mitigation by the Respondent above. Factors that mitigate the seriousness of the misconduct include:

95.1. It is acknowledged that the Respondent has made open and frank admissions at an early stage and shown a degree of cooperation with the SRA;

96. The Respondent has confirmed he is bankrupt and has provided evidence as to his personal financial means and the parties have agreed that it is appropriate to take these into account when reaching this agreement.

97. The Parties consider that in light of the admissions set out above and taking due account of the mitigation put forward by the Respondent, the proposed outcome represents a proportionate resolution of the matter which is in the public interest. It is submitted that the proposed strike out order is both necessary and proportionate.

Signed:

(John Tippett-Cooper, Capsticks Solicitors LLP, on behalf of the Solicitors Regulation Authority)

Dated: 15 June 2022

Signed: ..

(Sean Michael Callaghan)

Dated: 16.06.2022