SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12030-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

BARBARA JULIA GRIBBIN Respondent

Before:

Mr J. A. Astle (in the chair)
Miss H. Dobson
Mr S. Marquez

Date of Hearing: 17 March 2020

Appearances

Grace Hansen, barrister of Capsticks LLP, 1 St George's Road, Wimbledon, London, SW19 4DR for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that whilst she was a Solicitor at Iceblue Legal LLP ("the Firm"):-

1.1 Between 4 January 2016 and 22 May 2018 the Respondent allowed the Firm's client account to be used as a banking facility for sums up to £8,048,706.99 in breach of Rule 14.5 of the SRA Accounts Rules 2011 ("SAR 2011") and any or all of Principles 2, 3, 4, 6, 8 and 10 of the SRA Principles 2011 ("the Principles"). It was alleged the Respondent had acted dishonestly, or alternatively recklessly.

1.2 Between 4 January 2016 and 22 May 2018 the Respondent withdrew sums of up to £8,048,706.99 from the Firm's client account in breach of Rule 20.1 SAR 2011 and any or all of Principles 2, 3, 4, 6, 8 and 10 of the Principles. It was alleged the Respondent had acted dishonestly, or alternatively recklessly.

1.3 Between May 2017 and August 2018 the Respondent failed to replace promptly, or at all, one or more shortages in the client account, which on 17 August 2018 was a minimum of £121,529.06, in breach of Rule 7 SAR 2011 and any or all of Principles 2, 3, 4, 6, 8 and 10 of the Principles. It was alleged the Respondent had acted dishonestly, or alternatively recklessly.

1.4 Between 26 January 2018 and 17 August 2018 the Respondent failed to return client money of up to £39,681.69 to clients promptly, or at all, in breach of Rule 14.3 SAR 2011 and any or all of Principles 2, 4, 5, 6 and 10 of the Principles. It was alleged the Respondent had acted dishonestly, or alternatively recklessly.

1.5 Between July 2017 and August 2018 the Respondent failed to ensure that client account reconciliations were completed every five weeks in breach of any or all of Rules 29.1, 29.2 and 29.12 SAR 2011 and any or all of Principles 8 and 10 of the Principles.

Documents

2. The Tribunal reviewed all the documents submitted by the parties which included:-

- The Applicant's Application and Rule 5 Statement dated 22 November 2019 together with all Schedules and Exhibits
- Witness statement of Adam Howells (the SRA's Forensic Investigation Officer) dated 21 February 2020 together with all exhibits
- Emails from the Applicant's solicitor to the Respondent dated 9 January 2020 and 16 January 2020
- Letters from the Applicant's solicitor to the Respondent dated 16 January 2020 and 24 February 2020
- The Applicant's Schedule of Costs dated 9 March 2020

- Office Copy from the Land Registry dated 17 March 2020 for a property in Lancashire

Service of Proceedings

3. The Respondent did not attend the hearing and was not represented.

4. The Tribunal noted that the Standard Directions dated 25 November 2019 contained the details of the substantive hearing date. These, along with a number of other documents including the Rule 5 Statement and exhibits, had been served on the Respondent on 27 November 2019 by recorded delivery post. The Tribunal had been provided with a "Proof of Delivery" which confirmed the documents had been signed for by "Gribbin". In the circumstances, the Tribunal was satisfied that the Respondent had been notified of these proceedings and the substantive hearing date, in accordance with Rule 10 of the Solicitors (Disciplinary Proceedings) Rules 2007.

Application to Proceed in the Respondent's Absence

5. Ms Hansen made an application to proceed in the Respondent's absence. She informed the Tribunal that there had been no communication from the Respondent since proceedings were issued. A Case Management Hearing had taken place on 14 January 2020 as the Respondent had failed to file her Answer as required by the Standard Directions. Ms Hansen stated the Respondent had not attended that hearing and had not filed any Answer.

6. Ms Hansen drew the Tribunal's attention to letters she had sent to the Respondent dated 16 January 2020 and 24 February 2020 in which she had informed the Respondent of the Applicant's intention to apply for the hearing to proceed in the Respondent's absence if she did not attend the hearing. Both letters had been sent by recorded or special delivery post and the Tribunal was provided with copies of the proof of delivery confirming those letters had been delivered. Ms Hansen submitted the Respondent had exercised her right not to engage in these proceedings.

7. Ms Hansen reminded the Tribunal that the Respondent had been interviewed by the SRA's Forensic Investigation Officer in 2018. The Tribunal would be able to take into account the responses she had given during those interviews.

The Tribunal's Decision

8. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. The Tribunal took into account the criteria set out in the case of R v Hayward and Jones [2001] QB 862 when considering whether it was appropriate to proceed in the Respondent's absence.

9. The Respondent had not engaged with proceedings at all, although she was clearly aware that they were ongoing. There was nothing to suggest that she would attend a hearing on a future date or had any medical issues that were preventing her from attending. The Tribunal concluded that the Respondent had voluntarily absented herself.

10. The Respondent had been interviewed by the SRA's Forensic Investigation Officer on 16 and 17 August 2018. She had therefore provided some explanation in response to the matters alleged against her. The Tribunal would take her responses into account to address any prejudice to the Respondent that may arise in her absence during the course of the hearing.

11. The Tribunal also took into account the serious nature of the allegations which had been made against the Respondent. These involved allegations of dishonesty and related to events that had taken place in 2016. A significant period of time had elapsed since then and it was therefore in the public interest that this case should be concluded expeditiously. Taking all these matters into account, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence. The application was granted.

Factual Background

12. The Respondent, born in 1965, was admitted to the Roll on 16 November 1992.

13. At the material time, the Respondent was a member in Iceblue Legal LLP of First Floor, 14 Church Street, Ormskirk, Lancashire L39 3AN ("the Firm") which was incorporated on 23 October 2012. At the time of incorporation, the Firm had two members, Mr JD and Mrs DF. The Firm's practice included personal injury, clinical negligence and Wills and probate.

14. The Firm was authorised in March 2013 and commenced trading in April 2013. The Respondent became the third member in the Firm in either August or September 2013.

15. In 2014 Mr JD resigned as a member of the Firm. On 31 July 2014 Mrs DF resigned as member of the Firm and Mr JH was appointed as a member. On 6 April 2016 Companies House were notified that the Respondent had ownership rights in the firm of 75% or more. There were no further changes to the membership of the Firm.

16. The Respondent was the Compliance Officer for Legal Practice (COLP) and the Compliance Officer for Finance and Administration (COFA) of the Firm for the entire period covered by these allegations. The Firm was intervened into on 31 August 2018 and the Respondent's practising certificate was suspended.

17. On 15 August 2018 the Respondent telephoned the SRA and stated that there was a shortage on the Firm's client account of around £150,000. The Respondent explained that the shortage had arisen in the last six months of 2017 because she had allowed Mr AD of Company 1 to pay cheques into the client account, which she then paid to Company 1 before the cheques had cleared. However, the cheques from Mr AD had started to bounce.

18. During that telephone conversation the Respondent also stated that she had attempted to replace the shortage, but that she would not be able to do so and would be contacting an insolvency practitioner. The Respondent also told the SRA that due to the shortage there had been delays in making payments to clients.

19. Following the Respondent's telephone call, a Forensic Investigation Officer ("FIO") from the SRA conducted an investigation into the Firm. As part of that investigation the FIO interviewed the Respondent on 16 and 17 August 2018. The FIO produced a Forensic Investigation Report dated 23 August 2018.

20. During her interview with the FIO, the Respondent explained the background to her relationship with Company 1, Company 2 and Mr AD. Company 1 was a costs draftsmen business and its directors were Mr AD and Mr GS. The Respondent had done her training contract as an Articled Clerk at Firm C where Mr AD had worked in the accounts department. The Respondent had become a member in the Firm following an approach by Mr AD. Company 2 was also a cost draftsmen business owned by Mr AD and Mr GS.

21. There was no suggestion from the Respondent that Mr AD or Mr GS were clients of the Firm.

Allegations 1.1, 1.2 and 1.3

22. The FIO considered copies of bank statements for the Firm's client account for the periods 4 January 2016 to 17 August 2018. These showed that during the period from 4 January 2016 until 22 May 2018, £8,048,706.99 was transferred from the Firm's client account to Company 1, Company 2 and Mr AD. These payments were made by electronic transfer and the payee was identified on the bank statements.

23. The bank statements also demonstrated that the same sums transferred out of the Firm's client account had been deposited into the Firm's client account on the same day the transfer out was made. This therefore appeared to be a "cheque clearing scheme."

24. There was only one occasion where sums were not transferred out of the client account on the same the day the sums were deposited. On 22 September 2016, £39,600 was deposited into the Firm's client account. On Friday 23 September 2016 £21,350 was transferred out and then a further £18,250 was transferred out on Monday 26 September 2016. It was likely that those sums had not cleared when they were transferred out.

25. The majority of transactions was for round sums. Where the deposit was a sum greater than £25,000, more than one electronic transfer was made. The Respondent confirmed to the FIO during her interview that £25,000 was the limit for a single electronic transfer.

26. It was not possible to identify who deposited the sums from the bank statements alone. However, the Respondent admitted that Mr AD deposited the sums into the Firm's client account. Many of the deposits contain the description "HALLIWELL BOLTON", which the Respondent informed the FIO during interview was Mr AD's local branch. In addition, when taken to examples of these transactions by the FIO in interview, the Respondent accepted that transfers were made out of the client account because deposits were made into the client account for the same sums.

27. From the outset of the cheque clearing scheme, the Respondent paid out sums before the cheques had been cleared by the Firm's bank. This was clear as sums were frequently transferred out on the same day that deposits were made. After some time

the cheques deposited began to bounce. One example shown in the bank statements was that on 2 May 2017, £35,100 was deposited with reference "HALLIWELL BOLTON" in the Firm's client account. The same day two electronic payments, totalling £35,100 were made to Company 1. On 5 May 2017 an unpaid cheque was recorded in the bank statements for the sum of £35,100 which suggested that the cheque deposited three days previously had not cleared. The same cheque also appeared to be recorded as unpaid on 10 May 2017.

28. As the Respondent had paid out sums before the cheque had cleared, a shortfall of £35,100 arose in the client account. That shortfall appeared to have been promptly rectified on 5 May 2017 by an electronic payment received from Company 1 and a deposit into the client account.

29. From 5 May 2017 the Respondent was evidently aware of the risks of paying out funds from client account when the funds had not cleared. Despite this, she continued to transfer sums out of the client account before cheques cleared, including on 5 and 8 May 2017. In addition, cheques continued to bounce, including only days later on 12 May 2017.

30. The FIO reviewed the client account statements between May and July 2017 and identified frequent and increasing shortages on the client account during that period. The shortage was over £72,000 in June 2017 but was rectified by the end of that month.

31. By 31 July 2017 a shortage of £133,750 had arisen due to sums being paid out prior to the receipt of cleared funds and multiple cheques having bounced during July 2017.

32. After July 2017 the Respondent continued to operate the cheque clearing scheme and cheques continued to bounce. Due to shortcomings in the Firm's accounts the FIO was unable to calculate the actual shortfall in the client account, but did calculate that there was a minimum shortage of £121,529.06 as at 17 August 2018, which was not replaced.

Allegation 1.4

33. The Respondent provided the FIO with a folder of letters and cheques which had been written to clients but had not yet been sent. The FIO reviewed those letters and cheques and identified that as at August 2018 the Respondent had withheld 61 cheques from clients totalling £39,681.69 from 26 January 2018. The sums which had not been sent to those clients were for a lower sum than the funds held in the client account as at 17 August 2018.

34. During her interview with the FIO, the Respondent stated that she had not sent the cheques (which she stated represented payments in personal injury cases) because she was "trying to juggle the client account". This was not a proper reason to withhold sums from any of her clients. Furthermore, the Respondent had an obligation to remedy any shortfall in the client account.

Allegation 1.5

35. At the time of the FIO's visit to the Firm on 17 August 2018, the last client account reconciliation had been completed on 31 May 2017. As a result of this failure, the FIO was not able to fully reconcile the client account in August 2018.

36. As the Firm's COFA the Respondent was responsible for ensuring that that client account reconciliations were completed in accordance with Rule 29.1 of the SAR 2011. The Respondent also failed to keep proper accounting records in breach of Rules 29.1 and 29.2 SAR 2011.

37. The Forensic Investigation Report was sent to the Respondent by email on 28 August 2018. She was advised that the SRA was recommending an intervention into the Firm and into the Respondent's practice. The Respondent acknowledged receipt of the SRA's email on 28 August 2018 but did not provide any substantive response.

Witnesses

38. No witnesses gave evidence.

Findings of Fact and Law

39. The Tribunal had carefully considered all the documents provided and the Applicant's submissions. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

40. **Allegation 1.1: Between 4 January 2016 and 22 May 2018 the Respondent allowed the Firm's client account to be used as a banking facility for sums up to £8,048,706.99 in breach of Rule 14.5 of the SRA Accounts Rules 2011 ("SAR 2011") and any or all of Principles 2, 3, 4, 6, 8 and 10 of the SRA Principles 2011 ("the Principles"). It was alleged the Respondent had acted dishonestly, or alternatively recklessly.**

Allegation 1.2: Between 4 January 2016 and 22 May 2018 the Respondent withdrew sums of up to £8,048,706.99 from the Firm's client account in breach of Rule 20.1 SAR 2011 and any or all of Principles 2, 3, 4, 6, 8 and 10 of the Principles. It was alleged the Respondent had acted dishonestly, or alternatively recklessly.

Allegation 1.3: Between May 2017 and August 2018 the Respondent failed to replace promptly, or at all, one or more shortages in the client account, which on 17 August 2018 was a minimum of £121,529.06, in breach of Rule 7 SAR 2011 and any or all of Principles 2, 3, 4, 6, 8 and 10 of the Principles. It was alleged the Respondent had acted dishonestly, or alternatively recklessly.

40.1 Ms Hansen, on behalf of the Applicant, submitted that the Respondent had been involved in a cheque clearing scheme whereby Mr AD deposited cheques into the Firm's client account and the Respondent made electronic transfers of the sums deposited back to Mr AD. Ms Hansen submitted there had been no reason for the Respondent to engage in this type of conduct and there was no legitimate reason for the cheque clearing scheme to have been used. The Respondent had been transferring funds belonging to other clients to Mr AD because the funds he had paid into client account had not cleared at the time of the transfers. Ms Hansen submitted the Respondent ought to have been aware of the risks of paying out money from client

account before it had cleared. She submitted this had been a particularly risky banking facility which had continued for 2 years and had involved a total of over £8million.

40.2 The Tribunal carefully considered the responses given by the Respondent during her interview with the FIO. Matters had come to the attention of the Solicitors Regulation Authority ("SRA") because the Respondent had contacted the SRA to report that she had allowed Mr AD to pay Company 1's cheques into the Firm's client account, which she had then paid back to Company 1 before those cheques had cleared.

40.3 In her interview with the FIO in August 2018, the Respondent explained that she had met Mr AD when she had been an articled clerk at a practice where Mr AD had been in charge of the accounts department. She stated that Mr AD had contacted her when she became a sole practitioner as he had a costs drafting firm. She stated they had done some work together in this capacity. The Respondent stated she had found running a practice challenging and at one point was about to close her sole practice. She stated that was when Mr AD approached her and suggested she merge her practice and join the Firm which had financial backing from Company 1.

40.4 The FIO had taken the Respondent through a number of bank statements. The Respondent had accepted that various transactions showed that Mr AD had deposited cheques into the Firm's account, and she had paid the same funds back to his Company on the same day, or within a day or two, before they had cleared. She stated:-

> "Basically, I was stupid enough to agree to allow, allow [Company 1] um a costs drafting company which um, which is owned, and directors are [AD and GS] ……
>
> ….To um bank a cheque made payable to Iceblue Legal, into client account and then do a transfer straightaway, of the amount of...
>
> …..He used to go to the local Lloyds Branch and pay it into client account. So, there's nothing in the paying in book.
>
> ….. So, it was paid in and then you tally the cheques in and I'd do a transfer for the amount….."

40.5 The Respondent admitted to the FIO that:-

> "It was constant, it was become, it became daily……. it became almost like a cycle that I didn't know how to get out of."

40.6 She stated that initially the cheques had not bounced and if they did they were always replaced. However, she admitted it had become hard to keep track of unpresented cheques. She stated she had given Mr AD access to the Firm's online client account bank statements and that he had been involved in setting up the Firm's bank accounts as he "would be looking after all the financials".

40.7 The Respondent was asked about her discussions with Company 1. She stated that when she had raised the issue of using client funds to pay them back, she had been told to complete the transfers as they covered the cheques Company 1 had already paid into the Firm's account. The Respondent stated:-

> "…..so, I then thought oh my god, I'm going to have to do it because the cheque is going to bounce…….
>
> …. That cheque is going to bounce. And I thought that if I did it the cheque wouldn't bounce and then there was a flurry of them where they were just all bouncing despite that and there were still... even though they were saying 'oh it needs to cover a cheque' …."

The Respondent stated she thought that if she didn't pay out on receipt of the cheque, the next cheque would bounce. She stated that on some occasions money was "put back in" by Mr AD.

40.8 The Respondent stated that the shortfall started in late 2017, after her legal cashier left the Firm. She stated that her cashier had been "uncomfortable" with the transfers but had maintained reconciliations until she left in the summer of 2017.

40.9 The Respondent was asked by the FIO if she had allowed her client account to be used as a banking facility. Her response was:-

> "I have, haven't I. I have. It wasn't, I didn't intend to and I didn't think it would get as out of control as it did. And that's what happened. It's just got out of control and I didn't have the balls to.....
>
> …. I, I knew it was wrong. I knew it was wrong and I still agreed to do it."

40.10 The FIO asked the Respondent if she had misappropriated client funds to which she replied:-

> "I think I've facilitated the misappropriation of...I honestly, I've honestly had no, I've had no benefit from it at all….
>
> …..And that was my failure. I shouldn't have done. I shouldn't have done. I just shouldn't have done because I've basically been shat on from a great height…… But, I've got to accept responsibility for allowing it to happen."

40.11 In relation to the shortfall, the Respondent stated:-

> "……. because I felt trapped that I've had to carry on, because I was hoping that some miracle would happen basically…..
>
> …..I honestly thought that, I honestly thought it would get sorted out……
>
> …..That's what it was. And I just remember being, I just remember thinking, I can't, we can't put it into administration because we've got a hole in client ccount…..

> ….I don't even know how much it was. I just knew that there was a hole in client account…..
>
> …… I've lost complete control….
> … And I tried going, I tried going through the bank statements, and I can't…..
>
> ….I just can't work it out."

40.12 The Tribunal was satisfied, both from the bank statements provided, and also from the explanations given by the Respondent to the FIO that she had allowed the Firm's client account to be used as a banking facility for sums up to £8,048,706.99 in breach of Rule 14.5 of the SRA Accounts Rules 2011 ("SAR 2011"). It was quite clear from the bank statements that a third party, which the Respondent said was Mr AD, had paid cheques into the client account and the Respondent had transferred, mainly on the same day, and on occasion within 1-2 working days, the same amounts back to Company 1 and occasionally Company 2, when there had been no underlying transaction. There was no evidence that Mr AD or any of his companies were clients of the Firm. There were numerous instances after 2 May 2017 when the cheques paid by Mr AD had not cleared and therefore the Respondent had been transferring other clients' funds to Mr AD. This had led to a shortfall and, as at 17 August 2018, there was a minimum shortage on client account of £121,529.06 which had not been replaced. This was in breach of in breach of Rule 7 SAR 2011.

40.13 It was clear from the Respondent's answers to the FIO that she was aware in May 2017 that some of the cheques paid by Mr AD were not clearing, yet she continued to make payments from client account to his companies. She made reference to cash flow problems at Company 1, yet her conduct continued from May 2017 to August 2018. The Respondent should have been aware of the SRA's Warning Notice issued in December 2014 called "Improper Use of Client Account as a Banking Facility". During her interview with the FIO, the Respondent was asked if she was familiar with money laundering issues, to which she replied:-

> "I wouldn't say that I'm up to speed…"

40.14 The Respondent was the Principal of the Firm as well as the Firm's COFA. Accordingly she had a duty to remedy any shortfall in client account promptly. The initial shortfalls had been remedied quickly as the cheques that had been deposited by Mr AD cleared. However, cheques started to bounce and later shortages, after May 2017, were not remedied either promptly or sufficiently. Eventually, as she admitted to the FIO, the Respondent was unable to identify the exact amount of the shortfall, although she knew there was a shortage. She accepted she "had lost control" of the Firm's client account.

40.15 The Tribunal was satisfied that the Respondent had breached Principle 2 of the SRA Principles 2011 ("the Principles") and had acted with a lack of integrity. She had failed to act with moral soundness, rectitude and a steady adherence to an ethical code. She knew there was no underlying transaction and that neither Mr AD nor his companies were clients of her Firm. Yet she allowed them to pay cheques into her Firm's client account and made transfers back to them for corresponding amounts when she knew the cheques had not cleared. Members of the profession acting with integrity would

not allow client funds to be paid out to a third party in the absence of any underlying transaction, especially after the third party's cheques had bounced. Where there was any shortage, solicitors acting with integrity would immediately replace client funds.

40.16 The Tribunal was satisfied that the Respondent had breached Principles 3 and 4 of the Principles 2011 as she had allowed her independence to be compromised and had failed to act in the best interests of each of her clients. She had not prioritised her role as a guardian of client funds, and had instead allowed Mr AD and his companies to utilise her client account for their own purposes for a period of over 2 years. She had allowed Mr AD direct access to the Firm's online bank statements and even after she knew that cheques deposited by Mr AD had bounced, she continued to allow him to use the client account as he wished for over a year.

40.17 Client funds had not been protected. The Respondent continued to make transfers from client account even after she knew that cheques from Mr AD were not clearing and this eventually led to the shortfall on client account increasing. Therefore the Respondent had breached Principle 10 of the Principles 2011. Clients expected solicitors to safeguard clients' money and a failure to do so did not maintain the trust the public had placed in the Respondent or in the provision of legal services. The Respondent had also thereby breached Principle 6 of the Principles 2011.

40.18 The Tribunal was satisfied that the Respondent had failed to run her business in accordance with proper governance and sound financial and risk management principles because she had not only allowed a third party to use her client account as a banking facility, but she had also allowed a large shortage to accrue, and increase, on her client account which remained outstanding at the time of the Firm's intervention in August 2018. This was in breach of Principle 8 of the Principles 2011.

40.19 The Tribunal then considered whether the Respondent had acted dishonestly. The Applicant had drawn the Tribunal's attention to the test set out in the case of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67. Firstly the Tribunal was required to ascertain the actual state of the Respondent's knowledge or belief as to the facts. Having done so, the Tribunal had to consider whether the Respondent's conduct was dishonest by the standards of ordinary decent people. Lord Hughes had set out the test to be applied when considering the issue of dishonesty as follows:-

> "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."

40.20 It was clear to the Tribunal that the Respondent was aware, certainly from May 2017 that cheques being paid into the client account by Mr AD were not clearing. She knew that she was holding funds in client account which belonged to other clients and not to Mr AD. Yet, she continued to allow him to use the client account as a banking facility and she continued to repeatedly make transfers to him from other clients' funds, before Mr AD's cheques had cleared. This went on for a period of over 2 years and involved a total of over £8million. Indeed in her responses to the FIO, the Respondent had conceded she knew it was wrong, yet she continued to do it. The Tribunal had no doubt that ordinary decent people would consider this conduct to be dishonest. They would not expect a solicitor to deliberately allow a firm's client account to be used as a banking facility or pay client funds to an unrelated third party knowing full well that there had been no underlying transaction. The Tribunal found Allegations 1.1 and 1.2 proved including the allegations of dishonesty.

40.21 In relation to Allegation 1.3, the Tribunal considered carefully whether the Respondent had acted dishonestly. She had repeatedly explained to the FIO that she had not had the funds to repay the shortages on client account promptly. She had used her personal savings and had taken steps to obtain loans in an attempt to replace some of the earlier shortages but she had been unable to raise sufficient funds to replace the remaining shortage of £121,529.06. She had eventually run out of money and options. The Tribunal was not convinced that, in light of her impecuniosity, ordinary decent people would consider her failure to promptly replace the shortage on client account to be dishonest. The Tribunal was not satisfied to the requisite standard that the Respondent had acted dishonestly in relation to Allegation 1.3.

40.22 The Tribunal then considered whether the Respondent had acted recklessly in relation to Allegation 1.3. The Tribunal had been referred to the case of Brett v SRA [2014] EWHC 1974, in which Wilkie J had stated the definition of reckless was where: with respect to (i) a circumstance when (the solicitor) is aware of a risk that it exists or will exist and (ii) a result when (the solicitor) is aware that a risk will occur and it is, in circumstances known to them, unreasonable for them to take the risk.

40.23 Allegation 1.3 related to "failed to replace promptly…shortages." The Tribunal was not satisfied that at the relevant time the Respondent had the capacity to replace the shortages. It could not therefore be said that by failing, because of incapacity, to replace the shortages, being aware of a risk, she went on to take that risk. There was no "risk" but simply an inevitability because of her incapacity. It could not be said that she "acted recklessly." The Tribunal was not satisfied to the requisite standard that the Respondent had acted recklessly in relation to Allegation 1.3.

40.24 The Tribunal found Allegations 1.1 and 1.2 proved including dishonesty.

40.25 The Tribunal found Allegation 1.3 proved but did not find dishonesty or recklessness proved to the requisite standard.

41. **Allegation 1.4: Between 26 January 2018 and 17 August 2018 the Respondent failed to return client money of up to £39,681.69 to clients promptly, or at all, in breach of Rule 14.3 SAR 2011 and any or all of Principles 2, 4, 5, 6 and 10 of the Principles. It was alleged the Respondent had acted dishonestly, or alternatively recklessly.**

41.1 Ms Hansen submitted the Respondent had deliberately withheld a number of cheques that were due to clients when she should have rectified the shortage rather than delay paying money which was properly due to those clients. Ms Hansen submitted there had, at the time the cheques were written, been sufficient funds in the client account for all of those cheques to have been paid.

41.2 The Tribunal noted the Respondent had provided the FIO with a number of letters and cheques addressed to 61 clients whose cheques she had held back rather than paying them when they should have been paid. She stated to the FIO:

> "I keep it in a folder. I've not been sending the cheques out. I've been keeping them in a folder……
>
> ….. They're, they're small ones…..
>
> …….they're all small piddly amounts and you think oh just let those go. But, they're the ones that they don't tend to chase."

The Respondent had also admitted to the FIO that she had been "juggling" money in the Firm's client account as the Firm was in financial difficulties. She stated she had made payments to HMRC and payments for her practising certificate fee from client account because her office account had been frozen when HMRC presented a winding up petition in autumn 2017. She had also realised that the cheque clearing scheme she had been operating meant that she was using other clients funds to pay Mr AD and his companies whilst she was waiting for Mr AD's cheques to clear or be represented.

41.3 The Tribunal was satisfied that the Respondent had failed to return client money of up to £39,681.69 because she had withheld cheques that should have been sent to clients. This was in breach of Rule 14.3 of the SAR 2011 which required client money to be returned to the client promptly when there was no proper reason to retain it. The Tribunal was also satisfied that the Respondent had failed to act with moral soundness, rectitude and a steady adherence to an ethical code. She knew that the funds were due to clients but had deliberately withheld those funds so as to assist with the Firm's financial issues. Members of the profession acting with integrity would ensure that client funds were promptly paid to clients when there was no legitimate reason to keep them. The Respondent had therefore breached Principle 2 of the Principles 2011.

41.4 The Tribunal was also satisfied that the Respondent had breached Principles 4, 5, 6 and 10 of the Principles. She had failed to return client money properly due to clients. This was a failure to act in their best interests and a failure to provide them with a proper standard of service. Clients were entitled to expect that any money due to them would be sent to them promptly. By not sending that money to her clients, the Respondent had allowed a shortfall to accrue on client account and had therefore not protected client funds. The Respondent's conduct had not maintained the trust the public had placed in the Respondent or in the provision of legal services.

41.5 The Tribunal then considered whether the Respondent had acted dishonestly. It was quite clear that the Respondent knew the client cheques she had been withholding were due to clients and she had made a deliberate decision not to pay that money to them. She knew the Firm's client account had been used to pay money to Mr AD and his

companies and she was aware of "a hole" in client account. The Respondent admitted she had been "juggling" the money in her client account and had "lost control" over it. She spoke about the amounts she had withheld being small amounts, which were unlikely to be chased up. It was evident from her responses to the FIO that she had consciously selected which client cheques to hold back and based this on those that were unlikely to be chased. The Tribunal was satisfied that ordinary decent people would consider this conduct to be dishonest. They would not expect a solicitor to deliberately hold onto client cheques, or allow a shortfall to arise, in order to assist with a firm's cash flow when those cheques should properly be paid to clients.

41.6 The Tribunal found Allegation 1.4 proved, including the allegation of dishonesty.

42. **Allegation 1.5: Between July 2017 and August 2018 the Respondent failed to ensure that client account reconciliations were completed every five weeks in breach of any or all of Rules 29.1, 29.2 and 29.12 SAR 2011 and any or all of Principles 8 and 10 of the Principles.**

42.1 Ms Hansen submitted that, over one year, the Respondent had failed to carry out any client account reconciliations. She reminded the Tribunal that the shortage of £121,529.06 in August 2018 was the minimum shortage as the actual shortage could not be calculated due to the absence of proper records.

42.2 The Tribunal noted that Rule 29.12 of the SAR 2011 required all client account reconciliations to be carried out at least once every five weeks. Rules 29.1 and 29.2 made reference to keeping proper accounting records to deal with client money. During her interview with the FIO in August 2018, the Respondent admitted that the Firm's client account reconciliations had not been carried out since her cashier had left in summer 2017. The FIO had been unable to locate any client reconciliation statements for the period from July 2017 to August 2018. The Tribunal was satisfied that the Respondent had therefore breached Rules 29.1, 29.2 and 29.12 of the SAR 2011.

42.3 The Tribunal was also satisfied that in failing to carry out reconciliations on the Firm's client account, the Respondent had failed to run her business in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 of the Principles 2011. She had also failed to protect client money because if she had been carrying out client reconciliations as required, she would have identified much earlier the amount of the client account shortage. Her failure to protect client money was in breach of Principle 10 of the Principles 2011.

42.4 The Tribunal found Allegation 1.5 proved.

Previous Disciplinary Matters

43. None.

Mitigation

44. There was no mitigation from the Respondent other than the information she had given to the FIO during her interview. In that interview the Respondent had made reference to the Firm's financial difficulties which had led to HMRC issuing a winding up petition

in autumn 2017. She had made payments to HMRC and for her practising certificate fee from client account as the Firm's office account had been frozen after the HMRC winding up petition was issued. The Respondent had told the FIO that she had not taken any drawings "for months" and had been using her personal savings, as well as taken out loans, to make payments into the office account over a period of 12 months to keep the business going. The Respondent stated she had struggled to cope with the situation.

45. The Respondent told the FIO that Mr AD had initially told her that he was going to sell a property to "plug the shortfall" but subsequently, he had been ignoring her calls. She said that she had then gone to his home to confront him. The Respondent told the FIO that Mr AD told her he had put his company into administration. She said Mr AD told the Respondent:-

> "…you're going to have to sell some of your files and realise some of your WIP."

The Respondent stated that was when she decided she would have to report the matter. The Respondent stated:-

> "I feel like he's just tried to blame everyone. He's not tried to take any responsibility at all. He's trying to blame everyone um and he's been probably playing me very well."

Sanction

46. The Tribunal had considered carefully the documents provided and the Respondent's responses during her interview with the FIO. The Tribunal referred to its Guidance Note on Sanctions when considering sanction. The Tribunal also considered the aggravating and mitigating factors in this case.

47. The Tribunal firstly considered the Respondent's culpability. The motivation for the Respondent's conduct was initially to assist with Mr AD's cheque clearing scheme. When the cheques started to bounce and shortfalls started to arise on client account, her motivation was to keep the Firm going in the hope that she would be able to somehow rectify the shortfall. However during this period she had used client money to pay for her practising certificate fee and to make payments to HMRC. There was clearly some history between the Respondent and Mr AD as they had previously worked together. It seemed the Respondent's motivation for agreeing to the scheme may have been to assist Mr AD's company which, she said, had cash flow problems, although there was no evidence of this before the Tribunal or of any business agreement between the Respondent and Mr AD's companies.

48. The Respondent had failed to make payments that were properly due to clients with the intention that either she would be able to use their money to keep the Firm afloat, or she would not have to inform them of the shortfall. Her motivation for not carrying out the client account reconciliations seemed to be that she had not been able to do them and she had been too frightened to replace the bookkeeper who had left. Her conduct was planned and, as the Firm's COLP and COFA, she had direct control over the circumstances that had given rise to it. Whilst there may have been some truth in the

Respondent's assertion to the FIO that Mr AD had taken advantage of her position, nevertheless, she was an experienced solicitor having been in practice for about 25 years at the time of the conduct. The Tribunal concluded her level of culpability was high.

49. The Tribunal then considered the harm caused by the Respondent's conduct. There had been an identified minimum shortfall on client account of £121,529.06. Clients had been deprived of funds that properly belonged to them, and indeed those funds had been used to make payments to unauthorised third parties. The Respondent's conduct had caused significant harm to members of the public and to the reputation of the profession. The Respondent ought reasonably to have foreseen the level of harm caused by her behaviour and could well have taken steps much earlier to prevent the shortfall from escalating when the initial cheques had bounced. The Tribunal concluded that the level of harm caused was high.

50. The Tribunal then considered the aggravating factors in this case and identified those as follows:-

- The Respondent had dishonestly allowed the Firm's client account to be used as a banking facility, involving sums totalling over £8million for over 2 years;
- The Respondent had dishonestly retained client cheques over a period of almost 7 months;
- For over a year, the Respondent had failed to promptly replace shortfalls in client account and had failed to carry out client reconciliations;
- Her conduct had been deliberate, calculated and repeated over long periods of time;
- The Respondent had been the Firm's COLP and COFA during the material time so had additional responsibilities to ensure proper compliance with the rules that were in place to safeguard client money;
- Due to shortcomings in the Respondent maintaining the Firm's accounting records properly, the FIO could not calculate the actual shortfall;
- The Respondent had concealed her behaviour from some of her clients, by withholding their cheques so that they may not have been aware that she had received the funds to make payments to them;
- The Respondent had allowed the shortfall in the Firm's client account to continue to increase from May 2017, when she should have taken steps to minimise and replace it promptly;
- The Respondent ought reasonably to have known that her conduct was in material breach of her obligations to protect the public and the reputation of the legal profession;

- The Respondent had not engaged with these proceedings and, other than her responses to the FIO, there was no evidence of insight from her.

51. The Tribunal then considered the mitigating factors and identified those as follows:-

- The Respondent had taken some steps to try and replace some of the shortfall, although it was not entirely clear from her responses to the FIO during her interview, how much of the funds that she had managed to raise had been used in office account to finance the firm, and how much remained in client account to meet some of the shortfall;

- The Respondent had self-reported her conduct, although this had been done a long time after the conduct started and only when she realised there were no further options available to her to replace the shortfall;

- The Respondent had a previously unblemished record.

52. The Tribunal concluded that the Respondent's conduct was extremely serious. She had allowed a huge shortfall to accrue on client account and had thereby caused a high degree of harm to clients, the public trust and to the reputation of the profession. As such, the sanctions of No Order, a Reprimand or a Fine were insufficient to mark the seriousness of her misconduct.

53. The Tribunal had found that the Respondent had repeatedly acted dishonestly over a long period of time. It was difficult to formulate any conditions that would adequately address dishonesty. A Restriction Order would not be sufficient to protect the public and was therefore not an appropriate sanction.

54. The Tribunal then considered whether a Suspension could be imposed. The Respondent had not demonstrated any insight into her behaviour and had not engaged with the Tribunal proceedings at all. While she appeared to express some remorse to the FIO, she had not provided any evidence of this to the Tribunal. Her dishonest behaviour in repeatedly using client funds inappropriately and at times for the benefit of her Firm meant that the Respondent could not be trusted. She had allowed a large shortfall to arise in her client account over a long period of time and had improperly used and retained client monies. There was a need to protect the public and the reputation of the profession. The Tribunal concluded that a Suspension was not a sufficient sanction for conduct of this gravity.

55. The Tribunal was also mindful of the case of SRA v Sharma [2010] EWHC 2022 (Admin) in which Coulson J stated:-

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

56. The Tribunal was satisfied that there were no exceptional circumstances in this case. The Respondent was a risk to the public and the reputation of the profession, as she could not be trusted with client funds. The appropriate sanction was permanently to

remove the Respondent's ability to practise as a solicitor. The Tribunal Ordered the Respondent be Struck Off the Roll of Solicitors.

Costs

57. Ms Hansen made an application for the Applicant's costs in the total sum of £27,625.85. She provided the Tribunal with a Statement of Costs dated 9 March 2020 which contained a breakdown of those costs.

58. Ms Hansen stated that a great deal of time had been spent investigating the matter and following up lines of enquiry. The Applicant had obtained the Firm's bank statements from January 2014, which was as far as they were available. Those bank statements were then all considered carefully. Ms Hansen submitted the costs were reasonable and proportionate for this case.

59. Ms Hansen advised the Tribunal that, from the enquiries that had been made, it was believed the Respondent had been declared bankrupt in April 2019. It was not known whether her bankruptcy would be discharged in April 2020. Ms Hansen provided the Tribunal with evidence that the Respondent jointly owned a property although there was a restriction on the property register which referred to her bankruptcy. It was not known what the current value of that property might be.

60. The Tribunal had considered carefully the matter of costs and was satisfied that the amount of costs claimed was reasonable. This had been a complex case involving a large number of bank statements. Accordingly, the Tribunal made an Order that the Respondent should pay the Applicant's costs in the sum of £27,652.85.

61. In relation to enforcement of those costs, the Tribunal had particular regard for the case of SRA v Davis and McGlinchey [2011] EWHC 232 (Admin) in which Mr Justice Mitting had stated:-

> "If a solicitor wishes to contend that he is impecunious and cannot meet an order for costs, or that its size should be confined, it will be up to him to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive."

62. The Tribunal noted the Respondent had not provided any Statement of Means or evidence of either her bankruptcy or financial position. It was not known what the extent of her debts might be but it was clear that she had an interest in a property, the current value of which was not known. That property did not appear to be subject to any mortgage.

63. The Tribunal was also mindful of the cases of William Arthur Merrick v The Law Society [2007] EWHC 2997 (Admin) and Frank Emilian D'Souza v The Law Society [2009] EWHC 2193 (Admin) in relation to the Respondent's ability to pay the Applicant's costs. In this case, given the Respondent's age, it was quite possible she could gain some form of alternative employment.

64. In all the circumstances, the Tribunal did not consider this was a case where there should be any deferment of the costs order.

Statement of Full Order

65. The Tribunal Ordered that the Respondent, BARBARA JULIA GRIBBIN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £27,652.85.

Dated this 27th day of April 2020
On behalf of the Tribunal

J. A. Astle
Chair