SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11759-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

NEIL ADRIAN AISTON — Respondent

Before:

Mr A. Ghosh (in the chair)
Mr P. Jones
Mrs S. Gordon

Date of Hearing: 13 August 2018

Appearances

Nimi Bruce, barrister, instructed by Hugh Wooster, solicitor, both of Capsticks Solicitors LLP, 1 St Georges Road, Wimbledon, London, SW19 4DR, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The Allegations made against the Respondent were that he, whilst in practice as a sole practitioner at Aiston Solicitors ("the Firm"):

1.1. On dates between March 2013 and March 2015, caused or allowed the use of clients' monies for other clients' matters without consent, and in doing so breached Rules 1.2(c), and 20.1 of the SRA Accounts Rules 2011, and Principles 2, 4, 6, and 10 of the SRA Principles 2011.

1.2. In or about January 2015, arranged and/or effected a private loan between clients without the prior written authority of both clients and in doing so breached Rules 1.2(c), 27.1 and 27.2 SAR and Principles 2, 4, 6, and 10 of the SRA Principles 2011. **This Allegation was amended with leave of the Tribunal as set out below.**

1.3. In or about March 2016, arranged and/or effected a private loan between clients:

1.3.1. in circumstances giving rise to a conflict between his own interests and those of the Client 3 making the loan, and between the interests of the clients making and receiving the loan, and in doing so breached Outcome O(3.4) and O(3.5) of the SRA Code of Conduct 2011 and Principles 2, 4, 6, and 10 of the SRA Principles 2011;

1.3.2. without the prior written authority of both clients and in doing so breached Rule 27.2 SAR and Principles 2, 4, 6, and 10 of the SRA Principles 2011.

1.4. Failed to remedy breaches of the SARs promptly upon discovery and in doing so breached SAR 7.1 and Principle 10 of the SRA Principles 2011.

1.5. On dates between 31 March 2013 and 8 April 2016 failed to establish and maintain proper accounting systems, and proper internal controls over those systems and in doing so breached SAR 1.2(e), Outcome O(7.2) and 7.3 of the SRA Code of Conduct 2011 and Principle 8 of the SRA Principles 2011.

1.6. On dates between 16 March 2012 and 8 April 2017 failed to keep proper accounting records to show accurately and appropriately:

1.6.1. the position with regard to the money held for each client and in doing so breached SAR 1.2(f), 29.1 and 29.2 and Principle 8 of the SRA Principles 2011;

1.6.2. all dealings with office money relating to any client matter in an office cash account and on the office side of the appropriate client ledger account and in doing so breached SAR 29.4 and Principle 8 of the SRA Principles 2011;

1.6.3. the current balance on each client ledger account and in doing so breached SAR 29.2, 29.4 and 29.9 and Principle 8 of the SRA Principles 2011.

1.7. Failed to prepare a reconciliation statement which showed:

1.7.1. the cause of any difference shown by each of the comparisons required by SAR 29.12(a) and in doing so breached SAR 29.12(c) and Principle 8 of the SRA Principles 2011;

1.7.2. all shortages in reconciliations and in doing so breached SAR 29.14 and Principle 8 of the SRA Principles 2011.

1.8. Failed adequately to carry out his roles as a COLP and COFA and in doing so breached Rules 8.5(c) and (e) of the SRA Authorisation Rules 2011.

2. It was expressly alleged that the Respondent acted dishonestly in respect of the facts and matters set out at Allegations 1.2 and 1.3 or any of them. However, whilst dishonesty was alleged with respect to the allegations at Allegations 1.2 and 1.3 above, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

Allegation 1.2 as amended

In or about January 2015, arranged and/or effected a private loan between Client 1 and a third party without the prior written authority of Client 1 and in doing so breached Rules 1.2(c), 27.1 and 27.2 SAR and Principles 2, 4, 6, and 10 of the SRA Principles 2011.

Documents

- Application and Rule 5 Statement date 1 December 2017
- Hearing bundle
- Schedule of Costs

Preliminary Matters

3. Application to correct the Respondent's middle name in the Rule 5 Statement

3.1 The Rule 5 Statement had included the incorrect middle name for the Respondent. Ms Bruce applied to amend the Rule 5 Statement to correct this error. The Tribunal granted that application.

4. Application to proceed in absence

Applicant's Submissions

4.1 The Respondent had not attended and was not represented. Ms Bruce applied to proceed in his absence. Ms Bruce submitted that the Respondent had been in regular contact and had told the Applicant and the Tribunal that he would not be attending. It was clear that service had been effected and Ms Bruce submitted that he had voluntarily absented himself. In light of the fact that these were serious allegations there was an overriding public interest in the matter proceeding.

The Tribunal's Decision

4.2 The Tribunal considered the communications from the Respondent and Ms Bruce's submissions. The Respondent was aware of the date of the hearing and SDPR Rule 16(2) was therefore engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments

(4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22(5) which states:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
> (ii) …;
> (iii) the likely length of such an adjournment;
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
> (v) …;
> (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
> (vii) …;
> (viii) …;
> (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
> (x) the effect of delay on the memories of witnesses;
> (xi) …;"

4.3 In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

> "…It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".

4.4 Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account."

4.5 The most recent communication to the Tribunal from the Respondent had been on 10 August 2018 by email, in which he had stated:

> "I attach the Certificate of Readiness, although I have not completed those parts which are irrelevant as I will not be attending. I wish to make it clear that my non-attendance does not signify any admission as to the Allegations which I have consistently denied as they are untrue, as set out in my statements. However, I am aware that the admissions I have made will result in my being struck off and I have decided, independently of that outcome some 12 months or so ago, that I have no wish to practice in any event and have retired."

4.6 In his second witness statement dated 20 July 2018 he had stated:

> "Having admitted in my first Response the Allegations in 1.2 and 1.4 to 1.7 I am aware that the SDT will strike my name from the Roll of Solicitors. I have no objection to this course of action. Given the certain outcome and the fact that I have retired and have no wish to practice as a solicitor ever again, I see no point in wasting the time of the parties and the SDT in a hearing and instead submit this Second Statement in its place".

4.7 The Tribunal concluded that the Respondent had deliberately absented himself. He had not sought an adjournment and he clearly understood the implications of not attending. These were serious allegations which have been ongoing for some time and it was clearly in the public interest that they be heard. It was therefore in the interests of justice for the matter to proceed and Ms Bruce's application was therefore granted. The Tribunal reminded Ms Bruce to draw to its attention any point that the Respondent might have raised had he been present. Ms Bruce confirmed she would do so.

5. Application to amend Allegation 1.2

5.1 Ms Bruce applied to amend Allegation 1.2, with the consequent amendment to the way in which the dishonesty allegation was pleaded. The Respondent had stated that the individual referred to as Client 2 was not in fact a client. The Applicant accepted this and agreed that they were in fact a third party. Ms Bruce therefore applied to amend Allegation 1.2 in those terms. She submitted that there was no prejudice to the Respondent as it represented an acceptance of his position in that respect.

The Tribunal's Decision

5.2 The Tribunal was satisfied there was no prejudice to the Respondent in the Applicant amending the Allegation to accept a point made by him. The Tribunal therefore granted Ms Bruce's application to amend Allegation 1.2.

6. Anonymity of Witnesses

Applicant's Submissions

6.1 Ms Bruce applied for Client 3 and GM to be anonymised in light of the fact that their evidence related to Client 3's health issues. Ms Bruce submitted that it would not be in the interests of justice for Client 3's private medical history to be made public.

The Tribunal's Decision

6.2 The Tribunal noted the starting point was the requirement for open justice as affirmed in SRA v Spector [2016] EWHC 37 (Admin).

6.3 In this case, Client 3 was suffering from significant ill-health, the details of which were personal and private. The Tribunal was satisfied that it would not be in the interests of justice to have that medical information attributable to a named individual. The reader of this judgment would be able to understand the case without needing to know Client 3 or GM's names. The Tribunal permitted Client 3 and GM to give their evidence without giving their names in open Court. Instead they would be invited to confirm them by reference to their written statements. The Tribunal directed that any parts of the audio recordings of the hearing in which the names were inadvertently read out be redacted before the discs were released to non-parties.

6.4 Ms Bruce's application was therefore granted.

Factual Background

7. The Respondent was admitted to the Roll on 15 June 1979. At the relevant time he practised as the sole practitioner at his recognised sole practice, the Firm at 43 Friends Road, Croydon CR0 1ED. At the time of the hearing the Respondent held a practising certificate with conditions.

8. Following a complaint made by two clients of the Firm the SRA's Supervision Department commissioned a forensic investigation into the Firm. The investigation commenced on 13 January 2016 and the Interim Report was produced by the FIO on 2 March 2016.

9. The Respondent sent a letter to the Legal Ombudsman on 11 January 2016 responding to an email from the Legal Ombudsman's email of 7 December 2015 which asked for answers to eight questions.

10. An intervention report dated 21 March 2016 was produced and was disclosed to the Respondent on 21 March 2016 for representations, which he provided on 29 March 2016. A further request for information was sent to the Respondent by the SRA on 30 March 2016 and he responded on 31 March 2016.

11. Following the intervention on 8 April 2016, the FIO continued her investigation. She had written to the Respondent on 4 October 2016 setting out further concerns and requesting information and the Respondent replied on 18 October 2016. The FIO published her Final Report on 30 November 2016.

12. The SRA had sent an Explanation with Warnings letter ("EWW") to the Respondent on 16 February 2017 enclosing the Final Report. He had replied by way of letter dated 27 March 2017.

Allegation 1.1

13. The FIO identified that the Firm was holding £301,273.77 less than it should have been as at 30 September 2015 on the matter of Client 5. The FIO calculated that the Firm held a client account shortage of £290,686.61 ("the First Minimum Cash Shortage"). The FIO calculated the First Minimum Cash Shortage by subtracting the amount of money available on the Firm's client account (£10,587.16) from the Client 5 liabilities as of 30 September 2015 (£301,273.77).

14. In the Respondent's letter to the Legal Ombudsman dated 11 January 2016, he stated that he had informed the accountant for Client 5 that he would retain the proceeds from a sale of a property belonging to Client 5 to cover costs incurred in matters in which he had acted for Client 5 and other related companies and parties. The Respondent stated that he had explained this to JS, one of the Directors of Client 5, over the telephone.

15. The Respondent had argued that the First Minimum Cash Shortage was incorrect as he was entitled to use monies held for the Client 5 matters on the basis of a 'joint retainer' and because "several bills not having been correctly posted and/or prepared in respect of transfer that were done…".

16. The Applicant's case was that if the Respondent was correct this would reduce the shortage to £167,927.51 ("the Second Minimum Cash Shortage").

17. The Respondent had also disputed the Second Minimum Cash Shortage stating that it was at least £60,000 too high. The Respondent had informed the FIO that other invoices should be considered and he had produced a spreadsheet in relation to three matters. The FIO examined the spreadsheets and concluded that they could reduce the shortage further. Ms Bruce confirmed that if the Respondent's calculations were correct, the shortage was approximately £107,000.

Allegation 1.2

18. On 16 January 2015, the Respondent had transferred £273,753.00 from the client account ledger of Client 1 to a third party. The ledger showed that there were insufficient funds available to make this transfer which resulted in a shortfall of £147,759.22. During the FIO's visit on 11 February 2015 the Respondent had stated that:

- he was aware that the ledger held insufficient funds to make the transfer;
- he was aware the transfer would create a client account shortage;
- he did not know which accountants held the £165,000 security;
- he had agreed to the payment as otherwise one of Client 1's deals would be in jeopardy;
- he knew that he was not permitted to loan money from client account.

19. In his response to the FIO's letter of 4 October 2016 the Respondent had stated:

> "I fully accept that:
>
> a) The payment to on [sic] M27/4 in January 2015 was wrong and inexcusable.
>
> b) My accounts and the paperwork relating to billing and transfers fell behind, probably in 2014, and fell further behind as 2015 progressed. There are reasons why that happened but I acknowledge they do not

discharge my obligations under [sic] Code of Conduct of the Accounts Rules."

Allegation 1.3

20. Client 3 had made an application to SRA Compensation Fund for £175,000. The application included a witness statement by Client 3 dated 30 September 2016. He had stated that the Respondent had been his solicitor for around 35 years and that the Respondent knew that he suffered from depression and cancer. Client 3 had stated that the Firm acted for him in the sale of a cottage, which completed on 9 March 2016. He stated that while the sale had been going through, the Respondent "began to ask after my health more than before".

21. Client 3 had stated that the Firm did not immediately transfer the sale proceedings to him following completion, which led him to chase the Respondent for the money and for the Respondent to text Client 3 asking him to come to the office. On 29 March 2016, Client 3 had attended the Firm and met with the Respondent and a man who he later learned was Client 1. Client 3 had stated that the Respondent had asked him to transfer £175,000 into "the client base" and that this sum would be returned to him in four days.

22. Following a telephone call between Client 3's brother GM and the Respondent, the Respondent had drafted an agreement which Client 3 signed ("the Agreement"). The parties to the Agreement were Client 3, the Respondent and Client 1 and the terms provide for Client 3 to transfer to Client 1 and the Respondent jointly £175,000 which the Respondent would repay, with interest, within 3 months of the date of the Agreement. The Agreement did not set out that the £175,000 sum would be paid into Client 1's account and then transferred to the Respondent.

23. Client 3 had stated that when the Respondent had provided him with bank details, he "was having an anxiety attack and feeling ill" and that "He [the Respondent] did not read the agreement out, did not tell me to read it and did not explain any of the terms".

24. On the same day (29 March 2016) the net proceeds from the sale of Client 3's property were transferred to Client 3.

25. In his letters of 18 October 2016 and 27 March 2017, the Respondent had denied having said that the proceeds of sale due to Client 3 could not be released until the shortage had been replaced. The Respondent had stated that the CHAPS instruction in relation to net proceeds was sent before any payment was received from Client 3, via Client 1. He had denied that he had knowledge or suspicion of Client 3's health concerns at the time and he had stated that he had made it clear to both parties that the loan was to Client 1. He had further stated that he had discussed investment in a property development related to Client 1 and that "the loan was inextricably linked" to that development.

Allegation 1.4

26. The Applicant's case was that the Respondent was aware, at the time of making the transfers of client funds alleged in Allegations 1.1 and 1.2 he was creating shortfalls

against client ledgers and acting in breach of the SARs, but had not acted promptly to rectify such breaches.

Allegation 1.5

27. The Final Report had identified a number of issues which were revealed by the client account reconciliation on 30 September 2015, namely:

- Two unrepresented credit reconciling items (totalling £12,475.05) which had appeared as reconciling items for a number of months and did not appear to be genuine lodgements. The FIO had noted that "the two related ledgers showed that the removal of these items from the reconciliation was not achieved by writing the items back to the ledger".

- The client matter listing included 38 client-side debit balances totalling £397,314.00 and 103 office-side credit balances totalling £651,073.44. The bookkeeper had informed the FIO in discussion on 11 February 2016 that although some of the client-side debit balances could be off-set against the client credits, there were 14 instances totalling £31,510.00 where this was not possible.

- The reconciliation statement contained "adjustments" totalling £233,898.41 without consideration of which the figures on the reconciliation statement would not agree.

- The FIO had noted that the final reconciliation produced by the Firm prior to the intervention contained 25 client-side debit balances totalling £95,678.20 and 31 office-side credit balances totalling £106,607.96.

- The FIO noted that the office account was routinely at or near the £25,000 overdraft limit.

- The client account reconciliation statements from 16 March 2012 onwards all included "adjustments" (save for 31 March 2012 and 31 March 2013) each month in the sum of £13,328.60 to £235,098.41. The FIO noted that there were "irregularities" in the books of account during the months when adjustments were removed which meant that the books of account cannot be relied upon as accurate.

28. The Respondent stated in his letter to the SRA of 27 March 2017 that, "Save for the Client 1/Client 4 issue I deny these Allegations. A proper Accounting System was in place, although I accept internal controls over adhering to it may be subject to criticism. However, any criticism should be tempered by the fact that it is impossible to look after Clients' interests and have time to exert controls over compliance with Accounts Rules, apparently intended for compliance only be firms large enough to engage or employ full-time Accounts staff and Compliance staff".

Allegations 1.6 and 1.7

29. The FIO had concluded that the books of account were not in compliance with the SARs and were unreliable and she was therefore unable to accurately calculate whether funds

held on client bank account were sufficient to meet liabilities to clients as at 30 September 2015.

Allegation 1.8

30. Between August 2011 and the intervention into the Firm in April 2016, the Respondent was the Firm's approved COFA and COLP. It was the Applicant's case that the matters set out in relation to Allegations 1.1-1.7 amounted to breaches by the Respondent of his obligations under Rules 8.5(c) and (e) of the SRA Authorisation Rules 2011.

Live Witnesses

31. Client 3

31.1 Client 3 confirmed that his witness statement was true to the best of his knowledge and belief. He adopted it as his evidence.

31.2 Client 3 told the Tribunal that he had known the Respondent as he had been his solicitor for over 35 years. He had handled a number of matters for the family and Client 3 had put a great deal of trust in him. Client 3 confirmed that he had told the Respondent at the meeting that he had to return to hospital and was on medication. During the course of the meeting Client 3 had an anxiety attack and had to leave the office. He had called GM who had said he would telephone the Respondent.

32.3 Client 3 told the Tribunal that he felt "threatened, manipulated and groomed". He had signed the loan document without reading it and under duress. He confirmed that he had never received the £175,000 back from the Respondent.

33. GM

33.1 GM confirmed that his witness statements were true to the best of his knowledge and belief and he adopted them as his evidence. He told the Tribunal that he had first met the Respondent when he was 15-16 years old. The Respondent had "great knowledge of me and my family". He believed that he had an honest relationship with him.

33.2 GM told the Tribunal that when he telephoned the Respondent on the day of the meeting, the Respondent sounded very matter-of-fact and confident. He had asked the Respondent what his advice would have been if GM and Client 3 had been seeking advice on this. The Respondent had told him that he would have advised him to obtain something in writing. He had then agreed that he would put something in writing for Client 3. GM told the Tribunal that he found it hard to believe that he and Client 3 had been so "foolhardy" but emphasised that they had had total trust in the Respondent. GM also gave details of the nature and symptoms of Client 3's ill health.

Findings of Fact and Law

34. The Applicant was required to prove the allegations beyond reasonable doubt. 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 respectively of

the European Convention for the Protection of Human Rights and Fundamental Freedoms.

35. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of the parties, where provided.

The Tribunal's Approach

Dishonesty

36. In determining whether the allegation as to dishonesty had been substantiated the Tribunal applied the test set out in the judgment of the Supreme Court in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ..... 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 knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder 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."

Integrity

37. When the Tribunal was required to consider whether the Respondent had lacked integrity, it applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".

38. Wingate and Evans and Malins had continued a line of authorities that included SRA v Chan [2015] EWHC 2659, Scott v SRA [2016] EWHC 1256 (Admin), Newell-Austin v SRA [2017] EWHC 411 (Admin) and Williams v SRA [2017] EWHC 1478 (Admin).

39. **Allegation 1.1 - On dates between March 2013 and March 2015, caused or allowed the use of clients' monies for other clients' matters without consent, and in doing so breached Rules 1.2(c), and 20.1 of the SRA Accounts Rules 2011, and Principles 2, 4, 6, and 10 of the SRA Principles 2011.**

Applicant's Submissions

39.1 The Applicant's case was that in rendering invoices to entities other than those on whose behalf he was holding funds, and transferring sums pursuant to those invoices from client account funds held on behalf of other clients, without prior written consent, the Respondent had breached Rule 1.2(c) of the SAR by failing to use client's money for that client's matters only and in doing so breached Principles 2, 4, 6, 8 and 10 of the SRA Principles 2011. He had also breached Rule 7.1 of the SAR by failing to remedy breaches of the SARs promptly upon discovery and in doing so breached Principle 10 of the Principles and Rule 17.2 of the SAR by failing to give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party before transferring sums in respect of his fees from money held on client account. He had further breached Rules 20.1 and 27.1 of the SAR by withdrawing money from client account otherwise than in accordance with SAR 20.1 by making paper transfers of money held in a general client account from the ledger of another client when was not permissible to do so and so, again, had breached Principle 10 of the Principles.

39.2 It was submitted that the Respondent had lacked integrity in accordance with the test for integrity set out in Newell-Austin v SRA [2017] EWHC 411, namely that he had failed to act with moral soundness, rectitude and steady adherence to an ethical code, applying a purely objective test. He had transferred funds between the ledgers of clients in the knowledge that the clients had not given written consent to such transfers.

39.3 Ms Bruce submitted that the Tribunal was not required to find a specific amount of the shortfall in the client account. She told the Tribunal that even if the Respondent's figure of £107,000 was correct, it was still a significant sum and the allegation would still be made out.

Respondent's Submissions

39.4 In his witness statements dated 15 January 2018 and 20 July 2018, the Respondent denied this Allegation. He referred the Tribunal to his letters to the SRA dated 18 October 2017 and 27 March 2017.

39.5 He stated that the First Minimum Cash Shortage had never existed as it was the balance of sale proceeds held for Client 5 before the Firm's invoices and disbursements were paid. This was done with the consent of Client 5 and before the "unilateral attempt to vary the terms of the Firm's retainer Client 5 and two of its associated companies".

39.6 The Respondent set out in detail the background of the instructions he received from HE on behalf of Client 5. The Respondent further stated that the second minimum cash shortage was also not correct. He stated that it appeared that the FIO had rejected or disallowed some invoices and the Respondent stated that he could therefore not comment on her calculations other than to say that they were incorrect. The Respondent accepted that he had been behind with his billing on these matters as a result of having had to deal with the complaint.

39.7 The Respondent made further submissions as to the extent, or existence, of the cash shortage when addressing Allegations 1.5-1.8 and those submissions are set out below in relation to those Allegations.

39.8 The Respondent denied acting dishonestly or without integrity. He had stated in his first witness statement that:

> "The clients themselves have sought to gain financially by unilaterally varying their instructions and seeking to avoid payment of invoices rendered in respect of work done in accordance with the agreed retainer, from which they have benefited, financially, substantially. SRA has created a shortfall in client account by accepting the FIO's figures without justification, which decision will enure [sic] for the financial benefit only of these particular clients and potentially cause loss and damage to other, far less wealthy clients".

The Tribunal's Findings

39.9 The Tribunal noted that the Respondent's position was equivocal in the sense that he disputed the amount of the shortfall but he did not appear to dispute that there was a shortfall of some sort. The Respondent had not presented any argument to show that the figure of £107,000 was inaccurate. The Tribunal, for the purposes of determining this Allegation, did not need to make a finding as to the precise level of the shortfall. The relevant point was that there had been a significant shortfall. The Tribunal was satisfied beyond reasonable doubt that the Respondent had caused or allowed the use of client monies for other client matters without their consent, resulting in a shortage on the client account. Simply because invoicing was being done in a single chunk, did not entitle a solicitor to take money from any other client account without specific authority. The Tribunal noted what the Respondent said about being deceived but this was irrelevant to the matters in hand. The Respondent had had a misplaced confidence that future fees would obviate a shortfall. The Tribunal rejected the Respondent's case on this point.

39.10 The Tribunal found the factual basis of Allegation 1.1 together with the breaches of Rules 1.2 (c) and 20.1 of the SAR proved beyond reasonable doubt.

39.11 Principle 2

39.11.1 The Tribunal considered whether the Respondent had lacked integrity. The Tribunal found that the Respondent's priority had been to get money in and he had been billing without reference as to who was generating the work. The Tribunal found that knowingly transferring funds between the ledgers of clients knowing that they had not given written consent for those transfers demonstrated a lack of integrity and the Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

39.12 Principles 4 and 10

39.12.1 It followed from the Tribunal's factual findings that it was clearly not in the best interests of clients for there to be a shortage on the client account. It was also inconsistent with protecting client money and assets for there to be insufficient funds in the client account. The Tribunal found the breaches of Principles 4 and 10 proved beyond reasonable doubt.

39.13 Principle 6

39.13.1 It again followed from the Tribunal's findings that by making transfers between client ledgers without consent and thereby causing a shortage on the client account, the Respondent had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. The Tribunal noted the fundamental importance of safeguarding client monies and the damaging effect on the public's trust in the profession and this did not occur. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

39.14 The Tribunal found Allegation 1.1 proved in full beyond reasonable doubt.

40. **Allegation 1.2 - In or about January 2015, arranged and/or effected a private loan between Client 1 and a third party without the prior written authority of Client 1 and in doing so breached Rules 1.2(c), 27.1 and 27.2 SAR and Principles 2, 4, 6, and 10 of the SRA Principles 2011.**

Applicant's Submissions

40.1 Ms Bruce submitted that while there was a complex back story to the Allegation, in essence the Respondent had facilitated a loan between a client and a third party without that client's consent. Ms Bruce submitted that a solicitor's obligations were very straightforward in this regard and the Respondent had not provided a specific explanation for his actions. Ms Bruce further invited the Tribunal to make a finding of dishonesty in respect of this allegation. She submitted that the Respondent was fully aware that what he was doing was wrong. The Respondent knew that there were insufficient funds to make the transfer but went ahead and did it anyway. Ms Bruce submitted that this was dishonest in accordance with the test in Ivey.

Respondent's Submissions

40.2 The Respondent had stated that the Firm held funds for the benefit of Client 1 which Client 1 had wanted released to him as he owed money to the third party. The Respondent had refused to release the funds as they were being held in respect of sums owed by Client 4, whose fees Client 1 had agreed to pay if Client 4 did not. Client 1 had threatened action against the Firm if the Respondent did not release the funds. The Respondent had "reluctantly" made the payment to the third party on Client 1's behalf.

40.3 The Respondent had stated that Client 1 had replaced the funds but that due to an allegation of mortgage fraud, this turned out to be temporary. The Respondent admitted that he had allowed Client 1 to overdraw his client account. In his second witness statement to the Respondent confirmed that he had admitted that a private loan was made by him using client account funds without the consent of the clients for whom those funds were held. The Respondent stated "I deeply regret the action I took and struggle to understand why I agreed to help a desperate client on that occasion when nearly 40 years practice told me not to do so. All I can say is that I had known the clients concerned for over 10 years, trusted his statements as to repayment, when I should not even have entertained his request and as a result I will rightly be struck from the roll. I did not benefit financially or in any other way, personally or through my Firm".

40.4 In relation to the allegation of dishonesty, in respect of Allegation 1.2 the Respondent had stated in his first statement:

> "I have admitted that my conduct regarding the payment to Client 1 by me in January 2015 meets the definition of dishonesty used by the SDT prior to the case referred to in paragraph 68".

40.5 The Tribunal took this to be a reference to the test applied prior to the decision in Ivey.

The Tribunal's Findings

40.6 The Tribunal had considered the ledger presented in evidence by Ms Bruce. It also considered the Respondent's comments to the FIO during her visit on 11 February 2015. It also noted his admissions that he had made a private loan using client account funds and in doing so caused a shortage on the client account. The Respondent had admitted that this was done without the consent of the clients whose funds were being held. The Tribunal was satisfied beyond reasonable doubt that the factual basis of Allegation 1.2 was proved. The Tribunal was also satisfied that there had been a breach of Rule 1.2(c) of the SAR. Rules 27.1 and 27.2 were no longer relevant as the transfer had not been from one client ledger to another client ledger and the Tribunal therefore found those matters not proved.

40.7 Principle 2

40.7.1 For the reasons set out below, the Tribunal found that the Respondent had acted dishonestly. It also found that he had also lacked integrity and had therefore breached Principle 2.

40.8 Principles 4 and 10

40.8.1 The Respondent had clearly not been acting in the best interests of the Firm's clients when he took money from the client account such as to create a shortfall in the context of making a private loan. This was the polar opposite of the Respondent's duty to protect client money and assets. The Tribunal found the breach of Principles 4 and 10 proved beyond reasonable doubt.

40.9 Principle 6

40.9.1 The Respondent had failed to behave in a way that maintained the trust the public placed in him and in the profession for the reasons set out in the Tribunal's findings in relation to this allegation. It was inconsistent with the maintenance of trust for a solicitor to have made a private loan from funds held for other clients. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

40.10 Dishonesty

40.10.1 The Tribunal considered the Respondent's state of knowledge at the time of making the loan. The Respondent was aware that Client 1 did not have sufficient funds in his account to make this payment. The Respondent

nevertheless knowingly made the payment and by doing so knew that the funds were coming out of monies held for the benefit of other clients. The Respondent was therefore aware that the money was being paid from an account that it ought not to have been. The Tribunal was satisfied beyond reasonable doubt that this would be regarded as dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

40.11 The Tribunal therefore found Allegation 1.2 proved in full including the allegation of dishonesty.

41. **Allegation 1.3 - In or about March 2016, arranged and/or effected a private loan between clients:**

1.3.1. in circumstances giving rise to a conflict between his own interests and those of the Client 3 making the loan, and between the interests of the clients making and receiving the loan, and in doing so breached Outcome O(3.4) and O(3.5) of the SRA Code of Conduct 2011 and Principles 2, 4, 6, and 10 of the SRA Principles 2011;

1.3.2. without the prior written authority of both clients and in doing so breached Rule 27.2 SAR and Principles 2, 4, 6, and 10 of the SRA Principles 2011.

Applicant's Submissions

41.1 Ms Bruce invited the Tribunal to accept the evidence of Client 3 and GM, who she submitted were "utterly compelling witnesses of truth". Ms Bruce submitted that by arranging and executing this loan, the Respondent has failed to act in the best interests of either Client 3 or Client 1. It was not in the best interests of Client 3 to make an unsecured loan when the terms of repayment were not clear and where the Respondent had an interest in the loan being made. This represented a conflict of interest between the Respondent and Client 3. In addition there was a conflict of interest between Client 1 and Client 3 in that it was in the Client 1's interests for the loan to be made but not in the interests of Client 3. It was submitted that in making this loan the Respondent had lacked integrity as he knew that the making of the loan was not in the interests of Client 3 in circumstances in which he benefited from the making of the loan. Client 3 had been placed under pressure and the Respondent had known that he was vulnerable due to his health issues.

41.2 The Respondent had owed money to Client 3. Despite knowing that he was vulnerable and ill, the Respondent had continued to press Client 3 to agree to the loan by insisting that it was necessary in order for the proceeds of the property sale to be released to him. Client 3 had been in obvious distress and Mr Bruce submitted that any ordinary decent person would conclude that the Respondent's actions were dishonest.

Respondent's Submissions

41.3 In his statement dated 15 January 2018, the Respondent denied this Allegation. He stated that whilst he had first acted for Client 3's family in the early 1980s, there had been long periods between instructions. He was aware that Client 3 suffered from

depression but was not aware that he was being treated for it until after 2014. He stated that he was not aware of the type of depression that the Respondent suffered from but he stated that whenever Client 3 was feeling particularly depressed he would not be able to contact him and this had delayed the sale of 20 in late 2015 and early 2016.

41.4 In respect of the loan, the Respondent stated that he had been honest with Client 3 and had explained to him that there was a threat of an intervention into the Firm and had explained the consequences were that to happen. He had told Client 3 that he hoped that Client 1 repaying his loan to the Respondent would avoid an intervention. He had told him that there was no guarantee of this however. The Respondent also stated that he had been in discussions with Client 1 concerning a possible development. Client 1 had stated that he was prepared to offer an equal interest in the development and this was an offer which the Respondent had shared with Client 3. Client 3 had expressed interest in this and the appointment was made for 29 March 2016. The Respondent stated that at no time had he asked Client 3 to make a transfer other than to Client 1. The Respondent had also spoken to GM about the proposed agreement.

41.5 The Respondent stated that Client 3 "did not at any time say he felt ill on 29 March, I did not notice any symptoms of a panic attack or other illness in Client 3 on 29 March 2016". The Respondent stated that Client 3 was fully aware of what he was being asked to do and he had agreed to make the loan providing his conditions were accepted by Client 1 and the Respondent. The Respondent stated that he had offered to pay the proceeds of sale to Client 3 on 29 March before the meeting started and irrespective of its outcome. In his second statement the Respondent reiterated the points he made in his first, repeating that there was no sign of any mental illness at the prior to or at the meeting on 29 March.

41.6 In relation to the Allegation of dishonesty, the Respondent had stated in his first statement that:

> "I do not admit the loan to Client 1 by Client 3 was made by Client 3 otherwise than in full knowledge of the facts, both as to the indebtedness of Client 1 to the Firm and the purpose of the loan Client 3 agreed to make to Client 1. He was aware of how Client 1 was to repay the loan. I fail to understand how a person can be fit to act as working Director of a multi-million pound turnover company, yet be deemed potentially vulnerable and for that potential vulnerability, of which there were no behavioural or other indications prior to the Intervention, to have been considered so obvious as is [sic] should have affected my judgment on 29 March 2016. None of those signs became apparent until after 8 April 2016, the date of the Intervention. It is not right to infer that such symptoms must have been obvious over a week earlier when there is no evidence of that".

The Tribunal's Findings

41.7 Allegation 1.3.1

41.7.1 The Tribunal considered the evidence of Client 3 and GM. The Tribunal accepted their evidence and considered them credible witnesses. The evidence they had given was consistent with each other and with the documentary evidence of the bank transfers and the sequence of events on 29 March 2016,

which was not significantly disputed. They were clearly incensed at what they considered to be a breach of trust. The Tribunal had evidence from Client 3 about the meeting and from GM about the phone call. The Respondent had known them for almost 40 years and they had made the payment on his assurance that he was going to pay Client 3 back. This gave rise to a conflict between him and Client 3 as he was the ultimate recipient of the loan. The Respondent's objective was that Client 1 repaid him the money he owed.

41.7.2 The Respondent's position on the extent of his knowledge of Client 3's health problems was contradictory. The Tribunal found that the Respondent knew about Client 3's mental illness to a fuller extent than he had admitted in his statements, and that he had manipulated him. The Tribunal accepted Client 3's evidence that the Respondent had held the sale of proceeds over him until he agreed to transfer the money. The Tribunal preferred the evidence of Client 3 and GM over the Respondent's evidence. The Tribunal was satisfied beyond reasonable doubt that the Respondent had arranged and effected a private loan between Client 3 and Client 1 in circumstances giving rise to a conflict between the Respondent's own interests and those of Client 3 as well as between the interests of Client 1 and 3.

41.7.3 None of the exceptions set out in Outcomes 3.4 and 3.5 were engaged and the Tribunal therefore found the factual basis of Allegation 1.3.1 and the breaches of Outcomes 3.4 and 3.5 proved beyond reasonable doubt.

41.8 Dishonesty

41.8.1 The Tribunal considered the Respondent's state of knowledge at the material time. The Respondent knew that Client 3 was vulnerable, as he himself had accepted in his statements. The Respondent himself had stated that he found it difficult to take instructions from Client 3 on occasion due to his mental illness. However instead of taking due care of his client, he had exploited that vulnerability. The Tribunal rejected the Respondent's case that there was any advantage to Client 3 in making this loan. The reference to the investment scheme had put further pressure on Client 3 by referring to GM's possible benefit from it.

41.8.2 The Respondent knew that he was in urgent need of funds as he was facing the prospect of an intervention. The Respondent has clearly considered that one way of achieving this was to ensure that Client 1 repay the monies that he owed. The Respondent had linked Client 3's agreement to providing funds to Client 1 to the Respondent's release of sale proceeds owed to Client 3.

41.8.3 The Tribunal was satisfied beyond reasonable doubt that by the standards of ordinary decent people the Respondent's conduct was about as dishonest as it could get. The Respondent had engineered this loan directly for his own benefit in an attempt to rectify the Firm's finances.

41.8.4 The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

41.9 Principle 2

41.9.1 The Tribunal had found that the Respondent had acted dishonestly, and it also found that he had also lacked integrity and had totally failed to adhere to the ethical standards of his profession, and had therefore breached Principle 2.

41.10 Principles 4 and 10

41.10.1 For the reasons set out above, the Tribunal had concluded that it was clearly not in the best interests of Client 3 to make a loan in the sum of £175,000 in the circumstances in which he had done so. That sum had not been repaid and the Respondent had therefore very clearly breached his duty to protect client money and assets. The Tribunal found beyond reasonable doubt that the Respondent had breached Principles 4 and 10.

41.11 Principle 6

41.11.1 In light of the Tribunal's findings in respect of this allegation as set out above, the Tribunal was satisfied beyond reasonable doubt that the Respondent had clearly not behaved in a way that maintained the trust the public placed in him and in the provision of legal services, quite the opposite. The Tribunal found beyond reasonable doubt that he had breached Principle 6.

41.12 Allegation 1.3.1 was therefore proved in full beyond reasonable doubt.

41.13 Allegation 1.3.2

41.13.1 This Allegation had been pleaded as a breach of Rule 27.2 of the SAR. This stated as follows:

> "No sum in respect of a private loan from one client to another can be paid out of funds held for the lender either:
>
> (a) By a payment from one client account to another;
>
> (b) By a paper transfer from the ledger of the lender to that of the borrower; or
>
> (c) To the borrower directly
>
> Except with the prior written authority of both clients."

41.13.2 The facts in this case were that the payment had been made directly from Client 3's bank account. It had not been paid out of funds held for Client 3, who was the lender. It was therefore not clear to the Tribunal that Rule 27.2 was engaged. The money had not been held by the Respondent, although the Respondent did hold the proceeds of sale which were returned to Client 3 following the making of the loan.

41.13.3 The Tribunal found Allegation 1.3.2 not proved as Rule 27.2 was not engaged on the facts of this case.

42. **Allegation 1.4 - Failed to remedy breaches of the SARs promptly upon discovery and in doing so breached SAR 7.1 and Principle 10 of the SRA Principles 2011.**

Applicant's Submissions

42.1 It was submitted that the Respondent had told the FIO that he knew that there had been insufficient funds for Client 1 to make the loan (Allegation 1.2). Further, he had not, to date, repaid the £175,000 to Client 3 (Allegation 1.3).

Respondent's Submissions

42.2 In his first statement the Respondent stated:

> "I acted as promptly as I could to rectify the breach in Allegation 1.2 and refer to the Statement of Client 1 in that regard which should have seen rectification by March 2015 and again in the Autumn of 2015. I acted to obtain information required by FIO but no replies were received, indicating that I may have been misled by Client 4 and/or Client 1".

42.3 In his second statement he stated:

> "With regard to Allegation 4, I was not in a position to make good the claimed shortfall in Allegation 1.1 whether or not the shortfall from Allegation 1.2 existed. The liquidator suggested that I should make good all invoices paid by money owed to Company A and Company B by its associated companies and claim the money back in the liquidation of those companies. This process would have been long drawn out by the liquidator whose intention was clearly to reduce the amount paid to my firm in costs and disbursements. I refused; it was open to the liquidator to have adjusted inter-company accounts to resolve the situation and to enable the £116,000 actually due, in accordance with my submission, to the associated companies. Payment to the seller company had already been made of all but the money claimed by Company A and Company B in July 2015. If I had followed the liquidator's suggestion I would have committed another breach similar to Allegation 1.2, which I refused to do. For that reason I admit Allegation 1.4, but the delay was caused by the actions of the liquidator to Company A and Company B".

The Tribunal's Findings

42.4 The Tribunal had identified the breaches in the course of making its findings in respect of Allegations 1.1-1.2. The Respondent had caused the breaches and was therefore aware of them immediately. He had not rectified them promptly or at all, indeed he had compounded one breach by committing further breaches. The Tribunal found the factual basis of Allegation 1.4 and the breach of Rule 7.1 proved beyond reasonable doubt.

42.5 Principle 10

42.5.1 The breaches related to the security or otherwise of client monies, as the Tribunal had found when considering alleged breaches of Principle 10 in relation to Allegations 1.1-1.2. It was a matter of irresistible logic that failure to promptly remedy breaches of the SAR was incompatible with protecting client money and assets. The Tribunal found the breach of Principle 10 proved beyond reasonable doubt.

42.6 Allegation 1.4 was therefore proved beyond reasonable doubt.

43. **Allegation 1.5 - On dates between 31 March 2013 and 8 April 2016 failed to establish and maintain proper accounting systems, and proper internal controls over those systems and in doing so breached SAR 1.2(e), Outcome O(7.2) and 7.3 of the SRA Code of Conduct 2011 and Principle 8 of the SRA Principles 2011.**

Applicant's Submissions

43.1 It was submitted on behalf of the Applicant that the Respondent had breached the SAR and Principle 8 by failing to establish and maintain proper accounting systems and proper control over those systems. He had failed to identify, monitor and manage risks to compliance and had failed to run his business or carry out his role in the business effectively.

43.2 The Respondent had told the SRA in his letter of 27 March 2017 that he denied these Allegations and that although he accepted some criticism relating to "internal controls" may be subject to criticism. He had further stated:

> "However any criticism should be tempered by the fact that it is impossible to look after Clients' interests and have time to exert controls over compliance with Accounts Rules, apparently intended for compliance only be [sic] firms large enough to engage or employ full-time Accounts staff and Compliance staff".

Respondent's Submissions

43.3 The Respondent's submissions in relation to Allegations 1.5-1.8 were made together. They are set out here but not repeated under each Allegation heading. The Tribunal had them in mind when considering each of these Allegations.

43.4 In his first statement he stated:

> "As already stated in my responses I agree that I was in breach of the Compliance Officer Roles relating to Accounts. I agree my Accounts were not up to date and had not been finally completed at the date of Intervention. However until I am supplied with answers to long outstanding questions regarding how the shortfall claimed came about and what invoices and transfers have been rejected, disallowed and reversed as the case may be, I contend that the evidence of the FIO cannot be entertained by the Tribunal. The perceived shortfalls which are the subject of High Court action involving Client 5 and others are not shortfalls at all and there is no evidence of how the FIO came to

make her accusations. I note the FIO admits that if my contention about the nature of my retainer is correct, her First Minimum Cash Shortage figure is incorrect. Her Second Minimum Cash Shortage is not the figure calculated on the basis that my contention regarding my retainer is correct, that figure would be zero. There is one shortfall, which I have admitted both as to amount and cause and for which I accepted full responsibility and the consequences of that admission. That shortfall was replaced before the Intervention".

43.5 In his second statement he stated:

> "Allegations 1.5-1.8 I admit. I have failed properly to discharge my duties as COLP or COFA or keep my accounts up to date. I was affected by the pressure of work, and accept that the SDT has often heard of this problem with small firms. Nevertheless, the regulatory work load imposed on small firms is enormous, particularly when the employment or engagement of workers dealing with nothing but regulatory matters is simply not affordable in the current market. I was not helped by the illness of my cashier in 2015 and early 2016 which resulted in his absence from the office for lengthy periods. I accept I should have appointed another cashier in his absence to bring everything up to date. However my cashier worked with me for over 15 years and had become a personal friend. I allowed that friendship and my concern about my cashier's health priority [sic] over the health of my accounts, which I accept was the wrong priority".

The Tribunal's Findings

43.6 In his statements the Respondent's position had been that it was not possible to run a small practice and comply with the SAR, something the Tribunal rejected. In light of the Tribunal's findings above, it was a statement of the obvious that the Respondent had failed to establish and maintain proper accounting systems or proper internal controls over those systems. The Tribunal found the factual basis of Allegation 1.5 and the breaches of Rule 1.2(e) and Outcomes O(7.2) and 7.3 proved beyond reasonable doubt.

43.7 Principle 8

43.7.1 The Respondent had been the sole principal in the Firm and therefore his role was to establish and maintain those systems and controls. He had not only failed to do so but had flouted the SAR himself, thus rendering any controls that were in place totally ineffective. The Tribunal found the breach of Principle 8 proved beyond reasonable doubt.

43.8 Allegation 1.5 was therefore proved in full beyond reasonable doubt.

44. **Allegations 1.6 - On dates between 16 March 2012 and 8 April 2017 failed to keep proper accounting records to show accurately and appropriately:**

1.6.1. the position with regard to the money held for each client and in doing so breached SAR 1.2(f), 29.1 and 29.2 and Principle 8 of the SRA Principles 2011;

1.6.2. all dealings with office money relating to any client matter in an office cash account and on the office side of the appropriate client ledger account and in doing so breached SAR 29.4 and Principle 8 of the SRA Principles 2011;

1.6.3. the current balance on each client ledger account and in doing so breached SAR 29.2, 29.4 and 29.9 and Principle 8 of the SRA Principles 2011.

Allegations 1.7 - Failed to prepare a reconciliation statement which showed:

1.7.1. the cause of any difference shown by each of the comparisons required by SAR 29.12(a) and in doing so breached SAR 29.12(c) and Principle 8 of the SRA Principles 2011;

1.7.2. all shortages in reconciliations and in doing so breached SAR 29.14 and Principle 8 of the SRA Principles 2011.

Applicant's Submissions

44.1 It was submitted that in failing to maintain the books of account, the Respondent had breached the SAR and Principles 8 and 10 of the Principles.

Respondent's Submissions

44.2 These are set out under Allegation 1.5.

The Tribunal's Findings

44.3 The inevitable consequence of the misconduct found proved in relation to Allegations 1.1-1.3 was a finding that the Respondent had failed to keep accounting records properly written up and that he had failed to prepare a reconciliation statement. The Tribunal found the factual basis of each of these Allegations proved beyond reasonable doubt together with the Rules 1.2(f), 7.1, 17.2, 29.1, 29.2, 29.4, 29.9 and 29.12(a) of the SAR.

44.4 Principle 8

44.4.1 The Tribunal found the Respondent to have breached Principle 8 beyond reasonable doubt in relation to Allegations 1.6 and 1.7 for the same reasons as those set out in relation to Allegation 1.5.

44.5 Allegations 1.6 and 1.7 were therefore proved in full beyond reasonable doubt.

45. **Allegation 1.8 - Failed adequately to carry out his roles as a COLP and COFA and in doing so breached Rules 8.5(c) and (e) of the SRA Authorisation Rules 2011.**

Applicant's Submissions

45.1 It was submitted that the Respondent was required, as COLP and COFA, to undertake all reasonable steps to ensure compliance with the SAR and the SRA Code of Conduct

2011. The facts as set out in relation to Allegations 1.1-1.7, individually and collectively, demonstrated that he had failed to do so.

Respondent's Submissions

45.2 These are set out under Allegation 1.5.

The Tribunal's Findings

45.3 In addition to his general duties as a solicitor and as a manager, the Respondent had additional, specific responsibilities to ensure compliance by virtue of his role as COLP and COFA.

45.4 The inevitable conclusion to be drawn from the Tribunal's findings in relation to Allegations 1.1-1.7 was that he had failed in both roles. The Tribunal found Allegation 1.8 proved in full beyond reasonable doubt together with the breach of Rules 8.5(c) and (e) of the Authorisation Rules.

45.5 Allegation 1.8 was therefore proved beyond reasonable doubt.

46. **Allegation 2 – Dishonesty**

46.1 The Tribunal addressed the question of dishonesty when dealing with the substantive Allegations. Allegation 2 was proved beyond reasonable doubt in respect of Allegation 1.2 and Allegation 1.3.1.

Previous Disciplinary Matters

47. There was no record of any previous disciplinary findings by the Tribunal.

Mitigation

48. In his first statement the Respondent stated that he had "reluctantly" made the payment that formed the basis of Allegation 1.2. This was due to the threat of legal action by Client 1.

49. In his second statement the Respondent had expressed regret for the actions he took in relation to Allegation 1.2 in the terms set out above, in relation to non-attendance.

50. The Respondent stated, in relation to Allegations 1.5-1.8, that:

> "I apologise unreservedly to those clients adversely affected by my failures to maintain the standards reasonably expected of a solicitor. For over 40 years I have always tried to do the best I can for my clients and I will always regret my actions in January 2015 and the mistakes I made towards the end of my career and how that career came to an end".

51. The Respondent had stated that he had been made bankrupt in January 2017 but provided no evidence of this or any further details.

Sanction

52. The Tribunal had regard to its Guidance Note on Sanctions (December 2016) and to the judgment of the Divisional Court in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) in which it had been held that:

> "Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll....that is the normal and necessary penalty in cases of dishonesty... There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances... In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary... or over a lengthy period of time ...whether it was a benefit to the solicitor, and whether it had an adverse effect on others."

It was clear to the Tribunal, for the reasons set out below, that this case was very far removed from the residual category referred to in the judgment in Sharma and it therefore followed that the only appropriate sanction was that the Respondent should be struck off the roll.

53. The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

54. The Tribunal found that there was no clear evidence as to motivation. The Respondent's misconduct was planned and he had breached a position of trust. He had been a family solicitor to Client 3 and his family for 40 years. The Respondent knew how much trust was placed in him and has exploited that trust. He had preyed upon a vulnerable client in order to obtain a loan and the Tribunal considered that in terms of culpability this was at the highest level of seriousness.

55. The financial harm caused was £175,000 which Client 3 had lost and which the compensation fund would now have to deal with. There was inevitable harm to the reputation of the profession from the Respondent's actions.

56. As Coulson J had observed in Sharma:

> "34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

57. In addition to that, the misconduct had been deliberate, calculated and repeated. The Tribunal found that the Respondent had lacked insight throughout and had blamed everyone but himself for his failings. He had made very limited, equivocal admissions which the Tribunal had found did not come close to a full acceptance of the scale of his misconduct.

58. The Tribunal identified no mitigating factors.

Costs

59. Ms Bruce applied for costs in favour of the Applicant in the sum of £63,993.80. This was based on a Cost Schedule which had originally shown a total figure of £72,112.56. Ms Bruce told the Tribunal that this reduction was due to the erroneous addition of VAT to the Forensic Investigation costs and the fact that the hearing had taken one day rather than four.

60. The Tribunal considered the schedule of costs and was satisfied that it was a reasonable and proportionate sum.

61. The Respondent had not served a statement of means despite a direction to do so. There was therefore no basis to reduce the costs order on the basis of means and the Tribunal made the order in the usual terms.

Statement of Full Order

62. The Tribunal Ordered that the Respondent, NEIL ADRIAN AISTON, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £63,993.00.

Dated this 24th day of September 2018
On behalf of the Tribunal

A. Ghosh
Chairman