

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11747-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ELIZABETH MARION EMBERTON

Respondent

Before:

Mr D. Green (in the chair)

Mr J. Evans

Mr M. R. Hallam

Date of Hearing: 3 January 2018

Appearances

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

JUDGMENT ON AN AGREED OUTCOME

Allegations

1. The allegations against the Respondent, Elizabeth Marion Emberton, made by the Applicant in a Rule 5 Statement dated 6 November 2017, were that she: -
 - 1.1 From a date unknown in or around 2013 to a date unknown in or around 2016 she withdrew monies from client account in the approximate minimum sum of £99,704.09 and misappropriated it for her own purpose. In so doing she breached any or all of the following:
 - 1.1.1 Principles 2, 6, and 10 of the SRA Principles 2011 (“the 2011 Principles”); and
 - 1.1.2 Rule 20.1 and Rule 20.6 of the SRA Accounts Rules 2011 (“the 2011 Accounts Rules”).
 - 1.2 Between November 2015 to June 2016 she made round sum transfers in the sum of £328,814.00 on account of costs from client to office account. In so doing she breached any or all of the following:
 - 1.2.1 Principles 2 and 6 of the 2011 Principles;
 - 1.2.2 Rule 17.7 of the 2011 Accounts Rules.
 - 1.3 Failed to maintain proper accounting systems and records to show the position with regard to the money held for each client. In so doing she breached Rules 1.2 (e) and (f) and 29.1 and 29.2 of the 2011 Accounts Rules.
 - 1.4 Failed to carry out reconciliation statements in accordance with Rule 29.12 of the 2011 Accounts Rules.
 - 1.5 Failed to replace a shortfall on client account arising from breaches of the 2011 Accounts Rules, promptly or at all, and therefore breached any or all of the following:
 - 1.5.1 Rule 7.1 of the 2011 Accounts Rules.
2. Dishonesty was alleged with respect to the allegations at paragraph 1.1 and 1.2, but dishonesty was not an essential ingredient to prove that allegation.

Documents

3. The Tribunal reviewed the following documents:
 - Application and Rule 5 Statement dated 6 November 2017
 - Applicant’s statement of costs at issue
 - Tribunal’s standard directions issued on 14 November 2017
 - Respondent’s Answer to the allegations dated 28 November 2017
 - Statement of Agreed Facts, Admissions and Outcome dated 12 December 2017
 - Tribunal’s Guidance Note on Sanction dated December 2016

Factual Background

4. The Respondent was born in 1948 and was admitted as a solicitor in 1972. Her name remained on the Roll of Solicitors at the date of the proceedings.
5. At all relevant times, the Respondent practised on her own account under the style of Emberton Solicitors from Rainbow House, 10 Lumina Way, Lumina Park, Enfield, Middlesex EN1 1FS (“the Firm”).
6. Following receipt of a qualified Accountant’s Report for the period ending 30 April 2015, which recorded a shortage on client account of £148,140.86 relating to five client matters (which was stated in the report to have been corrected after the end of the financial year, with no loss to clients) a duly authorised officer of the Applicant commenced a forensic investigation of the Firm’s books of account and other documents on 19 July 2016. This resulted in the Firm being intervened into on 5 October 2016 and the Respondent’s Practising Certificate for 2015/16 was suspended.
7. The inspection culminated in a report dated 17 March 2017 (“the FI Report”). The FI Report confirmed that, as at 30 June 2016, a minimum cash shortage existed on the client account of £329,703.64. It was noted that the shortage could exceed £600,000 based on claims made on the Compensation Fund.

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

8. The parties invited the Tribunal to deal with the allegations against the Respondent in accordance with the Statement of Agreed Facts, Admissions and Outcome appended to this Judgment. The parties submitted that the proposed outcome was consistent with the Tribunal’s Guidance Note on Sanction.

Findings of Fact and Law

9. 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.
10. In her Answer to the allegations contained in a letter dated 28 November 2017, the Respondent admitted the allegations, which related to the accounts of the Firm and in particular dealings with client money. In the Statement of Agreed Facts, Admissions and Outcome, the Respondent confirmed that she admitted the allegations in their entirety, together with the factual basis of the admitted allegations.
11. The Tribunal reviewed the material before it and was satisfied to the required standard that the Respondent’s admissions were properly made and that the allegations, including the allegation of dishonesty, had been proved to the required standard.

12. The Tribunal had regard to its Guidance Note on Sanction (December 2016), to all of the facts of the case and the submissions of the parties. The Tribunal noted in particular the mitigation offered by the Respondent which included the following points:
 - 12.1 The extremely challenging personal circumstances during the material time, which had a negative impact on her heavy work load and how she was coping with her responsibilities at the firm. The Respondent submitted that the circumstances affected her decision making and she was suffering from stress and depression, but did not realise it;
 - 12.2 The Respondent had employed staff who made financial mistakes;
 - 12.3 The Respondent did not seek to contend that her circumstances affected her decision making to the extent that she did not appreciate that her actions were dishonest.
13. The Tribunal noted that the Respondent did not contend that there were any exceptional circumstances in her case and that she had agreed to being struck off the Roll of Solicitors.
14. The Tribunal noted and found that the matters alleged, admitted and proved were very serious. Client money had been misappropriated, and that misappropriation had been dishonest. This was a sad case, in which the Respondent's long and otherwise unblemished career was being brought to a dishonourable end. Protecting the reputation of the profession and the protection of the public required that the Respondent should be struck off the Roll. There were no exceptional circumstances contended for or found. Striking off was the usual and proportionate sanction in cases of dishonesty and there was no reason to find that this case was within the "small residual category where striking off would be a disproportionate penalty" (Coulson J in SRA v Sharma [2010] EWNC 2011 (Admin)).

Costs

15. The Tribunal noted that the Respondent had agreed to pay the Applicant's costs of the proceedings in the sum of £29,200. The Respondent had not sought to argue that those costs should be reduced, or that payment should be deferred, on account of her means.
16. The Tribunal noted that the costs of the proceedings at issue were stated to be £28,757.88. The schedule included the Applicant's supervision costs of £600 and forensic investigation costs of £24,922.26. The legal work done was carried out internally by the Applicant at £130 per hour, which the Tribunal noted was a reasonable rate. The forensic investigation costs were significant, but the Tribunal was satisfied that they were reasonable and proper given the time needed fully to review the Respondent's books of account and prepare the forensic investigation report. The costs agreed by the Respondent were only about £500 more than the costs at issue, which the Tribunal considered reasonable for the work done in agreeing and preparing the Statement of Agreed Facts, Admissions and Outcome and submitting the application to the Tribunal.

17. The Tribunal was satisfied that the costs the Respondent had agreed were reasonable and proportionate, and it should order her to pay those costs.

Statement of Full Order

18. The Tribunal Ordered that the Respondent, ELIZABETH MARION EMBERTON, 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 £29,200.00.

Dated this ^{17th} ~~16th~~ day of January 2018

On behalf of the Tribunal



D. Green
Chairman

Judgment filed
with the Law Society

on 17 JAN 2018

IN THE MATTER OF THE SOLICITORS ACT 1974

SOLICITORS REGULATION AUTHORITY

Applicant

ELIZABETH MARION EMBERTON

Respondent

STATEMENT OF AGREED FACTS, ADMISSIONS AND OUTCOME

1. By its application dated 6 November 2017, and the statement made pursuant to Rule 5(2) of the Solicitors (Disciplinary proceedings) Rules 2007 which accompanied that application, the Solicitors Regulation Authority ("the SRA") brought proceedings before the Solicitors Disciplinary Tribunal concerning the conduct of Mrs Emberton. (The Respondent)

Allegations

2. The allegations in these proceedings are that Mrs Emberton:
 - 2.1. From a date unknown in or around 2013 to a date unknown in or around 2016 withdrew monies from client account in the approximate minimum sum of £99,704.09 and misappropriated it for her own purpose. In so doing she has breached any or all of the following:
 - 2.1.1 Principles 2, 6, and 10 of the SRA Principles 2011 (2011 Principles);
and
 - 2.1.2 Rule 20.1 and Rule 20.6 of the SRA Accounts Rules 2011 (2011 Accounts Rules).

2.2 Between November 2015 to June 2016 made round sum transfers in the sum of £328,814.00 on account of costs from client to office account. In so doing she has breached any or all of the following:

2.2.1 Principles 2 and 6 of the 2011 Principles.

2.2.2 Rule 17.7 of the 2011 Accounts Rules.

2.3 Failed to maintain proper accounting systems and records to show the position with regard to the money held for each client. In so doing she has breached Rule 1.2 (e) and (f) and 29.1 and 29.2 of the 2011 Accounts Rules.

2.4 Failed to carry out reconciliation statements in accordance with Rule 29.12 of the 2011 Accounts Rules.

2.5 Failed to replace a shortfall on client account arising from breaches of the 2011 Accounts Rules, promptly or at all, and therefor breached any or all of the following;

2.5.1 Rule 7.1 of the 2011 Accounts Rules;

3. It is further alleged that the Respondent was dishonest in relation to the misconduct set out in paragraphs 2.1 and 2.2 above.

Admissions

4. The Respondent admits the allegations against her as set out in paragraphs 2 and 3 above in their entirety. She further accepts the factual basis of the admitted allegations as set out in this document.

Agreed facts

The following facts and matters are agreed between the SRA and the Respondent:

5. The Respondent was born in March 1948 and was admitted as a solicitor on 1 June 1972. Her name remains on the Roll.
6. At all relevant times the Respondent practised on her own account under the style of Emberton Solicitors, (The Firm) Rainbow House, 10 Lumina Way, Lumina Park, Enfield, Middlesex, EN1 1FS.
7. The last address known of the Respondent is **REMOVED BY THE TRIBUNAL PRIOR TO PUBLICATION.**
8. Following the receipt of a qualified Accountant's Report for the period ending 30 April 2015, which recorded a shortage on client account of £148,140.86 relating to five client matters, (the report stated that this had been corrected post year end with no loss to the clients) a duly authorised officer of the Applicant (the FI Officer) commenced a Forensic Investigation of the firm's books of account and other documents on 19 July 2016. This resulted in the firm being intervened into on 5 October 2016 and the Respondent's Practising Certificate for 2015/2016 being suspended.
9. The inspection culminated in a report dated 17 March 2017. The report confirmed that, as at 30 June 2016, a minimum cash shortage existed upon the client account of £329,703.64. (the shortage could exceed £600,000.00 based on claims made on the Compensation Fund. This was partly made up as detailed in Allegation 2.1 below.

Allegation 2.1 – Misappropriation of client funds

Failure to Account: Mr P S Deceased - £23,364.24

10. The FI Officer requested for review the five client files (Mrs S B deceased, E, Mr P S Deceased, PJ and SA) that made up the shortage in the Accountant's Report referred to in paragraph 8 above. All five client ledgers were overdrawn as at 30

April 2015. Part of the shortage was rectified in July and September 2015. A shortage remained of £22,201.52 on four of the matters.

11. The Respondent explained that she held most of her client files at her home address, where she carried out her work. Subsequently, the Respondent informed the FI Officer by telephone on 30 August 2016 that the files for Mrs S B Deceased and Mr P S Deceased had been accidentally incinerated.
12. The shortage on the Mr P S Deceased file of £45,939.34 was partly rectified on the 16 July 2015 with a credit on client account of £45,000.00. (the ledger subsequently printed of this file on 6 September 2016 showed a balance of nil, due to the client side of the ledger showing a credit entry of £939.34. However, the office and client bank statements do not record an entry for £939.34 on this date.
13. The Intervention Agents provided the FI Officer with a copy of the ledger to include the manual ledger card for the period 11 March 2013 to 25 April 2013. This showed that the (BRB) and the (RBBF) were the residual beneficiaries of the estate.
14. On a request from the FI Officer the BRB provided copy documentation relating to the estate to include the will and estate accounts. Likewise, documents were also sent by RBBF. The information on the estate accounts was compared to the receipt and payments on the client ledger. Not all funds had been included in the Estate Accounts. The FI Officer had prepared a spreadsheet recording the Estate Account entries and a spreadsheet recording the credit and debit entries from the ledge.
15. The ledger showed the total for distribution was £241,179.22 whereas the Estate Accounts showed the total amount for distribution as £214,222.46, a difference of £26,956.76. One discrepancy was the client ledger and client bank statement recorded on 8 May 2013 a receipt from National Westminster Bank of £71,995.03, whereas the Estate Accounts only recorded a receipt of £51,995.07, a difference of £19,999.96. The Respondent has therefore failed to distribute a total of

£23,364.24 to the beneficiaries (£26,956.75 less £3,592.52 which the Respondent described as a donation from the firm to the BRB when sending the Estate Accounts, in relation to what the Respondent classes as an overpayment.

16. As a result, the BRB should have received additional funds in the sum of £5,393.07 and the RBBF an extra £17,971.17.

Moneys transferred from the firm's client account to office account to settle unjustified invoices - £150,139.30

17. The Respondent had a scheme in place where she would improperly subsidise office bank account with client monies. False invoices would be raised on ledgers for client matters where funds were usually available, but no physical bills were prepared, and the funds improperly transferred from client bank account to office bank account.

18. A client matter listing, dated 30 June 2016, provided to the FI officer recorded 33 client debit balances, which totalled £216,155.80. The FI officer reviewed nine client files and ledgers from the list (which in total had debit balances of £150,139.30) and found that in total about 67 unjustified invoices had been raised. The Respondent had transferred funds from the firm's client to office bank account in settlement of the invoices. The invoices were not sent to clients. Transfers were made on some occasions when there were insufficient funds held on behalf of the clients which resulted in debit balances. The Respondent said she never overcharged her clients when it came to the final bill.

19. In interview with the FI Officer on the 8 December 2016 the Respondent was asked; *"So, in conclusion in respect of those nine client files that we have just talked about, you did raise a high number of unjustified invoices which were not sent to clients, and then you transferred funds from client to office bank account in respect of these invoices. You took and used for your own benefit client money. Do you agree?"* The Respondent replied "Yes".

20. And when asked, *“When, when so when would you say that started, that method of just making these round sum transfers and making invoices fit the money that you’ve transferred over. Was it in 2013?”* The Respondent answered *“Yeah”* Later in the interview when asked, *“Do you accept though that ... by taking client money in this way That was actually dishonest ...”* (it not being her money) the Respondent answered, *“Yes I do”. ... Yeah, I do accept that. It shouldn’t have happened. I didn’t, I was in such a state myself I didn’t realise ... quite the depth of what I was doing at all, but yes of course I realise that.”*

21. The Respondent said to the FI Officer that on all of the files she had raised bills as the matters had progressed, transferred funds from client to office bank in settlement of the bills, but had not sent the bills to clients as the bills were not due, she said *“I know that I have breached the accounts rules and my actions in carrying out transactions in this way have been wrong”*

22. By way of illustration the matters of Mr. R O A Deceased, (Mr. A) Ms N B Deceased (Ms. B) and Miss DPA Deceased (Miss A) are exemplified in the FI Report:

Mr A Deceased – Ledger debit balance £13,142.12

23. The Estate Accounts included Costs in the sum of £3,857.00. (costs £3250.00, Vat £650.00 and Probate court fee £157.00 less £200.00 paid on account) The bill dated 17 October 2014, was not recorded on the ledger. No other invoices or any notification of costs were found on the file.

24. The client ledger recorded six invoices totalling £17,100.00 (including VAT) recorded on the office side and a total of £17,993.55 transferred between 30 July 2014 and 11 May 2015, from client to office in respect of payment of invoices. By way of example, on 5 December 2014, the client to office transfer journal recorded the sum of £4,424.90 as transferred from client to office bank account in

settlement of invoice number 739. This sum was part of a transfer of £19,000.00 from client to office bank account.

25. The ledger records a negative client balance of £13,142.12 as at 3 August 2015.
26. The FI Officer during the interview on 8 December 2016, asked the Respondent whether she had authorised and paid the invoices recorded on the ledger. The Respondent said, *"I can't not agree because I really couldn't tell you. I just don't remember ... I must take full responsibility for it yeah But you know it's my fault"* When asked, *"Do you agree that it was wrong to do this by transferring funds from client to office account ... when you weren't entitled to those funds?"* The Respondent replied, *"Yes ... Well, yes but um as I say it wasn't, it wasn't with forethought, and thinking about it now, why we didn't charge £17,000.00, which we should have done because of the work involved"* (SEJ1: 47 - 50)
27. A cost report, dated 2 February 2017, prepared by Sue Corbin, Cost Lawyer and director of Costsdragon Limited, assessed the true cost of the estate administration work to be in the sum of £2,096.25. This is inconsistent with the Respondent's claim that she could have charged her client £17,000.00 because of the work involved.

Ms B Deceased – Ledger debit balance £23,757.12

28. The Estate Accounts included costs of £3,250.00 (£2,750.00 plus Vat of £550.00) The actual undated invoice found with the estate accounts is for £2,400.00 (£2,000.00 plus vat of £400.00). There were no other invoices or notification of costs on the file.
29. On the 20 September 2016, the Respondent confirmed to the FI Officer that the invoice was the correct amount billed to her client. She further said, *"as long I can recall and certainly since the beginning of January 2015, I had transferred funds from client to office account and raised an invoice when fees were not properly due so there will be invoices recorded on the client ledger, but most were not properly raised. I know that I am in breach of the accounts rules"*

30. The client ledger recorded seven invoices raised by the firm totalling £26,400.00 (including VAT). The ledger recorded that between 11 December 2014 and 20 May 2015, a total of £26,400.00 was transferred from client to office in respect of payments of those invoices. A copy of the ledger shows that as at 20 November 2015 there was a negative client balance of £23,757.12.

31. By way of example, the client to office transfer journal, recorded the sum of £13,532.13 transferred from client to office bank account on 06/03/15 in settlement of invoice number 793/794. The client bank statement recorded £18,000.00 paid on that day, which included the £13,532.13. (If the entries in the journal from 06/03/15 are added together they total £18,000.00).

32. In the interview on the 8 December 2016 the Respondent was asked whether she had authorised and paid the invoices recorded on the client ledger. The Respondent said, "*Yes ... Again I had somebody doing all ... all the work for me at that time*" and further said. "*I should have charged more on that one.*"

33. A cost report, dated 2 February 2017, prepared by Sue Corbin, Cost Lawyer and director of Costsdragon Limited, assessed the true cost of the estate administration work to be in the sum of £2,115.75. As in the case of Mr. A, this is inconsistent with the assertion made by the Respondent, that she should have charged more to the estate.

Miss A Deceased – Ledger debit balance £14,970.56

34. The Estate Accounts included costs of £27,000.00. (£23,000.00 plus VAT of £4,600.00). The invoice dated 8 June 2015 is not recorded on the client ledger at that date. There was however an invoice for that sum recorded on the ledger dated 13 November 2014. Other than this invoice no other invoices or notification of costs was found on the client file.

35. The client ledger recorded seven invoices totalling £71,700.00 including VAT which had been raised and debited to the office side of the client ledger. A total of

£67,700.00 was recorded on the client ledger as transferred from client to office bank account in respect of payment of these invoices. A table prepared by the FI Officer provides a breakdown of the transfers. This was produced from copy client and office journals and bank statements obtained from the Intervention Agents. It compares client to office transfers recorded on the client ledger with the transfers recorded in the firm's journals together with corresponding bank statements.

36. The ledger recorded a credit note raised on 26 May 2015 in the sum of £15,600.00, debited to office and credited to client account. The client bank account recorded a credit entry on 26 May 2015 of £3,500.00. This equated to client to office (CTO) transfers totalling £19,100.00 less an office to client (OTC) transfer of £15,600.00. Accordingly, the £3,500.00 transferred took into account the credit note of £15,600.00.

37. In a conversation with the FI officer on the 20 September 2016, she was asked why the invoices recorded on the ledger were not on the file. Mrs Emberton said, the invoices had been raised but never sent to the client and would not appear on the client file and that she had transferred funds from client to office bank account in respect of these invoices when the money was not properly due.

38. In the interview the FI Officer when referring to the money taken from client account in this way said, "Would you say that at the time you thought that was a dishonest action? The Respondent said, *"I don't suppose I was thinking. I was under such pressure myself. I just didn't think, and I really didn't think that I would land into a mess like this. I never thought that would happen ... I always thought there would be enough you know, enough money, enough work and I think there would have been had I been able to of, of done economics at the beginning of this which I wasn't able to do but ..."*

39. In the matter of Mr P S Deceased referred to in paragraphs 10 – 16 above, where the ledger recorded 27 invoices having been raised totalling £88,080.00 in just over 12 months and transfers having been made from client to office account to cover these in the sum of £86,633.75, the Respondent was asked in the interview

“whether she agreed with the number of invoices and transfers recorded” she replied, “You’ve no need to show me the ledger because the ledger is what it is and those are the facts that – of how it was recorded. But quite honestly ... the estate was agreed, as far as I remember, with the residuary beneficiaries, and I think it was just bad bookkeeping, because at that point I was just sort of saying oh well, we’ve got money on this and that, just take a bill on that to cover whatever we need. And it was just an over thought. I wasn’t sure of what I was doing.”

40. Transfers were made because the Respondent needed funds for the running of the business.

Payment to HMRC of £22,470.05 from client account

41. On the 7 June 2016 the sum of £25,000.00 was transferred from client to office bank account. There was no reason recorded in the cash book for the transfer except, ‘C-O’. When asked by the FI Officer to explain this entry the Respondent said; *“I transferred the money because I needed it for a VAT payment; no bills were posted though as yet as we need to catch up. We have raised bills to 22 February 2016 though. We have posted everything received on client account and are nearly up to date, but we have not allocated from 22 February 2016 costs against the matters”* The office bank statement records a debit payment of £24,470.05 payable to *“Hmrc VAT Southend”*.

42. The Respondent agrees that she misused client funds when:

- she failed to account fully to residuary beneficiaries by understating the funds received from National Westminster Bank in the Estate Accounts;
- raising unjustified invoices on client matters; and
- transferring monies from client account to office account to make a VAT payment.

43. The practise of using client monies to meet the running needs of the practice took place over a long period of time. The Respondent agrees that her actions resulted in a shortage on client account which persisted as at the date of intervention on 5 October 2016. The Respondent further agrees that such conduct undermines her integrity, the trust that the public places in her and in the provision of legal services and demonstrates a failure to protect client money and assets. She also agrees that it resulted in a breach of Rule 20.01 and 20.06 of the 2011 Accounts Rules in that client money was withdrawn from client account when it was not properly required for a payment to or on behalf of the client and exceeded the money held on behalf of the client.

Allegation 2.2 – Round sum transfers on account of costs

44. From the client cash book entries for the period November 2015 to June 2016, the FI Officer noted there were numerous round sum entries referenced 'C-O' on the debit cashbook, 28 entries totalling £328,814.00.

45. The current bookkeeper, Mrs B, said the Respondent alone operated the firm's bank accounts and made the transfers from client to office bank, when no reason had been recorded in the cash book apart from 'C-O'. A schedule of CTO transfers was drafted by the FI Officer.

46. Mrs B said that part of the work she carried out had been inputting daily entries into the client cash book and reconciling this total with the client bank account.

47. Mrs B said that the Respondent had also instructed her to retrospectively raise invoices in respect of 'C-O' transfers (so far up to 22 February 2016). A copy was provided of the instruction sheets from the Respondent, for the period December 2015 to 22 February 2016.

48. A copy of the Barclays Bank client bank statement for February 2016 (account number 80370282) recorded twelve round sum transfers to Barclays Bank (office account number 80370274) (as recorded in the cash book).

49. During the interview on the 8 December 2016, the FI Officer asked the Respondent whether transferring money from client to office bank account and then raising invoices to fit the transfers involved a lot of guess work on her part. The Respondent said, *"Oh yeah I wasn't thinking. Yeah, just ... just did it ..."*. The FI Officer said, *"But again it was just fitting those invoices wasn't it, to the round sum transfers?"* The Respondent replied, "Yes".

50. The Respondent agrees that she improperly transferred monies from client account to office account in breach of the Rules. She agrees that a solicitor of integrity would not transfer monies on account of costs which they were not certain were due and then at a later date ascribe an invoice to fit with the monies transferred. The Respondent agrees that such conduct undermines her integrity and the trust that the public places in her and the provision of legal services and also resulted in a breach of Rule 17.7 of the 2011 Accounts Rules in that round sum transfers should not be transferred in lieu of costs.

Allegation 2.3 - Failed to maintain proper accounting systems and records

51. The books of account were not in compliance with the Rules. When the FI Officer attended the firm on 19 July 2016, she was informed by the Respondent that the books of account had not been updated since the bookkeeper left in November 2015. On the return of the FI Officer in September 2016 the books of account had still not been brought up to date.

52. As detailed in Paragraphs 10 to 40 above accounting records were not properly written up to show dealing with client's money.

53. The Respondent agrees that she has breached Rule 1.2 (e) and (f) and 29.1 and 29.2 of the 2011 Accounts Rules.

Allegation 2.4 – Failed to carry out reconciliations

54. During the course of the investigation the firm did not provide the FI Officer with an up to date client account reconciliation.

55. On the 6 September 2016, the current bookkeeper provided a 'client reconciliation' sheet for 30 June 2016, which recorded a recent two-way reconciliation of cashbook entries and client bank entries. The reconciliation recorded a difference of £5,087.50. This was not in compliance with the 2011 Accounts Rules, which requires a three-way client account reconciliation. The reconciliation for June 2016 shows a closing cash book balance of £477,062.11. The client matter listing as at 30 June 2016 shows a balance of £3,492,412.06.

56. The Respondent agrees that she has breached Rule 29.12 of the 2011 Accounts Rules.

Allegation 1.5 – Failed to replace a shortfall on client account

57. The minimum shortage of £329,703.64 identified in the FI Report dated 17 March 2017 has not been replaced. The Respondent indicated to the FI Officer in the interview that she was in the process of going bankrupt.

58. The Respondent agrees that she has breached Rule 7.1 of the 2011 Accounts Rules.

Dishonesty

59. The Respondent's actions were dishonest in accordance with the test for dishonesty stated by the Supreme Court in **Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67**, which applies to all forms of legal proceedings:

“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”.

60. The Respondent acted dishonestly by the standards of ordinary decent people in misappropriating clients' monies and by making round sum transfers on account of costs and, by her admission to the allegations made against her by the SRA, has accepted that she knew and believed that those actions were dishonest.

Mitigation

61. In mitigation the following is put forward by the Respondent:

1. She was dealing with extremely challenging personal circumstances during the material time which in hindsight had a negative impact on her heavy work load and how she was coping with her responsibilities at the firm. The circumstances affected her decision making and she was suffering from stress and depression but did not realise it.
2. She had employed staff who made financial mistakes.
3. She does not seek, however, to contend that her circumstances affected her decision making to the extent that she did not appreciate that her actions were dishonest. Further, the Respondent does not assert that there are exceptional circumstances in this case which would justify the Tribunal in finding that it fell into the “... *small residual category where striking off will be a disproportionate penalty*” identified by Mr. Justice Coulson in Solicitors Regulation Authority v Sharma [2010] EWHC 2011 (Admin).

Agreed Outcome

62. Mrs Emberton accepts that the seriousness of her admitted misconduct is such that neither a reprimand, a fine or being suspended from practice would be a sufficient sanction.

63. Mrs Emberton accepts that the protection of the public and the protection of the reputation of the profession justifies her being struck off the Roll of Solicitors.

64. The SRA and Mrs Emberton submit to the Tribunal that the following are appropriate outcomes and are consistent with the seriousness of the matters admitted and with the Tribunal's Guidance Note on Sanctions:

64.1 An Order that Mrs Emberton be struck from the Roll of Solicitors; and

64.2 Further Ordering that Mrs Emberton do pay the SRA costs of £29,200.00.

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

65. The Respondent was a sole practitioner at the time of the misconduct. She had direct control and responsibility for the circumstances giving rise to the misconduct. Her motivation for misappropriating client monies and making round sum transfers from client to office account in lieu of invoices was to fund the business. Her actions were planned, when she needed money for the business she would either just transfer monies from client account to office account or raise an invoice, regardless as to whether it was properly due and whether there were sufficient monies in that particular client account. By using client money in this way, the Respondent agrees that she acted in breach of a position of trust. The Respondent had over 40 years' experience as a solicitor. The Respondent has caused harm to clients in using their money to run her business. The Respondent attempted to conceal the misconduct by false accounting. The harm caused was reasonably foreseeable. Her level of culpability was correspondingly high.

66. The Respondent's conduct in dishonestly misappropriating client money to a value of £99,904.09 and making round sum transfers on account of costs to a value of £328,814.00 was a significant departure from the "complete integrity, probity and trustworthiness" to be expected of a solicitor. Furthermore, the

Respondent improperly deprived her clients of significant sums of money. The harm caused by her actions was also serious.

67. The following factors aggravate the seriousness of the Respondent's misconduct:

67.1 the misconduct involves dishonesty;

67.2 the misconduct in relation to the breaches of the SAR 2011 was deliberate and repeated.

67.3 the misconduct continued over a period of time.

67.4 the misconduct involved the concealment of wrong doing.

67.5 the misconduct occurred where the Respondent knew or ought to reasonably have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

67.6 clients who have been affected by the misappropriation have had to make claims on the compensation fund for recovery of their monies.

68. The Respondent made admissions at an early stage and has cooperated with the SRA which is a mitigating factor.

69. The public expects solicitors to act with integrity, behave in a way that maintains the trust the public places in them and protect clients' money. The most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances as detailed above.

70. Having regard to all the facts giving rise to the allegations, the admissions made by the Respondent and her willingness to submit to such an Order, the SRA invites the Tribunal to make an Order that the Respondent be struck off the Roll of Solicitors.

Dated this 12 day of December 2017

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On behalf of the Applicant, the Solicitors Regulation Authority

E M EMBERTON

Elizabeth Marion Emberton