CASE NO.

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

- and –

SHAHID ALI

Respondent

STATEMENT PURSUANT TO RULE 12 (2) OF THE SOLICITORS (DISCIPLINARY PROCEEDINGS) RULES 2019

I, **JAMES DANKS**, am a Solicitor and Partner at Blake Morgan LLP of Apex Plaza, Forbury Road, Reading, RG1 1AX.

I make this statement on behalf of the Applicant, the Solicitors Regulation Authority Limited ("**the SRA**").

The Allegations

1. The allegations against the Respondent, Shahid Ali, made by the SRA are that, whilst in practice as a Solicitor and Partner at Osborn Knight Limited ("the Firm") he:

    1.1 Provided information to Person A, a third party, which he knew, or ought to have known was misleading in that:

        1.1.1 Between February and April 2020, as to the location of cash belonging to Client A , when it had been in the possession of the Respondent since September 2017;

1.1.2 On or around 13 April 2020, regarding the purpose of the, approximately, £15,000 cash provided by Client A to the Respondent.

In doing so, he breached any or all of:

1.1.3 Principle 2 of the SRA Principles 2019 ("the Principles");
1.1.4 Principle 4 of the Principles;
1.1.5 Principle 5 of the Principles;
1.1.6 Paragraph 1.4 of the Code of Conduct for Solicitors, RELs and RFLs 2019 ("the Code for Solicitors").

The facts and matters relied upon in support of this allegation are set out in paragraphs 18 to 49 below.

1.2 Between September 2017 to January 2022, the Respondent failed to:

1.2.1 record Client A's monies in a client ledger;
1.2.2 return client money promptly to Client A;
1.2.3 maintain proper accounting records.

Insofar as such conduct took place during the period from September 2017 but before 25 November 2019, he breached any or all of:

1.2.4 Rule 14.1 of the SRA Accounts Rules 2011 ("the AR 2011);
1.2.5 Rule 14.3 of the AR 2011;
1.2.6 Rule 15.1 of the AR 2011;
1.2.7 Rule 29.1(a) of the AR 2011;
1.2.8 Rule 29.2 of the AR 2011; and
1.2.9 Principle 4 of the SRA Principles 2011 ("the Principles 2011").

In so far as such conduct took place on or after 25 November 2019, he breached any or all of:

1.2.10 Rule 2.3 of the SRA Accounts Rules 2019 ("SRA AR");
1.2.11 Rule 2.5 of the SRA AR 2019 ;
1.2.12 Rule 8.1 of the SRA AR 2019; and
1.2.13 Principle 7 of the Principles.

The facts and matters relied upon in support of this allegation are set out in paragraphs 64 to 70 below.

1.3 In October 2019, the Respondent suggested to Client A, and/or encouraged Client A to provide an account to assist their defence, which he knew or ought to have known was misleading.

In doing so, he breached any or all of:

1.3.1 Principle 2 of the Principles 2011;
1.3.2 Principle 6 of the Principles 2011;
1.3.3 Outcome 5.2 of the SRA Code of Conduct 2011.

The facts and matters relied upon in support of this allegation are set out in paragraphs 88 to 95 below.

1.4 From August 2019 to December 2019, the Respondent provided, or caused to be provided, information to counsel, which he knew or ought to have known was misleading as to content of an audio recording of Client A, which was indicative of Client A's guilt.

Insofar as such conduct took place during the period from August 2019 but before 25 November 2019, he breached any or all of:

1.4.1 Principle 2 of the Principles 2011;
1.4.2 Principle 4 of the Principles 2011;
1.4.3 Principle 6 of the Principles 2011;
1.4.4 Outcome 1.2 of the SRA Code of Conduct 2011.

In so far as such conduct took place on or after 25 November 2019, he breached any or all of:

1.4.5 Principle 2 of the Principles 2019;
1.4.6 Principle 4 of the Principles 2019;
1.4.7 Principle 5 of the Principles 2019;
1.4.8 Principle 7 of the Principles 2019; and

1.4.9 Paragraph 1.4 of the Code of Conduct for Solicitors.

The facts and matters relied upon in support of this allegation are set out in paragraphs 106 to 128 below.

In addition, for conduct prior to 25 November 2019, allegations 1.3 and 1.4 are advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegation. For further particulars of dishonesty, please see paragraphs 96 to 98 and 129 to 133 respectively.

Appendices and Documents

2. The following appendices are attached to and relied upon in this Statement:

2.1. Appendix 1: Relevant rules and regulations.

2.2. Appendix 2: Anonymisation Schedule.

3. I also attach to this statement a bundle of documents, marked **"JD1"**, to which I refer in this statement. Unless otherwise stated, page references in this statement relate to that exhibit, using the format [**JD1, X**].

4. The bundle is divided into the following sections:

4.1. Section A: Witness statements.
4.2. Section B: SRA documentation.
4.3. Section C: Correspondence and Representations by the Respondent.

Professional Details

5. The Respondent was born on 25 November 1967 and admitted as a solicitor on 1 December 1995.

6. At the relevant time, the Respondent was a solicitor and partner at the Firm, undertaking criminal defence matters.

7. The Respondent currently holds a practising certificate which is free from conditions and remains a Partner at the Firm. He also remains, and was at the relevant time, the Firm's Compliance Officer for Legal Practice ('COLP') and Compliance Officer for Finance and Administration ('COFA').

Background

8. Client A was a professional [redacted]t player.

9. In 2017, Client A was charged by the National Crime Agency of conspiracy to offer bribes to players in the [redacted]') **[JD1, 128]**.

10. Whilst Client A was not participating in the [redacted], his role was to introduce his co-conspirator to the players who were playing.

11. Following being criminally charge, Client A retained the Respondent's previous firm, Abbey Solicitors, to defend him on the criminal matters **[JD1, 74].**

12. On 17 January 2019 **[JD1, 81]**, James Pickup KC and Mohammed Nawaz KC were instructed by the Respondent to represent Client A at the trial at [redacted] Crown Court. For clarity, at the time of instruction, Mr Nawaz had not taken silk.

13. Counsels' fees were met by the Legal Aid Agency by virtue of a representation order dated 14 December 2018 **[JD1, 1 and 84]**.

14. A client care letter, dated 20 December 2018, for Client A was prepared by the Firm **[JD1, 132].** This states that legal aid had been granted for Client A.

15. Conferences with counsel, the Respondent and the client took place on 25 June 2019, 15 August 2019 and 10 October 2019 **[JD1, 2 and 90]**.

16. On 14, 15 and 18 November 2019, an unsuccessful abuse of argument hearing took place and, as a result, Client A's trial commenced on [redacted] 2019 **[JD1, 94]**.

17. Due to the evidence presented, mid-trial the Respondent changed his plea to guilty. He was subsequently sentenced on [redacted] 2020.

The facts and matters relied upon in support of the allegations

Allegation 1 - Provided misleading information to Person A, a third party, which he knew, or ought to have known was misleading in that:

1.1.1 Between February and April 2020, as to the location of cash belonging to Client A, when it had been in the possession of the Respondent since September 2017;

1.1.2 On or around 13 April 2020, regarding the purpose of the, approximately, £15,000 cash provided by Client A to the Respondent.

18. The Applicant relies upon paragraphs 8 to 17 above.

19. In 2017, Client A was arrested for conspiracy to bribe. As a result of this arrest, Client A's house, where he lived with his wife, Person A was searched by the National Crime Agency ('NCA').

20. During the search, the NCA seized a number of electronic communication devices and approximately £5500 in cash **[JD1, 7]**. Whilst some of the electronic devices were returned to Person A, she was told that the cash and the remaining devices would be given to Client A's solicitor at a later time **[JD1, 7]**.

21. As part of the pre-trial preparation, Client A and Person A attended on the Respondent at the Firm's offices, and for Client A to provide funds to allow a silk to be instructed.

22. Prior to the meeting, the Respondent stated that £15,000 was required to retain James Pickup KC (£12,000) and £3,000 was for the Respondent's fees **[JD1, 7 and 78],** which Client A paid in two instalments, of £8,000 and £7,000 **[JD1, 74]**. Person A was unaware that an application had been made for her husband's defence to be completely publicly funded, and understood that only Mr Nawaz's KC's fees were covered on a public basis **[JD1, 7]**.

23. Following Client A's sentencing, on [redacted] 2020, Person A contacted the Respondent regarding the outstanding property that had been seized by the NCA during the house search in 2017 **[JD1, 9]**.

24. A text exchange took place between Person A and the Respondent **[JD1, 19].** Within this exchange, Person A confirmed that *"cash 4-5 thousand"* and two phones still needed to be returned.

25. The Respondent, in reply, stated that he would *"…confirm with CPS"* **[JD1, 19].**

26. With the property remaining outstanding on 8 April 2020, Person A again contacted the Respondent **[JD1, 21].** The Respondent stated that:

> *"I have been making enquiry and received an email yesterday from the CPS to say say* [sic] *that due to the virus operations were only dealing with emergency situations and therefore this had not been deemed a priority but when things open up they will prioritise and hopefully get back what they're able to return*
>
> *I am afraid that's as much as I've been told for the moment."*

27. Person A also, separately, contacted Brett Connelly of the NCA **[JD1, 23].**

28. Mr Connelly informed Person A that the money, and electronic devices, had been returned to the Respondent some time previously **[JD1, 24].** Mr Connelly also forwarded a receipt, dated 13 September 2017, provided by the Respondent, confirming that he had received a quantity of cash and other material **[JD1, 33].**

29. Person A sent the Respondent a message on 11 April 2020 regarding the £15,000 that was handed to the Respondent in October 2019 **[JD1, 43].** Within the messages, Person A stated:

> *"…just checking how much cash [Client A] gave you for the barrister…was it 15k or 18? He took some money from me and I'm 2k short so I'm not sure how much he paid you? Did you count it before you gave it to the barrister"*

30. The Respondent did not reply to Person A in writing but telephoned Person A on 13 April 2019 **[JD1, 10]**.

31. During this call, the Respondent stated that the £15,000 was made up of £10,000 plus VAT for Mr Pickup KC's fees, and £2500 plus VAT was for the Respondent's legal fees.

32. Person A subsequently produced a transcript of the conversation that took place **[JD1, 38].** Within the transcript, it is stated that the Respondent confirmed the amounts in the paragraph above.

33. During the telephone call, the Respondent also states that he is chasing Miss Murphy of the CPS in respect of the monies seized, and that she had told him that 'the officer' was supposed to be contacting the Respondent directly **[JD1, 40]**

34. Following the telephone call, Person A subsequently requested by text message that the Respondent provide an invoice for the £15,000 **[JD1, 43].** The Respondent replied with *"Will do"* **[JD1, 43].**

35. By text, Person A, on 16 April 2020, made a further request for the invoice for the £15,000 **[JD1, 45]**.

36. The Respondent replied with *"It's ok. Speak later. Just got a telephone conference"* **[JD1, 45]**.

37. Client A states **[JD1, 75]** that he had *"…never given [the Respondent] instructions to hide money from my wife. I immediately spoke to my wife when [the Respondent] told me about the fee. I told her he had asked me for this and what he had said it was for. When I made the payments, I took my wife with me. I have never given [the Respondent] instructions not to discuss this with my wife or keep the money from my wife…Even when I was in prison, I asked him about the money, and he said it was with the NCA. He would always tell my wife and me these stories and said he was trying to contact the NCA, but because of the lockdown due to the COVID pandemic, they weren't answering….he never once mentioned that he had already received the money from the NCA".*

38. Client A also states **[JD1, 74]** that the Respondent asked him for *"…£12,000 for the barrister…and £3,000 would be his own fee…I paid this amount to [the Respondent] in two instalments in person. On both occasions, my wife was also present, and I paid him in cash in front of her."*

Representations made by the Respondent in relation to allegation 1

39. Within an email from the Respondent to the SRA dated 2 December 2020 **[JD1, 130]**, he explained that Client A had concerns as to whether his wife would remain with him were he to be convicted.

40. It is accepted that Client A gave the Respondent funds but that this was, in effect, for safekeeping in the firm's safe, and it was Client A who told Person A that it was for counsel's fees.

41. In representations dated 13 May 2024 **[JD1, 170]**, the Respondent reiterates the denial of the allegation, and expands on the detail.

Monies Seized by the NCA

42. The representations accept that the monies seized by the NCA in 2017 had been handed to the Respondent but that the remainder of the belongings had not been.

43. The representations also explain that Person A had no authority to act on Client A's behalf, and that the Respondent considered **[JD1, 179]** that Person A was trying to *"…get his client's money".*

44. In any event, the Respondent also states that telling Person A that he had Client A's money would be breaching the client's confidence **[JD1, 179]** and that the answers he gave were akin to a 'fob off' **[JD1, 179]**. It is stated that the Respondent not being open and candid was being so to keep a client's 'secret safe' and to maintain client confidentiality.

45. In respect of the transcripts, the Respondent does not accept them as being accurate as he had not heard the recordings. It is stated on behalf of the Respondent that he should have ended the call with Person A but instead he *"…allowed himself to get drawn into a pointless conversation in which he was artfully trying to avoid telling Person A anything at all. Inevitably, he ends up sounding a little strange in the transcript. He sounds strange because he is obfuscating – he is trying to be unclear, obscure and difficult to understand. Basically, he is 'waffling'".* **[JD1, 182]**

46. It is also stated that, for the majority of the conversation, the Respondent does not say anything that could be misleading, but that when he does, the Respondent's dialogue is *"…incomprehensible gibberish"* **[JD1, 183].** It is accepted that the Respondent was being *"…secretive and obscure, and was deliberately allowing [Person A] to persist in her ignorance"* [as to the location of the monies returned by the NCA to the Respondent] **[JD1, 183]**.

47. In respect of the £15,000, the Respondent accepts that if the transcript is accurate, then he made a factually inaccurate statement. However, by way of explanation, the

Respondent states that Person A was a *"…person who it seemed would never stop until she had all of Client A's money, and most frustratingly of all the country was in lockdown and there was no possibility of visiting Client A in prison to obtain further instructions. In short, Mr Ali suspected that Person A may have been engaging in a criminal attempt to trick him and to defraud his client, Client A.*" **[JD1, 187].**

48. If the transcript is accurate, the representations go on to say that this was a situation when a *"…solicitor is permitted to say something inaccurate in order to protect the wellbeing of a vulnerable client and / or prevent the commission of a criminal offence".* Incorrect information was given to Person A to 'delay her' **[JD1, 189]**, and so she assumed the monies had been spent and could not be returned to her **[JD1, 189]**:

> "*Throwing a potential fraudster 'off the scent' in this way, even by giving or confirming inaccurate information cannot fairly be said to be dishonest because [the Respondent's] conduct would not be regarded as dishonest by the standards of ordinary decent people. Ordinary decent people do not think it is dishonest to stop a fraudster from winning a legal game and enriching herself by tricking an imprisoned and troubled man into signing a piece of paper."*

49. The Applicant does not accept the Respondent's explanation for the following reasons:

    49.1. Client A's evidence is that the Respondent also informed him that the NCA still held the money seized;

    49.2. Person A was actively involved in Client A's defence, and would attend conferences with him, which is not indicative of a client who has concerns about their spouse;

    49.3. The Respondent's written responses to Person A went further than providing a neutral response and instead provided detail as to what he proposed to do to recover the money from the NCA;

    49.4. The Respondent, in the audio transcript, proactively confirms Person A's account of events in respect of the £15,000 being for legal fees.

    49.5. No cogent evidence has been put forward as to why the Respondent considered Person A may be involved in a crime to trick the Respondent.

Breaches of the Principles and the Code of Conduct in relation to allegation 1

<u>Principle 4 (honesty) and Paragraph 1.4 of the Code of Conduct</u>

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

"When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

51. Between February to April 2020, the Respondent knew or believed the following facts:

51.1. That the monies seized by the NCA had been returned to him, and were not in the possession of the NCA or CPS;
51.2. That those monies were in the Firm's safe;
51.3. That the monies belonged to Client A;
51.4. That by suggesting to Person A that he would make enquiries with the CPS, she could be led to believe that the monies remained retained by the CPS and were not in the possession of the Respondent;
51.5. That both counsel were retained by the Firm, to represent Client A, under a Legal Aid representation order;
51.6. That counsels' fees had been, or would be, settled by the Legal Aid Agency;
51.7. That the Firm's legal costs had been, or would be, settled by the Legal Aid Agency;
51.8. That by suggesting to Client A that the £15,000 was for legal fees, she would believe that to be the case;
51.9. That when Person A asked about the amount paid for the legal fees, and the Respondent did not inform her that her belief was mistaken, that Person A would continue to believe that the monies were for legal fees.

52. Given this state of knowledge and belief, the Respondent acted dishonestly by the standards of ordinary decent people. Ordinary decent people would consider it dishonest to actively put forward purported facts, which were not correct and the solicitor knew to not be accurate.

53. By doing so, the Respondent was dishonest, and failed to act with honesty and therefore breached Principle 4 of the SRA Principles.

54. Further, by the Respondent knowingly providing incorrect information to a third party, Paragraph 1.4 is also breached.

Principle 2 (upholding public trust and confidence in the profession)

55. Principle 2 requires solicitors to act in a way that upholds public trust and confidence in the solicitors profession and in the legal services provided, and Principle 7 states that a solicitor must act in the best interests of each client.

56. The trust that the public places in solicitors and in the provision of legal services, depends upon the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. Solicitors are required to discharge their professional duties with integrity, probity and trustworthiness.

57. By providing information to Person A, a third party, which the Respondent knew or ought to have known was misleading and which allowed the Respondent to retain monies that he should have returned to a client, public trust in the Respondent and the provision of legal services would clearly be detrimentally impacted.

58. For the reasons stated above, the Respondent's conduct has breached Principle 2.

Principle 5 (Integrity)

59. The Respondent's actions amounted to a failure to act with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code) in breach of Principle 5 of the Principles. In *Wingate v SRA* [2018] EWCA Civ 366, the Court of Appeal held that integrity connotes adherence to the ethical standards of one's profession. Lord Justice Jackson held:

"*Integrity is a broader concept than honesty. In professional codes of conduct the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members*".

60. The Respondent failed to act with integrity in breach of Principle 5 in that when Person A explained that cash and two phones need to be returned, he told Person A on 21 February 2020 that he would confirm the position with the CPS.

61. The Respondent also told Person A on 8 April 2020 that he had made an enquiry with the CPS and that the matter had not been deemed a priority due to a virus situation. At this stage the Respondent must have known, or ought to have known that the cash was in his possession having been returned to him in September 2017.

62. A solicitor acting with integrity would have told Person A that the cash was, and had been, in his possession since September 2017, or if he felt that he could not divulge that information to a non-client, he would have explained to Person A that he could not disclose information without Client A's permission. Further, during a telephone call on 13 April 2020 with Person A, the Respondent confirmed that Client A had provided cash for Counsel's and his legal fees, even though Client A's case had been funded by Legal Aid.

63. The Respondent must have known, or ought to have known this, as Counsel's fees were met by the Legal Aid Agency under a Representation Order. A solicitor acting with integrity would have told Person A that Client A's case was funded by Legal Aid, or if they considered that they could not divulge this information to a non-client, they would have told Person A that they could not disclose the information without Client A's consent.

Allegation 2 - Between September 2017 to January 2022, the Respondent failed to:

1.2.1 record Client A's monies in a client ledger;
1.2.2 return client money promptly to Client A;
1.2.3 maintain proper accounting records.

64. The Applicant relies on paragraphs 18 to 42 above.

65. Neither the monies seized by the NCA and then given to the Respondent, nor the £15,000, were accounted for in a client ledger for Client A.

66. All of these funds were Client A's and should have been properly recorded as such. Instead, the physical cash was stored in the Firm's safe, and previously the safe of Abbey Solicitors.

67. Client A **[JD1, 75]** did not know that cash that had been seized previously by the NCA, had been given to the Respondent in 2017. Client A could not therefore provide instructions that the cash seized by the NCA, but returned to the Respondent, was to be held outside of the client account of either firm.

68. Client A understood that, in respect of the cash provided to the Respondent in 2019, that it was in respect of the Respondent's costs, and those of James Pickup KC **[JD1, 74]**. He did not, therefore, provide instructions that the cash was to be held outside of client account.

Representations made by the Respondent in relation to allegation 2

69. In the Respondent's representations dated 14 May 2024, the facts of the allegation are admitted **[JD1, 171]** and that the 'NCA money' and the £15,000 were client money. It is accepted that no record of these monies was made by the Respondent.

70. It is denied that the money was not safe, as it was physically held in the Firm's safe.

Breaches of the Principles and the Code of Conduct in relation to allegation 2

Rule 14.1 and 15.1 SRA AR 2011 and Rule 2.3 SRA AR 2019

71. The Respondent accepts that he held physical cash of Client A, and kept the same in a safe **[JD1, 191]**. It was not paid into a client account for either firm.

72. Rules 14.1 and 15.1 of the SRA Accounts Rules 2011, and Rule 2.3 of the SRA Accounts Rules 2019, require client money to be paid, without delay, into client account unless the client gives instructions in writing or, alternatively, it is confirmed in writing to the client that the money is held elsewhere.

73. Client A did not provide instructions, in writing or otherwise, for the monies returned by the NCA, not the monies purportedly to be for legal fees, to be held outside of the client account. These monies were clearly client monies and did not belong to the Respondent.

74. Consequently, Rules 14.1 and 15.1 of the SRA AR 2011, and Rule 2.3 of the SRA AR 2019 have been breached.

Rule 14.3 of the SRA Accounts Rules 2011 and Rule 2.5 SRA Accounts Rules 2019

75. Rule 14.3 of the SRA Accounts Rules 2011 and Rule 2.5 SRA Accounts Rules 2019 require client monies to be returned to a client promptly, as soon as there is no longer a proper reason to retain the same.

76. The monies seized by the NCA were delivered to the Respondent in September 2017. The Respondent retained this money in the Firm's safe, and did not return this money, to Client A until January 2022.

77. The monies purported to be for legal fees, were held by the Respondent for a period of over two years.

78. In both circumstances, there was no proper reason for the Respondent to retain the monies, which should have been returned to Client A in around September 2017 and October 2019 respectively.

79. As a result, Rule 14.3 of the SRA Accounts Rules 2011 and Rule 2.5 SRA Accounts Rules 2019 are both breached.

Rules 29.1(a) and 29.2 of the SRA Accounts Rules 2011 and Rule 8.1 SRA Accounts Rules 2019

80. Rules 29.1(a) and 29.2 of the SRA Accounts Rules 2011 and Rule 8.1 SRA Accounts Rules 2019 require a solicitor to keep written accounting records for client monies, which are appropriately recorded.

81. There was no record of the monies received from the NCA by the Respondent nor the monies received purportedly for legal fees.

82. It necessarily follows that that Rules 29.1(a) and 29.2 of the SRA Accounts Rules 2011 and Rule 8.1 SRA Accounts Rules 2019 are breached.

Principle 7 of the Principles and Principle 4 of the Principles 2011 ('Acting in the best interests of clients)

83. Solicitors are expected by the public to protect their clients' interests, which includes ensuring that client funds that solicitors are given to safeguard, are appropriately kept suitably safe and recorded.

84. Client funds should not be requested without proper reason by a solicitor, nor retained for longer than necessary. In this matter, for the NCA monies, these were retained by the Respondent for a number of years from 2017, and he made no efforts to return Client A's funds to him, nor inform Client A that he held the funds. Such conduct is not acting in a client's best interests.

85. The Respondent also requested monies to be given to him from Client A, purportedly in respect of legal fees, when these fees were covered by the Legal Aid Agency. A solicitor depriving a client of monies, even temporarily, which the solicitor is not entitled to, is similarly not acting in the best interests of a client.

86. These funds were not recorded in written form, so that the funds and the firms' funds, could be properly audited, and that would allow for it to be clearly evident that the monies were for Client A and could be returned to him.

87. For the reasons stated in paragraphs 83 to 86, Principle 7 of the Principles and Principle 4 of the Principles 2011 are breached.

Allegation 3 - In October 2019, the Respondent suggested to Client A, and/or encouraged Client A to provide an account to assist their defence, which he knew or ought to have known was misleading.

88. The Applicant relies upon paragraphs 8 to 17 above.

89. In around October 2019, the CPS served further evidence to be used at the trial, in the form of WhatsApp messages involving Client A and others.

90. The WhatsApp messages were indicative of Client A's guilt **[JD1, 8]**. During a weekend in October 2019, Client A and Person A attended the Respondent's office to discuss the additional evidence.

91. During this meeting, Client A indicated that he wanted to change his plea to guilty. The Respondent advised against this and instead was trying to "*…make up a story to explain the messages and lie about them in court*" **[JD1, 8].**

92. The Respondent told Client A to *"…think of something"* and reminded him that Client A's defence was that he was involved with the sale of [redacted] equipment. Client A states that the Respondent was "*…helping me in making up a story in which there were questions we could not answer…My wife told me to plead guilty. Even then [the Respondent] was against it and said "No, we still have a chance. We can fabricate a story""* **[JD1, 78].**

Representations made by the Respondent in relation to allegation 3

93. In the Respondent's representations dated 14 May 2024, he denies saying to Client A that a story should be created to mislead the court.

94. The Respondent explains that Client A always maintained his instructions that he was not guilty, and this was confirmed in a number of documents prepared for the client's approval.

95. With regard to the meeting in October 2019, the Respondent accepts that this took place. He explains that he told Client A and Person A, both of whom were present, that he did not believe the version of events put forward by Client A, and that he was concerned that Client A would struggle under cross-examination.

Breaches of the Principles and the Code of Conduct in relation to allegation 3

<u>Dishonesty</u>

96. The SRA relies upon the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67 and set out at paragraph 50.

97. In October 2019, the Respondent knew or believed the following facts:

97.1. That the messages served by the prosecution were indicative of Client A's involvement in the crime he was charged with;

97.2. That Client A accepted that the messages were indicative of his involvement, and could not explain the messages as being innocent;

97.3. A solicitor, acting for a defendant in criminal proceedings, cannot put forward a positive defence case if the client's instructions are that of guilt;

97.4. That by stating that Client A should 'make up a story' or 'fabricate' matters to explain the content of the WhatsApp messages, Client A's instructions would not align with the true facts.

98. Given this state of knowledge and belief, in suggesting that Client A create a story to fit the facts presented by the prosecution, the Respondent acted dishonestly by the standards of ordinary decent people.

Principle 2 of the 2011 Principles and Outcome 5.2

99. The SRA rely on *Wingate v SRA* [2018] EWCA Civ 366 as to the test for lack of integrity, as set out at paragraph 59 above. A solicitor should not be complicit in another person deceiving or misleading the court (Outcome 5.2).

100. A solicitor defending a client in a criminal matter should defend their client to the best of their abilities, based on instructions that are true to the knowledge of the solicitor. However, solicitors must also act in a way that upholds the constitutional principle of the rule of law and the proper administration of justice.

101. The Respondent did not act with integrity as he suggested and or encouraged Client A to provide an account to assist their defence which he knew, or ought to have known was misleading. This is a disregard to the proper administration of justice.

102. A solicitor acting with integrity would not have suggested or encouraged their client to provide an account in support of their defence, which was not true. In suggesting and/or encouraging his client to provide an account which, he knew or ought to have known was not true and therefore misleading, the Respondent breached Principle 2 of the Principles 2011 and failed to achieve Outcome 5.2 SRA Code of Conduct 2011.

Principle 6 of the 2011 Principles

103. Solicitors are, rightly, seen as ambassadors of justice. The trust that the public places in solicitors and in the provision of legal services, depends upon the reputation of the

solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. Solicitors are required to discharge their professional duties with integrity, probity and trustworthiness.

104. A solicitor who suggests that justice could be manipulated by an incorrect version of events being put forward would inevitably impact on the trust that the public places in the profession and the services that it offers.

105. Consequently, Principle 6 is breached.

Allegation 4 - From August 2019 to December 2019, the Respondent provided, or caused to be provided, information to counsel, which he knew or ought to have known was misleading as to content of an audio recording of Client A, which was indicative of Client A's guilt.

106. The Applicant relies upon paragraphs 8 to 17 above.

107. As part of the CPS case against Client A, an undercover recording was confirmed as used material.

108. The recording was of a meeting that took place between an undercover officer, Client A and a co-conspirator **[JD1, 2 and 8]**.

109. A transcript of the meeting was produced, which demonstrated that the conversation took place in English, with conversations in Urdu taking place between Client A and co-conspirator.

110. The CPS did not obtain a translation of the conversation that took place in Urdu, which was referenced as *"A [redacted] and A speak in a foreign language"* within the transcript provided **[JD1, 2]**. No transcript of the Urdu conversation was provided by the prosecution.

111. Due to the nature of the recording, and that the recorded conversation included the involvement of an undercover officer, a copy of the audio was not provided to the Respondent or Client A **[JD1, 2 and 8]**.

112. The Respondent was instead offered the opportunity to listen to the audio at a secure location, where he attended on 6 August 2019 by himself.

113. Following the Respondent listening to the audio, on 7 August 2019 at 1146, his colleague sent an email to Mr Pickup KC and Mr Nawaz **[JD1, 122]**. The information regarding the content of the audio can only have been received by the Respondent's colleague from the Respondent.

114. The Respondent was cc'ed into this email **[JD1, 122]**, which states:

"Dear Both

Just to bring you both up to speed and also to confirm our conversation of yesterday with Mr Pickup.

We confirm that Shah was given access to the recording relating to the 18th January 2017 at the [redacted] *Restaurant* [redacted] *the transcript that has been provided we would say is a fair translation of the conversation which took place and the parts of the translation which are noted as "inaudible" or "undecipherable" are very much that and at best was able to pick up the odd word which does not significantly or materially effect the translation provided.*

You will have also received, just to be sure, the directions made by the now allocated Trial Judge, HHJ Mansell QC.

In addition we are collating information which transgressed from Mr [redacted] *initial arrest, principally with the* [redacted] *and the disciplinary proceedings which were instituted and all relevant communications we are able to place our hands upon, to forward to you for your consideration.*

This material may be quite voluminous so please bear with us a day or so while we collate the same.

In addition and in conversation yesterday reference was made as to whether [Client A] may be able to have a fair trial, bearing in mind the adverse publicity from when this matter first arose in February 2017. Again, we are in the process of collating as many relevant articles as we can to give an indication as to what was clearly, and some may argue, continue to be the adverse publicity which surrounded [Client A] and his so called participation in this particular matter.

Finally, we have just received a telephone call from the CPS Lawyer, Mr Williams, who advises that with regards to our continuing and repeated requests for secondary disclosure a response should be with us if not today, then certainly tomorrow. As and when it is received we will of course forward the same to you both for your consideration.

At the very latest, can we please touch base on Monday of next week to review matters, by which time we hope that further material will have been sent to you for your consideration."

115. Following the Respondent listening to the audio, he reported to Client A that *"…you were speaking in Urdu, but because of the poor quality of the recording, I could not grasp properly what you were saying. I don't think that it is important evidence"* **[JD1, 77].**

116. The Respondent also told Person A, and counsel, that the audio was *"muffled and nothing could be made out"* **[JD1, 8].**

117. As part of a conference with James Pickup KC, the Respondent explained that he had listened to the audio recording, but that there was nothing in the recording that assisted Client A's case **[JD1, 2]**.

118. Counsel was not informed as to the content of the Urdu conversation, and the Respondent told Mr Pickup KC that there was no benefit to the Urdu conversation being translated **[JD1, 4 and 128]**

119. At the trial in December 2019, the Respondent attended court each day until the day when the audio of the conversation, in English, was to be played in open court **[JD1, 3 and 8]**.

120. When the recording was played to the court, the Urdu conversation was also played. Mr Nawaz KC understood Urdu, and recognised that the conversation involving Client A was 'damning' in terms of Client A's involvement in crime, and his guilt **[JD1, 3 and 128]**.

121. A member of the [redacted] was also present in court **[JD1, 3 and 128]**, and also understood the conversation that had taken place. They alerted the CPS to the content of the conversation.

122. Following the importance of the Urdu conversation being made clear to the court, and to Mr Pickup KC and Mr Nawaz KC, Client A changed his plea to one of guilty **[JD1, 4 and 128]**.

Representations made by the Respondent in relation to allegation 4

123. In the Respondent's representations of 14 May 2024, it is accepted that he is fluent in Urdu.

124. At paragraph 54g, it is stated that the recording was made "…*in a noisy Shisha bar with lots of background interference."*

125. It is also stated that Client A would have been best placed to determine if the transcript was not accurate as the recording of the conversation was only a short time before Client A's arrest.

126. The Respondent accepts that he listened to the recording and that it was always going to be 'damaging' **[JD1, 200]**. It is explained that the content of the recording was disclosed to both counsel on 6 August 2019, which was then confirmed to them in email correspondence the next day.

127. At paragraph 54(x)(ix and x) it is stated **[JD1, 200]**:

> *"Again, both barristers were fully aware of my views about the recording, particularly when I put those in writing the following day to them both.*
>
> *I am more than satisfied that Mr Pickup was fully aware of the damaging nature of the recording most certainly on the sixth and seventh of August 2019".*

128. The Applicant does not accept the Respondent's explanation for the following reasons:

128.1. The content of the Urdu conversation is apparent from the change of plea that occurred when it was played in court;

128.2. The Respondent has accepted being fluent in Urdu, and would therefore have understood the conversation involving Client A, which subsequently led to his change of plea;

128.3. The email sent to counsel on 7 August 2019 makes no reference to the conversation in Urdu, nor what the Respondent understood **[JD1, 122]**;

128.4. By the Respondent not informing counsel of the content of the Urdu conversation, which was meant to form Unused Material and not be used in court, a positive case for Client A's defence could still be put forward at trial by counsel.

Breaches of the Principles and the Code of Conduct in relation to allegation 4

Dishonesty & Principle 4 of the 2019 Principles, and Paragraph 1.4 of the SRA Code of Conduct 2019

129. The SRA relies upon the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67 and set out at paragraph 50.

130. Between August and December 2019, the Respondent knew or believed the following facts:

130.1. That the part of recorded conversation, which was spoken in Urdu, was indicative of Client A's guilt;

130.2. That he did not inform counsel of the content of the Urdu conversation;

130.3. That not telling counsel meant a positive defence could still be put forward for Client A;

130.4. That not informing counsel of the content of the Urdu conversation would cause counsel to understand there was nothing of concern.

131. Given this state of knowledge and belief, the Respondent acted dishonestly by the standards of ordinary decent people.

132. Ordinary decent people would consider it dishonest for a solicitor to not inform counsel of information that was crucial to a client's case and would impact the defence put forward, and allow a positive case to be made for Client A.

133. For the reasons given in paragraph 115 to 122, the Respondent should have ensured that any information which he provided to counsel did not mislead by omission. In omitting to tell Counsel that the recorded conversation was indicative of Client A's guilt, the Respondent breached Paragraph 1.4 of the SRA Code of Conduct 2019.

Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles 2019

134. The SRA rely on *Wingate v SRA* [2018] EWCA Civ 366, as to the test for lack of integrity set out at paragraph 60 above.

135. The SRA also rely on 115 to 122 above.

136. The Respondent failed to act with integrity in that he did not inform counsel that the conversation that took place in Urdu was indicative of Client A's guilt. When the conversation was played in court, client A changed their plea to guilty. Leading counsel stated in his note that he *was "disappointed that [the Respondent] did not share either with myself or my junior the true content of the Urdu exchanges … at the meeting of the* [redacted]*. His failure to do so compounded [Client A's] predicament. Had we been told what was said in these exchanges there would have been no trial. [Client A] would have pleaded and his mitigation would have been the more compelling…"* [**page 129**]. Further Leading Counsel confirmed in his witness statement dated X that *".. I would expect to be told by the Respondent, as I would expect to be told by any instructing solicitor, of any damaging material contained in the exchanges."*

137. A solicitor, who by omission, does not inform counsel of vital information, which impacts upon their client's case, is not a solicitor adhering to the high standards expected, and breaches Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles 2019.

<u>Principle 4 of the SRA Principles 2011 and Principle 7 of the SRA Principles 2019, and Outcome 1.2 of the SRA Code of Conduct 2011</u>

138. By not informing counsel of the Urdu conversation, which would have impacted on the advice given by them to Client A (as is evident from the events at court), Client A's matter proceeded to trial.

139. As such, any allowance that would be given for Client A's guilty plea, was minimised due to the timing of the guilty plea, and he therefore received a custodial sentence longer than he would likely have received if an earlier guilty plea had been entered. The Respondent failed to act in Client A's best interests and he failed to provide a service to Client A which protected his interests.

140. That conduct breaches Principle 4 of the SRA Principles 2011, Principle 7 of the SRA Principles 2019 and the Respondent failed to achieve Outcome 1.2 of the SRA Code of Conduct 2011.

Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019

141. A solicitor who does not provide material information to counsel instructed on a matter, which directly impacts on: how a defence is undertaken; and a person's liberty, damages the reputation of the profession. Had the Respondent told counsel about the content of the Urdu conversation, Client A's mitigation could have been more compelling. Further, Client A would have received a significant credit for an early guilty plea.

142. As such, Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019 are breached.

The SRA's investigation

143. Following receipt of the concern from Person A, the SRA wrote to the Respondent on 17 November 2020. The Respondent replied on 2 December 2020 **[JD1, 130].**

144. A further response was sent by the Respondent on 2 March 2022 **[JD1, 145].**

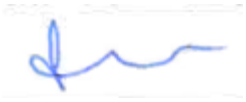
145. The SRA issued a Notice, dated 12 March 2024, recommending referral to the Tribunal **[JD1, 147],** which was provided to the Respondent for her comment.

146. By representations dated 13 May 2024, the Respondent replied to the Notice **[JD1, 170]**.

147. On 30 May 2024, an Authorised Decision Officer of the SRA decided to refer the Respondent to the Tribunal **[JD1, 207].**

Statement of Truth

I believe that the facts and matters stated in this statement are true.

Signed: 

Dated: 11 September 2024

CASE NO.

BEFORE THE SOLICITORS DISCIPLINARY TRIBUNAL

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

AND IN THE MATTER OF:

SOLICITORS REGULATION AUTHORITY LIMITED

Applicant

- and –

SHAHID ALI

Respondent

APPENDIX 1 TO STATEMENT PURSUANT TO RULE 12 (2)

SOLICITORS (DISCIPLINARY PROCEEDINGS) RULES 2019

Relevant Rules and Regulations

SRA Principles 2019

You act:

Principle 2	in a way that upholds public trust and confidence in the solicitors profession and in the legal services provided
Principle 4	with honesty
Principle 5	with integrity
Principle 7	in the best interests of each client

SRA Code of Conduct for Solicitors, RELs and RFLs 2019

1.4	that solicitors must not mislead or attempt to mislead their clients, the court or others by their own acts or omissions or being complicit in the acts or omissions of others

SRA Accounts Rules 2019

Rule 2.3 You ensure that client money is paid promptly into an account unless:

(a) in relation to money falling within 2.1(c), to do so would conflict with your obligations under rules or regulations relating to your specified office or appointment;

(b) the client money represents payments received from the Legal Aid Agency for your costs; or

(c) you agree in the individual circumstances an alternative arrangement in writing with the client, or the third party, for whom the money is held.

Rule 2.5 You ensure that client money is returned promptly to the client, or the third party for whom the money is held, as soon as there is no longer any proper reason to hold those funds.

Rule 8.1 You keep and maintain accurate, contemporaneous, and chronological records to:

(a) record in client ledgers identified by the client's name and an appropriate description of the matter to which they relate:

(i) all receipts and payments which are client money on the client side of the client ledger account;

(ii) all receipts and payments which are not client money and bills of costs including transactions through the authorised body's accounts on the business side of the client ledger account;

(b) maintain a list of all the balances shown by the client ledger accounts of the liabilities to clients (and third parties), with a running total of the balances; and

(c) provide a cash book showing a running total of all transactions through client accounts held or operated by you.

SRA Code of Conduct 2011

Outcome 1.2 You provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice

Outcome 5.2 You are not complicit in another person deceiving or misleading the court

SRA Principles 2011

Principle 2 You must act with integrity

Principle 4 You must act in the best interests of each client

Principle 6 You must behave in a way that maintains the trust the public places in you and in the provision of legal services

SRA Accounts Rules 2011

Rule 14.1 Client money must without delay be paid into a client account, and must be held in a client account, except when the rules provide to the contrary (see rules 8, 9, 15, 16, 17 and 19).

Rule 14.3 Client money must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds. Payments received after you have already accounted to the client, for example by way of a refund, must be paid to the client promptly.

Rule 15.1 Client money may be:

(a) held by you outside a client account by, for example, retaining it in the firm's safe in the form of cash, or placing it in an account in the firm's name which is not a client account, such as outside England and Wales; or
(b) paid into an account at a bank, building society or other financial institution opened in the name of the client or of a person designated by the client; but only if the client instructs you to that effect for the client's own convenience, and only if the instructions are given in writing, or are given by other means and confirmed by you to the client in writing.

Rule 29.1(a) You must at all times keep accounting records properly written up to show your dealings with:

(a) client money received, held or paid by you; including client money held outside a client account under rule 15.1(a) or rule 16.1(d)

Rule 29.2 All dealings with client money must be appropriately recorded:
(a) in a client cash account or in a record of sums transferred from one client ledger account to another; and
(b) on the client side of a separate client ledger account for each client (or other person, or trust).
No other entries may be made in these records.