SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11223-2014

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

STEPHEN PAUL KETTLEWELL Respondent

Before:

Mr A. N. Spooner (in the chair)
Mr A. G. Gibson
Mr P. Wyatt

Date of Hearing: 26 January 2016

Appearances

Peter Steel, Solicitor, Bevan Brittan LLP, Fleet Place House, Holborn Viaduct, London EC4M 7RF for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent by the Applicant were that;

1.1 From on or after 4 June 2007 the Respondent has undertaken reserved legal activities in issuing European Orders for Payment ("EOP") through Kettlewell Solutions Limited ("KSL"), a body that was not authorised or recognised by the Solicitors Regulation Authority ("SRA") in breach of Rule 12.01 of the Solicitors' Code of Conduct 2007 ("SCC 2007") and/or Rule 1.1 and/or Rule 1.2 of the SRA Practice Framework Rules 2011 ("PFR").

1.2 Between about November 2011 and March 2012 the Respondent undertook reserved legal activities in acting for Kevin Littleboy ("KL") either as a sole practitioner when not authorised to do so or through KSL, a body that was not authorised or recognised by the SRA in breach of PFR Rule 1.1 and/or Rule 10.1.

1.3 In a letter to the SRA dated 31 January 2012 the Respondent dishonestly or in the alternative recklessly represented that a) he had not handled any client money b) he was not paid for acting for KL, in breach of Principles 2, 6 and 7 of the SRA Code of Conduct 2011 ("the Principles").

1.4 On 8 March 2012 the Respondent appeared before Northallerton Magistrates as advocate for KL having told the SRA in his letter of 31 January 2012 a) that he did not practise as a solicitor and did not intend to and b) that the situation (i.e. his representing KL) "was a genuine mistake… and will never happen again". In breach of Principles 1, 2, 6 and 7 of the Principles.

1.5 In taking money from KL and/or in failing to pay this money back, he acted without integrity and/or in a way that failed to maintain the trust that the public places in him in breach of Principle 2 and/or Principle 6 of the Principles.

Documents

2. The Tribunal considered all the documents including;

Applicant

- Application dated 3 February 2014;
- Rule 5 Statement (as amended) with exhibit IGM1 dated 24 July 2015;
- Witness Statement of Charles Kevin Irving Littleboy with exhibit CKIL/1 dated 1 August 2014;
- Proof of Evidence of Peter Steel dated 27 November 2014 relating to the evidence of Michael Bray;
- Witness Statement of Michael Bray with exhibit MB/1 dated 25 January 2016;
- Statement of Costs dated 19 January 2016.

Respondent

- Answer dated 28 May 2014;
- Witness statement of the Respondent dated 1 August 2014;

- Email to the Tribunal dated 26 January 2016 including summary of income and outgoings.

Preliminary Matters

Privacy

3. The Respondent sent an email to the Tribunal and the Applicant at 9.53am on the day of the hearing. The substance of the email was an application to adjourn the hearing. The email began with the following request "If possible could this be kept confidential". He did not formally or specifically seek an order under Rule 12(4) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR"). Nonetheless in the interests of fairness the Tribunal decided to treat the request contained in the email as such an application, particularly as the Respondent was unrepresented. SDPR Rule 12(4) states;

> "Any party to an application and any person who claims to be affected by it may seek an order from the Tribunal that the hearing or part of it be conducted in private on the grounds of a) exceptional hardship b) exceptional prejudice to a party, a witness or any person affected by the application".

4. The Applicant submitted that the Tribunal should not make such an order. The Respondent had made reference to ill-health but had not provided any medical evidence. There was no evidence that any person would suffer extreme hardship or prejudice by the application being heard in open court. The Applicant told the Tribunal that he did not intend to refer to sensitive aspects of the Respondent's ill-health in the course of the hearing.

5. The Tribunal considered the Respondent's email and the Applicant's submissions. The Respondent had not explained in what way exceptional hardship or exceptional prejudice would arise if the matter were heard in open court. He had provided no evidence to explain or substantiate the nature of his ill-health. The Tribunal had in mind the principle of open justice and was not satisfied that the requirements of Rule 12(4) were met. The application to adjourn was therefore heard in open court.

Respondent's application to adjourn and Applicant's application to proceed in the Respondent's absence

6. The Respondent based his application to adjourn on three grounds; ill-health, lack of available finances to obtain representation, and his involvement in a road traffic accident on 21 January 2016 which had aggravated his health issues. Attached to the email was a copy of a letter from an accident management company addressed to the Respondent dated 21 January which made reference to the repair of a vehicle, a schedule of income and outgoings prepared by the Respondent and extracts from a credit reference file. The Respondent asked the Tribunal to adjourn the hearing in order that he could receive medical treatment, obtain medical evidence and arrange representation. In regards to representation, the Respondent indicated that he expected that his family would be in a position to assist him with funding.

7. The Applicant opposed the application to adjourn and applied for the matter to be heard in the Respondent's absence pursuant to SDPR Rule 16(2). The Respondent was aware of the hearing date and had been for some time. There had been exchanges of text messages between the Respondent and Mr Steel which confirmed this. This matter had previously been listed on 16 December 2014 when it had been adjourned due to the Respondent's ill-health. On that occasion the Tribunal had made the following direction;

> "If the Respondent wishes to apply for an adjournment of the substantive hearing on medical grounds, he is to provide an appropriate Consultant's medical report setting out a diagnosis and a prognosis, indicating whether he is able to participate in these proceedings and if not, when he is likely to be able to do so. The medical report should also indicate whether there are any steps or specific arrangements the Tribunal could take/make to assist the Respondent in participating in these proceedings. Any such a medical report must be filed with the Tribunal and served on the Applicant **no later than 2 months before the date of the substantive hearing."**

The Respondent had produced no medical evidence in support of this application, which was made very late. The Applicant referred to the principles to be applied in such applications contained in R v. Hayward, Jones and Purvis [2001] EWCA Crim 168. The Tribunal could conclude that the Respondent had waived his right to appear at what was the second listing of this matter. Two witnesses were ready to give evidence including KL, who had attended for the second time in these proceedings. Had the Respondent wished to obtain representation he could have done so much sooner and an adjournment would only cause further delay. The public interest required that the matter proceed notwithstanding the fact that the Respondent was not currently practising. Should the Tribunal refuse the adjournment and proceed in absence it would be open to the Respondent to apply for a re-hearing pursuant to SDPR Rule 19.

8. The Tribunal considered the representations made by the Respondent in his email and by the Applicant. 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 Hayward, Jones and Purvis 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) …;"

9. This was a case with a long history, having originally been fixed for a substantive hearing in December 2014 when the Respondent raised similar health issues and the Tribunal had made the direction referred to in paragraph 7 above. Subsequent directions that he serve a response to the Rule 7 statement by 30 January 2015 and a response to the amended Rule 5 statement by 14 August 2015 had also not been complied with. The present application was made very late in the day with no supporting medical evidence. No evidence of any injury suffered in the car accident or of the impact of any shock it may have caused was before the Tribunal. There had been ample opportunity for the Respondent to visit his doctor in the previous five days. The Respondent had referred to the possibility of his family assisting him with regards to paying for representation. These matters had been going on for several years and he could have considered the issue of representation in that time. Instead, he was raising the matter at the very last minute. The Tribunal noted that the Respondent faced serious allegations, including dishonesty. The Tribunal acknowledged that he did not pose a risk to the public as he was not currently practising. The effect of the delay on the memory of the witnesses was mitigated, to some extent, by the existence of witness statements and exhibits which could assist with recollection. However taking into account all the circumstances and the history of the case, the Tribunal determined that the Respondent had waived his right to be present and the interests of justice required that the application to adjourn be refused. The case would proceed in the Respondent's absence.

Application for a witness to give evidence by telephone

10. The Applicant relied on the evidence of Mr Michael Bray, a Legal Advisor at Northallerton Magistrates Court. Mr Bray was unable to attend London on the first day of the hearing due to work commitments, although he could have attended the following day. The Applicant submitted that this would not be a proportionate use of resources. His evidence was uncontroversial and the Respondent had indicated in a telephone conversation with Mr Steel on 6 January 2016 that he did not require Mr Bray to attend. The essence of Mr Bray's Witness Statement was no different to the contents of Mr Steel's Proof of Evidence dated 27 November 2014, which the Respondent had received in December 2014. The Witness Statement dated 25 January 2016 had been served on the Respondent by email to the same address from which the

Respondent had communicated with the Tribunal on the morning of the hearing. The Applicant sought the Tribunal's permission to hear Mr Bray's evidence by telephone.

11. The Tribunal noted that the substance of the Witness Statement was already contained in the Proof of Evidence and both documents had been provided to the Respondent. He had not indicated any opposition to Mr Bray's evidence. The Tribunal considered the Respondent's Witness Statement and Answer and noted that there was nothing contained in either of those documents that contradicted Mr Bray's evidence. It would not be proportionate to require Mr Bray to travel to London from Yorkshire and in those circumstances the Tribunal directed that Mr Bray could give his evidence by telephone.

Factual Background

12. The Respondent was born in 1972 and admitted as a Solicitor on 15 December 1999. At the time of the hearing his name remained on the Roll. His most recent Practising Certificate was granted for the year 2010-11 and held over until it was terminated on 16 August 2012. At the material times he was director and shareholder of KSL, also trading as Community Fees ("CF"). KSL was incorporated on 4 June 2007.

Allegation 1.1

13. KSL/CF were instructed by a number of communities of proprietors based in Spain in relation to pursuing cross-border debts pursuant to Regulation (EC) No 1896/2006 ("the Regulation"), where the creditor client resided in Spain and where the debtor resided in the United Kingdom ("UK"). CF marketed itself as providing "debt recovery services". KSL submitted a number of EOP applications at York County Court. KSL was not recognised or authorised by the SRA. The Respondent, in a letter to a firm of solicitors dated 24 July 2012, wrote "…we are a Debt Collection Agency and not a firm of Solicitors…" There was therefore no authority to undertake reserved legal activities. In his Answer dated 28 May 2014 and in his Witness Statement dated 1 August 2014 the Respondent admitted issuing EOPs but disputed that this constituted a reserved legal activity.

Allegation 1.2

14. On 5 December 2011 a Legal Adviser at Northallerton Magistrates Court contacted the SRA to raise concerns about the Respondent who had acted as an advocate in Court on 23 November 2011 on behalf of KL, who was facing criminal proceedings. The SRA sent an Explanation With Warning ("EWW") letter to the Respondent dated 11 January 2012 asking him to answer the allegation that he had practised as a sole practitioner when he was not authorised to do so, in breach of PFR Rule 10.1. The Respondent replied by letter dated 31 January 2012. He accepted the allegation, which he stated was due to a "genuine misunderstanding" on his part. He explained that he knew the individual and had agreed to attend Court with him in order to make an application to vary his bail. He alleged that he was not paid for the work and had not handled client money. He apologised and provided an assurance that this mistake "will never happen again". On the basis of the Respondent's explanations, the SRA took no further action. However Court records indicated that on 8 March 2012 the

Respondent again appeared and represented KL at the same Court at a committal hearing, when the case was transferred to the Crown Court.

15. The Respondent, in his Answer and Witness Statement, confirmed that he assisted KL including at the Police Station and twice at Court but denied that in doing so he had undertaken reserved legal activities.

Allegation 1.3

16. As part of a complaint made by KL concerning the Respondent's handling of his case, it was alleged that KL had paid KSL £5,000 plus VAT in respect of legal fees. This was contrary to what was said in the Respondent's letter of 31 January 2012 referred to in paragraph 14 above. In his Witness Statement the Respondent said he had attended KL's address on more than 40 occasions while he was on Police bail to provide advice and he had charged KL for this work, although he did not specify the fee.

Allegation 1.4

17. In his letter to the SRA dated 31 January 2012 the Respondent had given an assurance that there would be no further instances of reserved legal activity being undertaken, following his appearance at Court on 23 November 2011 and the subsequent raising of concerns by the SRA. As referred to in paragraph 14 above, he then represented KL at a committal hearing on 8 March 2012.

Allegation 1.5

18. As part of the complaint made by KL, it was alleged that the Respondent had taken a loan from KL in the sum of £65,000. The loan was advanced to KSL on 14 February 2012 on the understanding that it would be repaid after one week. None of the funds had been repaid.

Witnesses

Michael Bray

19. Mr Bray confirmed that he had been the Legal Advisor to the Court when KL appeared on 23 November 2011 and 8 March 2012. He had seen the Respondent in Court with KL on those occasions and had also seen correspondence that the Respondent had sent to the Court on 19 January 2012 and 9 February 2012. Although the Respondent did not explicitly tell the Magistrates that he was a solicitor, which would be an unusual way to express oneself in Court, the language used in the letters and whole inference from the way in which the case was conducted led him to believe that the Respondent was an authorised solicitor acting for his client. He sat in the correct place for solicitors in the Courtroom and was not simply acting as a McKenzie Friend. An application to vary the conditions attached to KL's bail was made by the Respondent on 23 November 2011, although that matter was adjourned to another date.

20. The committal hearing on 8 March 2012 proceeded under section 6(2) of the Magistrates Court 1980. This could only have occurred if the Court had believed that KL was legally represented, otherwise it would have had to have been dealt with under section 6(1).

Kevin Littleboy

21. KL had approached the Respondent following his arrest as he knew him as a local solicitor whom he had initially met in a pub. The Respondent told KL that he had considerable experience of handling matters of the nature being investigated by the Police. KL needed a very good solicitor and the Respondent told him that he had previously handled a similar case with a successful outcome. This was reassuring and KL decided to instruct him. The Respondent attended the Magistrates Court on two occasions. The majority of communication was by telephone, although there were approximately ten visits to KL's home.

22. Having decided to instruct the Respondent, KL paid him £5,000 plus VAT in legal fees. The purpose was to pay for the Respondent to represent him and resolve all the issues at the Police Station and at the Magistrates Court.

23. The Respondent asked KL to lend him £65,000 in a telephone conversation following KL's second appearance at the Magistrates Court. The Respondent had not attended this hearing and told KL that this was because he was being pursued by the Police due to a financial problem that had arisen in connection with his property business in Spain. He told KL that if the matter could not be resolved then he would be arrested and barred from acting as a solicitor. This could only be avoided by a payment of £65,000 being made. KL, panicking at the prospect of losing his representation, agreed to lend this money on the understanding that it would be repaid within one week. He never contemplated the possibility that it would not be repaid in that time. The money had never been repaid and there was now a Charging Order on the Respondent's house in favour of KL.

Findings of Fact and Law

24. 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 this private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

25. The Respondent had denied some of the allegations and had not addressed others in full or at all. In the circumstances the Tribunal treated each of the Allegations as being denied in their entirety.

26. **Allegation 1.1: From on or after 4 June 2007 the Respondent has undertaken reserved legal activities in issuing EOPs through KSL, a body that was not authorised or recognised by the SRA in breach of Rule 12.01 of SCC 2007 and/or Rule 1.1 and/or Rule 1.2 of the SRA PFR.**

26.1 The Applicant submitted that the issuing of EOP applications constituted the conduct of litigation and as such was a reserved legal activity. The Respondent would write to a debtor indicating the sum owed and the potential legal consequences of a failure to settle the debt. In the example of Mr and Mrs D, a letter was sent from CF dated 11 October 2010 stating:

> "We have been instructed by the Management Board in connection with your outstanding Community fees for the above community". It continued "We must advise you that if payment is not made in full within the next ten days the debt will be pursued under the European Order for Payment Procedure, EC Regulation 1896/2006. This directive enables the President of the Community to pursue cross-border EU debts through the debtor's court of domicile".

A further letter to Mrs and Mrs D on 12 November 2010 stated:

> "We are now about to commence legal proceedings to recover this debt".

The Applicant submitted that the reference to "legal proceedings" was significant as it implied litigation. A number of applications were filed at York County Court, signed by the Respondent in the following terms:

> "Name: Stephen Kettlewell
>
> Position: Solicitor
>
> I am duly authorised to sign this European order for Payment".

26.2 The Applicant referred the Tribunal to Article 1, paragraph 1 of the Regulation which states:

> "The purpose of this Regulation is (a) to simplify, speed up and reduce the costs of litigation in cross-border cases concerning uncontested pecuniary claims by creating a European order for payment procedure".

The word "litigation" demonstrated that the EOP was a litigious procedure. The issuing of proceedings went beyond a purely administrative function. The Applicant referred to paragraph 19 (viii) of HHJ Holman's Judgment in Bank of Scotland Plc v Whiteside [2011, unreported] which states:

> "It is in my view fundamentally wrong to suggest that the issue of court proceedings, the entry of judgment and the enforcement of that judgment are nothing more than an administrative function. The issue of a court claim is a serious matter and places obligations on claimants and their authorised representatives".

The conduct of litigation is a reserved legal activity as defined by section 12(1)(b) of the Legal Services Act 2007 ("the Act") which came into force on 1 January 2010.

26.3 In his Witness Statement the Respondent stated:

> "Having read through the EC Directive in some detail, it was my honest and professional understanding that this was not a reserved activity and I still maintain this. The legislation itself states that neither a solicitor nor barrister is required to issue the EOP".

Only in the event that the application was opposed would it fall within the Civil Procedure Rules and in those circumstances no further work would have been undertaken by KSL. The Applicant noted however that KSL had remained on the record in at least one matter that was contested.

26.4 The Applicant submitted that KSL was not an authorised body as asserted by the Respondent himself in his letter 24 July 2012 referred to in paragraph 13 above.

26.5 The Tribunal considered the submissions made by the Applicant and the Respondent as contained in his Witness Statement and Answer. It was not disputed that KSL had issued applications for EOPs. Conduct of litigation is a reserved legal activity and it was not suggested that KSL was an authorised body. The only issue for the Tribunal to determine was whether the issuing of the EOPs amounted to the conduct of litigation. Section 12(1)(b) of the Act defines the conduct of litigation as:

> "(a) the issuing of proceedings before any Court in England and Wales
> (b) the commencement, prosecution and defence of such proceedings
> (c) the performance of any ancillary functions in relation to such proceedings."

This is consistent with the Judgment in Whiteside which found that the issuing of proceedings was not merely an administrative exercise. The Regulation itself described the purpose of the EOP procedure as being to make litigation in this area more efficient and the Respondent's letters to debtors such as Mr and Mrs D made reference to the commencement of legal proceedings. The Tribunal was satisfied that the issuing of EOPs amounted to the conduct of litigation and therefore constituted a reserved legal activity. The applications were issued by KSL bearing the Respondent's signature. KSL was not an authorised body by the Respondent's own assertion and the Tribunal found this Allegation proved beyond reasonable doubt.

27. **Allegation 1.2: Undertook reserved legal activities between November 2011 and March 2012 in acting for KL either as a sole practitioner when not authorised to do so or through KSL, a body that was not authorised or recognised by the SRA in breach of PFR Rule 1.1 and/or Rule 10.1.**

27.1 The Respondent stated in his Witness Statement that there was mutual trust between himself and KL and that he decided to "assist him with his first court appearances". He continued:

> "I explained to Mr Littleboy at the time that he would need a separate firm and also a Barrister as the case would go to crown court" (sic).

He added:

> "The matters were always destined for the Crown Court and that is why I only assisted with the position on bail".

27.2 This was consistent with the evidence of Mr Bray, which the Tribunal accepted. The Respondent had attended Court on 23 November 2011 and made an application for a variation of bail conditions. He had further attended on 8 March 2012 and enabled the case to be committed to the Crown Court under s6(2) of the MCA 1980, whereas without representation it would have been dealt with under s6(1). The evidence of Mr Bray was corroborated by the evidence of KL and by the Respondent's letter to the SRA dated 31 January 2012, in which he admitted acting for KL at the November 2011 hearing. The Tribunal had no doubt that the Respondent was involved in the conduct of advocacy at both hearings as KL's solicitor. Section 12(1)(a) of the Act defines the exercise of a right of audience as a reserved legal activity. The Respondent was not authorised as a sole practitioner and KSL was not an authorised body as determined in paragraph 26.5 above. The Tribunal found this allegation proved beyond reasonable doubt.

28. **Allegation 1.3: Dishonestly, or in the alternative recklessly, represented to the SRA in a letter dated 31 January 2012 that a) he had not handled any client money b) he was not paid for acting for KL, in breach of Principles 2, 6 and 7 of the Principles.**

28.1 Although dishonesty was alleged, it was not an essential ingredient of the Allegation. The Applicant submitted that the Respondent had lied to the SRA in his letter of 31 January 2012 and that his actions were dishonest according to the combined test laid down in Twinsectra v Yardley and others [2002] UKHL 12 which requires that the person has a) acted dishonestly by the ordinary standards of reasonable and honest people and b) knew that by those standards he was acting dishonestly and had done so knowingly. The Tribunal considered the payment of £5,000 made by KL to KSL, the evidence of KL and the Witness Statement of the Respondent. The Tribunal accepted the evidence of KL. The Tribunal found that part of that payment was for services already provided and part was on account of future work, although the exact split may not have been made clear to KL. The Respondent had confirmed that he had charged KL for work undertaken although he had not particularised this work nor had he put a figure to the charges. The Tribunal found that the Respondent had therefore both handled client money and also been paid for acting for KL, and that both of the statements made to the SRA were clearly wrong.

28.2 The Tribunal considered the objective test as set out in Twinsectra. There was no doubt that the making of false statements to a regulator would be considered dishonest by the ordinary standards of reasonable and honest people. The submission to the SRA by the Respondent that he had not been paid and had not handled client money was the complete opposite of the reality of the situation. The Tribunal found that the objective test in Twinsectra was met.

28.3 The Tribunal considered the subjective test. The payment of £5,000 was made on 16 November 2011, less than two months before the Respondent received the letter from the SRA dated 11 January 2012. He had replied on 31 January 2012, having had

three weeks to prepare what was a detailed response. He only had one criminal client at the time. The Tribunal found that the Respondent knew that his representations to the SRA were entirely false and he made them with the deliberate intention of deceiving the regulator for personal gain. The Tribunal were entirely satisfied that his actions went well beyond recklessness, and that he knew he was acting dishonestly. Accordingly the combined test in Twinsectra was met and the Tribunal found beyond reasonable doubt that the Respondent had acted dishonestly. It followed from this finding that the Respondent lacked integrity (in breach of Principle 2), had not acted in a way that maintained the trust that the public places in the provision of legal services (in breach of Principle 6) and had not dealt with his regulator in an open and co-operative manner (in breach of Principle 7). This Allegation was found proved in full beyond reasonable doubt.

29. **Allegation 1.4: Appeared before Northallerton Magistrates Court on 8 March 2012 as advocate for KL having told the SRA in his letter of 31st of January 2012 a) that he did not practise as a solicitor and did not intend to and b) that the situation (i.e. previously representing KL) "was a genuine mistake… and will never happen again". In breach of principles 1,2,6 and 7 of the Principles.**

29.1 The circumstances of the Respondent's appearance on 8 March 2012 were described by Mr Bray. The proper administration of justice (Principle 1) requires that anyone carrying out a reserved legal activity be authorised to do so. The Respondent had not only carried out work that he was not authorised to do but in doing so had misled the SRA as to his intentions and had misled the Court as to his status. In Hoodless and Blackwell v SFA [2003] FSMT 0007 the Court said:

> "that a person lacks integrity if he/she acts in a way which, although falling short of dishonesty, lacks moral soundness, rectitude and steady adherence to an ethical code".

The Tribunal had no doubt that the Respondent had lacked integrity in his dealings with the SRA and in his decision to appear at Court on 8 March 2012. He was therefore in breach of Principle 2. Any solicitor advising a client, appearing before a Court and making submissions on behalf of a client when not authorised to do so and having promised the SRA that he would not do so seriously undermines the trust and confidence that the public places in the profession and the provision of legal services (Principle 6) and demonstrates a complete failure to deal with the regulator in an open and co-operative manner (Principle 7). The Tribunal found this Allegation proved in full beyond reasonable doubt.

30. **Allegation 1.5: Took money from KL and in doing so and/or in failing to pay this money back acted without integrity and/or in a way that failed to maintain the trust that the public places in him in breach of Principle 2 and/or Principle 6 of the Principles.**

30.1 The Tribunal found KL's evidence on this matter to be compelling. The Respondent had taken advantage of his relationship with KL, who was under enormous pressure at the material time, to obtain this loan. This was a client facing very serious criminal charges who was presented with the choice of advancing a significant sum of money to the Respondent or facing the prospect of being unrepresented at Court. The

Tribunal regarded this conduct as completely lacking in integrity and clearly damaging to public confidence in the provision of legal services. The failure to repay any of the money compounded matters. The Allegations of breaching Principles 2 and 6 were proved beyond reasonable doubt.

Previous Disciplinary Matters

31. On 8 July 2008 in Proceedings No 9862-2008 the Respondent had admitted acting dishonestly and failing to act in the best interests of his clients. The Tribunal had ordered that he be fined £5,000 and pay £4,250 in costs.

Mitigation

32. None.

Sanction

33. The Tribunal had regard to the Guidance Note on Sanctions (December 2015). The Tribunal assessed the seriousness of the misconduct by considering the culpability, the level of harm and any aggravating or mitigating factors.

34. The Tribunal found that the Respondent's motivation for the misconduct was personal financial gain. He had engaged in reserved legal activities without authorisation in order to earn money. In doing so and in order to do so he had misled the Court and lied to the SRA. This was not spontaneous, rather a planned course of conduct. He had breached the trust placed in him by KL, the most striking example being the circumstances in which he persuaded KL to loan him £65,000. The result was that KL had suffered financial loss and been subjected to avoidable anxiety in the course of his criminal proceedings. The harm caused to the public and the reputation of the profession was significant. The Respondent bore sole responsibility for these matters and his culpability was high.

35. The matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

> "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"."

36. The misconduct was deliberate, calculated and repeated and had continued over a period of time. KL was in a vulnerable position at the material time and the Respondent had exploited this. The Tribunal noted that this was the second occasion on which the Respondent had been before the Tribunal for acting dishonestly. The Tribunal found there to be no mitigating factors.

37. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The

Tribunal found none. The appropriate and proportionate sanction was that the Respondent be Struck Off the Roll.

Costs

38. The Applicant applied for costs of £30,578.40. The Tribunal queried aspects of the Costs Schedule, namely the "SRA Supervision Costs" of £1,350, the fact that there was no forensic investigation undertaken in this case and in those circumstances the preparation time appeared high. The Applicant submitted that the costs claimed were reasonable but conceded that there should be some reduction to reflect the fact that the hearing had concluded within a single day, having been listed for two days.

39. The Tribunal found that the amended Rule 5 Statement would not have been necessary had Allegation 1.5 been included in the original Rule 5. An Opening Note was unnecessary and disproportionate and the hearing had taken half the time originally estimated. The appropriate level of costs was £22,500 and the Tribunal ordered that the Respondent pay the costs fixed in that sum.

40. The Tribunal had regard to the Schedule of Income and Outgoings provided by the Respondent. This contained no information about capital assets and property. There was nothing contained in the information supplied to justify reducing the costs further or to make the order anything other than immediate.

Statement of Full Order

41. The Tribunal Ordered that the Respondent, STEPHEN PAUL KETTLEWELL, 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 £22,500.00.

Dated this 19th day of February 2016
On behalf of the Tribunal

A. N. Spooner
Chairman