The Respondent appealed to the High Court (Divisional Court) against the Tribunal's decision dated 21 July 2017 in respect of findings, sanction, and costs. The appeal was heard by Lord Justice Lindblom and Mr Justice Males on 24 January 2018 with Judgment handed down on 31 January 2018. The appeal was dismissed. Ramasamy v Solicitors Regulation Authority [2018] EWHC 117 (Admin.)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11570-2016

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RAJESWARY RAMASAMY Respondent

Before:

Mr J. C. Chesterton (in the chair)
Mr P. Jones
Mrs S. Gordon

Date of Hearing: 5-9 June 2017

Appearances

Andrew Tabachnik QC, barrister of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD, instructed by Anna Holdsworth, solicitor of Capsticks LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

Ian Stern QC, barrister of 2 Bedford Row, London WC1R 4BU, instructed by Peter Cadman, solicitor of Russell-Cooke LLP, 8 Bedford Row London WC1R 4BX for the Respondent.

JUDGMENT

Allegations

1. The Allegations made against the Respondent were that, as the sole principal of Thames Chambers Solicitors ("the Firm"), a recognised body she:

1.1 Contrary to Rule 8.6(c) of the SRA's Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 (the "Authorisation Rules"), employed or remunerated a person who was at the material time a struck-off solicitor and in so doing:

1.1.1 Acted in breach of Principles 2, 6, 7 and/or 8 of the SRA Principles 2011; and

1.1.2 Failed to achieve Outcomes 7.2 and/or 7.5 of the SRA Code of Conduct 2011 ("SCC").

1.2 Contrary to Rule 8.6(a) of the Authorisation Rules permitted or allowed a struck-off solicitor to be concerned in the management of the Firm and in so doing:

1.2.1 Acted in breach of Principles 7, 8 and/or 10 of the SRA Principles 2011; and

1.2.2 Failed to achieve Outcomes 7.2 and/or 7.5 of the SCC.

1.3 Permitted or allowed a struck-off solicitor to undertake litigation or work ancillary to litigation on behalf of the Firm without having the requisite permission from the SRA and in so doing:

1.3.1 Acted in breach of Principles 2, 4, 5, 6, 7 and/or 10 of the SRA Principles 2011; and

1.3.2 Failed to achieve Outcomes 5.2, 7.5 and/or 7.8 of the SCC.

1.4 Claimed fees on behalf of the Firm for work in circumstances where she was either unaware of whether that work had been carried out or where that work was carried out by a struck-off solicitor and in so doing:

1.4.1 Acted in breach of Principles 2, 4 and/or 6 of the SRA Principles 2011; and

1.4.2 Failed to achieve Outcome 1.2 of the SCC.

1.5 Claimed VAT despite not being VAT registered or having any entitlement to do so and in so doing:

1.5.1 Acted in breach of Principles 2 and/or 6 of the SRA Principles 2011; and

1.5.2 Failed to achieve Outcomes 10.2 and 10.3 of the SCC.

1.6 Permitted or allowed the use of a Firm email account, referred to in this Judgment as the "MH" account, by a person or persons other than the Respondent or those employed by her and by so doing:

1.6.1 Acted in breach of Principles 2, 4, 5, 6 and/or 8 if the SRA Principles 2011; and

1.6.2 Failed to achieve Outcome 7.8 of the SCC.

2. The Allegations above were made on the basis that the Respondent was dishonest. However, whilst dishonesty was alleged with respect to the Allegations, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

Documents

3. The Tribunal was addressed on behalf of the Respondent to the effect that many of the documents contained in the Applicant's bundle were irrelevant and prejudicial. This included a statement from JS and the Judgment of HHJ Behrens relating to the challenge to the intervention into the Firm. The Respondent did not seek an adjournment or recusal of the Members but invited the Tribunal to focus on the relevant issues and relevant documents. The Applicant told the Tribunal that the material had been included in the event that an allegation of bad faith on the part of Mr Chambers was to be repeated. The Applicant was not inviting the Tribunal to read or rely on irrelevant material and would be very clear as to which material was relied upon.

4. The Tribunal noted the submissions made by both parties. The Tribunal had read the papers prior to the hearing, as was usual. There was no application for an adjournment and/or for recusal. The Tribunal did not have regard to the Judgment of HHJ Behrens when assessing the evidence and reaching its conclusions.

5. There were some Allegations that were time sensitive in that they related to conduct that would only amount to a breach of particular Rules or Principles that took effect from a particular date. When considering such Allegations, the Tribunal confined itself to documents created after those dates.

6. The Tribunal considered all the documents that the parties referred to in the course of the hearing including:

Applicant

- Application and Rule 5 Statement dated 20 October 2016
- Witness Statement of Kate Williams with exhibits KW/1-10 dated 14 April 2015
- Witness Statement of Oliver Jones with exhibit OJ/1 dated 2 April 2015
- Witness Statement of Richard Lang dated 27 November 2015
- Witness Statement of Jonathan Chambers and exhibits dated 20 April 2017
- Opening Note and Suggested Reading List dated 31 May 2017
- Schedule of Costs

Respondent

- Answer to Rule 5 Statement dated 28 November 2016
- Amended Answer to Rule 5 Statement dated 11 January 2017

- Witness Statement of Respondent (undated)
- Further Witness Statement of the Respondent (undated)
- Witness Statements of JA (client) one dated 24 April 2017, one undated
- Witness Statements of Abdul Goffar dated 20 April 2017, 13 August 2015 and 30 September 2015
- Witness Statements of MA (client) dated 10 April 2017 and 11 January 2016
- Witness Statement of MB (client) dated 10 April 2017
- Witness Statements of FB (client) dated 10 April 2017 and 11 January 2016
- Witness Statements of KD (client) dated 10 April 2017 and 15 August 2015
- Witness Statements of SR (client) dated 10 April 2017 and 10 January 2016
- Witness Statements of ZU (client) with exhibit ZU/1 dated 10 April 2017 and 12 August 2015
- Witness Statements of NW (client) dated 10 April 2017 and 14 August 2015
- Witness Statement of AS (client) (undated)
- Witness Statements of Don Lalith Thantirimudali dated 10 April 2017 and 4 January 2016
- Preliminary Points dated 4 June 2017
- Final Submissions on behalf of the Respondent dated 7 June 2017
- Personal Financial Statement

Preliminary Matters

Tribunal's previous involvement in case where RSP appeared as a Respondent.

7. Allegations 1.1, 1.2, 1.3, 1.4 and 1.6 concerned the alleged involvement in the Firm of RSP, a struck-off solicitor.

8. RSP had appeared before the Tribunal on two occasions. In 2008 he had received a financial penalty from a Division of the Tribunal which included Mrs Gordon. In 2010 he had been struck-off the Roll of Solicitors by a Division of the Tribunal which included Mr Chesterton. At the commencement of the hearing, the parties were notified of this.

9. The Chairman confirmed that neither he nor Mrs Gordon had any recollection of the case or those hearings and that they saw no difficulty in sitting on this case.

10. Both parties confirmed that no objection was taken to them continuing to sit on this matter.

Factual Background

11. The Respondent was born in February 1961 and was admitted to the Roll on 15 January 2007. At the time of the hearing she held a practising certificate with conditions. At all material times from 13 October 2008 the Respondent was a sole practitioner trading under the style of Thames Chambers Solicitors (the "Firm").

12. The Respondent became a partner of the Firm on 4 July 2008 and from 13 October 2008, practised as a sole practitioner. At the material time the Firm practised from offices located at 2nd Floor, 303 Whitechapel High Street, London E1 1BY.

13. The Allegations arose out of concerns identified during the SRA's Forensic Investigation commenced by Jonathan Chambers on 8 May 2014. Mr Chambers prepared an Interim Forensic Investigation Report dated 17 November 2014 and a Final Forensic Investigation Report dated 15 April 2015. The Interim FIR was prepared prior to Mr Chambers' interview with the Respondent. On 19 January 2015, Mr Chambers met with the Respondent and the Final FIR incorporated the Respondent's comments.

Allegations 1.1 and 1.3

14. On attending the Firm on the first day of the Investigation it appeared to Mr Chambers that three members of staff were working from the office: Mr MH (an administrative assistant), Mr K (whose role was not known to Mr Chambers) and Mr KS, a former solicitor who had been struck off the Roll in May 2006, but in respect of whom the SRA had granted permission to the Firm to employ as a caseworker. RSP was also present on the day of the inspection. RSP was also known as Mr [S] and was referred to as such by some of the witnesses and in some documents. In most instances this was uncontroversial. In this judgment, unless otherwise specified, RSP and Mr S are the one and the same.

15. RSP was a former solicitor who was struck off the Roll on 22 September 2010. According to the Respondent, RSP became a client of the Firm in around September 2010 and she became aware that RSP was a struck-off solicitor in around March 2011.

16. Mr Chambers served on the Respondent a notice pursuant to section 44B of the Solicitors Act 1974 requiring her to produce 37 client matter files in which RSP was the claimant and other matters in which the Firm had acted for RSP. One matter was unrelated to RSP. Of the 21 matter files produced, 19 were civil litigation matters in which RSP was the client, one was an immigration matter conducted on behalf of RSP, and one was a claim to the SRA Compensation Fund on behalf of two former clients of RSP. The Applicant's case was that the Respondent had employed or remunerated RSP and permitted or allowed him to undertake litigation or matters ancillary to litigation. The Respondent denied these Allegations.

Allegation 1.2

17. At no time had there been an application by the Firm to the SRA for authorisation to employ or remunerate RSP for working on the Firm's clients' cases, or to permit RSP's involvement in the Firm's management. The Respondent accepted in interview that she was aware of the requirement to obtain the SRA's permission to engage the services of a struck off solicitor.

18. The Respondent had maintained that RSP was merely a client of the Firm and an introducer of other clients. The Applicant's case was that RSP had considerable involvement in the Firm's management, and was not merely client and introducer. The Respondent denied this Allegation.

Allegation 1.4

19. On 12 December 2011, there was a hearing in litigation between CS and a number of their former clients, including JS, in relation to outstanding legal fees owing to CS ("the CS litigation"). The former client parties had been represented by the Firm since August 2011, having been introduced by RSP. The transcript of the 12 December 2011 hearing recorded that "Mr [S], paralegal from Thames Chambers Solicitors" was the Firm's advocate at the hearing. The transcript recorded that "Mr [S]" made various submissions to the Court as to why there should not be a detailed costs assessment, in reliance on a submission that the underlying judgment was irregular. By email dated 16 December 2011, the Respondent emailed JS and his business partner KR, who was a co-party with JS, in which she stated:

> "We shall appreciate if you would please forward our fee of £600.00 for attendance in court on 12th December 2011 and drafting draft order, liaising with other side and forwarding to court for seal."

20. The Respondent denied having instructed RSP to attend the hearing. The Applicant's case was that the bill had been issued dishonestly. The Respondent denied this Allegation.

Allegation 1.5
Claim to SRA Compensation Fund

21. The Respondent made a claim for compensation to the SRA Compensation Fund on behalf of two of the Firm's clients. The claim to the Compensation Fund was deemed to be well-founded and the Respondent subsequently made a claim for the Firm's costs, which included a claim for VAT on her costs incurred in the period March to August 2012. In a letter dated 23 August 2013, which the Applicant suggested may have been mis-dated and should have read 23 August 2012, the Firm wrote to the SRA's Compensation Fund to "attach our bill of costs with the detailed narrative of the work undertaken". The Respondent's bill of costs, signed by the Respondent, stated: "Subtotal = £6,310 plus VAT and minus of Counsel is not charging VAT so the VAT is £1,122.00 GRAND TOTAL IS £7,432.00."

22. The bill further stated: "The costs estimated above do not exceed the costs which the Claimants are liable to pay in respect of the work that this estimate covers". Various queries on the overall costs claim were raised by the SRA in a letter dated 12 September 2013 which referred to the Respondent's "invoice for the costs of the application totalling £7,432 including vat". On 7 October 2013 the Respondent wrote to the SRA setting out a detailed response to the queries on costs. She did not withdraw or qualify her VAT claim in that letter.

23. On 5 November 2013, the SRA wrote to the Respondent stating that a recommendation would be made to pay £850 plus VAT in respect of the costs claim, and inquiring if the Respondent agreed to limit her claim to this sum. The Respondent replied by email dated 6 January 2014 disputing the assessment. Again, she did not withdraw or qualify the VAT element of her claim.

Claim to Mr SF

24. The Respondent had also claimed VAT when acting for RSP in the case of Mr SF. RSP had obtained a money judgment against Mr SF, and various enforcement routes were being pursued, including by way of the sale of a property owned by Mr SF.

25. In a letter dated 11 February 2013, the Respondent put forward a proposal that certain applications would not be made to the Court if particular sums were paid, including "additional costs which currently stands at £2,300.00 plus VAT". By letter dated 15 February 2013 the Respondent provided a "breakdown of our client's costs", which included a claim for "VAT @ 20% on £5,400.00 - £1,080.00". The Firm sent another letter dated 16 February 2013, seeking "further costs … which we are limiting to £300 plus VAT". On 26 February 2013, the Respondent prepared and dispatched a statutory demand for the full amount said to be due, and including a claim for VAT in the sum of £1,180.

26. Mr SF then changed solicitors and the Respondent prepared a letter to the new solicitors which stated that "VAT is chargeable on our profit costs on work done post judgment and excluding the judgment sum". This letter was sent by the Respondent to the "MH" email address (see Allegation 1.6). The Respondent contacted the solicitors again by letter dated 10 June 2013, which included a "breakdown of our settlement figure" incorporating VAT charges of £228 and £3,006.60.

27. The SRA contacted HM Revenue & Customs ("HMRC") to query the Firm's registration for VAT purposes. The statement of Richard Lang confirmed that the Firm was not registered for VAT between 9 October 2008 and 28 February 2015.

28. The Firm was not therefore registered for VAT at the material times. The Firm re-registered on 1 March 2015 after the Firm's accountant had explained in an email to the Respondent dated 24 December 2014 that "you need to register for VAT as your firm's turnover is more than the VAT threshold of £81,000". The effective date of registration was confirmed in a letter from HMRC to the Respondent dated 25 March 2015. There was no evidence of clients of the Firm being charged VAT.

29. The Respondent's case was that the claims were made in error.

Allegation 1.6

30. MH was an administrative assistant employed by the Firm. The Applicant's case was that RSP would work at the other table in MH's room. There were a number of emails from the MH email account, including to third parties, which bore the greeting or sign-off "Rajesh".

31. There were also emails that were sent by RSP using his personal, web-based, email address.

32. The Respondent stated in an interview with the SRA in December 2011 that RSP worked on his own cases using a computer that was "not networked". She denied that he had his own email address at the Firm, or that he used other staff members' email addresses, in particular the MH email account. The Respondent repeated her position in her second interview on 19 January 2015.

Applicant's Witnesses

Oliver Jones

33. Mr Jones confirmed that his Witness Statement was true to the best of his knowledge and belief. Mr Jones was a costs lawyer who had dealt with the Firm in February-March 2012 as he had been instructed to advise them in respect of a dispute over a bill of costs. He identified eight emails which had been sent to or from the MH email account with the salutations or sign-off being to or from 'Rajesh'. He had also sent an email on 12 March 2012 beginning "Hi Rajes" to the MH account.

34. In cross-examination Mr Jones confirmed that he did not have access to his file when making his Witness Statement. It had been prepared from memory and he had very limited recollection of the case, which involved approximately 19 days' work in 2012. Mr Jones recalled having a couple of conversations on the telephone with Rajes or Rajesh, assuming that they were the same person as the names were so close. The person he spoke to was a male.

Kate Williams

35. Ms Williams confirmed that the contents of her Witness Statement was true to the best of her knowledge and belief. She had attended the hearing on 12 December 2011 in the CS litigation that was the subject of Allegation 1.4, on behalf of her employers, CS. She recalled that two people from the Firm had attended. She formed this view based on the fact that one or both of them had approached her and attempted to have a discussion about making an offer. One of the individuals then addressed the Court. She could not say whether either of the people she saw at the December 2011 were the same as the representatives she had seen at a previous hearing in October 2011 at Staines County Court or at a subsequent hearing in February 2014.

36. Following the hearing, on 14 December 2011 Ms Williams had had a telephone conversation with "Mr [S] @ Thames Ch" in which she had recorded in an attendance note "Conf'd I emailed him 15 mins ago re: draft order. He hasn't rec'd it. KW re-sending. He'll call in 10 mins if still not rec'd". Correspondence continued during 2012 and 2013 involving emails from the MH email account and a telephone call from "Mr [S] @ Thames C" on 25 October 2012, "Mr [S] @ Thames Ch" on 23 April 2013 and a message left on 22 January 2013 stating "Please call Mr [S]…".

37. In cross-examination Ms Williams confirmed that she would not be able to identify the person visually, for example from pictures. She was only able to describe his appearance in vague terms.

38. When she received the telephone calls she was told by her receptionist who was on the phone. She did not know which number the calls were coming from as they went through the switchboard.

39. Ms Williams assumed that the person she spoke to on the phone on 14 December 2011 was the same person who she seen at Court two days earlier.

40. The Tribunal noted that in relation to this part of the evidence, it was not accepted by the Respondent that Mr [S] was RSP.

Jonathan Chambers

41. Mr Chambers confirmed that the contents of his Witness Statement were true to the best of his knowledge and belief. He confirmed that the Firm's accounts were in order at the time of his investigation. His 2012 investigation had included an interview with the Respondent. In that interview the Respondent had told him that RSP was drafting letters to be sent out by the Firm. Mr Chambers confirmed that no action was taken following this investigation or following his investigation in 2013. Mr Chambers did not believe he had checked to see if the computer to which RSP had access was connected to the network or not. Mr Chambers agreed that at no time had he spoken to MH, from whose email address many of the emails relevant to this case were being sent to and from. It was put to Mr Chambers that it was obvious to him that the MH email account was being used by a number of people in the Firm. Mr Chambers confirmed that this was the case.

42. Mr Chambers confirmed that he examined the appointments diary during the course of his 2012 investigation and there were appointments listed under the names 'Rajes' and 'Rajesh'. He agreed that the Respondent had told him that neither were a reference to RSP as people sometimes added an 'H' to the end of her name.

43. Mr Chambers had not seen any wage slips, record of payments or signing-in books at the office relating to RSP. Mr Chambers confirmed, in cross-examination that correspondence in which RSP appeared to be acting for a client was being sent to and from RSP's personal web-based email account and not the MH account.

The Respondent

44. The Respondent confirmed that her Witness Statements were true to the best of her knowledge and belief. She had completed her degree in 1998 and had been called to the Malaysian bar in 2002. She had then practised in Malaysia until 2004 when she came to the United Kingdom, taking the transfer exam in 2005 and holding a practising certificate from January 2007. By October 2008, when she became the sole proprietor of the Firm, therefore, she had been practising in the United Kingdom for less than two years.

45. In November 2014 she had undergone an operation, resulting in her being off work for approximately one month. She then returned to work on an intermittent basis as she recovered. Her recuperation continued into the following year.

46. While the legal system in Malaysia was different to that of England and Wales, similar rules to the SRA Principles about honesty and integrity also applied.

47. In cross examination the Respondent was asked whether it would be dishonest to allow a struck-off solicitor to use the MH email address if the purpose was to conceal his involvement in the Firm. She agreed that it would be.

48. MH was a part-time administration assistant who started in 2009. His main duties included looking after the files, answering telephone calls and sending out emails. The Firm did not use email on a regular basis until around 2011, prior to that the Firm had mainly used faxes. If the Respondent was not in the office she might dictate emails to MH over the phone. He would also open up the office most mornings. In addition to his work duties he was also studying at a college across the road from the office and when he was not working at the Firm he would be at college. In total MH was usually at the Firm for about half the week. MH was not a solicitor and was not qualified in any other way. He was not a caseworker and none of his work involved working on the actual cases themselves. The Respondent was asked why, in a statement dated 13 February 2015 in County Court proceedings, she had referred to MH as a caseworker. The Respondent explained that the word may have been wrong, he was not a legal caseworker but he would take dictation, send emails and assist with filling in some immigration forms.

49. The Respondent told the Tribunal that she referred to herself as 'Rajes' which was the short version of her name. Her name was not spelt 'Rajesh'.

50. The Respondent did not dispute that others in the Firm had access to the MH email account. However she told the Tribunal that she had never permitted RSP to use it. She had told RSP this categorically in 2012 following her interview with the SRA. It was put to the Respondent that in that interview she had denied that he had been permitted to use the email address. The Respondent explained that in 2012 not many emails were being sent generally.

51. The Respondent was taken to email correspondence between Oliver Jones and the MH account. She stated that she was aware of the exchanges because sometimes she would dictate responses to a caseworker when a response was required. She confirmed that she did not have access to the office email when she was not in the office. She was asked how she would be made aware of the contents of emails and she stated that she could not remember but it may have been by telephone. The Respondent was shown an email dated 13 March 2012 timed at 11:32am sent to the MH email account and copied to the Respondents email address. The email was from Oliver Jones and commenced with the words "Hi Rajesh". The response to that email came three minutes later at 11:35am from the MH email account to Mr Jones and was signed "rajesh". The email exchanges continued over a period of days. It was suggested to the Respondent that someone else was composing the replies coming from the Firm. The Respondent denied this and stated that it was her dictation to a caseworker or one of the solicitors at the Firm. She told the Tribunal that most of them used the name 'Rajesh' when describing her. The Respondent was asked about the evidence of Oliver Jones where he had stated that he spoke to a man called Rajesh. The Respondent stated that it could have been any male member of staff but it was not RSP. RSP never use the name 'Rajesh' but referred to himself as Mr [S].

52. The Respondent told the Tribunal that there was a person working at the Firm by the name of RS who was not an admitted solicitor but did some work experience at the Firm for a few months in 2012. He then left as he secured a job, came back again for another few months and then left and she had not seen him since. It was put to the Respondent that the SRA had asked for documents about RS's employment at the Firm and they had not been provided. The Respondent stated that she lost all her employee documentation when they had to suddenly leave the office premises. The Respondent was shown an email from the MH account dated 21 January 2013 timed at 12:39pm addressed to counsel. The email subject referred to a K, one of the people that RSP was suing. The Respondent stated that this would have been dictated by RSP to one of her staff. The Respondent was shown an email that had been sent on 22 September 2011 at 16:56 from Kate Williams to the MH email account. This had been forwarded 14 minutes later from the MH account to RSP's personal email account. It was put to the Respondent that RSP had forwarded this email to his personal email account and then used that account to communicate with the client. The Respondent did not think that this was so and suggested that he may have asked someone to send it to him rather than him sending it himself to his own personal account.

53. The Respondent was shown an email dated 23 December 2014 from an IT developer to the MH email account. The email began "Hi Mr [S]". The Respondent stated that she was not in the office around this time as it was only a few weeks after her operation. It was possible that members of staff may have asked RSP for some suggestions but that he would not have involved himself in this matter beyond that. An email of the same date from an IT director to the MH account addressed "Dear Mr [S]" was shown to the Respondent. She confirmed that RSP and the IT director knew each other well. She was asked if this related to the Firm and she stated that she assumed so. The IT director had commented, in an email of the same date timed at 14:36, sent to the MH email account addressed to "Mr [S]", that he wished the Respondent a swift recovery. The Respondent agreed that this demonstrated that the IT director knew the difference between RSP and the Respondent, who he referred to as 'Rajes'. The Respondent stated that this was probably an example of the Firm's staff engaging his help while she was absent through illness.

54. The Respondent was taken to an exchange of emails concerning the registration of Mr Goffar on the payroll. On 22 December 2014 at 18:31 there was an email from the accountant to his assistant which was copied to the MH account and to the Respondents email address stating as follows:

> "Hi Rajes, Mathew [sic] needs also needs to know the starting date of PAYE. Is it 1/10/14? He also needs your NI number, which I can give him. Please let us know which date to start payroll from".

55. At 19:44 a reply was sent from the MH account to the accountant providing Mr Goffar's National Insurance number, his full name, the number of hours he was working, his wage and his start date.

56. At 19:45 the accountant replied to the MH account asking for Mr Goffar's date of birth and address. At 19:46 a reply was sent from the MH account containing Mr Goffar's date of birth and an address in the E1 area of London. The email stated

"He is living in my house as a tenant". The Respondent confirmed that at this time that was RSP's address. It was put to the Respondent that on the face of it the person writing the email to the accountant, which was sent one minute after the request, was RSP. The Respondent denied that it was RSP and stated that Mr Goffar had sent the email. As to the wording, the Respondent stated that Mr Goffar would have to be asked about that. It was put to the Respondent that these emails demonstrated that RSP was heavily involved in the management of the Firm. The Respondent denied this.

57. In re-examination the Respondent stated that she was the person with authority to add someone to the payroll and she was the one who would be paying them. Any reference to 'Rajesh' in this email exchange would be a reference to her and not to RSP.

58. The Respondent was shown an email from the accountant to the MH account dated 17 February 2015 concerning an increase in the rate of VAT. On 15 March 2015 the Firm had sent an email from the MH account to HMRC concerning VAT. The Respondent was asked whether VAT was something that RSP was dealing with. The Respondent said it was not. It was put to her that this email did not come from the bookkeeper and did not come from the Respondent. The Respondent stated that it could have been dictated by her.

59. The Respondent confirmed that she was aware of the rules concerning the employment of struck-off solicitors. The Respondent was shown an email from (a client) to the MH email account addressed to "Mr [S]" dated 25 January 2015. It was put to the Respondent that MS thought that one way to communicate with RSP was to email him at the MH email address. The Respondent stated that this was not necessarily the case.

60. The Respondent was taken to emails between Counsel and the MH email account in January 2015. It was put to her that an email to Counsel dated 10 January 2015 was from RSP. The Respondent stated that he would have been dictating it to Mr Goffar. It was put to the Respondent that it was "plain as day" that the series of emails were sent by RSP. The Respondent stated that she had not been there at that time but that it was Mr Goffar who had sent them. She had asked him and he had admitted to her that he was the one taking dictation from RSP.

61. On 16 February 2015 a solicitor for the defendants in litigation involving the Firm wrote to the MH email account asking for details of MH, his role in the Firm and a certified copy of his photo identity. It also asked for details as to the capacity which he was working and acting client matters and has professional qualifications. The email went on to state that the reason this information was important was that their clients were making a specific allegation that RSP was using this as an alias and was using this email address. Following receipt of this email it was forwarded from the MH account to Counsel. The Respondent was asked whether this was MH himself asking Counsel "should I answer the question below". The Respondent stated that it must be one of her staff but that she did not know who. She stated that she must have been aware of this letter and asked somebody to obtain Counsel's comments. She stated that she must have therefore dictated the email or ask someone to send it. That

person would either have been MH or Mr Goffar. She was "100%" certain that it was not RSP.

62. The Respondent was taken to an email exchange dated 30 January 2015. It included an outgoing email from the MH account to a client, ARS, at 11:30am and a reply from ARS at 16:40. The Respondent was asked why the outgoing email concluded with the words "kind regards" but did not contain a name. The Respondent stated that some of the staff did not put a name when sending emails from the MH account. It was put to the Respondent that ARS was responding to RSP as the email began with the words "hi Rajesh". The Respondent denied this.

63. The Respondent was asked about an email dated 6 March 2015 from NS (a client) to the MH account which began with the words "Dear Mr Rajesh". The Respondent confirmed that this was a request for immediate action and assistance from the Firm. It was put to the Respondent that this email was intended RSP. The Respondent stated that this was not the case. The client had been introduced by an individual who is copied into the email and NS had thought that the Respondent was male. When he had subsequently attended the offices and realised his mistake they had a laugh about it. It was put to her that this was not explained in her Witness Statements. The Respondent stated that she had not focused on this particular email when drafting her responses.

64. The Respondent was taken to an email dated 9 March 2015 from SV (a client) to the MH email account which begins "Hi Rajesh" and forwards an email relevant to her case. The Respondent stated that she did not think that she had opened the file for this person.

65. The Respondent was asked about an email from the MH account to NW (a client) dated 7 March 2015 and it was put to her that this was an email from RSP to NW. The Respondent denied this. She confirmed that NW's company was a client and that NW had known RSP and the Respondent for a number of years. The Respondent stated that NW knew RSP first.

66. The Respondent was asked about documentation relating to proceedings before the Middlesbrough County Court in November 2012, in which RSP was the client. In the application notice, signed by RSP, he had stated "I have now obtained a permanent position in a solicitor's Firm working as a clerk to the solicitors and earn now £1200 per month after pay my mortgage and living expenses I'm able to save £300 per month which now I can afford to pay". The Respondent was asked which solicitors Firm RSP was referring to. She stated that she did not know and it was not her position to ask. RSP never gave her the name of the Firm as he was just a client. She now believed that the Firm was somewhere in the East Ham area but did not know the name of it. It was put to the Respondent that in her interview with the SRA on 11 December 2012, three weeks after the application to the Middlesbrough County Court she had told the SRA that she did not think that RSP was employed anywhere. The Respondent stated that she found this information out later, and was not in possession of it at the time of the interview.

67. The Respondent confirmed that she had conduct of the CS litigation from the point of instruction in August 2011. She accepted that RSP had attended the hearing in December 2011 but she had found this out later and she had not instructed him to do

so. She had not sent anybody to attend the hearing and therefore she accepted that it was RSP and not, for example, RS who had attended. The Respondent was asked why there were a number of emails between RSP from his personal email account and the client in the CS litigation. The Respondent stated that she did not know what communication took place between them. It was put to the Respondent that Kate Williams was clearly communicating with RSP in the course of her telephone communications that she had described in her evidence. The Respondent did not accept this and denied that RSP was the person dealing with the draft order. She stated that this was RS. She stated that nobody knew that RSP had attended court at that time and that RS was the person in communication with Kate Williams.

68. The Respondent was asked about the email that he had sent on 16 December 2011 to JS and KR. The Respondent was taken to the passages in her interview with Jonathan Chambers on 19 January 2015 when she had told him that she had sent that email so that JS's business partner, KR, would pay 50% of the costs of the case. The Respondent told the Tribunal that she had been tired at the time of the interview and that was not the way in which she had wished to express herself. She explained that JS knew that she had not sent anybody from the Firm to the hearing and he knew that RSP did not work for the Firm and so she could not charge him for RSP's attendance. She had told Mr Chambers that she might have made a mistake and she told the Tribunal that she had done a lot of preparation work on the case. If the bill really had included attendance at court it would come to more than £600. It was put to the Respondent that the correct position was that she had billed the two clients for £600 because she had sent RSP to court. The Respondent denied this and stated that it was a mistake. Attendance at court should not have been included in the bill. The Respondent was asked whether she had received a reply from KR asking why he had been billed in error. The Respondent stated that he had not responded but that he did not tend to do so if he was asked for money.

69. The Respondent agreed that she knew that RSP was a struck-off solicitor from around March 2011. She had read the Tribunal's judgment in around April 2011 and she confirmed that she knew of the prohibition on employing a struck-off solicitor without the consent of the SRA. The Respondent was also aware that a struck-off solicitor could not conduct litigation under the Firm's name and that she was not permitted to assist or abet a struck-off solicitor in acting for the Firm. She knew that this would be wrong at all times. It was put to the Respondent that she had agreed to take on RSP's cases on favourable payment terms. The Respondent agreed this was correct because he had approximately 30 cases at the time. It was further put to her that in return RSP agreed to help out around the office. The Respondent denied this and stated there was no agreement like that. He was simply a client and she could not and did not ask him to do office work.

70. The Respondent was asked why a document was saved in the Firm's server entitled "my last month bank statement" which contained RSP's bank account. The Respondent explained that this had been entered into the server by MH. The reason for this was that given the large number of cases that the Firm was handling for RSP, it made sense to hold this document on file rather than asking him for the same document repeatedly.

71. The Respondent confirmed that the Firm was not registered for VAT in the period 9 October 2008 to 28 February 2015. Registration was due to start in December 2014 but was delayed until March 2015. The Respondent agreed that she could not charge for VAT if she was not registered for it. She never charged any of her clients for VAT. The Respondent was taken to a letter dated 11 February 2013 sent from the Firm on behalf of RSP, the Firm's client, to the solicitors acting for Mr SF in which it was stated as follows;

> "Our client's instructions are unless an undertaking is given by you that completion will take place on 18th February 2013 and the sum of £9,000 plus interest and additional costs which currently stands at £2,300 plus VAT are paid on the said date, our client is prepared to withhold the applications until 18 February 2013, otherwise all applications will be launched tomorrow after 12 noon."

72. The Respondent confirmed that she had signed the letter on behalf of the Firm. On 15 February 2013, in the same case, the Firm had sent a breakdown of costs which included VAT at 20%. On 26th of February 2013, in the same litigation, further reference to VAT at 20% was again included.

73. The Respondent agreed that the bill of costs issued to RSP on 10 July 2013 in respect of the same costs that have been referred to above, did not include any claim for VAT. It was put to the Respondent that over a period of months she was claiming VAT from Mr SF when not registered to do so and this VAT was not reflected in the bill being issued to the client. The Respondent stated that the invoice was only raised when the monies come in.

74. The Respondent was asked about the other claim for VAT, this time from the SRA Compensation Fund. The Respondent accepted that VAT had been included in the claim. She further accepted that she had not withdrawn the VAT claim in subsequent correspondence. She explained that she was not thinking about VAT as she was too upset following the reduction in her overall claim and her focus was on addressing the points that they had raised in doing so.

75. In respect of both instances of VAT being claimed, the Respondent told the Tribunal that she was not familiar with VAT issues and at the time she was waiting for confirmation of the VAT registration number which the accountant was dealing with. She had filled in the form, sent it to the accountant to forward on and then chased him up, possibly in 2013 at which point he had told the Respondent that he had already submitted it. She subsequently spoke to a new accountant who told that the form had in fact not been submitted. She had been distracted by her absence from the office following her surgery during some of this time. It was put to her that while she may well have signed the form she knew that it had never been submitted to HMRC, something the Respondent denied.

76. The Respondent was adamant that each of these claims for VAT were genuine errors and she had not acted dishonestly. Had she wanted to cheat people into paying VAT to which she was not entitled, she had the opportunity to cheat all of her clients in this way and she had not done so. In the event she never received payment in either of these instances and so there had been no gain to her.

77. In response to questions from the Tribunal the Respondent stated that she had been following advice given to her by her accountant, specifically that she was claiming VAT in anticipation of registration. She was asked why, if that was the case, she had not started billing any of her clients for VAT. She explained that the bills issued to clients were prepared by the bookkeeper and not by her, whereas the bills that were the subject of Allegation 1.5 were prepared by her. She had never told the bookkeeper to start adding VAT to the client bills and the bookkeeper would calculate the bills based on money held on account.

78. In respect of all the Allegations it was put to the Respondent that she had acted dishonestly. The Respondent denied each of the Allegations and specifically denied that she had been dishonest in respect of any of them.

Respondent's Witnesses

Abdul Goffar

79. Mr Goffar confirmed that the contents of his witness statements were true to the best of his knowledge and belief. He was a former part-time administrative assistant at the Firm and had left his job when the Firm was closed by the SRA in mid-June 2015. He had started work at the Firm in approximately November to December 2014. His duties included keeping files in order, typing dictation and sometimes interpreting from Bengali to English for clients. He worked approximately 16 to 17 hours a week, the equivalent of two days. This was the only job he held at the time.

80. He confirmed that RSP was a "big client" of the Firm. When Mr Goffar was in the office he would see RSP most of the time. RSP used to wait in reception until one of the staff members called him in. He would then sit opposite Mr Goffar who would help him with his work. RSP has a large amount of work that involved suing people and Mr Goffar would just do the typing. Mr Goffar was shown an email sent to a barrister about one of RSP's cases. Mr Goffar recalled sending this email. He was asked whether it was dictated by RSP or whether was to Goffar had written it himself. Mr Goffar stated that most of the time RSP would "say things to me and I would write it or I would start before him just to say hello to the other side when emailing". RSP would sit across the desk and dictate the email and Mr Goffar would type it out exactly as it was being dictated. Mr Goffar told the Tribunal that if any email related to a case the Respondent would have to verify it and it would then be sent out. RSP was not allowed to come around the other side of the desk as the Respondent had made it clear that he was not allowed to do so.

81. In response to questions from the Tribunal, Mr Goffar confirmed that he would not tilt the computer screen to show RSP the email which had been composed. Normally replies to the email would be printed off for him or read out to him. All outgoing emails had to be checked by the Respondent, but when she became unwell "it did slip a bit". Mr Goffar described it as an upsetting and difficult time for everyone. Mr Goffar told the Tribunal that the MH email account was one that everybody used. It required a password which was changed every three months. He did not know other people's passwords.

82. Mr Goffar was asked about the emails concerning registration for payroll and PAYE. He confirmed that the emails related to him. Mr Goffar stated that he had sent these emails himself. This was during the time when the Respondent was in hospital. At the time email was sent RSP was in the office. Mr Goffar was asked whether RSP had helped with this email. Mr Goffar stated that he was not sure how PAYE worked and he knew that RSP used to run the Firm and so he asked him what information he needed to send. RSP told him what he needed to do. Mr Goffar wrote it on a piece of paper and then sent the email. During this exchange RSP was sitting in reception and Mr Goffar was writing down his answers on a jotter. Mr Goffar was asked why the email was phrased in the first person, specifically with reference to the address. It was put to him that it would be more logical to say "I am living…" as opposed to "he is living". Mr Goffar accepted that this would be correct but explained that he had made a lot of similar mistakes like this owing to his dyslexia.

KD

83. KD confirmed that his Witness Statements were true to the best of his knowledge and belief.

84. He had known RSP for approximately three years when KD was having some problems with estate agents and were looking for a good solicitor. RSP introduced him to JS who, in turn, introduced into the Firm. The Respondent handled his cases well. He became aware that RSP was no longer in practice, having been struck-off. He would see RSP at the Firm's offices and they would chat in the public area. He did not discuss cases with them. KD was asked whether he had any conversations about his cases, even informally. KD said that he had discussed cases before the Firm was involved but having instructed the Firm he never discussed his cases with RSP or with JS. He confirmed that RSP would come to the court hearings to offer moral support. This happened four or five times.

NW

85. NW confirmed that his Witness Statements were true to the best of his knowledge and belief.

86. NW confirmed that he was a friend of the Respondent and he would see her when she came to his area in Hounslow. He also knew RSP and had done so for approximately five or six years. He would call him Mr [S] and he knew his first name to be 'Rajesh'. This was how he would spell his name if he was writing to him.

87. NW used to work for a property management company and one of his clients was KD. Occasionally he had a need for solicitors where there was a dispute with tenants and NW would liaise with the Firm about some of those matters. He confirmed that RSP would attend some of the court hearings in relation to these to provide moral support. He was asked in cross-examination whether there were discussions about the case before the hearing started and NW confirmed that there were. He was asked whether there were discussions in which RSP would participate. NW was unable to recall. After the hearings were concluded RSP would probably make reference to how the hearing had gone but nothing more.

88. NW was shown an email from himself to the MH email address. The email began "Hi Rajesh" and NW was asked whether this email was being directed to RSP. NW said it was not, it was intended for MH. He stated that all emails were sent to Rajesh or to MH. He stated that it was a general email "otherwise it would go to Rajesh". It was pointed out to NW that Rajesh was RSP's first name but NW stated that RSP had never acted on that email.

89. In re-examination NW was asked who this email was intended for. He stated that all emails were intended for the office but RSP had no direct connection with any of the cases and he had a different email address which NW would use if he wished his advice. He was asked if he had ever sent an email to RSP using the MH email address to which he replied "not necessarily". In response to question from the Tribunal NW stated that by Rajesh he meant the Respondent not RSP.

SR

90. SR confirmed that the contents of his Witness Statements were true to the best of his knowledge and belief. He stated that he knew the Respondent as she used to be his tenant and sometimes he instructed the Firm. He told the Tribunal that they were not really still in contact. Over the last year or so the only contact he had had with her was one telephone call. He had asked how things were going and why her Firm was closed and when he had gone to visit her she had explained the reasons. He was asked whether he had written his statement himself and he said that the Respondent had written it down for him.

91. It was put to him that the only basis for concluding that RSP was not employed by the Firm was that this was what the Respondent had led him to believe. SR denied this and stated that RSP used to come to her office as he was a client. SR worked in the restaurant downstairs from the office and sometimes they would ask for food to be delivered. On some occasions he would see RSP in the office. On those occasions RSP would be sitting down where the clients would sit, opposite the Respondent. SR confirmed that he had asked the Respondent if RSP was working there. This was because most of the time RSP was there and he thought that maybe he was working with her but the Respondent had stated that he was not. It was put to him that any belief that he had about RSP's involvement came from what the Respondent had told him. SR denied this.

92. In response to questions from the Tribunal SR confirmed that when food was ordered he would take it up to the Firm. On some occasions this was just for the staff and sometimes for clients as well. If RSP wanted food he would come down to the restaurant and order it.

ZU

93. ZU confirmed that his Witness Statements were true to the best of his knowledge and belief. He was asked if he was a friend of the Respondent he stated that he was not, he was a client. He was asked how often he had visited the Firm's office and he said that this varied. He had a large dispute with a restaurant and towards the end of that case he was visiting once or twice a week. This was around 2011-2012, which was also around the time that he also encountered RSP. He would see him at the Firm sitting in

reception. By 'reception' he meant in the outside offices, which he described as the "so-called reception area".

94. It was put to him that his understanding that RSP was not employed by the Firm came from the Respondent and RSP telling him so. ZU stated that he met RSP in reception, initially exchanging passing greetings. He had asked the Respondent who this person was and she had told him that he was a client. ZU and RSP got talking and ZU established that RSP was quite knowledgeable. As a result he offered him a job helping him with his investments.

95. Before April 2014 RSP worked for him on a consultancy basis once a week for a couple of hours. He then worked for him part-time for 16 hours per week. ZU was asked whether RSP gave advice in respect of a dispute in which ZU had instructed the Firm. He said he was not helping out. If ZU needed to write an email to the Respondent, RSP would help him with that and he would read aloud any letters that were received by him. He was asked whether RSP had offered his thoughts on legal matters. ZU said that he had not. This was the Respondent's job. RSP was helping ZU with tenancy agreements and letters which ZU would dictate and RSP would type. He confirmed that he was engaged to help with some legal problems in respect of tenancy disputes and he further acknowledged that some of the legal problems would develop into issues where the Firm was instructed. There were occasions when RSP came to meetings about those cases but he did not contribute to discussions. He had attended meetings but he would not talk during them. He would not offer views before the meeting. After the meeting he would suggest possible courses of action but his main job was reading documents aloud.

96. The Tribunal asked him how it was that he was impressed by RSP's legal knowledge. ZU stated that he had met RSP two to three times and had a general conversation in the course of which he explained that he had a tenancy problem and that he had got the papers muddled up. RSP had helped put the papers into order and the conversation had progressed from there. This took place in the reception of the Firm's offices.

<u>Don Lalith Thantirimudali</u>

97. Mr Thantirimudali confirmed that his Witness Statements were true to the best of his knowledge and belief.

98. He was involved in the Firm's IT arrangements, taking over towards the end of 2014. He knew RSP as Mr [S] and met him in reception "a couple of times". He was dealing with MH as the Respondent was unwell at this time.

99. RSP would ask questions about the IT system in general. He gave his ideas about the computers that the Firm could purchase. Mr Thantirimudali was asked if he thought it was unusual for a client to be contributing his ideas to discussions about such issues. Mr Thantirimudali replied that it could be unusual but sometimes his own clients, friends or family members would contribute their ideas in a similar way.

100. Mr Thantirimudali was taken to an email he had sent on 13 March 2015 to the MH email account and the Respondent's email address. The email stated "Hi Mr [S], Please check the quote for the Dell server. Better than online price. Let me know your

thoughts please". He was asked why it was addressed to RSP. Mr Thantirimudali explained that he had accidentally referred to MH as RSP. He had meant to write "Mr [H]". He was asked to confirm that this was his evidence, which he did.

101. In re-examination, Mr Thantirimudali was asked how he referred to the Respondent. He stated that he would call her "Mrs Rajes". He would attend the offices if there was a problem but otherwise the contract provided for remote support. RSP never called him to attend the offices and RSP did not pay him.

102. The Tribunal asked Mr Thantirimudali if he discussed the purchase of a particular brand of computer with MH as opposed to RSP. Mr Thantirimudali explained that he was talking with MH about various brands and then RSP joined the conversation and gave his ideas.

AS

103. AS confirmed that his Witness Statement was true to the best of his knowledge and belief.

104. AS was asked whether there was a time in 2011 when RSP helped out in litigation against a Mr K. AS stated that it was not RSP that helped, this was the Firm. He met RSP as he was a client of the Firm. Prior to instructing the Firm he also knew RSP through other colleagues and friends.

105. He was asked why an instruction to bailiffs dated 16 March 2011 in those proceedings asked the bailiffs to keep the Firm updated by calling "Mr Rajesh S". AS did not know how this had occurred but he confirmed that RSP was not dealing with the case. RSP did assist him outside the Firm's premises on occasions. They would meet in a restaurant or in the cafe. He was shown an email sent by RSP from his personal email account to the solicitors for the other side on 15 June 2011 in which RSP had stated "I will take instructions". AS was asked if this triggered any memory about a conversation with RSP. AS stated that he was unable to remember.

106. AS was shown a court document, specifically a writ of possession which again contained RSP's name. It was put to AS that this was an example of RSP helping out. AS confirmed that they had had verbal discussions.

107. AS had never heard RSP described himself as a paralegal and indeed he had never heard that expression before this hearing.

108. In re-examination AS explained that there came a point in the proceedings when he had insufficient funds to proceed with the case through the Firm and RSP had stated that he could contact a barrister on AS's behalf. This was help that RSP was providing to him as a friend. He had told AS that he could not assist himself as he was a struck-off solicitor. He was providing suggestions and advice and he was not charging him.

MA

109. MA confirmed that his Witness Statements were true to the best of his knowledge and belief. He used to work in the restaurant downstairs and was also a former client of the Firm. He was asked in cross-examination if he would see the Respondent and RSP. He stated that sometimes the Respondent would order food and he would take it upstairs and see that RSP was sometimes there. This was mainly at lunchtimes and sometimes in the evening. On some occasions RSP would eat in the restaurant with JS. It was put to MA that his understanding about RSP came entirely from what the Respondent had told him. MA stated that he went there and the Respondent handled his personal case. He asked her who RSP was and she had told him that he was client. RSP had also informed him of this. In re-examination he was asked what RSP had said to him about not being in practice. MA stated that RSP had told that he had cases with the Firm but that he was not in practice.

MB

110. MB confirmed that the contents of his Witness Statement were true to the best of his knowledge and belief. He was a former client of the Firm and head chef of the restaurant downstairs until it closed in 2014. In cross-examination he was asked how he knew that RSP was not employed. MB stated that when he went to the Respondent's office RSP would be there in his office and on one occasion he asked the Respondent whether RSP was her employee or client and she had told him that he was client.

111. After the restaurant closed MB worked in Brighton for three months before returning to London. By this point the Firm's offices had moved to a different location. He saw the Respondent on one occasion at her new premises but did not see RSP.

FB

112. FB confirmed that the contents of her Witness Statements were true to the best of her knowledge and belief. She was a former client of the Firm and also a friend of the Respondent. She instructed her on quite a few matters and this caused her to visit the offices. She saw RSP a couple of times and spoke to him. She stated that RSP appeared to have a sound knowledge of law and property issues. She was asked what sort of things she would discuss with RSP she stated that it would be "general talk" and this would also include issues to do with law and property.

JA

113. JA confirmed that the content of his Witness Statement was true to the best of his knowledge and belief. He was a client of the Firm between 2008 - 2015. The Firm dealt with a number of matters for him and he visited the offices from time to time. JA was asked in cross-examination if his thoughts about RSP came from the Respondent. He stated that he became friends with RSP. The Respondent had told him that RSP was banned from practising.

Findings of Fact and Law

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

115. **Allegation 1.1: Contrary to Rule 8.6(c) of the SRA's Authorisation Rules for Legal Services Bodies and Licensable Bodies 2011 (the "Authorisation Rules"), employed or remunerated a person who was at the material time a struck-off solicitor and in so doing:**

1.1.1 Acted in breach of Principles 2, 6, 7 and/or 8 of the SRA Principles 2011; and

1.1.2 Failed to achieve Outcomes 7.2 and/or 7.5 of the SCC.

The relevant date in respect of this Allegation was 31 March 2012

Applicant's Submissions

115.1 The Applicant referred the Tribunal to the SDT decision in Cunnew [6134-1992]. At [44] the Tribunal had stated:

> "As to the question of "employment" – it is well established that a master and servant relationship is not a fundamental requirement to establish that a person has acted as a solicitor's clerk. The Tribunal consider that "employment" should be construed in the wider sense of "keeping busy" or "keeping occupied". It follows from that that payment of a wage is not essential to establish employment. The intention of Section 41 is that struck off solicitors be kept out of solicitors offices save in exceptional and closely regulated cases. Although not argued before them, the Tribunal believe it is useful to add that in its view the word "remunerate" should also be interpreted in its widest sense so that it not only means "to reward" or "to pay for services" but also "to provide recompense for". The payment of out of pocket expenses by the respondent was therefore remuneration"

115.2 The Guidance Notes to the Authorisation Rules stated at (xv):

> "The scope of the duty in Rule 8.6(c) goes beyond the strict employer-servant relationship (contract of service) and includes a relationship founded on a contract for services or indirect arrangements which are intended to have the effect of frustrating this rule".

115.3 The Applicant submitted that it was therefore not necessary to demonstrate that money was changing hands, what was important was that RSP was working in a solicitor's office.

115.4 The Applicant submitted that evidence of the Respondent's involvement in the Firm could be seen in a number of documents. On 30 January 2015 an email had been sent from AS to the MH email account beginning "Hi Rajesh". On 6 March 2015 an email was sent to the MH email account beginning "Dear Mr Rajesh", followed by an email on 9 March 2015 beginning "Hi Rajesh". A further example was the paperwork relating to the proceedings before the Middlesbrough County Court. This included a copy of RSP's bank statement being held on the Firm's server. RSP's name appeared on the Application Notice with the Firm's address in the section for service of documents. As part of his case RSP had stated "I have now obtained a permanent position in a solicitor's Firm working as a clerk to the solicitors…"

115.5 The Applicant submitted that the Respondent knew that she should not be employing or remunerating RSP, did so nonetheless and did so knowingly. Her actions were therefore dishonest.

Respondent's Submissions

115.6 A number of introductory submissions were made on behalf of the Respondent that were relevant to all the Allegations faced by the Respondent. The Tribunal had them in mind when considering each of the Allegations.

115.7 The Respondent reiterated that there were a number of documents contained in the papers that were irrelevant and the Tribunal was invited to take care not to have regard to those documents when considering these matters.

115.8 Some of the material referred to the Tribunal's findings in respect of RSP. On behalf of the Respondent it was submitted that there should be no guilt by association with RSP.

115.9 The Respondent was 56 years of age and had obtained her A-levels in 1992 when she was 31, her law degree in 1998 when she was 37 and her qualification in law in Malaysia in 2002. She had then qualified in the United Kingdom in 2007 at the age of 46. It was submitted that this demonstrated a level of commitment despite financial hardship which she would not have gone through only to throw it away by breaking the code of conduct or acting dishonestly. Her experiences in practice prior to having ownership of the Firm were limited. At the time that she took over the Firm she had been practising for less than three years, much of that in Malaysia. She had contacted the SRA at the time in order to ascertain if she was able to take on the role. The Firm was one that was entrenched in the community with a variety of clients. It was submitted that the standard against which it should be judged was that of a small firm with a hand to mouth existence requiring exceptional hard work and dedication to clients. English was not the Respondent's first language.

115.10 The SRA had taken no action following the 2012 investigation notwithstanding the fact that all the material now before the Tribunal had been available to the SRA prior to the 2012 interview. The accounts and the Firm's liabilities had been reviewed annually and had not been the subject of criticism. This was an important factor to bear in mind when considering the issue of dishonesty.

115.11 It was submitted that much of the case for the Applicant revolved around the spelling of the name 'Rajes' or 'Rajesh' in emails. The Tribunal could not be sure that there was no possibility of misspelling, indeed there was evidence to the contrary including from Oliver Jones who had used both spellings in his emails. Abdul Goffar had written 'Rajesh' until he was corrected. The appointments diary showed at least one member of staff spelling her name with an 'H'. Counsel for the Applicant had referred, in cross examination of Mr Goffar, to "a number of [S]s in this case". In a statement provided by MH to the SRA on 22 December 2012, MH had confirmed that he had written in the appointment book 'Rajesh' are opposed to 'Rajes'. It was submitted that MH was a potentially key witness who the SRA had not taken a witness statement from.

115.12 In relation to Allegation 1.1 specifically, there was no evidence that RSP was paid or remunerated financially. The Tribunal was asked to therefore consider what the benefit was to RSP.

115.13 It was submitted on the Respondent's behalf that the email exchange of 30 January 2015 between ARS and the MH email account was a single page with no other references in the documents. The first email did not contain a name of sender but the response was to Rajesh. It would be wrong to speculate as to whether this related to Rajes or RSP. RSP was an introducer of the client and so it was possible that the client had mistakenly thought he should be writing to him or alternatively that he had misspelt the Respondent's name.

115.14 In respect of the 6 March 2015 email from NS, it was submitted that this was, again, a single page from which the Tribunal was being invited to conclude that it must relate to RSP and that it followed that he was therefore being employed by the Respondent. Again, the sender may have mistakenly concluded that the Respondent was a male. Similar points were applicable to the email from SV of 9 March 2015.

115.15 In respect of the Middlesbrough County Court proceedings, this was RSP's own case and he was providing documents to the court.

115.16 The Tribunal was referred to the evidence of NW in which he had explained how he had intended to address the email to MH and mistakenly addressed to Rajesh.

115.17 The Respondent had called a large number of witnesses who had confirmed that they were aware that RSP was a struck-off solicitor. There was nothing wrong with the fact that they had discussed some legal issues with him. What was prohibited would be for a struck off solicitor to give that advice purporting to be under the umbrella of the Firm. None of the witnesses had suggested that he had done so and the Applicant had not put to any of the witnesses that they were lying.

<u>The Tribunal's Findings</u>

115.18 In considering this Allegation and the evidence relating to it, the Tribunal had regard to the fact that the Authorisation Rules 2011 took effect on 31 March 2012.

115.19 It was common ground and a matter of public record that RSP was a struck off solicitor. The purpose of striking-off a solicitor was the protection of the public. It was not a step taken lightly and it was only taken where the need to protect the public and the reputation of the profession was such that there was no alternative but to remove a solicitor from practice. The only circumstances, therefore, in which it was permitted for him to be in a solicitor's office was if his involvement with the Firm was approved by the SRA or he was there purely on his own personal cases as a client.

115.20 There was no evidence that RSP had been employed or remunerated financially. He was not on the payroll, there was no evidence of financial payments being made to him and there was no contract of employment. The Tribunal agreed with the description of employment and remuneration provided in Cunnew. Although that case pre-dated the Authorisation Rules, the same mischief that the Rule 8.6(c) was addressing was being considered in that case under section 41 of the Solicitors Act 1974.

115.21 It was clear that RSP was at the Firm's offices a great deal of the time. A number of the Respondent's witnesses had given evidence before the Tribunal that he was there to such an extent that they had asked the Respondent whether or not he was employed. He was also there when Mr Chambers attended the offices.

115.22 It was clear that RSP was provided with facilities to work on his own cases, using the Firm's accommodation and the assistance of caseworkers. He was able to dictate emails to staff in the Firm. The Tribunal found that while he may not have had unfettered access, he certainly had easy access to the Firm.

115.23 The Tribunal noted the evidence of FB, ZU and, by implication AS who had told the Tribunal that they found RSP to be knowledgeable about legal matters, in the case of FB, as a result of conversations that they had had with him on the Firm's premises. By affording RSP office space, dictation facilities and access to clients the Firm enabled RSP to maintain his reputation in the community as somebody who could provide legal advice notwithstanding the fact that he had been struck off. He had a deep understanding of the Firm's clients and of the practice due to his high level of presence. The Tribunal noted the Respondent's evidence that RSP had approximately 30 cases. Despite this RSP had time to advise and discuss other people's cases, often while sitting in reception and initiating those conversations. This was indicative of the amount of time RSP was spending at the offices.

115.24 The Tribunal considered not just the individual examples of RSP's involvement in the Firm but also the totality of his conversations, his presence and his ability to send emails by dictating them to caseworkers or staff members. The Tribunal's findings in respect of the MH email account are set out in more detail below in consideration of Allegation 1.6. The Tribunal was satisfied beyond reasonable doubt that the Respondent had remunerated RSP in the sense of the Cunnew case.

Principle 2

115.25 In considering integrity the Tribunal had regard to the definition set out in Hoodless & Anor v Financial Services Authority [2003] UKFTT FSM007 in which

integrity was said at [19] to connote "moral soundness, rectitude and steady adherence to an ethical code. A person lacks integrity if unable to appreciate the distinction between what is honest or dishonest by ordinary standards". In Solicitors Regulation Authority v Chan & Ors [2015] EWHC 2659 (Admin) CITATION at [48] Davis LJ stated "As to want of "integrity", there have been a number of decisions commenting on the import of this word as used in various regulations. In my view, it serves no purpose to expatiate on its meaning. Want of integrity is capable of being identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case".

115.26 The Respondent had been warned by the SRA in 2012 to take particular care over RSP's links to the Firm. The Respondent knew that he was struck off and she knew not only that she had to get approval from the SRA but also how to go about it as she had done so in respect of another individual.

115.27 The Respondent had been alert to the possibility of RSP becoming too involved as she had described, in her 2012 interview, repeatedly telling RSP that he was "not to give any suggestions" to clients of the Firm. She had gone on in that interview to accept that she thought "he overstepped, he did overstep at that time I think…".

115.28 The Respondent was responsible for taking steps to ensure that RSP did not have any involvement in the Firm beyond that of a client. However whatever steps, if any, the Respondent took were inadequate. She had not seen some of the emails which indicated that she had not been checking them. The system of the Respondent checking outgoing emails did slip according to Mr Goffar.

115.29 The Tribunal had heard evidence from a number of witnesses including the Respondent that RSP was an important client to the Firm. He had a large number of cases and he was well-connected in the local community. The Tribunal found that the Respondent's judgement had been clouded by that importance and she had lost sight of her obligations and responsibilities to ensure that he did not have any involvement in the Firm. In doing so she had allowed a situation to arise whereby he was being remunerated despite being a struck-off solicitor.

115.30 The Tribunal was satisfied beyond reasonable doubt that the Respondent had lacked integrity and had therefore breached Principle 2.

Principle 6

115.31 The regulatory system was designed to protect the public and a fundamental part of that was that if a solicitor was removed from practice they should not be continuing to operate in a Firm of solicitors without SRA approval. The public could not have trust in the provision of legal services if those safeguards were not maintained by practising solicitors. The Tribunal had also found that the Respondent had lacked integrity in permitting this situation to arise and persist. The Tribunal was satisfied beyond reasonable doubt therefore that the Respondent had breached Principle 6.

Principle 7

115.32 The Tribunal had found for reasons set out above that the Respondent was in breach of Rule 8.6(c) and therefore she had clearly failed to comply with her legal and regulatory obligations. The Tribunal was satisfied beyond reasonable doubt that the Respondent was in breach of Principle 7.

Principle 8

115.33 By failing to comply with the Authorisation Rules and, by doing so, failing to comply with her legal and regulatory obligations, the Tribunal was satisfied beyond reasonable doubt that the Respondent had failed to run her business and carry out her role in the business effectively and in accordance with governance and in particular with sound financial and risk management principles. The risks associated with a struck off solicitor having easy access to the Firm were considerable. The Tribunal was satisfied beyond reasonable doubt that the Respondent was in breach of Principle 8.

Outcome 7.2

115.34 This Outcome required the Respondent to have systems and controls in place in order to achieve compliance with the Principles, Rules and Outcomes and other requirements of the Handbook. The Tribunal had found for reasons set out above that the Respondent had failed to comply with the relevant Principles and rules therefore was satisfied beyond reasonable doubt that she had failed to achieve Outcome 7.2.

Outcome 7.5

115.35 The Authorisation Rules 2011 were made under the Solicitors Act 1974 and were therefore secondary legislation. Having found the Respondent to have breached the Authorisation Rules, the Tribunal was satisfied beyond reasonable doubt that she had failed to comply with legislation applicable to her business and had therefore failed to achieve Outcome 7.5.

Dishonesty

115.36 The Tribunal considered the question of dishonesty in accordance with the combined test laid down in Twinsectra v Yardley and others [2002] UKHL 12 which required 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.

115.37 The Tribunal considered the objective test. The remuneration of a struck off solicitor who also happened to be a significant client of the Firm, particularly in circumstances where there had been a prior warning about precisely this issue with precisely this struck-off solicitor, was conduct that the Tribunal was satisfied beyond reasonable doubt would be regarded as dishonest by the ordinary standards of reasonable and honest people.

115.38 The Tribunal considered the subjective test. As stated above the Tribunal had found that the Respondent's judgement had been clouded by her reliance on RSP as a client. The Tribunal regarded this conduct as reckless and foolish. However the Tribunal could not be satisfied beyond reasonable doubt that the Respondent herself realised that by the standards of reasonable and honest people her conduct was dishonest. The second limb of the Twinsectra test was therefore not met and the Tribunal did not find dishonesty proved in respect of Allegation 1.1.

115.39 Allegation 1.1 was therefore proved in full with the exception of dishonesty which was found not proved.

116. **Allegation 1.2: Contrary to Rule 8.6(a) of the Authorisation Rules permitted or allowed a struck-off solicitor to be concerned in the management of the Firm and in so doing:**

1.2.1 Acted in breach of Principles 7, 8 and/or 10 of the SRA Principles 2011; and

1.2.2 Failed to achieve Outcomes 7.2 and/or 7.5 of the SCC.

Applicant's Submissions

116.1 The Applicant referred the Tribunal to Law Society of England and Wales v Shah [2015] 3 All ER 522. At [56] Tim Kerr QC, sitting as a Deputy High Court Judge stated:

> "It shows that Mr Shah advised on or influenced recruitment decisions made by Ms Fosuhene on behalf of Trinity, in the case of Mr Akondan and Mr Naveed; that he assisted Trinity in its response to Mr Mansoori's complaint; that he 'has a tendency to volunteer advice' (in his own words); that he advised on the acquisition of office premises by Trinity; that he had a telephone extension number at Trinity; that he was physically working from within the firm's office premises from late January to March 2014; that he was party to an arrangement whereby Ms Fosuhene was shown as an employee of Bradwell; and that he was the author of legal documents prepared on behalf of Trinity"

116.2 At [57] Tim Kerr QC went on to find:

> "That is sufficient to demonstrate that he had a management role at Trinity and that the latter was therefore in breach of its obligation to prevent him having such a role".

116.3 The Applicant submitted that the involvement by RSP in registering Mr Goffar for PAYE, his involvement in the accounts, including the reference to VAT in the emails of 17 February and 15 and 15 March 2015 in particular demonstrated that the Respondent had permitted or allowed RSP to become concerned in the management of the Firm in a similar way to that described in Shah. The Applicant submitted that RSP had played a role in the Firm that amounted to a management role and that the Respondent had permitted or allowed this knowingly and thereby dishonestly.

Respondent's Submissions

116.4 On behalf of the Respondent it was submitted that there was no evidence that RSP has played any part in advising or influencing recruitment, moving of premises or acquisition of new premises. There was no evidence that RSP had been given a private telephone line at the Firm or a private email address. He was not there physically every day and there was no evidence that the reason for his attendance when he was there was anything other than to attend to his own matters. He was a client of the Firm and he paid fees to the Firm for the services. His name did not feature on any notepaper and he did not have access to bank accounts or cheque-books. In respect of the PAYE it was submitted that it was clear that it was the Respondent who was responsible for making the decision to set someone up PAYE the Tribunal was referred to Mr Goffar's evidence concerning the reason for the grammatical error in which he wrote "he is living in my house". In respect of the tax matters the accountant was writing to the Respondent with regards to registration for VAT and this had been sent to the MH email address.

116.5 As regards the IT matters this occurred at the time when the Respondent was unwell but it was submitted that the decisions were still being taken by the Respondent in respect of which IT systems and hardware to purchase.

The Tribunal's Findings

116.6 The Tribunal considered carefully the wording of Rule 8.6(a) which stated that:

> "An authorised body must ensure that;
>
> (i) any manager or owner of the authorised body; or
> (ii)
> (iii) any manager of a body corporate which is a manager of the authorised body
>
> has been approved by the SRA under part 4."

116.7 The Tribunal invited further submissions from the parties in order to obtain clarity as to the basis on which Allegation 1.2 was put, given that RSP was not said to be a manager of the Firm rather that he was concerned in the management of the Firm. The Applicant submitted that the examples given in Shah were applicable in this case and the Tribunal could therefore safely conclude that RSP was concerned in management without actually becoming a manager. There were no specific further submissions on this point on behalf of the Respondent other than to submit that if the Tribunal were having difficulty finding the matter proved then it should be found not proved.

116.8 The Tribunal considered the examples given in Shah both individually and cumulatively. The assessment of an individual's role in management was fact specific. RSP had clearly had some involvement in decisions relating to the purchase of computers. However this had consisted of him offering advice on management business. He was never elevated to the position of making decisions such as would make him a manager as described by Rule 8.6 (a).

116.9 In respect of the PAYE, this clearly demonstrated involvement in the Firm and access to the emails (to be discussed in relation to Allegation 1.6) but it was limited, in that instance, to the provision of information to the accountant in order to set Mr Goffar up on the PAYE system, a decision that only the Respondent was responsible for. The same was true in respect of the VAT and accounting emails.

116.10 The Tribunal could not be satisfied beyond reasonable doubt that RSP's involvement was such that he was concerned in management or that he had become a manager for the purposes of Rule 8.6 (a). The Tribunal therefore found Allegation 1.2 not proved.

117. **Allegation 1.3: Permitted or allowed a struck-off solicitor to undertake litigation or work ancillary to litigation on behalf of the Firm without having the requisite permission from the SRA and in so doing:**

1.3.1 Acted in breach of Principles 2, 4, 5, 6, 7 and/or 10 of the SRA Principles 2011; and

1.3.2 Failed to achieve Outcomes 5.2, 7.5 and/or 7.8 of the SCC.

The relevant date in respect of this Allegation was 6 October 2011

Applicant's Submissions

117.1 The Applicant referred the Tribunal to the definitions of "reserved legal activity" as set out in section 12 of the Legal Services Act 2007 ("LSA 2007"). Section 12(1)(b) included the 'conduct of litigation' as a reserved legal activity. The term of 'conduct of litigation' was defined Schedule 2, part 4 of the LSA 2007 as follows:

> "(1) The "conduct of litigation" means –
>
> (a) The issuing of proceedings before any court in England and Wales
>
> (b) The commencement, prosecution and defence of such proceedings and
>
> (c) The performance of any ancillary functions in relation to such proceedings (such as entering appearances to actions)."

117.2 The Applicant submitted that the Respondent had permitted or allowed RSP to conduct litigation by attending the hearing in December 2011, dealing with the costs dispute of the following year and by handling NW's case in 2015. The Respondent had done so knowingly and had therefore acted dishonestly.

Respondent's Submissions

117.3 The Tribunal was referred to the Respondent's submissions in respect of Allegation 1.1. It was submitted that the Respondent could not have known that RSP had attended the hearing on 12 December 2011, although it was accepted that the evidence pointed to him having attended. Kate Williams had agreed that this was the only occasion on which the Firm had not sent Counsel, as the client had not wished to pay for someone to attend. Counsel had been present at the previous hearing in

October 2011 and at a subsequent hearing in February 2014. The person who attended on 12 December 2011 did not appear to have attended again and it was submitted that he had not made the subsequent phone calls to Kate Williams in connection with the draft order. The Tribunal was reminded of Kate Williams statement in which she stated "from 16 January 2012 until around mid-October 2012 most of the email communications with Thames Chambers were to and from [MH] some of which were signed off from [MH] and others from "Rajes". Occasionally I received an email from rajes.wary@tc-solicitors". There was no reference to Mr [S] (RSP) after January 2012.

117.4 The letter from the Firm dated 7 September 2011 to CS invited CS to "kindly forward all future correspondence on the above matter to our Firm".

117.5 The Respondent's specific submissions in respect of the email of 16 December 2011 requesting payment for attending the hearing on 12 December 2011 are set out below in relation to Allegation 1.4.

117.6 The Tribunal was referred to the Witness Statement of KD in which he had stated "Mr [S] would join in the discussions about the cases from time to time but he did not present the cases in any way". He further stated "I also knew that Mr [S] was himself a client of Thames Chambers. It was not surprising to me that Mr [S] spent time at the offices of Thames Chambers but he was not involving himself in my affairs as an employee of Thames Chambers". He went on to state "although I've discussed my matters with Mr [S] however he did not involve himself in my cases; they were handled by Mrs Ramasamy".

117.7 The Tribunal was reminded of the evidence of SR. In particular in his Witness Statement he had stated "I speak to him about legal issues myself and found him to have good knowledge of the law. Obviously I and my partners all knew that any discussion we had with Mr [S] have nothing to do with Thames Chambers solicitors as he was not employed by the firm."

117.8 In respect of NW the Tribunal was referred to his witness evidence including the following section from his Witness Statement "[KD] made some initial payment to Thames Chambers to carry out work. [KD] mistakenly was handing over the payment to Mr [S] when Mr [S] clearly stated that he does not work for the Firm and is only an introducer and the payment should be made to Mrs Ramasamy. [KD] then handed the payments to Mrs Ramasamy who gave a receipt for the payment." The Tribunal was referred to the letter from ZU dated 23 March 2015 addressed "to whom it may concern" in which it stated that RSP was an employee of the company which ZU was managing director. This confirmed that RSP's employment started from 1 April 2014. It was submitted that this letter could only be requested by the Respondent due to her concern to ensure that she could provide material to RSP based ZU's instruction. The Applicant had not suggested that these witnesses were telling lies.

<u>The Tribunal's Findings</u>

117.9 In considering this Allegation and the evidence relating to it, the Tribunal had regard to the fact that the relevant date was 6 October 2011 onwards.

117.10 The transcript of the hearing on 12 December 2011 showed a Mr [S] attending on behalf of the Firm. He made detailed submissions on technical legal points. These were not submissions that would have been made by a work experience student.

117.11 The Tribunal was satisfied beyond reasonable doubt that RSP had attended the hearing on 12 December 2011. The Respondent had not disputed this to be the case, albeit her position was that she was unaware of it at the time. The Tribunal accepted the evidence of Kate Williams that RSP had subsequently liaised with her concerning the drafting of the draft order. This was clear from the telephone attendance notes. Kate Williams had not been dealing with the Respondent in those telephone conversations. The attendance notes referred to "Mr".

117.12 The Tribunal rejected the suggestion that the conversation that Kate Williams had on 14 December 2011 was with RS, the work experience placement. It was wholly implausible that a person on work experience would be drafting an order. Subsequent telephone attendance notes were clearly notes of conversations between Kate Williams and RSP. The Tribunal noted that on 23 April 2013 Kate Williams had received a phone call in which the person she was speaking to, described as Mr [S] stated that he was "in the middle of something urgent at the moment" and that he was on a "2 day trial Thurs & Fri". Again these was clearly not the sort of activities that work experience student would have been undertaking. The Tribunal was again satisfied that the person that Kate Williams was speaking to was RSP. They were discussing matters that were at the very least ancillary to the conduct of litigation.

Principle 2

117.13 The Tribunal found that the Respondent had permitted or allowed RSP to conduct litigation or work ancillary to litigation by failing to prevent it. By remunerating a struck off solicitor, as proved in relation to Allegation 1.1, she had allowed a situation to arise in which she did not have control over what he was doing. The reasons for this were set out in the Tribunal's analysis of Allegation 1.1. Tribunal was satisfied beyond reasonable doubt that the Respondent had allowed her judgement to be clouded to such an extent that she had lacked integrity. The Tribunal found the Respondent to have breached Principle 2.

Principle 4

117.14 The Tribunal found that it could never be the best interests of the client to permit allow a situation to arise whereby a struck-off solicitor was undertaking litigation on their case, including presenting himself at court as a paralegal and conducting negotiations with the other side. The Tribunal was satisfied beyond reasonable doubt that the Respondent had therefore failed to act in the best interests of her clients and was in breach of Principle 4.

Principle 5

117.15 Failing to act in the best interests of her clients was clearly inconsistent was providing them with a proper standard of service and for the reasons set out above Tribunal was satisfied beyond reasonable doubt that the Respondent was in breach of Principle 5.

Principle 6

117.16 In the same way that the trust the public placed in the provision of legal services was undermined by the remuneration of a struck off solicitor as detailed in Allegation 1.1, permitting or allowing that struck off solicitor to undertake litigation undermined that trust. The Tribunal was therefore satisfied beyond reasonable doubt that the Respondent had breached Principle 6.

Principle 7

117.17 The Tribunal, having found the factual basis of this Allegation proved, was satisfied beyond reasonable doubt that the Respondent had therefore clearly failed to comply with her legal and regulatory obligations. The breach of Principle 7 was therefore proved.

Principle 10

117.18 The Tribunal noted that the subject matter of the hearing on 12 December 2011 and the subsequent correspondence related to the issue of costs. Clearly if that matter went against the clients of the Firm, this would have a potentially negative impact on them financially. The Respondent had clearly, therefore, failed to protect clients' financial interests by permitting or allowing RSP to have involvement in that work. The Tribunal was satisfied beyond reasonable doubt that the Respondent was in breach of Principle 10.

Outcome 5.2

117.19 The Tribunal, for reasons set out below, had not found the Respondent to be dishonest. In considering Allegation 1.4 the Tribunal had considered that there was a possibility that the Respondent had not known at the time that RSP had attended the hearing on 12 December 2011. The Tribunal found that the word "complicit" required it to be satisfied beyond reasonable doubt that the Respondent deliberately set out to deceive or mislead the Court. The Tribunal was not satisfied that the Respondent's level of knowledge at the material time was such that this could be proved to the required standard. The Tribunal therefore found the breach of Outcome 5.2 not proved.

Outcome 7.5

117.20 The Respondent had clearly not complied with the legislation applicable to her business, specifically the prohibition on struck off solicitors conducting litigation without SRA approval. Tribunal was satisfied beyond reasonable doubt she had failed to achieve Outcome 7.5.

Outcome 7.8

117.21 If there had been a proper system in place for supervising client matters there would have been no way that she would not have known that RSP was conducting litigation and or work ancillary to litigation. If the Respondent knew that RSP was doing this work then clearly there was no system in place. If she did not specifically know then

this, too, demonstrated the absence of a system and certainly one that was adequate. In either scenario the Tribunal was therefore satisfied beyond reasonable doubt that the Respondent failed to achieve Outcome 7.8.

Dishonesty

117.22 The Tribunal again approached the issue of dishonesty in accordance with the test set out in Twinsectra.

117.23 The Tribunal considered the objective test. The Respondent had permitted or allowed RSP to undertake litigation, including on his own cases. This had occurred in circumstances where there had been a prior warning about his involvement. As a result clients had not been exposed to risk. This was conduct that the Tribunal was satisfied beyond reasonable doubt would be regarded as dishonest by the ordinary standards of reasonable and honest people.

117.24 The Tribunal considered the subjective test. As stated above the Tribunal had found that the Respondent's judgement had been clouded by her reliance on RSP as a client. The Tribunal regarded this conduct as reckless. The Respondent ought to have been aware that he was doing this work and it was quite possible that she was aware. However the Tribunal could not be satisfied to the required standard, in other words, beyond reasonable doubt that the Respondent herself had specific knowledge that he was undertaking litigation. There was a possibility that she did not know this at the time. The Tribunal could not, therefore, find beyond reasonable doubt that the Respondent realised that by the standards of reasonable and honest people her conduct was dishonest. The second limb of the Twinsectra test was therefore not met and the Tribunal did not find dishonesty proved in respect of Allegation 1.3.

117.25 Allegation 1.3 was therefore proved in full save for the allegation of dishonesty and for the alleged failure to achieve Outcome 5.2.

118. **Allegation 1.4: Claimed fees on behalf of the Firm for work in circumstances where she was either unaware of whether that work had been carried out or where that work was carried out by a struck-off solicitor and in so doing:**

1.4.1 Acted in breach of Principles 2, 4 and/or 6 of the SRA Principles 2011; and

1.4.2 Failed to achieve Outcome 1.2 of the SCC.

Applicant's Submissions

118.1 The Applicant's primary submission was the Respondent instructed RSP to attend the hearing on 12 December 2011 and he duly made representations on behalf of the client and his fellow claimants. Four days later she sent a bill to the clients for that hearing despite RSP being a struck-off solicitor. The alternative was that she knew nothing about RSP attending in which case the she had charged for attendance at a hearing where there had, to her knowledge, been no attendance.

118.2 The Applicant referred the Tribunal to the transcript of the hearing which recorded the claimant as being represented by "Mr [S] (Paralegal from Thames Chambers Solicitors, 303 Whitechapel Road, London E1)". In her interview on 19 January 2015 the Respondent had denied sending RSP, or indeed anyone, to attend the hearing with the client.

118.3 The Applicant relied on the evidence of Kate Williams as to RSP's involvement with the preparation of the draft order including in the course of telephone conversations in the days following the hearing.

118.4 The Applicant submitted that the Respondent had billed her clients for work undertaken by a struck off solicitor and had done so knowingly, thereby acting dishonesty. Alternatively if she did not know that RSP had attended Court then she had billed for work that she did not believe to have been done at all, which was also dishonest.

Respondent's Submissions

118.5 It was submitted on behalf of the Respondent that the work undertaken was preparation and that this was what she had billed for. She had made an innocent error in referring to "attendance" but she had done £600 worth of work on the case and was therefore entitled to raise a bill in that sum.

118.6 The Respondent had no direct knowledge as to whether RSP had attended but it was acknowledged that he must have done based on the evidence. Kate Williams had confirmed that she would not be able to recognise the person she saw at Court. The conversations she had with the person at the Firm did not specifically reference anything that had been said in Court.

118.7 The submissions about dishonesty referred to in relation to Allegation 1.1 applied to all Allegations including this one.

The Tribunal's Findings

118.8 The Tribunal examined the wording of the claim for costs contained in the email of 16 December 2011 with reference to the description of work done. It referred to "attendance in Court on 12th December 2011 and drafting draft order, liaising with the other side and forwarding to court for seal". The wording was clear. It was referring to the attendance at Court, including the date of the hearing, and the subsequent work that was required following that hearing. This described a specific phase of the case and made no reference to preparation. In her evidence before the Tribunal the Respondent had referred to attending a Case Management Conference. There was no reference to that in the email of 16 December and there was no suggestion that this was the hearing that had taken place on 12 December 2011.

118.9 In her evidence to the Tribunal the Respondent had stated that the bill involved "paperwork and bundles preparation". This was work that would be done in advance of a hearing and was distinct from drafting the draft order, which would be done after the hearing.

118.10 The Tribunal considered the Respondent's interview on 19 January 2015 and found the following exchanges to be particularly relevant:

Extract 1:

"JC: Enclosing, you're charging your client £600.00 for attending Court, and the transcript clearly shows that it was Mr [S], paralegal from Thames Chambers?

RR: I don't know which Mr [S] whether its [RSP] or any [S] went. I have no idea whether [RSP] went".

118.11 This suggested that RS may have attended the hearing. As discussed in relation to Allegation 1.3 above, the Tribunal had rejected any possibility that it was RS who had attended the hearing.

Extract 2:

"JC: Yeah so you have charged your client £600.00
RR: mmm
JC: for going to Court
RR: Not just that, drafting order and…the other side so those are all the, it's together yeah"

118.12 It was clear from this extract that the Respondent was not denying that the bill was for attendance, but was explaining that it was for the post-hearing work as well. This was inconsistent with her oral evidence that it was for the pre-hearing work.

Extract 3:

"JC: Why on earth would you bill your client for attending that hearing?

RR: It was him, [JS] was always asking me to send an email because saying that attendance, Court or any drafting, any work done, he wanted his partner to pay his share of 50% unless I send anything, he doesn't pay."

118.13 This extract suggested that the reason for the issuing of the bill was at the request of JS in order that his business partner, also a client of the Firm, would pay 50% and that this included 'attendance' at Court.

Extract 4:

""JC21" - So the words for attendance in Court is incorrect, that's not right?

RR No. I have done the drafting and the other work, so actually there was no attendance from my office."

118.14 The reference to 'drafting' in the email of 16 December 2011 was specific to post-hearing work. The Respondent's own evidence was that this post-hearing work was undertaken by RS. The Tribunal had rejected that but it had done so by finding that RSP was the person who was liaising with Kate Williams in the drafting of the order. There was no suggestion that it was the Respondent who had drafted the draft order. This interview extract either referred to pre-hearing work, in which case it was inconsistent with Extract 2 or it was referring to post-hearing work in which case it contradicted the Respondent's evidence that RS had done that work.

118.15 The Tribunal was satisfied beyond reasonable doubt that the bill was for 'attendance' and subsequent drafting and not for preparation. The Tribunal rejected the Respondent's evidence that it was in reality a bill for preparation.

118.16 There were two possible scenarios. The first scenario was that the Respondent knew that RSP had attended Court. The second scenario was that the Respondent, at the time of issuing the bill, believed that nobody had attended Court. If the first scenario was correct then the Respondent had issued a bill for attendance at Court by a struck-off solicitor. If the second scenario was correct then the Respondent had issued a bill for an attendance at Court that, in her mind, had never occurred. The Tribunal was satisfied beyond reasonable doubt that these were the only two plausible scenarios and that one or other of them had occurred.

Principle 2

118.17 The Tribunal was satisfied beyond reasonable doubt that RSP had attended Court on 12 December 2011. There was no doubt that he was a struck off solicitor and that the Respondent knew he was a struck off solicitor. Either the Respondent knew he had attended, in which case she had issued a bill for services undertaken by a struck-off solicitor, or she did not know he had attended in which case she had billed for work she did not believe to have been undertaken. Whichever scenario applied, the Tribunal was satisfied beyond reasonable doubt that the Respondent had lacked integrity and breached Principle 2.

Principle 4 and Outcome 1.2

118.18 The Tribunal found that the issuing of a bill in either scenario, was inconsistent with acting in the best interests of the Respondent's clients. The Tribunal was satisfied beyond reasonable doubt that the Respondent had breached Principle 4 and had failed to achieve Outcome 1.2.

Principle 6

118.19 The trust the public placed in the provision of legal services depended on solicitors acting with integrity and honesty. The issuing of a bill in either scenario meant that this trust was severely diminished. The Tribunal was satisfied beyond reasonable doubt that the Respondent had breached Principle 6.

Dishonesty

118.20 The Tribunal again applied the test in accordance with Twinsectra.

118.21 The Tribunal considered the objective test in respect of each of the two scenarios identified.

118.22 If the first scenario had occurred then the issuing of a bill for work undertaken by a solicitor who had been struck-off would be dishonest by the ordinary standards of reasonable and honest people.

118.23 If the second scenario had occurred then the issuing of a bill for work that had not, in the Respondent's mind, been done would also be dishonest by the ordinary standards of reasonable and honest people.

118.24 The objective test was therefore met in either scenario.

118.25 In applying the subjective test to each scenario, the Tribunal did not make a finding as to which scenario had occurred; only that it must have been one of them. The Tribunal was satisfied beyond reasonable doubt that the Respondent knew which of the two scenarios had occurred. In the first scenario she would have known that she was issuing a bill for work undertaken by a struck off solicitor. The Tribunal was satisfied beyond reasonable doubt that she would have known that this was dishonest by the ordinary standards of reasonable and honest people. In the second scenario the Respondent would have known that she was issuing a bill for attendance when there had been, to her mind, no such attendance. The Tribunal was satisfied beyond reasonable doubt that the Respondent would have known this was dishonest by the ordinary standards of reasonable and honest people. In either scenario the Tribunal was satisfied beyond reasonable doubt that the subjective test for dishonesty was met.

118.26 The distinction between this Allegation, where the Tribunal had found dishonesty, and Allegation 1.3, where it had not, was that this related to a specific act on the part of the Respondent personally. Allegations 1.1-1.3 and 1.6 related to the generality of RSP's involvement with the Firm and on that the Tribunal had not been satisfied to the required standard that the Respondent met the subjective test under Twinsectra. However in this case the Respondent had personally issued a bill to her clients for work that either she believed had not been done or that she knew had been done by a struck off solicitor.

118.27 The Tribunal therefore found beyond reasonable doubt that in issuing the bill the Respondent had acted dishonestly.

118.28 Allegation 1.4 was proved in full.

119. **Allegation 1.5: Claimed VAT despite not being VAT registered or having any entitlement to do so and in so doing:**

1.5.1 Acted in breach of Principles 2 and/or 6 of the SRA Principles 2011; and

1.5.2 Failed to achieve Outcomes 10.2 and 10.3 of the SCC.

Applicant's Submissions

119.1 The Applicant submitted that the claims for VAT should not have been made. If the Respondent knew that she was not entitled to charge VAT, as evidenced by the fact that she had not charged her clients, it begged the question as to why VAT was claimed in just these two instances.

119.2 The Applicant submitted that the Respondent had acted dishonestly in making the VAT claims. The Respondent had told the solicitors for the other side that VAT was payable but her bill to RSP for the same work did not include VAT. In respect of the claim to the SRA, the Respondent had not withdrawn or corrected the claim despite having had more than one opportunity to do so. The Tribunal was invited to reject the Respondent's explanations on these points.

119.3 The Respondent had demonstrated manifest incompetence. The Applicant referred the Tribunal to Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin) and Solicitors Regulation Authority v Libby [2017] EWHC 973 and submitted that the level of incompetence here was of a similar magnitude. The incompetence was so serious as to amount to a lack of integrity and to undermine the trust the public placed in the Respondent and in the profession.

Respondent's Submissions

119.4 On behalf of the Respondent it was submitted that she had never denied claiming VAT in error. The Respondent had anticipated that her turnover may cross the VAT threshold and so she had sought to register before this happened rather than afterwards. This was an example of her acting responsibly. She had obtained the form, which the accountant had completed, she had signed it and returned it to the accountant. This had been done on 1 May 2013. The accountant did not send the form to HMRC, but the Respondent had believed that VAT should be charged at that time. As to why she had not, therefore, charged clients VAT from this point, this was the result of "disorganised thinking" and not dishonesty.

119.5 One of the claims was to the SRA compensation fund. If the Respondent was trying to claim money that she was not entitled to, it would have been illogical to attempt to do so from the regulator. In any event there could be nothing dishonest about claiming the VAT unless there was an intention to steal the monies. There was no evidence of this, indeed the sums claimed were never in fact paid and the Respondent had stated that she would have repaid any monies paid to her in error.

The Tribunal's Findings

119.6 The Respondent had admitted the factual basis of this Allegation. She had claimed VAT on the two occasions described above. At the time of claiming she was not registered for VAT and therefore should not have claimed it.

Principle 2

119.7 The Respondent had actively engaged with the accountants as to whether to register herself for VAT or not. The accountants had written to her and had proceeded to

complete the form, which she signed and sent back on or about 1 May 2013. The Tribunal accepted the Respondent's evidence that she assumed they had submitted the form to HMRC. The Respondent therefore believed, erroneously, that she should start to add VAT in anticipation of becoming registered. Her evidence on this point was consistent with her Witness Statements.

119.8 The Respondent had not told the bookkeeper to prepare the bills to clients any differently. This explained the inconsistency in RSP not being charged VAT despite the claim being made from the other side. The Tribunal considered the definition of lack of integrity in Hoodless. The Tribunal was not satisfied that the Respondent's errors in this regard amounted to a failure of moral soundness, rectitude and steady adherence to an ethical code. The Tribunal found the alleged breach of Principle 2 not proved.

Principle 6

119.9 The claiming of VAT was clearly an error. The Tribunal considered whether that error amounted to manifest incompetence of type described in Libby and Iqbal. In Libby the Court stated at [42] "Whether incompetence amounts to a breach of the Principles, and Principle 6 in particular, and what the appropriate sanction would be for any such breach, will depend upon all the circumstances of the case". In that case the solicitor had received over £450,000 over a 3 month period, spending only £54,500 of that on eligible legal expenses resulting in over £400,000 being spent for purposes not permitted by the written agreement which he had signed. The Court had concluded; "The public could not be expected to have confidence in the solicitor's handling of their own affairs if, in the context of the firm's affairs, the solicitor borrowed large sums of money for his firm and then failed, through carelessness, to ensure that the monies were properly used".

119.10 In this case the Respondent had made two claims for VAT when she ought not have done so, but this was in the context of a belief that she was awaiting VAT registration.

119.11 The Respondent had not in fact received the VAT which she had claimed in error. In an email sent to Counsel on 16 February 2015 she had stated "No I was not entitled to charge vat BUT if I had recovered it I would have paid it". As discussed above, the Tribunal found these to be two bona fide errors made by the Respondent. They were mistakes but they did not amount to manifest incompetence and there was no evidence of bad faith or impropriety.

119.12 The trust and confidence placed in the Respondent and in the provision of legal services would not have been undermined in the circumstances of this case. The Tribunal found the alleged breach of Principle 6 not proved.

Dishonesty

119.13 In light of the Tribunal's findings that the breaches of Principle 2 or 6 were not proved, the Tribunal was not satisfied that the Respondent had acted dishonesty by the standards of reasonable and honest people. The criteria for the objective limb of the Twinsectra test was not met. The Tribunal was therefore not required to consider the second limb. Dishonesty was therefore not proved.

Outcome 10.2

119.14 Outcome 10.2 states "you provide the SRA with information to enable the SRA to decide upon any application you make, such as applying for a practising certificate, registration, recognition or a licence and whether any conditions should apply". The Tribunal considered whether this Outcome was relevant to the Allegation.

119.15 In respect of the claim for VAT from Mr SF the Tribunal was unable to see how Outcome 10.2 was engaged as this did not involve any application to the SRA. The Tribunal did not find Outcome 10.2 proved in respect of the claim from Mr SF.

119.16 In respect of the claim from the SRA Compensation Fund, this was an application to the SRA albeit it did not fall into the list of examples cited in the Outcome. Nevertheless the Respondent had made an application to the SRA and had failed to provide the SRA with the information it needed in order to determine that application, specifically that she was not entitled to claim VAT. This error went uncorrected in subsequent correspondence. The Tribunal was satisfied beyond reasonable doubt that the Respondent's error in claiming VAT meant that she had not achieved Outcome 10.2 in respect of that claim.

119.17 The failure to achieve Outcome 10.2 was therefore proved in part.

Outcome 10.3

119.18 Outcome 10.3 states that "you notify the SRA promptly of any material changes to relevant information about you including serious financial difficulty, action taken against you by another regulator and serious failure to comply with or achieve the Principles, rules, outcomes or other requirements of the Handbook".

119.19 In respect of the claim for VAT from Mr SF, for the reasons outlined above in relation to Outcome 10.2, the Tribunal was unable to see how Outcome 10.3 was engaged.

119.20 In respect of the claim for VAT from the SRA Compensation Fund, the Respondent had, as discussed, provided inaccurate information in the claim. Upon discovering that she had not, in fact, been registered for VAT, she had failed to correct this. The Tribunal was satisfied beyond reasonable doubt that this failing meant that the Respondent had failed to achieve Outcome 10.3 in respect of that claim.

119.21 The failure to achieve Outcome 10.3 was therefore proved in part.

119.22 Allegation 1.5 was therefore found proved to the extent that Outcomes 10.2 and 10.3 had not been achieved in respect of the claim to the SRA Compensation Fund. It was not proved in respect of the claim to Mr SF.

119.23 The alleged breaches of Principles 2 and 6 and the allegation of dishonesty were not proved.

120. **Allegation 1.6: Permitted or allowed the use of a Firm email account referred to in this Judgment as the "MH" account by a person or persons other than the Respondent or those employed by her and by so doing:**

1.6.1 Acted in breach of Principles 2, 4, 5, 6 and/or 8 if the SRA Principles 2011; and

1.6.2 Failed to achieve Outcome 7.8 of the SCC.

Applicant's Submissions

120.1 The Applicant submitted that there was a wealth of evidence to show that even if RSP was not the only person who had access to the MH email account he was one of the people that certainly did. This was a device in order to conceal the full extent of his involvement in the Firm.

120.2 MH was employed by the Respondent as administrative assistant and the Applicant submitted that RSP was permitted by the Respondent to make use of that email account as a means of disguising the true nature of RSP's relationship with the Respondent and the Firm. There were numerous emails from the MH account which were plainly intended for, or sent by, RSP. The Tribunal was reminded of those exhibited by Oliver Jones and the emails referred to in relation to Allegations 1.1 and 1.2. The Tribunal was also reminded of the various emails from the MH account to counsel in January 2015 which the Applicant submitted were sent by RSP.

120.3 The Applicant submitted that the Respondents actions were dishonest because of the purpose for which the email account was being used, namely concealment.

Respondent's Submissions

120.4 On behalf of the Respondent it was submitted that only authorised staff are permitted to use the Firm's email and that this had been stated very clearly by Mr Goffar without that part of his evidence being challenged. In his Witness Statement he had stated "I remember that [MH] who was the senior staff used to draft emails on behalf of Mr [S] on his own matters. However he will send the draft to Mrs Ramasamy for her approval to send them out. I also assist the same way. However, during the period Mrs Ramasamy was on medical leave I used to assist Mr [S] sending out emails related to his own matter if it is not emails to the opposite parties or courts that I would first confirm with Mrs Ramasamy". This had not been challenged by the Applicant. In his second witness statement he had explained that RSP would dictate the email and he would type it out and send it out. This was consistent with the Respondent's evidence on the point. NW had stated in his Witness Statement that he knew MH was a member of staff at the Firm and he has communicated with him mostly by email.

120.5 The email system was password protected and the password was changed every three months. Mr Goffar did not know what the other employees' passwords were. There was nothing wrong with the client dictating a letter or statement or any other document that they wished to be sent by their solicitor. That solicitor could send it out, or amend with the client agreement and then send the document out.

120.6. The Respondent submitted that there was a contradiction between Allegation 1.1 and 1.6 in Allegation 1.1 was put on the basis that RSP was employed by the Firm whereas Allegation 1.6 alleged that somebody who was not employed by the Firm was using the email address.

120.7 Mr Goffar had told the Tribunal that the emails relied upon by the Applicant looked as though they were written by him, and not therefore, it was submitted, by RSP. Additionally many of the emails made reference to "Rajesh" it was submitted that this was inconsistent with trying to conceal RSP's involvement. There were many other ways which this could be done without using his first name.

The Tribunal's Findings

120.8 The Tribunal considered all the emails to and from the MH email account that the parties had referred to in their submissions and evidence. The MH email account was clearly an account used by a number of people working at the Firm, not just MH.

120.9 The Tribunal was not satisfied that beyond reasonable doubt that references to 'Rajes' and "Rajesh" were necessarily references to RSP. The possibility of mis-spelling of the Respondent's name could not be excluded. However the Tribunal was satisfied that where the email referred to "Mr [S]", in some instances they did refer to RSP.

120.10 The Tribunal noted the email of 21 January 2013 from the MH account to VR in which the sender states "I acted for the defendant…". This was an email sent by RSP as it referred to him in the first person and was sent on one of his own cases where he was suing a former client.

120.11 On 25 January 2015, 23 December 2014, an email was sent addressed "Dear Mr [S]". Two emails were sent on 23 December 2014 beginning "Hi Mr [S]". One of those emails asked the recipient to pass on his good wishes to the Respondent and so clearly the email was not being written to her. The Tribunal was satisfied that the emails to/from Counsel in January 2015 were between Counsel and RSP.

120.12 The Tribunal did not consider there to be a material distinction between a situation in which RSP physically sat at the computer and typed out an email and one in which he dictated an email to a staff member who then types it out verbatim and sent it. The two scenarios came to the same thing, namely the recipient/sender would believe they were communicating with RSP. The Tribunal did not need to make a finding as to whether RSP was physically sitting at the keyboard on each occasion. The issue for the Tribunal was whether he had the "use" of the MH email account. The Tribunal considered that having "use" included utilising email by way of dictation.

120.13 The Tribunal saw no tension between Allegations 1.1 and 1.6 by reason of its findings on the meaning of 'remuneration'. It had not been the Applicant's case that RSP was an employee in the traditional sense and the Tribunal had not found him to be one.

120.14 The Tribunal was satisfied beyond reasonable doubt that RSP had been permitted or allowed to use the MH email account in the same way that he had been permitted or allowed to undertake litigation as discussed in Allegation 1.3. In determining the

factual basis of this Allegation the Tribunal was not required to find that he had done so for the purposes of concealing the true nature of his relationship with the Firm.

Principle 2

120.15 The Tribunal found that the Respondent had permitted or allowed persons other than MH to use the MH email account, specifically RSP, by failing to prevent it and by allowing the situation to arise out of the fact that she had remunerated him. The use of the email was in a similar category to his undertaking litigation – it was the inevitable consequence of the Respondent's failings in relation to Allegation 1.1.

120.16 The Respondent either knew that RSP was using the MH email account or she had allowed a situation to develop in which she did not have full control over everything that was taking place in the Firm, such as RSP utilising the general email address. The reasons for this were set out in the Tribunal's analysis of Allegation 1.1. The Tribunal was again satisfied beyond reasonable doubt that the Respondent had allowed her judgement to be clouded to such an extent that she had lacked integrity. The Tribunal found the alleged breach of Principle 2 to be proved.

Principle 4

120.17 The Tribunal found that it could never be the best interests of any client to permit or allow a situation to arise whereby a struck off solicitor was using the Firm's email system to communicate with clients and third parties. The Tribunal was satisfied beyond reasonable doubt that the Respondent had therefore failed to act in the best interests of clients and the breach of principle 4 was proved.

Principle 5

120.18 The Tribunal had found that the Respondent had failed to act in the best interests of her clients. This was clearly inconsistent was providing a proper standard of service and for the reasons set out above Tribunal was satisfied beyond reasonable doubt that the Respondent was in breach of Principle 5.

Principle 6

120.19 In the same way that the trust the public placed in the provision of legal services was undermined by the remuneration of a struck off solicitor, as detailed in Allegation 1.1, permitting allowing that struck off solicitor to have access to the Firm's email system, and to use it in the way that he had done, undermined that trust in the same way. The Tribunal was therefore satisfied beyond reasonable doubt that the Respondent had breached Principle 6.

Principle 8

120.20 In losing control of the operation of the Firm by reason of her remuneration of RSP the Respondent had allowed a situation to arise where a struck-off solicitor was communicating under the umbrella of the Firm. This was clearly inconsistent with the Respondent's duty under to ensure proper governance and adherence to sound financial and risk management principles. The risks associated with allowing situation

to arise whereby a struck off solicitor was behaving this way were significant and substantial. The Tribunal was satisfied beyond reasonable doubt that the Respondent was in breach of principle 8.

Dishonesty

120.21 The Tribunal again approached the issue of dishonesty in accordance with the two-stage test set out in Twinsectra.

120.22 The Tribunal considered the objective test. Permitting or allowing a struck off solicitor to send emails from the Firm's email system, in circumstances where, as already referred to above, there had been a prior warning about his involvement and as such allowing him to 'get around' his strike off was conduct that the Tribunal was satisfied beyond reasonable doubt would be regarded as dishonest by the standards of reasonable and honest people.

120.23 The Tribunal considered the subjective test. As stated above the Tribunal had found that the Respondent's judgement had been clouded by her reliance on RSP as a client. The Tribunal again regarded this conduct as reckless. The Respondent ought to have been aware that he was sending these emails. It would not have been difficult to establish this and it was quite possible that she was aware. However the Tribunal could not be satisfied to the required standard, in other words, beyond reasonable doubt that the Respondent herself had knowledge that he was using the email account in the way he was. There was a possibility that she did not know this at the time. The Tribunal could not, therefore, find beyond reasonable doubt that the Respondent realised that by the standards of reasonable and honest people her conduct was dishonest. The second limb of the Twinsectra test was therefore not met and the Tribunal did not find dishonesty proved in respect of allegation.

Outcome 7.8

120.24 Had the Respondent had a system in place for supervising client matters and the operation of her emails she would have realised that RSP was using the MH email account. The Tribunal having allowed for the possibility that the Respondent was not being fixed with the knowledge of RSP's activities it therefore followed that there can have been no such system in place. The Tribunal was therefore satisfied beyond reasonable doubt that the Respondent failed to achieve outcome 7.8.

120.25 Allegation 1.6 was proved in full save for the allegation of dishonesty, which was found not proved.

121. **Allegation 2 – Dishonesty**

121.1 The Tribunal had considered the issue of dishonesty in respect of each substantive Allegation. Allegation 2 was proved to the extent that the Respondent had acted dishonesty in relation to Allegation 1.4 but not proved in respect of Allegations 1.1, 1.2, 1.3, 1.5 and 1.6.

Previous Disciplinary Matters

122. The Respondent had one previous appearance before the Tribunal. On 17 May 2012 the Respondent had admitted the following allegations:

That she failed to pay:

1.1 the premium due for indemnity insurance for the indemnity year 2009/2010 to Capita (which manages the Assigned Risks Pool ("ARP") on behalf of the Solicitors Regulation Authority ("SRA")) within the prescribed period for payment; and

1.2 the premium due for the indemnity insurance year 2010/2011 to Capita within the prescribed period for payment;

and was in policy default in breach of Rule 16.2 of the Solicitors' Indemnity Insurance Rules 2010 ("SIIR");

123. The Tribunal had made no order save for costs, which the Respondent had been ordered to pay in the sum of £2,098.25.

124. The Tribunal indicated that the previous findings would have no impact on sanction in this case.

Mitigation

125. On the Respondent's behalf it was submitted that in view of the fact that there had been no penalty in the previous proceedings meant that the Respondent should be treated as effectively being of good character.

126. The Tribunal's findings had been significantly more limited than those advanced by SRA. Although the events set out had occurred, the Respondent could not have be held to have been complicit in them and therefore the breaches were for reasons connected with her lack of management skill.

127. The dishonesty finding related to the email of 16 December 2011. It was a single incident, 6 years ago. This finding, presumably, was based on her interview. It was important to note that no fees were actually paid and so nobody had lost out. The fee, in terms of the amount of money, was due in any event. There had been no attempt to unjustly enrich herself. This was one email to one client and it was submitted that it fell at very lowest end of any finding of dishonesty. This amounted to exceptional circumstances such that the Tribunal could consider a penalty other than a strike-off.

128. The Respondent had taken over the Firm in very difficult circumstances. At the time she had one years' experience and had never had the proper training that she ought to have had. This was regrettable as she clearly had ability and cared about her clients. The Respondent recognised that she was not in a position to run her own firm and that she needed to learn how to run a firm properly. The Respondent was currently subject to conditions and was working as a caseworker not a solicitor at present. It was submitted that there was no risk to public by her working in another Firm. She

desperately wanted to remain a solicitor and had a lot to offer her clients but this was better achieved by working in another firm and learning the intricacies of management. The Tribunal was invited to consider imposing a Restriction Order on the Respondent.

Sanction

129. The Tribunal referred to its Guidance Note on Sanctions (December 2015) when considering sanction.

130. The Tribunal assessed the seriousness of the misconduct by considering the level of culpability and the degree of harm together with any aggravating or mitigating factors.

131. The Tribunal found that the Respondent's motivation arose from RSP being a significant client. This had a financial effect on the Firm. He also brought with him legal experience and a reputation in the community. The misconduct was not deliberately planned but rather had evolved over a period of time. In the case of Allegation 1.4, however, the Respondent had knowingly sent clients a bill in circumstances where she knew that she was not entitled to do so. The dishonesty occurred in the overall context of her judgement having been impaired by RSP's influence. There had been a clear failure of governance in the management of the Firm for which the Respondent had direct control and responsibility. The Tribunal accepted that she had limited experience. Her explanations to her regulator had not been clear or consistent and there had been a failure on her part to respond to the very clear warning that she had received in 2012.

132. In assessing harm the Tribunal accepted that neither the claim for £600 nor the claims for VAT were ever paid and so there was no evidence of financial loss as a result of the Respondents misconduct. However the potential for harm when running a Firm to which a struck-off solicitor had easy access was extraordinarily high. The public's confidence in the profession and in the regulatory system was seriously undermined. The risks of harm were highly foreseeable.

133. The misconduct was clearly aggravated by the Respondent's dishonesty in respect of Allegation 1.4. The misconduct as a whole was repeated over a period of time and the Respondent would have known or ought reasonably to have known that she was in material breach of her obligations.

134. Matters were mitigated by the fact that there had been no actual loss caused and the Tribunal noted her route into the profession, her limited experience and the fact that during some of the material time she was seriously unwell. Although the Respondent had accepted that she should not be involved in running a Firm in the future, the Tribunal did not find her to have any meaningful insight into the misconduct.

135. The Tribunal noted all that had been said in mitigation on the Respondent's behalf and took it into account when determining the appropriate sanction. The Respondent was clearly highly regarded by her clients and it was regrettable that she had put herself in this position after many years of hard work in achieving her legal qualifications.

136. The Tribunal found that the misconduct was so serious that no order, a reprimand or a financial penalty would be insufficient for the protection of the public and the reputation of the profession. The Tribunal had been invited to consider a Restriction Order in this case. However the Respondent had been found to have acted with a lack of integrity over a significant period of time and to have acted dishonestly. The Tribunal concluded that a Restriction Order was not sufficient to reflect the seriousness of the misconduct. The protection of the public was paramount. The involvement of a struck-off solicitor in a Firm was so undermining to the protections put in place by the regulatory system that, combined with a finding of dishonesty, the only appropriate sanction was the Respondent's removal from practice. The Tribunal considered whether there were any exceptional circumstances that could place this case into the small category of cases where a strike-off could be avoided, as was set out in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin).

137. The Tribunal noted that the dishonest act was a single incident. However this had not taken place during the time that the Respondent was unwell and there was no evidence that she had been pressured into doing this against her will. Taking into account her lack of insight and the multiple findings of lack of integrity relating to RSP's involvement in the Firm, despite the 2012 warning, the Tribunal could not find any exceptional circumstances.

138. The only appropriate sanction was therefore a strike-off. The public interest and the need to protect the reputation of the profession required nothing less.

Costs

139. The Applicant applied for costs in the total sum of £91,357.15. Both parties invited the Tribunal to summarily assess the costs.

Applicant's Submissions

140. In terms of the investigation costs, there had been two reports prepared. The reference to 51 hours of 'Other' related to dealing with a Witness Statement from JS, with various drafts being sent to and from him. It also related to other witnesses and potential witnesses as part of investigation.

141. The Tribunal raised the concern that additional costs may have been incurred by the change in solicitors instructed by the SRA. The Applicant submitted that the author of the Rule 5 Statement had subsequently left Bevan Brittan and so a new fee earner would have been required in any event. The SRA had therefore not incurred additional cost by instructing Capsticks. This had been done on a fixed fee basis. The £10,000 fixed fee was a lower amount than if the costs had been claimed on a purely hourly rate basis, in which case it would have been in the region of £18,000. The time required for reading-in by a new fee earner had been taken account of by the fixed fee element.

142. The Tribunal queried Counsel's fee given his previous involvement in the intervention proceedings. Mr Tabachnik told the Tribunal that it was correct that he had clear idea of the general architecture of the case. However he had not drafted the

Rule 5 statement and had had no involvement between the last hearing in front of HHJ Behrens, which was heard in March 2016, and April 2017

143. It had taken four days to read back in to the case, the first day being included in the brief fee. If different Counsel had been instructed then it would have required them to read it from scratch.

144. The Applicant confirmed that it took a realistic view when it came to enforcement of costs orders.

Respondent's Submissions

145. On behalf of the Respondent it was submitted that the relevant documents could have been contained in a single file instead of three. Had that been the case then it would not have taken Mr Tabachnik four days to read back in to the case. As regarded the statement of JS, one statement had been created from a lengthy email and that was the extent of it.

146. The Respondent had sold her house and those funds had been misappropriated by her solicitor, resulting in a successful claim to the SRA compensation fund. The Tribunal was invited to consider the Respondent's statement of means. There was no application for an order that costs not be enforced without leave of the Tribunal.

The Tribunal's Decision

147. The Tribunal had been invited to summarily assess costs and agreed to do so.

148. The case had been properly brought and the majority of the Allegations against the Respondent had been proved.

149. The investigation costs were insufficiently particularised, most notably the claim for 'Other'. The Tribunal decided that it was appropriate to deduct approximately 31 hours from this claim, a reduction of £2,923.40.

150. The Tribunal had concerns about possible duplication of work by the two firms that had been instructed by the SRA. The Rule 5 statement had been prepared by Bevan Brittan and the £748 claimed in respect of that was reasonable. The remainder of the preparation had been undertaken by Capsticks and was included in the fixed fee of £10,000. The Tribunal therefore reduced the claim for Bevan Brittan's preparation by £9,380.50 as this was work that may have been done twice due to the change in representation.

151. The Tribunal noted Counsel's earlier involvement in the case and the submissions made by the Respondent as to documents. The Tribunal found that a reduction of approximately one third was appropriate, equating to a reduction of £6,750.

152. The appropriate and proportionate level of costs, taking into account VAT where applicable, was £70,123.30.

153. The Tribunal considered the Respondent's statement of means. She had made an offer to pay £500 per month towards any costs and no application had been made for an order not to be enforced without leave of the Tribunal.

154. The Tribunal noted the Applicant's assurances that it took a realistic and pragmatic approach to enforcement of costs. There was no reason before the Tribunal to reduce the costs further on account of means or to defer payment.

Statement of Full Order

155. The Tribunal Ordered that the Respondent, Rajeswary Ramasamy, 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 £70,123.30.

Dated this 21st day of July 2017
On behalf of the Tribunal

J. C. Chesterton
Chairman