SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11678-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

MIGUEL JOSE ROURE LOPEZ — Respondent

Before:

Mr E. Nally (in the chair)
Mr P. Lewis
Mr R. Slack

Date of Hearing: 6-7 August 2018

Appearances

James McClelland, barrister of Fountain Court Chambers, Temple, London EC4Y 9DH, instructed by Shaun O'Malley, solicitor of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Rule 5 Allegations

1. The Allegations contained in the Rule 5 Statement dated 9 June 2017 were that:

1.1 On 10 and 11 November 2015 he sent misleading emails to his client's debtor, FO, in which he purported to provide his firm's client account details when in fact the details did not relate to his firm's client account thereby breaching any or all of Principles 2 and 6 of the SRA Principles 2011 ("the Principles 2011").

1.2 On or around 10 and 11 November 2015 he caused an inappropriate transfer of funds due to his client from FO into his own personal account instead of the firm's client account ("the inappropriate transfer") in breach of:

1.2.1 Rule 14.1 of the SRA Accounts Rules 2011 ("the SAR 2011");

1.2.2 Principles 2, 4, 6 and 10 of the Principles 2011.

1.3 On or around 17 November 2015 he misled his firm as to his dealings both with regard to and the circumstances of the inappropriate transfer in breach of Principles 2 and 6 of the Principles 2011.

2. Dishonesty was alleged with respect to the allegations at paragraphs 1.1, 1.2 and 1.3 above but dishonesty was not an essential ingredient to prove the allegations.

Rule 7 Allegations

1. The Allegations contained in the Rule 7 Statement dated 12 October 2017 were that:

1.1 Between 19 August 2015 and 6 January 2016 he permitted 9 transfers totalling £61,285.00 from an ECS Limited account to his own account(s) without his client's consent thereby breaching any or all of Principles 2, 4, 6 and 10 of the Principles

1.2 Between 19 April 2016 and 17 May 2016 he permitted 3 transfers totalling £12,656.89 from ECS Limited's paypal account to his own account(s) without his client's consent thereby breaching any or all of Principles 2, 4, 6 and 10 of the Principles.

1.3 He failed to advise CGG of the circumstances in relation to monies purportedly invested on his behalf which led to CGG submitting a criminal complaint against the Respondent, thereby breaching any or all of Principles 2, 4, 6 and 10 of the Principles.

1.4 Between October 2015 and January 2016 he borrowed £47,000.00 and €9,100.00 from CGG in circumstances where there was an own interest conflict as CGG had not obtained independent legal advice and thereby breached Principles 3, 4 and 6 of the Principles and O(3.4) of the SRA Code of Conduct 2011 ("the 2011 Code").

2. Dishonesty was alleged with respect to the allegations at paragraphs 1.1 to 1.3 above but dishonesty was not an essential ingredient to prove the allegations.

Preliminary Matters

3. Application to proceed in absence

3.1 The Respondent did not attend the hearing and was not represented. Mr McClelland applied to proceed in his absence. He took the Tribunal through the correspondence history. The last contact from the Respondent had been March 2018. In the course of the proceedings the Respondent had indicated that he may seek a direction permitting him to participate by videolink. The Tribunal had indicated that it would consider making such a direction, but no application had been forthcoming.

3.2 Mr McClelland told the Tribunal that the Applicant was ready to proceed and had one witness ready to give evidence who had travelled from Spain. Another was due to give evidence via videolink from the USA.

3.3 He submitted that it was in the interests of justice for the hearing to proceed.

The Tribunal's Decision

3.4 The Tribunal considered the representations made by the Applicant. The Respondent was aware of the date of the hearing as he had participated in previous Case Management hearings and had been sent the Memoranda from those hearings. SDPR Rule 16(2) was therefore engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

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

(xi) ...;"

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

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

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

3.7 The Tribunal noted that there had been intermittent engagement with the process on the part of the Respondent. He had not engaged since March 2018 despite knowing that the hearing date was approaching. The Tribunal had given an indication that it would be amenable to an application for him to participate by videolink, as he had stated that he was residing in the USA. He had not made that application despite being aware of the Tribunal's position on this issue. The Respondent had not sought an adjournment and the Tribunal had no confidence that he would engage if one was granted. It would only increase cost and delay.

3.8 The Applicant was ready for the hearing and had arranged the logistics to enable its witnesses to give evidence. The Allegations went back some time and were serious. There was a public interest in them being determined without further delay. The Tribunal had the Respondent's Answer and was aware of his position in respect of the Allegations, which it would note and take into consideration.

3.9 In all the circumstances it was in the interests of justice to proceed in the absence of the Respondent and Mr McClelland's application was therefore granted.

4. Jurisdictional Issues

4.1 The Respondent had raised a number of challenges to the Tribunal's jurisdiction to hear the case. The Tribunal took these as a preliminary point.

Respondent's Submissions

4.2 In his Answer, the Respondent made the following submissions:

> "1. As I have informed this court on several occasions I am being tried again for the same facts when there is already a final judicial resolution, as my lawyer has already informed. Mr. [CGG] filed a claim with the Spanish courts which were DECLARED COMPETENT, against my professional performance with Mr. [CGG]. The pretensions of Mr. [CGG] were rejected both in the first instance

and in the second instance, and these resolutions are already as you can read. This produces the effect of res judicata.

The action of the court and the SRA said with all due respect is a violation of my fundamental rights since a citizen can not be tried in the same case twice when there is already a final decision of a court of a member state that is also considered competent.

If the Spanish court considered that it was competent both for territorial and functional jurisdiction, it does not make sense for another court of another Member State now to hear and judge the same case on a matter that is considered res judicata.

The effect of res judicata is that produced by final judicial decisions, in the same or in others.

Sentences and judicial resolutions produce effects from the moment they fulfill (sic) the constitutional mandate of art. 117.3 of the Spanish Constitution (hereinafter CE) to judge, that is, to comply with and respond to the right that art. 24 EC recognizes to obtain effective judicial protection.

By definitive resolution the art. 207 of the Civil Procedure Act understand those that end the first instance or decide the appeals filed against them. Certain Autos and Decrees are final because they put an end to the issue that is the subject of a resolution, for example, the one that resolves the lack of jurisdiction.

The final resolutions are (i) those against which no appeal is possible because the law does not grant the possibility of being appealed, (ii) those against which recourse may be given, but which has not been filed, (iii) those against that appeal is possible but has not been admitted because it was not effectively interposed due to failure to comply with procedural or material requirements (iv) those against which the appeal has been effectively filed but subsequently abandoned because it did not appear before the Superior Court that must resolve it or well for not fulfilling some formal requirement during the processing of the resource.

Negative or excluding effect

The art. 222.1 LEC provides that res judicata, whether judgments or dismissals, will exclude, according to the law, a further process whose purpose is identical to the process in which it occurred.

Its foundation lies in legal security by avoiding ongoing processes on the same issue between the same parties, not only based on what was deducted in the first process but also what could have been deduced.

As indicated in STS 650/14 of November 27, Roj: STS 5251/2014 - ECLI: ES: TS: 2014: 5251, res judicata formerly meant a presumption that what is judged is true - "quia res iudicata pro veritate accipitur "(Because res judicata is considered true) - and has been modernized - as a result of the statement of

motives of Law 1/2000, of January 7, of Civil Procedure - to the status of institute, of a nature procedural, aimed at preventing the undue repetition of litigation, through the so-called negative or exclusionary effect, to prevent a judicial dispute, already elucidated by final judgment on the merits, to be raised again (In the same sense, 123/13 of March 11, STS 360/2012 of June 13, STS 826/2011 of November 23 and 155/2014 of March 19).

The purpose of the res judicata is to prevent the same litigation from being repeated indefinitely and that, on the same issue that affects the same parties, contradictory judgments are passed or judgments are repeated without reason in the same sense (STS 164/11 of March 21 , Roj: STS 1240/2011 - ECLI: ES: TS: 2011: 1240).

In the STS 392/06 of April 19, 2006 (Roj: STS 2972/2006 - ECLI: ES: TS: 2006: 2972) and 768/13 of December 5, it is concluded that the res judicata creates a situation of full stability that not only allows to act in accordance with the resolved, but it transcends effectively to the future, preventing reproducing the same issue and return to what has been resolved by preventing in the new process any jurisdictional activity on the matter, even to dictate a identical statement about him. Its essence is to prevent statements contrary to the completely resolved question, with the possibility only of subsequent jurisdictional activity of aspects that affect its effectiveness

The requirements to appreciate the effect of res judicata material in its negative or exclusive sense, are the identity of subjects, object and cause to ask.
The firmness of the judicial resolution supposes that, in the literal diction of art. 207.4 LEC, pass on the authority of res judicata, which reach this category.

The final judicial decision produces the procedural effects that are proper to the process in which it is issued, putting an end to it, and also produces material effects for the litigants, resolving both the legal issue at issue, declaring or not the right whose recognition is claimed, or condemned or absolving of the service claimed, as preventing the process itself from resolving what has already been resolved.

In art. 207.3 LEC refers to the formal res judicata in the sense that such effect is achieved with the firmness of the judicial decisions and the court of the process in which they have fallen must in all cases comply with the provisions of them. Hence, the effect of formal res judicata is understood to refer to the process in which the resolution reaches this degree, leaving the Court and the parties related to the ruling in it, as regards the preclusive effect, not being able to appeal the non-appealed, and with regard to preventing a new judicial resolution within the same process from resolving what has already been resolved (it can not be discussed or resolved in the execution of the judgment as decided in it).

Once a judicial resolution reaches the category of res judicata, the court that has issued it not only can not dictate others that decide the same issue differently, but all subsequent resolutions must take what I decide as a starting point for

resolve other issues. And in the same two sense, the parties are prevented from exercising claims in a different sense to the one already resolved.

B) CRIMINAL PREJUDICIALITY

Once the judicial decisions against my professional action by the Spanish courts are firm and said I have no responsability, as we have previously argued, there is a pending process for a complaint against the complainants and proposed witnesses. Here there is a difference that in both cases the courts do see crime and responsibility in the actions of SR CGG CGG and Mr. Dan Gerberg. The allegations of the SRA are out of all logic and tando testify as the documentary evidence must be rejected since they are mostly false documents and other fraudulently obtained circumstances that are being instructed in the Spanish courts that have been declared competent to do so.

As we have informed the court there are two criminal proceedings and the continuation of this process directly affects those processes. It is more the SRA not only not content with publishing false information, but evidence that has been communicated with Mr. [CGG] being this a total interference in a criminal process that in the case of Spain is totally illegal.

The criminal jurisdictional order is preferred (Article 44 LOPJ) so that art. 10.2 except the general rule of knowledge with purely preliminary effects. Thus, the existence of a criminal prejudicial question that can not be dispensed with for a due decision or that directly conditions its content, will determine the suspension of the procedure as long as it is not resolved by the criminal bodies to which it corresponds, except for the exceptions that the law establish.

The criminal prejudicial question is the one referred to in art. 40 LEC, that is, facts investigated in a criminal case as allegedly constituting an offense, that substantiate the claims of the parties in the civil process, provided that the decision of the criminal court about such facts can have decisive influence on the resolution on the matter civil.

the art. 114 of the Criminal Procedure Act (hereinafter LECrim) provides that "criminal trial in an investigation of an offense or offense has been filed, no suit may be filed regarding the same fact; suspending him if there were him, in the state in which he finds himself, until a final judgment is handed down in the criminal case. "

We return to denounce the violation of my fundamental rights for the above mentioned while denouncing the attitude of the SRA in this case since even in the translation and publication is done wrongly and leads to confusion along with the damages and prejudices that I am producing that rubbing and bad faith and that is not giving me more choice than to go to court to ask for justice.

EUROPEAN SCOPE
Right of the Union

Recital 15 of Regulation No 44/2001 reads as follows:

"The harmonious functioning of justice requires that the possibility of parallel proceedings be minimized and that irreconcilable resolutions be avoided in two Member States. It is advisable to provide a clear and effective mechanism in order to resolve the cases of lis pendens and connectedness and to obviate the problems arising from national divergences on the date on which a matter is considered pending. For the purposes of this Regulation, it is appropriate to define this date autonomously

Regulation No 44/2001 includes, in section 9 of its chapter II, entitled 'Lis pendens and connectedness', articles 27 to 30. Article 27 of this Regulation has the following wording:

"1. Where claims are made for the same purpose and the same cause between the same parties before courts of different Member States, the court before which the second claim is filed shall automatically suspend the proceedings until the court before which the case is declared competent is suspended. interposed the first.

2. When the court before which the first claim was filed is declared competent, the court before which the second action was filed shall be inhibited in favor of the former. "

That Regulation provides in Article 5, which appears in section 2 of its Chapter II, entitled 'Special Powers', the following:

'Persons domiciled in a Member State may be sued in another Member State:

In the case of actions for damages or restitution actions based on an act that gives rise to a criminal proceeding, before the court that knows of said process, to the extent that, in accordance with its law, said court may know about the civil action.

Under Article 28 of that Regulation:

When related claims are pending before courts of different Member States, the court before which the subsequent claim has been filed may suspend the proceedings.

When such related claims are pending in the first instance, any court before which the subsequent claim has been filed may likewise be inhibited, at the request of one of the parties, provided that the court before which the first claim was filed was competent to hear the demands in question and that their law allows their accumulation.

Claims related to each other by a relationship so close that it would be appropriate to process them and judge them at the same time in order to avoid resolutions that could be irreconcilable if the matters were judged separately, will be considered as related.

Article 30 of the same Regulation provides that:

"For the purposes of this Section, a court shall be considered to have knowledge of a dispute:

from the moment in which the writ of demand or equivalent document has been presented to him, provided that the plaintiff has not subsequently failed to take all the measures required to deliver the identity card to the defendant, or The document must be served on the defendant before it is presented to the court, at the moment when the authority responsible for the notification receives it, provided that the plaintiff has not subsequently failed to take all the measures required to present the document. to court."

It should be recalled immediately that, according to Article 1 (1), Regulation No 44/2001 will apply 'in civil and commercial matters irrespective of the nature of the court'.

Thus, according to the wording of that provision, judgments delivered in civil matters by a criminal judicial body are included in the scope of application of the aforementioned Regulation (see, to that effect, Krombach, C-7/98, EU: C : 2000: 164, paragraph 30 and cited jurisprudence).

Furthermore, it is clear from Article 1 (1) of Regulation No 44/2001 that only certain matters expressly mentioned in that Regulation are excluded from the concept of civil and commercial matters (see, to that effect, Mahamdia, C-154/11, EU: C: 2012: 491, paragraph 38).

According to settled case-law of the Court of Justice, with a view to ensuring, to the extent possible, the equality and uniformity of the rights and obligations resulting from Regulation No 44/2001 for the Member States and the persons concerned, it can not be interpreted the concept of "civil and commercial matters" as a mere reference to the domestic law of one or the other of the States concerned. This concept must be considered as an autonomous concept, which must be interpreted, referring, on the one hand, to the objectives and system of the aforementioned Regulation and, on the other hand, to the general principles that are deduced from all national legal systems (Schneider judgments, C-386/12, EU: C: 2013: 633, paragraph 18 and cited case-law, and flyLAL-Lithuanian Airlines, C-302/13, EU: C: 2014: 2319, paragraph 24 and cited case-law).

In order to determine whether or not a matter falls within the scope of Regulation No 44/2001, it is necessary to examine the features that characterize the nature of the legal relationships between the parties to the dispute or the subject matter of the dispute (flyLAL-Lithuanian Airlines judgment). , C-302/13, EU: C: 2014: 2319, paragraph 26 and cited case-law).

In that regard, in paragraph 19 of the Sonntag judgment (C-172/91, EU: C: 1993: 144), the Court of Justice held that, even if criminal proceedings are instituted, the civil action brought in order to obtain the redress of the damage caused to an individual as a consequence of a criminal offense is of a civil nature. In fact, in the legal systems of the Contracting States, the civil nature of the right to obtain compensation for the damage suffered as a consequence of

behavior considered punishable from the point of view of criminal law is generally recognized.

The action against the provisions of Article 1 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, since it has knowledge that it has already been resolved by a court of another state while the same issue and also there is another criminal trial started with the same parties involved but now in favor of Miguel Roure with claim for pecuniary compensation for the damage alleged by the complainant .

2) Article 27 (1) of Regulation No 44/2001 must be interpreted as meaning that a claim has been made, for the purposes of this provision, when a complaint has been filed as a civil claim before a court judge. instruction, although the investigation phase of the controversial issue has not yet been completed.

3) Article 30 of Regulation No 44/2001 should be interpreted as meaning that when a person makes a complaint as a civil plaintiff before an investigating judge by filing a document which, according to the applicable national law, must not be to be notified before said presentation, the date on which it should be considered that this judicial body is aware of the litigation is the date on which the complaint was made.

I hope and request that the court reconsider and file the present proceeding after the assignment."

Applicant's Submissions

4.3 Mr McClelland told the Tribunal that he had distilled the Respondent's points into three arguments:

4.4 Argument 1

4.4.1 The Tribunal should not determine the Rule 7 Allegations because they were res judicata – a criminal complaint against the Respondent having already been made by CGG in the Spanish Courts and dismissed by them.

4.4.2 Mr McClelland submitted that Argument 1 was wrong in law and in fact. A prior acquittal in criminal proceedings was no bar to a subsequent disciplinary prosecution. The Tribunal was referred to the statement of the position by Simon-Brown LJ in the Court of Appeal in R (on the application of Redgrave) v Commissioner of Police for the Metropolis [2003] EWCA Civ 4 at [37]:

> "These authorities to my mind establish that, even assuming there has been an acquittal by a criminal court, the double jeopardy rule has no application save to other courts of competent jurisdiction and there is therefore no bar to the bringing of disciplinary proceedings in respect of the same charge. And it is surely right that this should be so. Plainly it is so where the standard of proof is different... But in my judgment it is right also even where the standard of proof is the same, i.e. where the

> disciplinary charge too has to be proved beyond reasonable doubt … as continues to be the case under many disciplinary codes, for example those governing … with regard to certain charges, solicitors."

4.4.3 Mr McClelland further submitted that Argument 1 was also wrong in fact because CGG's complaint against the Respondent had not concluded but was still at a preliminary stage.

4.5 Argument 2

4.5.1 The Tribunal should not determine either the Rule 5 or Rule 7 Allegations because the Respondent had brought criminal complaints in Spain against each of the Applicant's witnesses, and the present proceedings would prejudice those complaints.

4.5.2 Mr McClelland submitted that this argument reflected a misunderstanding of the issues which the Tribunal was required to decide. The question for this Tribunal was not how a Spanish Court or Tribunal would proceed. The question was whether this Tribunal should suspend its proceedings and the relevant guidance was contained in the Tribunal's Policy/Practice Note on Adjournments, which made clear that the existence of other proceedings would not generally result in an adjournment unless to proceed would risk muddying the waters of justice. Mr McClelland submitted that this was not the case here and there was no imminent trial.

4.6 Argument 3

4.6.1 The Tribunal was debarred from determining these proceedings because EU Regulation No. 44/2001 (the "Judgments Regulation") grants priority to the criminal proceedings in Spain. The Respondent's argument appeared to be that, even though those proceedings were criminal, they had a civil component in that civil redress was being sought. They therefore engaged the Regulation and dispossessed the Tribunal of jurisdiction to determine the proceedings.

4.6.2 Mr McClelland submitted that this again reflected a misunderstanding on the part of the Respondent. The Judgments Regulation governed civil and commercial matters where there was a risk of competing claims being brought between the same parties in multiple jurisdictions. It did not apply to professional regulators responsible for regulated persons for misconduct committed within its own regulatory jurisdiction. Article 1(1) of the Judgments Regulation stipulated that the regulations "shall not extend, in particular, to revenue, customs or administrative matters.". The administrative nature of professional regulatory proceedings was reflected in the fact that the Tribunal was exercising statutory powers and was susceptible to judicial review before the Administrative Court.

4.7 The Respondent had previously made similar submissions to the Tribunal at a hearing on 26 September 2017 and they had been rejected. Mr McClelland invited this Division of the Tribunal to similarly dismiss the Respondent's submissions and proceed to hear the case.

The Tribunal's Decision

4.8 The Tribunal considered carefully the submission made by both parties. It was convenient to group the Respondent's submissions together in the same way that Mr McClelland had. The Tribunal was satisfied that he had fairly summarised the Respondent's position.

4.9 Argument 1 had no factual basis in that there was no evidence that the proceedings, to which he had referred, had been concluded, indeed there was clear evidence that they were ongoing. However even if they had been concluded, it was clear from Redgrave that this would not preclude the Tribunal from proceeding to hear the Allegations. The Tribunal was required to make determinations as to whether the Respondent's actions amounted to professional misconduct. That was not the focus of any other proceedings that may be ongoing, even if it was of relevance to those proceedings. The Tribunal rejected Argument 1.

4.10 The same point was applicable to Argument 2 – the Tribunal's focus was on the Respondent's conduct in his professional work in England and Wales. Proceedings in this or any other jurisdiction had a different focus. The actual existence of proceedings against the Applicant's witnesses in relation to the Rule 5 Allegations (Mr Gerber and Ms Franzese) was seriously in doubt. There was no evidence of such proceedings and Mr Gerber and Ms Franzese appeared to know nothing about them. Mr CGG understood there to be a hearing in October regarding his case. There was no identifiable risk to those proceedings, if they existed, from the Tribunal hearing this matter. The Tribunal dismissed Argument 2.

4.11 The Tribunal noted the wording of Article 1(1) of the Judgments Regulation, which was unequivocal. It did not apply to this Tribunal and as such, the Respondent's argument was misconceived. The Tribunal dismissed Argument 3.

4.12 The Tribunal considered the Memorandum of the decision of the previous Division of the Tribunal on 26 September 2017. It noted that nothing had changed since that decision and the Respondent had not challenged that Division's reasoning, for example by way of an application for Judicial Review.

4.13 The Tribunal accordingly dismissed all the Respondent's challenges to the Tribunal's powers to hear the case and proceeded with the hearing.

5. Application to sit in private and to restrict disclosure of documents

5.1 Mr McClelland told the Tribunal that the Respondent had raised a number of matters in his Answer which should not be aired in open Court. He invited the Tribunal to sit in private to hear his submissions on this point, which it agreed to do.

5.2 Mr McClelland submitted that the matters raised by the Respondent, to which he drew the Tribunal's attention, were peripheral to the issues that fell to be determined by the Tribunal. However the Respondent was not present and it was right to draw the Tribunal's attention to matters which the Respondent may have wished to raise.

5.3 Mr McClelland proposed that if the witnesses, himself and the Tribunal were all circumspect about the matters they referred to then there would be no necessity to sit in private. He also invited the Tribunal to direct that no documents be released to a non-party without each party being given 14 days to make written representations about such disclosure.

The Tribunal's Decision

5.4 The Tribunal considered carefully the matters raised by the Respondent and rightly highlighted by Mr McClelland. The Tribunal agreed that they did not appear to be matters on which the Tribunal needed to make a finding and were of no apparent relevance to the issues in the case. The Tribunal kept this under review throughout the case and this remained the position at its conclusion. It was therefore not necessary to produce a redacted Judgment setting them out.

5.5 The Tribunal was content to deal with the matter as Mr McClelland suggested, out of an abundance of fairness to the Respondent.

5.6 The Tribunal directed no papers relating to this case were to be disclosed to non-parties without leave of the Tribunal and not before the parties had been given 14 days in which to make any submissions on the disclosure request. It also directed that the discs of the private session, together with seven minutes of the public session during which the issue had been discussed, should not be disclosed to non-parties.

Factual Background

6. The Respondent was born in 1973 and was registered as a Registered European Lawyer (REL) on 7 April 2014. At the time of the hearing he remained registered as a REL.

7. From March 2015 until 20 November 2015, the Respondent practised at Goldberg Segalla Global LLP ("GS") of 1st floor, 65 Leadenhall Street, London, EC3A 2AD. From 20 November 2015 onwards it was understood that he practised via his own company, Reactive Legal Services LLP which was not an authorised body.

8. The Respondent's first language was Spanish, though he spoke and wrote English reasonably fluently, as evidenced by his written communications and his employment at a firm in the City of London. In order to avoid repeated uses of *[sic]* in the Judgment, the Respondent has been quoted in full, even where grammatical errors appear in what he has written. The Tribunal had no difficulty in understanding the Respondent's case notwithstanding those errors.

Rule 5 Allegations

9. On or around 10 November 2015 the Respondent was instructed on behalf of MT to obtain a debt totalling £182,488.52 from FO, which was a company and a debtor of MT. The Respondent's instructions came from EF, the Managing Director of MT.

10. On 10 November 2015 the Respondent sent an email to FO demanding that it immediately transfer £183,488.52 "..to my next lawyer trust account in order to resolve this issue pacifically". The Respondent provided the bank account details in the name

of "Miguel Roure" at Royal Bank of Scotland with an account number and sort code. On the same date DR of FO responded by email to the Respondent and stated the basis on which they would transfer the funds as follows:

> "Following our conversation I am happy to forward the funds to your client trust account. This will be on the basis that the money will be held in that account until completion of the HMRC investigation. For clarity we are happy and willing to work with yourselves and [MT] with this investigation. On confirmation you are happy with this I will of course transfer the funds."

11. The Respondent replied by email on 11 November 2015 as follows:

> "As lawyers in the city we follow with our clients all protocols properly so I confirm you we held the founds in our client trust account. I did not receive any transfer. Can you send me the justification you made the transfer of the founds according with our conversation?. If you did not make the transfer can you make the transfer immediately."

12. DR of FO responded on the same date and asked: "Should the account name not be GoldbergSegalla rather than Miguel Roure?". The Respondent replied shortly afterwards stating "It is Miguel Roure/GS. It is correct trust account". DR then confirmed that the funds had been transferred to the client trust account. The firm's actual bank details were set out in the initial engagement letter dated 11 November 2015 sent by the Respondent to MT. These account details were different to that contained in the email of 10 November 2015.

13. On 11 November 2015 EF forwarded an email from SJ of RFX to the Respondent to provide bank details and reference in order that the Respondent could transfer the funds to MT's account with RFX. On 13 November 2015 RFX chased the Respondent in relation to the transfer of £183,488.52, who confirmed that he would require his client's instructions. On 16 November 2015 the Respondent emailed SJ and stated as follows:

> "Following instructions from my client I requested to RBS to transfer founds to your platform from my trust client account last friday. Also following the instruction from my client I informed you we had to do this way in order to resolve the issue created by my Client customer last week when I had to act immediately in order to reduce the damages created to my client from the others parts. Please let me know if you need anything else."

14. There were further email exchanges, which included the Respondent emailing SJ on 17 November stating; "I will call RBS again in order to send you with copy everybody that I did on Friday so I do not understand. Please call me if you can I wanted resolve this immediately".

15. SJ emailed the firm forwarding his earlier emails with the Respondent. Daniel Gerber, a partner within the firm then emailed the Respondent on 17 November 2017 as follows:

"Miguel

Please call me as soon as you receive this email. Please do not issue any letter on letterhead regarding this matter. I need to have an IMMEDIATE understanding of the use of these funds and whether they are in your possession. We could have potential Trust violations that are reportable to the SRA. In addition, it was my understanding that the 184k was for fees, but it appears that this is for your to transfer to another party as conduit for the purchase of silver. None of this makes any sense to me. We have now received an inquiry regarding money laundering. Please stop whatever you are doing and call me. Thank you. Dan".

16. Mr Gerber spoke with the Respondent, who was in Venezuela at the time, on Skype during 17 November 2015 and he subsequently emailed the Respondent as follows:

"Miguel

Thank you for Skipping from Venezuela just now. This will confirm that you have not received any funds on this matter into any personal account or GS account and will not do so until you and I have discussed this further. In the meantime, you have confirmed that the funds received last week for fees were for an unrelated arbitration. You will write up for my review an explanation of this transaction, as well as, the arbitration that the fees were earned on.

In the meantime, neither you or the firm will not proceed to be a conduit for any transfer of funds.

I look forward to the written report."

17. The Respondent acknowledged the email and confirmed that he would do as requested.

18. On 18 November 2015, the client MT attended the firm's offices and made a complaint that the funds were held in the Respondent's account. The firm told MT that it had no knowledge of the transaction and no control over the funds but would investigate and work with all parties to resolve the matter.

19. Mr Gerber was aware of the concerns raised by RFX and requested details from the Respondent who replied by email on 18 November 2015: "I never transfer any money at all what I do was in order to discovery what the really did." In a separate chain of emails, the Respondent sent an email to Mr Gerber of the same date in which stated as follows:

"I called the company in the presence of [EF] and requested them pay the [EF] company. They requested a uk bank account in order to resolve the issue and acting to help [EF] who I know him for a long time and also he suppose were my friend I offered him do the payment throw a bs account I have. I did this in order to help the client and the urgent of the matter";

20. He further stated:

> "I process in a completely good faith and apologies for all of this. I did not transfer any money and all I was doing it all the time in order to find the real situation. I will show you all evidence that confirm what I say".

21. Mr Gerber responded as follows:

> "We cannot have you doing transactions outside of this firm's accounts. The actions or inactions you take still reflect or could be attributed to the firm. This can never happen again. Please disengage from this transaction. I am not comfortable with it AT ALL. I do not understand what fees you took or why. Again because you are doing this on your own account you have done it outside the firm and I am very concerned. Was an invoice sent? You cannot do what is simply customary under Spanish law or what seems expedient. We are regulated by the SRA not Spain. I will not put this firm at risk.
>
> Please confirm that you have received no funds personally or otherwise for fees or anything related to this. If you have done so, you must return any funds and withdraw from this matter. Going forward. You cannot take matters outside of the firm or send letters on your own letterhead without telling us. This is not a reflection of good or transparent partnership. Let's speak when I land."

22. The Respondent replied on the same date and stated:

> "I never send any invoice, I never received anything personally and I will do everything you say also I did outside of the firm until I check everything. All I tell you is the truth. And I act in a completely good faith".

23. The Respondent emailed EF on the same date at 16:07 to confirm that he would be asking RBS to immediately return "any amounts I received of the matter related to this matter or you personally" and confirming that he would not continue to represent EF.

24. The firm suspended the Respondent on 20 November 2015 and the Respondent offered his resignation on the same date. On that date the Respondent emailed Mr Gerber at 07:52am stating: "I already returning back money according with Client and Payer instructions. I already send 19000 for the limitation, 20k tomorrow and the rest of monday when I be in London. sorry for all of this."

25. The firm continued to liaise with FO and MT and the payment was received by FO, which they confirmed on 23 November 2015.

Rule 7 Allegations

26. These Allegations arose of out of the Respondent's dealings with a client, CGG. The matters concerning CGG related to a company, "ECS Limited", and, on the Applicant's case transfers of funds by the Respondent from accounts relating to ECS Limited. The Respondent denied all the Rule 7 Allegations in their entirety. Therefore, although the circumstances are set out under the heading 'Factual Background', the Tribunal noted

that the Respondent did not accept the premise of the Allegations and these facts were as put by the Applicant.

27. The Applicant's case was that CGG was running a web-site which had a personal Paypal account in his own name. As his business was growing, CGG opened a bank account in the UK. In or around March 2015 CGG, approached a Spanish Legal Firm, MYG Consulting, as he wished to incorporate a limited company in London. CGG was to act as the nominee director and shareholder with a trust and power of attorney in his favour and the associated bank account, visa card and Paypal account would be used by CGG. MYG told CGG that they worked with a lawyer regulated in England, the Respondent, who could assist with this work.

28. CGG paid €5,000.00 and signed a contract with MYG Consulting and paid €4,700.00 for the Respondent to undertake the work. The Respondent was to build an operational company, open a bank account and work with Paypal to allow funds to be deposited in the new account. The Respondent established ECS Limited and signed a document entitled "Declaration of Trust" in relation to ECS Limited which made him the sole share-holder and director of the limited company. Under the Declaration of Trust, the Respondent was to hold his share and, as the sole director, follow any lawful instructions given to him by CGG. The Respondent opened a bank account at a London branch of BBVA in the name of ECS Limited ("the BBVA account").

29. CGG had paid money into the BBVA account to assist in relation to ECS Limited. As a result of the manner in which ECS Limited had been formed and the associated Declaration of Trust, the Respondent was the sole director and was able to make payments to and withdrawals from the BBVA account. However, CGG did not have authority to make withdrawals from the BBVA account as he was not a Director of ECS Limited and did not have authority in relation to the BBVA account.

30. Allegation 1.1

30.1 The Applicant's case was that The Respondent made the following transfers from the BBVA account which totalled £61,285.00:

Date	Amount	Transferred to
19.08.2015	£12,010.00	"TO ROYAL BANK ACC"
25.08.2015	£10,010.00	"MIGUEL JOSE ROURE LO"
26.08.2015	£4,010.00	"MIGUEL J ROURE LOPEZ"
01.09.2015	£9,010.00	"MIGUEL J ROURE"
08.09.2015	£6,000.00	"MRL"
11.09.2015	£8,000.00	"PPG 10/09/2015"
15.09.2015	£2,000.00	"PPG 14/09/2015"
06.01.2016	£5,000.00	"WITHDRAWAL"
06.01.2016	£5,245.00	"MIGUEL JOSE ROURE"

30.2 The Applicant's case was that these transfers were made without CGG's consent and that CGG, when he attempted to gain access to the accounts which had been set up by the Respondent in relation to ECS Limited the bank, was unable to deal with him (CGG) as he did not have the authority.

31. Allegation 1.2

31.1 The Applicant's case was that the Respondent also made the following payments from the PayPal account to his Citibank account which totalled £12,659.89, again without consent:

Date	Amount	Transfer to
19.04.2016	£6,360.69	"CITIBANK EUROPE PLC x-0662"
19.04.2016	£6,128.40	"CITIBANK EUROPE PLC x-0662"
17.05.2016	£167.80	"CITIBANK EUROPE PLC x-0662"

32. Allegation 1.3

32.1 The Applicant's case was that following an offer from the Respondent to invest CGG's money through an investment company, CGG came to agreement with the Respondent to make a joint investment in CFD via an investment platform, IGM. The Applicant's case was that CGG made the following transfers to the Respondent's Citibank account in relation to the matter:

Date	Amount	Transfer to
03.07.2015	€15,000.00	Miguel Roure/Reactive
07.07.2015	$15,000.00	Miguel Roure
13.07.2015	€15,000.00	Miguel Roure/
27.07.2015	€14,000.00	Miguel Roure
28.07.2015	€14,000.00	Miguel Roure/Reactive
31.07.2015	€14,000.00	Miguel Roure
21.09.2015	$32,849.34	Miguel Roure/Reactive

32.2 CGG alleged that he had asked the Respondent for reliable proof that the investment had been made and updates on progress, but that limited information was provided. CGG subsequently consulted another lawyer, Mr Antonio Gatell Contreras ("Mr Gatell").

32.3 Mr Gatell emailed the Respondent on various occasions on behalf of CGG to seek information in relation to the investment, including evidence of the investment contract and statements of positions in relation to the investment. The Respondent had advised Mr Gatell during a telephone conversation on 8 March 2016 that CGG would receive the transfer of the joint investment in IGM, which he did not. In response to Mr Gatell, the Respondent claimed that CGG remained his client and that confidentiality continued to apply. In the circumstances, the Applicant invited the Tribunal to draw an inference that the Respondent had misappropriated the money, either by not having made the investment, or by making it, but either way, by subsequently withdrawing the money.

33. Allegation 1.4

33.1 The Applicant's case was that CGG lent the Respondent the following sums of money in a personal capacity:

Date	Amount	Account receiving money
05.10.15	£47,000.00	Royal Bank of Scotland in the name of Miguel Roure/Reactive
20.11.15	€2,500.00	BBVA in the name of Miguel J Roure
15.01.16	€5,000.00	Citibank in the name of Miguel Roure/Reactive
18.01.16	€1,600.00	Citibank in the name of Miguel Roure/Reactive

33.2 Mr Gatell had told the Applicant that the Respondent did not advise CGG to seek advice in relation to these loans.

Witnesses

34. Helen Franzese

34.1 Ms Franzese confirmed that her witness statement was true to the best of her knowledge and belief. Ms Franzese had been a partner at GS at the material time and had assisted Mr Gerber in collating documents to produce to the SRA pursuant to a production notice. She told the Tribunal that she had only reviewed her own email account when retrieving emails and that she had not had any communication with the Respondent on WhatsApp.

35. Daniel Gerber

35.1 Mr Geber confirmed that his two witness statements were true to the best of his knowledge and belief. He told the Tribunal that GS had wanted to keep matters that pre-dated the Respondent joining separate from his GS matters. There were matters open with GS that pre-dated his start-date, but this was as a way of monitoring the £300,000 figure that formed the basis of his joining GS and it also enabled checking for conflicts of interest. Mr Gerber told the Tribunal that there was an induction process for new staff and the Respondent would have been clear about the requirements relating to client accounts.

36. CGG

36.1 Mr CGG gave evidence with the assistance of an official Spanish interpreter. He confirmed that his two witness statements were true to the best of his knowledge and belief.

36.2 He told the Tribunal that he had had access to the BBVA account for one day after it was set up, and that after that he had been told by the bank that his access had been changed with only the Respondent having access to it.

36.3 Mr CGG confirmed that he had not altered any of the banking documentation and therefore the reference to a loan had been generated by the bank, not written by him.

Findings of Fact and Law

37. 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 his

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

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

General Approach

Integrity

39. Where the Tribunal was required to consider the question of integrity, it applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

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

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

Dishonesty

41. The test for considering the question of dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "The test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ….. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

42. In all instances where the Tribunal was required to consider the issue of dishonesty it applied the test in Ivey and in doing so, adopted the following approach:

- Firstly the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.

- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Rule 5 Allegations

43. **Allegation 1.1 - On 10 and 11 November 2015 he sent misleading emails to his client's debtor, FO, in which he purported to provide his firm's client account details when in fact the details did not relate to his firm's client account thereby breaching any or all of Principles 2 and 6 of the SRA Principles 2011 ("the Principles 2011").**

Applicant's Submissions

43.1 Mr McClelland told the Tribunal that the Respondent had maintained that this account was a "business account" not a "personal account", a proposition Mr McClelland told the Tribunal missed the point. It was not the client account of the firm and it was not a client account administered in accordance with the SARs at all. Further, and in any event, it was not being used exclusively as a business account. The bank statements included, by way of examples, debit card transactions for supermarkets, restaurants and public transport.

43.2 Mr McClelland submitted that the emails sent by the Respondent on 10.11.15 and 11.11.15 were misleading and improper. The emails were sent using his GS email account (mroure@goldbergsegalla.com), with the GS's electronic letterhead on which he was described as a partner in that firm. The Respondent could not have made it any clearer that he was writing in his capacity as a partner at GS and that the "lawyer trust account" to which he referred was the firm's client account. His email the following day was still more explicit when he referred to "our client trust account" and, again, presented himself as acting on behalf of the Firm, using the phrase "As lawyers in the city we follow with our clients all protocols properly". Mr McClelland submitted that any reasonable reader would have understood the Respondent's description of himself and his colleagues as being "lawyers in the city" was a reference to the fact that GS had offices in the City of London. The email was calculated to reassure FO that GS's account was administered in accordance with the protective protocols attending a client account.

43.3 When DR sought specific reassurance that the account R had provided was GS's client account. R replied (as above) that "It is Miguel Roure/GS. It is correct trust account". The Respondent was specifically representing that the details he had provided were to a trust account held by, or on behalf of, GS.

43.4 Mr McClelland submitted that the Respondent had knowingly made false and misleading representations that went to the heart of a solicitor's role as a trusted custodian of client funds. This was in circumstances in which FO could not have made it plainer that they were only transferring the funds on condition that they be held on the firm's client account, and that this was a matter to which they attached importance.

43.5 Mr McClelland submitted that the Respondent's conduct was dishonest by the standards of ordinary, decent people, lacked integrity as it demonstrated a manifest departure from the standards to be expected of a solicitor, and was conduct which would undermine public trust, both in the Respondent and the profession.

43.6 Mr McClelland submitted that there was nothing to the Respondent's suggestion that there had been a lack of disclosure of the full picture. The emails formed part of a continuous chain, and any missing WhatsApp messages were available to the Respondent in any event.

Respondent's Submissions

43.7 The Respondent, in his Answer and in his Investigation Response sent to the SRA on 11 August 2016, made a number of complaints about lack of disclosure and an absence of support from GS, which he told the Tribunal had resulted in his rights being violated and had left him unable to defend himself. He told the Tribunal that, had all the documents been available, he would have been able to rebut all the Allegations.

43.8 In relation to the specific Allegations, he denied them in full. In his Answer he told the Tribunal that while he may have been an "idiot" he had never been dishonest. In his Investigation Response he explained that the account used was a business account, not a personal account.

43.9 In his Investigation Response he stated:

> "I acted with integrity and send money following the instructions and order from my former firm and the customer as soon as RBS let me do it. I did not retain the founds intentionally and the only reason were what I explain below.
> I acted in the client's best interest because I did everything possible to get their money back so would not in the hands of the debtor and thus continue according to client interest."

43.10 He later stated in the same document:

> "Facilitating my business account I was sure I protected the interest and the assets of my client who needed to recuperate the founds and also GS because since I was alone without assistance from GS and did not want the firm received any funds until they authorize me. It is completely false that I did not reported to the firm. They knew from the first moment I received the funds in my business account not my personal account. The reason Dan Gerber insist me if I received any founds to my personal account or GS segalla account is because the client did not signed the engagement letter with GS that's all or what I understood form him and why I keep thje firm out although they were informed since the beginning".

43.11 The Respondent denied that he had instructed the debtor to transfer to his "personal account", describing this as "completely false" and stating that the money had gone into a business account that he held with RBS. He had done so to assist EF in recovering his money as quickly as possible.

43.12 The Respondent's Answer was consistent with his explanation in the Investigation Response.

The Tribunal's Findings

43.13 The Tribunal considered carefully the emails that were the basis of this Allegation. The email sent on 10 November 2015 contained the following relevant characteristics:

- It was from the Respondent's email account at GS – mroure@goldbergsegalla.com;
- The email described the Respondent as a partner;
- It gave the address of GS;
- It contained a direct dial telephone number for the Respondent at GS;
- It contained a link to the GS website;
- Although the email referred to "my client" it later stated "we are instructed" to issue proceedings;
- It demanded the money be transferred to a "trust account".

43.14 The Tribunal considered that this email made clear that the Respondent had been sending it purportedly in his capacity as a partner at GS. Although he had referred to "my client", his use of the word "we" indicated that it was GS that had been instructed to issue proceedings if the money was not transferred.

43.15 The recipient, DR, had replied and confirmed that he was content to forward the funds to "your client trust account". This was on the basis that the money would be held in that account until the completion of an HMRC investigation. The Tribunal considered this to be a request for reassurance, which the Respondent purported to provide on 11 November 2015. In that email he had written "As lawyers in the City we follow with our clients all protocols properly so I confirm you we held the founds in our client trust account" (Tribunal's emphasis), thus communicating in the first-person plural. The Tribunal took account of the fact that English was not the Respondent's first language. However he had routinely communicated in the first-person singular when he chose to and this had included in his Investigation Response and his Answer, as well as in other emails and indeed within the same email. The Tribunal was entirely satisfied that any reasonable reading of this email would lead to the conclusion that it was purporting to be sent by the Respondent on behalf of GS, and that references to "our" and "we" referred to GS as a firm.

43.16 The reference to following protocols, linked as it was to a reference to lawyers in the City of London, clearly conveyed that GS followed SRA Rules.

43.17 The Tribunal further noted that both DR and the Respondent used the phrase "client trust account". The Tribunal had no doubt that DR was seeking assurance that the money would be held in a client account and the Respondent had purported to provide that assurance. He had not corrected DR to say, for example, that it was not a trust account but a business account.

43.18 DR had then sought clarification of what he clearly believed to be an error, namely the name on the account. He specifically asked the Respondent whether it should be GS as opposed to Respondent. Even if all of the above had been the result of a misunderstanding or mistake on the part of the Respondent, this was his opportunity to

correct and clarify matters. Instead of doing this however, he had sent a one line response to DR adding the letters GS and reconfirming that it was the "correct trust account". Again, this email, in common with all the emails on this point, came from the Respondent's GS email account.

43.19 The Respondent further acknowledged the transfer into "your client trust account" and made no corrections to DR's apparent understanding of the position.

43.20 The Tribunal was satisfied beyond reasonable doubt that the Respondent had sent emails that were misleading, and did mislead. They referred to a client trust account in the context of a series of emails sent by the Respondent purportedly in his capacity at GS. He provided reassurance on the back of that status and not only failed to correct DR's misapprehensions but also endorsed them.

43.21 The Tribunal found the factual basis of Allegation 1.1 proved beyond reasonable doubt.

43.22 Dishonesty

43.22.1 The Tribunal considered the Respondent's state of knowledge at the time he was sending the misleading emails. The Respondent knew where the money should have gone. Although he had not signed his offer letter, he had been at GS for six months and was operating as a partner as reflected in the email stationary describing him as such. The Respondent knew that he was using a GS email account and he knew that the bank account details he was providing did not relate to a GS bank account, let alone its client account. The Respondent was also aware that he had to describe this account as a client trust account in order to reassure DR that this was an appropriate account into which the monies should be deposited.

43.22.2 The Respondent had clearly read the request for clarification as to the status of the bank account as he had replied to the email. In that reply he had stated that the bank account name was "Miguel Roure/GS", which he would have known was plainly untrue.

43.22.3 It was with these matters in mind that the Respondent had misled DR and FO by providing information that was not simply inaccurate but was untrue. The bank account was not a client trust account and was not even a GS account of any sort.

43.22.4 The Tribunal was satisfied beyond reasonable doubt that the provision of misleading and untrue information by a solicitor/REL as to the nature and description of a bank account would be considered dishonest by the standards of ordinary decent people.

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

43.23 Principle 2

43.23.1 The Tribunal noted the requirement for scrupulous accuracy described in Wingate and Evans and Malins. Making repeated misleading and untrue representations, particularly in the context of a transfer of monies owed to a client, was inconsistent with the high standards required of a solicitor/REL. A solicitor of integrity would have taken the opportunity to correct any genuine errors when clarification and reassurance had been sought. Instead, the concerns had been waved away and further misleading statements had been made. The Tribunal was satisfied beyond reasonable doubt that the Respondent had lacked integrity and breached Principle 2.

43.24 Principle 6

43.24.1 The Tribunal considered that it followed as an irresistible consequence from the factual findings that the trust the public placed in the Respondent and in the provision of legal services was seriously undermined. The trust the public placed in the profession would cease to exist if solicitors were prepared to send misleading emails. The Tribunal found the alleged breach of Principle 6 proved beyond reasonable doubt.

43.25 Allegation 1.1 was therefore proved in full including the allegation of dishonesty.

44. **Allegation 1.2 - On or around 10 and 11 November 2015 he caused an inappropriate transfer of funds due to his client from FO into his own personal account instead of the firm's client account ("the inappropriate transfer") in breach of:**

1.2.1 Rule 14.1 of the SRA Accounts Rules 2011 ("the SAR 2011");

1.2.2 Principles 2, 4, 6 and 10 of the Principles 2011.

Applicant's Submissions

44.1 Mr McClelland submitted that solicitors were obliged to hold money in client account; indeed it was possibly the most fundamental financial obligation to which any solicitor was subject. The Respondent must have known this, but nonetheless chose to breach this requirement.

44.2 In this case FO had made clear that they were only willing to transfer the money if it was paid into client account and held on trust pending the resolution of the HMRC Investigation. The Respondent knew this, but nonetheless procured the transfer of funds from FO into his own RBS Account.

44.3 In doing so Mr McClelland submitted that the Respondent had acted dishonestly by the standards of ordinary, decent people, failed to act with integrity, in his client's best interests or in a way that maintained public trust. He had also failed to protect client money and assets.

Respondent's Submissions

44.4 The Respondent had made submissions relevant to Allegation 1.2 in the course of his submission in relation to Allegation 1.1. He denied that it was a personal account and had maintained that by using the business account he was protecting his client's interests. He had stated in his Investigation Response that the funds were kept safe and any delay in the transfer was due to RBS limits on the amount that could be transferred.

44.5 The Respondent denied the Allegation in full.

The Tribunal's Findings

44.6 It was not in dispute that the monies had been transferred into the account, the details of which had been given by the Respondent as discussed above in relation to Allegation 1.1. The Tribunal noted that the Respondent had drawn a distinction between a personal account and a business account. The Rule 5 statement alleged that it had been paid into "his own personal account" as opposed to the Firm's client account.

44.7 The Tribunal noted that the bank account was in the Respondent's name and it was described as a business current account. The Tribunal noted that it appeared to be a mixed use account, in that a number of the items were clearly personal transactions. Whatever type of account it was, it was very obviously not a client account of any sort. A client account had special features and was a trust account. It was therefore clearly not GS's client account. The Tribunal considered that a business account under the personal control of an individual was still a personal account. The account was for his benefit and not for his clients and only he could operate it.

44.8 The transfer into that account had been occasioned by the Respondent's misleading emails which the Tribunal had found him to have sent when considering Allegation 1.1. The Tribunal was satisfied beyond reasonable doubt that the Respondent had caused an inappropriate transfer of funds due to his client from FO into his own personal account instead of into GS's client account.

44.9 The Tribunal noted the Respondent's complaints about lack of disclosure. He had never specified what items were missing or what the documents would have shown. The Tribunal had been presented with a continuous link of email exchanges which did not show any apparent gaps in the chain. It was fanciful to suppose that there was a completely parallel set of correspondence and/or messages that painted a completely different picture.

44.10 The Tribunal therefore found the factual basis of this Allegation and the breach of Rule 14.1 of the SAR proved beyond reasonable doubt.

44.11 Dishonesty

44.11.1 The Tribunal considered the Respondent's state of knowledge.

44.11.2 The Tribunal had already found that the Respondent knew that he was providing the details of his own personal account to DR/FO and that in doing so he had dishonestly misled them. The Respondent knew, therefore, that the

funds had been transferred into his account and not the client account of GS. This was evidenced by the Respondent's acknowledgement of the transfer to DR, following his reassurance to DR that the account into which it was being paid was the correct account.

44.11.3 The Respondent's dishonesty in relation to Allegation 1.1 enabled the transfer of funds which was the subject of Allegation 1.2. The Tribunal was satisfied beyond reasonable doubt that where funds were transferred as a consequence of dishonest misrepresentations, this in itself would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

44.12 Principle 2

44.12.1 The Tribunal found that it must lack integrity to allow money to be paid into a solicitor's own personal account instead of a firm's client account as a result of dishonestly misleading emails. The Tribunal found beyond reasonable doubt that the Respondent had lacked integrity and breached Principle 2.

44.13 Principles 4 and 10

44.13.1 The Tribunal considered that it was self-evidently not in the client's best interests for monies due to them to be placed in an account other than a client account. This was because it placed funds outside the regulated environment and placed their money is at risk. This type of action was wholly inconsistent with the duty to protect client money and assets. The Tribunal found the breaches of Principles 4 and 10 proved beyond reasonable doubt.

44.14 Principle 6

44.14.1 The Tribunal was satisfied beyond reasonable doubt, based on its other findings in relation to this Allegation, that the Respondent had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. The Tribunal therefore found the breach of Principle 6 proved beyond reasonable doubt.

44.15 Allegation 1.2 was therefore proved in full including the allegation of dishonesty.

45. **Allegation 1.3 - On or around 17 November 2015 he misled his firm as to his dealings both with regard to and the circumstances of the inappropriate transfer in breach of Principles 2 and 6 of the Principles 2011.**

Applicant's Submissions

45.1 Mr McClelland submitted that the Respondent had knowingly misled his partners when he informed them, in response to repeated and specific requests for confirmation, that he had not received funds either into any "personal account" (as distinct from a "GS account") or "personally". By misleading his partners in this way, he had acted dishonestly and failed to act either with integrity or in such a way as to maintain public trust.

Respondent's Submissions

45.2 In his responses to Allegation 1.1 and 1.2 the Respondent had made clear that it was his case that GS and its partners, specifically including Mr Gerber, were fully aware of the situation. He had followed Mr Gerber's instructions at all times and denied misleading GS.

45.3 The Respondent therefore denied this Allegation in full.

The Tribunal's Findings

45.4 The Tribunal noted the evidence of Mr Gerber. The Tribunal found him to be a credible and reliable witness of truth. He had given evidence in a straightforward fashion. The Tribunal had similarly found Helen Franzese to be an honest and helpful witness. Most importantly, the Tribunal found their evidence to be consistent with the contemporaneous documentary evidence. The Tribunal accepted the evidence of both these witnesses.

45.5 The Tribunal reviewed the email exchanges involving the Respondent around 17 November 2015. The Tribunal noted a number of emails that contained misleading representations. On 18 November 2015 the Respondent had written to Mr Gerber stating: "I never send any invoice, I never received anything personally and I will do everything you say also I did outside of the firm until I check everything". The explicit reference to not receiving anything personally was clearly wrong. The Tribunal had already found in relation to Allegation 1.2 that he had received the funds into his own personal bank account. The fact that it was a business current account did not make this email accurate. Mr Gerber's question had been "Please confirm that you have received no funds personally or otherwise for fees or anything related to this" (Tribunal's emphasis). This was a wide question that required a comprehensive answer. The correct answer would have been for the Respondent to tell Mr Gerber that he had received the monies into his own business current account. However the Respondents' reply was constructed, the Tribunal found it to be misleading.

45.6 This email exchange followed a Skype call the previous day, the contents of which the contents of which Mr Gerber had put into an email of 17 November 2015. In that he had stated "This will confirm that you have not received any funds on this matter into any personal account or GS account and will not do so until you and I have discussed this further". The Respondent's reply did not correct this but stated that "I did not transfer any money…". This was also misleading.

45.7 The Tribunal again rejected the Respondent's suggestion that there were missing documents which were given a different meaning to the emails presented to the Tribunal. The email chain presented to the Tribunal appeared complete, but even if one or two emails were missing it was inconceivable that they would have been of a nature to completely change the context of the emails that had been exhibited such as to make them accurate.

45.8 Furthermore, the emails exhibited to the Tribunal were consistent with the evidence of Mr Gerber and Ms Franzese. The Tribunal was satisfied beyond reasonable doubt that the Respondent had misled his firm as to his dealings with regard to the circumstances

of the inappropriate transfer of funds into his own personal account. The Tribunal found the factual basis of Allegation 1.3 proved beyond reasonable doubt.

45.9 Dishonesty

45.9.1 The Tribunal considered the Respondent's state of knowledge at the material time, which included the matters it had found proved in relation to Allegation 1.1. The Respondent knew that the statements he had made to the partners were untrue, in that he was aware that the funds had been received into his own bank account and not that of the GS. The questions from Mr Gerber had been posed in very clear and unequivocal terms and been put to the Respondent more than once. The answers from the Respondent, both orally and in writing had initially been equally clear but were simply untrue and misleading.

45.9.2 The Tribunal was satisfied beyond reasonable doubt that a solicitor misleading their business partners in the context of urgent and serious enquiries being made by them would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

45.10 Principle 2

45.10.1 The Tribunal considered that a solicitor of integrity did not, as the Respondent had done, provide answers to his colleagues' queries that were plainly false and were rooted in an attempt to cover his tracks. He had repeated these misleading statements over a period of time as his explanations became increasingly complicated. The Tribunal was satisfied beyond reasonable doubt that in misleading his firm he had lacked integrity and breached Principle 2.

45.11 Principle 6

45.11.1 It followed as a matter of logic that the trust the public placed in the Respondent and in the profession was eroded in the circumstances detailed above. The Respondent had been given the opportunity to co-operate with Mr Gerber and acknowledge his error. Instead he had continued with the concealment. The Tribunal found beyond reasonable doubt that the Respondent had breached Principle 6.

45.12 Allegation 1.3 was therefore proved in full including the allegation of dishonesty.

Rule 7 Allegations

46. **Allegation 1.1 - Between 19 August 2015 and 6 January 2016 he permitted 9 transfers totalling £61,285.00 from an ECS Limited account to his own account(s) without his client's consent thereby breaching any or all of Principles 2, 4, 6 and 10 of the Principles**

Applicant's Submissions

46.1 Mr McClelland submitted that this Allegation was relatively simply established. The BBVA Account was set up to facilitate CGG's business, carried on through ECS. The Respondent had no beneficial interest in ECS or in the monies held in the BBVA Account. Instead, the Respondent was acting as a professional trustee and nominee director, holding his shareholding on trust and exercising his directorship subject to CGG's lawful directions. CGG funded the BBVA Account through transfers from own bank funds and PayPal accounts. Because the Respondent was ECS's director and the BBVA Account was held in ECS's name, only he could access the account. Mr McClelland submitted that it was clear that the Respondent had made use of his access to the BBVA Account to misappropriate a total of £61,285.55. The Respondent had contended that he never transferred to his own account any funds from "Mr CGG's Account" (understood to be a reference to the BBVA Account). Mr McClelland submitted to the Tribunal that this was simply untrue as evidenced by the documentary evidence and the evidence of Mr CGG himself, which the Tribunal was invited to accept.

46.2 The Respondent had alleged that CGG had made the allegations "in order to protec himself for Tax evasion". Mr McClelland submitted that no proper explanation of this very serious allegation had been advanced, still less evidence that would make it good. The Respondent had also alleged that the documents had been forged. Mr McClelland submitted that it was unclear which documents this related to. The documents were genuine and Mr McClelland told the Tribunal that the Applicant had served a Civil Evidence Act Notice to which the Respondent had not replied. The Respondent had misappropriated £61,285 from the BBVA Account and that, in so doing, acted dishonestly, without integrity, not in his client's best interests, had failed to protect client money and assets and had acted in such a way as to fail to maintain public trust.

Respondent's Submissions

46.3 The Respondent addressed the Rule 7 Allegations in his Answer. His submissions related to the totality of the Rule 7 matters and are set out here in their entirety to avoid repetition.

> "1. to the correlatives of the contrary I strongly oppose and challenge all the documentation that has also been obtained fraudulently. They are completely false, indeed he aport a contract of a investment which the signature is not mine.
>
> As we said before in this case the tribunal is knowing a case has already finished against me in spain and is making with due all respect and interferent ion in the criminal process against MR [CGG] for false claim including the SRA claim. The continuation of this process not only violates my fundamental rights but is giving for some a crime of fraud in my professional activity that tando the college of Madrid as the court of instruction and the court of appeal and ruled that the civil and criminal pretenses of the Mr. [CGG] are completely unfounded. Is that I will have to answer for the same complaint in all countries that this senator has filed a complaint when a judge has already ruled in my favor and believes that there is an alleged crime of Mr. [CGG].

1. I never transfer to my account any founds from Mr [CGG] Account. All the transfer I made were my own money.
2. Mr [CGG] never send me any money to make investment. All money I use for any investment was my own money.
3. Mr [CGG] never transfer to me nay money as a loan. The money he allegued I transfer to my account he transferred by himself to Chipre or other European country. .
4. I only recive part of my fees for my professional services for the disputes with paypal by Spanish jurisdiction and other advice for his issues in Spain.
5. We have the serius suspicious he made the claims against me in order to protec himself for Tax evasion. He support his request with false documentations.

As you could see in the firm resolution of the Spanish court which the claim it was exactly the same as the SRA claim which now this tribunalis knowing despite an Spanish tribunal has already resolved by criminal and civil point of view, mr [CGG] allegation were completely unproved.

Mr [CGG] made also an other claim at the [AA] where the board give me thanks me of all my attorneys and appoint me now as neutral certified arbitration.

What I see here SRA stabled as truth what Mr [CGG] said and after when I provided the resolution of the Spanish court resolution they continuo despite the evidence I show and published an information completely false. How is possible here is not respected the resolution of an European state member court ? The allegation of SRA put in the table the facts that I made a fraud in fact. Fact which I insist a tribunal already said was unproved and resolved in my favor. What happen? Because the resolution of the court don't like I must to respond again for accusation were demonstrate were false in all countries Mr [CGG] issued.

My lawyer has already with officals documentations from the Spanish courts there are now two criminal process against this person which are included the legal fraud making here by them. Mr [CGG] knows perfectly the resolutions of the Spanish tribunals in my favor and continuo with this is with due all respect a legal process fraud making by him because he is trying to use this tribunal to get a different resolution which were already resolved by this Spanish court. As you can read at the appeal couts the resolution is firm without any other more appeals.

As there are a pending process against them im not allowed to give all documentation until the Spanish court resolve because are under confidentiality and are eencial for my claims and right of my defense. The fact you continuo with this process will cause me a completely indefension. We are talking about a criminal process and the tribunal need to underrtand how serius is this and I request don't make me more damages as Mr [CGG] and the rest made me. Remember in this moment of the criminal process I am not longer the respondent…I am the victim."

The Tribunal's Findings

46.4 The Tribunal noted that the Respondent had asserted that all of the documents relied upon in relation to the Rule 7 Allegations were forgeries. He had not specified in what way they were forged or by whom. They had all been served pursuant to a Civil Evidence Act notice and the Respondent had chosen not to file a counter notice. The Respondent had called no expert evidence in support of his assertion that the documents were forgeries. The Tribunal considered that there was no evidential basis to support that the documents were anything other than genuine. The Tribunal proceeded on that basis and considered the Allegations based on the documents before it, having regard to the evidence and submissions made by both parties.

46.5 In relation to Allegation 1.1, the fact of the transfers having occurred was made out on the basis of the bank statements which clearly showed destination of funds being the Respondent's bank accounts.

46.6 The Respondent had denied making the transfers. This was contradicted by the evidence of CGG, who had been clear in his written and oral evidence that the Respondent was responsible for making the transfers. The Tribunal found CGG's evidence to be honest and straightforward. He had given clear and crisp answers and while he clearly felt wronged, the Tribunal was satisfied that his evidence was truthful.

46.7 The Tribunal accepted CGG's evidence that he was a client as this evidence was corroborated by the documentary evidence of the Respondent's emails to Mr Gatell in which he had described CGG as his client. In an email of 4 March 2016 the Respondent had written to Mr Gatell stating: "To my knowledge, [CGG], unless I'm mistaken, is still my client and I am the only one who must deal with him. Furthermore, now that I've seen that you don't know the details and also I'm not going to break confidentiality. With regard to my wish or otherwise to return today, you have become very confused. And, of course [C] knows all about it. But. I tell you, be careful with calling my professionalism into question. I'm someone who always deals with the consequences".

46.8 The Tribunal noted that the Respondent had presented a cheque in the sum £100,000, which he would not have done had he been entitled to the money. The Tribunal noted that this cheque had 'bounced' and found that the circumstances surrounding the presentation of the cheque corroborated CGG's evidence. The Tribunal accepted the evidence of CGG that the Respondent had thwarted his attempts to access the account and that he had been told, in terms, that it was the Respondent who had prevented him having access. The Tribunal found the factual basis of Allegation 1.1 proved beyond reasonable doubt.

46.9 Principle 2

46.9.1 The Tribunal was satisfied beyond reasonable doubt that taking clients' monies without their consent and subsequently suppressing their access to the account amounted to a lack of integrity. The Tribunal found the alleged breach of Principle 2 proved beyond reasonable doubt.

46.10 Principles 4 and 10

46.10.1 It was clearly not in the best interests of a client to make unauthorised withdrawals from their bank account. In terms of protecting client money and assets, this was the diametric opposite of the Respondent's obligations. The Tribunal was satisfied beyond reasonable doubt that the Respondent had breached Principles 4 and 10.

46.11 Principle 6

46.11.1 In light of the Tribunal's findings above, it was a matter of inevitable logic that the trust the public placed in the Respondent and in the profession was fully breached if a solicitor took funds from a client without their consent. The protection of client monies was one of the most important duties owed by a solicitor. The Tribunal was satisfied beyond reasonable doubt that the Respondent had breached Principle 6.

46.12 Dishonesty

46.12.1 The Tribunal considered the Respondent's state of knowledge at the time he was permitting the transfers. The Respondent knew that he had an ECS account into which payments had been made by CGG. He was also aware that he had transferred that money out of that account and he was aware that he had transferred them into his own accounts. He had done so without the consent of his client, which he would have known he did not have. This was in the context of being in an investment relationship with his client.

46.12.2 The Tribunal was satisfied beyond reasonable doubt that to make the transfers in such circumstances would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

46.13 Allegation 1.1 was therefore proved in full beyond reasonable doubt including the allegation of dishonesty.

47. **Allegation 1.2 - Between 19 April 2016 and 17 May 2016 he permitted 3 transfers totalling £12,656.89 from ECS Limited's paypal account to his own account(s) without his client's consent thereby breaching any or all of Principles 2, 4, 6 and 10 of the Principles.**

Applicant's Submissions

47.1 Mr McClelland submitted that in circumstances where the Respondent made transfers from the PayPal account without CGG's consent, he had misappropriated £12,656.75 from the PayPal account set up for his client's business. This was dishonest and involved a failure to act with integrity; to act in his client's best interests; to act in a way that maintained public trust, and to protect client money and assets. The Tribunal was again invited to accept CGG's evidence.

Respondent's Submissions

47.2 These are set out above in relation to Allegation 1.1.

The Tribunal's Findings

47.3 The Tribunal was satisfied beyond reasonable doubt that the transfers had taken place as evidenced by the bank transfers, which it had sight of. The Tribunal again accepted the evidence of CGG. The circumstances of the transfers were the same as in Allegation 1.1, this time in relation to the PayPal account. The Tribunal therefore found the factual basis of Allegation 1.2 proved beyond reasonable doubt.

47.4 Principles 2, 4, 6 and 10.

47.4.1 In light of the Tribunal's factual findings in relation to this Allegation, the consequent breaches of principle flowed in the same way that they had, and for the same reasons as in relation to Allegation 1.1. The Tribunal found the breach of each of these principles proved beyond reasonable doubt.

47.5 Dishonesty

47.5.1 The Tribunal found the Respondent's state of knowledge to be the same as it had been when he was making the transfers from the account in Allegation 1.1. The only difference was that these transfers were exclusively from the PayPal account. However the Tribunal was satisfied that it remained the case that the Respondent knew he was making transfers and knew he did not have his client's consent.

47.5.2 The Tribunal was satisfied beyond reasonable doubt that the Respondent's conduct in those circumstances was dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

47.6 Allegation 1.2 was therefore proved in full beyond reasonable doubt including the allegation of dishonesty.

48. **Allegation 1.3 - He failed to advise CGG of the circumstances in relation to monies purportedly invested on his behalf which led to CGG submitting a criminal complaint against the Respondent, thereby breaching any or all of Principles 2, 4, 6 and 10 of the Principles.**

Applicant's Submissions

48.1 Mr McClelland submitted that having provided the Respondent with funds, CGG was never provided with a clear response or supporting documents to his enquiries, receiving instead only limited and fragmentary information.

48.2 The "Declaracion Jurada" which the Respondent executed on 2 October 2015 made clear that the Respondent and CGG had agreed to make a 50:50 joint investment in the

IG platform, with the profits to be shared between them on the same ratio, subject to a specified deduction.

48.3 Mr Gatell had emailed the Respondent on various occasions seeking information in relation to the investment. On 8 March 2016 the Respondent informed Mr Gatell during a telephone conversation that CGG would receive a transfer of his joint investment. However, this had never occurred and the Respondent had then claimed that Mr Gatell had misunderstood, later invoking lawyer-client confidentiality to maintain that it would no longer be appropriate for him to communicate with Mr Gatell.

48.4 CGG subsequently obtained from IG documents which showed that investments were placed but that the Respondent made substantial cash withdrawals of £61,645.7. In the circumstances, Mr McClelland invited the Tribunal to infer that the Respondent had misappropriated the sums withdrawn. Mr McClelland submitted that the Respondent's failure to advise CGG as to the circumstances of their joint investment and his misappropriation of the invested funds was dishonest and, in particular, involved a failure to act with integrity or to maintain public trust.

Respondent's Submissions

48.5 These are set out above in relation to Allegation 1.1.

The Tribunal's Findings

48.6 The Tribunal considered, as a preliminary matter, the scope of Allegation 1.3. The Applicant had made an application to amend the Rule 7 statement a few days before the hearing. This had been rejected by the Tribunal in part due to the lateness of the application and also on the basis that it was open to the Applicant to make submissions during the hearing. The wording of Allegation 1.3 referred to a failure to advise. While it was correct to say that the body of the Rule 7 invited the Tribunal to make an inference about misappropriation, if the Applicant wished to make a specific allegation of misappropriation that should have been clearly pleaded as such.

48.7 The Tribunal therefore confined its deliberations in respect of Allegation 1.3 to the question of whether the Respondent had failed to advise CGG of the circumstances in relation to monies reportedly invested on his behalf which led CGG to submitting a criminal complaint against the Respondent.

48.8 The Tribunal first of all considered whether or not there was an investment relationship. The Tribunal considered the documentation including the Declaration of Trust as well as the Skype thread that led up to it. It was populated with the sort of details that one would expect from a document detailing an investment relationship and the Tribunal was satisfied beyond reasonable doubt that there was such an agreement. The Tribunal had rejected the suggestions of forgery for the reasons set out above. The Declaration was consistent with the content of the Skype messages and the Respondent himself had acknowledged the fact of an investment when communicating with Mr Gatell. The Tribunal had already found that CGG was the Respondent's client and it further noted that the funds were transferred as evidenced by the bank records.

48.9 The Tribunal again accepted CGG's evidence and noted the replies to Mr Gatell which were consistent with CGG's evidence that attempts to get information or being obstructed by the Respondent.

48.10 The circumstances were that the monies did not find their way to where CGG thought they were going and this had been the subject of a criminal complaint. The Tribunal was satisfied beyond reasonable doubt that there had been a pattern of obstruction. The factual basis of Allegation 1.3 was therefore proved beyond reasonable doubt.

48.11 Principle 2

48.11.1 The Tribunal found that it lacked integrity to obfuscate and obstruct a client who was trying to get proper advice about an investment. The client had repeatedly asked the Respondent questions and by not explaining adequately or at all the Respondent had created an environment where transfers of funds had taken place without the CGG's knowledge. The Tribunal was satisfied beyond reasonable doubt that the Respondent had lacked integrity and it found the breach of Principle 2 proved.

48.12 Principles 4 and 10

48.12.1 It was a fundamental aspect of the solicitor-client relationship that the client was in a position to make informed decisions. This could not happen if the client was not properly advised and if attempts to seek clarity on important matters were obstructed. In failing to properly advise CGG, the Respondent had exposed his client to potential financial loss. This was evidently not in the client's best interests and was inconsistent with protecting client monies and assets. The Respondent clearly could not be protecting CGG's assets if he was not properly advising him as to how the monies had been invested. CGG was a client as well as an investment partner and the Respondent had been under a duty to keep him fully informed to enable him to make decisions.

48.12.2 The Tribunal was satisfied beyond reasonable doubt that the Respondent had breached Principles 4 and 10.

48.13 Principle 6

48.13.1 It followed as a matter of logic that the trust the public placed in the Respondent and the profession was seriously undermined in circumstances where he had deliberately failed to advise his client and in doing so had failed to act in CGG's best interest. The tribunal found the breach of Principle 6 proved beyond reasonable doubt.

48.14 Dishonesty

48.14.1 The Tribunal considered the Respondent's knowledge of matters at the material time.

48.14.2 The Respondent knew that CGG was his client and that he had been instructed to invest funds on CGG's behalf. The Respondent knew that as CGG's lawyer, he was under a duty to advise CGG and to respond to any queries he raised. The Respondent was aware, from the emails, that CGG, and Mr Gatell on his behalf, was seeking information from him. The Respondent was the author of replies to those emails that were evasive initially and then became hostile.

48.14.3 The Tribunal examined the context of the failure to advise. This was a situation in which misappropriation might occur and the Respondent had been deliberately obstructive and confrontational. There had been a deliberate decision to obfuscate when asked for specific answers. The pattern of responses was one of withholding of key information. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

48.15. Allegation 1.3 was therefore proved in full beyond reasonable doubt including the allegation of dishonesty.

49. **Allegation 1.4 - Between October 2015 and January 2016 he borrowed £47,000.00 and €9,100.00 from CGG in circumstances where there was an own interest conflict as CGG had not obtained independent legal advice and thereby breached Principles 3, 4 and 6 of the Principles and O(3.4) of the SRA Code of Conduct 2011 ("the 2011 Code").**

Applicant's Submissions

49.1 Mr McClelland submitted that by obtaining substantial personal loans from CGG without ensuring that he first received legal advice, the Respondent had allowed his independence to be compromised, acted when he was subject to an own interest conflict and failed to act in his client's best interests or in a way that maintained public trust.

49.2 The Respondent had denied that CGG lent him any money, however Mr McClelland invited the Tribunal to reject this on the basis of CGG's evidence.

Respondent's Submissions

49.3 These are set out above in relation to Allegation 1.1.

The Tribunal's Findings

49.4 The Tribunal considered whether there had been a loan. CGG had given evidence to the effect that there was and the Tribunal accepted his evidence. There were monies in the bank account with the word "loan" written on the documentation and there was also the handwritten document containing the Respondent's bank account details. CGG had told the Tribunal that an assistant of his had written this on his instructions.

49.5 The next issue was whether CGG had been advised to obtain independent legal advice. He had given evidence that he had not been so advised and there was no evidence to

contradict that. In circumstances where a lawyer was accepting a loan from a client, something the Tribunal considered unwise generally, it was absolutely essential that the client was advised to take independent legal advice. The Respondent should have declined to accept the loan without such advice being taken. This was an obvious conflict of interest between the interest of the Respondent, who wanted the loan, and his client, who should have been advised to take independent legal advice before making such a loan.

49.6 The Tribunal was satisfied beyond reasonable doubt that there had been a loan and that CGG had not been advised to seek independent legal advice before the Respondent accepted the loan. The Tribunal found the factual basis of Allegation 1.4 and Outcome 3.4 proved.

49.7 Principle 3

49.7.1 The Tribunal noted the lack of a written agreement and the personal interest the Respondent had in receiving the loan monies. The Tribunal was satisfied beyond reasonable doubt that by putting his own interests above those of his client, the Respondent had allowed his independence to be compromised. The Tribunal therefore found the breach of Principle 3 proved.

49.8 Principle 4

49.8.1 It followed from the Tribunal's findings above that the Respondent could not have been acting in the best interests of his client, CGG, as he had allowed his independence to be compromised and had put his own interests ahead of those of his client. This was clearly incompatible with his duties under Principle 4 and the Tribunal was satisfied beyond reasonable doubt that he had breached Principle 4.

49.9 Principle 6

49.9.1 In light of the Tribunal's findings that the Respondent had accepted a loan from his client, failed to ensure that the client was properly advised, compromised his own independence and therefore acted where there was a conflict of interest, it stood to reason that the trust the public placed in the profession was eroded by such conduct. The public would be deeply concerned by this sort of behaviour and the Tribunal was satisfied beyond reasonable doubt that the Respondent had breached Principle 6.

49.10 Allegation 1.4 was therefore proved in full beyond reasonable doubt.

Previous Disciplinary Matters

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

Mitigation

51. The Respondent did not present any mitigation.

Sanction

52. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

53. In assessing the Respondent's culpability, the Tribunal found that there was personal financial benefit at the heart of the misconduct contained in the Rule 5 Allegations. The Respondent had sent misleading emails to facilitate the payments into his account and had then sent more misleading emails to cover this up. The purpose was to get funds into his account - what happened thereafter was less clear – but he had wanted to put the funds beyond GS which was why he had given the account details he had.

54. The misconduct found proved in respect of the Rule 7 Allegations was clearly for personal financial gain. The misconduct in respect of the Rule 7 matters in particular, had been planned and had continued over a period of time. The emails, the obfuscation and the delay in responding to enquires were all part of that.

55. The Respondent had breached his position of trust in respect of GS, FO (who was led to believe he was transferring the monies to a client account at GS), CGG and MT. He was an experienced lawyer who was operating at Partner-level

56. In terms of the harm caused, this was substantial and serious. Monies had been misappropriated, funds had been dispersed and the investment contemplated by CGG had not happened. This had resulted in ongoing litigation in Spain.

57. The Respondent had caused loss to individuals and harm to the reputation of GS and the profession. He had made unsubstantiated attacks on Mr Gerber, Ms Franzese, CGG and GS. While he had not misled the regulator as such, he had certainly put it to a lot of trouble.

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

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

59. In addition, the misconduct had been deliberate, calculated and repeated and had continued over a period of time. It was characterised by concealment and attempts to deflect blame onto others. The Respondent ought to have known that he was in material breach of his obligations. Indeed in the course of his defence he had made numerous representations about his obligations to the Madrid Bar.

60. There was very little in the way of mitigation. The Tribunal accepted that the £183,000 was repaid within a few days, albeit under pressure from GS.

61. The Tribunal found that the Respondent lacked any insight. He had been offended by the Allegations and had fought every point. He had advanced flawed technical arguments and had tried to block the process throughout. He had challenged the authenticity of documents in a way that was unrealistic and fantastical. He had not engaged in the closing stage of proceedings, thus requiring the Applicant to prepare for a fully contested hearing.

62. The misconduct was so serious that a Reprimand, Fine, Restriction Order or Suspension would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.

63. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Respondent had presented no exceptional circumstances and the Tribunal was unable to identify any. The Tribunal found there to be nothing that would justify either a fixed term or an indefinite suspension. The only appropriate and proportionate sanction was that the Respondent be Struck Off the Register of European Lawyers.

Costs

64. Mr McClelland applied for costs, presenting a revised cost schedule to take account of the fact that the hearing had taken two days and not four. He invited the Tribunal to carry out a summary assessment. He told the Tribunal that this was not a single case but two cases in one.

65. There had been a need to translate many documents but care had been taken to ensure none of it was un-necessary.

66. The way in which case had been fought, including jurisdictional points being taken, had resulted in additional hearings.

67. The Applicant had booked two interpreters – one to assist CGG in giving his evidence and one to assist the Respondent, should he have required it. They had been block-booked for three and five days respectively. Mr McClelland submitted that the costs were reasonable given the scope of the Allegations.

68. The Tribunal considered that the costs claimed were reasonable and proportionate. It reduced the second interpreter's fee by one day as the hearing had only been listed for four days, not five.

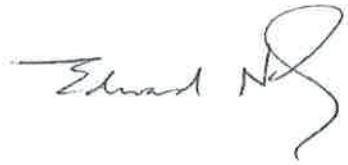
69. The Respondent had not served a Statement of Means and so there was no basis upon which to consider reducing the costs on the grounds of ability to pay. The Tribunal therefore made a cost order in the usual terms, in favour of the Applicant.

Statement of Full Order

70. The Tribunal Ordered that the Respondent, Miguel Jose Roure Lopez, Registered European Lawyer, be STRUCK OFF the Register of European Lawyers and it further

Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £57,535.98.

Dated this 7th day of September 2018
On behalf of the Tribunal



E. Nally
Chairman