SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11746-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

ANDREW JOHN PETERS — Respondent

Before:

Mr S. Tinkler (in the chair)
Mr P. Jones
Mrs C. Valentine

Date of Hearing: 14 June 2018

Appearances

Inderjit Johal, Counsel, employed by the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent Andrew John Peters, made by the Solicitors Regulation Authority ("SRA" or "Applicant") were that:

1.1 Between 19 March 2013 and 27 October 2016 he failed to properly account for money received from clients, in breach of all or any of:

(a) Rule 14.1 of the SRA Accounts Rules 2011;
(b) Rule 17.1 of the SRA Accounts Rules 2011;
(c) Principles 2, 4, 6 and 10 of the SRA Principles 2011;

1.2 By virtue of his criminal convictions for motoring offences on 24 May 2016 and 31 May 2016, he breached Principles 1, 2 and 6 of the SRA Principles 2011;

1.3 By failing to report to the SRA his criminal convictions from 24 May 2016 and 31 May 2016 and/or the County Court Judgment against him under Case Number B2CD51M5, he:

(a) failed to achieve Outcome 10.3 of the SRA Code of Conduct 2011; and/or
(b) breached Principle 7 of the SRA Principles 2011.

2. Dishonesty was alleged with respect to the allegations at paragraph 1.1, but dishonesty was not an essential ingredient to prove those allegations.

Documents

3. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 30 October 2017 with exhibit JRL1
- Letter from the SRA dated 14 November 2017 to Cartwright King Solicitors
- Letter from the SRA dated 16 January 2018 to Cartwright King Solicitors
- Letter with Civil Evidence Act Notice dated 27 March 2018 to Cartwright King Solicitors
- Second witness statement of Sean Grehan dated 16 May 2018
- Witness statement of Carol Anne Prince Reimann dated 16 May 2018 with exhibits CR1 – CR5
- Second witness statement of Carol Anne Prince Reimann dated 17 May 2018
- Civil Evidence Act Notice dated 22 May 2018
- Email from Jonathan Leigh of the Applicant dated 12 June 2018 with attached:
  - email and letter from Cartwright King Solicitors dated 11 June 2018
  - letter from the Respondent's GP date 6 June 2018
- Applicant's statement of costs for final hearing dated 7 June 2018 with attached Applicant's statement of costs as at date of issue
- Judgment in the case of GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162

Respondent

- Answer of the Respondent to the Applicant's Rule 5 Statement dated 13 December 2014 [2017]

Preliminary Issue

4. The Respondent was not present. For the Applicant, Mr Johal applied for the Tribunal to proceed in his absence. He relied on the judgment in the case of GMC v Adeogba and GMC v Visvardis [2016] EWCA Civ 162 with which the Tribunal was familiar. He also referred to correspondence sent to the Tribunal by his colleague Mr Jonathan Leigh, comprising letters from Cartwright King Solicitors dated 11 June 2018, which firm had until that date acted for the Respondent and from the Respondent's GP dated 6 June 2018. The Respondent had notice of the date, time and place of the hearing through the Standard Directions dated 15 November 2017 which had been served by recorded delivery post on Mr Colin Davis of Cartwright King Solicitors. The Tribunal noted Mr Davis's letter of 11 June 2018 to the Applicant which stated:

> "As the GP letter served earlier indicates, [the Respondent] feels he is in no condition to cope with the stress & anxiety arising from attendance at the hearing. He will not be attending accordingly and desires the matter to proceed in his absence.
>
> He has had to cease instructing my firm on financial grounds..."

5. The Tribunal considered that the Respondent had been properly served with notice of the proceedings and that he had voluntarily absented himself from the substantive hearing. He had indicated through his then representatives that he wished the matter to go ahead in his absence and the Tribunal considered that there was no prospect that if the matter were adjourned his attendance would be secured. Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 provided:

> "If the Tribunal is satisfied that notice of the hearing was served on the respondent in accordance with these Rules, the Tribunal shall have power to hear and determine an application notwithstanding that the Respondent fails to attend in person or is not represented at the hearing."

In all the circumstances the Tribunal considered that it was appropriate to proceed in the absence of the Respondent.

Factual Background

6. The Respondent was born in 1963 and was admitted to the Roll of Solicitors in 1989. He did not hold a current practising certificate.

7. At all times relevant to the allegations the Respondent was an employee solicitor of Martin Smith & Co ("the firm"), in Borehamwood, Hertfordshire. The Respondent had previously held other roles including (according to the Applicant's records) being a partner in another firm of solicitors from January 1996 to February 2006.

8. The firm raised various concerns and issues with the Applicant regarding the Respondent from September to November 2016. These started with initial queries and concerns regarding driving convictions and a County Court Judgment for £4,132.88 against the Respondent in relation to which Attachment of Earnings Orders were in place. Matters then progressed to initial reports of clients that cash payments made to the Respondent had not been properly recorded or banked.

9. A Forensic Investigation Officer ("FIO") of the Applicant was commissioned by its Supervision department. He began an inspection on 31 January 2017, interviewed the Respondent with a colleague on 14 March 2017 and completed a final Forensic Investigation ("FI") Report on the matter on 11 May 2017.

Allegation 1.1

10. In September 2016, the firm asked a part-time para-legal to work on the unpaid bills of costs on the Respondent's matters. The para-legal wrote to clients in various matters where an account was outstanding. As a result of those enquiries clients started contacting the firm to state they had already paid money to the Respondent. Eight matters were summarised in the Rule 5 Statement:

HE (a company)

11. The firm were instructed to provide advice relating to the transfer of shares in the company in the event of the directors' deaths and to prepare Wills for the directors. The Respondent was the fee-earner. Mr CH of the company stated that the Respondent accepted a cash payment from the company of £540.00 on or around 1 May 2015. This payment was a month after the firm's invoice for that amount was raised on 1 April 2015. In relation to this matter, the interview transcript recorded the Respondent as stating or agreeing that:

- Mr CH had paid cash on a Friday evening and it did not get banked;
- He would never dispute that the client had paid;
- His intention was to put [the money] back in but it never was.
- His repayment of money was "when I was able to do it".

Mr O

12. The firm was instructed by Mr O in relation to a matrimonial and ancillary relief matter. The Respondent was the fee earner. The client ledger showed all bills of costs had been paid from an amount of £60,000.00 received into the firm's client bank account from another firm on 17 October 2016. Mr O subsequently contacted the firm in December 2016 and provided evidence of two bank transfers directly to the Respondent, firstly £1,000.00 on 3 August 2016 and subsequently £1,500.00 on 26 October 2016. Both payment transfers to the Respondent were marked with the reference "Fee". Mr O was recorded in an attendance note as stating to the firm that he had, in effect, paid twice, requesting reimbursement from the firm. The FIO noted that the firm subsequently reimbursed Mr O £2,500.00 on 8 February 2017. In his written reply to the Applicant of 3 July 2017, although the Respondent did not deny receiving the money he stated that Mr O was the boyfriend of his former secretary and wished to "thank me personally for what I had done".

Mr F

13. The firm was instructed by Mr F in relation to a matrimonial matter. The Respondent was the fee earner. The ledger for the matter showed the firm's bills of costs and disbursements being settled from the significant net sale proceeds of a property (the proceeds of sale were received on 24 June 2016). After the Respondent left the firm, a partner at the firm took over conduct of the file and noted Mr F's bank statements showed payments made directly to the Respondent. Mr F subsequently deposed in a statement that, at the beginning of the matter, he was told by the Respondent to pay legal fees to him directly rather than the firm, to receive a discount. Mr F set out and evidenced five separate bank transfer payments to the Respondent between July 2015 and August 2016, for a total of £4,120.00. In relation to this matter, the FI Report provided a summary of the Respondent's comments in interview. The interview transcript recorded the Respondent as stating or agreeing to various points, including that:

- He had known Mr F since the early 1990s. He was a client but a friend as well;
- Mr F "was different". He was a friend. The Respondent was not aware of any other bank payments directly to him;
- Mr F would call him a lot and most of the work he was doing for him was "in my time". He had "loads and loads of attendances" on Mr F but he would not have "formally billed him" for every attendance and he "pretty much" reduced his bill. He told Mr F that he had "kept his bill to an absolute minimum with the firm";
- He "appreciated" that he had to undertake legal work under the umbrella of the firm to be insured;
- The £2,000.00 bank transfer was "different" and was a thank you for "all my time, everything else. Not to do with his Ancillary Relief proceedings or whatever else";
- The other £2,120.00 he agreed should have been transferred over to the firm;
- He would have given Mr F his personal bank details but did not understand why the monies were not just paid into the firm's accounts;
- "It looks ridiculous with the benefit of hindsight".

Ms J

14. The firm was instructed by Ms J in relation to a matrimonial matter. The Respondent was the fee earner. The client ledger for the matter did not record any receipts of money from the client or bills of costs having been raised (with a petition fee shown as having been paid from the office bank account on 31 October 2016). After the Respondent had left the firm, Ms J met with a partner of the firm (Ms R) and reported several cash payments that she had made to the Respondent. Ms J had retained receipts for the first two of these payments (totalling £920.00) and provided a witness statement to the FIO confirming the full amount of £2,120.00 had been paid in cash to the Respondent. An attendance note of the firm's discussion with Ms J recorded her as being very worried

that she had lost all the money she had paid. The FIO noted that the firm reimbursed Ms J with £2,120.00 on 8 February 2017. In relation to this matter the Respondent was noted as stating or agreeing in interview various matters, including that:

- He had signed a receipt she held and thought he had received £1,016.00 from Ms J, but if she said that she paid him £2,120.00 then he accepted that she had;
- "goodness only knows" what happened to that money;
- The money had not been banked with the firm;
- As no bill of costs had been raised, the money was client money on account of costs;
- His mind-set was that he was always going to make good the money but he accepted he had taken the money and not replaced it more than a year later;
- Ms J "was the one that I was concerned about because in my own mind I was thinking crikey....well that was a large sum of money. Normally it was just a bill paid. You know a will or £180.00 or £150.00 here or £160.00 it was..."

Ms W

15. The firm was instructed by Ms W in relation to preparing a Will. The Respondent was the fee earner for the matter. The ledger for the matter showed an unpaid bill of costs for £180.00, dating from 14 March 2016. No payment from the client was set out on the ledger. Ms W subsequently confirmed in a witness statement (with exhibited receipt) that she had paid the Respondent £180.00 in cash on 23 March 2016 and that, when she received a letter dated 20 October 2016 from the firm requesting payment of costs, she informed the firm that she had already paid the Respondent in cash. In interview, the Respondent accepted or stated that:

- He had issued the receipt on 23 March 2016 and received the £180.00, but not banked the money into the firm's accounts;
- He would have tried to pay the money into the firm's bank accounts at a later date, but accepted that he had not banked the money he received in March 2016 into the firm, before or after he left the firm;
- He would not have chased Ms W for the money (for the outstanding bill), as he knew it had been paid.

Ms B

16. Ms B stated that she made 3 separate cash payments of £40.00 each to the firm, in relation to a matrimonial matter. Two of the payments were paid into the firm's account (on 14 May 2013 and 3 September 2013). An earlier payment made to the Respondent on 19 March 2013 was not received by the firm. All three payments were receipted. The Respondent confirmed in interview that he had signed the receipt on

19 March 2013. As the payment on 19 March 2013 was a payment on account of costs, it was client money.

Mr E

17. The firm (through the Respondent) acted in relation to the administration of the estate of Mr H's sister (Mr E's mother). Mr H was the executor of the estate and had been the deceased's carer. Mr H stated that cash payments of £160.00 and £300.00 were made to the Respondent on 11 May 2016 and 12 September 2016 (respectively at the office of the firm and at a public house). Mr H retained receipts for both payments. Mr H stated that no bills had been received, but on receipt of a letter from the firm after the Respondent had left he confirmed to the firm that payments on account had been made. The ledger did not record the payments on account as being received, with the firm subsequently transferring funds from office account in relation to the receipted cash payments made to the Respondent. At the time the payments were received by the Respondent, the payments were client money on account of costs or disbursements. In interview, the Respondent confirmed receipting and receiving the cash, stating or agreeing that his intention had been that "it would go back in".

Ms S

18. Ms S stated that:

- She was an executor and beneficiary of her late father's estate. The firm were instructed to act in the administration and Ms S met with the Respondent on 24 February 2016 at the firm's offices;
- At that meeting, the Respondent asked Ms S for a cash payment of £160.00, which she understood to be for the probate issue fee. Ms S was surprised to be asked for such a payment due to the size of the estate, but paid the Respondent £160.00 in cash as requested. The Respondent provided a receipt;
- On or around 1 November 2016, Ms S received a bill of costs from the firm and noted that the £160.00 payment made to the Respondent had not been taken into account;
- Ms S wrote to the firm on 3 November 2016 explaining the cash payment made and agreed that the rest of the costs be deducted from the estate.

19. In relation to this matter, in interview the Respondent confirmed he signed the receipt for £160.00 and said he remembered Ms S giving him the money but did not know what had happened to the money. Following a question about what happened to the money, the Respondent stated, "Well I didn't issue that bill".

Allegations 1.2 and 1.3

20. The Respondent was convicted on 24 May 2016 of drink driving – being fined £600.00 and disqualified from driving for 12 months and ordered to pay costs and a victim surcharge.

21. The Respondent was convicted on 31 May 2016 of driving on a road in a motor vehicle which:

    (a) Had no third party insurance in place;

    (b) Had 3 tyres that did not comply with various requirements. The Respondent was fined £1,100.00 in this matter and had his driving licence endorsed as well as being ordered to pay costs and a victim surcharge.

22. The Respondent was made subject to a County Court Judgment in St Albans County Court under case no. B2CD51M5. An Attachment of Earnings Order dated 1 December 2015 was served on the firm. The Order stated that the amount payable under the judgment was £4,142.88.

The Applicant's Investigation

23. Following completion of the FI Report, a letter setting out various allegations and seeking explanations and information from the Respondent was sent to him on 22 May 2017. An allegation of dishonesty was included.

24. The Respondent replied by email on 3 July 2017. No hard copy or associated documents as referred to in the response had been received. In his reply the Respondent provided general comment and comment on specific allegations.

25. In relation to general comment, in summary the Respondent stated that:

- He had always endeavoured to act in accordance with the principles laid down in the Code of Conduct and the interests of his clients "have been paramount at all times";
- His conditions of work at the firm were not suitable and affected his health adversely;
- Any monies he personally received from clients was in respect of work carried out or to be carried out on their behalf, "because it was conducted out of hours, there was no loss to the firm & certainly no loss to clients";
- He estimated he spent in excess of £600.00 per month meeting and entertaining clients outside the office, as a result of the office environment (the nature of which the firm disputed);
- In the latter part of his employment he was working very long hours in the office and he became increasingly dependent upon alcohol and other recreational drugs. He "accepts this had a profound effect on [his] personal judgement and memory";
- His personal life was "in tatters" and he became increasingly depressed;
- Part of his salary was commission based and the general working conditions "adversely effected [his] ability to earn a salary sufficient to meet [his] income needs";

- He found the situation of working at the firm to be intolerable.

26. In relation to specific relevant matters, in summary the Respondent stated that:

- He did not dispute the monies received from clients (with the exception of some of the money allegedly received from one client, which was not exemplified in the Rule 5 Statement);

- He would "be happy to argue with the firm as to who should receive the money having regard to matters referred to above…";

- He would be happy to repay any money from clients that are "properly due to the firm", but believed the money was "principally received in respect of work undertaken outside of the terms of my employment";

- He attended HE (a company) after work on 3 separate occasions and prepared Wills for them;

- Mr F was a personal friend who was:

  > "grateful at the extent to which [he] had minimised his legal costs by undertaking the vast majority of the work on his case in personal time either in the evening or weekend".

- Both Mr F and Mr O wished to thank him for what he had achieved in his personal time;

- He was "quite intoxicated" when interviewed by the FIO;

- There were occasions when he gave cash to Ms R of the firm and the money was not properly recorded in office or client account; (Ms R described in evidence the compliant process she followed when cash was paid in)

- He did repay money on [some] subsequent occasions and thought they included matters to which he had referred the FIO;

- In relation to the allegation of accounts rules breaches, he stated that his

  > "personal judgement and memory was adversely effected by excess alcohol and pressure of work".

- He informed, or thought he had informed, a partner at the firm (Ms R) of his convictions and County Court Judgment, and thought she would make any necessary report;

- He denied acting dishonestly;

- He was seeking to address issues arising from his alcohol and drug problems and had no intention of practising as a solicitor, requesting a voluntary removal from the Roll.

27. On 4 July 2017, an Authorised Officer of the Applicant decided to refer the conduct of the Respondent to the Tribunal.

Witnesses

28. **Mr Sean Grehan** was an FIO of the Applicant and had been for nearly 11 years. He confirmed the truth of his 2 witness statements dated 26 October 2017 and 16 May 2018. The Respondent had attended the Applicant's London office for interview. He asked for 2 or 3 breaks during the interview. The witness was aware that the Respondent had drug and alcohol dependency issues and had discussed with a colleague whether the Respondent should be asked if he was under the influence of drugs or alcohol when he attended but they had decided against doing so. The witness had not detected any signs that the Respondent was intoxicated during the interview.

29. **Ms Carol Anne Prince Reimann** gave evidence. She confirmed the truth of her witness statements dated 16 and 17 May 2018. The witness was the managing partner of the firm. The Respondent had commenced employment in August 2013. The witness had joined the firm to facilitate the retirement of the partner Mr MS who specialised in litigation especially matrimonial work with some litigation and probate which was not the witness's specialism. Mr MS was to become a consultant but his caseload was to be taken over by a solicitor who could step into his shoes. The Respondent was recruited as a potential partner and undertook all the contentious work. After his initial 3 month probationary period his salary was increased to £32,500.00 from 1 November 2011 and was subsequently increased to £40,000.00 in October 2012 with arrangements for a commission bonus element to be triggered when his receipted fee income exceeded 3 times his basic salary. That threshold was not reached but annual bonuses were paid. The witness confirmed that as the Respondent was an employed solicitor any money received from clients by way of costs should go to the firm. It was noticed that there was an increasing number of small bills which appeared not to have been paid. The witness was trying to assist the Respondent in his billing. As she said in her witness statement in September 2016, a part-time para-legal Ms AA was given the project of being credit controller for the Respondent's outstanding bills. She wrote to clients with unpaid bills although the first occasion when they discovered what had occurred was with one of the witness's own conveyancing clients. The witness was preparing a completion statement for her and checked ledgers relating to other matters and saw an unpaid bill for a Will prepared by the Respondent. The witness said in her first witness statement that she had queried it with the Respondent before contacting the client and he was sure the client had paid. The client immediately confirmed she had paid her bill of £180.00 in cash. As soon as she put the phone down the witness asked the Respondent to join her in the room of another partner Mr SR. She recounted the conversation with the client and asked for the Respondent's explanation. He replied that it was very clear what had happened. The witness said she agreed it was very clear and it appeared that he had stolen the money. The Respondent said she should be very careful about making accusations. He gesticulated with a finger close to her face and stormed out of the office. The witness referred to other clients who seemed to have

bills unpaid including where a client said she had paid a probate fee in cash to the Respondent which did not appear in the ledger.

30. The witness stated that the Respondent was summarily dismissed because he could not demonstrate that he had a practising certificate and by this time after conversations with Ms W the client for whom the Respondent had prepared a Will and Mrs KW (whose matter was not exemplified because the Respondent disputed the amount he had received) the witness felt she had to move swiftly to protect the clients and the firm. As to whether the Respondent had tried to resign, Mr SR was working over the weekend and the Respondent was in the office and told SR that he intended to resign. On 1 November 2016, the witness met with the Respondent and told him she understood he intended to resign and understood that she would receive his letter of resignation. He responded that she would receive it in good time.

31. The witness had attached schedules to her witness statement which the firm had provided where the client claimed to have paid and the Respondent had not banked the money. The witness stated that some clients provided documentary evidence. If they did not do so she had no reason to disbelieve what they were saying and it would have been inappropriate to challenge them. In her statement the witness stated that the firm kept a nominal ledger to record shortfalls on the Respondent's files which were refunded to clients by the firm. It showed a total of £26,396.00 being refunded to clients by the firm across 35 matters.

32. The witness stated that the firm had not made a claim on its insurance policy although the insurers were notified and appointed other solicitors to monitor matters. They advised that each matter would be treated as an individual claim. Where the money involved was office money it was outside the scope of the policy cover. In each case involving client money the amount was below the excess and the total was under the firm's annual excess and so no claim was made. The Respondent had not offered to repay the firm.

33. The witness's second statement related to the criminal convictions and the County Court Judgment. An Attachment of Earnings Order had been received from the St Albans County Court in December 2015 (towards a judgment debt of £4,132.88). The witness had asked the Respondent about it. He explained that it related to a credit card bill in his name arising from the time when he had split from his ex-partner and mother of his child. He said that she was supposed to be re-paying it. The witness told him the Judgment needed to be reported to the Applicant and insurer and she asked for more details which did not materialise. As she set out in her statement, during the summer of 2016 she mentioned several times to the Respondent that he would need to report the matter to the Applicant and that she would have to do so if he did not. During the summer of 2016, the firm received a further Attachment of Earnings Order relating to the conviction for drink-driving. She was not aware of the other conviction.

34. The witness clarified for the Tribunal that eventually the firm received a hand delivered letter on 11 November 2016 dated 5 November 2016 which seemed to say that the Respondent resigned but considered that he been constructively dismissed. It was before the Tribunal.

35. The Respondent's contract of employment was attached to the first witness statement, the Tribunal asked questions as the Respondent was not present. He had asserted that he was able to keep some of the costs because he had undertaken work in his own time. The Tribunal asked if he was allowed to earn fees in his own time. The witness replied that paragraph 7.2 of his contract of employment precluded that:

> "The Solicitor shall devote the Solicitor's whole time and attention to the proper performance of his duties during the usual hours of work, and shall diligently and to the best of the Solicitor's skill and ability perform the duties of the employment."

The witness stated that the Respondent had no ability to practise in his own time; he had no indemnity insurance for that. As to his saying that some of the payments were received as a gratuity for going the extra mile there was no such policy at the firm; it had never crossed their minds as being permissible.; it had never crossed their minds. Staff sometimes received gifts such as flowers, chocolates and alcohol, but never money. She confirmed he had not notified the firm of any such gratuities.

36. The witness confirmed that the loss fell on the firm. As to the Respondent saying that he paid money into the account of the firm, cash payments were received into office account or client account and book keeping entries were made. Sometimes clients wanted to pay in cash, particularly matrimonial clients so the witness did not question if cash was received and on the few occasions, probably once every two months, when this occurred, it was paid into the firm's accounts.

37. The witness had not noticed from the Respondent's demeanour at work if he was influenced by alcohol or drugs and seemed impaired by the intake of drink or drugs. She described the Respondent as by nature an ebullient person. She had once challenged him about having had a glass of wine at lunch time which she informed him would not be tolerated. Sometimes in the afternoon it would appear that he had taken a drink but this was not sufficient for the witness to be concerned that he did not know what he was doing. The witness clarified that she had begun to have concerns about the Respondent in the 6 months before his dismissal; she put it down to his troubled personal life as evidenced by his conviction for drink driving.

Findings of Fact and Law

38. The Applicant was required to prove its allegations beyond reasonable doubt. In arriving at its decision the Tribunal gave due weight to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for his private and family life under, respectively, Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

39. **Allegation 1.1 - Between 19 March 2013 and 27 October 2016 he failed to properly account for money received from clients, in breach of all or any of:**

(a) Rule 14.1 of the SRA Accounts Rules 2011;
(b) Rule 17.1 of the SRA Accounts Rules 2011;
(c) Principles 2, 4, 6 and 10 of the SRA Principles 2011

Allegation 2 - Dishonesty was alleged with respect to the allegations at paragraph 1.1.

Allegation 1.1

39.1 Rule 14.1 provided:

> "Client money must without delay be paid into client account, and must be held in a client account"

The Rule referred to exceptions where the SRA Accounts Rules 2011 provided to the contrary but it was submitted that none of the circumstances set applied to the relevant matter.

Rule 17.1 provided:

> "When you receive money paid in full or part settlement of your bill (or other notification of costs) you must follow one of the following five options:
>
> (a) determine the composition of the payment without delay, and deal with the money accordingly:
>
> (i) if the sum comprises office money and/or out-of-scope money only, it must be placed in an office account;
>
> (ii) if the sum comprises only client money, the entire sum must be placed in a client account;
>
> (iii) if the sum includes both office money and client money, or client money and out-of-scope money, or client money, out-of-scope money and office money, you must follow rule 18 (receipt of mixed payments); or
>
> (b) ascertain that the payment comprises only office money and/or out-of-scope money, and/or client money in the form of professional disbursements incurred but not yet paid, and deal with the payment as follows:
>
> (i) place the entire sum in an office account at a bank or building society branch (or head office) in England and Wales; and
>
> (ii) by the end of the second working day following receipt, either pay any unpaid professional disbursement, or transfer a sum for its settlement to a client account; or
>
> (c) pay the entire sum into a client account (regardless of its composition), and transfer any office money and/or out-of-scope money out of the client account within 14 days of receipt; or
>
> (d) on receipt of costs from the Legal Aid Agency, follow the option in rule 19.1(b); or

(e) in relation to a cheque paid into a client account under rule 14.2(e), transfer the costs element out of the client account within 14 days of receipt."

Principle 2 required a solicitor to act with integrity.

Principle 4 required a solicitor to act in the best interests of each client.

Principle 6 required a solicitor to behave in a way that maintained the trust the public placed in them and in the provision of legal services.

Principle 10 required a solicitor to protect client money and assets

39.2 For the Applicant, Mr Johal referred the Tribunal to the 2 witness statements of Ms R and 7 statements from clients of the firm which had been served under cover of a Civil Evidence Act notice whom the Respondent's then representatives informed Mr Johal they did not require to attend the hearing so that the Tribunal could rely on the statements. He pointed out that the Respondent's Answer was mistakenly dated 2014 when it should have been 2017. The Respondent had not worked as a solicitor since he left the firm in November 2016 and had indicated that he would not work as a solicitor in the future. The Respondent set out his position in his Answer. He admitted all the allegations save that of dishonesty. He accepted that he received monies from the clients and that it was unorthodox. In paragraph 5 of his Answer he said:

> "The Respondent accepts that he was misguided in the way in which he dealt with client money. However, the treatment of client monies, whilst unorthodox, was done at all times with a view to achieving the best result for the client."

Mr Johal submitted that the Respondent used the monies for his personal living expenses and purchases and there was no evidence that he replaced the money that he improperly took. The Respondent was dismissed after discovery of certain payments from clients which were not accounted for and which were discovered after the firm sent a note to clients about unpaid bills. Mr Johal referred particularly to the case of Ms W for whom the firm was instructed to prepare a Will. The Respondent was the fee earner for the matter. The ledger showed an unpaid bill of cost for £180.00 dating from 14 March 2016. No payment from the client was set out on the ledger. Ms W subsequently confirmed in a witness statement with exhibited receipt (on a compliments slip) that she had paid the Respondent £180.00 in cash on 23 March 2016 and that, when she received a letter from the firm dated 20 October 2016 requesting payment of costs, she informed the firm that she had already paid the Respondent in cash. The receipt was signed by the Respondent who did not bank the money and did not tell the firm what he had done. Mr Johal submitted that this was typical of the type of case where the Respondent failed to account to the firm. He took a relatively small amount of cash for work carried out, gave a receipt, kept the money and failed to account to the firm for it. Other instances involved much larger amounts for which he failed to account.

39.3 Mr Johal informed the Tribunal that during the forensic investigation the firm provided a schedule of 29 clients who had notified the firm that they had paid monies to the Respondent. The payments in the schedule totalled £19,003.00. This was mainly office

money but £5,000.00 to £6,000.00 of it was client money. It was office money where a bill had been raised and it was client money where it was paid on account of costs and a bill had not yet been raised. The monies received by the Respondent spanned the period March 2013 to October 2016 and the individual amounts ranged from £40.00 to £3,100.00. The payments were mainly made in cash but there were also bank transfers by Mr O of £1,000.00 and £1,500.00, and by Mr F totalling £1,120.00. In May 2017, the firm provided an updated schedule totalling £22,603.00. The FIO made his own enquiries of the 29 clients and there were 15 client matters where the client produced documentary evidence of payment to the Respondent by way of, for example, a receipt or where they gave witness statements. The FIO included a table in his FI Report setting out 15 of the matters where 15 clients had made 38 payments to the Respondent totalling £19,590.00. (Twenty-three of the 38 payments were evidenced by a receipt or alternative evidence and 28 of the payments were made in 2015 and 2016).

39.4 Mr Johal submitted that the Respondent did not dispute he received the money; in a response dated 3 July 2017 to the Applicant's Explanation with Warning letter dated 22 May 2017, the Respondent said amongst other things:

> "Any monies I personally received from clients was in respect of work carried out or to be carried out on their behalf, because it was conducted out of hours, there was no loss to the firm & certainly no loss to clients."

And

> "With the exception of monies allegedly received from [KW] some of which I dispute, I do not dispute the monies received from other clients…"

39.5 He also said:

> "Any monies I received would have been spent on living and general expenses associated with my work…"

Ms KW (who was a different individual from Ms W) said she had had paid £3,200.00. Setting that amount aside, the Respondent admitted receiving £16,390.00. In interview he calculated that he had taken and kept £10,000.00. The FIO exemplified 6 client matters and received admissions about them in interview. The Applicant exemplified 8 cases in the Rule 5 Statement and adduced 7 witness statements where there was no dispute. When he was interviewed by the FIO on 14 March 2017, the Respondent made extensive admissions about his conduct generally and about specific clients but in his Answer said he was heavily intoxicated throughout the interview. He said that he could still function at a superficial level. The FIO saw no warning signs about that intoxication; the Respondent answered in clear and generally coherent manner so the Tribunal could rely on the interview but if the Tribunal felt it could not rely on the interview it did not make any difference to the Applicant's case because of the admissions the Respondent made in his Answer. (He said that he "found the interview a difficult experience, both physically and in trying to recall past events. He asked for breaks frequently. He struggled to remember the specifics of some events. He tried his best to give as full an account as he could in the circumstances.")

39.6 Mr Johal relied on the admissions made in interview set out in the Rule 5 Statement: The general comments included statements that:

- The Respondent had previously run an office (as a partner of another firm) and was fully conversant with the SRA Accounts Rules;
- His personal financial situation was "appalling" and he had always lived hand to mouth;
- This was not his proudest moment and he had always held being a solicitor in high regard;
- He did not think his conduct had been reasonable for a solicitor and he was disappointed with himself;
- He had a problem with alcohol and in the 6 months before his employment ended with the firm he had been drinking heavily.

On the specific issue of retention of funds paid to him by clients, the Respondent's comments in interview included that:

- He was aware that he was supposed to bank the cash received;
- There had been occasions when he had taken cash from clients and failed to bank the cash into the firm's bank accounts;
- He did not know "what the hell [he] was doing most of the time", but stated that he would have kept a record so would not have denied receiving the money when it came to doing a bill of costs;
- He did not know what he did with the money, but later stated "I suppose yeah I spent it yeah";
- His plan was always to bank the money after he had used it in the interim; which he knew was wrong. He had been using the money as temporary cash-flow and had intended to repay the money into the firm's bank accounts;
- His conduct had something to do with his alcohol dependency;
- He would know who had paid him money as he had maintained a list;
- He was hoping that things would change around and he would be able to repay the money into the firm's bank accounts;
- He would say that most of the money was office money, but there were two sums of money he was concerned about when [he] left;
- There were three matters on which the Respondent thought he could recall using the money then banking it with the firm at a later date;

- He had not repaid any of the money as he was "frog-marched out of the office".

Allegation 2 - Dishonesty

39.7 In respect of the allegation of dishonesty, the Rule 5 Statement referred to the earlier test for dishonesty which had been applied in the Tribunal. The Applicant had written to the Respondent on 14 November 2017 to inform him of the recent decision of the Supreme Court in the case of Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67 which the Tribunal would now apply. In submissions, Mr Johal relied on 3 of the above points in particular regarding dishonesty. The Respondent admitted his financial position was appalling and that he had always lived from hand to mouth and needed cash-flow. Mr Johal pointed to parts of the transcript where these admissions were made. Secondly the Respondent admitted that he was using the money obtained from clients as a cash float for himself. Thirdly he said that he planned to bank the money and knew that it was wrong to use it in the interim. Mr Johal submitted that the evidence was that the Respondent never replaced the money. In all the cases exemplified in the Rule 5 Statement he never paid the monies into the firm. Even if he had received monies on account of bills and paid it in later, it was still dishonest because the Respondent knew his responsibilities for client money and that he did not have their permission to use the money for himself in the interim. The Respondent said he did not seek cash payments but this was not so; for example in his witness statement client S said:

> "During the meeting on 24 February 2016 [the Respondent] asked me for a cash payment of £160.00…"

39.8 Mr Johal submitted that £26,396.00 was refunded to clients by the firm and the Respondent did not approach the firm or offer to pay money to them. Mr Johal submitted that the Respondent's conduct was dishonest by the standards of ordinary decent people because he was an experienced solicitor who deliberately sought and retained money due to the firm. He was aware that he should account to the firm for money received and admitted that instead of doing so he used the money for his personal use. He admitted that he was aware of his professional duties and his duty to pay the money into the firm's accounts. Over 2 to 3 years he obtained and retained around £16,000.00. Even if the Tribunal accepted that the Respondent used the money temporarily for his cash flow problems he was aware of the Solicitors Accounts Rules; he did not tell either the firm or the clients what he was doing and he had no permission to use the money for himself.

Allegation of Breaches of the SRA Principles

39.9 In the Rule 5 Statement the breaches alleged were described as follows:

- Principle 2: a solicitor acting with integrity would not himself retain money paid to him by clients, for which a proper account was required to be made. The Respondent's failure to act in this way showed a serious departure from the standards expected of a solicitor and demonstrated a lack of rectitude and steady adherence to a moral code.

- Principle 4: although the Respondent stated in his email of 3 July 2017 explaining his conduct that "the interests of [his] clients have been paramount at all times" it was evidently not in the best interests of his clients for him to retain funds they had paid rather than properly accounting for the money to their client account, either on account or to ensure an outstanding bill was clearly recorded as having been paid.

- Principle 6: the Respondent's behaviour, in retaining and failing properly to account for money paid to him in good faith, was behaviour that diminished the trust and confidence placed in the Respondent, and in the provision of legal services.

- Principle 10: in retaining client money for his personal use, the Respondent failed properly to protect client funds (irrespective of any stated intention at some point to replace the funds in the future). The notes to Principle 10 in the SRA Handbook also stated that this Principle went to the heart of the duty to act in the best interests of your clients.

Determination of the Tribunal

39.10 The Tribunal had regard to the evidence and submissions for the Applicant and the Respondent's Answer to the Rule 5 Statement, his email to the Applicant of 3 July 2017 and his statements in interview. It also noted the explanations which the Respondent had given to the Applicant during the investigation process and in his Answer to the Rule 5 Statement. The Respondent admitted in his Answer :

> "The Respondent accepts that over the period of the allegations he failed to properly account for money received from clients, in accordance with his professional duties and responsibilities. The Respondent accepts that he should have paid client monies into the relevant account (either the client account or office account) without delay. In failing to do so, he accepts that he acted in breach of the SRA Accounts Rules 2011 and the SRA Principles 2011."

39.11 Regarding allegation 1.1 (a), Rule 14.1 required client money to be paid without delay into client account and to be held there. As set out in the Rule 5 Statement where money received and retained by the Respondent was client money (when received), his failure to bank and properly account for any such payment was in breach of Rule 14.1 SAR 2011 and Rule 17.1. Examples of this included matters involving Ms J, Ms B, Mr E (evidenced by the statement of his carer, Mr H) and Ms S. This applied to monies received by the Respondent on account of bills which had not yet been delivered. There was documentary evidence and the evidence of witness statements that the Respondent had been in breach of the Rule. The Respondent's admissions had been partial in respect of payments made to him by Ms KW. The Tribunal had considered her evidence. In his Answer, the Respondent said generally that he had "no opportunity to collect the records of cash payments that he kept in the client files." He said in respect of Ms KW "the Respondent is not able to give a precise account as to the amount paid without reference to his contemporaneous records." The Respondent had not provided any evidence in support of his denial and the Tribunal found as a fact that the Respondent had received all the payments which Ms KW alleged. The Tribunal found

allegation 1.1(a) proved on the evidence to the required standard; indeed it was admitted in the main.

39.12 Regarding allegation 1.1(b), Rule 17.1 was summarised in the Rule 5 Statement as follows:

> "Rule 17.1 of the SAR 2011: When you receive money paid in full or part settlement of your bill (or other notification of costs) you must [depending on the exact composition of the payment]: i) place the sum in an office account (if all office or out of scope money); ii) place the sum in a client account (if the sum comprises only client money); iii) place the money in client and/or office money as appropriate in accordance with the Rules relating to mixed payments (if applicable); iv) place the entire sum into client account and transfer any office money within 14 days."

As set out in the Rule 5 Statement where money received and retained by the Respondent was office money, e.g. for payment (or part payment) of a bill of costs, his failure to bank and properly account for the payment was in breach of Rule 17.1 of SAR 2011. Examples of this included matters involving HE (a company), Mr O and Ms W. Again there was documentary evidence and the evidence of witness statements that the Respondent had been in breach of the Rule. The Tribunal found allegation 1.1(b) proved on the evidence to the required standard; indeed it was admitted.

39.13 In respect of allegation 1.1(c), breach of Principles 2, 4, 6, and 10 of the SRA Principles 2011 was alleged. The Tribunal considered that the failure to account properly for money received from clients was a clear breach of the obligation for a solicitor to act with integrity (Principle 2); it also constituted a failure to act in the best interests of each client (Principle 4) as the Respondent used the money for his own personal needs and there was a risk that it would have been lost to the clients had the firm not reimbursed them. The Respondent's conduct also represented a failure to behave in a way that maintained the trust the public places in him (or her) and in the provision of legal services (Principle 6); the public expected to deal with their money properly and not for the solicitor's own purposes. The Respondent had also failed to protect client money and assets (Principle 10). The Tribunal therefore found allegation 1.1 (c) proved on the evidence to the required standard. Allegation 1.1 was therefore found proved against the Respondent in all its aspects.

39.14 In respect of the dishonesty alleged in connection with allegation 1.1, the Tribunal applied the test in the case of Ivey which set out:

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

In his Answer the Respondent said:

> "At no time did the Respondent act dishonestly. The Respondent accepts that the conduct set out at §1.1 of the Allegations is not consistent with the professional standards that he should have maintained as a solicitor. However, his actions were motivated by a genuine, if misguided, effort to act in what he believed to be his client's best interests."

The Respondent also relied on the part of his Answer that related to allegation 1.1 which involved his meeting clients out of the office. He continued:

> "The Respondent took payments from his clients when he met them. As he met them in evenings and at weekends, he was not able to pay the client monies into the firm's account immediately.
>
> Ordinarily, the Respondent would hand cash paid to him by clients to the firm's receptionist. The receptionist would deposit the cash into the appropriate account, in accordance with the Respondent's instructions.
>
> The Respondent accepts that he would not always cause his client's money to be paid into the appropriate account immediately, or within an acceptable period of time.
>
> The Respondent kept a full record of all cash payments taken from each of his clients. The records for each client were kept on the client file. The Respondent had sole responsibility for his client files. These records enabled the Respondent to calculate how much each client had paid. Consequently, he did not chase clients for fees already paid.
>
> On occasion, the Respondent spent clients' monies on personal living expenses. The Respondent never intended that the client or the firm would lose those funds.
>
> Using his detailed records, the Respondent knew how much client money he had spent on personal purchases, and consequently how much he needed to repay. Repaying monies spent ensured that there was no loss to the firm or the client. Where a client was a longstanding client, repayments may be made over a long period of time..."

The Tribunal had found as a fact that over a period of 3½ years the Respondent sought out payments from clients and even gave written receipts in some cases but did not pay the money he obtained into either office or client account as appropriate. He had stated that he was abusing alcohol and drugs at the material time but there was no evidence that he did not know what he was doing; he was receiving cash or bank transfers from clients on account of bills delivered or to be delivered which should be paid promptly into the firm's accounts. He admitted that he had applied some of the money for his own personal use. The Tribunal had heard evidence that some payments to the firm were made in cash and paid into the firm's accounts. The Respondent knew what the correct procedure was and that he had not paid large quantities of what he had received into the firm. The Respondent knew he was retaining money that belonged either to

the firm, or to clients of the firm, and he was using it for his own purposes. That was his state of mind and knowledge of the facts. The Tribunal determined that ordinary and decent people would consider his actions to be dishonest and the Tribunal found allegation 2 dishonesty proved on the evidence to the required standard.

40. **Allegation 1.2 - By virtue of his criminal convictions for motoring offences on 24 May 2016 and 31 May 2016, he breached Principles 1, 2 and 6 of the SRA Principles 2011.**

40.1 Principle 1 required a solicitor to uphold the rule of law and the administration of justice. Principles 2 and 6 are set out under allegation 1.1 above.

40.2 For the Applicant, Mr Johal relied on certified copies of the memoranda of the register of West and Central Hertfordshire Magistrates' Court (St Albans and Stevenage Courts) in respect of the criminal convictions. In the Rule 5 Statement, it was submitted that the driving offences of which the Respondent was guilty were breaches of the law which put the safety of other road users, at least temporarily, in greater danger than otherwise, in breach of laws of England and Wales aimed at increasing road safety. It was also alleged in the Rule 5 Statement that the professional obligation of solicitors to uphold the rule of law and the proper administration of justice required them amongst other things to abstain from criminal behaviour at all times. As the Respondent was convicted of criminal offences he had breached Principle 1. A solicitor acting with integrity would not break the law in ways which placed other members of the public at increased risk. A solicitor engaging in such criminal activity might properly be said to lack moral soundness, rectitude and steady adherence to an ethical code so as to lack integrity in breach of Principle 2. It was also submitted that the trust that the public placed in solicitors, and in the provision of legal services, depended upon the reputation of the solicitors' profession as one in which every member might be trusted to the ends of the earth. The Respondent's behaviour, in increasing the danger on roads on two separate occasions, would be likely to undermine the trust that the public places in the behaviour of solicitors. The Respondent provided an account in interview, which was summarised in the FI Report. The full account was set out in the interview transcript. In summary, the Respondent stated that the drink driving offence occurred when he was trying to assist a vulnerable female, with the other conviction for driving an unsuitable car with no insurance said by the Respondent to have arisen after he drove the car "for an MOT", after he "hadn't driven it in months".

40.3 The Tribunal had regard to the evidence and submissions for the Applicant and the Respondent's Answer to the Rule 5 Statement, his email to the Applicant of 3 July 2017 and his statements in interview. Rule 15(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 provided:

> "A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances."

40.4 The Respondent did not dispute either conviction. The Tribunal therefore relied upon the Certificates of Conviction and found as a fact that the Respondent had been convicted as alleged. The Tribunal considered that the Respondent had been convicted of serious offences and thereby failed to uphold the rule of law and the administration of justice. He had accordingly breached Principle 1. As to Principle 2, the Respondent had been convicted of drink driving, driving while uninsured and with 3 non-compliant tyres. The Respondent must have been aware that he was unfit to drive and he was well aware of the lack of insurance and also the state of the car as he said in his email of 3 July 2017 to the Applicant: "I had not driven the vehicle for many months as a result of its condition." The Respondent considered that his conduct displayed a lack of integrity and found breach of Principle 2 proved to the required standard on the evidence. Such conduct would also fail to maintain the trust the public place in him and the legal profession, constituting a breach of Principle 6 as alleged. The Tribunal found allegation 1.2 proved on the evidence to the required standard, indeed the allegation was admitted.

41. **Allegation 1.3 - By failing to report to the SRA his criminal convictions from 24 May 2016 and 31 May 2016 and/or the County Court Judgment against him under Case Number B2CD51M5, he:**

(a) failed to achieve Outcome 10.3 of the SRA Code of Conduct 2011; and/or
(b) breached Principle 7 of the SRA Principles 2011

41.1 Principle 7 stated that a solicitor must comply with legal and regulatory obligations and del with your regulators (and ombudsmen) in an open, timely and co-operative manner.

Outcome 10.3 required:

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

41.2 In relation to the County Court Judgment, it was submitted in the Rule 5 Statement that the Respondent stated or agreed in interview that he was unaware of the matter until he received notification of the Attachment of Earnings Order which was received by the firm on 1 December 2015, that he would have dealt with it if he had known but he was not actually in a financial position to settle the matter. It was alleged that the Respondent failed to report to the Applicant either his criminal convictions or the unsatisfied County Court Judgment despite them being evidence of either failure to comply with the Principles or evidence of serious financial difficulty. It was also alleged that in failing to report his convictions or the unsatisfied County Court Judgment to the Applicant at all, the Respondent failed to deal with his regulator in an open, timely and co-operative manner. The Respondent's position on this issue was in summary that he either told or thought he had told a partner at the firm about the various matters and that he thought the partner would notify the Applicant. He had not checked if the firm had notified the Applicant. The Respondent's duty to report relevant matters regarding his personal circumstances to his regulator was a personal duty under the SRA Code of Conduct 2011. As such, the Respondent's actions (in either telling or thinking he told a partner at the firm) might be mitigation, but did not constitute a defence to the allegations.

41.3 The Tribunal had regard to the evidence and submissions for the Applicant and the Respondent's Answer to the Rule 5 Statement, his email to the Applicant of 3 July 2017 and his statements in interview. The Tribunal found as a fact that he had failed to report the criminal convictions and the County Court Judgment as alleged. The witness Ms R gave evidence that she had advised him on several occasions that he needed to report to the Applicant the conviction for drink driving which was the only one of which she was aware and of the County Court Judgment of which the firm had become aware by way of an Attachment of Earnings Order but the Respondent failed to take the necessary action. The Respondent thereby failed to comply with his legal and regulatory obligations and deal with regulators (and ombudsmen) in an open, timely and co-operative manner which constituted a breach of Principle 7. The fact that he had an outstanding County Court Judgment being enforced by way of an Attachment of Earnings Order indicated that the Respondent was in serious financial difficulty which he should also have reported. His failure to do so constituted a breach of Outcome 10.3. The Tribunal therefore found all aspects of allegation 1.3 proved on the evidence to the required standard; indeed the allegation was admitted.

Previous Disciplinary Matters

42. None.

Mitigation

43. The Respondent was not present. In his Answer he referred to his earlier career, which he described as successful and "throughout his career he worked with dedication to his clients and in his clients' best interests."

Sanction

44. The Tribunal had regard to its Guidance Note on Sanctions. The Respondent had all allegations found proved against him including the allegation of dishonesty which he had denied. The Tribunal regarded all the allegations as serious but dishonesty was the most serious. In terms of culpability for his dishonest conduct the Respondent's motivation had been to obtain money from clients and his firm for his own personal use. His actions extended over 3 years and so could not be regarded as spontaneous. He sought cash payments from clients who trusted him and withheld money from the firm his employer. He had direct control of and sole responsibility for what occurred. The Respondent was a solicitor of considerable experience and admitted that he knew what he did was wrong. As to the harm caused by his actions, the firm lost money; it reimbursed the affected clients and suffered the embarrassment of having to write to clients to find out who had paid bills and who had not. The reputation of the firm and the profession suffered as a result of the Respondent's dishonest actions. What he did was a complete departure from the "complete integrity, probity and trustworthiness" expected of a solicitor with commensurate harm to the profession's reputation. The extent of that harm was reasonably foreseeable and the Respondent foresaw it. There were many aggravating factors; dishonesty had been alleged and proved, the misconduct was deliberate, calculated and repeated; it continued over a period of time. The Respondent knew that he was in material breach of his obligations to protect the public and the reputation of the profession and that his actions would have an impact on those affected. As to mitigating factors, the Respondent did not seek to make good

the losses or notify the regulator of what he had done. He appeared to have no insight into the severity of his conduct. In respect of allegations 1.2 and 1.3, the severity of what the Respondent had done was aggravated by 2 separate criminal offences having been committed and that he had failed to report the misconduct to his regulator. The only mitigating factor was that he made some admissions. The Tribunal considered that no order, a reprimand or fine would not be proportionate or adequate to reflect the severity of the allegations which had been found proved. The Tribunal considered that the seriousness of the misconduct was at the highest level such that a lesser sanction such as suspension would not be appropriate and that strike off was necessary to protect public confidence. Furthermore the Guidance Note set out that the most serious misconduct involved dishonesty whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty had been proved would almost invariably lead to striking off, save in exceptional circumstances. The Tribunal could see no exceptional circumstances here and the Respondent himself accepted that he was not fit to practise; the letter from his former representatives of 11 June 2018 stated that he had always accepted wide ranging breaches of the rules which might well justify his compulsory striking from the Roll.

Costs

45. For the Applicant, Mr Johal applied for costs in the amount of £20,531.40 subject to the application of a pro rata reduction regarding the shorter than estimated hearing time caused by the decision of the Respondent not to attend. Mr Johal submitted that his claim for attendance could be reduced by 3 hours. He would also incur only one night's hotel expenses. The Tribunal considered the costs claimed to be reasonable subject to those deductions, and also subject to a reduction in the amount claimed for preparation of the Rule 5 Statement as the time spent seemed somewhat greater than should have been required. The Tribunal assessed costs at £19,000.00. It then looked at the Respondent's ability to pay the costs of the Applicant. In the Standard Directions, the Respondent had been given the opportunity to provide a statement of his means supported by appropriate evidence if he wished his means to be taken into account. The Respondent had not provided any such information. The Tribunal had only the reference in a letter from his former solicitors to the effect that he:

> "enjoys seasonal labour at the property in which he resides, these are irregular earnings and amount to less than the minimum wage.
>
> In order to meet the shortages for which he is responsible my client had made arrangements to surrender his pension. This should enable him to discharge those sums within a matter of months. My client possessed no other assets real or personal and even for day to day living is entirely reliant upon the good will of others."

46. The letter continued that he would be unable to meet the costs in the schedule and there was no realistic prospect of him returning to work. Mr Johal submitted that he could not counter what the former representatives said about the Respondent's financial circumstances. He informed the Tribunal that a colleague had sent a personal financial statement form to the Respondent on 11 May 2018 but it had not been completed. He asked for an immediately enforceable order and for it to be left to the Applicant to enforce it if it was worth enforcing. In the absence of proper evidence demonstrating

his financial circumstances, the Tribunal considered that it would not be appropriate to reduce the costs awarded to the Applicant but instead to make an enforceable order in the full amount assessed noting that the Respondent had a pension pot and was undertaking some work and that the Applicant would take a reasonable approach to enforcement and would interact with the Respondent about payment. The Tribunal therefore made an order for costs in favour of the Applicant in the amount of £19,000.00.

Statement of Full Order

47. The Tribunal Ordered that the Respondent, ANDREW JOHN PETERS, solicitor, be Struck Off the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £19,000.00.

Dated this 25th day of July 2018
On behalf of the Tribunal

S. Tinkler
Chairman