SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11753-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

HUW PRICE Respondent

Before:

Mr R. Hegarty (in the chair)
Miss H. Dobson
Mr S. Howe

Date of Hearing: 13 & 14 August 2018

Appearances

Ms Marianne Butler, Counsel of Fountain Court Chambers, Middle Temple Lane, Temple, London EC4Y 9DH, instructed 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

In a Rule 5 Statement dated 20 November 2017:

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") as amended with the permission of the Tribunal were:

1.1 He gave false and misleading information to the SRA's Regulatory Supervisor in that:

1.1.1 in a letter dated 14 September 2016 he stated that monies in Valleys Law Solicitors client account were approximately £3,000.00 and related to one client, Mrs P; and

1.1.2 in a telephone conversation on 9 November 2016 he stated that he had sent a cheque to a client Mrs P for the outstanding monies in Valleys Law Solicitors client account; and

1.1.3 in an e-mail dated 17 February 2017 in response to a Notice pursuant to S44B of the Solicitors Act 1974 (as amended) he stated that there were no clients that Valleys Law Solicitors continued to hold monies for.

He thereby breached any or all of Principles 2, 6 and 7 of the SRA Principles 2011 ("the Principles") and Outcome 10.6 and 10.8 of the SRA Code of Conduct 2011 ("the Code").

1.2 He gave false and misleading information to the SRA's Forensic Investigation Officer on 6 April 2017 in that:

1.2.1 he stated that he had sent a cheque to Mrs P for £3,000.00 and the balance on the Valleys Law Solicitors Client account was nil; and

1.2.2 he subsequently stated that the amount in Valleys Law client account was approximately £10,000.00.

He thereby breached any or all of Principles 2, 6 and 7 of the Principles and Outcome 10.6 of the Code.

1.3 From 17 April 2015 to 18 June 2017 the Respondent breached Rule 29 of the SRA Accounts Rules ("SAR") in that he:

1.3.1 failed to maintain any financial records for Valleys Law Solicitors in breach of Rule 29.1 of the SAR; and

1.3.2 failed to ensure that the current balance on each client ledger was shown, or readily ascertainable from the records kept, contrary to Rule 29.2 SAR; and

1.3.3 failed to conduct client account reconciliations in breach of Rule 29.12 and 29.13.

As a consequence of the above the Respondent breached Principles 4, 6 and 10.

1.4 From 17 April 2015 to 18 June 2017 the Respondent breached Rule 14.3 of the SAR in that he failed to return client money to clients promptly.

By failing to comply with the requirements of the SAR he thereby breached any or all of Principles 4, 6 and 10.

1.5 From 17 April 2015 to 18 June 2017 the Respondent failed to remedy breaches of the SAR promptly upon discovery contrary to Rule 7.1 of the SAR.

By failing to comply with the requirements of the SAR the Respondent breached any or all of Principles 4, 6 and 10.

1.6 From 7 August 2015 to 18 June 2017 the Respondent practised as a sole practitioner of Valleys Law Solicitors:

1.6.1 without authorisation from the SRA in breach of Rule 10.1 of the SRA Practice Framework Rules 2011; and

1.6.2 failed to comply with conditions imposed on his practising certificates for the practice years 2014-2015, 2015-2016 and 2016-2017.

He thereby breached any or all of Principle 7 and Principle 8 of the Principles and in respect of allegation 1.6.1 Outcome 10.13 of the Code and in respect of allegation 1.6.2 Outcomes 10.2 and 10.13 of the Code.

While dishonesty was alleged against the Respondent with respect to allegations 1.1 and 1.2, proof of dishonesty was not an essential ingredient for proof of any of the allegations.

The further allegations against the Respondent made by the SRA in a Rule 7 Statement dated 5 July 2018 were that he failed to notify the SRA:

1.7 that he was the subject of bankruptcy proceedings within 7 days of the presentation of the petition and thereby breached (or failed to achieve) any or all of:

1.7.1 Principle 7 of the Principles; and

1.7.2 Outcome 10.3 of the Code; and

1.7.3 SRA Practising Regulations 2011, Regulation 15.1(c)

1.8 that he had been adjudged bankrupt on 23 May 2017, when he applied to have the suspension of his Practising Certificate for 2016/2017 lifted on 29 June 2017, or during the subsequent application process or upon receipt of the outcome, and thereby breached (or failed to achieve) any or all of:

1.8.1 Principles 2 and 7 of the Principles; and

1.8.2 Outcome 10.2 of the Code.

1.9 that he had been adjudged bankrupt on 23 May 2017 when he applied for a Practising Certificate for the practice year 2017/2018 and thereby breached (or failed to achieve) any or all of:

1.9.1 Principles 2 and 7 of the Principles; and

1.9.2 Outcome 10.2 of the Code.

It was the Applicant's case that the Respondent acted dishonestly in respect of the allegations at paragraphs 1.8-1.9 above. Dishonesty was not an essential ingredient to the allegations at 1.8-1.9 above and it was open to the Tribunal to find the allegations proved with or without a finding of dishonesty.

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 5 Statement dated 20 November 2017 with exhibit JE1
- Rule 7 Statement dated 5 July 2018 with exhibit JE2
- Note of Opening/Skeleton Argument of the Applicant drafted by Ms Marianne Butler dated 12 August 2018
- Witness statement of Mr Richard Esney dated 23 July 2018 with exhibit RE1
- Attendance note of Ms Joanne Elliott of the Applicant dated 24 July 2018
- Proof of delivery note of Rule 5 Statement and other documents on 29 November 2017
- Proof of delivery note of Rule 7 Statement on 10 July 2018
- Letter from Ms Elliott of the Applicant to the Respondent dated 16 July 2018
- Email from Ms Elliott to the Respondent dated 6 August 2018
- Email from Ms Elliott of the Applicant to the Tribunal dated 14 August 2018
- Email from Ms Butler to the Tribunal dated 14 August 2018
- Judgment in the case of GMC v Adeogba [2016] EWCA Civ 162
- Judgment in the case of Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366
- Applicant's Statement of Costs as at date of hearing dated 6 August 2018

Respondent

- Email from the Respondent to the Tribunal dated 13 August 2018

Preliminary and Other Issues

3. The Respondent was not present. For the Applicant, Ms Butler applied for the Tribunal to proceed in his absence. She referred the Tribunal to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 which 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."

Ms Butler reminded the Tribunal that a Case Management Hearing ("CMH") had taken place by telephone on 17 January 2018 in which the Respondent had participated. The Respondent had failed to file an Answer to the Rule 5 Statement as required by Standard Directions dated 27 November 2017. The Memorandum of the CMH recorded that the Respondent's attention was drawn to paragraphs 7, 8 and 9 of the Tribunal's Practice Direction No 6 for the steps that could be taken by the Tribunal if the Respondent failed to comply with the directions given at the CMH. The Respondent's attention was also drawn to SDT Practice Direction No. 5 as to the inference that could be drawn where a Respondent did not give evidence. The Respondent explained at the CMH that he had overlooked the date for compliance with the direction. He requested an extension of 14 days from the date of the hearing within which to file his Answer and any documents on which he intended to rely at the substantive hearing. The Respondent was given until 31 January 2018 to comply and a further CMH was fixed for 5 February 2018. Save for some further communications with Ms Elliott of the Applicant nothing more was received from the Respondent. He did not attend the CMH held by telephone on 5 February 2018. The Tribunal made an order for the Respondent to file his Answer and documents by 5 March 2018 and upon the application of the Applicant directed that unless he did so he be prohibited from filing and serving his Answer and documentation without leave of the Tribunal.

4. The Applicant issued a Rule 7 Statement dated 5 July 2018 covering matters which were not known to the Applicant when the Rule 5 Statement was issued. It was certified as showing a case to answer by the Tribunal on 6 July 2018. Ms Elliott had communicated with the Tribunal about service of the Rule 7 Statement and by an email dated 17 July 2018 from the Tribunal office was provided with a proof of delivery notice issued by Royal Mail showing delivery on 10 July 2018 with a signature which resembled that on letters in the hearing bundle signed by the Respondent. A directions order was made by the Tribunal following the certification of the Rule 7 Statement directing that the Respondent file an Answer to the Rule 7 Statement and all documents on which he intended to rely by 23 July 2018. Nothing was heard from the Respondent. On 24 July 2018, Ms Elliott telephoned the Respondent to find out if he was going to attend the substantive hearing. The Tribunal was provided with a copy of her attendance note of the call. The note included:

> "He immediately said he had received my letter of last week…"

Ms Butler explained that this was understood to be a letter dated 16 July 2018 comprising a Civil Evidence Act notice and notice to admit documents appearing within the bundle exhibited to the Rule 5 and Rule 7 Statements. The note also recorded:

> "HP [the Respondent] said he had not made up his mind whether or not he intends to go, but that he will think it over, but he didn't think he had any objections to the allegations…

> I asked him if anyone was helping or advising him or would be representing him, he said he did have someone he was speaking to, but didn't expand on this.
>
> I asked him when we could expect to hear from him and [the Respondent] said he would contact SDT and me by the end of the month."

On 6 August 2018, Ms Elliott emailed the Respondent. Ms Butler submitted that the Applicant had tried to achieve a difficult balance between pursuing the Respondent, and gently and appropriately asking if he would attend the hearing. Nothing further had been heard until the morning of this hearing. The Respondent had sent an email to the Tribunal (timed at 09.37 and using an incorrect address) but had copied it to Ms Elliott who forwarded it to the Tribunal at 10.26. The email included:

> "I refer to the above hearing and wish to let you know that unfortunately I will not be attending in person…
>
> I have applied to remove myself from the roll of solicitors as I am no longer working and I do not wish to work as a solicitor in the future.
>
> I do not contest the matters put before you by the SRA and wish to apologise for the mistakes I have made…"

Unaware of the email at that point, the Tribunal had directed the clerk to attempt to contact the Respondent by telephone on the mobile phone number which both the Tribunal and the Applicant had used to communicate with the Respondent for the CMH in January 2018 and in the absence of an answer, the clerk left a voicemail message reminding him amongst other things that the hearing was scheduled for 10.00 and that the Tribunal might decide to commence in his absence.

5. Regarding the exercise of the Tribunal's discretion to proceed in the absence of the Respondent, Ms Butler drew its attention to the judgment in the case of GMC v Adeogba [2016] 1 WLR 3867 where the Court of Appeal had determined that the principles in the criminal case of R v Hayward [2001] QB 862 applied within the regulatory context which had previously only been assumed. The Court set out at some length, the importance of fairness to the Respondent:

> "the judge's overriding concern will be to ensure that the trial, if conducted in the absence of the defendant, will be as fair as circumstances permit and lead to a just outcome…"

The judgment also included:

> "Thus the first question which must be addressed in any case such as these is whether all reasonable steps have been taken to serve the practitioner with notice…Assuming the Panel is satisfied about notice, discretion, whether or not to proceed must then 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; the criteria for criminal cases must be considered in the

context of the different circumstances and different responsibilities of both the GMC and the practitioner."

Ms Butler submitted that service had been established and it was quite clear that the Respondent was aware of the proceedings; he had the Rule 5 and Rule 7 Statements and was apprised of the allegations and had elected of his own volition having taken advice of some kind, as referred to in the 24 July 2018 attendance note, not to attend. She submitted that the public interest and the protection of the public applied as much to solicitors as to the medical profession and that it would be fair to proceed in the absence of the Respondent.

6. The Tribunal considered the submissions for the Applicant and the papers before it. In accordance with the Tribunal's practice, the Respondent had been provided with a considerable amount of documentation when he was served with the Rule 5 Statement on 27 November 2017. The Tribunal had proof of service of both the Rule 5 and Rule 7 Statements and the Respondent had participated in one CMH in January 2018 but then ceased to engage so that an "unless" order was made. The Respondent had been given a further generous extension of time to file an Answer and documentation at the January 2018 hearing and failed to do so. The Tribunal concluded that the Respondent was fully aware of the proceedings and the pleadings. The attendance note of Ms Elliott's telephone conversation with the Respondent on 24 July 2018 provided evidence that he had received her letter of 16 July 2018 and of the Respondent's awareness of the substantive hearing and that he was undecided whether to attend. The Tribunal noted that the email address used by the Applicant was that of the Respondent's former firm but there had also been a telephone call and letters which were sent to his home address. The Tribunal considered whether it was fair to proceed. The Respondent had had plenty of opportunities to file an Answer and to think about whether he would participate in the hearing. The Respondent had confirmed his awareness of the hearing by his email just before it commenced and communicated that he had decided not to attend. The Tribunal had also attempted to communicate with the Respondent by leaving a message before the beginning of the hearing. The Tribunal had particular regard to the chronology of the case; the Rule 7 Statement had been issued in July 2018 but the allegations had been put to him by a letter of 28 March 2018 when he had been given until 16 April 2018 to respond. The letter had been sent to his home address and copied to a firm at which he then worked. The Tribunal had regard to the guidance in the Adeogba case. It considered that to delay the proceedings would not improve the chances that the Respondent would attend. In all the circumstances the Tribunal decided to exercise its discretion to proceed in the absence of the Respondent and without his being represented.

7. Ms Butler submitted a Note of Opening and Skeleton Argument just before the commencement of the hearing. The Tribunal had elected not to read it before hearing the Applicant's case. The Note had not been provided to the Respondent by reason of time. Later, having heard the Applicant's case and having been assured that the Note contained no new information which was not before it but that the Note had been prepared to assist the Tribunal in considering the evidence, the Tribunal decided that it would read the Note before arriving at its determination of the allegations.

8. Ms Butler referred to the Applicant's notice to admit documents dated 16 July 2018 to which no response had been received and asked that all the documents be admitted into evidence. The witness statement of Mr Esney, the Forensic Investigation Officer ("FIO") had been served on 7 August 2018 by tracked mail or recorded delivery, slightly later than the date of 23 July 2018 envisaged by the Standard Directions of 27 November 2017. Nothing had been heard from the Respondent about any wish to cross examine the FIO and the Respondent had not attended the hearing. Ms Butler submitted that the FIO's evidence was unchallenged and the Applicant had not therefore required that he attend the hearing. The Tribunal enquired when the Respondent first saw the FIO's Forensic Investigation ("FI") Report which was attached to the witness statement and was told that it formed part of the exhibit to the Rule 5 Statement. Having heard part of the Applicant's case, the Tribunal considered whether it required the FIO's attendance to answer questions as he needed some time to travel to the Tribunal. Initially there was a concern that the FIO quoted in his FI Report some comments including that the Respondent admitted lying, which appeared to refer to matters outside the recorded interview on 6 April 2014. Ms Butler submitted that the FIO set out in his email to the Respondent of 6 April 2016 what had been covered and the Respondent by a reply dated 12 April 2017 confirmed that the FIO's account was correct. On consideration, the Tribunal did not feel it necessary for the FIO to attend the Tribunal.

9. Ms Butler also applied to amend the Rule 5 Statement by withdrawing from allegation 1.2, a reference to Outcome 10.8 (which referred to complying promptly with any written notice from the Applicant) whereas the allegation referred to information given orally to the FIO in a meeting. She also applied to withdraw a reference to Outcome 10.2 in allegation 1.6.1 which referred to practising without authorisation as the Outcome required the solicitor to provide the Applicant with information to enable it to decide upon any application the solicitor made, such as for a practising certificate, registration, recognition or a licence and whether any conditions should apply. The Tribunal gave permission for both these amendments to the allegations after it had heard the Applicant's case. Ms Butler also applied to correct certain typographical errors in the Rule 5 Statement; a superfluous use of the words "Rule 29" in allegation 1.3.1 where Rule "29.2" was specified; to substitute Rule 29.2 for 29.9 in allegation 1.3.2. Rule 29.2 was referred to and quoted under allegation 1.3.2 subsequently in the Rule 5 Statement. Ms Butler submitted that the amendments requested would cause no prejudice to the Respondent. The Tribunal gave permission for these corrections to be made.

Factual Background to the Rule 5 Statement

10. The Respondent was born in 1969 and was admitted to the Roll of Solicitors on 15 October 1993.

11. On 11 March 2002, the Respondent became a partner of the firm Gough Davies Solicitors. The firm had one other partner, Mr BG.

12. On 11 March 2013, an authorised Officer of the Applicant approved the Respondent's nomination as Compliance Officer for Legal Practice ("COLP") for Gough Davies Solicitors.

13. On 16 August 2013, Mr BG retired from Gough Davies Solicitors, leaving the Respondent as the sole remaining partner.

14. On 27 November 2013, the Respondent changed the name of Gough Davies Solicitors to Valleys Law Solicitors ("the firm").

15. On 20 August 2014, an Authorised Officer decided to grant the Respondent a practising certificate for the 2013-2014 practice year subject to conditions that included that he could not be a sole practitioner.

16. The Respondent appealed the Authorised Officer's decision dated 20 August 2014, and the appeal was dismissed by an Adjudicator on 13 November 2014.

17. The Respondent subsequently submitted a Firm Closure Notification form ("FCN") to the Applicant dated 13 May 2015, setting out that the firm closed on 17 April 2015 and as a result the Applicant's records were updated.

18. The conditions imposed on the Respondent's practising certificate for the 2013-2014 practice year, were continued on the Respondent's practising certificate for 2014-2015, 2015-2016 and 2016-2017.

19. On 6 August 2015, an Adjudicator found that the Respondent had continued to provide legal services through the firm and decided to rebuke the Respondent and direct him to pay a fine of £1,000.00. The Respondent was also ordered to pay £1,537.50 in costs. The Adjudicator stated:

> "Since Mr [BG's] retirement from practice, [the Respondent] has failed to apply to the [Applicant] for authorisation as a Recognised Sole Practitioner or any other appropriate authorisation. An SRA Supervisor has been engaging with [the Respondent] since the beginning of April 2014 until the present in regards to [the Respondent] practising without authorisation. [The Respondent] is in breach of his 2013-2104 practising certificate as he is the sole lawyer manager of Valleys Law. The Supervisor is presently supervising the closure of the firm."

20. On 22 March 2016, the Applicant received a report from J Legal that it had received a letter from the Respondent on the firm's letter headed paper dated 29 January 2016. On 4 April 2016, J Legal provided a further letter which the Respondent had sent on the firm's letter headed paper dated 21 March 2016. In the letters, both dated after the closure of the firm, the Respondent referred to "his client" in respect of a divorce matter.

21. The Applicant's Regulatory Supervision department commenced an investigation into this matter, and a Regulatory Supervisor (Ms KE who later became Mrs KC) wrote to the Respondent on 11 May 2016 asking for his formal explanation for continuing to practice through the firm when the firm was reported as closed on 17 April 2015.

22. On 21 July 2016, the Applicant received a further report from N Solicitors that they had received letters on the firm's letter headed paper from the Respondent in relation to a matrimonial matter.

23. Between September 2016 and December 2016, despite the Regulatory Supervisor's repeated requests, the Respondent did not provide any client account bank statements, or evidence that the remaining amount on the client account for the firm had been paid back to the client whom the Respondent asserted was owed the funds.

24. Therefore, on 16 January 2017 a Production Notice ("Notice") was served on the Respondent under S44B of the Solicitors Act 1974 requiring him to produce, amongst other information, client account bank statements and details of the clients for whom he continued to hold client money.

25. The Respondent did not comply with the Notice and therefore because of concerns regarding whether the Respondent continued to hold client money, the Applicant's Supervision department commissioned a Forensic Investigation of the firm.

26. On 6 April 2017, an FIO Mr Esney commenced an inspection of the books of accounts and other documents of the firm. The FIO met with the Respondent on 6 April 2017 and following the meeting obtained his authority to obtain the bank statements for the firm. A transcript of the meeting was made.

27. On the same day 6 April 2017 the FIO sent an email to the Respondent in the following terms:

> "Good afternoon Mr Price. Thank you for meeting with me today to discuss the issues relating to the money you still hold in relation to Valleys Law which closed in April 2015.
>
> I am sending this email so that there is no confusion about what we discussed. Please read it and confirm it records our conversation and that you understand the position.
>
> You initially told me that you had paid the outstanding balance of £3,000.00 to Mrs [P] … by cheque recently and said you were "surprised" I wasn't aware of this. You said there was no more money in the account. You were unable to give me a copy of the letter enclosing the cheque stub or a clear idea of when you sent the cheque. You said you thought the documents I needed would be in the garage you stored the closed files in (garage belonging to Mr [BD]).
>
> You told me that you had requested statements for the two year period from April 2015 to date. You did not know how long these would take to arrive.
>
> You thought you had seen bank statements for the Barclays account but could not recall where or when. You said you didn't want to give an answer which you weren't sure of and would advise clients (as a duty solicitor) of the same when giving police station advice. You didn't think they were being sent to you (sic) home address but could not be sure.
>
> I told you I didn't believe you that you that you (sic) had paid the money to Ms [P] and asked if you were lying. You said "yes" and went on to say that you had not sent any money to Mrs [P]. I asked you why you had lied to me. You apologised and said that you accepted that you should have "just dealt

with things" and that the issues you were facing were "totally avoidable". You said that you found the closure of the firm difficult to deal with.

In relation to the money held from the closure of Valleys Law you accepted that there was more than £3,000.00 in the account and said it was likely to be around £10,000,00. I asked why you had lied to the [Applicant (KC)] and you repeated that you were sorry and had found it difficult to deal with the closure of the firm.

I asked you if there was in fact more than £10,000.00 in the account. You said "no" but could not be sure.

I went on the (sic) explain that I required sight of the bank statements. You said you had requested them on Tuesday but, given the various false statements you have made to date, I told you that I would have to consider the use of my powers under the Solicitors Act 1974 which includes enforcing the Production Notice previously served on you; serving a further notice or contacting the bank direct. I explained that there were possible costs implications to you and reiterated the need for you to obtain the bank statements yourself. You said you would do that and email them to me on receipt. I will continue with my course of action until I see the statements.

We discussed the fact that the firm held client money and that you would need to account to the client for that money. You accepted that and told me that you would be able to reconcile the remaining money. You said the document were in the garage and felt it would take you one day to complete the exercise once the bank statements had been received. You believed the money related to no more than three clients.

Please let me know if you receive the statements. `Once I have them we can discuss further. In the meantime I will be continuing with the course of action discussed and outlined above."

28. On 12 April 2017, the Respondent replied (having been reminded) with bank account details for the office and client accounts and including:

"I confirm that your email record of our meeting is accurate…"

29. On 18 April 2017, the FIO obtained the bank statements for the firm which showed that the balance held in the client account as of 24 March 2017 was £20,138.34.

30. The FIO's inspection culminated in an FI Report dated 18 May 2017 which identified:

- the Respondent's admissions that he misled the Applicant about the amount of client money that he still held in client account and about returning funds to an identified client; and

- that he failed to maintain and reconcile the firm's client account after the firm's closure; and

- that he continued to receive and pay out monies from the firm's client bank account after the firm closed; and

- that he had not provided to the Applicant any client account bank statements to verify the sums due to clients, and still operated and held money in the firm's client account.

31. As a result of the conclusions set out in the FI Report, the Regulatory Supervisor prepared a report recommending the intervention into the practice of the Respondent at the firm.

32. On 18 June 2017, an Adjudication Panel decided to intervene into the practice of the Respondent practising at the firm and decided to refer his conduct to the Tribunal.

33. On 18 June 2017, as a result of the intervention, the Respondent's 2016-2017 practising certificate was automatically suspended.

34. On 29 June 2017, the Respondent applied for the suspension of his practising certificate to be terminated. On 20 July 2017, an Authorised Officer of the Applicant decided to terminate the suspension of the Respondent's 2016-2017 practising certificate subject to conditions. The Authorised Officer approved the Respondent's employment at GT LLP subject to conditions that he would be directly supervised and would not have responsibility for the training or supervision of any other employee at GT LLP.

Factual Background to the Rule 7 Statement

35. A petition for the Respondent's bankruptcy was presented on 12 October 2016 by HMRC.

36. On 23 May 2017, the Respondent was adjudged bankrupt at the High Court of Justice. Therefore his 2016-2017 practising certificate was automatically suspended. However, the Respondent did not notify the Applicant of the bankruptcy, so its records were not updated.

37. On 23 June 2017, Mr NM and Mr RC were appointed as the Respondent's Joint Trustees in Bankruptcy by the High Court of Justice.

38. On 23 January 2018, the Applicant received notification of the Respondent's bankruptcy when Mr NM wrote dated 18 January 2018 to the Applicant enclosing the Bankruptcy Order and Certificate of Appointment of the Trustees in Bankruptcy.

39. Between the period commencing from 23 May 2017 (when the Respondent was made subject to the Bankruptcy Order) until 23 January 2018 (when the Applicant received notification of the Order from Mr NM), the following regulatory decisions were made without the Applicant knowing that the Respondent was bankrupt:

- On 18 June 2017, an Adjudication Panel decided to intervene into the practice of the Respondent, and thereby his practising certificate for 2016-2017 practice year was automatically suspended.

- On 29 July 2017, the Applicant granted the Respondent's application of 29 June 2017 to lift the suspension on his practising certificate for 2016-2017 practice year.

40. On 12 October 2017, the Respondent applied for a practising certificate for the practice year 2017-2018 without disclosing the Bankruptcy Order made against him.

41. On 12 February 2018, an Authorisation Officer prepared a report for Adjudication to consider the application by the Respondent for a practising certificate for the 2017-2018 practice year recommending that the application be refused, and also that his practising certificate for the 2016-2017 practice year be revoked following notification of the Respondent's bankruptcy.

42. On 23 March 2018, an Adjudicator decided to refuse the Respondent a practising certificate for the practice year 2017-2018, and to revoke his practising certificate for the 2016-2017 practice year.

43. On 28 March 2018, an Investigation Officer of the Applicant wrote to the Respondent requesting his formal explanation for having failed to disclose the Bankruptcy Order to the Applicant. The Respondent did not reply to the letter.

Witnesses

44. There were no witnesses.

Findings of Fact and Law

45. 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.

(The submissions below include both those made in the documents and at the hearing.)

Opening Submissions for the Applicant

46. For the Applicant, Ms Butler submitted that these proceedings concerned the conduct of the Respondent following his submission to the Applicant of an FCN dated 13 May 2015 in respect of the firm, which stated that the firm closed on 17 April 2015 (when the Applicant's records were updated to reflect that fact). Between that date and 18 June 2017 (when the Applicant intervened into the Respondent practising as the firm and decided to refer his conduct to the Tribunal), the Respondent was chased by the Applicant as to ensuring the proper closure of the firm, initially by a Regulatory Supervisor (Ms KE/Mrs KC) and subsequently, as a result of his uncooperative approach, by the FIO from April 2017. The evidence from throughout that period showed that the Respondent: (i) continued to run the firm on his own after it was officially closed, without authorisation and in breach of his practising certificate conditions; (ii) failed to maintain financial records; (iii) failed to return

client monies to clients; and (iv) repeatedly misled and lied to the Applicant as to his actions. For the reasons set out below in submissions, Ms Butler submitted that the Applicant's position was that the facts giving rise to each of these allegations had been either admitted to by the Respondent during the course of his exchanges with the FIO; and/or were in any event readily demonstrable on the face of the documents.

47. At the conclusion of her submissions on the allegations, Ms Butler cited the inference referred to in Practice Direction No 5:

> "The Tribunal directs for the avoidance of doubt, that in appropriate cases where a Respondent denies some or all of the allegations against him (regardless of whether it is alleged he has been dishonest) and/or disputes the material facts and does not give evidence or submit himself to cross-examination, the Tribunal shall be entitled to take into account the position the Respondent has chosen to adopt as regards the giving of evidence when reaching its decision in respect of its findings."

Ms Butler submitted that the allegations were serious. However she argued that the need for an inference to be drawn had been superseded by the email the Respondent had sent to the Tribunal that morning before the hearing began in which he effectively admitted all the allegations. This was not the first time he had adopted that position; he had informed Ms Elliott in the telephone conversation of 24 July 2018 that he did not think he had any objections to the allegations.

48. **Allegation 1.1 - He gave false and misleading information to the SRA's Regulatory Supervisor in that:**

1.1.1 in a letter dated 14 September 2016 he stated that monies in Valleys Law Solicitors client account were approximately £3,000.00 and related to one client, Mrs P; and

1.1.2 in a telephone conversation on 9 November 2016 he stated that he had sent a cheque to a client Mrs P for the outstanding monies in Valleys Law Solicitors client account; and

1.1.3 in an e-mail dated 17 February 2017 in response to a Notice pursuant to S44B of the Solicitors Act 1974 (as amended) he stated that there were no clients that Valleys Law Solicitors continued to hold monies for.

He thereby breached any or all of Principles 2, 6 and 7 of the SRA Principles 2011 ("the Principles") and Outcome 10.6 and 10.8 of the SRA Code of Conduct 2011 ("the Code").

48.1 Principles and Outcomes cited in allegation 1.1:

Principle 2

> "You must act with integrity".

Principle 6:

> "You must behave in a way that maintains the trust the public places in you and in the provision of legal services".

Principle 7:

> "You must...comply with your legal and regulatory obligations and deal with your regulators and ombudsman in an open, timely and co-operative manner".

Outcome 10.6:

> "you co-operate fully with the SRA and the Legal Ombudsman at all times including in relation to any investigation about a claim for redress against you".

Outcome 10.8:

> "you comply promptly with any written notice from the SRA.""

48.2 In respect of allegations 1.1.1 to 1.1.3, Ms Butler submitted that the Respondent failed to co-operate with the investigation, making misleading statements and did not respond to numerous letters and telephone calls. In particular he did not give a prompt response to the formal notice dated 21 December 2016 or respond promptly or in the time stipulated in the S44B notice of 16 January 2017.

Allegation 1.1.1

48.3 For the Applicant, Ms Butler submitted that in the FCN dated 13 May 2015, the Respondent estimated that the firm would cease to hold or receive client money by 17 October 2015:

> "Estimated 6 month period to account to clients directly or transfer funds to other firms as per clients' instructions".

The Respondent estimated that he had around 100 client files and was:

> "In process of transferring to other firms or directly to clients as per clients' instructions".

He signed the form as "Principal".

48.4 The Respondent's letter of 14 September 2016 to the Applicant included:

> "I am holding approximately £3,000.00 only in the client account for one former client....this is held pending the client's instructions and I will send you a copy of the bank statement when I have received this from the bank".

Ms Butler submitted that bank statements obtained by the FIO on 12 April 2017 from the bank for the client account showed that, for the period 9 September 2016 to 23 September 2016, the balance on the client account was, in fact, £19,995.82. During

a meeting with the FIO on 6 April 2017, the Respondent admitted that the money retained in the client account was more than £3,000.00 and was likely to be around £10,000.00; and that he believed that the money related to no more than 3 clients. Ms Butler referred the Tribunal to:

- The email sent by the FIO to the Respondent dated 6 April 2017 confirming the issues that they had discussed that day which included:

  > "you accepted that there was more than £3,000.00 in the account and said that it was likely to be around £10,000.00"

  and

  > "you believed the money related to no more than three clients"

  The Respondent confirmed the accuracy of the email on 12 April 2017.

- The transcript of the April 2017 interview which recorded the Respondent as saying:

  > "I think it is about £10,000.00".

- The FI Report which set out:

  > "On the basis of [the Respondent's] vague responses to the questions the Officer asked him if he was lying about the payment to Mrs [P]. [The Respondent] said "yes" and confirmed he had lied about making the payment to Mrs [P].
  >
  > The Officer asked [the Respondent] what the current balance on [the firm's] client account was. [The Respondent] said "about £10,000.00". The Officer asked [the Respondent] if it was the case that there was more than £10,000.00 in the client bank account. [The Respondent] said "No" but stated that he could not be sure.
  >
  > The Officer asked [the Respondent] why he thought the firm held £10,000.00. [The Respondent] stated "because I've seen bank statements". The Officer asked [the Respondent] when he had seen the bank statements given that he has been unable to provide the same to the [Applicant]. [The Respondent] said he could not recall. The Officer told [the Respondent] that was not an acceptable answer and asked him when he had seen the bank statements. [The Respondent] said he believed he had seen the bank statements "in the garage" but could not be sure.
  >
  > The Officer asked [the Respondent] where the bank statements were being sent. [The Respondent] did not answer initially. The Officer repeated the question. [The Respondent] said he could not remember. The Officer asked if the statements were being delivered to [the Respondent's] home address. [The Respondent] said "I don't think so" and then stated "no" but was unable to confirm where the statements

were being sent. He was unable to confirm that he was in receipt of statements relating to the client bank account.

The Officer asked [the Respondent] if he knew to which clients the money related. [The Respondent] said the historic financial records were stored in the garage and he would be able to access the same and identify the client for whom money was held. The Officer asked how many individual clients were affected. [The Respondent] stated he did not know but believed it was "a maximum of three". He stated he would be able to reconcile the client account once he received the bank statements."

48.5 Ms Butler submitted that on 11 May 2017, (following the FIO having obtained copies of the bank statements for the client account from the bank), the Respondent emailed the FIO with a list of 28 client matters on which he said that he retained client monies, giving (according to the Respondent) a total of £18,890.45.

Submissions for the Applicant in respect of both allegations 1.1 and 1.2

48.6 In respect of allegations 1.1 and 1.2, Ms Butler submitted that as set out in the Rule 5 Statement, the statements contained in the 14 September 2016 letter, the telephone attendance note of 9 November 2016 and the 17 February 2017 email were all part of a deliberate strategy by the Respondent to mislead the Applicant as to the monies still held on the account. That much was clear from the following facts. The Respondent admitted, in terms to the FIO, during the April 2017 meeting that he had lied about the facts that he had returned the outstanding monies on the client account to Mrs P such that the balance on the account had been reduced to nil. The fact that, whilst accidental, non-dishonest errors about the precise total on an account could occur, it was not possible for the Respondent to have been innocently mistaken about the position on the client account given the various different, very specific explanations and excuses as to what he said had happened and/or what he was doing with regard to it. In particular:

- On 14 September 2016 the Respondent said that the money was held "pending the client's instructions" (thereby giving the impression that he had looked at the account balance, determined who it belonged to and was addressing the need to return it to the client when, in fact, it subsequently emerged that the money related to numerous clients and no such steps were being taken);

- On 19 October 2016 in a telephone call KC made to him he said that he was "struggling to contact this former client…he will try once more and if not go and visit her property" (thereby giving the same impression);

- On 1 November 2016 in another call from KC he said that he "hadn't heard from client and [was] still awaiting instructions" (and again);

- On 9 November 2016 in another call from KC he claimed (as stated above) that he had delivered a cheque to the client for the outstanding balance when he later admitted that he had not and at this time he must have known that he had not done so;

- On 17 November 2016 he claimed that he "hadn't closed client [account] as hasn't had time" (thereby suggesting that the balance was nil following the cheque that had been allegedly sent);

- On 17 February 2017 he claimed in an email that details of the payment to Mrs P were "stored and will be retrieved and copied to you" (when in fact no such payment had been made).

- During the April 2017 meeting, the Respondent began the meeting by seeking to perpetuate his previous lies, claiming once again that he had returned the outstanding monies to Mrs P such that the balance on the client account had been reduced to nil (before admitting that both matters were not true).

48.7 Ms Butler also relied on what she described as the obvious reluctance on the part of the Respondent to engage with the Applicant's enquiries as evidenced by his failure to respond to correspondence and/or to update the Applicant as expressly requested to do so, and the repeated assurances that he gave as to providing information to the Applicant, which he did not then fulfil. She took the Tribunal to what she submitted were examples of his failures to respond, or to respond properly to the Applicant citing finally his email response on 17 February 2017 to KC's telephone call of 16 February 2017 during which the Respondent said he would get the information to KC by lunchtime the following day. The only information provided the following day was the client account bank details. Despite his claim on 17 February 2017 to "revert to you shortly", nothing further was heard, with the result that Regulatory Supervision commissioned the Applicant's forensic investigation team to commence an inspection of the books of account, and the April 2017 meeting was arranged with the FIO.

48.8 Ms Butler submitted that ultimately, the Respondent only came (partially) clean with the FIO at the April 2017 meeting having been repeatedly pressed to do so in circumstances in which the FIO had made it clear to the Respondent during their meeting that he simply did not believe him. Ms Butler submitted that conducting such a deliberately misleading strategy towards the Applicant constituted: (i) a lack of integrity (in breach of Principle 2) within the meaning laid down by the Court of Appeal in Wingate and Evans v SRA [2018] EWCA Civ 366 at paragraphs 93 to 103, including at (100) that:

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty."

Ms Butler also submitted that the Respondent's actions constituted a failure to behave in a manner which maintains the trust the public has in solicitors and in the provision of legal services (in breach of Principle 6); and, necessarily, a failure to comply with the Respondent's regulatory obligations and deal with the Applicant in an open, timely and co-operative manner (in breach of Principle 7) and breaches of Outcomes 10.6 and 10.8 of the Code.

Tribunal Determination

48.9 In considering allegation 1.1, the Tribunal noted that 1.1.2 and 1.1.3 were prefixed 'and'. The Tribunal decided to interpret the allegation as it understood the Applicant

intended, that is that the allegation could be proved in part and that to find one aspect not proved would not be fatal to those elements found proved.

Tribunal Determination regarding allegation 1.1.1

48.10 The Tribunal had regard to the evidence and the submissions for the Applicant. This part of allegation 1.1 related to the Respondent's letter to the Applicant of 14 September 2016 in which he responded to a list of queries from the Regulatory Supervisor then Ms KE. He informed her that he was holding "approximately £3,000.00 in the client account for one former client"; that "this is held pending instructions"; that "save for the one matter mentioned above" he had completed the finalisation of running down and disposing of files in relation to the firm's closure; and that the letters dated 29 January 2016 and 21 March 2016 in relation to the matter of client C "were the only ones sent on headed paper following closure." The Tribunal found all of these statements to be untrue as a matter of fact. The Respondent must have known that his client account held more than £3,000.00 and that it related to more than one client. The Respondent admitted in the interview with the FIO on 6 April 2017, (confirmed by the FIO's email of the same day which the Respondent approved as accurate) that he believed the outstanding client monies related to "a maximum of three clients" and exceeded £3,000.00; he said it was likely to be around £10,000.00 (which was also incorrect). However the transcript of the 6 April 2017 interview recorded that he agreed he had "seen bank statements in the last few months". The Tribunal determined that the Respondent had either made no effort to find out the exact amount or he knew what it was. He did not say that he had made a mistake in the 14 September letter about the amount. In terms of the number of clients and the Respondent's reference in the letter to "one former client", he did not claim and it was in any event implausible that he had forgotten the letters he had written as principal of the firm on its letter headed notepaper after it had closed. They related to 2 different clients and were sent to 2 different firms of solicitors; Ms H – letters to N Solicitors dated 26 August 2015 and 29 January 2016 and Mr C letters dated 29 January 2016 and 21 March 2016, of which one matter according to the recipient, spanned 16 months. The Tribunal considered whether the Respondent's statements in the letter of 14 September 2016 constituted a breach of Principle 2 the requirement to act with integrity bearing in mind the definition in Wingate and Evans. The Respondent had deliberately provided false and misleading information to his regulator. The Tribunal found proved on the evidence to the required standard that he had breached Principle 2. Acting in such a way would not maintain the trust of the public; it was part and parcel of being regulated that one would comply with the regulator's requests whereas the Respondent was misleading his regulator. The Tribunal found that he was therefore in breach of Principle 6. His actions also breached Principle 7 as he was not complying with his legal and regulatory obligation in an open, timely and cooperative manner. He gave false information and then only after being chased. He had also failed to achieve Outcome 10.6 by not co-operating fully. In respect of outcome 10.8, the Tribunal considered whether Ms KE's letter of 16 August 2016 to which the Respondent's letter of 14 September 2016 was a reply, constituted "written notice" from the Applicant. The Tribunal noted that KE's letter was not formal notice such as was constituted by a S44B Notice under the Solicitors Act 1974 but decided that the letter was nevertheless written notice to the Respondent as Outcome 10.8 extended to "any notice". On that basis the Respondent had failed to comply promptly and failure to achieve Outcome 10.8 was proved. The

Tribunal therefore found allegation 1.1.1 proved on the evidence to the required standard.

Allegation 1.1.2

48.11 For the Applicant, Ms Butler referred the Tribunal to the Applicant's handwritten attendance note prepared by Mrs KC dated 9 November 2016 which included:

> "Has delivered a cheque to the client with regard to the o/s [outstanding] client money in his client account. I asked that [the Respondent] keep me up to date as to when this is cashed because I will require a bank statement showing a nil balance".

As to that position, Ms Butler submitted that during the April 2017 meeting, the Respondent admitted to the FIO that he had not sent the money to Mrs P. Subsequently, the Respondent provided the Applicant with a list of 28 clients for whom he continued to hold money. In fact, the bank statements show that the outstanding balance on the client account as at 4 November 2016 was £20,035.82.

Tribunal Determination regarding allegation 1.1.2

48.12 The Tribunal had regard to the evidence and the submissions for the Applicant. This allegation related to a telephone call on 9 November 2016 with Mrs KC of the Applicant which she recorded in an attendance note. The Tribunal noted that the Respondent had never challenged any of the Applicant's evidence and there was no evidence to impugn the accuracy of the note. It recorded the Respondent speaking specifically and saying he had "delivered a cheque to the client with regard to the o/s client money in the client account". The Tribunal found proved that the Respondent gave false and misleading information during the telephone call and that constituted a breach of Principle 2. It also breached Principle 6 because the public would not expect a solicitor to lie to his regulator about delivering a cheque to a client. The behaviour did not constitute dealing with the regulator in an open fashion and therefore breached Principle 7. Outcome 10.6 was also proved because the Respondent lied and therefore was not co-operating fully. As to Outcome 10.8, the information was provided by the Respondent in a telephone call and the Tribunal did not find that constituted a failure to achieve Outcome 10.8 which required compliance with any written notice. The Tribunal found allegation 1.1.2 proved on the evidence to the required standard save in so far as it related to Outcome 10.8.

Allegation 1.1.3

48.13 It was set out in the Rule 5 Statement:

- On 17 November 2016, KC telephoned the Respondent and the note recorded that the Respondent stated that he had not closed the client account for the firm as he had not had time. Therefore the Respondent in asserting this position continued the misleading impression that he had ceased to hold client monies.

- On 1 December 2016, KC emailed the Respondent, requesting his bank statements for the firm from April 2015 to November 2016, and confirmation that his former client, Mrs P, had cashed the cheque for £3,000.00.

- On 9 December 2016, the Respondent emailed KC requesting an extension to provide his reply to the email of 1 December 2016, on the basis that he was waiting for the bank statements from his bank and his book-keeper was away.

- On 12 December 2016, KC responded to the Respondent agreeing to the extension requested until 16 December 2016.

- The Respondent failed to reply by 16 December 2016. Therefore, on 21 December 2016, KC wrote to him requesting:

    - Contact details for the clients for whom he held money;
    - Details of the client account where the money was held;
    - Evidence of the cheque he had issued to the client in relation to the remaining amount in client account;
    - If the money in client account had not been returned to the client, evidence of the steps he had taken to try to deal with it;
    - His explanation as to why he was still using his email address at the firm.
    - Copies of bank statements for all the firm's client accounts for the period 17 April 2015 to November 2016.

  The Respondent failed to reply to the letter of 21 December 2016.

- On 16 January 2017, KC sent to the Respondent a S44B Notice for the information requested by her letter of 21 December 2016.

- On 16 February 2017, the Regulatory Supervisor telephoned the Respondent, and asked him why he had failed to produce the information required by the Notice. A telephone attendance note dated 16 February 2017 recorded the call from KC to the Respondent:

  > "Asked [the Respondent] why I had not received his response to production notice. [The Respondent] said that he was struggling to get the bank statements together. He said that when [the firm] closed down, they took all files & information to a storage facility and it has been stored in an illogical manner so it is difficult to locate specific items. I asked why [the Respondent] had not contacted the bank for further copies of the bank statements and [the Respondent] said "I suppose they would charge me for those." [The Respondent] went on to say that he had difficulty getting access to the storage facility and I asked what the problem was. I asked specifically whether there were any unpaid bills relating to the storage facility but [the Respondent] said there weren't. [The Respondent] said it's just the fact everything is a mess at the storage facility.
  >
  > I told [the Respondent] that it might have been helpful for him to contact me to let me know he was struggling to collate the information I had

> requested. [The Respondent] apologised and said he accepted the same. I went on to comment that I had not received information when I have requested it on approximately 12 occasions (set out in a letter sent to him) [the letter from the Applicant dated 21 December 2016]. [The Respondent] said he thought he had always returned my calls but I confirmed he hadn't.
>
> I asked [the Respondent] to provide all other information as requested in the Production Notice today. [The Respondent] said that he was due in Court today and this was taking up all of his time today. [The Respondent] said he could get me the information by lunchtime tomorrow."

48.14 Ms Butler referred the Tribunal to the Respondent's email of 17 February 2017, the day after the telephone call from KC the note of which is quoted above where he stated that he was "able to answer some parts of the [S44B] notice" dated 16 January 2017. The Respondent answered, in response to a request in the notice for:

> "contact details to include the name, telephone number and postal address for the client(s) upon whose behalf you continue to hold client money",
>
> "I do not believe there are any such clients any longer"

In fact, as outlined above, the Respondent went on to admit that he had not sent the outstanding monies to Mrs P and that there was a significant balance outstanding on the account. Ms Butler submitted that the Respondent never provided evidence of the returned cheque (because it had never been sent) and never provided the bank statements to the Applicant. They were ultimately obtained by the FIO from the bank in April 2017. The Respondent provided the Regulatory Supervisor with false and misleading information in his email of 17 February 2017, the implication being that he no longer held client money. It appeared that he made this statement to try to end the enquiries and investigation into the firm. It was submitted that in providing false and misleading information to the Regulatory Supervisor in a letter of 14 September 2016, telephone call of 9 November 2016 and email of 17 February 2017, the Respondent failed to act with integrity. The public would not expect solicitors to provide false and misleading information to their regulator, particularly in relation to an investigation into their conduct. In doing so the Respondent failed to behave in a manner which maintained the trust the public had in him and in the provision of legal services, and further failed to co-operate with his regulator in breach of Principles 2, 6 and 7 of the Principles. The Respondent also failed to co-operate fully with the Applicant's investigation by failing to respond to the Regulatory Supervisor's letter of 16 August 2016, email of 11 October 2016, letter of 21 December 2016, Notice of 16 January 2017 and an email of 22 February 2017 and failing to provide the bank statements for the firm requested in the letters of 16 August 2016 and 11 October 2016 and therefore failed to achieve Outcome 10.6 and Outcome 10.8 of the Code.

Tribunal Determination regarding allegation 1.1.3

48.15 The Tribunal had regard to the evidence and the submissions for the Applicant. This allegation related to an email dated 17 February 2017 sent by the Respondent in answer to the S44B notice. The Respondent stated that he did not believe that there

were "any such clients any longer upon whose behalf he continued to hold client money". He said this although he subsequently sent a list to the Applicant on 11 May 2017, (following the FIO having obtained copies of the bank statements for the client account from the bank), of 28 client matters on which he said that he retained client monies. The Tribunal determined that this was clearly false and misleading information. In fact the Respondent's interim answers in this email to points 3 and 4 in the production notice were also inaccurate although not the subject of the allegation as he said that the bank statements and cheque or cheque stub and covering letter along with any other evidence that demonstrated that he had issued the cheque to the client were "stored and will be retrieved and copied to you." It was clearly impossible to produce the cheque or cheque stub and any covering letter as he had not issued a cheque to the client Mrs P. The Respondent admitted in the April 2017 interview with the FIO that he had not sent any money to Mrs P and the Tribunal determined that the Respondent's answer regarding the clients for whom he continued to act was a breach of Principle 2 as he knew it to be a lie. That led to a breach of Principles 6 and 7. He also failed to achieve Outcomes 10.6 and 10.8 as he was not co-operating fully and not complying promptly with a written notice in this case the S44B Notice. The Tribunal therefore found all aspects of allegation 1.1.3 proved on the evidence to the required standard.

Dishonesty regarding allegation 1.1

48.16 Ms Butler submitted regarding both allegations 1.1 and 1.2 that the Respondent's actions amounted to conduct that was dishonest by reference to the standards of ordinary decent people, as set out in the decision of the Supreme Court in the case of Ivey (Appellant) v Genting Casinos (UK) Ltd t/a Crockfords (Respondent) [2017] UKSC 67. As to dishonesty in respect of allegation 1.1 specifically, the Applicant relied upon the factors set out in the Rule 5 Statement, including that:

- In a context in which the Respondent was a solicitor of 23 years' experience, the untruthful explanations given to the Applicant were not spur of the moment decisions but rather were deliberate decisions as to what to say, which were committed to writing by the Respondent.

- The untruthful claims were repeated on numerous occasions to the Applicant and concerned the handling of client money. The Respondent made a deliberate decision during the course of an investigation by the Applicant to lie by providing a letter to KC on 14 September 2016 stating that he was holding approximately £3,000.00 in the client account for the firm for one former client, Mrs P.

- The Respondent thereafter continued the lie he had told the Regulatory Supervisor in the letter of 14 September 2016, when he spoke to her by telephone on 9 November 2016. In the telephone conversation he informed the Regulatory Supervisor that he had sent a cheque to Mrs P.

- The Respondent again furthered his lie in response to a Notice sent to him by the Applicant dated 16 January 2017, by setting out in the email of 17 February 2017 that he did not believe that he was holding client money any longer. Despite having the time and opportunity over the course of the

investigation to correct the position by disclosing the truth, the Respondent chose to continue the lie. The Respondent also set out in his email of 17 February 2017 that he would retrieve and provide a photocopy of the cheque stub/cheque of the payments from client account to Mrs P. The Respondent on making this promise, was misleading the Regulatory Supervisor, as he knew that he could not provide the evidence he claimed he was going to provide of payment of the remaining client monies to Mrs P, as he subsequently admitted to the FIO on 6 April 2017, he had never sent a cheque to Mrs P. It appeared that the Respondent had made this assertion that he could provide evidence on the payment to Mrs P to add credence to his lies and to allay any suspicion he had lied.

- The Respondent then failed to produce the bank statements to KC of the Applicant (despite numerous requests to do so in her letters of 11 October 2016, 21 December 2016 and 16 January 2017) in order to prevent his lies being uncovered.

Tribunal Determination regarding dishonesty and allegation 1.1

48.17 In respect of the dishonesty, the Tribunal applied the test in the case of Ivey:

> "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."

The Tribunal noted that the Respondent did not specifically admit to dishonesty although he did not challenge the allegations. It was clear that when he made each of the statements that were the subject of allegations 1.1.1, 1.1.2 and 1.1.3 he knew that he was lying. He had seen bank statements and only he could have paid Mrs P and he knew he had not done so. He lied in the letter of 14 September 2016 and perpetuated and elaborated on the lie in the telephone conversation of 9 November 2016 and confirmed that there were no clients for whom he held money in his email of 17 February 2017. He lied cumulatively as he was repeatedly asked about the position and chased for information. The Tribunal was satisfied that the Respondent had, as the Applicant alleged, followed a deliberate strategy to mislead the Applicant having embarked on that course in the September 2016 letter. What he said could not have been honest mistakes. The Tribunal was satisfied that ordinary decent people would consider that in all aspects of allegation 1.1, the Respondent had been dishonest.

49. **Allegation 1.2 - He [the Respondent] gave false and misleading information to the SRA's Forensic Investigation Officer on 6 April 2017 in that:**

1.2.1 he stated that he had sent a cheque to Mrs P for £3,000.00 and the balance on the Valleys Law Solicitors Client account was nil; and

1.2.2 he subsequently stated that the amount in Valleys Law client account was approximately £10,000.00.

He thereby breached any or all of Principles 2, 6 and 7 of the Principles and Outcome 10.6 of the Code.

49.1 Principles and outcome cited in the allegation:

Principles 2, 6 and 7 are set out under allegation 1 above, as is Outcome 10.6.

49.2 For the Applicant, in respect of allegation 1.2.1, Ms Butler submitted that the best account of what had occurred was set out in the email dated 6 April 2017 from the FIO to the Respondent which is quoted in the background to this judgment and the accuracy of which was approved by the Respondent in his email dated 12 April 2017. The FIO also gave an account in the FI Report:

> "During the meeting [the Respondent] said that the balance of the [firm's] client bank account was nil as he had returned the remaining client money to a Mrs [P]…
>
> [The Respondent] said he had sent Mrs [P] a cheque in the sum of approximately £3,000.00 and was "surprised" that the Officer was not aware of this as he had told the Supervisor.
>
> …
>
> The Officer asked [the Respondent] if the statements would confirm a zero balance at the date of the meeting (6 April 2017). [The Respondent] said "yes"."

As stated above, having made these claims at the outset of the meeting, and having then been challenged by the FIO as to whether he was lying the Respondent went on to admit at the meeting that he had not sent the outstanding monies to Mrs P and that the balance outstanding on the account was significantly more (as was demonstrated on the bank statements obtained by the FIO).

49.3 In respect of allegation 1.2.2, Ms Butler submitted that having admitted to the FIO that he had lied about having returned the outstanding monies to Mrs P, during the April 2017 meeting, the Respondent went on to say that he thought that the amount still held on the client account was about £10,000.00. The transcript of the meeting recorded that the Respondent said "I think it is about £10,000". The FIO asked the Respondent why he had said that £3,000.00 was left on the client account if in fact £10,000.00 was left on client account. The Respondent replied (omitting comments made by the FIO):

> "It's, it's my fault. I mean it was, it was pretty kind of devastating um situation. I, I mean I hated like having to, to, to close um down and I mean I hated. I mean it was a position I put myself in. Um but I found it very, very difficult to, to cope with and, and being confronted with um, um you know allegations from the, the [Applicant]. I suppose I probably found it easier to say I think there is the £3000 and I've kind of perpetuated that and...but that's, my fault, and I apologise for, for that"

Ms Butler submitted that in the interview the FIO repeatedly offered the Respondent the opportunity to consider carefully his revised position before asserting that the amount on client account was £10,000.00. The FIO stated:

> "...I am concerned that it's taken me coming here and speaking to you...and the position has changed in the blink of an eye. It's gone from you categorically telling [KC] that there's £3000 in the account. You've now trebled, or more than trebled that to £10,000. I suspect there's probably more money again, but it's entirely up to you if you want to come clean...and tell me what the actual situation is"

Later in the interview the FIO again invited the Respondent to reconsider his position, stating:

> "...Now is your opportunity to, to come clean if you like, because if you are found to have misled the SRA, that could easily be a dishonesty allegation against you ok. So, if there's anything you want to say I'd say it now"

However, the Respondent maintained his position that in fact £10,000.00 remained on client account. In the interview, the Respondent also told the FIO that he had seen the bank statements for the firm in the last few months, which added to the false impression that his revised position on the amount of outstanding monies in the client account for the firm was accurate, when it was not. Subsequently, the Respondent provided the Applicant with the list of 28 clients for whom he continued to hold money amounting, according to the Respondent, to £18,890.45. In fact, the bank statements showed that the outstanding balance on the client account as at 24 March 2017 was £20,138.234 (and there was no evidence that the amount had been reduced between that date and the April 2017 meeting).

Allegation 1.2.1 and 1.2.2 taken together by the Tribunal

49.4 The Tribunal had regard to the evidence and the submissions for the Applicant. This allegation related to the interview on 6 April 2017 with the FIO whose email of the same date recorded:

> "You initially told me that you had paid the outstanding balance of £3,000.00 to Mrs [P] … by cheque recently and said you were "surprised" I wasn't aware of this. You said there was no more money in the account…"

This statement was made before the recording device was switched on but at the beginning of the interview the transcript recorded:

> "So, so you've just told me off, off tape obviously that the money had been paid away the latter half of last year…"

The Tribunal also noted the exchanges in the transcript of the interview during which the Respondent changed his position regarding the amount remaining in the client account. The Tribunal considered that the FIO put the position to the Respondent in his email of 6 April 2017 about the £3,000.00 in very precise terms and the Respondent did not challenge what he said. In interview, the Respondent referred to being a criminal lawyer and advising as a duty solicitor and therefore he was well placed to challenge the account if it was incorrect. Equally, the Respondent stated in the interview that he had seen the bank statements in the last few months and so must have known the amount held, which throughout that period was around £18,900.00 and not £10,000.00 as he told the FIO in the interview. The Tribunal found proved on the evidence to the required standard that the Respondent had given false and misleading information to the FIO in the interview and that in doing so he breached Principles 2, 6 and 7. He had also failed to achieve Outcome 10.6 as giving false and misleading information could not constitute co-operating with the regulator. The Tribunal therefore found allegations 1.2.1 and 1.2.2 proved.

Dishonesty regarding allegation 1.2

49.5 As to dishonesty in respect of allegation 1.2, the Applicant relied upon the factors set out in the Rule 5 Statement, including that:

- During the April 2017 meeting, the Respondent continued the lie he had previously told to the Regulatory Supervisor that he had returned the remaining client monies to Mrs P. When the FIO asked for evidence that the Respondent was no longer holding client money and of the payment to Mrs P, the Respondent did not admit he was lying but instead chose to make excuses for not being able to produce the evidence sought by the FIO.

- The Respondent did not admit that he was lying about no longer holding client money until it became apparent that the FIO doubted him, when the FIO directly asked him if he was lying.

- The Respondent knew what he had done was wrong as he apologised to the FIO in the meeting and when asked why he had lied also said he felt he had to perpetuate the lie he had told to the Regulatory Supervisor. He was reminded of the importance of not misleading the Applicant and invited to come clean, but the Respondent went on to claim that the balance on the account was "about £10,000,00".

- In respect of his claim at the April 2017 meeting that there was around £10,000.00 in the account, the Respondent admitted to the FIO that he had seen the bank statements over the last few months, such that he must have known that the balance on the account was in fact around double what he claimed.

- The Respondent knew that it was wrong as a solicitor (and one of over 23 years' experience) to provide false and misleading information to his

regulator. However, he decided to mislead the FIO by stating that £10,000.00 remained on client account to the FIO in the context of a formal interview. Further, during the interview the FIO reminded the Respondent of his duty not to mislead the Applicant, and gave him the opportunity to consider his statement regarding the outstanding balance on client account, but despite this the Respondent failed to disclose the truth.

- As the Respondent failed to disclose the bank account statements and due to concerns about the reliability of the amount he claimed remained on client account given his admission that he had already lied about the balance, the FIO had to ascertain the bank account statements from the Respondent's bank directly to uncover the true position as he could not rely on the Respondent to do so.

Tribunal Determination regarding dishonesty and allegation 1.2

49.6 The Tribunal again applied the Ivey test. It found that when he met with the FIO on 6 April 2017, the Respondent continued the deceit that he had already begun. He made a false statement that he had returned the £3,000.00 to Mrs P and that the client account balance was nil and when he was pressed to tell the truth instead he created another falsehood by telling the FIO that the client account held around £10,000.00. If he had made an honest mistake about the amount being £3,000.00, this would have been an opportunity to say so and correct the figure to the £18,890.45 that apparently, from the schedule he later sent to the FIO, he actually thought was there. The Tribunal considered that ordinary decent people would think that the Respondent's behaviour was dishonest and the Tribunal found dishonesty to be proved on the evidence to the required standard in respect of allegation 1.2.

50. **Allegation 1.3 - From 17 April 2015 to 18 June 2017 the Respondent breached Rule 29 of the SRA Accounts Rules ("SAR") in that he:**

1.3.1 failed to maintain any financial records for Valleys Law Solicitors in breach of Rule 29.1 of the SAR; and

1.3.2 failed to ensure that the current balance on each client ledger was shown, or readily ascertainable from the records kept, contrary to Rule 29.2 SAR; and

1.3.3 failed to conduct client account reconciliations in breach of Rule 29.12 and 29.13.

As a consequence of the above the Respondent breached Principles 4, 6 and 10.

50.1 Principles and Rules cited in the allegation:

Principle 4:

"You must act in the best interests of each client".

Principle 6 is quoted in respect of allegation 1.1.

Principle 10:

"You must protect client money and assets".

(Relevant regulations are quoted below before the particular allegation.)

50.2 For the Applicant in respect of allegations 1.3, 1.4 and 1.5, Ms Butler submitted that there were numerous largely admitted failures so the Respondent could not demonstrate that he had accounted for client money and breaches of Principles inevitably followed.

Allegation 1.3.1

50.3 Rule 29.1 of the SAR:

"You must at all times keep accounting records properly written up to show your dealings with:

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

(b) any office money relating to any client or trust matter"

50.4 In respect of allegation 1.3.1, Ms Butler submitted that during the April 2017 meeting, the Respondent admitted: that he did not have the financial records relating to the firm and so was unable to provide the FIO with any details of the books of account; and that he had not maintained any financial records since the closure of the firm on 17 April 2015. In circumstances in which it was common ground that client money continued to be held by the firm in the client account up until the date of intervention (£20,138.34), it followed that the Respondent had breached Rule 29.1.

50.5 The Tribunal had regard to the evidence and the submissions for the Applicant. The allegation related to failure to maintain any financial records for the firm in breach of Rule 29.1. The Tribunal noted that on 10 May 2017, the Respondent emailed the FIO 58 client ledgers stating that the majority of the balances shown had been paid to other firms including the Respondent's employers GT. The ledgers did not record those payments. On 11 May 2017, the Respondent had provided to the FIO a list of clients, comprising balances which had been transferred to GT and balances which remained in client account. However it was noted in the FI Report that he did not attach any documentation, e.g. client ledger accounts which supported his calculations. When the FIO obtained bank statements the amount shown as held in client account as at 24 March 2017 was £20,138.34 whereas the total the Respondent had given in the list was £18,890.45. The rule required the Respondent to keep accounting records "properly written up" and detailed what they should contain. The Respondent made admissions during the 6 April 2017 meeting with the FIO but the Tribunal did not rely on that in making its determination. After taking a considerable time to consider the problematic use of the word 'any' in the allegation in respect of financial records, the Tribunal took the allegation to mean any financial records such as satisfied the requirements of Rule 29.1 which on the evidence was certainly the case. The Tribunal found proved that the Respondent was in breach of Rule 29.1 and

that his breach was also a failure to act in the best interests of each client (Principle 4), a failure to maintain the trust the public placed in him and in the provision of legal services (Principle 6) and a failure to protect client money and assets (Principle 10). The Tribunal therefore found allegation 1.3.1 proved on the evidence to the required standard.

Allegation 1.3.2

50.6 Rule 29.2 of the SAR:

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

50.7 It was set out in the Rule 5 Statement that on 6 April 2017, when the FIO met with the Respondent, the Respondent was not in possession of the client ledgers for the firm. The FIO reported in the FI Report that the client ledgers did not record the payments made to the other firms where the client matters had been transferred as required under Rule 29.2 of the SAR. Ms Butler submitted that a breach of Rule 29.2 followed from the following facts. In respect of the 58 client ledgers emailed by the Respondent to the FIO on 10 May 2017 (which totalled £632,982.10) the Respondent claimed that the:

> "bulk of these balances were transferred to other firms and I will report back to you on how the balances left over are made up, to match the bank statements"

In fact, the client ledgers did not record the payments that had allegedly been made to the other firms (including GT where the Respondent was employed) to which the matters had been transferred. By way of example, the ledger for client H did not show the balance of £1,460.00 having been transferred to GT, as claimed by the Respondent in his email to the FIO of 11 May 2017.

50.8 On the basis of the client ledgers, the Respondent claimed (in his email to the FIO of 11 May 2017) that the amount still held on the client account related to 28 client matters in the amount of £18,890.45. The balance that he asserted across the client ledgers on his own account did not, however, tally with the balance shown by the bank statements as being held on the client account (£20,138.34 as at 20 April 2017) as the Respondent admitted in his email of 11 May 2017:

> "I'm continuing to ascertain the reason for the difference between the above balance and the balance on the statement".

50.9 The Tribunal had regard to the evidence and the submissions for the Applicant. By virtue of the state of the firm's financial records as referred to by the Tribunal in its determination of allegation 1.3.1 above, the Tribunal found that the Respondent was in breach of Rule 29.2 and Principles 4, 6 and 10. The Tribunal therefore found allegation 1.3.2 proved on the evidence to the required standard.

Allegation 1.3.3

50.10 Rules cited in the allegation:-

Rule 29.12 of the SAR:

> "You must, at least once every five weeks:
>
> (a) compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all unpresented items) of all general client accounts and separate designated client accounts, and of any account which is not a client account but in which you hold client money under rule 15.1(a) or rule 16.1(d), and any client money held by you in cash; and
>
> (b) as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients (and other persons, and trusts) and compare the total of those balances with the balance on the client cash account; and also
>
> (c) prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons".

Rule 29.13 of the SAR:

> "Reconciliations must be carried out as they fall due, or at the latest by the due date for the next reconciliation. In the case of a separate designated client account operated with a passbook, there is no need to ask the bank, building society or other financial institution for confirmation of the balance held. In the case of other separate designated client accounts, you must either obtain statements at least monthly or written confirmation of the balance direct from the bank, building society or other financial institution. There is no requirement to check that interest has been credited since the last statement, or the last entry in the passbook".

50.11 Ms Butler submitted that it was recorded in the FI Report that at the April 2017 meeting the Respondent admitted that:

> "He had failed to undertake monthly client account reconciliations since the closure of the firm and that as such he was unable to immediately identify to which clients the money belonged"

Despite having told the FIO at the April 2017 meeting that he would be able to reconcile the remaining money, the position as at 11 May 2017 was that the Respondent was still unable to reconcile the sums being held according to the ledgers, and the balance in the bank account. The FIO had telephoned the Respondent on 27 April 2017 having sent him the bank statements for the firm on 20 April 2017, to ascertain his progress with dealing with the remaining client monies. The Respondent confirmed during the telephone call that he had not taken any action in relation to the bank statements and had not attempted to reconcile the client money. The FIO urged the Respondent during the telephone call to report back to him by 8 May 2017 on progress in reconciling client money. On 10 May 2017, the FIO again telephoned the Respondent, who confirmed he had not reconciled the client bank account but expected to do so by 11 May 2017. On 11 May 2017, the Respondent emailed the FIO, setting out a list of clients matters where he asserted he had identified client sums which remained in client account. However, in the email the Respondent acknowledged that he had been unable to reconcile the sums due to a difference between the amount shown on the client account bank statements for the firm, and the amount he had identified from the client ledgers. The position as at the date of intervention was as stated in the FI Report that:

> "He has not reconciled the client account and we have no evidence that he has made any progress in distributing the money properly".

50.12 It was submitted that by failing to carry out client account reconciliations to show the true position with regard to the Respondent's dealings with client money from, at the latest 17 April 2015 until 18 June 2017 the Respondent breached Rule 29.12 and 29.13 of SAR. The Respondent also failed to comply with his legal and regulatory requirements by failing to keep accounting records. The Respondent's failure to comply with the requirements under the SAR meant he was not able to demonstrate that he had accounted for client money or show his dealings with client money, and he thereby failed to act in the best interests of clients and failed to protect client money. Further, by failing to keep written up accounts he failed to maintain the trust the public placed in him and the provision of legal services, and therefore breached Principles 4, 6 and 10.

50.13 The Tribunal had regard to the evidence and the submissions for the Applicant. The Tribunal found that the Respondent was unable to demonstrate that he had carried out the required client account reconciliations from the closure of the firm in 2015 to 18 June 2017 the date of intervention and indeed he admitted that in the 6 April 2017 interview. The Tribunal therefore found that he was in breach of Rule 29.12 and 29.13 and of Principles 4, 6 and 10. The Tribunal therefore found allegation 1.3.3 proved on the evidence to the required standard.

51. **Allegation 1.4 - From 17 April 2015 to 18 June 2017 the Respondent breached Rule 14.3 of the SAR in that he failed to return client money to clients promptly.**

As a consequence of the above he thereby breached any or all of Principles 4, 6 and 10.

51.1 Rule 14.3 of the SAR:

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

51.2 For the Applicant, Ms Butler submitted that the Respondent stated in the FCN (on 13 May 2015) that there would be an "Estimated 6 month period to account to clients directly or transfer funds to other firms as per clients' instructions". Following the Respondent's continued failure to provide bank statements to the Applicant in response to the repeated requests of its Regulatory Supervisor, the position as ascertained by the FIO nearly 2 years later (having obtained bank statements from the bank on 18 April 2017), was that, as at 24 March 2017, £20,138.34 was still held on the client account. Despite the FIO suggesting on 20 April 2017 that the Respondent attempt to identify to whom the money belonged, no response was received to that email. Ms Butler also relied on what the Respondent said in the telephone calls from the FIO of 27 April 2017 and 11 May 2017 set out under allegation 1.3.3 above. In the former, he did not provide any explanation for his failure to take any action and in the latter he still did not identify what steps if any he was taking to return client money. On 18 June 2017, when an Adjudication Panel decided to intervene into the former practice of the Respondent it set out that the Respondent had failed to protect the interests of clients, including as one of the reasons:

> "There is still £20,138.34 in the client account of [the firm]. [The Respondent] has made insufficient attempts to ensure this money is properly distributed."

The Respondent's failure to deal with the money remaining on client account from, at the latest, 17 April 2015 until 18 June 2017 and to ensure that it was returned to clients was therefore a breach of Rule 14.3 of the SAR. Clients expected solicitors to return their money to them promptly once it was no longer required. The Respondent's failure to return the money to them was not in his clients' best interests and he failed to maintain the trust the public placed in him and in the provision of legal services. He failed to protect client money by failing to properly account to it to his clients. Ms Butler clarified for the Tribunal that the Respondent had made a couple of references to believing that there were unbilled costs to the firm; the Applicant was still investigating that aspect in respect of money transferred to GT.

51.3 The Tribunal had regard to the evidence and the submissions for the Applicant. The Tribunal noted the 6 month time estimate given by the Respondent in May 2015 to return money to clients directly or transfer funds to other firms when he filed the FCN with the Applicant and that some 2 years later as at 24 March 2017 in spite of numerous enquiries by the Applicant he had still not done so and held over £20,000.00 in the firm's client account. The Tribunal found the Respondent to have breached Rule 14.3 requiring the prompt return of monies to clients and that his breach was in breach of Principles 4, 6 and 10. Allegation 1.4 was therefore found proved on the evidence to the required standard.

52. **Allegation 1.5 - From 17 April 2015 to 18 June 2017 the Respondent failed to remedy breaches of the SAR promptly upon discovery contrary to Rule 7.1 of the SAR.**

By failing to comply with the requirements of the SAR, the Respondent breached any or all of Principles 4, 6 and 10.

52.1 Principles and rules cited in the allegation:

Principles 4, 6 and 10 are set out under allegation 1.3 above.

Rule 7.1 of the SAR:

> "Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account."

52.2 Ms Butler submitted that it was common ground that the Respondent held substantial sums of money on the client account following the closure of the firm when they should have been returned to the clients. Following the April 2017 meeting, the FIO reminded and nudged the Respondent to try to reconcile the accounts and return client funds. In his email of 14 June 2017 to the Applicant in respect of the recommended step of intervention, the Respondent said:

> "I accept these ought to have been transferred to the clients some time ago for which I apologise".

The Respondent was in correspondence with the Applicant from August 2016 about returning client funds. The Respondent provided client ledgers to the FIO on 10 May 2017 which he asserted identified client liabilities of more than £500,000.00 but that did not accord with the client account bank statements. The FI Report set out that due to the lack of accounting records the FIO was unable to calculate whether the firm held sufficient funds to meet client liabilities. Despite his admission to the FIO at the April 2017 meeting that, amongst other things, he had not maintained any financial records for the firm since its closure and that there was an outstanding balance on the client account that needed to be returned to the clients, and despite the efforts of the FIO to encourage the Respondent to carry out reconciliations and make progress in respect of returning funds to clients including by providing the Respondent with the bank statements, the position as at the date of intervention (as recorded in the Adjudication Panel's decision) was that:

> "[The Respondent] has not maintained any financial records for [the firm] since it closed on 17 April 2015. He has not reconciled the client account and we have no evidence that he has made any progress in distributing client money properly"

It was submitted that the Respondent failed to remedy the breaches of the SAR, from at the earliest, 17 April 2015. As at 18 June 2017, when the Applicant decided to intervene into the firm, the Respondent still had not remedied the breaches of the SAR and he therefore breached Rule 7. He also failed to comply with his legal and

regulatory requirements, by failing to act in the best interests of clients, maintain the trust the public placed in the Respondent and the provision of legal services and protect client money, and he thereby breached Principles 4, 6 and 10.

52.3 The Tribunal had regard to the evidence and the submissions for the Applicant. The Tribunal found that the Respondent had made no discernible effort to remedy his breaches of the SAR and that he had breached Rule 7.1 as alleged. The Tribunal found that this failure to comply also constituted reaches of Principles 4, 6 and 10. The Tribunal found allegation 1.5 proved on the evidence to the required standard.

53. **Allegation 1.6 - From 7 August 2015 to 18 June 2017 he [the Respondent] practised as a sole practitioner of Valleys Law Solicitors:**

1.6.1 without authorisation from the SRA in breach of Rule 10.1 of the SRA Practice Framework Rules 2011; and

1.6.2 failed to comply with conditions imposed on his practising certificates for the practice years 2014-2015, 2015-2016 and 2016-2017.

He thereby breached any or all of Principle 7 and Principle 8 of the Principles and in respect of allegation 1.6.1 Outcome 10.13 of the Code and in respect of allegation 1.6.2 Outcome 10.2 and Outcome 10.13 of the Code.

Allegation 1.6.1

53.1 Principles and Rules cited in the allegation:

Principle 7 is quoted under allegation 1.1 above.

Principle 8:

> "you must run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles".

Outcome 10.13:

> "once you are aware that your firm will cease to practise, you effect the orderly and transparent wind-down of activities, including informing the SRA before the firm closes."

Rule 10.1 of the SRA Practice Framework Rules 2011 (the Framework Rules" published on 1 November 2015:

> "If you are a solicitor or REL you must not practise as a sole practitioner unless:
>
> a) the SRA has authorised your practice as a recognised sole practice, or
>
> b) [Deleted]

c) you are authorised to practise as a sole practitioner by an approved regulator other than the SRA."

53.2 Ms Butler provided information by email to the Tribunal on the second morning of the hearing to explain that before 1 November 2015, Rule 10 was worded differently; it referred at (a) above to "recognised sole practitioner" rather than "recognised sole practice" (the detail of the rules was quoted) but the effect was the same; the change of wording was required because the definition of "authorised body" had changed to reflect that sole practitioners would henceforth be treated as a "recognised sole practice" which was included in the definition of an authorised body.

53.3 Ms Butler submitted that the Respondent's partner Mr BG retired on 16 August 2013. Allegation 1.6 referred to the Respondent's conduct after the decision of the Adjudicator of 6 August 2015 as his conduct in respect of this issue for the period of 16 August 2013 until the 6 August 2015 had already been adjudicated upon. The Applicant did not rely on the earlier period but referred to it only as context for the allegation. In particular, the Applicant relied upon:

- The correspondence provided to the Applicant (from J Legal and N Solicitors) evidencing that the Respondent was continuing to practise after 6 August 2015 by way of letters from the Respondent dated 29 January 2016 and 21 March 2016 provided by J Legal, which identified the Respondent as to the Principal and were signed "HUW PRICE on behalf of VALLEYS LAW SOLICITORS". In both cases the Respondent referred to "his client" in respect of a divorce matter. The Applicant also relied on letters from the Respondent dated 26 August 2015 and 29 January 2016 provided by N Solicitors and signed "HUW PRICE on behalf of VALLEY LAW SOLICITORS", referring, again to "our client" in respect of a divorce matter.

- The email from J Legal dated 4 April 2016 including:

  "you will see that they still hold themselves out as solicitors authorised by you".

- The email from the Respondent on 10 June 2016 (responding to the Regulatory Supervision department's request for a formal explanation on 11 May 2016 for continuing to practise when the firm was reported as closed) including:

  "I am sorry that a letter was sent with a Valleys Law letterhead in March. This should not have happened in the course of completing an outstanding matter. This was my error for this I sincerely apologise".

- An email from N Solicitors dated 21 July 2016 including:

  "I have been dealing with Valley's [sic] Law for over 16 months regarding a matrimonial dispute."

- The bank account statements for the client account reviewed by the FIO (and recorded in the FI Report) showed a number of transactions took place after the closure of the firm for example: £87,550.26 was received on

25 September 2015; and £67,118.64 was paid out on 8 October 2015. Further the bank statements showed that there were two standing order payments of £10 continuing to be paid into the client account for the firm for the period 1 January 2017 to 12 April 2017. In respect of the fact that the Respondent was allowed to collect in the firm's debts after its closure and these payments might fall into that category, Ms Butler clarified that the Applicant did not know to what these payments related. She submitted that the payments were only a small part of the Applicant's case.

53.4 Ms Butler submitted that on 19 October 2016, the Regulatory Supervisor informed the Respondent, during a telephone conversation, of the report received from N Solicitors, and asked him if he had conducted any other work after closure. The note records that the Respondent informed her that "he didn't think there were anymore". During the telephone conversation she requested, amongst other things, that the Respondent provide her with copies of any letters or emails he had sent out on the firm's letter headed paper after closure. On 18 November 2016, the Respondent emailed Mrs KC providing to her copies of three letters, which he stated were the only letters sent after the closure of the firm. The enclosed were letters to N Solicitors dated 26 August 2015 and 29 January 2016, and a letter to J Legal dated 21 March 2016. The Respondent's assertion that he had only sent 3 letters after the closure of the firm was incorrect, on the basis of evidence the Applicant had already received, and had previously forwarded to the Respondent as he did not include the letter of 29 January 2016 to J Legal.

53.5 Ms Butler submitted that by practising as a sole practitioner without the required authorisation, the Respondent breached Rule 10.1 of the Framework Rules. Further, he failed to comply with his regulatory obligations requiring him to be authorised, and in accordance with principles of proper governance in breach of Principles 7 and 8. The Respondent also failed to effect an orderly and transparent wind down of the activities of the firm, and therefore failed to achieve Outcome 10.13. The breaches were exacerbated by the fact that on 6 August 2015 he was rebuked by the Adjudicator for practising without authorisation, but continued to do so.

53.6 The Tribunal had regard to the evidence and the submissions for the Applicant. The Tribunal was satisfied that the Respondent had practised as a sole practitioner without authorisation during the period specified in the allegation based on the evidence of the correspondence with J Legal and N Solicitors and that there were for example a receipt in September and a payment out in October 2015, both in significant amounts. The Tribunal found that the Respondent was thereby in breach of Rule 10.1 of the Framework Rules. The Tribunal also found that the Respondent was not dealing with the regulator in an open manner breaching Principle 7 and that he was not operating his business in accordance with proper governance, breaching Principle 8. He had failed to achieve Outcome 10.13 because by practising unauthorised he was not conducting the orderly and transparent wind-down of activities. The Tribunal found allegation 1.6.1 proved on the evidence to the required standard.

Allegation 1.6.2

53.7 Principles and outcome cited in the allegation:

Principles 7 and 8 are quoted under allegation 1.6.1 above.

Outcome 10.2:

> "you provide the SRA with information to enable the SRA to decide upon any application you make, such as for a practising certificate, registration, recognition or a licence and whether any conditions should apply;"

53.8 The allegation related to the Respondent's failure to comply with his practising certificate conditions in the period after the Adjudicator's decision of 6 August 2015. Ms Butler submitted that on 20 August 2014, an Authorised Officer decided to grant the Respondent a practising certificate for the 2013-2014 practice year subject to conditions that included that he could not be a sole practitioner. The conditions imposed on the Respondent's practising certificate for the 2013-2014 practice year, were continued on the Respondent's practising certificate for 2014-2015 (on 15 April 2015), for 2015-2016 (on 19 January 2016) and for 2016-2017 (on 2 February 2017). The Respondent failed to comply with the conditions imposed on his practising certificates for the practice years 2014-2015, 2015-2016 and 2016-2017 as he continued to run client matters representing himself as the sole principal of the firm from 7 August 2015 until the date of intervention into the firm of 18 June 2017. By failing to comply with the conditions on his practising certificates during this period, Ms Butler submitted that the Respondent failed to comply with his regulatory obligations which restricted him from acting as a sole practitioner, and did not act in accordance with principles of proper governance in breach of Principles 7 and 8. The Respondent also failed to inform the Applicant that he was continuing to practise from the firm in breach of his practising certificate conditions as required under Outcome 10.2. (Ms Butler clarified for the Tribunal that the Respondent had been able to obtain a practising certificate after the firm closed because he was acting as a consultant to GT.) The public would expect the Respondent to comply fully with his regulatory obligations, regarding compliance with his practising certificate conditions. Failure to comply with these regulatory requirements would necessarily reduce the trust the public place in the Respondent and in the provision of legal services.

53.9 The Tribunal had regard to the evidence and the submissions for the Applicant. The Tribunal found that conditions had been imposed upon the Respondent's practising certificate and after an unsuccessful appeal in August 2014 when they were first imposed, they had been imposed on all his subsequent practising certificates. The Tribunal found that the Respondent was well aware of the conditions on his practising certificate; as evidenced by his appeal. By continuing to practise and doing so without informing the Applicant he failed to achieve Outcome 10.2 and by failing to comply with the conditions he was not effecting an orderly wind-down of the practice and failed to achieve Outcome 10.13. The Tribunal found that his conduct also constituted a breach of Principles 1.7 and 1.8. The Tribunal found allegation 1.6.2 proved on the evidence to the required standard.

The allegations against the Respondent made by the SRA in a Rule 7 Statement dated 5 July 2018 were that he failed to notify the SRA:

54. **Allegation 1.7 - that he was the subject of bankruptcy proceedings within 7 days of the presentation of the petition and thereby breached (or failed to achieve) any or all of:**

1.7.1 Principle 7 of the Principles; and

1.7.2 Outcome 10.3 of the Code; and

1.7.3 SRA Practising Regulations 2011, Regulation 15.1(c)

Allegation 1.7

54.1 Principles and rules cited in the allegation:

Principle 7 is quoted under allegation 1.1 above.

Outcome 10.3:

> "You notify the SRA promptly of any material changes to relevant information about you including serious financial difficulty...

Regulation 15.1 (c) of the SRA Practising Regulations 2011:

> "In addition to any requirements under Section 84 of the Solicitors Act 1974 or any other rules applicable by virtue of that Act, a solicitor, registered European lawyer or foreign lawyer must inform the SRA within seven days if he or she:
> ...
> (c) is made the subject of bankruptcy proceedings."

54.2 Ms Butler submitted generally in respect of allegations 1.7 to 1.9 that the facts were admitted by the Respondent and/or readily demonstrable on the face of the documents. The allegations which were incorporated in the Rule 7 Statement save for what became allegation 1.7.1 were put to the Respondent in the Applicant's Explanation with Warning letter dated 28 March 2018 and he did not reply. Ms Butler also relied on the Respondent's email of 13 August 2018 to the Tribunal in which he did not contest the allegations. Ms Butler submitted that the petition for bankruptcy was presented to the High Court on 12 October 2016 but, notwithstanding the express provisions of Regulation 15.1(c) of the Practising Regulations and Outcome 10.3, the Respondent did not inform the Applicant. When the Respondent was subsequently made bankrupt on 23 May 2017 his practising certificate should have been automatically suspended under S15(1) of the Solicitors Act, with the Applicant on notice that the Respondent was in financial difficulties and facing bankruptcy. This was not the case and the Respondent continued to practise when he should not have done so between the 23 May 2017 and the intervention into his firm on the 18 June 2017. Due to the Respondent's failure to be open and honest the Applicant was not aware that an event had been triggered requiring regulatory measures to protect the public. The Respondent's failure to notify the Applicant within 7 days that a bankruptcy petition had been presented against him on or after the 12 October 2016 was a failure to deal with the Applicant in an open, timely and co-operative manner in accordance with Principle 7 of the SRA Principles 2011. The Respondent had a duty upon the

presentation of the bankruptcy petition to report it to the Applicant; the petition was a "material change" involving "serious financial difficulty" as set out under Outcome 10.3, and the Respondent should have reported it within 7 days of 12 October 2016, in accordance with Regulation 15.1(c), but he failed to comply with these provisions. Ms Butler submitted that the requirement to report within 7 days was a well-known and well understood rule. In fact the Respondent never reported to the Applicant that he was the subject of bankruptcy proceedings or made the subject of a Bankruptcy Order.

54.3 The Tribunal had regard to the evidence and the submissions for the Applicant. The Tribunal enquired when the Respondent first became aware of the bankruptcy order. There was no evidence upon this point bearing a statement of truth but it was understood from an enquiry made by Ms Elliott of the Applicant with the Joint Trustees that as the Respondent would have been personally served with the bankruptcy petition. The Tribunal found the facts underlying the allegation proved; the Respondent had not notified the Applicant of either the petition or the Bankruptcy Order.

54.4 In respect of allegation 1.7.1, the Tribunal was satisfied that the Respondent's failure to advise the Applicant that he was the subject of bankruptcy proceedings constituted a breach of Principle 7 regarding compliance with his legal and regulatory obligations and acting in an open, timely and co-operative manner in his dealing with the regulator.

54.5 In respect of allegation 1.7.2, the Tribunal found that the Respondent had breached Outcome 10.3 which reinforced his obligation to report.

54.6 In respect of allegation 1.7.3, the Tribunal found that the Respondent had breached Regulation 15.1(c) because he had failed to notify the Applicant within 7 days that he was the subject of bankruptcy proceedings.

54.7 The Tribunal therefore found all aspects of allegation 1.7 proved on the evidence to the required standard.

55. **Allegation 1.8 - [The Respondent failed to notify the Applicant] that he had been adjudged bankrupt on 23 May 2017, when he applied to have the suspension of his Practising Certificate for 2016/2017 lifted on 29 June 2017, or during the subsequent application process or upon receipt of the outcome, and thereby breached (or failed to achieve) any or all of:**

1.8.1 Principles 2 and 7 of the Principles; and

1.8.2 Outcome 10.2 of the Code.

55.1 Principles and rules cited in the allegation:

Principles 2 and 7 are set out under allegation 1.1 above.

Outcome 10.2 is set out under allegation 1.6 above.

55.2 It was submitted that following the intervention into the firm on 18 June 2017, the Respondent emailed the Applicant on 29 June 2017, asking for the suspension of his practising certificate to be lifted, and for his employment at GT Solicitors LLP to be approved. The Respondent enclosed with his email a letter from GT dated 29 June 2017, setting out that the Respondent was employed by them as an Assistant. The Respondent failed to disclose that he was subject to a Bankruptcy Order in his application. An Authorisation Officer of the Applicant emailed the Respondent on the 29 June 2017 to confirm a file had been set up to consider his application. On 4 July 2017, an Authorisation Officer emailed the Respondent stating in her email: "I have now considered your application, the circumstances of the intervention and all of the information you have provided". The Authorisation Officer went on to explain in her email that she was recommending the termination of the suspension and the imposition of conditions on the Respondent's practising certificate for the 2016-2017 practice year. The Authorisation Officer clearly stated the information she had considered in reaching her proposed recommendation, which excluded consideration of the bankruptcy, as the Respondent had failed to disclose it to the Applicant. The Respondent replied to the Authorisation Officer on 7 July 2017 stating that he agreed with the recommendation of the Authorisation Officer and that he agreed to the proposed conditions being disclosed to GT, stating "I have shown them your email in any case". It subsequently came to light that the Respondent's proposed employers, GT, had written to the Legal Aid Agency on 6 July 2017, enclosing the email from the Authorisation Officer to the Respondent of 4 July 2017. The letter set out that GT's legal aid contract had been terminated by a decision of 26 June 2017. In the letter GT asked for a reconsideration of the termination, on the basis the Respondent's suspension was to be lifted. The Authorisation Officer was subsequently contacted by Mr SH a Contract Manager of the Legal Aid Agency who explained in his email of 19 July 2017 that the:

> "termination of the Legal Aid contract for [the Respondent's] current firm was on the basis they don't have a qualified supervisor for their crime Legal Aid work. [The Respondent] was their nominated supervisor, but as a result of issues with his PC, he therefore no longer qualified as a supervisor".

55.3 Accordingly, the reinstatement of the Respondent's practising certificate was necessary in order for GT to regain their legal aid contract. This information suggested that the Respondent's motivation for failing to disclose the bankruptcy, was possibly that the continuity of the Respondent's proposed employers carrying out legal aid work and the viability of the Respondent's role at the firm depended on the reinstatement of the legal aid contract as soon as possible, and the Respondent might have been concerned about the impact the adverse disclosure about his bankruptcy would have. On 7 July 2017, the Authorisation Officer wrote to GT requiring further information about the Respondent's proposed role at the firm. On the same date, the Authorisation Officer emailed the Respondent to notify him she had emailed GT which responded on 11 July 2017, answering the Authorisation Officer's questions. On 13 July 2017, the Authorisation Officer emailed the Respondent and GT to confirm that she was recommending his employment with GT be approved subject to conditions. The Respondent emailed on 14 July 2017 to confirm that he agreed to the conditions. On 20 July 2017, the Authorisation Officer made the decision to terminate the suspension on the Respondent's practising certificate for 2016-2017 practice year. The decision recited the facts and issues considered in reaching the decision. The

Respondent's failure to disclose the bankruptcy petition, or the fact of the Bankruptcy Order were not factored into the decision, as the Respondent had failed to disclose them. Nor was the Authorisation Officer aware at the time she made the decision that the Respondent was committing an on-going breach of his legal and regulatory obligations to be open and honest about his bankruptcy to the Applicant.

55.4 Ms Butler submitted that at no point did the Respondent inform the Applicant about the bankruptcy order notwithstanding that:

- The bankruptcy order was plainly relevant information that the Applicant would want to know about in any circumstances;

- It was all the more obviously relevant in a context in which the Applicant had decided on 18 June 2017 to intervene into the firm on grounds of suspected dishonesty by the Respondent concerning client funds. Ms Butler referred particularly to paragraphs 3.1 and 5.1 of the decision of the Adjudication Panel. The former stated that a ground for intervention was that:

  > "There is reason to suspect dishonesty on the part of [the Respondent] in connection with his practice, or former practice, as a solicitor…"

  The reason for suspecting dishonesty was given at paragraph 5.1 and included the history of the varying account the Respondent had given to the Applicant about the contents of his client account. At 5.2 it was set out that the Respondent had failed to protect the interests of clients and former clients for reasons from which Ms Butler highlighted the following:

  > "a) There is still £20,138.34 in the client account of [the firm]…
  >
  > b) On 11 May 2017 [the Respondent] sent an email to the FIO with a list of 28 client matters on which he said client money was retained. The list totalled £18,890.45…
  >
  > c) [The Respondent] has not maintained any financial records for [the firm] since it closed on 17 April 2015. He has not reconciled the client account and we have no evidence that he has made any progress in distributing the money properly.
  >
  > d) The supervisor and FIO have chased [the Respondent] over a period of nearly two years asking him to properly close [the firm]…
  >
  > e) A total of £97,685.73 was paid out of [the firm] client account in two separate payments on 27 July 2015 and 8 October 2015 (£30,587.09 and £67,118.64) The bank statements also show that there are two standing order payments of £10.00 from [two individuals] paid into the client account of [the firm]…"

- The Respondent was engaged in frequent correspondence with the Applicant during this period for example by his email of 14 June 2017 in respect of the recommended intervention and from 29 June 2017 during the course of his

application to have the suspension on his Practising Certificate lifted and he did not mention the bankruptcy.

55.5 It was submitted in the Rule 7 Statement that the Respondent's actions amounted to a failure to act with integrity in breach of Principle 2. The Respondent had a duty to disclose this information but had failed to. Ms Butler submitted that the Respondent made a deliberate decision not to inform the Applicant. This had to be considered against the background of the evidence such as his informing the Regulatory Supervisor that he had sent a cheque to Mrs P which could not have been an error. As to the Respondent's application to lift the suspension consisting of just a two line email, Ms Butler pointed out that the allegation did not just relate to the time he applied but also to the period during the subsequent application process and correspondence about the conditions under which he was to practise, about how he was to be supervised and about dealing with client money. It was also submitted that the Respondent's failure to notify the Applicant that he was adjudged bankrupt on 23 May 2017, or at all, and specifically when he applied to have the suspension on his practising certificate lifted, and throughout the application process, and when the decision was made, was a failure to deal with the Applicant in an open, timely and co-operative manner in accordance with Principle 7. It was also a failure to achieve Outcome 10.2 of the SRA Code of Conduct 2011 as he failed to provide the Applicant with information required to make an informed decision, meaning the decision made was without a complete picture of the Respondent's regulatory history and conduct.

55.6 The Tribunal had regard to the evidence and the submissions for the Applicant. The Tribunal found that the facts underlying the allegation were proved. It understood that the High Court would have to have been satisfied as to service before making the Bankruptcy Order. The first time the Joint Trustees wrote to the Respondent was on 17 July 2017 but the Respondent had not challenged the allegation. The Tribunal understood that the Official Receiver would probably have written to him before the Joint Trustees did so. He knew he was bankrupt when he made the application. The Bankruptcy Order was made on 23 May 2017 and the Respondent applied to terminate the suspension of his practising certificate arising out of the intervention in his firm on 29 June 2017. At no point in the process did the Respondent make the required notifications.

55.7 The Respondent was subject to a bankruptcy order when he applied to lift the suspension of his practising certificate arising out of the intervention into the firm and he did not notify the Applicant then or when it was lifted. The Tribunal found that the Respondent's bankruptcy was a critical fact that the Applicant would need to know about. The Tribunal noted incidentally that by contrast with his other contacts with the Applicant, the Respondent replied promptly to communications from the Applicant about the imposition of conditions and the supervision arrangements on his future practise. The Respondent's actions in concealing the bankruptcy were in the view of the Tribunal a clear failure to act with moral soundness, rectitude and a steady adherence to an ethical code and he was therefore in breach of Principle 2. He did not deal with the regulator in an open manner as he concealed a key fact and this constituted a breach of Principle 7. As he had failed to provide the Applicant with information required to enable it to make an informed decision on his application to lift the suspension he failed to achieve Outcome 10.2. The Tribunal found allegation 1.8 proved on the evidence to the required standard.

56. **Allegation 1.9 - that he [the Respondent] had been adjudged bankrupt on 23 May 2017 when he applied for a Practising Certificate for the practice year 2017/2018 and thereby breached (or failed to achieve) any or all of:**

1.9.1 Principles 2 and 7 of the Principles; and

1.9.2 Outcome 10.2 of the Code.

It was the Applicant's case that the Respondent acted dishonestly in respect of the allegations at paragraphs 1.8 and 1.9 above.

56.1 Principles and outcome cited in allegation:

Principles 2 and 7 are quoted under allegation 1.1 above. Outcome 10.2 is quoted under allegation 8 above.

56.2 Ms Butler submitted that the Respondent applied for a practising certificate for 2017-2018 on 12 October 2017. The application form recorded under the section entitled "SRA Practising Regulations 2011" as follows:

> "Our records show that the following paragraphs of Regulation 3.1 apply to you: REG 3.1B, REG 3.1C, REG 3.1N, REG 3.1A, REG 3.1G, REG 3.1A, REG 3.1D".

The Respondent was then invited by a question which stated "If you are aware of any paragraphs that apply to you, then please enter the details". The Respondent left the answer section blank. In fact, by reason of his bankruptcy the Respondent was also subject to Regulation 3.1(j) of the SRA Practising Regulations 2011, but he failed to disclose this. Regulation 3.1 stated:

> "Regulation 3 applies to an initial application for a practising certificate, an application for replacement of a practising certificate....in any of the following circumstances, subject to the exceptions set out in 3.3 below, relating for example to a previously undisclosed event...
>
> ...
>
> (j) The applicant is an undischarged bankrupt."

Ms Butler submitted that although the form did not specifically ask about bankruptcy the Respondent should have known of the requirements. Clause 5.1 of the decision dated 19 January 2016 about his application for a practising certificate for 2015/2016 stated that the relevant rules and regulations were attached to the decision. These included the SRA Practising Regulations 2011. The Applicant only learned of the Respondent's bankruptcy when the Joint Trustee in bankruptcy provided this information in a letter to the Applicant in January 2018.

56.3 On 12 February 2018, the Authorisation Officer prepared a report recommending that the Respondent's practising certificate for the 2016-2017 practice year was revoked, and that his practising certificate for the practice year 2017-2018 should be refused. The Authorisation Officer disclosed the report to the Respondent on the same day. The Respondent did not respond. On 23 March 2018, an Adjudicator decided to revoke

the Respondent's practising certificate for the 2016-2017 practice year, and to refuse his practising certificate for the practice year 2017-2018. The Adjudicator set out in her reasoning for revoking the practising certificate for the practice year 2016-2017 that she was doing so on the basis that she had decided to refuse him a practising certificate for 2017-2018 practice year, and it would be therefore illogical for him to hold over on his previous practising certificate. The Adjudicator, in refusing the Respondent a practising certificate for the practice year 2017-2018, stated:

> "I am concerned at [the Respondent's] cavalier attitude both towards his legal and regulatory obligations and his dealings with his regulator. Practising as a solicitor comes with responsibilities, which include: acting with honesty and integrity"

The Adjudicator continued:

> "The [Applicant] has learned of [the Respondent's] bankruptcy since permission was granted for his employment at [GT] LLP. The information did not come from [the Respondent]; a further example of him neglecting his obligations to notify us of relevant information".

56.4 It was submitted that the Respondent failed to act with integrity (Principle 2) in that he failed to disclose that he had been adjudged bankrupt on 23 May 2017 when he applied for a practising certificate for the practice year 2017-2018 and failed to inform the Applicant that he was therefore subject to the Regulation 3.1(j) of the SRA Practising Regulations 2011. The Respondent's failure to notify the Applicant that he was adjudged bankrupt on 23 May 2017 at any time, and specifically when he applied for a practising certificate for the 2017-2018 practice on 12 October 2017, was a failure to deal with the Applicant in an open, timely and co-operative manner in accordance with Principle 7 of the SRA Principles 2011. It was also a failure to meet Outcome 10.2 of the SRA Code of Conduct 2011 as he failed to be open and provide the Applicant with information required to provide a complete picture of the relevant regulatory information pertaining to his application when he made his application.

56.5 The Tribunal had regard to the evidence and the submissions for the Applicant. The Respondent's behaviour was a continuation of lying to the regulator and essentially the same considerations applied to this allegation as to allegation 1.8. He was in breach of Principles 2 and 7. The Tribunal found that the Respondent had failed to provide the Applicant with information to enable it to determine his application for a practising certificate and had therefore failed to achieve Outcome 10.2. The Tribunal found allegation 1.9 proved on the evidence to the required standard.

Dishonesty in respect of allegations 1.8 and 1.9

56.6 Ms Butler submitted in respect of each of Allegations 1.8 and 1.9 in respect of the allegation of dishonesty, that in addition to evidencing plainly a breach of Outcome 10.2 and Principles 2 and 7, even if the Respondent was not aware of his specific obligations to inform the Applicant about his bankruptcy, he must have been aware that the bankruptcy order was clearly relevant information that the Applicant would want to know about – particularly in a context in which it already suspected that he had been dishonest with regards to client funds – and it was accordingly to be

inferred that his decision not to inform the Applicant despite repeated opportunities to do so was a deliberate one.

Tribunal Determination in respect of dishonesty relating to allegations 1.8 and 1.9

56.7 The Tribunal followed the test in the case of Ivey and considered the facts known to the Respondent when he applied for the suspension of his practising certificate to be lifted and when he applied for a new practising certificate for 2017-2018. In respect of allegation 1.8, the Respondent was an experienced solicitor familiar with the Applicant's requirements. He had a history of interactions with the Applicant and had been provided with the regulatory requirements in 2014. He was subject to Rule 3 and the notification of the decision about his practising certificate application for 2015-2016 made on 19 January 2016 stated as much. In his email sent in just before the hearing he apologised:

> "for the fact that I failed to notify the [Applicant] of my bankruptcy last year. I was not aware that I was under an obligation to make the notification but obviously I now realise this was an error."

The Tribunal did not find lack of awareness at all credible in the circumstances. It found that the Respondent knew that bankruptcy was an important piece of information for the Applicant in its decision making; Rule 3(j) made that plain. The Tribunal found that he had decided to withhold this critical information in order to succeed in having the suspension lifted. Based on the facts it had found proved that is that the Respondent had deliberately concealed his bankruptcy and about his state of knowledge of the regulatory requirements as set out above, the Tribunal determined that ordinary decent people would consider the Respondent's actions to be dishonest and that dishonesty was therefore proved on the evidence to the required standard in respect of allegation 1.8. In respect of allegation 1.9, the application form did not specifically refer to reporting bankruptcy proceedings but the same considerations applied; the Tribunal found that the Respondent deliberately ignored his reporting obligations and the Tribunal found dishonesty proved in respect of allegation 1.9 also.

Previous Disciplinary Matters

57. None.

Mitigation

58. The Respondent was not present and had not submitted any mitigation save to say in his email on 13 August 2018 that he apologised for the mistakes he had made:

> "which led to the intervention in my former practice… My bankruptcy has not yet been discharged and would be grateful if you would take this into consideration in making your decision."

Sanction

59. The Tribunal had regard to its Guidance Note on Sanctions. All the allegations had been found proved save for one aspect of one allegation. Dishonesty had been found

proved relating to client money and to withholding important information from the Applicant. In assessing the seriousness of the misconduct, as to culpability, the Respondent had operated as a sole practitioner and kept the Applicant in ignorance for as long as possible. In so far as his actions could be understood his motivation had been his own survival. He continued to practise after he served notice of closure on the Applicant and while supposedly the firm was being wound down. To some extent his efforts to deceive were planned in that the dishonesty in both cases demonstrated a course of misconduct. The Respondent was in a position of trust relating to client money and he breached that trust. He had direct control of and responsibility for the circumstances giving rise to the misconduct. There was no suggestion that anyone else was involved. The Respondent was a solicitor of 23 years' experience who deliberately misled his regulator; this formed a substantial part of the allegations against him. The Respondent's level of culpability was high. As to the harm caused by the Respondent's misconduct, he had withheld a considerable amount of money due to clients. It had been necessary to intervene into his practice to protect them. He had also significantly departed from the complete integrity, probity and trustworthiness expected of a solicitor by his lack of integrity and by his dishonesty. His dishonesty had harmed the reputation of the profession and the harm he had caused was reasonably foreseeable. There were aggravating factors; dishonesty had been found proved and his actions were at least to some extent deliberate. The misconduct continued over a period of time; two years in respect of withholding client money. There was also prolonged concealment of wrongdoing. The Respondent knew or ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession. There must have been some financial impact on clients as he was withholding their money. The Tribunal noted the contents of the Respondent's email of 13 August 2018 but did not consider his mitigation to be significant. The Tribunal considered that he had accepted the allegations because he had to, rather than because of any obvious insight. As to the appropriate sanction, the misconduct was far too serious for no order or a reprimand. A fine was also inadequate. The Respondent had shown no regard for suspensions or restrictions on his practising certificate and in any event the Tribunal considered that the seriousness of the allegations with the findings of lack of integrity and dishonesty were at a level of seriousness such that a lesser sanction than strike off would be inappropriate and that it was necessary both for the protection of the public and the reputation of the profession. The Guidance set out that the most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved would almost invariably lead to striking off, save in exceptional circumstances. The Tribunal could find no exceptional circumstances and determined that the Respondent should be struck off.

Costs

60. For the Applicant, Ms Butler applied for costs in the amount of £30,462.61. The costs schedule had been served upon the Respondent. Ms Butler submitted that the schedule should be subject to an adjustment to reflect that the case had been estimated for 4 days and had been much shorter; the total for attendance at the hearing by the Applicant should be reduced by half. The refresher fee for attendance by Counsel should also be reduced. Ms Butler submitted that Counsel's costs might seem high but it had been necessary to prepare on the basis of a four day contested hearing. Regarding disbursements, there had been a mistaken duplication of the Applicant's travel cost

which should be removed. Hotel accommodation should also be reduced from 3 nights to one. In summary, Ms Butler submitted that there had been a large number of allegations and the fact that a Rule 7 Statement had become necessary had inevitably increased costs. The Tribunal noted the suggested adjustments. It considered the costs claim to be reasonable and proportionate in all the circumstances having particular regard to the degree of detail and complexity involved in the case. The Tribunal assessed costs in the sum of £24,029.87. As to the ability of the Respondent to pay, he had been directed in the Standard Directions that if he wished to have his means taken into account he must inform the Tribunal by 16 July 2018 and serve a Statement of Means supported by documentary evidence. He had failed to do so. In the email sent to the Tribunal just before proceedings commenced on the first day of the hearing, the Respondent stated that his bankruptcy had not been discharged but the Tribunal had no evidence to support that assertion and in the normal course of events it would have been discharged in May 2018. The Joint Trustee advised via Ms Elliott in the affirmative regarding discharge of the bankruptcy order adding: "It is automatically discharged 12 months from the date of Order which means it was discharged on 23 May 2018." The Respondent had been employed by GT LLP but his current employment status was not known for certain. The Tribunal determined that it would make no reduction in the costs order on account of means as the Respondent had failed to provide any evidence that would justify doing so. The Tribunal awarded costs to the Applicant in the amount of £24,029.87.

Statement of Full Order

61. The Tribunal Ordered that the Respondent, Huw Price, 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 £24,029.87.

Dated this 2nd day of October 2018
On behalf of the Tribunal

R. Hegarty
Chairman