SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11786-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

GARY ACKINCLOSE Respondent

Before:

Mr J. A. Astle (in the chair)
Mrs A. Kellett
Mr M. R. Hallam

Date of Hearing: 5-7 February 2019

Appearances

Rupert Allen, barrister of Fountain Court Chambers, Temple, London EC4Y 9DH, instructed by Shaun Moran, solicitor of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

1. The Allegations contained in the Rule 5 Statement dated 8 February 2018 were as follows:

1.1 On or about 13 November 2014 the Respondent, without legitimate basis, sent an email to KS (a business associate of the Respondent's client CH) detailing his personal bank account details and requesting fees (owed by CH to the Firm) be paid directly into the Respondent's own personal bank account rather than to the Firm as they should have been. The Respondent thereby breached both (or either) of Principles 2 and 6 of the SRA Principles 2011.

1.2 The Respondent subverted the Firm's accounts process by:

1.2.1 Altering invoice 583/14 on or about 9 October 2014 to create an invoice under reference 583/14(3) which was not known to the Firm's accounts team or reflected in the Firms (sic) records. This was contrary to both (or either) of Principles 2 and 6 of the SRA Principles 2011 and/or

1.2.2 On or about the following dates: - 9 October 2014, 11 and 13 November 2014, the Respondent sent invoice 583/14(3) to KS/CH in support of a request that fees related to CH's matter be paid directly into the Respondent's own personal bank account rather than to the Firm as they should have been. The Respondent thereby breached both (or either) of Principles 2 and 6 of the SRA Principles 2011.

1.3 On 31 March 2017 the Respondent, through his legal representatives, denied that he had created Invoice 583/14(3) when this was incorrect and misleading. The Respondent thereby breached all (or any) of Principles 2, 6 and 7 of the SRA Principles 2011.

1.4 In or around February 2015 and/or May 2016 the Respondent provided misleading information to his Firm by incorrectly and/or disingenuously claiming that he had caused payments to be made by client CH directly into his own personal bank account by mistakenly providing KS with his personal bank account details over the telephone. In fact, the direct payments of CH's fees were as a result of an email sent by the Respondent to KS explicitly requesting direct payments on 13 November 2014. By providing misleading information to the Firm the Respondent breached both (or either) of Principles 2 and 6 of the SRA Principles 2011.

Dishonesty was alleged with respect to the Allegations at paragraphs 1.1, 1.2, 1.3 and 1.4 however proof of dishonesty was not an essential ingredient for proof of those Allegations.

The Allegation contained in the Rule 7 Statement dated 20 September 2018 was that he:

1.5 Practised as a solicitor at Andrew J Fenny & Co after 26 October 2017 in circumstances in which he had not had that employment approved by the SRA, contrary to conditions on his Practising Certificate and in breach of any or all of Principles 2, 6 and 7 of the SRA Principles 2011.

Preliminary Matters

2. Mr Allen applied to amend the Application to correct a typographical error in respect of the individual making the application. This was not opposed by the Respondent and the Tribunal granted this application.

Factual Background

3. The Respondent was born in 1967 and was admitted as a solicitor in England and Wales on 1 November 2001. As at the date of the Rule 5 Statement his name remained on the Roll and he held a Practising Certificate subject to the following conditions:

   - He was not to act as a manager or owner of an authorised body.

   - He may act as a solicitor only in employment. That employment must first be approved by the SRA.

4. At all material times in relation to Allegations 1.1-1.4 the Respondent was a consultant solicitor practising at The Associate Law Firm ("the Firm"), in Newcastle.

5. On 19 May 2016, the SRA received a report from Jane Jelly, Compliance Officer for Legal Practice ("COLP") at the Firm, which advised that the Respondent had provided his personal bank details to a client. She stated that the Respondent had told her that he had mistakenly provided his account details to his client CH who had made two payments into his personal account. The Respondent had identified those payments and transferred them to the Firm's client account. When closing the client matter file the Respondent had undertaken a review of his personal account and noted two further payments from client CH, each of £1,000. The Respondent had notified the COLP and transferred the money to the Firm's client account.

6. On 23 August 2016 a detailed report was received from Keystone Law ("the Keystone report"), which stated that the Firm had established that the Respondent had provided his personal bank details to his client CH in an email dated 13 November 2014, causing the client to make the following four payments to him directly:

   - 14 November 2014 - £900
   - 13 February 2015 - £1,000
   - 13 March 2015 - £1,000
   - 25 March 2015 - £800

7. The Respondent returned those payments to the Firm on the following dates:-

   - 27 February 2015 - £900
   - 17 April 2015 – £800
   - 6 May 2016 - £2,000

8. The Firm stated that they had encountered difficulty in persuading the Respondent to return his Firm laptop after terminating their relationship. When it was returned to them, they had discovered that the Respondent had wiped the memory clean by restoring it to default factory settings.

The CH matter

9. The Respondent was acting on behalf of client CH in a debt recovery matter. CH's business associate, KS, dealt with most aspects of the litigation and was the Respondent's main point of contact.

10. On 29 September 2014, an invoice of £3,602.52 had been raised by the Firm to CH under invoice number 583/14. This included fees of £1,740 together with disbursements such as counsel's fees and expenses. On 9 October 2014, the Respondent agreed with KS that he would reduce the fees payable by half.

11. On 13 November 2014, the Respondent sent an email to KS attaching an amended copy of invoice 583/14, with the fees reduced to £900. The invoice attached to the email was numbered 583/14(3). In that email the Respondent requested that the monies be paid into a Santander bank account, the details of which were the Respondent's personal bank account. The invoice itself contained the Firm's client account details as the usual method for clients to make payment. The following day, 14 November 2014, £900 was paid into the Respondent's personal bank account by client CH and on 13 February 2015 a further £1,000 was paid into the same account.

12. On 27 February 2015, the Respondent informed the Firm's accounts manager that client CH had transferred money to the Respondent's personal account. The Applicant's case was that the Respondent had told Jane Jelly that he had mistakenly provided his personal bank details during a telephone call while driving. The Respondent transferred £900 to the Firm's client account but did not at that time make reference to the further £1,000 he had received on 13 February 2015.

13. On 13 March 2015 client CH paid a further £1,000 directly in to the Respondent's personal bank account, followed by another payment of £800 on 25 March 2015. On 17 April 2015, the Respondent informed the Firm that he had received a further payment of £800 directly from client CH. The Respondent transferred the £800 to the Firm but made no reference to the £1,000 he had received on 13 March 2015.

14. On 1 April 2016 CH agreed a settlement of his case. On 5 May 2016 KS notified Jane Jelly that he had not received invoices for all the payments CH had made to the Firm. Jane Jelly therefore raised this with the Respondent and on 6 May 2016, the Respondent informed the Firm that he had identified a further £2,000 in payments made directly into his own account by client CH. These funds were transferred to the Firm's client account.

15. On 1 June 2016 Jane Jelly was informed by the Respondent that he had actually received the funds directly from the client as far back as November 2014. The Respondent's contract was terminated by the Firm on 2 June 2016.

16. The SRA had raised these matters in an Explanation with Warning letter ("the EWW") to the Respondent dated 3 March 2017. The response to the EWW, dated 31 March 2017, was received from Murdoch's Solicitors on behalf of the Respondent.

17. In that response, the Respondent stated that he reduced the client's fees at the request of KS. The Respondent stated that he was entitled to reduce the Firm's fees and that the reduction affected his remuneration. He denied that he prepared the invoice numbered 583/14(3) and stated that this had been prepared by someone else at the Firm. The Respondent denied that that he intended to achieve personal gain through his actions and stated that the fee reduction he agreed with KS/CH was to his detriment.

18. The Respondent accepted that he had provided KS with his personal bank details in an email, stating that this was a genuine error caused by fatigue and his familiarity of providing his account number in relation to his other separate businesses, which he was running concurrently with this work at the Firm.

19. The Respondent accepted that the payments set out above were received into his account. He stated that he had not noticed these entries in his personal account as he was often too busy to check his account in detail. The Respondent stated that he regretted providing his personal bank details and apologised.

Allegation 1.5

20. On 26 September 2017 an Adjudicator at the SRA decided to impose two conditions on the Respondent's practising certificate as follows:

- That he may act as a solicitor only in employment. That employment must be first be approved by the SRA
- That he was not to act as a manager or owner of an authorised body

21. On 28 September 2017 the SRA informed the Respondent that the approved employment condition would take effect from 26 October 2017.

22. On 9 November 2017 the Respondent emailed the SRA stating "I wish to continue in the employment of Andrew J Fenny & Co. I understand that an application is required. If you could please provide a copy of any application form that must be submitted under such circumstances I would be grateful".

23. On 10 November 2017 the SRA replied to that email, advising the Respondent that his prospective employer should email approval@sra.org.uk.

24. On 21 November, Andrew J Fenny & Co wrote to the SRA confirming that the Respondent was still employed by the firm as a consultant.

25. On 17 January 2018 the SRA emailed the Respondent in relation to his application for a Practising Certificate for 2017/18. The email referred to SRA records which indicated that the Respondent was employed by Andrew J Fenny & Co and as such

the Respondent was in breach of the condition on his Practising Certificate. The Respondent was informed that he must cease practising.

26. On 3 April 2018 the Respondent provided representations to the SRA in which he stated that an earlier email from the SRA had confused him as to whether his conditions remained on his 2016/17 certificate. This was a reference to an email of 1 November 2017 which acknowledged receipt of the Respondent's application for the 2017/18 certificate and stated that until a decision was made he could continue to practise on his 2016/17 certificate.

Live Witnesses

27. Jane Jelly

27.1 Ms Jelly confirmed that her witness statement was true to the best of her knowledge and belief. In cross-examination she confirmed that when the Respondent had first started with the Firm there was no case management system in place. She disagreed that in the early days consultants were mainly based at home. She told the Tribunal that consultants, including the Respondent, were required to work on Office 365 and not on the desktop system. She stated that documents were never supposed to be stored on a device's own drive desktop as the Firm needed to have access to those documents.

27.2 Ms Jelly agreed that the Respondent had a lot of work commitments and with his description of himself as being "exceptionally busy Monday to Sunday".

27.3 Ms Jelly told the Tribunal that she was aware of the Respondent having cash flow issues but she did not feel that this amounted to financial difficulties. She stated that the Firm had tried to support the Respondent through those cash flow issues. The Respondent put to her that those cash flow issues only arose after April 2015. Ms Jelly denied this and stated that they were consistent throughout his time at the Firm. Ms Jelly agreed that the Respondent had been concerned when he had attended the office to inform her of receipt of the £900 into his personal account. In her witness statement she had referred to him panicking. Ms Jelly told the Tribunal that at the time, based on the Respondent's demeanour and on what he was telling her, she had believed him that it was a genuine mistake. Ms Jelly confirmed that she had not asked the Respondent to file a written report or send an email setting out what had happened nor had she asked him to sign any internal risk assessment. The Respondent asked Ms Jelly whether she had asked him at the time he disclosed them as to the dates of the actual payments into his personal account. Ms Jelly stated that the Respondent had given the impression that he had just noticed it and she knew that he was often logging into his personal bank account and so she concluded that he knew what was going on in his bank account all the time and so assumed these payments had just been received. Ms Jelly confirmed that the Respondent transferred the £900 into client account of his own volition having reported it the same day.

27.4 In April 2015, when the Respondent had reported the payment of £800, Ms Jelly had again believed what the Respondent told her because of his appearance and demeanour.

27.5 The Respondent asked Ms Jelly a number of questions concerning the laptop. Ms Jelly told the Tribunal that she had no objection to the Respondent having used it for his private business and knew he was doing so, but it was the Firm's laptop and she had wanted to safeguard the Firm's data. By that time, she was investigating matters that were serious and she had told him not to delete the data due to the SRA investigation.

27.6 The Respondent asked Ms Jelly whether she recalled a partnership deed being drafted and sent to the Respondent from Andrew Fenny. Ms Jelly told the Tribunal that she knew nothing about this. The Respondent suggested that Ms Jelly had seen him reading this draft partnership deed over his shoulder when he was working in the Firm's office and that from that point on their working relationship had taken a turn for the worse. Ms Jelly denied this.

28. Linzi Jelly

28.1 Ms Jelly confirmed that the contents of her witness statement were true to the best of her knowledge and belief. She agreed that the Respondent was "quite hectic" and that he had a number of commitments relating to work outside the Firm. She told the Tribunal that the Respondent had been "a bit shocked" and concerned when he reported the £900 having ended up in his personal bank account. His reaction was similar when he reported the £800 in April 2015. Ms Jelly told the Tribunal that the Respondent's financial difficulties had existed throughout his time at the Firm and were not confined to the period after April 2015. In response to a question from the Tribunal, Ms Jelly explained that there was a period of about one month during which the Respondent had not had secretarial support. She confirmed that the Respondent had never been asked to give dates as to when the payments had been received in his bank account. She further agreed that the conversations were fairly informal.

29. The Respondent

29.1 The Respondent adopted his answers to the Allegations together with his written submissions as part of his evidence. In the course of his evidence in chief the Respondent was also permitted to adduce a chronology and written submissions comprising bullet points as part of his evidence. The Respondent told the Tribunal that he had been taken on as a self-employed consultant by Jane Jelly and at that stage he had been using his computer desktop to save Word documents. He told the Tribunal that he joined the Firm in September 2014. He worked on his own for between four and six months. He was then provided with some secretarial support from GJ, but this proved unsatisfactory. This lasted for approximately six or seven months, before JB joined as his support in 2016, possibly 2015. The Respondent told the Tribunal that he felt he was doing well financially. He had a £4,000 authorised overdraft facility that he did not need to utilise. He tended to be only marginally overdrawn and for short periods and was quickly back in credit. He told the Tribunal that client CH was introduced to him and it was a complicated case which required a high level of intensity of work. The Respondent told the Tribunal that this "saturated" a lot of his time.

29.2 The Respondent set out in detail the various working commitments that he had at the material time, both at the Firm and outside it. The Respondent told the Tribunal that he was working between 10 and 12 hours a day seven days a week. This led to considerable fatigue which in turn had led to him making genuine mistakes. The Respondent told the Tribunal that he had no financial difficulties before April 2015 when he had lost some work with another company as well as at the college where he was teaching. This put more pressure on him to collect fees through practising. The Respondent told the Tribunal on more than one occasion that if he had been minded to take client money, something he strongly denied, the obvious time to have taken it would have been after April 2015 and not before. The Respondent told the Tribunal that he had a major trust problem with Jane Jelly, which he put down to her having seen him reading the draft partnership deed on his laptop. He recalled seeing her silhouette while he was reading this document. He told the Tribunal that he believed that Jane Jelly had disclosed his personal data, something he stated he discovered subsequently. However it was as a result of the breakdown of trust between the two of them that he had taken the decision to wipe the data on the laptop.

29.3 In respect of the Rule 7 Allegation, he told the Tribunal that he had understood that he was permitted to carry on practising pending a decision by the SRA. The conditions had been imposed right at the end of the practising period of 2016/2017. He told the Tribunal that Andrew Fenny had read it the same way as he had, and they had both concluded that the letter was confusing. The Respondent also told the Tribunal that he had considered that it was still in the interests of clients for him to do the work, rather than handing the work over to someone-else pending the decision, and that if his judgment in this matter had been incorrect then he apologised.

29.4 In respect of the first payment, the Respondent told the Tribunal that he could have amended the client account details on the invoice but had not done so. He had only ever intended that the money would go into the Firm's client account. The Respondent explained that he did not recall sending the email dated 13 November 2014. He had not realised that the money had gone into his bank account until February 2015, when he had noticed it and reported it to the Firm in a state of panic. In respect of the fourth payment, the Respondent told the Tribunal that he had discovered this in April 2015 and had again alerted the Firm. The Respondent emphasised that there had been no loss to client money and that the intention had always been that payments would end up on the Firm's client account. He strongly denied being dishonest in any way.

29.5 In cross-examination the Respondent confirmed that he was familiar with the Solicitors Accounts Rules and he understood the importance of looking after office and client money. The Respondent agreed that over the period of approximately 6 months leading up to October 2014 he had prepared a "fairly large number" of invoices. Mr Allen asked the Respondent if he knew that he was writing to a client of the Firm when he had sent the email dated 13 November 2014. The Respondent confirmed that he was aware that he was writing to a client of the Firm and he had appreciated so at the time. He stated that he was working very quickly at the time and so the email was "off-the-cuff". Mr Allen put to the Respondent that the email referred to a previous discussion that had taken place and that therefore some thought must have gone into it. The Respondent agreed to an extent but stated that it was not a lot of thought due to the speed at which he was working. He agreed that he had put

some thought into the attachment of the invoice. The Respondent accepted that he was sending the client an invoice for the purpose of obtaining payment of fees due to the Firm and that he knew this at the time. The Respondent confirmed that at no time was he seeking monies due to him personally when sending this email. He had put his own bank account details due to a "force of habit" and it was not a conscious decision. Mr Allen put to the Respondent that he knew that he was providing bank account details. The Respondent confirmed this was correct but stated that he was typing the email at such speed that the inclusion of his bank details was instinctive and a mistake due to his being "massively fatigued". The Respondent had been focused on the other things that he had to do and there were files all around his desk. He denied that he made a deliberate decision to include bank account details. The Tribunal enquired of the Respondent as to why he had included bank details on the third email concerning this matter but not on the first or second. The Respondent replied that there was no reason for this other than the fact that when he was working outside the Firm he was used to putting his own personal bank details on emails. Mr Allen put to the Respondent that the real reason that he had put his details in the email was that he wanted the client to ignore the details on the invoice and send payments to the Respondent. The Respondent denied this. He stated that he could not be clear enough that this was a genuine mistake.

29.6 Mr Allen put to the Respondent that he had been overdrawn just before the payment of £900 came into his account on 14 November 2014. He therefore suggested that the Respondent must have noticed the payment as it helped take the account into credit. The Respondent denied this and stated that he had a £4,000 overdraft facility and had also received other payments around that time. The Respondent tended to check his balance and the payments leaving the account rather than going through historic transactions when he logged onto his bank account. He told the Tribunal that he was working at speed and if he looked at the account it would have been simply a cursory glance at the balance. Mr Allen put to the Respondent that Jane Jelly had stated that he had frequently logged on to his online banking in the office. The Respondent denied that he had done so frequently before April 2015. He would have been checking it, but not intensely. The Respondent told the Tribunal that he had not rendered any further invoices between September 2014 and the conclusion of the case in 2016. He explained that he had realised that the case was going to be successful and made a decision not to put in invoices. This was in part due to the client having cash flow issues and also because he wanted to receive further work from the client.

29.7 Mr Allen asked the Respondent if he had ever chased the £900 in fees that were set out in the invoice. The Respondent stated that he had not done so due to pressures of work. Mr Allen put to the Respondent that the reason that he had not chased for payment was because he knew that the client had settled the invoice with payment directly to his personal bank account. The Respondent denied this and told the Tribunal that he would never deliberately look to secure money from a client with the intention of keeping it. The Respondent told the Tribunal that he had come across the payment when looking at his account in February 2015, at which point he "went into panic mode and went hurtling into the Firm". The Respondent confirmed that at that point in time, namely 27 February 2015, he had already received the second payment of £1,000 into his account on 13 February 2015. The Respondent told the Tribunal that he had not noticed the second payment and reiterated his point about the overdraft and the extent to which he would check his bank account. He accepted that he had

missed the payment due to the circumstances of his working life. Mr Allen put to the Respondent that any responsible solicitor would check to see if there were further payments. The Respondent accepted this and stated that if he had spotted it he would have disclosed that payment to the Firm as well.

29.8 Mr Allen reminded the Respondent of the evidence of Jane Jelly and Linzi Jelly to the effect that he had told them that he had provided the bank account details by mistake during a telephone conversation that took place while he was driving. The Respondent accepted that he may have done but was unable to recall. If he had said it, it was because he was often in his car and he did a lot of conference calls whilst driving. The response to the EWW letter had been sent on his instructions and whatever information was contained in it reflected his best recollection at the time. The Respondent accepted that he should have used the words "can't recall" rather than specifically denying that the conversation had taken place in those terms.

29.9 The Respondent accepted that he had received the total sum of £2,800 in February and March 2015. He told the Tribunal that he had not noticed the receipt of that amount of money. Mr Allen asked the Respondent whether he had not examined his bank account again having spotted the £800 payment. The Respondent stated that he was in a fluster at the time and had not done so. In addition, his working week was such that he was too busy to do so.

29.10 Mr Allen put to the Respondent that he should have/would have asked KS if any other payments had been made into his personal bank account in error. The Respondent stated that he had not done so as he had already found the payment of £800 and he had told the client about that and they had not told him of any other payments. When asked why he had not checked he explained that this was due to working pressures and fatigue. The Respondent accepted that there had been a conversation in February/March 2015 in which he had said to the client that if he paid him then he in turn would pay the Firm.

29.11 The Respondent agreed that by reference to an email dated 11 March 2015 he was aware that £1,000 of the £2,800 had been received from the client. Mr Allen put to the Respondent that he must have been aware that he had received the £1,000. The Respondent agreed. Mr Allen asked the Respondent to confirm that this was the £1,000 that had arrived in his bank account on 13 February 2015, which he did. Mr Allen asked the Respondent if he had known that this money had been received into his personal account. The Respondent stated that he accepted that it had been received but that he had "missed it". The Respondent clarified that the term "missed it" meant not making the transfer to the Firm. He stated that he was aware that the payment had come in as a result of a discussion with KS. He accepted that it should have been transferred and the reason why it had not been transferred was because he had missed it. The Respondent accepted that he had not then told the Firm until May 2016 as it had "gone off [his] radar". The Respondent denied that he had been knowingly or deliberately retaining the funds.

29.12 The Respondent confirmed that he did not seek to challenge the evidence of KS, who had provided a witness statement in these proceedings. Mr Allen put to the Respondent that he was saying that, whilst he had asked for payment into his account deliberately in February/March 2015, the insertion of his bank account details in an

email in November 2014 was an accident. The Respondent told the Tribunal that this was exactly what he was saying. He had been chasing the client for payment on account and he had asked him to pay him directly on the basis that Jane Jelly was pressing the Respondent to get money in. The Respondent did not recall the Firm's account details and therefore provided his own with the intention that he would transfer the funds. Mr Allen put to the Respondent that he must have known at the time that this was wrong. The Respondent denied this and stated that this was reflective of his fatigue but he now accepted that it had been the wrong thing to do. The Respondent confirmed again that he was aware that he received the funds into his personal account and accepted that he had not done anything about it for over a year. When he had done so he had made a formal report to Jane Jelly in her capacity as COLP and COFA. The Respondent denied trying to mask the payments. Mr Allen suggested that the only reason he had disclosed it was because this was what was needed in order to settle the outstanding fees on invoices. The Respondent denied this.

29.13 The Respondent confirmed that it was the comment by KS in 2016, to the effect that he had not received the invoices that was the trigger for him to check his bank accounts. He had told Jane Jelly that he was going to do this check, rather than saying nothing and checking himself. Mr Allen put to the Respondent that the reason he told Jane Jelly that he was going to check was because he was well aware of what he would find. The Respondent denied this and told the Tribunal that at 9.00am the following morning he had attended the office and transferred the money straight away. The Respondent told the Tribunal that this was the first time that Jane Jelly had asked for specific dates of payments.

29.14 The Respondent was cross examined about the amendment of the invoice. He confirmed that it was the Firm's usual practice, when amending an invoice, to raise a credit note and adjust the accounting records. There was more than one way of doing this but either way it would need to be in the Firm's accounting records. The Respondent agreed that he would need to tell Linzi Jelly and he further agreed that he had not done that. Mr Allen put to the Respondent that his response to the EWW denied that he had edited the invoice himself when in fact he now accepted he had done so. The Respondent told the Tribunal that at the time he could not recall amending the invoice and it did not look like a document that he would have prepared. Mr Allen put to him that it looked exactly like such a document. The Respondent agreed but stated that at the time he gave the answers via his solicitors he thought that a secretary had prepared it and denied recalling amending the invoice.

29.15 In respect of Allegation 1.5, the Respondent told the Tribunal that he had found the email dated 1 November 2017 from the SRA to be confusing. Mr Allen put to him that in an email dated 9 November 2017 the Respondent had stated that he understood that an application to the SRA was required and that therefore he could not have been confused by the email of 1 November 2017. The Respondent denied this and explained that he had been relying on the comment in that email to the effect that he could continue to practice on his 2016/17 certificate until a decision had been made by the SRA. He did not think that he was subject to the condition attached to that certificate as it had been triggered only at the end of October and therefore he thought it was due to start from November. Mr Allen took the Respondent to a letter from the SRA dated 17 January 2018 and put to the Respondent that the instruction in this letter that he cease practising could not be clearer. The Respondent accepted that, and

told the Tribunal that with hindsight it would have been appropriate to stop and that he had not done so.

29.16 In response to clarification questions from the Tribunal, the Respondent appeared to suggest that he had originally instructed the IT consultant to download the Firm's data onto a USB stick so that it could be returned to the Firm. The Respondent agreed that he had not made any reference to this in his written responses or his evidence until this point. He told the Tribunal that the instruction was verbal and he was not sure if in fact the data had been downloaded and/or the memory stick delivered to the Firm. In his closing submissions, the Respondent clarified his position, which was that the laptop was cleaned and that there had been no memory stick.

Findings of Fact and Law

30. The Applicant was required to prove the Allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

31. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of both parties, which are briefly summarised below.

General Approach

Dishonesty

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

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

33. The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

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

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

34. The Tribunal took account of the character references when considering the question of dishonesty.

Integrity

35. When the Tribunal was required to consider whether the Respondent had lacked integrity it applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

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

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

37. **Allegation 1.1 - On or about 13 November 2014 the Respondent, without legitimate basis, sent an email to KS (a business associate of the Respondent's client CH) detailing his personal bank account details and requesting fees (owed by CH to the Firm) be paid directly into the Respondent's own personal bank account rather than to the Firm as they should have been. The Respondent thereby breached both (or either) of Principles 2 and 6 of the SRA Principles 2011.**

Applicant's Submissions

37.1 Mr Allen submitted that there was no reason for the Respondent to have provided any bank details in the email of 13 November 2014. He submitted that the Respondent must therefore have deliberately decided to type his bank details into the email.

37.2 Mr Allen submitted that the Respondent would have known that he was writing to an individual who was a client of the Firm and not doing so in his personal capacity. Mr Allen further submitted that it was not credible for the Respondent to suggest that he did not realise that he was providing his own bank account details, noting that the Respondent had typed "Santander" rather than Lloyds, where the Firm held its account. Mr Allen also submitted that the Respondent must have been aware of the payments into his personal bank account at the time or shortly after they were made. Mr Allen submitted that the evidence demonstrated that the Respondent had been frequently overdrawn over the relevant period and at other times had a modest credit balance. In that context, the amounts received were substantial. Mr Allen referred the Tribunal to the evidence of Jane Jelly and Linzi Jelly to the effect that the Respondent, when in the office, had complained about the need for money to pay his

mortgage and meet other financial commitments. He would frequently log onto his online bank account and was also frequently checking whether fees had been received on his matters in order that he could raise an invoice from the Firm and thus obtain his personal share of payment.

37.3 Mr Allen took the Tribunal to the email exchanges in which the Respondent had asked the Firm to raise the original invoice urgently so that he could receive "immediate payment". The email of 9 October 2014 requested payment "by return". However after that the Respondent did not chase payment of the original invoice which Mr Allen submitted could only be explained on the basis that the Respondent knew that the amended invoice had been paid. Mr Allen also submitted that the Respondent had given incorrect, misleading or incomplete information to the Firm. He had given the impression that the payment had only just been received when in fact it had been received longer ago than the Respondent had implied. The Respondent had also failed to inform the Firm that he had provided his bank account details by email and suggested that he had done so by telephone while driving. Mr Allen submitted that the return of the payments of £900 and £800 to the Firm were done in order to cover the outstanding amount of the original invoice issued on 29 September 2014 so as to avoid the Firm chasing the client for an apparently overdue payment and thereby discovering the position. The Respondent would have been aware that the payment of £800 in April 2015 was in excess of the amount required by the amended invoice, which had been discharged by the payment of £900 to the Firm in November 2014. However, the Respondent had not told the Firm about the amended invoice as this would have raised questions about why the payment of £800 had been made. Mr Allen made a number of submissions about the subsequent payments, but Allegation 1.1 related to the sending of the email dated 13 November 2014. The Tribunal focused on the pleaded Allegations when considering this matter.

37.4 Mr Allen invited the Tribunal to infer that by deleting the data from the laptop, despite a specific request from Jane Jelly that he did not do so, the Respondent had sought to destroy the evidence which would reveal to the Firm that the payments had been made into his personal bank account at his specific request.

Respondent's Submissions

37.5 The Respondent had set out his position in detail in the course of his oral evidence and in his written answers to the Allegations. In his closing submissions he reiterated those points. The Respondent's submissions often covered more than one Allegation and the Tribunal had all of the submissions in mind when considering the Allegations. The Respondent made a number of detailed submissions about the other payments beyond the £900 in November 2014. However, the Tribunal confined itself to the payments that formed part of the Allegations and they are therefore not recited here.

37.6 The Respondent submitted that he had not been dishonest and that all he had sought to do was put right a genuine error. He referred the Tribunal to the character references that he had submitted. He told the Tribunal that there had been no loss to the client and the file had been fully accounted for "to the penny". He submitted that this was indicative of his true state of mind at the material times.

37.7 The Respondent reminded the Tribunal of the evidence of Jane and Linzi Jelly that he had been panicking when he reported the payments into his account.

37.8 The Respondent submitted that there was no evidence, by reference to bank statements, that would have alerted him to any further payments. There were many payments of sums not dissimilar to the £900. He told the Tribunal that he had tried to be as clear as he could that he only ever intended the £900 payment to be paid into the Firm's client account. The Respondent referred the Tribunal to an email from KS dated 31 March 2017 in which KS had stated:

> "You never at any time asked for any benefit to be given to you personally from a reduction in fee rate and if anything I still believe that you are owed the bonus that [CH] promised you at the mediation meeting in Birmingham where we settled the case in [CH's] favour…"

37.9 He had reported it as soon as he noticed that it had in fact been paid into his own account. The Respondent told the Tribunal that he "highly disputed" that he gave the impression that the payment had only just been received. Jane Jelly did not make a report as COLP or COFA and he was not asked to send in a full formal report. The Respondent categorically denied that the reason he did not chase the payment was because he knew it was in his account. He had simply decided not to bill the client again until the conclusion of the case.

37.10 The Respondent reminded the Tribunal that at the material time he had been working 10-12 hours a day and that it was only after April 2015 that his financial situation changed. If he was minded to take client money, which he denied, he would have done so after April 2015. He submitted that this was another factor in support of his case that the payments were the result of a genuine mistake.

The Tribunal's Findings

37.11 The Respondent had admitted that he had sent the email of 13 November 2014. This email contained bank account details which, it was accepted, related to his own personal bank account. The invoice attached to the email contained the bank account details for the Firm's client account. It was common ground that the money that was being sought from the client should have been paid into the Firm's account and not into the Respondent's personal account. There was therefore no need to put any bank account details in the email at all, and certainly not his own.

37.12 This was an email to a client in which payment of fees was being requested. The Respondent had told the Tribunal that he had sent the email without thinking due to being busy and fatigued. The Tribunal accepted that the Respondent may well have been tired and overworked, but it did not accept the Respondent's evidence that this was the reason for sending the bank account details, for reasons set out below. However even if that had been the case, such factors could not and did not amount to a legitimate reason for giving his own personal bank details to a client and asking for payment into that account. As a professional, the distinction between a Firm's client account and a personal bank account should be obvious at all times. The Tribunal found the factual basis of Allegation 1.1 proved beyond reasonable doubt.

Dishonesty

37.13 The Tribunal considered the Respondent's state of knowledge at the time he sent the email to the client.

37.14 The Respondent had accepted in his evidence that he knew he was emailing a client of the Firm and knew that he was emailing to request payment of fees. The Respondent had no need to put any bank details in the email at all, as the correct ones were in the attached invoice. The Tribunal found that the Respondent had taken a conscious decision to put bank details into that email. If he had not been giving it a "second thought" then he might have been expected to ask the client to pay the fees into the account details set out in the attached invoice.

37.15 The Respondent had given evidence to confirm that he did not know the Firm's account details from memory. The only bank account details he would have been able to recall, therefore, were his own. The Tribunal found that the Respondent knew that he was putting his own bank account details into that email, as there were no other account details that he could have inserted.

37.16 The Tribunal was entitled to look at what happened subsequently to inform its assessment of the Respondent's state of knowledge at the time of sending the email. The £900 payment was made into the Respondent's bank account the day after the email. Thereafter the Respondent stopped chasing the payment. The Tribunal found that the failure to chase the monies after 13 November 2014, having been chasing for the payment regularly until that date, on 9 October 2014 and 11 November 2014, was a clear indication that the Respondent believed the bill had been paid. He could not have thought it had been properly paid into the client account as the money had not been paid into it and he had no evidence that it had been so paid. Rather it had been paid into his personal account and was for a significant sum.

37.17 The Tribunal accepted the evidence of Jane Jelly and Linzi Jelly that the Respondent had checked his bank account frequently. He was self-employed and it was implausible to suggest that he did not give it proper attention until February 2015, such as would alert him to the payment. The Tribunal accepted that the Respondent may well have had an authorised overdraft limit of approximately £4,000 but that did not preclude the Respondent wanting to keep an eye on his cash-flow. If it had been, as the Respondent asserted, a genuine error on his part, the Tribunal would have expected him to have noticed it almost immediately and to have notified the client and the Firm without delay.

37.18 When the Respondent did report the payment to Jane Jelly, he did not tell her that it had been paid to him in November 2014 and he told her that he had given the account details over the phone while driving, which was either incorrect or only partially true and therefore misleading because he had without doubt requested payment made to his personal bank account in the email of 13 November 2014.

37.19 The Tribunal rejected the Respondent's evidence on this matter. He had initially, in his dealings with the Firm and in correspondence with the SRA, denied amending the invoice or providing the account details in the email. When confronted with irrefutable evidence to the contrary, he had changed his account. The Respondent had

repeatedly told the Tribunal that if he had wanted to misappropriate client money, the logical time to have done so was after April 2015. The Tribunal found this to be an implausible defence because of the pattern of lapse into overdraft of his personal account and the relationship of that pattern to the sequence of payments of client money into that account and not one that assisted its assessment of his state of knowledge in November 2014.

37.20 The Tribunal found beyond reasonable doubt that the Respondent had knowingly given his bank account details to the client in the email of 13 November 2014, based on his conduct at the time of sending the email and afterwards.

37.21 The Tribunal was satisfied beyond reasonable doubt that for a solicitor to provide their own personal bank account details to a client would clearly be regarded as dishonest by the standards of ordinary, decent people.

37.22 The Tribunal found the Allegation of dishonesty proved beyond reasonable doubt.

Principle 2

37.23 The Tribunal considered that putting personal bank details on an email attaching an invoice to a client, even through simple carelessness, which this was not, amounted to a failure to adhere to an ethical code. The requirement, referred to in Wingate, that he be "scrupulously accurate" was clearly not met. The importance of the proper handling of client money was paramount and the result of providing the wrong details was that the client's money was not protected. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principle 6

37.24 It followed as a matter of logic that where a solicitor gave his own personal bank details to a client in the course of seeking payment, this would undermine the trust the public placed in the profession. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

38. **Allegation 1.2.1 - The Respondent subverted the Firm's accounts process by altering invoice 583/14 on or about 9 October 2014 to create an invoice under reference 583/14(3) which was not known to the Firm's accounts team or reflected in the Firms records. This was contrary to both (or either) of Principles 2 and 6 of the SRA Principles 2011.**

Applicant's Submissions

38.1 Mr Allen submitted that it was now common ground that the amended invoice was prepared by the Respondent shortly before it was sent to the client on 9 October 2014. The usual procedure would be that the Respondent would dictate his invoices and these would then be typed up by a secretary and emailed to Linzi Jelly in order that an invoice number could be allocated and the invoice entered onto the accounting system. It was accepted that the Respondent had the authority to set his own charges and agree to reduce his fees. However any reduction of a fee that has already been invoiced required the Firm's accounts team to be notified. Mr Allen submitted that the

Respondent had deliberately and knowingly subverted the Firm's accounting process and had subsequently lied in an attempt to hide this from the SRA.

Respondent's Submissions

38.2 The Respondent's submissions were encompassed in those set out under Allegation 1.1 and his position was also set out clearly in the course of his evidence.

The Tribunal's Findings

38.3 The Respondent had admitted that he had amended the invoice and had not informed Linzi Jelly that he had done so, nor had he brought the amended invoice to the attention of the Firm. The result was that it had not entered the Firm's accounting systems. The Tribunal found the factual basis of Allegation 1.2.1 proved beyond reasonable doubt.

Dishonesty

38.4 The Tribunal considered the Respondent's state of knowledge at the time he amended the invoice. The Respondent knew he was amending it as he had agreed to reduce the fees to £900. The Respondent knew at the time that he had not told Linzi Jelly or otherwise put the revised invoice through the Firm's accounting systems. He had subsequently told the SRA that a secretary had drafted it. He had been unequivocal in that statement and had not said that he could not recall having done so, as was his case before the Tribunal. When confronted with the meta-data he had accepted he must have carried out the amendment.

38.5 The Respondent had been engaging regularly with the accounts team and was part of an open-plan office. The Tribunal was satisfied beyond reasonable doubt that the Respondent had known at the time that he was amending the invoice and not informing the Firm.

38.6 The Tribunal found beyond reasonable doubt that the Respondent's actions in so doing would be considered dishonest by the standards of ordinary, decent people as it involved concealment. The allegation of dishonesty was therefore proved.

Principle 2

38.7 The Tribunal found that amending an invoice without informing anyone at the Firm, with the result that it did not go into the accounting system, was inconsistent with adherence to the ethical code that bound solicitors. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principle 6

38.8 The Tribunal found that the trust the public placed in solicitors was undermined in circumstances where a solicitor subverted the accounts system by altering an invoice without informing anyone. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

39. **Allegation 1.2.2 - On or about the following dates: - 9 October 2014, 11 and 13 November 2014, the Respondent sent invoice 583/14(3) to KS/CH in support of a request that fees related to CH's matter be paid directly into the Respondent's own personal bank account rather than to the Firm as they should have been. The Respondent thereby breached both (or either) of Principles 2 and 6 of the SRA Principles 2011.**

Applicant's Submissions

39.1 Mr Allen's submissions in relation to Allegation 1.2 as a whole are set out under the section dealing with Allegation 1.2.1 above.

Respondent's Submissions

39.2 The Respondent's submissions were encompassed in those set out under Allegation 1.1 and his position was also set out clearly in the course of his evidence.

The Tribunal's Findings

39.3 The invoice that was the subject of Allegation 1.2.2 was the invoice attached to the email dated 13 November 2014 which formed the basis of Allegation 1.1. The Tribunal had already made findings in respect of that email and the attached invoice to the effect that the Respondent had provided his personal bank details in that email rather than those of the Firm. The Tribunal was satisfied beyond reasonable doubt that on 13 November 2014 the Respondent had sent this invoice to the client in support of a request that fees relating to that client's matter be paid directly into the his own bank account rather than that of the Firm. To that extent, the factual basis of Allegation 1.2.2 was proved beyond reasonable doubt.

39.4 Although copies of the invoice had been sent to the client previously on 9 October 2014 and 11 November 2014, they had not been attached to an email containing the Respondent's own personal bank details. This Allegation was therefore proved beyond reasonable doubt only in respect of the 13 November 2014 sending of the invoice.

Dishonesty

39.5 The Tribunal had analysed the Respondent's state of knowledge in respect of the email and attached invoice dated 13 November 2014 when considering Allegation 1.1. The same state of knowledge applied to this Allegation and the Tribunal found the Allegation of dishonesty proved beyond reasonable doubt for the same reasons as set out in respect of Allegation 1.1.

Principles 2 and 6

39.6 The Tribunal found the breaches of these Principles prove beyond reasonable doubt for the same reasons as set out in respect of Allegation 1.1.

40. **Allegation 1.3 - On 31 March 2017 the Respondent, through his legal representatives, denied that he had created Invoice 583/14(3) when this was incorrect and misleading. The Respondent thereby breached all (or any) of Principles 2, 6 and 7 of the SRA Principles 2011.**

Applicant's Submissions

40.1 The Respondent, in his response to the SRA by letter dated 31 March 2017 had denied generating the amended invoice. Mr Allen submitted that this denial had been untenable and indeed was no longer maintained by the Respondent. Mr Allen submitted that it was inconceivable that the Respondent did not know at the time that his denial was untrue.

Respondent's Submissions

40.2 The Respondent did not make specific submissions beyond what he had said in the course of his evidence in respect of this Allegation. He did, however, reiterate his explanation for deleting the contents of the laptop. The Respondent confirmed that there had been no memory stick and that his position was that it had been deleted as he did not trust Jane Jelly to preserve his own personal data stored on the laptop.

The Tribunal's Findings

40.3 The Tribunal considered the wording of the EWW letter dated 3 March 2017 and the reply from Murdochs Solicitors dated 31 March 2017, sent on the Respondent's instruction.

40.4 The EWW letter stated, under the section headed 'Summary of facts':

> "Further, you amended the invoice offline…"

40.5 In the reply of 31 March, the Respondent had instructed his solicitors to write the following:

> "My client didn't prepare the invoice. The invoice would have been typed by [GJ] or Linzi Jelly, or if she had commenced employment by this time, by [JB]." The letter continued; "My client did not generate 3 or 4 copies of the invoice. Questions concerning how the invoice was generated should be directed to the Firm as they prepared them. My client is not surprised that they have been unable to provide copies as he describes their administration as shambolic".

40.6 This was a robust denial on the part of the Respondent that he had created the invoice. The Tribunal noted from the meta-data that this could not be correct and the Respondent no longer asserted that he had not amended it. The information conveyed to the SRA by the Respondent was incorrect and was therefore misleading. The Tribunal found the factual basis of Allegation 1.3 proved beyond reasonable doubt.

Dishonesty

40.7 The Tribunal considered the Respondent's state of knowledge at the time that he instructed his solicitors to respond to the SRA. The letter from the SRA dated 3 March 2017 was a particularly important letter as it made clear that serious allegations were being investigated. The Respondent would have known this from the contents of the letter. The Respondent had accepted in evidence that the letter from Murdochs was sent on his instruction and the Tribunal had no doubt that he would have approved the contents of the letter before it was sent. The denial of involvement in the creation of the invoice, which was an important matter and not a trivial point of detail, was unequivocal in that it firmly denied that the Respondent had prepared the invoice. However it went further than that and specifically identified other individuals at the Firm as being responsible, together with gratuitous comments about the Firm's record-keeping, which the Tribunal found particularly unattractive in the context of the Respondent having erased the contents of the laptop, including data belonging to the Firm despite a specific request that he not do so. The Tribunal rejected the Respondent's evidence that the explanation given in this letter was merely down to forgetfulness. If he had been unable to remember how the invoice was created then he would have said so. However instead he had positively asserted that someone else had created the invoice. The Tribunal was satisfied beyond reasonable doubt that the Respondent knew that he was providing an answer to the SRA that was incorrect and misleading as he knew that he created the invoice. The Tribunal was satisfied beyond reasonable doubt that providing incorrect and misleading information to the SRA knowingly would be considered dishonest by the standards of ordinary decent people. The Tribunal therefore found that the allegation of dishonesty proved beyond reasonable doubt.

Principle 2

40.8 The Tribunal was satisfied beyond reasonable doubt that this was a clear case of a lack of integrity where a solicitor under investigation provides incorrect and misleading information and in doing so, tries to blame someone else rather than taking responsibility. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principle 6

40.9 It followed from the Tribunal's earlier findings that the trust the public place in the profession was clearly undermined when a solicitor provided incorrect and misleading information to his regulator in response to a letter sent in the course of an investigation. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

Principle 7

40.10 It again followed from the Tribunal's findings that the Respondent had failed to comply with his regulatory obligations and the breach of Principle 7 was therefore proved beyond reasonable doubt.

40.11 Allegation 1.3 was proved beyond reasonable doubt including the allegation of dishonesty.

41. **Allegation 1.4 - In or around February 2015 and/or May 2016 the Respondent provided misleading information to his Firm by incorrectly and/or disingenuously claiming that he had caused payments to be made by client CH directly into his own personal bank account by mistakenly providing KS with his personal bank account details over the telephone. In fact, the direct payments of CH's fees were as a result of an email sent by the Respondent to KS explicitly requesting direct payments on 13 November 2014. By providing misleading information to the Firm the Respondent breached both (or either) of Principles 2 and 6 of the SRA Principles 2011.**

Applicant's Submissions

41.1 The Respondent had told Linzi and Jane Jelly on 27 February 2015 that the reason the client had made the payment of £900 into his personal bank account was because he had mistakenly provided those details to the client during a telephone call while driving. The Respondent had failed to mention that he had typed out his personal account details in the email of 13 November 2014, something that only came to light after he had left the Firm and following a full investigation. Mr Allen submitted that the Respondent must have known at the time that the information he provided was untrue.

Respondent's Submissions

41.2 The Respondent reminded the Tribunal that he had been doing a lot of driving at that time and could not remember having sent the email of 13 November 2014. This explained why he had said that he must have transferred the bank account details to the client while driving.

41.3 The Respondent submitted that this was a reasonable view to have taken.

The Tribunal's Findings

41.4 The evidence of Jane Jelly and Linzi Jelly was that the Respondent had told them that he had given his personal bank details while driving, something the Respondent had denied in the letter to the SRA of 31 March 2017. In his evidence before the Tribunal he had conceded that it was possible he had given this explanation to Jane and Linzi Jelly.

41.5 The Tribunal found Jane Jelly and Linzi Jelly to be credible witnesses. Their evidence was corroborated by the contemporaneous file note dated 27 February 2015 by Jane Jelly in which the following had been noted:-

> "Gary came into the office and informed me that the client transferred money directly into his personal account today. I asked why the client did this and why they had his personal account details.

Gary confirmed that he was driving at the time he spoke to the Client and mistakenly gave them his personal account details".

41.6 The Tribunal was satisfied beyond reasonable doubt that this was the account that the Respondent had given to Jane Jelly. That account was clearly wrong or at least misleading as there was no evidence of a telephone conversation between the Respondent and the client in November 2014 in those terms. Further, the Respondent accepted that he had conveyed the bank account details in the email, which the Tribunal had seen and was the subject of Allegation 1.1. The account given was incorrect, either because it was untrue or because it failed to tell the whole truth, and as such it was misleading and the Tribunal found the factual basis of Allegation 1.4 proved beyond reasonable doubt.

Dishonesty

41.7 The Tribunal considered the Respondent's state of knowledge at the time he gave the explanation to the Firm. The Tribunal focussed on the February 2015 conversations as the matter did not appear to have been revisited in specific terms thereafter. The pleading of the Allegation did not require the Tribunal to consider May 2016 as it was alleged that the misleading information was conveyed in or around February 2015 and/or May 2016.

41.8 The Respondent had knowingly inserted his bank details into the email a little over two months before his conversation with Jane Jelly. The Respondent had been asked specifically by Jane Jelly how the payment into his account had occurred. The truthful answer was the one subsequently provided by the Respondent and borne out by the evidence. The Tribunal found that the Respondent knew that the bank account details had been provided in the email rather than or as well as in the course of a telephone conversation. The Respondent knew precisely what Jane Jelly was asking him and would have appreciated the need to provide a clear and accurate picture of what had taken place.

41.9 The Tribunal was satisfied beyond reasonable doubt that by providing misleading and inaccurate information to the Firm on this crucial point, the Respondent had conducted himself in a manner which would be considered dishonest by the standards of ordinary decent people.

Principle 2

41.10 The Respondent was under a duty to take care to ensure that the information he had provided to the Firm was correct. It clearly lacked integrity for a solicitor to give misleading information on a matter as serious as this. The Respondent should have been completely transparent and he had instead given a misleading account, something he subsequently denied having done. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principle 6

41.11 The Tribunal found the breach of Principle 6 proved as a matter of logic based on its earlier findings in relation to this Allegation.

41.12 Allegation 1.4 was therefore proved beyond reasonable doubt including the allegation of dishonesty.

42. **Allegation 1.5 - Practised as a solicitor at Andrew J Fenny & Co after 26 October 2017 in circumstances in which he had not had that employment approved by the SRA, contrary to conditions on his Practising Certificate and in breach of any or all of Principles 2, 6 and 7 of the SRA Principles 2011.**

Applicant's Submissions

42.1 Mr Allen submitted that the Respondent's position in respect of this Allegation was misconceived. He submitted that the wording of the letter from the SRA dated 28 September 2017 was clear and left no room for misunderstanding. The Respondent was not permitted to continue practising as an employed solicitor after 26 October 2017 unless the SRA authorised that employment. The Respondent had relied on an incorrect interpretation of the email dated 1 November 2017 which related to a separate application for a new practising certificate for the 2017/2018 practising year. Mr Allen submitted that it was clear that by stating that the Respondent could continue to practise with his 2016/2017 certificate, the SRA meant that he could do so provided he complied with any conditions attached to it. Mr Allen referred to the Respondent's email to the SRA of 9 November 2017 in which he stated that he understood that an application was required to permit him to continue in the employment of Andrew Fenny. No such application was made until February 2018. Mr Allen submitted that the Respondent appeared to have given thought to the condition preventing him from acting as a manager or owner of an authorised body as he confirmed that he had adhered to it immediately. Mr Allen submitted that even if any confusion had arisen after the SRA's email of 1 November 2017, that could not have continued after the email he received on 17 January 2018 informed him that he must cease practising if he had not done so already. Mr Allen submitted that the argument put forward by the Respondent that he continued to practise after 26 October 2017 to protect the best interests of his clients was without merit. It was not open to the Respondent to substitute his own view of what he believed was in his client's best interests for that which was required by his regulator.

Respondent's Submissions

42.2 The Respondent invited the Tribunal to "take a view" of his conduct. He appreciated his regulatory obligations and his judgment had been clouded by the fact that he wanted to serve the best interest of his clients. He told the Tribunal that he could only apologise if he had got that judgment wrong. The Respondent had set out his case during the course of his evidence.

The Tribunal's Findings

42.3 It was not in dispute that the Respondent had practised as a solicitor at Andrew J Fenny & Co after 26 October 2017. It was also not in dispute that this employment had not been approved by the SRA. It was further agreed that the Respondent had conditions attached to his Practising Certificate which required him to have the said approval. The area of dispute in relation to this Allegation was the Respondent's knowledge and understanding of the existence of the conditions. The factual basis of the Allegation was therefore not contested and the Tribunal found it proved beyond reasonable doubt.

Principle 2

42.4 In considering whether the Respondent had lacked integrity, the Tribunal examined the correspondence carefully.

42.5 The decision of 26 September 2017 stated that the relevant condition would take effect "30 days from the date of my decision". The letter dated 28 September 2017 informing the Respondent of the decision stated:

> "The first condition will take effect 30 days from the date of the Adjudicator's decision. The second conditions [sic] comes into force from the date of this letter. You will shortly be issued with an updated practising certificate stating the conditions".

The letter also stated:

> "You cannot work for a solicitor or an organisation authorised and regulated by the SRA unless you have permission from us".

42.6 The email of 1 November 2017 was referenced "Your 2017-2018 practising certificate application". It continued:

> "We have received your practising certificate (PC) application. We will aim to make a decision within 120 days. You can continue to practise with your 2016-2017 PC until we make a decision".

42.7 The email concluded by providing contact details in the event that the Respondent had any questions.

42.8 On 9 November 2017, after the receipt therefore of the 1 November 2017 email, the Respondent emailed the SRA stating:

> "I wish to continue in the employment of Andrew J Fenny & Co. I understand that an application is required".

42.9 The email of 17 January 2018 from the SRA to the Respondent stated:

> "You are in breach of the condition on your practising certificate if you are employed as a solicitor without our approval and you must cease practising if you have not done so already".

42.10 It was clear to the Tribunal that even if there had been some confusion on the part of the Respondent, which seemed unlikely given the contents of his email of 9 November 2017, by the time he received the letter in January 2018 there could be no room for misunderstanding. Despite that he continued working in breach of the condition. The Tribunal noted that the Respondent had taken steps to comply with the other condition attached to his certificate at the same time. It was therefore difficult to see how he could argue that he was clear about the existence of one condition and not the other when they were both imposed at the same time. The Tribunal found that a solicitor of integrity would take the greatest care to comply with the conditions attached to his practising certificate. To say that it was in his client's interests to continue despite those restrictions was no answer to the Allegation. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principle 6

42.11 The trust the public placed in the profession was clearly undermined if solicitors did not abide by conditions imposed on their practising certificate for the protection of the public. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

Principle 7

42.12 This was proved beyond reasonable doubt as an inevitable consequence of the Tribunal's factual findings.

42.13 Allegation 1.5 was proved beyond reasonable doubt.

Previous Disciplinary Matters

43. There were no previous findings against the Respondent at the Tribunal.

Mitigation

44. The Respondent was offered the opportunity of a short break to give him time to prepare his mitigation and refer to the Guidance Note on Sanction. The Respondent declined to do so and confirmed he was ready to present his mitigation forthwith.

45. The Respondent reminded the Tribunal of what he had said in his evidence relating to his working life and the level of fatigue he was experiencing at the material time. He told the Tribunal that his mistakes were totally out of character after a previously unblemished career of approximately 30 years, as reflected in his character references.

Sanction

46. The Tribunal had regard to the Guidance Note on Sanctions (December 2018). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

47. The Tribunal found that the Respondent's motivation for his misconduct was his own financial benefit. His actions were premeditated, albeit they were not particularly sophisticated. The Respondent had been in a position of trust to the extent that he owed a duty of candour to the Firm, which he had not discharged. The Respondent was a very experienced solicitor and had direct control and responsibility for his misconduct. The Tribunal noted that he had misled the regulator deliberately.

48. In respect of the harm caused, the principal harm had been caused to the reputation of the profession and the Firm. The Tribunal noted that there was no loss to the client, or indeed ultimately to the Firm but that the potential for it was eminently foreseeable. The public would be concerned by the Respondent's conduct.

49. The misconduct was aggravated by the fact that it was deliberate, calculated and repeated and had continued over a period of time. There had been concealment of wrongdoing, most notably the wiping of the laptop which contained the Firm's data, which the Tribunal found deeply troubling. The Respondent knew or ought to have known that he was in material breach of his obligations both in respect of the Rule 5 Allegations and the Rule 7 Allegations.

50. The misconduct was mitigated to an extent by the fact that the monies were replaced, albeit far from promptly. The Tribunal noted that the Respondent had hitherto had a good career, as reflected in the character evidence adduced on his behalf. However, the Tribunal found that the Respondent lacked any insight into his wrongdoing and this was reflected in the fact that he had denied all the Allegations.

51. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less in circumstances where multiple findings of dishonesty and lack of integrity had been made.

52. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal had regard to the Respondent's personal circumstances at the material time and the character references. The Respondent had described a very busy work routine. However the Tribunal did not consider that this could amount to an exceptional circumstance. He had chosen to take on the work that he had and that could not absolve him of the duty to be honest and ethical in his work. The Tribunal found there to be nothing that would justify an indefinite suspension. The only appropriate and proportionate sanction was that the Respondent be Struck Off the Roll.

Costs

53. Mr Allen applied for the Applicant's costs in the sum of £25,535. The basis of this claim was set out in a schedule of costs provided to the Tribunal.

54. The Respondent submitted that 21 hours for telephone and written communication with the witnesses was excessive. He submitted that having three fee earners working on the case had caused a "massive overlap". The Respondent pointed out that the claim for hotel accommodation for the witnesses was illogical as they had both travelled to and from the Tribunal the same day. The Respondent also described Mr Allen's brief fee of £16,000 as "massively excessive". In response Mr Allen submitted that the hourly rates claimed were not especially high and explained that in a case such as this there was a senior legal adviser, a legal adviser and a paralegal working on the case. In respect of the hotel accommodation, the expectation was that the witnesses may have had to remain in London overnight and accordingly the hotels had been paid for and the costs had been incurred. Mr Allen submitted that in respect of his own fees they included not only the three-day hearing but also earlier work in the case. He submitted that the fees were reasonable and proportionate in a case that was not entirely straightforward and had gone on for a year.

The Tribunal's Decision

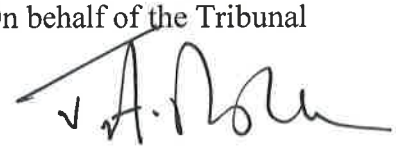
55. The Tribunal considered the cost schedule and the submissions of both parties. The case concerned five Allegations spanning a period in excess of three years. The overall figure claimed was reasonable and proportionate in the circumstances. The Allegations had all been contested and there had been a three-day hearing as a result. The one criticism the Tribunal did have was over the trial bundles. The pagination had, in many instances, disappeared in the course of photocopying. This had resulted in a delay at the start of the hearing while the numbering was manually written onto the affected pages. This had not assisted the Tribunal and under those circumstances the costs claimed for preparing the trial bundles was deducted from the overall costs. The Tribunal concluded that the appropriate level of costs was £25,395.

56. The Respondent had submitted a statement of income and outgoings. He had not, however, attached supporting evidence. However the Tribunal noted that the Respondent owned property. He also had other sources of income beyond his legal practice. The Tribunal was mindful that the Applicant took a sensible approach when it came to matters of enforcement, which could include attaching a charging order to property owned by the Respondent. In circumstances, the Tribunal saw no basis to reduce the costs on account of the Respondent's means. The Tribunal therefore made the order in the usual terms.

Statement of Full Order

57. The Tribunal Ordered that the Respondent, GARY ACKINCLOSE, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £25,395.00.

Dated this 7th day of March 2019
On behalf of the Tribunal



J. A. Astle
Chairman