SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11877-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MICHAEL KENNETH SMITH Respondent

Before:

Ms H. Dobson (in the Chair)
Mr J. A. Astle
Mr S. Marquez

Date of Hearing: 1 August 2019

Appearances

Andrew Bullock, barrister of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The Allegations made against the Respondent by the SRA were that:

1.1 In April 2014, by failing to carry out adequate enquiry in relation to Mr DSR and Mr NSK, to include any or adequate enquiry into their employment history and qualifications, before allowing them into his firm, he breached either or both of:

1.1.1 Principle 6 of the SRA Principles 2011; and

1.1.2 Principle 8 of the SRA Principles 2011.

1.2 Between 16 June 2015 and 20 November 2017 inclusive, by permitting Mr DSR and/or Mr NSK to maintain control over his firm, including opening a branch office which was not approved or authorised by the SRA, over which he had no or adequate supervision or control, he breached all or any of:

1.2.1 Principle 2 of the SRA Principles 2011;

1.2.2 Principle 6 of the SRA Principles 2011; and

1.2.3 Principle 8 of the SRA Principles 2011.

1.3 Between 16 June 2015 and 20 November 2017 inclusive, by failing to have in place adequate systems to ensure he had sufficient supervision and control over Mr DSR and Mr NSK, in particular in respect of immigration matters being undertaken by them, he breached, or failed to achieve, any or all of:

1.3.1 Principle 6 of the SRA Principles 2011;

1.3.2 Principle 8 of the SRA Principles 2011;

1.3.3 Outcome (7.2) of the SRA Code of Conduct 2011;

1.3.4 Outcome (7.3) of the SRA Code of Conduct 2011; and

1.3.5 Outcome (7.8) of the SRA Code of Conduct 2011.

1.4 Between 16 June 2015 and 20 November 2017 inclusive, in his capacity as the Firm's Compliance Officer for Legal Practice and Compliance Officer for Finance and Administration by failing to ensure compliance with the Firm's statutory obligations and further failing to report material failures of those Rules to the SRA, he breached all or any of:

1.4.1 Rule 8.5 (c) (i) of the SRA Authorisation Rules 2011;

1.4.2 Rule 8.5 (c) (iii) of the SRA Authorisation Rules 2011;

1.4.3 Rule 8.5 (e) (i) of the SRA Authorisation Rules 2011;

1.4.4 Rule 8.5 (e) (iii) of the SRA Authorisation Rules 2011;

1.4.5 Principle 6 of the SRA Principles 2011;

1.4.6 Principle 7 of the SRA Principles 2011; and

1.4.7 Principle 8 of the SRA Principles 2011.

1.5 Between 16 June 2015 and 20 November 2017 inclusive, by failing to ensure that client money and assets were properly protected he breached all or any of:

1.5.1 Principle 5 of the SRA Principles 2011;

1.5.2 Principle 6 of the SRA Principles 2011; and

1.5.3 Principle 10 of the SRA Principles 2011.

1.6 Between 16 June 2015 and 20 November 2017 by failing to keep accounting records properly written up he breached Rule 29.1 of the SRA Accounts Rules 2011.

Preliminary Matters

2. Application to proceed in absence

2.1 The Respondent did not attend and was not represented. Mr Bullock applied to proceed in the Respondent's absence.

2.2 Mr Bullock told the Tribunal that it was clear from correspondence sent by the Respondent that he knew of the hearing date and would not be attending. The reasons given in his witness statement were that he now lived in Canada and could not afford representation. The reasons would not change if an adjournment was granted. The Allegations were serious, such that the public interest favoured a prompt disposal.

The Tribunal's Decision

2.3 The Tribunal was satisfied that the Respondent was aware of the date of the hearing as he had referred to it and Rule 16(2) of the Solicitors (Disciplinary Rules) 2007 was therefore engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;

(ii) ...;
(iii) the likely length of such an adjournment;
(iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
(v) ...;
(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
(vii) ...;
(viii) ...;
(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
(x) the effect of delay on the memories of witnesses;
(xi) ...;"

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

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

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

2.6 The Respondent had sent an email to his former solicitor which he had asked him to forward to the Tribunal dated 29 July 2019. In that email he had stated:

> "I can only apologise for not being able to attend the SDT hearing but I currently have no income and no way of funding attendance and representation or meeting costs demands. I am living with my daughter and her partner who have been extremely supportive and helpful".

2.7 The Respondent had also referred to health matters but had not provided any medical evidence, nor had he sought an adjournment or made an application for special measures or reasonable adjustments.

2.8 In his witness statement he had stated:

"I am unable to attend the hearing on 1 August 2019 as I now live in Canada and I am unable to afford representation. Please accept this statement as my explanation of the matters alleged".

2.9 The Tribunal was satisfied that the Respondent had taken a conscious decision not to attend the hearing or to participate other than by way of written evidence and submissions. The Respondent had served an Answer, a witness statement and an email of 21 July 2019, all of which addressed the Allegations in detail. This was in addition to his email of 29 July 2019, which addressed the issue of his attendance. The Tribunal concluded that an adjournment would not secure his attendance and would therefore only delay matters. There was a clear public interest in serious allegations being determined in a timely manner. The Tribunal therefore granted Mr Bullock's application to proceed in absence.

Factual Background

3. The Respondent was born in 1948 and was admitted to the Roll of Solicitors on 1 July 1976. At the time of the hearing the Respondent did not hold a current practising certificate.

4. The Respondent had been approved as the Recognised Sole Practitioner of Smiths Law, 6 Bentley Drive, Oswestry, Shropshire SY11 1TQ ("the Firm") on 18 February 2013. In his application to the SRA for authorisation, the Respondent stated that "the practice will be a new firm focusing on wills, shareholders and x-option agreements, non-contentious probate, estate planning, trusts and IHT, seminars training and presentations. No other work will be undertaken. The idea is to build a small, bespoke firm, specialising within a very narrow field of work". The Respondent had been appointed as the Firm's Compliance Officer for Finance and Administration ("COFA") and Compliance Officer for Legal Practice ("COLP") on 18 February 2013.

5. The Firm changed its name to Legacy Legal Solicitors on 16 June 2015 and also changed its practising address to 57 Frederick Street, Jewellery Quarter, Birmingham, B1 3HS. On 27 June 2016 the SRA's records were changed to show the Firm relocated to 90-94 Soho Road, Handsworth, Birmingham, B21 9SP ("the Birmingham office").

6. The Respondent remained the Recognised Sole Practitioner of the Firm until it closed on or around 20 November 2017.

7. Between 1 November 2017 and 20 February 2018, the SRA received 30 reports from people who were either clients of the Firm, or third parties reporting on behalf of clients of the Firm. Many of these reports were from elderly clients, and/or clients for whom English was not their first language. As a result of these reports, the SRA commenced an investigation into the Firm. On 20 November 2017 a duly authorised officer of the SRA ("the FI Officer") commenced an inspection of the books of accounts and other documents of the Firm at the Birmingham office ("the Inspection"). The Inspection culminated in a Forensic Investigation Report dated 13 December 2017 ("the FI Report")

8. A decision was made to intervene into the Firm on 11 April 2018 on the grounds that the Respondent had failed to comply with rules made by the SRA, and that intervention was necessary to protect the interests of any clients, former clients, and any beneficiaries of the Respondent.

Allegation 1.1

9. On a date believed to be in 2014, Mr DSR, a qualified will writer, not admitted as a solicitor, attended at one of the Respondent's seminars and approached him with the intention to transform into Legacy Legal Solicitors. Mr NSK started working at the Firm in February 2014 as a trainee solicitor. He subsequently qualified as a solicitor and was admitted to the Roll in November 2015. The Respondent told the SRA that Mr NSK was a relative of Mr DSR and they both attended the same Temple in Slough. The Respondent had not provided the SRA with details of any steps taken by him prior to allowing Mr DSR and/or Mr NSK into the Firm.

Allegation 1.2

10. The Firm, as Legacy Legal Solicitors, had been wholly funded by Mr DSR. No application had been made to the SRA for approval of Mr DSR as a non-lawyer owner of the Firm.

11. The Respondent told the FI Officer, that despite being the sole manager at the Firm, he left the running of it Mr DSR and Mr NSK. He told the FI Officer that "I felt that I'd got no control over it". In his interview with the FI Officer on 21 November 2017 the Respondent stated that Ms FA had been employed at the Firm without him having any involvement in the decision-making process. In that interview the Respondent had admitted that he had failed to supervise and manage Mr DSR and Mr NSK.

12. The Respondent had also told the FI Officer that throughout the practice of the Firm he had been primarily based in France, although he would come back from there early on a Monday morning and head back on a Friday evening.

13. Mr NSK had signed the lease on the Birmingham office as Director of Legacy Legal Solicitors Limited, witnessed by Mr DSR as Legacy Legal Solicitors, 43 Western Road Southall, London, UB2 5HE. The Respondent was not a signatory to the lease, despite it being for the Head office of his Firm.

14. On attending unannounced at the Firm's Head Office in Birmingham the FI Officer found that the offices had been repossessed by an agent on behalf of the landlord due to a failure to make the rental payments, with arrears of £11,888.40 being due at that time.

15. The Respondent stated in his interview that he did not get any remuneration from the Firm; he told the FI "No, nothing, not a penny. Not even my expenses paid. You see the thing is um I was being paid to do the seminars. Um I've got a reasonable pension from when I was 60. Um and a wealthy partner. So, to me it was more of a hobby than anything else and when I got fed with it I said I am just retiring. I've had enough. I'm going, end of. Um I didn't want to be involved in it. I didn't want to do the work. I didn't want the pressure because it is pressure." The Respondent was

asked whether he thought he had suitably discharged his responsibilities as a sole practitioner, from a regulator's point of view, to which he replied, "probably from a regulator's point of view, no".

16. The Respondent had also stated to the FI Officer that with the benefit of hindsight he would have just set up a limited company, as opposed to a solicitor's firm. He stated "If I were, if I could turn the clock back obviously I would have done that. Um to be frank with you I don't give a monkey's because I've retired. Um I'm out of the business anyway um having made a few mistakes along the way, particularly with regard to these people".

Allegation 1.3

17. The Respondent advised the FI Officer that Legacy Legal Solicitors had been set up with the intention of undertaking immigration work. He explained that it was Mr DSR's idea to "target the Asian community and no one else". The Respondent did not speak Punjabi, Urdu or Gujrati, and stated that he had "never actually met or dealt with a single client …Never, ever met one client. Never dealt with them. Never done any work for any client whatsoever". He had also told the FI Officer that other than a basic course in immigration he did not have any experience in that area of law. The Respondent had admitted to the FI Officer that he did not check Mr NSK and Mr DSR's experience of immigration work and that he was not in a position to supervise the immigration files.

18. In terms of training members of the staff he had told the FI Officer that "as they arrived I taught them how to write letters but he had not managed or supervised them.

19. The Respondent had agreed with the FI Officer during his interview on 21 November 2017 that Mr NSK and Mr DSR appeared to be running an autonomous Immigration practice and that "they were running the whole thing and that's why I wanted out". The Respondent also stated that "I wasn't there all the time obviously. I was, I've got other commitments. I was still doing seminars around the Country. Um and when [Mr DSR and Mrs NSK] were together, I just tended to leave them to it and go, they went to see the clients and I just, I'm afraid I started to turn a blind eye because I wanted out".

Allegation 1.4

20. The Respondent had been appointed as the Firm's COLP and COFA on 18 February 2013. During the interview with the FI Officer on 21 November 2017, the Respondent stated that Mr DSR had "actually gone on the course, the COLP and COFA course.... and so he took over all those um those responsibilities.....he ran that aspect in the office. He um, what was very useful about it was that he'd got um one of his business interests was a drinks business so, of course, he was pretty clued about on Anti-Money Laundering and stuff like that."

21. The Respondent did not report his concerns that Mr NSK and Mr DSR were running an autonomous immigration practice over which he had no control

22. The Respondent stated that on or around 6 October 2017 he attended at the Firm's Southall office after he received a telephone call from a client trying to contact the Firm. He stated that the shutters were down and the office was closed. He attempted to call Mr NSK and Mr DSR on their mobile phones which were dead. He entered the office and found it empty. He stated that "they'd stripped the office out … I didn't know at the time they'd taken files …. Everything was gone from the office. It was like the office hadn't been there".

23. The Respondent did not report the theft of client information to the SRA or to the police until after the SRA's investigation had commenced. He stated that he had "been investigating to try and find out what's been going on there". The Respondent had also told the FI Officer that he had not contacted the SRA to say that the Firm had closed/was closing, because the FI Officer was coming to speak with him on 21 November 2017.

Allegation 1.5

24. The Respondent informed the FI Officer that there were about 60-70 client wills stored at the Firm's offices which were missing. He further stated that there may be more, as the Firm's computers containing confidential client information along with IT servers were also missing.

25. The Tribunal was told that clients had reported that they were still missing original documents, such as passports, birth certificates, title deeds and key immigration documents including residence permits, which had been handed to the Firm and not been returned.

26. The Respondent informed the FI Officer that he could not be certain that all of the client files for the Firm were safe.

Allegation 1.6

27. The Respondent advised the FI Officer that the Firm did not hold client money, and that the immigration work was undertaken on a fixed fee basis. However, he also advised the FI Officer that "Mr NSK and Mr DSR were running an autonomous immigration practice within [the Firm]" over which he had no control or access to books of account or accounting records.

Witnesses

28. None.

Findings of Fact and Law

29. 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.

30. **Allegation 1.1 - In April 2014, by failing to carry out adequate enquiry in relation to Mr DSR and Mr NSK, to include any or adequate enquiry into their employment history and qualifications, before allowing them into his firm, he breached either or both of:**

1.1.1 Principle 6 of the SRA Principles 2011; and

1.1.2 Principle 8 of the SRA Principles 2011.

Applicant's Submissions

30.1 Mr Bullock submitted that the public would trust a solicitor to be alive to the risk of allowing unknown and/or unadmitted individuals into his firm and would therefore expect him to undertake thorough and conclusive checks, for example obtaining confirmation of their previous employment and/or practising status and taking up references from their former employers.

30.2 Mr Bullock told the Tribunal that the Applicant's case was that the Respondent's failure to carry out effective checks into Mr DSR and/or Mr NSK before allowing them into his Firm would undermine the trust the public places in him and in the provision of legal services. In allowing Mr DSR and Mr NSK into his Firm in such circumstances, in particular in light of the consequences of their actions, the Respondent failed to run his business in accordance with proper governance and sounds risk management principles.

Respondent's Submissions
The Respondent's position generally

30.3 In his Answer to the Rule 5 Statement the Respondent stated the following, in relation to all the Allegations:

> "As mentioned in paragraph 4 the Respondent accepts responsibility for the matters that have been raised against him and in those circumstances makes full admissions for the matters and allegations that are raised in the Rule 5 Statement at paragraph 1 (1.1. to 1.6) which for completeness are fully detailed above. The Respondent apologises for the events that took place and accepts that he has fallen below the very high standards expected of a solicitor in practice".

30.4 In his witness statement dated 4 July 2019, the Respondent appeared to deny the Allegations. His witness statement included the following:

> "The failure of the firm was due to the misconduct by my two former colleagues, one of whom was a qualified solicitor. Their pre-meditated act of misconduct was calculated to cause the collapse of the firm and loss to its clients. It was an isolated act, not a series of acts over a period of time and in my submission has no connection with failure to supervise."

30.5 The Respondent made an overarching argument concerning the interview with the FI Officer:

> "I was asked to attend a meeting at the SRA with one Oliver Baker. Despite the fact I informed him that I was seriously ill…he insisted on holding the meeting. It is on record as to how ill I was at that point in time. The actions of DSR/NSK had caused me some very serious stress. I was not sleeping, I was dealing with clients who were concerned and wanted to know what was happening, there were lots of phone calls every day and I was extremely stressed by it all. Baker should have waited until my health problems had been resolved but he was having none of it. He made out that it was going to be an informal chat in a coffee bar at first, but when I was on my way to the meeting he suddenly swapped the venue to the SRA offices, brought a colleague and said he was going to record it. He should have told me that I should have legal assistance present to protect my position, particularly in view of my health issues. He also told me the firm was being intervened in, but this did not happen for a further 5 or 6 months. In my opinion and given my state of health this situation was "entrapment."

30.6 In the email sent to the Tribunal by the Respondent's former solicitor on 21 July 2019, the Respondent stated:

> "It is not my intention to oppose the SRA's case or contest it. The term "mitigation" relates to lessening, easing, cushioning, reducing the severity or seriousness of something. (Google). My statement is a statement only in mitigation. I have accepted the SRA outcomes and have no wish to hold up this case."

30.7 In relation to the subject of Allegation 1.1, in his witness statement, the Respondent explained how he came to work with DSR as follows:

> "DSR came to one of my seminars, I believe in late 2013. At that time he worked part-time for a will-writing company in the West Midlands and part-time for [PS], a person I have known for some years. I met up with DSR again at some time in early 2014…..After some months of discussions, it was agreed to open an office in Birmingham to do wills and estate planning. Another solicitor, [JS] who had immigration and litigation experience commenced employment when the office was opened later on in 2014. The extent of the firm's work was estate planning, wills, trusts, some probate advice and in due course, immigration."

30.8 In relation to NSK the Respondent stated:

> "Around 2015, I met with a trainee solicitor, NSK and his father to discuss the possibility of transfer of his training contract. The father did not feel NSK was getting sufficient experience at the firm he was with. The SRA have alleged that I did not "check him out" but this is incorrect. He was more than halfway through a training contract with another firm, who had checked him out, before taking him on and gave references on his behalf as to his character and capability. In order for him to transfer his training contract I had to get consent

> from that firm and obtain SRA authorisation for the transfer. I have attached the copy SRA authorisation to this statement. I placed with my solicitors the originals of the two letters from the SRA, one addressed to me and the other to NSK, regarding SRA approval for his training to be taken over by me. As regards training and supervision of NSK this was constant (as he has confirmed to the SRA). The SRA also issued a certificate of training to me".

30.9 In his email of 21 July 2019, in relation to NSK, the Respondent stated:

> "I had to get permission from his previous firm and I had to get the SRA's permission, which I did, as I have supplied proof. I have said in mitigation that I carried out the procedures which I thought were necessary and that I thought the issue of SRA authorisation was enough. Obviously, it was not and I have no defence to the allegation, but I have mitigated by attaching the various authorisations."

The Tribunal's Findings

30.10 The Tribunal noted that the Allegation, as set out at the start of the Rule 5 Statement started with the words "In April 2014..." but that later in the Rule 5 Statement the Allegation was repeated in slightly different terms, namely "In or around April 2014", which was clearly a wider period of time that did not confine it to the month of April. The Tribunal considered it regrettable that there was an inconsistency in the drafting. However the Respondent clearly knew the nature and scope of the allegation he had to meet and he had responded to the Rule 5 in its totality. There was therefore no prejudice to him. The Tribunal therefore considered Allegation 1.1 on the basis of "In or around" April 2014. The Tribunal considered the Respondent's complaints about the interview with the FI Officer. This is discussed at paragraph 31.7 below.

30.11 The Tribunal noted that the Respondent's witness statement appeared to contest matters and this was at odds with his Answer, which was full and unambiguous in admitting to the Allegations in their entirety. The Tribunal further noted that at the time of filing his Answer he had the benefit of legal advice and that the Answer contained a statement of truth (as did the witness statement). The Answer was also consistent with the transcript of the Respondent's interview. It was also broadly consistent with the email of 21 July 2019 in which he stated his intention not to contest the Applicant's case. The Tribunal took the totality of the Respondent's replies as admission of the Allegations, with the remaining representations being put forward as mitigation. The Tribunal nevertheless considered the points the Respondent raised in his witness statement as the burden of proof remained on the Applicant. The Tribunal was unable to attach much weight to the witness statement however, as it would have been challenged had the Respondent attended and given evidence.

30.12 There was no dispute that the Respondent had allowed DSR and NSK into the Firm. DSR was not a solicitor and he had been taken on to perform substantial duties in the firm, including being the de facto COLP. The checks that would need to be undertaken when giving someone a senior role would be much higher. They were of a different level to those that may be required in relation to a trainee, for example. DSR was also the funder of the Firm.

30.13 In respect of NSK, the Respondent had not actually stated what enquiries he made, if any. The Respondent had made no independent enquiries about his character or suitability for the role.

30.14 The Respondent's witness statement did not provide any details of any independent checks undertaken in respect of either DSR or NSK. The fact that the SRA granted a transfer of the Training Contact did not of itself equate to the type of suitability enquiry that the Respondent should have undertaken.

30.15 The Tribunal was satisfied that the admissions made by the Respondent in his Answer were properly made and it found the factual basis of Allegation 1.1 proved beyond reasonable doubt.

30.16 Principle 6

30.16.1 The Tribunal found that the public would expect solicitors employing people to deal with clients would seek adequate references and make proper enquiry as to their suitability for the role they were undertaking. The Respondent had not done this and the Tribunal was satisfied beyond reasonable doubt that in failing to do so he had failed to act in a way which maintained the trust the public would have placed in him and in the provision of legal services. The breach of Principle 6 was therefore proved.

30.17 Principle 8

30.17.1 It followed as a matter of logic from the Tribunal's factual finding that the Respondent had failed to run his Firm or carry out his role in the Firm in accordance with proper governance and sound financial and risk management principles. The breach of Principle 8 was therefore proved beyond reasonable doubt.

30.17.2 The Tribunal found Allegation 1.1 proved in full beyond reasonable doubt.

31. **Allegation 1.2 - Between 16 June 2015 and 20 November 2017 inclusive, by permitting Mr DSR and/or Mr NSK to maintain control over his firm, including opening a branch office which was not approved or authorised by the SRA, over which he had no or adequate supervision or control, he breached all or any of:**

1.2.1 Principle 2 of the SRA Principles 2011;

1.2.2 Principle 6 of the SRA Principles 2011; and

1.2.3 Principle 8 of the SRA Principles 2011.

Applicant's Submissions

31.1 The Applicant's case was that because he failed to maintain proper control and supervision over his Firm, the Respondent was unable to effect an orderly closure. This resulted in detriment to clients. The Respondent had been the Firm's Recognised Sole Practitioner but was unable to provide details of the Firm's clients, or answers to

those clients about the whereabouts of their files and documents, as he did not know this information himself.

31.2 Mr Bullock submitted that the public would trust a solicitor of integrity to be alive to the risk of allowing unadmitted individuals to effectively control his firm and would expect him to ensure that they were not permitted to be involved with any element of managing or controlling his Firm, without appropriate controls and supervision. Such a member of the public would also trust a solicitor of integrity to ensure that any individuals involved in the management of his firm had the appropriate SRA authorisation enabling them to do so.

31.3 The Applicant's case was that the Respondent allowed himself to be used as a front by previously unknown and/or unadmitted individuals to the apparent detriment of the Firm's clients. He had allowed Mr NSK and/or Mr DSR to manage his firm, including opening and running the unauthorised Southall branch without any attempt to control or supervise the same, especially after he had concerns about the actions of Mr NSK and Mr DSR. Mr Bullock submitted that the Respondent had failed to act with integrity, failed to act in a manner which maintained the trust the public placed in him and in the provision of legal services, and failed to run his business in accordance with proper governance and sounds risk management principles. He had therefore breached Principles 2, 6 and 8 of the SRA Principles

Respondent's Submissions

31.4 The Respondent's witness statement included the following:

> "NSK/DSR advised at some time in 2016 that they thought opening an office in Southall would be a good idea. There are two large temples where they had connections. We lived in close proximity to Southall. It was decided to open Southall as an "appointments-only" sub-office, as we considered that, with local competition, the office would take some time to attract business. The telephone and IT server systems were linked to the main office in Birmingham: phoning the office in Southall meant the phone was answered in Birmingham. Appointments were generally made for Saturdays, occasionally Sundays. Supervision of this office was in accordance with the rules relating to sub-offices which are appointments-only offices. In 2016 NSK qualified and was made a partner in the business, put on the letter heading and had business cards printed showing his title as "managing partner." He was responsible for organising client appointments, taking instructions, drafting documents in estate planning and immigration matters and for dealing with the web-site and related IT matters. The SRA have alleged that NSK was not a partner in the practice. He signed correspondence to clients as "partner" and he was on the bank mandate as a partner in the practice. He was a de facto partner."

31.5 The Respondent exhibited a copy of NSK's business card.

31.6 The Respondent summarised his position as follows:

> "...the allegations of the SRA regarding the employment of NSK/DSR, the alleged lack of a qualified immigration lawyer, carrying out immigration without authorisation and employing NSK as a trainee without authorisation are all incorrect, as are their allegations that the Southall sub-office was run without proper supervision".

The Tribunal's Findings

31.7 The Tribunal considered the Respondent's complaint, set out in his witness statement, as to the way in which the interview had been conducted. In essence the Respondent was arguing a) that he had been ambushed by the fact and nature of the interview; b) that in any event he was too unwell to have been interviewed and c) the FI Officer had proceeded regardless. The Respondent invited the Tribunal to disregard the interview.

31.8 The Tribunal reviewed the interview and noted the following exchange at the beginning:

> "OB [FI Officer]: Thank you for, for joining us today Mr Smith. Can I, can I Just firstly check, are you happy for this interview to be recorded?
>
> MS [Respondent] Of course, yes.
>
> OB: Excellent. If at any point during the interview you, you don't feel well, or you want to have a break, or you just want to stop the interview, Just let us know
>
> MS: Yes, ok
>
> OB: that's not a problem, we can do that.
>
> MS: Right, thank you
>
> OB: Because we had originally arranged to meet yesterday
>
> MS: Yes
>
> OB: and you weren't very well."

There was then discussion about the Respondent's difficulties the previous day. The following exchange then took place:

> "MS: Um so my apologies for yesterday.
> OB: No, it's - your health comes first I have no issue with that".

31.9 The transcript of this interview had been served under a Civil Evidence Act notice and no counter-notice had been served by the Respondent. He had taken no issue with reliance on the interview transcript until his witness statement in July 2019. It was

clear from the passage quoted above that there was nothing in the Respondent's complaints. The interview had been delayed once on account of the Respondent not being well and the FI Officer made clear he was willing to delay it again and/or allow the Respondent a break. The Tribunal entirely rejected the Respondent's submission that the interview be disregarded.

31.10 It was clear from the interview that the Respondent himself considered he had lost control in that the immigration department, which represented a significant portion of the Firm's work, was being run without any governance on his part. The Tribunal referred to the following passage of that interview:

> "OB: OK so in essence if I understand, if we understand what you're telling us, by the end, we're, we're getting close to the current date now. Your concerns specifically were that [NSK] and [DSR] were running an autonomous practice?
>
> MS: Yes, yeah, absolutely.
>
> OB: An autonomous Immigration practice,
>
> MS: Yeah
>
> OB: of which you had no control?
>
> MS: No control whatsoever. I couldn't get them to come to a meeting."

31.11 The Respondent also said the following during the same interview:

> "Well, I wasn't there all the time obviously. I was, I've got other commitments. I was still doing seminars around the Country. Um and when [NSK] and [DSR] were together, I just tended to leave them to it and go, they went to see the clients and I just, I'm afraid I started to turn a blind eye because I wanted out".

31.12 The Tribunal noted the evidence that DSR and NSK were funding the Firm and had instigated the change of entity, as well as the move to the Jewellery Quarter and to Handsworth.

31.13 The Tribunal found the factual basis of Allegation 1.2 proved beyond reasonable doubt and that the Respondent's admissions in his Answer were properly made.

31.14 Principle 2

31.14.1 The Tribunal 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".

31.14.2 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).

31.14.3 The Tribunal found several examples in the interview, which are quoted above, that demonstrated that the Respondent had never attempted to exert control, having given it away to DSR and NSK. By his own admission the Respondent had turned a blind eye to how the Firm was being run. When he had been asked why he had not simply set up a company to deliver the seminars he had stated the following:

> "Um it would have been far better with hindsight, to have done that. Much better. Um when I was running along in 2011 to 2013, I literally was just doing seminars. Having a, not an easy life because you've still got to read all the latest cases and stuff like that. But it was so much easier than, than all this nonsense that um, that's carried on. Um so I agree with you, extremely valid, If I were, if I could turn the clock back obviously I would have done that. Um to be frank with you I don't give a monkey's because I've retired. Um I'm out of the business anyway um so having made a few mistakes along the way, particularly with regard to these people."

31.13.4 The Tribunal had no doubt that adopting such an attitude to something as important as the running of the Firm lacked integrity. The clients depended on him to run the Firm properly and have adequate control over it. Immigration clients were often vulnerable and the consequences of a mishandled case could be grave. The failure to have control, to the extent that an unauthorised branch office was opened, was very serious and the Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

31.14 Principles 6 and 8

31.14.1 It followed as a matter of logic that the public would lose the trust they placed in the Respondent and in the provision of legal services in circumstances where he had given up control of his firm to individuals whom he had not properly vetted. The breach of Principle 6 was proved beyond reasonable doubt. The breach of Principle 8 was also proved beyond reasonable doubt for the same reasons as set out in relation to Allegation 1.1.

32. **Allegation 1.3 - Between 16 June 2015 and 20 November 2017 inclusive, by failing to have in place adequate systems to ensure he had sufficient supervision and control over Mr DSR and Mr NSK, in particular in respect of immigration matters being undertaken by them, he breached, or failed to achieve, any or all of:**

1.3.1 Principle 6 of the SRA Principles 2011;

1.3.2 Principle 8 of the SRA Principles 2011;

1.3.3 Outcome (7.2) of the SRA Code of Conduct 2011;

1.3.4 Outcome (7.3) of the SRA Code of Conduct 2011; and

1.3.5 Outcome (7.8) of the SRA Code of Conduct 2011.

Applicant's Submissions

32.1 Mr Bullock told the Tribunal that the Respondent had no access to any of the Firm's accounts or records in relation to immigration matters or clients and was not therefore in a position to know what client matter files were ongoing, or to attempt to supervise the same. The Respondent had no procedures in place to supervise the immigration work being undertaken by the Firm, or to ensure that it was complying with the requirements of the SRA Principles, Code of Conduct and other rules contained within the Handbook. If he had ensured there were sufficient controls in place then Mr NSK and Mr DSR could not have removed all records of the immigration clients, he would have been able to determine who those immigration clients were and he would have been able to protect the client files and documents from being unlawfully removed from the Firm's offices.

32.2 Mr Bullock submitted that the public would expect a solicitor to ensure that his firm had sufficient control and systems in place, to ensure that all matters being undertaken by his Firm were properly supervised, and that sufficient controls were in place to protect the client files. As a result of having insufficient experience in immigration matters the Respondent was unable adequately to supervise those files.

32.3 Mr Bullock further submitted that the Respondent had failed to have sufficient controls in place to prevent Mr NSK and/or Mr DSR from creating an autonomous immigration practice within the Firm, and was therefore unable to access client matters and accounting records, and to identify which clients needed to be notified of the closure of the Firm. As he could not access any accounting records relating to the immigration matters he was not in a position to determine whether any monies that may have been held should be returned to the clients.

32.4 The Applicant's case was that the Respondent had failed to act in a manner which maintained the trust the public placed in him and in the provision of legal services and had failed to run his business effectively and in accordance with sound risk management principles, and had therefore breached Principles 6 and 8 of the SRA Principles 2011.

32.5 It was further the Applicant's case that in allowing Mr NSK and Mr DSR to run an autonomous immigration practice within his Firm, over which he had no control, the Respondent had failed to have in place a system of supervising clients' matters, to include regular checking of the quality of work by suitably competent and experienced people and had therefore failed to achieve Outcomes (7.2), (7.3) and (7.8) of the SRA Code of Conduct 2011.

Respondent's Submissions

32.6 The Respondent's witness statement included the following:

> "A lack of supervision falls within the tort of negligence and is related to a test of foreseeability, duty of care, etc. Foreseeability has a number of different factors. It is related to time sequences. In the SRA's handbook example of supervision, the reference is to a series of recurring incorrect behaviours over a period of time, which went unnoticed. The longer the period of time before misconduct is discovered, the greater the likelihood of lack of supervision being a justified complaint".

32.7 The Respondent also stated:

> "On the matter of supervision, there are thousands of witnesses (the target audience was in excess of 50,000) and TV and camera crews who can confirm my presence in the firm. I did a live television feed from the office every Monday and Thursday (with JS, DSR and NSK) from 2015 - 2017. We used to meet at the office early in order to prepare notes for that day's presentation, anticipate questions and prepare answers. The live TV feed went out at any time between 5 and 8 PM and often went on until 10 PM, to answer questions".

32.8 The Respondent stated that in 2016 the Firm had received notice of an SRA inspection visit. He stated:

> "There was no further investigation after that visit. No regulatory action was initiated. There were no breaches of the rules. The inspection visit was over a period of three days. We produced files and copies of all documents requested by the SRA. We also produced all of our financial statements, records, bank statements, copy invoices, copies of relevant requested files, etc. Copies of this paperwork has been supplied to the SRA. We complied with all requests satisfactorily and remedied the three minor matters which we were referred to during the officer's visit. There were no breaches of accounts rules, supervision, security of clients files and assets, security of the offices, etc. At no time did the SRA either during the inspection visit or in the follow up report complain or refer to any of the matters which the SRA now allege. The office was in order at the date of the inspection visit. Following the inspection visit's follow up report we decided to employ the services of an outside compliance company to visit and inspect procedures. The appointed company actually made the first visit to the offices to inspect and make recommendations in 2017. There were no client complaints against the firm at any time. Any follow-up inspection visit by the SRA would have produced the same result. Client files, documents and assets were secure, the office security system was properly administered and all cases in hand were discussed and dealt with; accounts were up to date and training continued weekly as the bi-weekly TV feeds continued. The CCTV system could be accessed from an application on our mobile phone".

32.9 In the email to the Tribunal of 21 July 2019 the Respondent stated:

> "I had an immigration solicitor at the firm and he applied for authorisation for immigration. The SRA issued authorisation and the same body are saying that it was not enough. I have no defence to the allegation, but I have mitigated by showing a copy of the SRA authorisation."

32.10 He also stated in that email:

> "[NSK's] misconduct was not just fundamental to the failure of the firm, it is fundamental to my mitigation. I have provided proof that [NSK] stole the firms funds from its bank account within a few days of September 2017 and stole the firm's client files, accounts, computer databases, the CCTV system, everything. I have admitted to lack of adequate supervision in this regard, but my argument in mitigation is that it would have been difficult for me to have foreseen such an event. If he had committed continuous and recurring acts of theft of client files and assets, and continuous thefts from the bank account, then there would have been more serious lack of supervision on my part. But there were no such acts. It was a one-off event from which my mitigation statement explains the reason for the failure of the firm and loss of client files and assets which "cushions or lessens the severity of the supervision" aspect of this case".

The Tribunal's Findings

32.11 There was considerable overlap between this Allegation and Allegation 1.2 in that if the Respondent did not have proper or adequate control over his firm then there was no way of putting in place adequate systems of supervision. This was particularly the case in relation to the immigration department which was autonomous. The Tribunal relied on the extracts from the interview referred to in relation to Allegation 1.2. The Respondent had, by his own admission, no qualifications in immigration law and had only undertaken a basic course. The Tribunal found that to be wholly inadequate as a basis for supervising NSK and DSR. The Respondent had admitted in his interview that he was in no position to supervise them.

32.12 The Tribunal found the factual basis of Allegation 1.3 proved beyond reasonable doubt.

32.13 Principles 6 and 8 and Outcomes 7.2, 7.3 and 7.8

32.13.1 The Tribunal found the breaches of Principles 6 and 8 proved beyond reasonable doubt for the same reasons as set out in relation to Allegations 1.1 and 1.2. It also found the breaches of Outcomes 7.2, 7.3 and 7.8 proved beyond reasonable doubt.

32.14 Allegation 1.3 was proved in full beyond reasonable doubt.

33. **Allegation 1.4 - Between 16 June 2015 and 20 November 2017 inclusive, in his capacity as the Firm's Compliance Officer for Legal Practice and Compliance Officer for Finance and Administration by failing to ensure compliance with the Firm's statutory obligations and further failing to report material failures of those Rules to the SRA, he breached all or any of:**

1.4.1 Rule 8.5 (c) (i) of the SRA Authorisation Rules 2011;

1.4.2 Rule 8.5 (c) (iii) of the SRA Authorisation Rules 2011;

1.4.3 Rule 8.5 (e) (i) of the SRA Authorisation Rules 2011;

1.4.4 Rule 8.5 (e) (iii) of the SRA Authorisation Rules 2011;

1.4.5 Principle 6 of the SRA Principles 2011;

1.4.6 Principle 7 of the SRA Principles 2011; and

1.4.7 Principle 8 of the SRA Principles 2011

Applicant's Submissions

33.1 The Applicant's case was that the Respondent had failed to discharge his regulatory obligations, including co-operating with his regulator in an open and timely manner. The public would expect a solicitor to notify his regulator promptly of any concerns he may have regarding individuals who had effective control over his practice. Such a member of the public would also expect a solicitor to notify his regulator immediately, as well as the police, as soon as he became aware that items had been stolen from his Firm, including client files, client documents and client information stored on missing computer systems.

33.2 Mr Bullock submitted that by failing to report material breaches of the SRA Handbook 2011 the Respondent had breached Rules 8.5 (c) (i) and (iii) of the SRA Authorisation Rules 2011. He had also breached Principles 6, 7 and 8 of the SRA Principles 2011.

Respondent's Submissions

33.3 The Respondent's witness statement included the following:-

> "I was not contacted "by a client" to tell me the premises had been repossessed. I spoke to the landlady at Southall, who told me the rent had not been paid, and that DSR and NSK had attended the offices late at night, taking out the CCTV system and other items; she was not aware of the exact detail of these items. When I went to the premises, they had stripped them out in the same way that they had stripped out the Birmingham office. As regards the repossession of the Birmingham office premises, I was actually working there on the morning the landlord came to the premises to repossess. I immediately arranged to put everything into an office a few doors away. This enabled me to carry on closing down files, speaking to clients and attempting to close the

firm down properly. The story that I was unaware of the repossession is simply that: a story made up by the SRA. What I was unaware of was the fact that the rent had not been paid and that repossession proceedings had taken place. That is a different matter".

The Tribunal's Findings

33.4 The Tribunal had already found a number of non-compliances as set out in its findings in relation to Allegations 1.1-1.3. The Respondent had completely abrogated his responsibility and had purported to delegate his duties to DSR who was unadmitted and un-vetted. The result of the Respondent's failures was exemplified by the clear-out of the office and by his response. The Tribunal found that any responsible solicitor would have immediately contacted the SRA and the Police, given the gravity of the breach. The Respondent's explanation that he was trying to establish what had occurred was entirely inadequate.

33.5 The interview with the FI Officer disclosed that the Respondent had previously had concerns about the way in which matters were being handled at the Firm, but he had done nothing. As a result, clients' wills, documents and money had been removed from the Firm. The Tribunal found the factual basis of Allegation 1.4 and the breaches of the SRA Authorisation Rules proved beyond reasonable doubt.

33.6 Principles 6, 7 and 8

33.6.1 It followed from the Tribunal's findings in relation to the factual basis of this matter that the Respondent had failed in his legal and regulatory obligations in a number of ways. This was self-evidently inconsistent with running his business in accordance with sound financial and risk management principles. The public trust in the provision of legal services and in the Respondent would be fundamentally undermined by a solicitor who had abandoned his special and important responsibilities as COLP and COFA in this way. The Tribunal found the breaches of Principles 6. 7 and 8 proved beyond reasonable doubt.

33.7 Allegation 1.4 was proved in full beyond reasonable doubt.

34. **Allegation 1.5 - Between 16 June 2015 and 20 November 2017 inclusive, by failing to ensure that client money and assets were properly protected he breached all or any of:**

1.5.1 Principle 5 of the SRA Principles 2011;

1.5.2 Principle 6 of the SRA Principles 2011; and

1.5.3 Principle 10 of the SRA Principles 2011.

Applicant's Submissions

34.1 Mr Bullock submitted that a member of the public and a client of a firm of solicitors would expect a solicitor to ensure that all client assets, including but not limited to client files, original documents, Wills, title deeds, passports and client money,

together with confidential information relating to client matters stored on computer systems and/or servers, were properly protected. By failing to do so, the Respondent failed to provide a proper standard of service to his clients, failed to act in a way which maintained the trust the public placed in him and in the legal profession and failed to protect client assets, and therefore breached Principles 5, 6 and 10 of the SRA Principles 2011.

Respondent's Submissions

34.2 In his witness statement the Respondent stated the following:

> "The SRA have alleged that I "failed to secure files and assets of clients" properly. There would have to be evidence to show that files and documents went missing over a period of time, otherwise there is no justification for such a complaint. The premises were protected by 24- hour, seven day a week CCTV, inside and externally; there were electronic shutters on the outside doors and windows. A steel fire door protected the exterior at the rear to the premises, (again monitored by 24/7 CCTV) and a security gate which needed a special access code to open it. If there were any problems with security of clients files and assets this would have been brought to our notice by the SRA on their three-day inspection visit in 2016".

34.3 In the email to the Tribunal of 21 July 2019 the Respondent stated:

> "Securing clients files and assets: as I stated, at the premises, we had electronic steel shutters, lockable filing cabinets, fireproof deeds cabinet and CCTV. I thought that this was sufficient to secure client files and assets. There was not a series of thefts and removal of clients files and assets over a period of time: this was a one-off event on 3rd October 2017. I have admitted the allegation against me but in mitigation I have explained the system that was in place, which was obviously inadequate and again I am at fault".

The Tribunal's Findings

34.4 The Tribunal found this matter proved beyond reasonable doubt on the basis of the FI Report, the interview with the Respondent, the Respondent's admission in his email and the findings the Tribunal had made in relation to the earlier Allegations. It was clear that the Respondent had failed to protect client money and assets as a result of his failure to control his Firm or to supervise those working in it.

34.5 The Tribunal found the factual basis of Allegation 1.5 as well as the breaches of Principles 5, 6 and 10 proved beyond reasonable doubt.

35. **Allegation 1.6 - Between 16 June 2015 and 20 November 2017 by failing to keep accounting records properly written up he breached Rule 29.1 of the SRA Accounts Rules 2011.**

Applicant's Submissions

35.1 Mr Bullock submitted that by failing to have in place properly written up accounting records to show the Firm's dealings with office money relating to client matters, the Respondent breached Rule 29.1 of the SRA Accounts Rules 2011.

Respondent's Submissions

35.2 In his witness statement the Respondent stated the following:

> "The SRA have referred to accounts' breaches. Up-to-date accounts were presented to the SRA on the three-day inspection in 2016, along with copy files, invoices, statements, client care letters and a whole range of other documents which were presented to them. The accounts were kept up to date both before and after the visit. The latest accounts were being prepared for September 2017 when NSK and DSR sabotaged the premises. There is no evidence that the accounts were not up to date, but by removing the computerised and manual records DSR/NSK ensured the accounts could not be completed."

The Tribunal's Findings

35.3 The Respondent had told the FI Officer that he had no access to the books of account or the accounting records. The Tribunal found that he could not have the accounts properly written up if he did not have access to them. The removal of items from the office was a consequence of his other failures and the fact that the accounts had been written up satisfactorily at an earlier SRA inspection did not assist with the position subsequent to that.

35.4 The Tribunal found Allegation 1.6 proved beyond reasonable doubt.

Previous Disciplinary Matters

36. On 6 August 1987 the Tribunal had ordered that the Respondent be suspended from practice as a solicitor for the period of one year to commence on the 6th day of August 1987 and it had further ordered that he do pay the costs of and incidental to that application and enquiry, to include the costs of The Law Society's Investigation Accountant, such costs to be taxed by one of the Taxing Masters of the Supreme Court.

Mitigation

37. The Respondent's witness statement and email of 21 July 2019 had been described as mitigation and has been quoted from above. In addition, the Respondent raised matters concerning ill-health. These are not set out in this Judgment but the Tribunal had full regard to them. The Respondent told the Tribunal that the health issues were not relevant to the misconduct but related to his personal circumstances at the time of the hearing.

Sanction

38. 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.

39. In assessing culpability the Tribunal found that the Respondent's motivation was simply that he wanted to retire and no longer cared about the Firm or his obligations. This was abundantly clear from his interview. The misconduct was planned to the extent that he had taken on DSR and NSK. That did not happen spontaneously. The Respondent had been a position of trust to his clients both as the sole practitioner at the Firm and as COLP and COFA. He had demonstrated a complete disregard for his obligations as a solicitor to these clients. He was a very experienced solicitor and was fully culpable for his misconduct.

40. In considering the question of harm, the Tribunal noted that approximately 30 clients had raised concerns and there had been a pay-out from the Compensation Fund of approximately £13,000. The documents that went missing were hugely important to those clients. As the Tribunal noted above, for immigration clients in particular, the loss of documents could have devastating consequences.

41. The reputation of the profession was significantly damaged by the Respondent's complete disregard for his responsibilities and the harm caused to individuals was clearly foreseeable.

42. The misconduct was aggravated by the fact that it took place over a period of time. The clients were potentially vulnerable due to the nature of the cases in which they had instructed the Firm to act for them. The Respondent knew and ought reasonably to have known that he was in material breach of his obligations. The Respondent had previously been subject to a significant sanction by the Tribunal, albeit more than 30 years ago. It should, notwithstanding the lapse of time, have been seared into his consciousness.

43. The misconduct was mitigated by the fact that the Respondent had belatedly taken steps to try to find other immigration solicitors to act for the remaining clients and he had co-operated with the SRA. The Respondent had made full and frank admissions in his Answer, but had forcefully resiled from them in his witness statement before partially reverting to his admissions in his email. The Tribunal was able to give him some credit for his admissions, but it did not find him to have a significant level of insight. At no time had the Respondent demonstrated that he fully appreciated the seriousness of his wrongdoing.

44. 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. This was a serious and wide-ranging breach of the Respondent's professional obligations with potentially severe consequences for the Firm's clients.

45. 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 both at the material time and at the time of the hearing. The Tribunal found there to be nothing that would justify an indefinite suspension rather than a Strike-Off. The Respondent's desire to retire and walk away from the Firm was in no way an exceptional circumstance. He had already been suspended for a year many years ago.

46. This Tribunal considered that this type of conduct represented a real danger to the public. It had for example the potential to open the door to money laundering and the facilitation of terrorist financing.

47. The only appropriate and proportionate sanction was that the Respondent be Struck Off the Roll.

Costs

48. Mr Bullock sought costs in the sum of £13,547.80, based on the schedule provided to the Tribunal and the Respondent.

49. The Tribunal considered that the costs were reasonable and proportionate. The Tribunal considered the Respondent's financial statement. This was not supported by documentary evidence and was not entirely clear in terms of his outgoings. What was apparent was that there was surplus income. The Tribunal saw no basis for reducing the costs or deferring enforcement. The Tribunal therefore ordered that the Respondent pay the Applicant's costs in full.

Statement of Full Order

50. The Tribunal Ordered that the Respondent, MICHAEL KENNETH SMITH, 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 £13,547.80.

Dated this 27th day of August 2019
On behalf of the Tribunal

Hollett Dobson

H Dobson
Chair

Judgment filed
with the Law Society
on 27 AUG 2019