SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11896-2018

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

KESSAR NABI Respondent

Before:

Mr B. Forde (in the chair)
Mr J. C. Chesterton
Mrs L. Barnett

Date of Hearing: 16 May 2019

Appearances

Suzanne Jackson, solicitor of the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent was not present and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, were that whilst in practice as a sole practitioner at Nabi Solicitors ("the firm"):

1.1 Between July 2016 and May 2017, he had on 13 client matters made (i) payments from client account when there were insufficient funds held for the individual clients and (ii) over transfers or duplicate transfers from client to office account. This resulted in a shortage in the sum of £31,573.97 which the books of account failed to show. He thereby breached any or all of the following:

1.1.1 Principles 2, 6, and 10 of the SRA Principles 2011. ("the Principles")

1.1.2 Rule 20.1 and 9 and 29.1 of the SRA Accounts Rules 2011. ("the 2011 Accounts Rules")

1.2 He failed to replace the shortage in the sum of £31,573.97 outstanding as at 30 June 2017 on the firm's client account arising from breaches of the SRA Accounts Rules 2011. In so doing he had breached any or all of:

1.2.1 Rules 7.1 and 7.2 of the 2011 Accounts Rules;

1.2.1 Principles 2 and 6 of the Principles.

1.3 He failed to carry out any reconciliations from 30 June 2017 until the firm's intervention on 29 June 2018. Between 30 November 2016 to 30 June 2017 the reconciliations had not been completed as they fell due but had been completed around 6 months after. In so doing he had breached Rule 29.12 and 29.13 of the 2011 Accounts Rules.

1.4 He failed to run the business effectively and in accordance with proper governance and sound risk management principles by running the business when the firm was in serious financial difficulties without having any strategic plan in place and with liabilities to a number of creditors accumulating. In so doing he had breached any or all of Principle 2, 6 and 8 of the Principles.

1.5 He failed to notify the SRA promptly that the firm was in serious financial difficulty from around early 2017. The firm had approximate debts in the minimum sum of £115,267.36 including owing around £57,454.79 to HMRC, which had been accumulating since April 2014. In so doing he:

1.5.1 breached Principle 7 of the Principles; and

1.5.2 failed to achieve Outcome 10.03 of the SRA Code of Conduct

1.6 He failed to cooperate with the SRA on a timely basis or at all with regard to enquiries made by the Forensic Investigations Officer (FI Officer) and failed to produce documents to the FI Officer throughout the investigation during May 2018, and therefore:

1.6.1 breached Principle 7 of the Principles; and

1.6.2 failed to achieve Outcome 10.6 of the SRA Code of Conduct 2011;

Dishonesty was alleged with respect to the Allegation at paragraph 1.1 but dishonesty was not an essential ingredient to prove the Allegation.

Preliminary Matters

Application to proceed in absence

2. The Respondent did not attend the hearing and was not represented. He had not sought an application for an adjournment. Ms Jackson made an application to proceed in the absence of the Respondent pursuant to Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR").

3. Ms Jackson told the Tribunal that the proceedings had been served on the Respondent to the address that he had confirmed to her before the proceedings had been issued. His Answer to the Allegations had been due by 7 January 2019. It was not served and the Tribunal had given him a further 14 days, after which he would need to seek leave for permission to adduce an Answer. The Respondent had contacted Ms Jackson on 28 February 2019 to say that he would be contacting the Tribunal to make such an application. He had not done so.

4. Ms Jackson told the Tribunal that she had served notices under the Civil Evidence Acts and the Respondent was clearly aware of the hearing date. Ms Jackson therefore invited the Tribunal to proceed with the hearing.

The Tribunal's Decision

5. The Tribunal was satisfied that the Respondent was aware of the date of the hearing and SDPR Rule 16(2) was therefore engaged. This was evident by the fact that he had been in contact with the SRA as recently as February 2019.

6. 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) …;"

7. 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".

8. 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".

9. The Respondent had not engaged with the proceedings at any stage. He had not sought to vary the directions and had not applied for an adjournment of the substantive hearing. There was nothing to suggest to the Tribunal that if it adjourned the matter that he would attend any re-listed hearing.

10. The Allegations facing the Respondent were serious and related to conduct that took place 2-3 years ago. The public interest required that they be determined as soon as possible. The Tribunal was satisfied that the Respondent had voluntarily absented

himself and that it was in the interests of justice to proceed. The application was therefore granted.

Factual Background

11. The Respondent was admitted to the Roll of Solicitors on 2 June 2008. His name remains on the Roll. At all material times the Respondent carried on practise as sole practitioner at Nabi Solicitors of Rose Hill Works, Nelson Street, Bolton, Lancashire, BL3 2RW. He was also the firm's Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA).

12. As a result of concerns about a possible abandonment of the firm by the Respondent, the FI Officer commenced a Forensic Investigation of the firm's books of account and other documents on 27 April 2018. The inspection culminated in a report dated 29 May 2018 (the FI Report). A decision was made to intervene into the firm on 29 June 2018 and the Respondent's Practising Certificate was suspended. At the time of the hearing the Respondent remained on the Roll.

Allegation 1.1

13. The FI Officer was unable to calculate whether the firm had sufficient funds to meet its liabilities to clients as at 31 March 2018 as the firm had not updated its accounting records since 30 June 2017. The firm's completed client account reconciliations from 31 July 2016 to 30 June 2017 recorded a difference each month between the firm's liabilities to clients and the client cash available at the bank. The FI Officer was able to establish that a minimum client account cash shortage of £31,573.97 was in existence as at 30 June 2017.

14. The Applicant's case was that the cause of the shortage was due to payments being made on individual client matters when there were insufficient funds held for that client to make the payments and to make over transfers or duplicated transfers from client to office account.

15. The books of account as at 30 June 2017 did not show the client account shortage identified, as eight office to client transfers to the value of £28,023.97 had been posted to the client account ledgers but the actual transfers had not taken place at the bank. The client account reconciliation only identified a difference of £3,550.00.

16. The client account reconciliation statement for the period ending 30 June 2017 gave details of five client matters where monies had been transferred out of client account. The FI Officer reviewed the client ledgers for these matters. They showed that as at 30 June 2017, in four of the matters, payments totalling £1,100.00 were made on 16 May 2017 for "locus reports", in circumstances where there were insufficient funds available on the ledgers to make the payments. On the fifth matter (Miscellaneous - 999999) there had been a duplication of a client to office transfer in the sum of £2,450.00.

17. The remaining four ledgers showed that office to client transfers for the various payments had been posted to the ledgers dated as 2 November 2017 in order to rectify overpayments made from client account. The FI Officer reviewed the client bank

statements from 1 June 2017 to 4 May 2018 for all five matters. The FI Officer found no evidence that the transfers had been made at the bank. There was also no evidence on the office bank statements for the same period, to support any such transfers having been made.

18. The list of uncleared items as at 30 June 2017 recorded eight outstanding office to client account transfers amounting to £28,023.97. These transfers had been posted to the client ledgers but had not been transferred at the bank.

19. The ledgers showed that on the matters of S and H monies had been transferred from client to office account without any reason for the transfer. The ledgers, at the time the transfers were made, showed that the firm did not hold any money for the clients. There were no outstanding bills of costs or other debit balances on the office side of the client ledgers. On the matters of S1 and I, the client ledgers and bank statements showed a duplication of the previous client to office transfers that had been made. Duplicated transfers of fees on five client matters had been recorded as the reason for the shortfall of £27,417.00 on the reconciliation statements in November and December 2016 and duplication of fees on eight client matters had been recorded as the reason for the shortfall of £28,023.97 for January 2017 to April 2017. On the remaining three matters, monies had been paid out to third parties for disbursements or transfers made to office account which created debit balances on the client side of the ledgers.

20. A review of the firm's office account bank statements between June 2016 and May 2017 showed that several of the transfers made from the firm's client to office account were made when the firm was close to, or over its £25,000.00 overdraft limit. On 18 July 2016, a transfer of £1,387.50, included in a total transfer of £3,539.70, was made from client to office account relating to the matter of S. Prior to this transfer, the office account balance was £21,541.50 overdrawn. On the same day the transfer was made, the Respondent made a payment to HMRC of £5,052.25 and to himself of £300.00.

21. On 12 November 2016, a transfer of £12,149.00 was made from client to office account relating to the matter of H. Prior to this transfer, the office account balance was £23,234.75 overdrawn. On the same day that the transfer was made, the Respondent made a payment to HMRC for VAT in the sum of £6,405.49 and for PAYE/NIC of £874.39. A payment of £1,000.00 was also made to the Respondent's accountant.

22. On 21 November 2016, monies totalling £12,880.50 were transferred from client to office account relating to the matters of S1 and I. Prior to this transfer, the office account balance was £22,166.07 overdrawn. On the same day that the transfer was made, the Respondent made a payment to himself of £3,000.00 and to BHS Facilities of £2,500.00.

23. The office account bank statements for 2018 showed that nine transfers had been made from client to office account. Seven of these were round sum transfers, and all had been made at a time when the firm was either close to, or just over its overdraft limit of £25,000.00.

24. The Applicant's case was that the office account bank statements for 2016-2018 indicated that the Respondent was operating the firm's office account as a personal account.

Allegation 1.2

25. The FI Officer had reviewed the firm's completed client account reconciliations from 31 July 2016 to 30 June 2017. For each month the reconciliation statement recorded a difference between the firm's liabilities to clients and the client cash available at the bank.

26. For the moths of July 2016 to October 2016, the reconciliation recorded a difference of £1,387.50. For the months of November and December 2016, the client account reconciliation statements recorded that the shortfall had increased to £27,417.00 and for January 2017 to April 2017, the difference had increased to £28,023.97.

27. During a meeting with the FI Officer on 11 May 2018 the Respondent confirmed that he was aware of a shortage on the firm's client account. He had stated that he "can't work it out properly" but that it was "about £40,000.00" and had been "accumulating over the years". The Respondent had said that the shortage consisted of monies received for the payment of professional disbursements on the client matters he had conducted. The Respondent had stated that part of the shortage was caused when client to office transfers had been duplicated by mistake. By the time this had been discovered there were insufficient funds in the office account to rectify them. The Respondent had said he was unable to rectify the shortage unless he received "money back from HMRC and the bank".

Allegation 1.3

28. The FI Officer had noted that reconciliation statements had only been carried out for the period up to 30 June 2017. The Respondent had agreed that no further client account reconciliations had been carried out since that date. The FI Officer reviewed the reconciliations statements carried out from 30 November 2016 to 30 June 2017. The documentation printed off the LawByte system showed that the reconciliations had not been completed as they fell due but had been completed around six months later.

Allegation 1.4

29. At the time of the inspection the firm had a number of outstanding liabilities to a number of creditors. The Respondent disputed some of these as they had been paid with Bills of Exchange or Promissory Notes.

30. In relation to HMRC, a statutory demand dated 21 November 2017 was provided by the Respondent and showed he owed £57,454.79 in tax. The schedule attached showed that the debt began to arise in April 2014 due to outstanding National Insurance and Income Tax.

31. At a meeting on 4 May 2018 the Respondent told the FI Officer that he was in dispute with HMRC and that he was entitled to a refund. He said he had sent payment for the outstanding debt to HMRC in the form of a Promissory Note. The Respondent was told by HMRC in a letter dated 5 October 2017 that they would "only accept payment [for the debt] by methods shown on their website". In the meeting on the 4 May 2018, the Respondent said he thought it likely that the amount owed had increased to around £64,000.00.

32. In relation to PCL, the Respondent had entered into a credit agreement with this company to pay for his Professional Indemnity Insurance. He explained to the FI Officer at the meeting on 4 May 2018, that the first payment due under the agreement had been paid from office account and he had then cancelled the Direct Debit due to "insufficient funds in the business". He told the FI Officer that he had paid the outstanding debt to PCL with a Promissory Note but that it had not been accepted. Court proceedings had been issued against him for the outstanding debt.

33. In an email from the Respondent dated 19 December 2017 to PCL he had stated "The promissory note provides continuing security to the debt owed to [PCL]" In response PLC wrote "I can confirm that we have not agreed to defer payment under a promissory note ... so this will now be passed to our Recoveries Department for further action" . The Respondent replied in an email of 20 December 2017, stating "I have not deferred the payment as suggested in your e-mail. I have issued a negotiable instrument which operates as money and extinguishes the debt owed to you for the full balance ... The debt no longer exists as it has been suspended"

34. The Respondent had also owed money to a medical agency which had previously been used by the firm. The Respondent had said in the meeting on 4 May 2018, that a firm of solicitors acting for the agency had written to him in 2017 to say the outstanding liability was a round £50,000.00 and a few months previously another firm had written to say the debt was around £100,000.00. The Respondent had estimated that the outstanding debt to be £7,000.00 to £8,000.00 but was unable to provide the FI Officer with the agreement or any other documentation to show what the current debt was.

35. In a letter to the agency dated 4 August 2017 the Respondent had written "Solely in an attempt to stop imminent proceedings being brought I am prepared to deal with this on a without prejudice basis" and enclosed a Promissory Note for £44,692.41.

36. The Respondent also owed monies to the firm's bank. The overdraft facility on its office account was £25,000.00. He also had an outstanding business loan that had been taken out for £70,000.00 on 29 May 2015. As at 4 May 2018, the amount outstanding was £44,217.82.

<u>Allegation 1.5</u>

37. The Applicant's case was that the Respondent had not informed the SRA of the financial difficulties he was experiencing as set out above.

Allegation 1.6

38. When initial contact was attempted with the Respondent by the SRA no response was received. The FI Officer who attended the firm on 27 April 2018, without notice, found that the firm was closed. On 30 April 2018 further contact was attempted but without success.

39. In a letter dated 1 May 2018 the Respondent was advised that the FI Officer and a colleague would be attending to carry out an investigation on 4 May 2018. He was advised of what documentation the firm was required to produce. At the meeting none of the documentation was available. The Respondent said he was unable to access the firm's accounting system, LawByte as he did not know the password. The Respondent told the FI Officer that he did not have any recent accounting records available as the books of account were not up to date and were held by the firm's accountants. He consented to the FI Officer collecting them directly from the accountants.

40. The Respondent requested more time to get the information on the number of client files at the firm and it was agreed that the FI Officer would return on 11 May 2018. The Respondent was requested to have the LawByte accounts system accessible on that day and, if possible, for the firm's cashier to be in attendance. When the FI Officer attended again on 11 May 2018, the Respondent said he was unable to provide access to the LawByte system as he said he still did not have the password. The FI Officer asked him if he could get the information together that day whilst still on site. He said he was not able to collate the documentation within these time constraints. He said that the FI Officer's request represented "borderline harassment and victimisation of a BME firm"

41. The Respondent said he would contact the FI Officer by telephone by 2.00pm on 16 May 2018 with details of the names and number of open matters held by the firm and with details of the number of closed files held by the firm. No call was received on this date. The FI Officer attempted to call the Respondent on 17 and 22 May 2018. On the 23 May 2018, the Respondent sent an email to the FI Officer stating that he had received her "correspondence" and would "provide the response that you require by 5pm 28th May". The FI Officer sent further emails to the Respondent on 23 and 24 May 2018, requesting further information. At the date of the FI report no further response had been received from the Respondent.

Witnesses

42. None.

Findings of Fact and Law

43. 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.

44. 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 the Applicant, which are briefly summarised below.

General Approach

Integrity

45. 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".

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

Dishonesty

47. In respect of Allegation 1.1 the Tribunal was required to consider whether the Respondent had acted dishonestly. 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."

48. 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.

49. **Allegation 1.1 - Between July 2016 and May 2017, he had on 13 client matters made (i) payments from client account when there were insufficient funds held for the individual clients and (ii) over transfers or duplicate transfers from client to office account. This resulted in a shortage in the sum of £31,573.97 which the books of account failed to show. He thereby breached any or all of the following:**

    1.1.1 Principles 2, 6, and 10 of the SRA Principles 2011. ("the Principles")

    1.1.2 Rule 20.1 and 9 and 29.1 of the SRA Accounts Rules 2011. ("the 2011 Accounts Rules")

Applicant's Submissions

49.1 Ms Jackson submitted that the Respondent had made payments from client account when there were insufficient funds in the account to cover the payment and made transfers from client to office account when there was no reason for the transfers to be made. This took place over approximately a year. He had therefore acted in breach of Rules 20.1 and 20.9 of the 2011 Accounts Rules by withdrawing money from the client account when it was not properly required for a payment to or on behalf of the client and by allowing the client account to go overdrawn.

49.2 The books of account of the firm were not properly written up in that the ledgers showed that there had been office to client transfers made to rectify the overpayments made from client account, when there was no evidence that the transfers had been made at the bank. Ms Jackson submitted that the Respondent had therefore acted in breach of Rule 29.1 of the 2011 Accounts Rules.

49.3 Ms Jackson submitted that the Respondent's conduct had lacked integrity and undermined the trust that the public placed in him. The purpose of the accounts rules were to ensure transparency of dealings with client and office money. The Respondent's conduct in failing to protect client money was in breach of Principle 10.

49.4 In relation to dishonesty, Ms Jackson submitted that at the time he misappropriated client monies the state of the Respondent's knowledge was that he had been admitted as a solicitor for eight years, five of which he had spent as a sole practitioner. He was COLP and COFA at the firm and so was under an obligation to ensure compliance with the rules. He would have understood his obligation to his client account and client monies. Despite this, duplicate transfers had been made. The Respondent knew that at the time he made those transfers, his bank account was approaching his overdraft limit. The Respondent knew that the reconciliation statements showed an increasing shortage and he admitted to the FI Officer that he was aware of this. He was aware that it was around £40,000 and had been accumulating since 2010. He had not tried to rectify it but had continued to misuse client monies for his own purpose.

The Respondent had sought to disguise the shortage by creating false and misleading accounts. His conduct was deliberate and amounted to a course of conduct between July 2016 to June. These were therefore not isolated events or momentary aberrations. Ms Jackson submitted that the documents did not support the Respondent's contention that the transfers were made in error. She referred the Tribunal to the bank statements in support of this submission. Ms Jackson described the conduct as premeditated. In all the circumstances she submitted that the Respondent's conduct would be considered dishonest by the standards of ordinary decent people.

The Tribunal's Findings

49.5 The Tribunal considered the relevant ledgers and bank statements as set out in the FI Report. It was clear beyond reasonable doubt that the Respondent had made payments from client account when there were insufficient funds to do so. He had also made over-transfers and duplicate transfers into the office account from the client account. This had resulted in the shortage referred to above and was reflected in the delayed reconciliations referred to in Allegation 1.3. The Tribunal found the factual basis of Allegation 1.1, together with the breaches of Rules 20.1, 20.9 and 29.1 of the 2011 Accounts Rules and Principle 10, proved beyond reasonable doubt. The Tribunal interpreted the wording of the phrase "Rule 20.1 and 9" as referring to Rules 20.1 and 20.9, as opposed to Rule 9.

Principle 2

49.6 The Tribunal accepted Ms Jackson's submissions with regards to integrity. The Respondent had responsibility as a solicitor, COLP and COFA to ensure that client monies were treated with the utmost care. Instead he had used the client account to fund the firm as well as his own personal expenditure. The Tribunal considered this an egregious case of a lack of integrity and the Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principle 6

49.7 The public would be deeply concerned to see client monies being moved around in the way that the Respondent had done. It was this type of activity that could deter members of the public from going to a solicitor, such was the erosion of trust that resulted. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

Dishonesty

49.8 The Tribunal considered the Respondent's state of knowledge between July 2016 and May 2017 when he made the payments and transfers.

49.9 The Respondent knew that money was short and the Tribunal noted that the transfers had occurred when he had been approaching his overdraft limit. The Tribunal had seen examples where payments to HMRC coincided with misappropriations from the client account and found that the Respondent knew that he was choreographing payments to meet the liabilities. In addition he was using his office account for

personal use, something he would clearly have known he was doing using client monies.

49.10 There was no evidence the transfers were made in error. This was not just one transfer that was swiftly rectified and the Tribunal found there to be no credence to the suggestion that it was an error. The Respondent had accepted in his meeting that he had a shortage on the client account and that he was having financial difficulties. This was contained in the unchallenged evidence of the FI Officer.

49.11 The Respondent knew of the importance of his obligations relating to client monies as he was, in addition to being a solicitor, the COFA (and COLP), which was a role that bestowed special responsibilities for ensuring that such monies were protected at all times.

49.12 The Tribunal found that the Respondent's state of knowledge was complete in that he knew he was making transfers and payments from the client account otherwise than in accordance with the 2011 Accounts Rules.

49.13 The Tribunal was satisfied beyond reasonable doubt that the Respondent's conduct would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

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

50. **Allegation 1.2 - He failed to replace the shortage in the sum of £31,573.97 outstanding as at 30 June 2017 on the firm's client account arising from breaches of the SRA Accounts Rules 2011. In so doing he had breached any or all of:**

1.2.1 Rules 7.1 and 7.2 of the 2011 Accounts Rules;

1.2.1 Principles 2 and 6 of the Principles.

Applicant's Submissions

50.1 Ms Jackson submitted that despite the Respondent being aware of the shortage on client account from at least mid-2016, he had failed to make any attempt to rectify it. The shortage remained un-remedied as at the date of the intervention Ms Jackson submitted that a solicitor acting with integrity would have attempted to address the shortage rather than allowing it to continue.

The Tribunal's Findings

50.2 The Tribunal had found, when considering Allegation 1.1 that the Respondent was aware at the time of making the transfers that there were insufficient funds held on the client account and that he was aware of the consequent shortage on the client account. The Respondent was therefore under a duty to remedy the shortage promptly upon discovery, in other words immediately. It was clear from the ledgers and bank statements that he had not done so. The Tribunal found the factual basis of

Allegation 1.2, together with the breaches of Rules 7.1 and 7.2 of the 2011 Accounts Rules proved beyond reasonable doubt.

Principle 2

50.3 The Tribunal had found, when considering Allegation 1.1, that the Respondent had lacked integrity when making the transfers and payments from client account that gave rise to the shortage. It therefore followed that his failure to remedy the shortage was a continuation of the conduct that lacked integrity. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principle 6

50.4 It followed from the Tribunal's findings of fact and in relation to a lack of integrity that the Respondent's conduct would undermine the trust the public placed in him and in the provision of legal services. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

50.5 Allegation 1.2 was therefore proved in full beyond reasonable doubt.

51. **Allegation 1.3 - He failed to carry out any reconciliations from 30 June 2017 until the firm's intervention on 29 June 2018. Between 30 November 2016 to 30 June 2017 the reconciliations had not been completed as they fell due but had been completed around 6 months after. In so doing he had breached Rule 29.12 and 29.13 of the 2011 Accounts Rules.**

Applicant's Submissions

51.1 Ms Jackson submitted that there were no reconciliations statements after 30 June 2017 and the ones up to that date had been completed around 6 months late. The Respondent had therefore acted in breach of Rule 29.12 and 29.13 of the 2011 Accounts Rules.

The Tribunal's Findings

51.2 The Tribunal found this Allegation proved beyond reasonable doubt on the basis of the ledgers, the FI Officer's conclusions and the Respondent's admissions to the FI Officer in that regard. The Respondent had clearly breached Rules 29.12 and 29.13 of the 2011 Accounts Rules.

51.3 Allegation 1.3 was proved in full beyond reasonable doubt.

52. **Allegation 1.4 - He failed to run the business effectively and in accordance with proper governance and sound risk management principles by running the business when the firm was in serious financial difficulties without having any strategic plan in place and with liabilities to a number of creditors accumulating. In so doing he had breached any or all of Principle 2, 6 and 8 of the Principles.**

Applicant's Submissions

52.1 Ms Jackson submitted that the Respondent had continued to trade while the debts increased. He had been trading with a shortage on his client account from July 2016 up to 30 June 2017, using client monies to keep the firm running He was also using office account, which he knew contained client monies, for personal expenses.

52.2 Ms Jackson submitted that the Respondent had failed to put any strategy in place to attempt to regularise the position or obtain assistance with how the financial difficulties of the firm could be remedied. Instead he had attempted to satisfy the debts with Promissory Notes. Ms Jackson submitted that the Respondent had failed to run the business effectively and in accordance with proper governance and sound risk management principles and had thereby breached Principle 8 of the 2011 Accounts Rules.

52.3 The Respondent knew or ought to have known that the Promissory Notes were worthless and would not be accepted by financial institutions as payment of their debts. Ms Jackson submitted that a solicitor of integrity would not try and settle debts in this way or challenge that there was a debt outstanding in the way that the Respondent had. This type of behaviour undermined the trust that the public would place in the Respondent and in the provision of legal services.

The Tribunal's Findings

52.4 The Tribunal noted the significant debts that had accrued. The Respondent owed significant sums of money to a variety of creditors, totalling in excess of £100,000. The Respondent had, in a number of cases, attempted to settle these debts by way of Promissory Notes, which was an extraordinary approach for a solicitor to take. In other instances, he had used client monies to pay office expenditure, which was also wholly inappropriate. This did not amount to a strategic plan for the running of the business and it was clearly not in accordance with proper governance and sound risk management principles. The Tribunal found the factual basis of Allegation 1.4 together with Principle 8, proved beyond reasonable doubt.

Principle 2

52.5 The Tribunal found that it lacked integrity to correspond with creditors in the way that he had, to attempt to rely on Promissory Notes to settle liabilities and to use monies from client account in the way that he had. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principle 6

52.6 The Tribunal found that by running the firm in the way that the Respondent had was inconsistent with maintaining trust in the profession on the part of the public. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

52.7 Allegation 1.4 was proved in full beyond reasonable doubt.

53. **Allegation 1.5 - He failed to notify the SRA promptly that the firm was in serious financial difficulty from around early 2017. The firm had approximate debts in the minimum sum of £115,267.36 including owing around £57,454.79 to HMRC, which had been accumulating since April 2014. In so doing he:**

1.5.1 breached Principle 7 of the Principles; and

1.5.2 failed to achieve Outcome 10.03 of the SRA Code of Conduct

53.1 Ms Jackson submitted that by not informing the SRA of the financial difficulties he was experiencing, the Respondent had breached Principle 7 and failed to achieve Outcome 10.3 of the SRA Code of Conduct.

The Tribunal's Findings

53.2 The fact of the serious financial difficulties being experienced by the Firm was established and the reasons set out in relation to Allegation 1.4 above. The difficulties were clearly very serious as was reflected by the winding-up petitions faced by the firm. The next question for the Tribunal was whether the Respondent had notified the SRA promptly of such difficulties. The Respondent had only started discussing these matters with the SRA once the investigation had begun and some considerable time after the problems had started. The Tribunal did not consider this to be prompt and the Respondent had therefore failed to comply with his legal and regulatory obligations.

53.3 The Tribunal found the factual basis of Allegation 1.5 together with the breach of Principle 7 and the breach of Outcome 10.3 (the reference to 10.03 in the Allegation being taken to mean 10.3) proved in full beyond reasonable doubt.

54. **Allegation 1.6 - He failed to cooperate with the SRA on a timely basis or at all with regard to enquiries made by the Forensic Investigations Officer (FI Officer) and failed to produce documents to the FI Officer throughout the investigation during May 2018, and therefore:**

1.6.1 breached Principle 7 of the Principles; and

1.6.2 failed to achieve Outcome 10.6 of the SRA Code of Conduct 2011;

Applicant's Submissions

54.1 Ms Jackson submitted that by failing to deal with enquiries made by the FI Officer promptly or at all and failing to produce documents throughout the investigation, the Respondent had failed to comply with his regulatory obligations and had failed to deal with the SRA in an open, timely and co-operative manner and in doing so had breached Principle 7 of the 2011 Principles.

The Tribunal's Findings

54.2 The Tribunal noted the instances of non-cooperation set out in the FI Report, which the Respondent had not challenged. The Tribunal was satisfied beyond reasonable doubt that the Respondent had not co-operated either in a timely fashion or indeed at

all. The factual basis of Allegation 1.6, together with the breach of Principle 7 and Outcome 10.6 was therefore proved in full beyond reasonable doubt.

Previous Disciplinary Matters

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

Mitigation

56. The Respondent had advanced no mitigation.

Sanction

57. 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.

58. In assessing the Respondent's culpability the Tribunal identified the following factors:

- The Respondent had been motivated by self-interest including personal financial gain;

- The misconduct had been planned;

- The Respondent had acted in breach of trust, primarily to his clients but also to his creditors;

- He had direct control of the circumstances giving rise to the misconduct as he was a sole practitioner as well as COLP and COFA;

- He was of some experience, having been qualified for six years at the material time;

- There was an element of concealment by way of the failure to reconcile the ledgers but the Tribunal noted that he did make some admissions to the FI Officer as to the state of the finances.

59. In terms of harm caused, the Tribunal found there to be great harm caused to the reputation of the profession and the trust the public placed in it. There was also harm potentially caused to individual clients and creditors by reason of the serious financial difficulties, the client account shortages and the attempt to settle debts by Promissory Note.

60. The Tribunal identified the following aggravating factors:

- Dishonesty; Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

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

- The misconduct was deliberate calculated and repeated;
- The misconduct continued over a significant period of time;
- The Respondent knew or ought to have known that he was in material breach of his obligations.

61. The Tribunal found no mitigating factors.

62. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be an appropriate or 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, particularly given the misuse of client monies on repeated occasions and the lack of insight on the part of the Respondent.

63. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. 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

64. Ms Jackson applied for costs based on a schedule of costs that had been served on the Respondent as well as the Tribunal. Ms Jackson told the Tribunal that the costs should be reduced by £520 to take account of the fact that the hearing had taken less time than expected. She had already compiled the costs on the basis of a one-day hearing rather than two days. The Tribunal queried the inclusion of the cost of a hotel given that it had been a one-day hearing. Ms Jackson explained that this was for the night preceding the hearing.

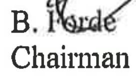
65. The Tribunal considered the costs incurred to be reasonable and proportionate, taking account of the reduction already sought by Ms Jackson. The Tribunal also deducted the cost of a second one day Travelcard in the sum of £13.10.

66. The Respondent had not served a Statement of Means and there was no basis on which to reduce the costs or direct a deferral of payment. The Tribunal therefore ordered costs be paid by the Respondent served in the sum of £10,379.55.

Statement of Full Order

67. The Tribunal Ordered that the Respondent, KESSAR NABI, 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 £10,379.55.

Dated this 6th day of June 2019
On behalf of the Tribunal



B. Forde
Chairman

Judgment filed
with the Law Society
on 11 JUN 2019