SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11921-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ROGER PAUL JACKSON First Respondent

[SECOND RESPONDENT] Second Respondent

[THIRD RESPONDENT] Third Respondent

Before:

Mr P. Lewis (in the chair)
Mr R. Nicholas
Dr S. Bown

Date of Hearing: 22 – 24 July 2019

Appearances

Rory Mulchrone, barrister of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

The First Respondent did not attend and was not represented.

Philip Engelman, barrister of Cloisters Chambers, Elm Court, Temple EC4Y 7AA for the Second Respondent.

Mark Bradley, barrister of Deans Court Chambers, 24 St John Street, Manchester, M3 4DF for the Third Respondent.

JUDGMENT

Allegations

The First Respondent

1. The allegations against the First Respondent made by the Solicitors Regulation Authority ("SRA") were that, while admitted as a solicitor on dates between approximately 2013 and July 2018:

1.1 He failed to respond, adequately or all, to one or more communications from the SRA or its agents sent during the course of a regulatory investigation; and he therefore:

1.1.1 breached Principle 7 of the SRA Principles 2011 ("the Principles");

1.1.2 failed to achieve Outcomes 10.6 and/or 10.8 of the SRA Code of Conduct 2011 ("the Code").

1.2 He fabricated one or more telephone attendance notes purporting to record conversations with Client YE, when such conversations had not in fact occurred; and he therefore breached Principles 2 and/or 6 of the Principles.

1.3 He failed to take out after the event ("ATE") insurance policies on behalf of one or more clients; and he therefore breached Principles 4, 5 and/or 6 of the Principles.

1.4 He caused or allowed a Notice of Funding to be filed and/or served on behalf of Client YE, indicating that the claim had the benefit of an insurance policy, issued by a named insurer when, in fact, no such policy had been taken out on behalf of that client; and he therefore:

1.4.1. breached Principles 1, 2 and/or 6 of the Principles;

1.4.2. failed to achieve Outcome 5.1 of the Code.

1.5 He failed to ensure that Client SS's particulars of claim and/or witness statement were compliant with the Civil Procedure Rules 1998, in that they were not appropriately translated or certified; and he therefore:

1.5.1. breached Principle 5 of the Principles;

1.5.2. failed to achieve Outcomes 1.2 and 1.5 of the Code.

1.6 He made or permitted to be made one or more offers to settle claims on behalf of Client SS and/or Client AS without any or adequate instructions to do so, and he therefore:

1.6.1. breached Principles 4 and/or 5 of the Principles;

1.6.2. failed to achieve Outcome 1.2 of the Code.

1.7 He:

1.7.1 caused or allowed Client AS's claim to be stayed;

1.7.2 failed to inform Client AS that his claim had been stayed and/or of an unsuccessful application to restore it;

and he therefore:

1.7.3 breached Principles 2, 4 and/or 5 of the Principles;

1.7.4 failed to achieve Outcomes 1.2 and/or 1.5 of the Code.

1.8 He:

1.8.1 caused or allowed Client YE's claim to be struck out;

1.8.2 failed to inform Client YE, promptly or at all, that his claim had been struck out;

and he therefore:

1.8.3 breached Principles 2, 4 and/or 5 of the Principles;

1.8.4 failed to achieve Outcomes 1.2 and/or 1.5 of the Code.

1.9. He failed, adequately or at all, to:

1.9.1 notify (i) clients, (ii) Betesh Partnership Solicitors and/or BPS Solicitors LLP (collectively, "the Firm") of his connection with M&S Vehicle Hire Ltd, namely, that his wife was a director and shareholder in that company;

1.9.2 inform the Firm of a referral arrangement between his clients and M&S Vehicle Hire Ltd;

and he therefore:

1.9.3 breached Principles 2 and/or 3 of the Principles;

1.9.4 failed to achieve Outcomes 1.15, 6.1, 6.2 and 12.4 of the Code or any of them.

1.10. He acted dishonestly in relation to allegations 1.2, 1.4, 1.7, 1.8 and 1.9 above or any of them but proof of dishonesty was not required to establish those allegations or their particulars.

<u>The Second Respondent</u>

2. The allegations against the Second Respondent made by the SRA were that, while in practice as a solicitor and/or partner and/or COLP at the Firm:

2.1. Following a Disciplinary Meeting held on or about 14 July 2014 and the First Respondent's subsequent expulsion from the Firm, he failed adequately to report misconduct by the First Respondent to the SRA; and he therefore:

2.1.1. breached Principle 7 of the Principles;

2.1.2. failed to achieve Outcome 10.4 of the Code.

2.2. Having been asked by the SRA for explanations of the First Respondent's departure from the Firm in letters dated 26 May 2016 and/or 16 August 2016, he failed to provide complete or adequate explanations for the same, and he therefore breached Principles 2 and/or 7 of the Principles.

2.3. He failed adequately or at all to inform Clients AS, SS and YE (or any of them) of the Firm's various failings in the handling of their matters, or of potential claims available to them as a result, and he therefore:

2.3.1. breached Principles 2, 4, 5 and 6 of the Principles or any of them;

2.3.2. failed to achieve Outcome 1.16 of the Code.

The Third Respondent

3. The allegations against the Third Respondent made by the SRA were that, while in practice as a solicitor at the Firm:

3.1. He failed adequately or at all to:

3.1.1 explain to Client AS why the trial of his claim did not proceed on 14 October 2013, in circumstances where he knew that the hearing had been vacated, and proceedings stayed, following the Firm's failure to lodge a trial bundle at the correct court;

3.1.2 explain the procedural consequences of the stay, including that Client AS required relief from sanction;

and he therefore:

3.1.3 breached Principles 2, 4 and/or 5 of the Principles;

3.1.4 failed to achieve Outcomes 1.1, 1.2 and 1.16 of the Code or any of them.

3.2 He failed to inform Client AS, adequately or at all, of the outcome of a hearing on 7 February 2014, including the failure, with costs, of applications for relief from sanction and/or to lift the stay; and he therefore:

3.2.1 breached Principles 2, 4 and/or 5 of the Principles;

3.2.2 failed to achieved Outcomes 1.1, 1.2 and 1.16 of the Code, or any of them.

3.3. He failed to give adequate notice to Client SS that the trial of his claim would take place on 14 October 2014 and he therefore:

3.3.1 breached Principles 4 and/or 5 of the Principles;

3.3.2 failed to achieve Outcomes 1.1, 1.2 and 1.16 of the Code, or any of them.

3.4. On 21 October 2014 he told Client SS that his claim had been struck out because the Firm did not have up to date contact details for him, or words to that effect, which was disingenuous and/or misleading, and he therefore:

3.4.1. breached Principles 2 and/or 5 of the Principles;

3.4.2. failed to achieve Outcomes 1.1, 1.2 and 1.16 of the Code, or any of them.

3.5. He failed, adequately or at all, to:

3.5.1. notify clients and/or the Firm of his connection M&S Vehicle Hire Ltd namely, that his wife was a director and shareholder in that company;

3.5.2. inform the Firm of a referral arrangement between his clients and M&S Vehicle Hire Ltd;

and he therefore:

3.5.3. breached Principles 2 and/or 3 of the Principles;

3.5.4. failed to achieve Outcomes 1.15, 6.1, 6.2 and 12.4 of the Code, or any of them.

Documents

4. The Tribunal reviewed all the documents submitted by the parties, which included:

- Rule 5 Statement and exhibit RTM1 dated 30 January 2019
- Answer of the Second Respondent dated 7 March 2019
- Answer of the Third Respondent dated 18 March 2019
- Applicant's Schedule of Costs dated 15 July 2019

Preliminary Matters

5. <u>First Respondent's Purported Application to Adjourn</u>

5.1 In an email dated 8 July 2019, the First Respondent applied to adjourn the proceedings on the basis that he had had insufficient time to prepare for the hearing as (i) he had not been properly served with the proceedings; (ii) he had insufficient time to prepare and (iii) he had insufficient time to instruct solicitors and counsel. Further, he submitted that the hearing should proceed against the Second and Third Respondents only.

5.2 On 9 July 2019 at 13:09, the Tribunal emailed the First Respondent in the following terms:

> "Thank you for your email of 8 July 2019.
>
> As stated previously, in the interests of transparency, please ensure all correspondence sent to the Tribunal is copied to the other parties. The starting point is that the Tribunal does not receive material that has not been served on the parties. The reason for this is that all parties are entitled to know what has

been said by other parties in the proceedings in order that they can respond if they choose to. If any party wishes the Tribunal to depart from that position then an application will need to be made to the Tribunal for leave to file and rely on a document which has not been disclosed to all parties.

If you wish to apply to adjourn the proceedings in respect of yourself and/or vary the directions you will need to complete an application form, which can be found on our website https://www.solicitorstribunal.org.uk/Application For an Order - Formatted.pdf and send this to the parties when filing the form with the Tribunal so that they can provide a response to your application. The application will then be referred to a Tribunal Division for decision."

5.3 The First Respondent did not complete an application requesting an adjournment, nor did he confirm that he had copied his correspondence to the other parties. Notwithstanding the Tribunal's email of 9 July 2019, the First Respondent emailed Mr Mulchrone on 10 July 2019 in relation to the disclosure of the original files. He did not mention in that email that he sought an adjournment. In the circumstances, the Tribunal considered that the First Respondent no longer sought an adjournment or severance of the matter.

6. Application to Proceed in the Absence of the First Respondent

6.1 The First Respondent did not attend the hearing. Mr Mulchrone submitted that the First Respondent had belatedly engaged in the proceedings, and had requested the disclosure of the underlying files relating to the allegations. It was clear, from his limited engagement, that he was aware of the proceedings, and had been served in accordance with the Tribunal's Rules. His last communication with the Applicant had been on 10 July 2019, the date by which he was required to file and serve his Answer pursuant to a direction of the Tribunal made on 1 July 2019.

6.2 In that communication, the First Respondent asserted that the Second and Third Respondents had not complied with the Tribunal's direction that they disclose the files to him and thus, he was in no position to file his Answer. Mr Mulchrone informed the First Respondent that this was a matter that he would need to raise with the Tribunal. There had been no further communication from the First Respondent.

6.3 Mr Mulchrone referred the Tribunal to the relevant case law as regards absent Respondents (R v Jones [2002] UKHL 5 and GMC v Adeogba [2016] EWCA Civ 162). He submitted that the Tribunal's discretion to proceed in the absence of the First Respondent pursuant to Rule 16(2) of the Solicitors (Disciplinary proceedings) Rules 2007 ("SDPR") should be exercised with the utmost care and caution. Whilst the criteria in Jones should be considered, the Tribunal should note the difference between criminal and regulatory proceedings, in that the First Respondent's attendance could not be compelled. It was in the public interest and in the interest of the other Respondents to proceed with the matter. In all the circumstances, the First Respondent had voluntarily absented himself from the hearing and it was proper to proceed in his absence.

6.4 Mr Engleman and Mr Bradley supported the application to proceed in the absence of the First Respondent and confirmed that the Second and Third Respondents wanted the matter to proceed.

The Tribunal's Decision

6.5 On 8 April 2019, the Tribunal made an order for substituted service by email following a failed attempt at delivery by recorded mail. The papers had been returned to the Tribunal as not called for. An email attaching the papers was sent to the First Respondent on 8 April 2019, using Mimecast, a secure email service. A notification was received that the email was accessed at 17:21 on 8 April 2019. Despite the email being accessed, there was no communication from the First Respondent to suggest that he had any difficulty in accessing any of the documents. On 26 May 2019, the First Respondent contacted the Tribunal having received a copy of a Memorandum of a Case Management hearing. On 28 May 2019 the Respondent telephoned the Tribunal and requested that papers be sent by post to his home address (the same address at which service was originally attempted). Papers were sent by recorded delivery that day. Delivery was attempted on 29 May 2019 but was unsuccessful. The papers were collected on 31 May 2019. Those papers included (amongst other things) notification of the hearing date. The Tribunal determined that the First Respondent had been served in accordance with the SDPR. He was clearly aware of the proceedings. He had been in contact with the Applicant, and had also emailed the Tribunal. Having determined that service was effected in accordance with its Rules, the Tribunal then considered whether the First Respondent had voluntarily absented himself from the hearing thus waiving his right to appear.

6.6 The Tribunal noted that notwithstanding the advice from Mr Mulchrone to contact the Tribunal as regards the alleged non-disclosure of the underlying client files, he had failed to do so. Further, notwithstanding the Tribunal's email to him of 9 July 2019, the Respondent had made no application for the proceedings to be adjourned. The Tribunal did not consider that the First Respondent would attend at any future hearing were the matter to be adjourned:

- he had sought to evade service of the papers;
- he had submitted that papers had not been served whereas he had either failed to access those papers, or had ignored them;
- he had failed to send his correspondence to all parties as he was required to do;
- he failed to make an application for an adjournment despite being advised of the correct procedure;
- he suggested numerous witnesses he would like to call but had seemingly made no attempt to obtain witness statements;
- he had had the papers from 31 May 2019 at the latest but had made no attempt to comply with any directions.

6.7 The Tribunal considered that the First Respondent's conduct was deliberate so as to disrupt the proceedings he faced. It noted that the Second and Third Respondents wished for the matter to proceed. Whilst it was asserted that the First Respondent wished to instruct solicitors and counsel, he had not done so as at 8 July 2019 despite having been in possession of the papers for at least 5 weeks and in the knowledge of the substantive hearing date. The Tribunal noted that both the Second and Third Respondents wanted the matter to proceed. It was undesirable to have a separate hearing for the First Respondent and no application for severance had been made. Nor had the First Respondent applied for the hearing to be adjourned. The Tribunal considered that the First Respondent was voluntarily absent such that he had waived his right to appear. In all the circumstances it was in the interests of justice and in the public interest to proceed in his absence.

Factual Background

7. The First Respondent was admitted to the Roll in February 1983. Until July 2014 he was a partner in the Firm. The Second Respondent was admitted to the Roll in December 1975. He was and is a partner in the Firm and specialised in litigation and family work. He held an unconditional practising certificate and was the Firm's Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA"). The Third Respondent was admitted to the Roll in April 2012. He was an assistant solicitor at the Firm where he became the Head of Personal Injury. He held an unconditional practising certificate.

8. In or around July 2014 the First Respondent was expelled from the Firm. This followed an internal investigation into the First Respondent's conduct, in which the Firm found that he had failed, (among other things): to supervise staff; to maintain orderly files; to report to clients; to pay counsel; to report to insurers and predecessor firms; and to report potential claims to partners.

9. *YE matter*

9.1 On 1 April 2016 the SRA received a complaint from YE who had instructed the Firm following a road traffic accident. YE complained that having provided documents to the Firm, the Firm had failed to submit them to Court in time resulting in his claim being struck out and costs being awarded against him. Further, the Firm had failed to insure his claim, leaving him liable for costs of £14,000. He had believed his claim to be insured on the basis of a Notice of Funding that had been filed at Court indicating that he was insured. Rather than attempting to remedy matters, the Firm applied to come off the record.

9.2 Following further complaints, a forensic investigation officer ("FIO") was instructed to attend the Firm to review matters. The FIO produced a forensic investigation report ("FIR") dated 16 October 2017.

10. *AS matter*

10.1 The Firm failed to deliver a trial bundle to the Court in time, resulting in the claim being struck out. Thereafter, the Firm failed to notify AS that his claim was struck out. AS

was pursued for the costs of the Defendant's solicitors and also recovery, storage and hire costs.

11. *SS matter*

11.1 The Firm failed to notify the client of the trial as they were unable to contact him. The claim was struck out. The Firm had previously failed to ensure that the Particulars of Claim and witness statement were properly executed in that they had not been translated by an accredited interpreter but by the director of SAL, who had referred the matter to the Firm.

11.2 When SS complained to the Firm, he was told that he had failed to notify the Firm that his address had changed and that he was therefore in breach of their terms and conditions. The Firm provided SS with details of its outstanding costs and disbursements.

12. *M&S Vehicle Hire*

12.1 The FIR further identified that the First Respondent had arranged for clients of the Firm to be referred to M&S Vehicle Hire Limited, a credit hire company incorporated by his and the Third Respondent's wives without the knowledge or consent of the partners in the Firm.

Witnesses

13. The following witnesses provided statements and gave oral evidence:

- Lindsay Barraclough – Forensic Investigator in the employ of the Applicant
- Second Respondent
- Third Respondent

14. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case, made notes of the oral evidence, and referred to the transcript of the hearing. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

15. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents rights to a fair trial and to respect for their private and family lives under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral together with the submissions of all parties.

Dishonesty

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

> "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."

17. When considering dishonesty the Tribunal firstly established the actual state of the Respondents 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. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

18. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … [Professionals] are required to live up to their own professional standards … Integrity connotes adherence to the ethical standards of one's own profession".

19. **Allegation 1.1 – The First Respondent failed to respond, adequately or all, to one or more communications from the SRA or its agents sent during the course of a regulatory investigation; and he therefore (i) breached Principle 7 of the Principles; (ii) failed to achieve Outcomes 10.6 and/or 10.8 of the Code.**

The Applicant's Case

19.1 The FIO sent letters or emails to the First Respondent on 4, 11 and 17 July 2017. Formal allegations were put to him by way of a letter dated 17 April 2018 with a response required by 2 May 2018. All correspondence was sent to either the First Respondent's last known address, or by email. The First Respondent failed to reply to any correspondence. Mr Mulchrone submitted that by failing to respond to correspondence the First Respondent was in breach of Principle 7, as he had failed to comply with his legal and regulatory obligations and had failed to deal with his regulator in an open, timely and co-operative manner. Further, he had failed to achieve Outcome 10.6 as he had failed to co-operate fully with the SRA at all times in relation to any investigation

about a claim for redress. Similarly, he had failed to achieve Outcome 10.8 as he had failed to comply promptly with a written notice from the SRA.

The Tribunal's Findings

19.2 The Tribunal found that the First Respondent had not replied to any of the correspondence sent to him by the Applicant including the EWW letter of 17 April 2018 which put formal allegations to him. Principle 7 required the First Respondent to comply with his legal and regulatory obligations and to comply with his regulator in an open, timely and co-operative manner. In failing to respond to correspondence from the SRA, the First Respondent had failed to comply with his obligation to the regulator. He had also failed to co-operate fully at all times in relation to an investigation about a claim for redress. The Tribunal found beyond reasonable doubt that the First Respondent had breached Principle 7 and failed to achieve Outcome 10.8. Accordingly, the Tribunal found allegation 1.1 proved beyond reasonable doubt.

20. **Allegation 1.2 – The First Respondent fabricated one or more telephone attendance notes purporting to record conversations with Client YE, when such conversations had not in fact occurred; and he therefore breached Principles 2 and/or 6 of the Principles.**

The Applicant's Case

20.1 Contained within the file was a telephone attendance note by the First Respondent dated 26 March 2013, where he purported to record a 45 minute telephone conversation with YE. A further telephone attendance note of 13 June 2013 purported to record a telephone conversation with YE of 1 hour 15 minutes. In his complaint to the Firm, YE confirmed that he had not spoken to the First Respondent. In his witness statement of 12 August 2016, YE denied calling the First Respondent on 26 March 2013 and denied receiving a call from the First Respondent on 13 June 2013. He stated that the Firm did not possess a telephone number on which it could have called him. In his statement of 8 January 2019 in these proceedings, YE explained that he never had any direct contact with anyone at the Firm. He provided all of his documents to Mr R from SAL. YE further stated: "…I have never spoken with anyone at the Firm by telephone from 2013 to 2015. I believe the telephone attendance notes are a blatant lie. I asked the Firm to produce a telephone log a record that the call was made to me and asked them if they had my number to contact me on. They have not provided any evidence or replied to this request".

20.2 Mr Mulchrone submitted that if the telephone calls did not take place, the First Respondent had fabricated the attendance notes. In fabricating telephone attendance notes, the First Respondent had failed to maintain the trust the public placed in him in breach of Principle 6, and had failed to act with integrity in breach of Principle 2.

Dishonesty

20.3 Mr Mulchrone submitted that if it was accepted that Client YE never spoke to the First Respondent, it followed that telephone notes purporting to record conversations

between Client YE and the First Respondent had been fabricated by the First Respondent. Ordinary decent people would consider this behaviour to be dishonest.

The Tribunal's Findings

20.4 The Tribunal considered YE's statement and his complaint to the SRA. It was clear from those documents that YE asserted that he had never spoken to the First Respondent. YE did not attend the Tribunal to give evidence, however he was only required for cross-examination by the First Respondent, who himself had not attended. In the circumstances, the Tribunal afforded full weight to YE's written evidence. YE's complaint that he had not spoken to the First Respondent had been consistent throughout the documents. He had asked the Firm to produce the number on which he had been spoken to and telephone records of the relevant times. None had been forthcoming. The Tribunal accepted YE's evidence in full and determined that the First Respondent had not spoken to YE contrary to what was indicated in the telephone attendance notes. The Tribunal thus concluded that those attendance notes had been fabricated by the First Respondent. That such conduct failed to maintain the trust the public placed in the First Respondent and in the provision of legal services was plain. Members of the public would not expect a solicitor to fabricate telephone attendance notes with clients. No solicitor acting with integrity would fabricate telephone attendance notes; such conduct was, without doubt, in breach of Principle 2. The Tribunal found beyond reasonable doubt that the First Respondent's conduct was in breach of Principles 2 and 6 as alleged.

20.5 The Tribunal determined that the First Respondent knew that he had not spoken to the client when he created the attendance notes. Ordinary decent people would consider that to fabricate a note suggesting that a solicitor had spoken to his client when he had not was dishonest. Thus the Tribunal found beyond reasonable doubt that the First Respondent's conduct to be dishonest.

20.6 Accordingly, the Tribunal found allegation 1.2 proved beyond reasonable doubt, including that the First Respondent's conduct was dishonest.

21. **Allegation 1.3 – The First Respondent failed to take out ATE insurance policies on behalf of one or more clients; and he therefore breached Principles 4, 5 and/or 6 of the Principles.**

The Applicant's Case

21.1 ATE insurance premiums were for the purposes of insuring clients against the risk of paying the other side's costs in the event that the claim was unsuccessful.

YE

21.2 As detailed above, YE's claim was struck out. In the Defendant's solicitors bill of costs it was stated: "During the process of recovering the costs incurred from the Claimant it appears that the Claimant did not have the benefit of ATE Insurance, despite the Claimant's Solicitors serving a Notice of Funding with the proceedings which stated a policy number." One of the matters complained of by YE was that the Firm failed to take out ATE insurance despite allowing him to believe otherwise.

21.3 The Notice of Funding in this matter was dated 31 January 2013. It was stated that there was insurance cover of up to £50,000. On 27 November 2017, the named insurer wrote to the Defendant's solicitors stating that they were unable to trace a policy in YE's name.

SS

21.4 The Firm wrote to SS on 4 February 2014 stating that the Firm could arrange ATE insurance. The letter also stated: "In signing this letter you confirm that you have no objection to us arranging a policy on your behalf." The FIO found no policy on the file. The Third Respondent's file note of 14 October 2014 stated: "I am also concerned that previous file handler didn't take out any ATE insurance as there is none confirmed on notice of funding and no policy on file".

AS

21.5 Similar to SS, a letter to AS dated 9 January 2013 stated that the Firm could arrange ATE insurance and that "In signing this letter you confirm that you have no objection to us arranging a policy on your behalf." It was clear from AS's complaint dated 13 July 2016, that he expected that an ATE policy had been taken out on his behalf. The FIO found no ATE policy on the file.

21.6 By failing to take out ATE premiums on behalf of one or more clients retaining the Firm under a conditional fee agreement, the First Respondent failed to act in such clients' best interests and/or to provide a proper standard of service. He therefore breached Principles 4 and/or 5. Further or alternatively, the conduct alleged constituted a failure to behave in a way that maintained the trust the public placed in the First Respondent and in the provision of legal services in breach of Principle 6.

The Tribunal's Findings

21.7 In his email of 8 July 2019, the First Respondent stated that he had never had any control or involvement in the setting up of files or choosing the Firm's policy in relation to the choice or timing of the taking out of ATE policies. The allegations as regards the failure to take out ATE policies should be levied at SK, the partner in the Personal Injury department and not at the First Respondent. He also explained that the file front cover contained information including whether ATE had been taken out.

21.8 The Tribunal considered that whilst the First Respondent may not have been responsible for choosing which provider the Firm chose in order to take out ATE insurance, as the person with conduct of the files, it was the First Respondent's responsibility to ensure that the appropriate insurance was taken out on behalf of his clients. Further, the letters sent to clients confirmed that such insurance would be taken out on a client's behalf.

21.9 The documentary evidence clearly demonstrated that no ATE policies had been taken out on behalf of AS, SS and YE. That this was not in the best interests of the clients and did not provide clients with a proper standard of service was clear. Indeed, the failure to take out ATE insurance left YE responsible for a bill of £14,000 in costs. Such conduct also failed to maintain the trust the public placed in the First Respondent

and in the provision of legal services contrary to Principle 6. Members of the public would expect a solicitor to take out a policy of insurance in circumstances where the letter of engagement specifically stated that this would be done on the client's behalf. Accordingly, the Tribunal found beyond reasonable doubt that the First Respondent had breached Principles 4, 5 and 6 as alleged; allegation 1.3 was found proved beyond reasonable doubt.

22. **Allegation 1.4 - The First Respondent caused or allowed a Notice of Funding to be filed and/or served on behalf of Client YE, indicating that the claim had the benefit of an insurance policy, issued by a named insurer when, in fact, no such policy had been taken out on behalf of that client; and he therefore: breached Principles 1, 2 and/or 6 of the Principles; failed to achieve Outcome 5.1 of the Code**

The Applicant's Case

22.1 Mr Mulchrone repeated his submissions as regards the YE matter at allegation 1.3 above. By causing or allowing a notice of funding to be filed and/or served on behalf of Client YE indicating that the claim had the benefit of an insurance policy, issued by a named insurer when, in fact, no such policy had been taken out on behalf of that client, the First Respondent misled the Court and/or the defendant's solicitors and he therefore failed to uphold the rule of law and the proper administration of justice in breach of Principle 1. He also failed to act with integrity in breach of Principle 2. Further, such conduct was capable of undermining public trust in the First Respondent and/or the provision of legal services in breach of Principle 6. He also failed to achieve Outcome 5.1 of the Code which stipulated: "you do not attempt to deceive or knowingly or recklessly mislead the court".

Dishonesty

22.2 Mr Mulchrone submitted that as the partner with conduct or supervision of the relevant file and an experienced solicitor of around 30 years standing, the First Respondent must have known than no ATE policy was in place for Client YE but he nevertheless caused or allowed a Notice of Funding to be filed at Court and served on the Defendant's solicitors which incorrectly stated that there was. In doing so, the First Respondent deliberately caused or allowed the Court and/or defence solicitors to be misled. Ordinary, decent people would consider this behaviour dishonest.

The Tribunal's Findings

22.3 In his email of 8 July 2019, the First Respondent started that he would be requesting the Tribunal make a finding of 'Fundamental Dishonesty' against YE. He asserted that it was clear from the attendance note of 26 March 2013 that YE did not need a hire vehicle and had been using his old vehicle. The Tribunal considered that this did not address the substance of the allegation, nor was it relevant to the Tribunal's consideration of the First Respondent's conduct.

22.4 The Tribunal was satisfied beyond reasonable doubt that no ATE insurance policy had been taken out on behalf of YE, notwithstanding the information contained in the Notice of Acting submitted to the Court. The Tribunal noted that the First Respondent

provided no explanation as to why the Notice of Acting contained information in relation to an ATE policy when no such policy existed for YE.

22.5 The Tribunal found that the First Respondent had misled the Court as alleged. Such conduct failed to uphold the rule of law and the administration of justice in breach of Principle 1 of the Principles. Such conduct was demonstrably in breach of Principle 6: members of the public expected solicitors to uphold the rule of law. The Tribunal found that no solicitor acting with integrity would knowingly mislead the Court; in so doing the First Respondent had breached Principle 2 and failed to achieve Outcome 5.1.

22.6 The Tribunal found that the First Respondent had knowingly provided a false declaration to the Court. Reasonable people would consider that knowingly providing the Court with false information was dishonest.

22.7 Accordingly, the Tribunal found allegation 1.4 proved beyond reasonable doubt, including that the First Respondent's conduct had been dishonest.

23. **Allegation 1.5 – The First Respondent failed to ensure that Client SS's particulars of claim and/or witness statement were compliant with the Civil Procedure Rules 1998, in that they were not appropriately translated or certified; and he therefore: breached Principle 5 of the Principles; failed to achieve Outcomes 1.2 and 1.5 of the Code.**

The Applicant's Case

23.1 The Practice Directions to CPR 22 and 32 set out procedural requirements for the pleadings and evidence of persons who do not speak English as a first language. In an attendance note with Counsel dated 14 October 2014 it was noted that SS's witness statement was translated by an unauthorised person and that the Particulars of Claim Client SS's Particulars of Claim were signed by SS but not certified by an authorised person or translated into his own language. This was in breach of either or both Practice Directions. Mr Mulchrone submitted that whilst it appeared from the complaint made by SS that he spoke good English, where the documents were translated, notwithstanding his command of English, the documents should be compliant with the Rules. By failing to comply with relevant Practice Directions the First Respondent failed to provide a proper standard of service in breach of Principle 5. He also failed to achieve Outcomes 1.2 ("you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice"); and 1.5 ("the service you provide to clients is competent, delivered in a timely manner and takes account of your clients' needs and circumstances").

The Tribunal's Findings

23.2 The Tribunal found the obligations under the CPR were clear. Where the Particulars of Claim and the client's statement had been translated, there should have been a certification by an authorised person. That had not happened in this case. The fact that SS reportedly had a good command of English was not to the point. Where there had been a translation, the procedural requirements had to be complied with. As the solicitor with conduct of the case, it was for the First Respondent to ensure proper compliance. He had failed to do so and had thus failed to provide his client with a

proper standard of service in breach of Principle 5. He had also failed to achieve Outcomes 1.2 and 1.5 as alleged. Accordingly, the Tribunal found allegation 1.5 proved beyond reasonable doubt.

24. **Allegation 1.6 – The First Respondent made or permitted to be made one or more offers to settle claims on behalf of Client SS and/or Client AS without any or adequate instructions to do so, and he therefore: breached Principles 4 and/or 5 of the Principles; failed to achieve Outcome 1.2 of the Code.**

The Applicant's Case

24.1 The FIO identified that Part 36 offers were made to settle cases out of court on behalf of SS, on 24 January 2014, and AS on 7 March 2013. The FIO was "unable to determine from the file whether the Part 36 offer had been discussed with the client prior to it being made" (AS) and "unable to identify any instructions from the client" (SS).

24.2 Mr Mulchrone submitted that it was well established that a solicitor who issued proceedings thereby warranted that he had authority to do so. The legal consequence of proceedings being issued without authority was that the proceedings were defective and liable to be struck out on that account: It was unquestionably a misuse of the process of the court for a law firm to issue proceedings in the name of a person who has not given it authority to do so. Similar considerations applied in relation to the settlement of claims without proper authority/instructions. By settling or offering to settle cases without any or adequate instructions (or permitting this to be done), the First Respondent could not be satisfied that he was acting in his clients' best interests and therefore breached Principle 4. Acting without instructions also constituted a poor standard of service contrary to Principle 5. The First Respondent failed to provide services to SS and AS in a manner which protected their interests in their matters subject to the proper administration of justice and thus failed to achieve Outcome 1.2.

The Tribunal's Findings

24.3 The Tribunal noted that there was no evidence that either SS or AS had provided the First Respondent with instructions to make settlement offers. It was imperative that a solicitor, when making offers to settle a claim, was fully instructed by his client to do so. In failing to obtain the instructions of his clients prior to making offers to settle their claims, the First Respondent had failed to act in his clients best interests and to provide them with a proper standard of service in breach of Principles 4 and 5. He had also failed to achieve Outcome 1.2, as he had failed to provide services to them in a manner which protected their interests in their matters. Accordingly, the Tribunal found allegation 1.6 proved beyond reasonable doubt.

25. **Allegation 1.7 – The First Respondent: (i) caused or allowed Client AS's claim to be stayed; (ii) failed to inform Client AS that his claim had been stayed and/or of an unsuccessful application to restore it; and he therefore: breached Principles 2, 4 and/or 5 of the Principles; failed to achieve Outcomes 1.2 and/or 1.5 of the Code.**

The Applicant's Case

25.1 On 11 October 2013, an Order was made that AS's claim be stayed and a hearing on 14 October 2013 be vacated as the Claimant had failed to lodge a trial bundle with the court. The Order stated that if no application had been made to restore the claim by 4.00 pm on 29 November 2013 then the claim would be struck out and the Claimant would be liable for the Defendant's costs, to be assessed if not agreed.

25.2 The file contained a note, dated 11 November 2013, drafted by the Third Respondent who appeared to have taken over conduct of the matter. In the note, the Third Respondent recorded that he had spoken to the First Respondent, who had stated that the trial bundle had been "accidentally hand delivered to Sheffield" instead of Rotherham County Court.

25.3 The Firm made an application to lift the stay but this was refused. AS was ordered to pay the Defendant's costs to be assessed in default of agreement. AS was not informed of this outcome at the time, nor of the Defendant's bill of costs for assessment in the sum of £12,073.00.

25.4 By causing the claim to be stayed and then failing to inform AS of this, or of the unsuccessful application to lift the stay, the First Respondent failed to act with integrity in breach of Principle 2. He also failed to act in AS's best interests or to provide him with a proper standard of service in breach of Principles 4 and 5. Further, he failed to achieve Outcomes 1.2 and 1.5.

Dishonesty

25.5 Mr Mulchrone submitted that as the partner with conduct or supervision of the relevant files and an experienced solicitor of around 30 years standing, the First Respondent must have known that he was required to inform Client AS of the failure of his claim and the reasons for this but he failed to do so. Ordinary, decent people would consider this behaviour dishonest.

The Tribunal's Findings

25.6 It was clear that the failure to lodge the trial bundle at the correct Court was due to the First Respondent's error. It was also clear that the failure to lodge the trial bundle caused the claim to be stayed. Following his error in lodging the bundle with the correct Court, the First Respondent instructed the Third Respondent to apply to lift the stay and for relief from sanction. It was thus clear that the First Respondent was aware of the issues caused by his error, however, at no time did he inform AS of his error or the remedial action planned. It was plain that such conduct was in breach of Principles 4 and 5, and failed to achieve the Outcomes as alleged.

25.7 The First Respondent was an experienced solicitor who was aware of his obligation to his client and knew that he should inform him of the relevant issues in relation to his case. No solicitor acting with integrity would fail to inform their client of these matters because of the likely consequences for the client's claim. The Tribunal found beyond reasonable doubt that in failing to inform AS of the developments on his case, the First Respondent's conduct lacked integrity in breach of Principle 2.

25.8 The Tribunal found that the First Respondent deliberately failed to inform AS about the status of his claim so as to avoid telling AS that it was his (the First Respondent's) conduct that had caused the claim to be stayed. The Tribunal found that reasonable and honest people would consider that a solicitor deliberately failing to keep his client informed so as to avoid disclosing his own errors was dishonest. Accordingly, the Tribunal found allegation 1.7 proved beyond reasonable doubt, including that the First Respondent's conduct was dishonest.

26. **Allegation 1.8 – The First Respondent: (i) caused or allowed Client YE's claim to be struck out; (ii) failed to inform Client YE, promptly or at all, that his claim had been struck out; and he therefore: breached Principles 2, 4 and/or 5 of the Principles; failed to achieve Outcomes 1.2 and/or 1.5 of the Code.**

The Applicant's Case

26.1 It was apparent from YE's complaint, statements and supporting documents that the First Respondent at no time took instructions directly from him. However, Client YE provided all documents requested of him via S9 Autos. His claim was nonetheless struck out, with costs, something which Client YE only learnt of from the other side. In particular, the First Respondent failed to serve a list of documents as directed by the Court, despite emails showing the Firm having received this via S9 Autos within the deadline.

26.2 By causing YE's claim to be struck out and/or then failing to inform him of this, the First Respondent failed to act with integrity in breach of Principle 2. He failed to act in his client's best interests and provide a proper standard of service in breach of Principles 4 and 5. He also failed to achieve Outcomes 1.2 and 1.5.

Dishonesty

26.3 Mr Mulchrone submitted that as the partner with conduct or supervision of the file and an experienced solicitor of around 30 years standing, the First Respondent must have known that he was required to inform YE of the failure of his claim and the reasons for this but he failed to do so. Ordinary, decent people would consider this behaviour dishonest.

The Tribunal's Findings

26.4 The Defendant's solicitors wrote to the First Respondent on 13 August 2013 in the following terms:

> "We refer you to the Court's Order dated 5 June 2013 which stipulates that witness statements were to be exchanged by 12 July 2013. We note your client's statement is dated 11 July 2013, but your letter is dated 31 July 2013 (it was not received in these offices until 9 August 2013). Please therefore confirm the reason as to why your client's statement was not served in conjunction with the Court's Order.

> Furthermore, your client has not provided a signed disclosure list which was required by 28 June 2013, along with the specific disclosure referred to in paragraph 2 of the Court's Order referred to above. You have in fact still not provided documents referred to in paragraphs 2 (a) and 2 (b). We can advise you that an application was made to the Court on 15 July 2013 to strike out your client's claim for failure to comply with the Court's Order and we enclose a copy of this for your records. We await hearing from the Court in this regard."

26.5 In his complaint, YE made clear that he had provided all documents as requested. His position in that regard was supported by the documentary evidence. The first that YE was aware as regards the outcome of his claim was on receipt of a letter from the Defendant's solicitors with a demand for costs. It was clear that the failure to lodge documents at Court in compliance with Court directions was due to the First Respondent who had conduct of YE's case. At no time did the First Respondent inform YE of the issues arising. That such conduct was in breach of Principles 4 and 5, and failed to achieve the Outcomes as alleged was plain.

26.6 The First Respondent was an experienced solicitor who was aware of his obligation to his client and knew that he should inform him of the relevant issues in relation to his case. No solicitor acting with integrity would fail to inform their client of these matters, particularly in light of the consequences for the client's claim. The Tribunal found beyond reasonable doubt that in failing to inform YE of the developments on his case, the First Respondent's conduct lacked integrity in breach of Principle 2.

26.7 The Tribunal considered that the First Respondent deliberately failed to inform YE about the status of his claim so as to avoid telling AS that it was his (the First Respondent's) conduct that had caused the claim to be stayed. The Tribunal found that reasonable and honest people would consider that a solicitor deliberately failing to keep his client informed so as to avoid disclosing his own errors was dishonest. Accordingly, the Tribunal found allegation 1.8 proved beyond reasonable doubt, including that the First Respondent's conduct was dishonest.

27. **Allegation 1.9 – The First Respondent failed, adequately or at all, to: notify (i) clients, (ii) Betesh Partnership Solicitors and/or BPS Solicitors LLP (collectively, "the Firm") of his connection with M&S Vehicle Hire Ltd, namely, that his wife was a director and shareholder in that company; inform the Firm of a referral arrangement between his clients and M&S Vehicle Hire Ltd; and he therefore: breached Principles 2 and/or 3 of the Principles; failed to achieve Outcomes 1.15, 6.1, 6.2 and 12.4 of the Code or any of them.**

<u>The Applicant's Case</u>

27.1 M&S Vehicle Hire (M&S) was incorporated on 4 December 2013. The nature of the business was described as "renting and leasing of cars and light motor vehicles". AT incorporation M&S had 2 directors and shareholders, namely the wives of the First and Third Respondents.

27.2 When new personal injury clients were introduced to the Firm, vehicle hire would be arranged with M&S if it was required. M&S had an arrangement with a company called Progress Vehicle Management (PVM), which would provide vehicles to M&S to be hired to its clients, (i.e. M&S effectively acted as a 'middle man').

27.3 The Second Respondent and other directors of the Firm had no knowledge of M&S and its arrangement with clients of the Firm until the Third Respondent told them of the arrangement following the First Respondent's expulsion from the Firm. The FIO could not identify any evidence that clients were informed of the First Respondent's connection to M&S.

27.4 By failing to notify the Firm and/or clients of these matters the First Respondent failed to act with integrity contrary to Principle 2. Acting with integrity would have required the First Respondent to make full and frank disclosure of that connection to his clients and his partners. Failure to do so meant that the First Respondent caused or allowed clients to retain and incur liabilities towards a hire company in which his wife had a direct financial interest, a situation where there was a risk of an own interest conflict, which inevitably compromised the First Respondent's independence. Thus he also breached Principle 3.

27.5 Further the First Respondent failed to achieve Outcome 1.15 ("you properly account to clients for any financial benefit you receive as a result of your instructions"); Outcome 6.1 ("whenever you recommend that a client uses a particular person or business, your recommendation is in the best interests of the client and does not compromise your independence") Outcome 6.2 ("clients are fully informed of any financial or other interest which you have in referring the client to another person or business"); and Outcome 12.4 ("you only (a) refer, recommend or introduce a client to the separate business; (b) put your client and the separate business in touch with each other; or (c) divide, or allow to be divided, a client's matter between you and the separate business, where the client has given informed consent").

Dishonesty

27.6 Mr Mulchrone submitted that as the partner with conduct or supervision of the relevant files and an experienced solicitor of around 30 years standing, the First Respondent must have known that he was required to disclose his connection with M&S to his clients and/or his partners but he failed to do so. Ordinary, decent people would consider this behaviour dishonest.

The Tribunal's Findings

27.7 There was no evidence that the First Respondent had informed either his clients or the other partners of his connection with M&S. The Tribunal determined that the failure to do so was a deliberate choice on the part of the First Respondent. The Tribunal considered that the First Respondent was aware of his obligation to inform his clients of his connection to an organisation to which he referred them. In failing to do so, the First Respondent failed to account to clients for any financial benefit he received as a result of his instructions, failed to ensure that his recommendation to M&S was in the best interests of his clients, failed to inform his clients of any financial or other interest which he had in referring them to M&S. Consequently, he failed to achieve Outcomes

1.15, 6.1 and 6.2. In failing to obtain his clients consent, he had failed to achieve Outcome 12.4(a), (b) and (c).

27.8 The Tribunal determined that in failing to inform his clients of his connection to M&S, and allowing clients to incur financial liabilities to that company the First Respondent's independence was compromised in breach of Principle 3; it was in his interests for M&S to be used by his clients, however it did not follow that to do so was in his clients best interests. The Tribunal found that in failing to inform his clients and the other partners of his connection to M&S, the First Respondent failed to act with integrity.

27.9 As detailed, the Tribunal considered that the First Respondent's failure to inform his clients and the other partners of his connection with M&S was a deliberate choice made by the First Respondent, in the knowledge that he was obliged to do so. Reasonable and ordinary people would consider that a solicitor who deliberately failed to convey information to his clients and partners when he ought to, so as to conceal any potential financial benefit, was dishonest. Accordingly, the Tribunal found allegation 1.9 proved beyond reasonable doubt, including that the First Respondent's conduct had been dishonest.

28. **Allegation 1.10 – The First Respondent acted dishonestly in relation to allegations 1.2, 1.4, 1.7, 1.8 and 1.9 above or any of them but proof of dishonesty was not required to establish those allegations or their particulars.**

28.1 The Applicant's submissions regarding dishonesty and the Tribunal's findings are detailed under the relevant allegations.

29. **Allegation 2.1 - Following a Disciplinary Meeting held on or about 14 July 2014 and the First Respondent's subsequent expulsion from the Firm, the Second Respondent failed adequately to report misconduct by the First Respondent to the SRA; and he therefore: breached Principle 7 of the Principles; failed to achieve Outcome 10.4 of the Code.**

Allegation 2.2. - Having been asked by the SRA for explanations of the First Respondent's departure from the Firm in letters dated 26 May 2016 and/or 16 August 2016, the Second Respondent failed to provide complete or adequate explanations for the same, and he therefore breached Principles 2 and/or 7 of the Principles.

<u>The Applicant's Case</u>

29.1 On 7 July 2014, the Second Respondent notified the SRA of a proposal to expel the First Respondent from the Firm due to "alleged fundamental breaches of the LLP agreement". Following the disciplinary meeting held on 14 July 2014, the Second Respondent caused a further email to be sent to the SRA on 23 July 2014 which stated (amongst other things):

> "The decision was made to expel Mr Jackson from the practice as of the 18th July 2014. This was following the meeting of the 14th July referred to previously. The reasons behind the expulsion were serious breaches of the LLP agreement.

> We have notified our insurers and asked that he be immediately removed from our policy. We have also notified all appropriate authorities. You should therefore be aware that under no circumstances is he entitled to practice under the umbrella of BPS Law LLP.
>
> If you need anything further, please do not hesitate to ask".

29.2 The FIO subsequently identified that the disciplinary meeting highlighted 41 client matters of concern and the notification letter sent to the First Respondent on 4 July 2014, sets out 17 separate failings. The letter stated that this meant the First Respondent had "not complied with the SRA Handbook 2011 and in particular the SRA Code of Conduct and/or professional rules, statutes, regulations, professional standards and other provisions governing the conduct of the business".

29.3 Mr Mulchrone submitted that the Second Respondent failed to report the First Respondent's serious misconduct to the SRA, adequately or at all, in spite of invitations to explain the First Respondent's departure from the Firm in letters dated 26 May 2016 and/or 16 August 2016. Whilst it was accepted that the Second Respondent had sent a letter to the SRA on 7 April 2015, which included letters sent to the First Respondent on 4 and 18 July 2014, he had not referred in his letters of 2016 to those letters, and he had failed to answer the questions posed in full. In so failing, the Second Respondent failed act with integrity contrary to Principle 2. He also failed to comply with his regulatory obligations and/or to deal with his regulator in an open, timely and co-operative manner. He therefore breached Principle 7. Further, he failed to achieve to achieve Outcome 10.4 of the Code ("you report to the SRA promptly, serious misconduct by any person or firm authorised by the SRA, or any employee, manager or owner of any such firm (taking into account, where necessary, your duty of confidentiality to your client")**.**

<u>The Second Respondent's Case</u>

29.4 The Second Respondent denied allegations 2.1 and 2.2. He explained that on 7 July 2014 an email was sent to the SRA in the following terms:

> "Dear Sirs
>
> I am the COLP of BPS Law LLP and this report is made to you in my capacity as COLP. On Friday the 4th July 2014 the Equity Partners of BPS Law LLP served upon [the First Respondent], an Associate Member of the LLP, with formal notice under our LLP agreement of a proposal to expel Mr Jackson from the Partnership due to alleged fundamental breaches of the LLP agreement.
>
> The meeting of the Partners to make the final decision is to be held on Monday 14th July. [The First Respondent] has been made fully aware of the grounds upon which his expulsion is sought.
>
> Issues arising out of the breaches of the LLP agreement are being handed internally. We will contact you again following the meeting of the 14th July to update you of the position.

If you have any further queries then please do not hesitate to contact me".

29.5 Following the meeting, a further email was sent to the SRA on 18 July 2014. That email stated:

> "Further to my email of the 7th July, I write to update you of the position with [the First Respondent]. The decision was made to expel Mr Jackson from the practice as of the 18th July 2014. This was following the meeting of the 14th July referred to previously. The reasons behind the expulsion were serious breaches of the LLP agreement.
>
> We have notified our insurers and asked that he be immediately removed from our policy. We have also notified all appropriate authorities. You should therefore be aware that under no circumstances is he entitled to practice under the umbrella of BPS Law LLP.
>
> If you need anything further, please do not hesitate to ask".

29.6 The Second Respondent explained that at no time did the Applicant seek any further information notwithstanding the offer to provide more information if required in both emails.

29.7 Both emails that were sent were written and sent following the advice of and with the assistance of AW, a solicitor who advised the Firm on matters of compliance. The Second Respondent explained that he had no reason not to reveal the First Respondent's misconduct to the SRA. He believed that the emails he had sent provided the SRA with all the information required; he relied on the advice of AW to that end.

29.8 The Second Respondent explained that the letter of 26 May 2016 had not been received. That letter was resent on 15 July and was replied to on 19 July 2016 (although the letter was wrongly dated 19 June 2016). Enclosed with the letter to the SRA was a letter dated 31 May 2016 to the Legal Ombudsman in relation to YE's complaint, and a letter in reply from the Ombudsman dated 21 June 2016. The letter from the SRA was headed "Complaint From YE".

29.9 A further letter was received from the Applicant dated 16 August 2016 and headed "Your firm's response to the complaint from Mr YE". The Second Respondent explained that when he answered the questions, it was in the context of the YE complaint and not in relation to the First Respondent generally. The Second Respondent explained whilst he had not recalled sending the letter to the SRA on 7 April 2015 until the commencement of the hearing, he "probably remembered" at the time of writing his response to the 16 August 2016 letter, that he had sent the 7 April 2015 letter which detailed the First Respondent's conduct. The Second Respondent explained that he had no reason to conceal the First Respondent's conduct.

29.10 As regards allegation 2.1, Mr Engelman submitted that the Second Respondent notified the Applicant of the First Respondent's expulsion from the Firm in his emails of July 2014. As regards allegation 2.2, Mr Engelman submitted that the Applicant relied upon the failure of the Second Respondent to answer the questions in the letters of May and August 2016. Those questions had been answered in full by virtue of the letter

sent by the Second Respondent on 7 April 2015. It could not be right that the Applicant complained that the questions had not been fully answered it was already in possession of the information sought, and had been in possession of that information for over a year.

The Tribunal's Findings

29.11 The Tribunal considered the emails sent by the Second Respondent in 2014, informing the Applicant of the forthcoming meeting and subsequent expulsion of the First Respondent from the Firm. The reason for the First Respondent's expulsion was given as "serious breaches of the LLP agreement". The Tribunal found that a breach of contract did not always equate to serious misconduct.

29.12 As regards the invitation for the SRA to contact the Second Respondent if it wanted further information, there was nothing in those emails that would cause the Applicant to believe that there were matters of serious professional conduct that ought to be investigated. Further, the invitation for the SRA to contact the Second Respondent was not capable of reversing the Second Respondent's obligation to report serious misconduct; his failure in that regard was not, and could not be negated by the SRA not asking for further information.

29.13 The Tribunal noted that the Second Respondent relied on the advice he was given by AW. The Tribunal found, as the Second Respondent accepted during cross-examination, that the duties of compliance were his. The Tribunal considered that whilst the Second Respondent could rely on the advice he received in mitigation of his failure to fully report the nature of the First Respondent's conduct, the advice received could not and did not negate his obligations in that regard.

29.14 The Tribunal considered that the emails were not sufficient to discharge the obligation to inform the Applicant of serious professional misconduct. The Tribunal found that in failing to adequately report the First Respondent's misconduct in his emails of July 2014, the Second Respondent failed to comply with his legal and regulatory obligations in breach of Principle 7. He also failed to report promptly to the SRA the serious misconduct of the First Respondent and thus failed to achieve Outcome 10.4. Accordingly, the Tribunal found allegation 2.1 proved beyond reasonable doubt.

29.15 The Second Respondent accepted, during cross-examination that he did not answer any of the questions posed in the letter of 26 May 2016. He also accepted that his answers to the questions asked in the 16 August 2016 letter did not go to the core of what he was being asked. The Second Respondent explained that his answers were written in the context of the YE complaint. The Tribunal noted that in the August 2016 letter the Second Respondent was specifically asked (amongst other things): "Confirm if there were any concerns about [the First Respondent's work] prior to his departure from your firm". The Second Respondent replied "As mentioned above [the First Respondent] was an experienced solicitor with considerable expertise in his field. We had not been made aware of any operational concerns contemporaneously with this case." In response to the question "Please explain the reasons for [the First Respondent's] departure from your firm" the Second Respondent replied "Towards the end of June/early July 2014 [the First Respondent] chose to absent himself from this office, just days after attending a partners meeting at my home when he fully contributed to

the future ideas of the firm. His absence came as a great shock, and caused us to urgently commence internal proceedings under his partnership agreement. [The First Respondent] attended a formal internal meeting and a decision was made to expel him from the practice, which he did not appeal."

29.16 The Tribunal did not consider that the answers provided by the Second Respondent were adequate. Even on his own case, he accepted that he had not fully answered the questions asked. The Tribunal found that in failing to provide adequate answers to the letters of 26 May and 16 August 2016, the Second Respondent had failed to comply with his legal and regulatory obligations and to deal with his regulator in an open timely and co-operative manner in breach of Principle 7. The Tribunal did not find that in failing to do so, the Second Respondent's conduct lacked integrity. The letter of 7 April 2015 to the Applicant had not been referred to by the Respondent in his letter to the Applicant of 6 September 2016, his Answer to the Rule 5 Statement, or his witness statement in these proceedings. It had been recalled following the disclosure by the Applicant of a Time Report extract dated 19 December 2016 that had been provided by the FIO. That report mentioned the letter of 7 April 2015. Whilst it was clear that the Second Respondent had not recalled sending the letter to the Applicant, it had, nevertheless been sent. That letter attached the correspondence sent to the First Respondent and detailed the conduct complained of in full, including references to breaching the Principles and Codes, and numerous failings under the Solicitors Accounts Rules. The Tribunal accepted that the Second Respondent, when he answered the letters of May and August 2016, did so from the perspective of the YE complaint. It was clear that the Second Respondent had already provided the Applicant with the details of the First Respondent's conduct, albeit not when required to do so. In the circumstances, the Tribunal did not find that the Second Respondent's conduct in that regard was lacking in integrity. Accordingly, the Tribunal found allegation 2.2 proved beyond reasonable doubt save that it did not find that the Second Respondent's conduct lacked integrity; the allegation of a breach of Principle 2 was dismissed.

30. **Allegation 2.3 - He failed adequately or at all to inform Clients AS, SS and YE (or any of them) of the Firm's various failings in the handling of their matters, or of potential claims available to them as a result, and he therefore: breached Principles 2, 4, 5 and 6 of the Principles or any of them; failed to achieve Outcome 1.16 of the Code.**

The Applicant's Case

AS

30.1 The trial bundle in this matter was submitted to the wrong court, with the result that the claim was stayed. AS was not informed of this or of the Firm's subsequent attempts to have the stay lifted. Nor was he informed of the failure of those attempts and the consequential failure (with costs) of his claim.

30.2 The Second Respondent accepted that this matter was not handled correctly, although he sought to blame this on the First Respondent. He relied upon a letter to the client dated 28 July 2015 in which he set out a history of the matter, accepted that the situation was "not ideal" and offered to issue fresh proceedings.

30.3 Mr Mulchrone submitted that the letter of 28 July 2015 was not sufficiently transparent about the Firm's failings in this matter or the possible remedy available to the client (claim in negligence against the Firm). The AS matter was an apparently straightforward case in which liability was admitted subject to proof of causation and quantum. The matter was unsuccessful (with adverse costs consequences) largely because the Firm failed to lodge a trial bundle at the correct court or to obtain relief from sanction thereafter (something which was more likely to be achieved with evidence from the client that he was not personally at fault). Whilst the failings may have been originally the First Respondent's and/or the Third Respondent's they were ultimately the Firm's responsibility and as COLP it was the Second Respondent's duty to be candid about this.

SS

30.4 The FIR described activity on the file up until a month or two before the First Respondent was expelled from the Firm. There was then no activity on the file until October 2014, by when the matter had been taken over by the Third Respondent.

30.5 An attendance note dated 8 October 2014 recorded discussions with the other side including about the forthcoming trial. On 10 October 2014, the Third Respondent wrote to the client and a witness to advise that the trial was listed for 14 October 2014.

30.6 On 13 October 2014 the trial was transferred from Rotherham to Barnsley County Court. The Firm asked Mr R of S9 Autos to inform the client and his witness. He responded by querying if those individuals were aware of the trial at all as he himself only learned of it on Friday 10 October 2014.

30.7 Internal emails within the Firm thereafter indicated that "There is no contact number for client or witness". In an email dated 13 October 2014 and timed at 16:38, the Third Respondent stated: "The client and his witness are aware. The letter that went out on Friday was next day special."

30.8 The client did not attend the trial and his claim was consequently struck out with costs. An attendance note made by the Third Respondent that day recorded discussions with counsel as follows:

> "Attendance note - 2 conversation [sic] with Counsel. 1 in the vening [sic] of 13.10.14 and other early am 14.10.14. Counsel made aware we have not been able to make contact with client and his witness to advise of change of venue. Counsel will ask for an adjournment if client doesn't turn up. However, there are issues with the documents client is seeking to rely upon. the Particulars of Claim do not contain a translation clause. client's witness statement is translated and witnessed by hire co and not a person certified. On that basis, the Defendant is going to seek that the case is struck out in any event. she also asked me for a copy of the medical report for previous RTA as it Is a disclosable doc. D now taking issue it hasn't been disclosed, although it's a bit late to raise this issue. I advised Counsel, I am also concerned that previous file handler didn't take out any ATE insurance, as there is none confirmed on notice of funding and no policy on file. Frther [sic], I wasn't happy about prospects in respect of liability in any event. counsel agreed with me on this point. engaged 30 mins".

30.9 A further attendance note stated:

> "Call from Counsel following trial. Client did not turn up. Counsel informed the Court Usher at Rotherham that we had been unable to speak with the client concerning change of venue to Barnsley, who said would redirect them if they made themselves known. Counsel asked for an adjournment but the Judge struck out the claim pursuant to CPR rule 39.3. Defendant awarded costs in the sum of £4831 .95. Counsel advised, had the client attended and trial gone ahead, Defendant raised issues that: 1, The Interpreter was not accredited and therefore would argue it was not a valid statement of truth; 2. The PoC was signed by the client but no statement of truth from an interpreter. Counsel also confirmed her view that the medical report in relation to an earlier accident undermined the client's case".

30.10 SS was notified of the outcome but not of counsel's/the Third Respondent's concerns as to the case generally. The letter stated: "As you didn't advise us of your change of address and we don't hold a telephone number for you, we were unable to reach you to inform you of the trial. This ultimately led to your case being struck out."

30.11 On 6 November 2014 the client complained as follows:

> "I am writing to you with great disappointment and am disgusted in the manner I have been treated and my claim dealt with.
>
> You are the cause of having my claim struck out and am holding you responsible.
>
> J[…] from S9 Autos contacted me yesterday, he advised me of my claim status and he also showed me a letter dated 21 October 2014 you emailed him. I am your client and you should be contacting me not S9 Autos.
>
> [The First Respondent] is aware of my new address and has a contact number for me so do not understand how you claim that I have breached my contract with you.
>
> J[…] has also informed me that you sent out a letter to me advising me of the trial three days before the trial. How is this acceptable? When did you become aware of the trial date?
>
> I want to make a formal complaint in the manner me and my claim has been dealt with and am holding you responsible for the other side costs and my losses including any money owed to [J… of S9 Autos] as he has advised me that he will be pursuing me…"

30.12 While there may have been an evidential dispute between SS and the Firm as to whether he had supplied an updated address and/or a telephone number, there were multiple telephone attendance notes on file. Either these were fabricated or the Firm did hold a telephone number for Client SS. In any event, it was clear that there were a number of failings in the Firm's handling of this matter which should have been but were not brought to the Client's attention, including: the failure to take out ATE insurance; the

failure to comply with the CPR/use an accredited interpreter for the witness statement and particulars of claim; failure to realise that the trial was listed until a week beforehand (had this been appreciated earlier there would have been more time to trace the client); and failure to notify the client of the listing at all until one working day beforehand.

YE

30.13 The Second Respondent denied wrongdoing by the Firm or alternatively blamed the First Respondent. His primary position appeared to be that this was a fraudulent claim and/or that it failed due to YE's failure to provide instructions/return key documents. However, the documentary evidence showed that YE returned his list of documents within the deadline. The Firm then failed to serve this, causing the claim to be struck out. Further, a witness statement dated and apparently prepared only one day before the deadline was not served until after that deadline expired.

30.14 The Second Respondent was under a duty as Senior Partner and as COLP to be candid and open with clients claiming to have received a poor service from the Firm. While the failings on these files might originally have been the First Respondent's and/or the Third Respondent's, ultimate responsibility for them lay with the Firm. Where there was clear evidence of negligence (for example, a failure to take out ATE insurance, or to lodge a trial bundle at the correct court), the Second Respondent had a duty to notify clients of potential claims available to them as a result.

30.15 The Second Respondent failed in his duties and, in so failing, failed to act with integrity in breach of Principle 2. He also failed to act in clients' best interests, contrary to Principle 4 and/or to provide a proper standard of service, contrary to Principle 5. The conduct alleged was capable of undermining public trust and confidence in the Second Respondent and the provision of legal services. He therefore breached Principle 6. Further his conduct constituted a failure to achieve Outcome 1.16 of the Code ("you inform current clients if you discover any act or omission which could give rise to a claim by them against you").

The Second Respondent's Case

30.16 The Second Respondent denied allegation 2.3.

AS

30.17 The Second Respondent relied on his letter of 28 July 2015. He considered that the letter was an accurate summary of the position. The letter was sufficiently transparent and was a fair and accurate reflection of the Firm's failures. He had considered at the time of sending that letter that the problem could be remedied by the issuing of new proceedings on AS's behalf. During cross-examination it was accepted by the Second Respondent that the letter was not as detailed as it could have been and that the letter was "not ideal". However, he had been open in the letter; it was clear that the Firm had "messed up".

SS

30.18 The Second Respondent considered that the letter to SS accurately reflected the reasons for his claim being struck out – namely, as SS had not advised the Firm of his change of address and the Firm did not hold a contact number for him, the Firm had been unable to reach him so as to inform him of the trial. He failed to attend and that ultimately led to his claim being struck out. The Second Respondent explained that he had not reviewed the file in full and relied on the information provided to him by the Third Respondent. He was unaware of any issues as regards the lack of an ATE policy. He had read counsel's note and was aware of the issues as regards certification, however that was not relevant to the reason for SS's claim being struck out. It was accepted that SS should have been informed of his trial date earlier than 10 October, given that notification of the date was received by the Firm on 24 September.

YE

30.19 The Second Respondent had no knowledge of this matter until he received correspondence from the SRA. He spoke to the Third Respondent who explained that the matter was being dealt with by the Legal Ombudsman. He was also informed by the Third Respondent that YE's claim was fraudulent. As to informing YE of any potential failings of the Firm, the Second Respondent considered that as the matter had been referred to both the Legal Ombudsman and the SRA, it was not appropriate for him to write to YE directly.

30.20 Mr Engelman submitted that whilst the Second Respondent maintained that the letter of 28 July 2015 to AS was an accurate summary of the position, he accepted with hindsight that the letter was not as full as it might have been and ought to have also dealt with the issue of costs. The costs that were being claimed against AS were settled by the Firm on 8 November 2016. The Second Respondent had not dealt with the SS matter. The letter to SS of 21 October 2014 was drafted by the Third Respondent and approved by the Second Respondent. The letter accurately reflected the reason for the claim being struck out, namely SS's failure to attend the trial. As regards YE, the Second Respondent had no knowledge of this matter until he was contacted by the SRA. The Second Respondent accepted his overriding duty of candour and did his best to comply with that. It was submitted that there was no evidence that the Second Respondent had failed to act with integrity.

The Tribunal's Findings

AS

30.21 The Tribunal examined the letter sent by the Second Respondent to AS. That letter stated:

> "….
> Court proceedings were issued on 13 February 2013 in order to seek recovery of the same. A Defence was filed and served which admitted liability but put you to strict proof as to causation and the extent of your losses.
> ….

> Returning to the progress made in your case, an Order was made on 20 September 2013 stating that you, the Claimant, was debarred from relying upon witness evidence unless the Court granted you relief.
>
> The trial of your claim was due to take place on 14 October 2013. However, an order dated 11 October 2013 removed the trial from the Court list due to the trial bundle not being lodged.
>
> An application was made on 28 November 2013 seeking permission to rely upon your witness evidence and that the claim be relisted for trial.
>
> The hearing of the application took place on 31 January 2014, which was dismissed.
>
> Therefore, your case was never determined by a Judge at trial. Whilst this is not ideal, it does not mean your claim is lost. Subject to your instructions, we are able to commence fresh proceedings.
>
> Therefore, before any further steps can be taken, please confirm whether or not you wish to instruct the firm to continue to pursue your losses incurred as a result of the collision dated 4 November 2011."

30.22 The Tribunal found that this was not a full and frank letter highlighting the Firm's failings, as it should have been. The letter did not explain to the client that his witness evidence had not been served in compliance with the Court's directions despite that evidence being provided in a timely manner by AS. Nor did the letter explain that the proceedings had in fact been stayed following the failures of the Firm as regards the service of documents – the case had not, the Tribunal determined, simply been "removed from the list" as stated in the letter. The letter did not tell the client that he had a potential claim in negligence against the Firm. The Tribunal found that it was not clear from the letter that the claim had been struck out as a result of the Firm's failings.

30.23 The Tribunal noted that during cross-examination, the Second Respondent accepted that the letter was not sufficiently transparent about the Firm's failings. He also accepted that it was his duty to ensure that AS was informed about acts or omissions that could give rise to a claim against the Firm. The Tribunal found that he had failed to do so. The Tribunal determined that the letter to AS was wholly inadequate and was crafted so as not to reveal the inadequacy of the service provided by the Firm to AS.

30.24 In failing to be candid with AS about the Firm's deficiencies in the handling of his case, the Second Respondent did not act in AS's best interests or provide him with a proper standard of service in breach of Principles 4 and 5. Such conduct failed to maintain the trust placed in him and in the provision of legal services in breach of Principle 6. In failing to inform AS of any act or omission that could give rise to a claim against the Firm, the Second Respondent failed to achieve Outcome 1.16

30.25 The Tribunal determined that members of the public and members of the profession would have expected the Second Respondent to be completely candid in his letter to AS; that was the course a solicitor acting with integrity would take. In failing to be

clear as the Firm's deficiencies, the Second Respondent failed to act with integrity in breach of Principle 2.

30.26 Having found the alleged breaches proved in their entirety as regards AS, the Tribunal did not need to consider the matters of SS and YE. The Tribunal noted that throughout his evidence, the Second Respondent variously stated that he had not reviewed all the documents in the file and that he had relied on the information provided to him by the Third Respondent. The Tribunal found this to be unsatisfactory. The expectation for a COLP, or any solicitor considering a complaint, was that all the documents in the file would be considered and reviewed in full. It was not best practice to simply rely on what had been stated by the solicitor with conduct of the case.

30.27 Given its findings as regards AS, the Tribunal found allegation 2.3 proved beyond reasonable doubt.

31. **Allegation 3.1 - The Third Respondent failed adequately or at all to: explain to Client AS why the trial of his claim did not proceed on 14 October 2013, in circumstances where he knew that the hearing had been vacated, and proceedings stayed, following the Firm's failure to lodge a trial bundle at the correct court; explain the procedural consequences of the stay, including that Client AS required relief from sanction; and he therefore: breached Principles 2, 4 and/or 5 of the Principles; failed to achieve Outcomes 1.1, 1.2 and 1.16 of the Code or any of them.**

<u>The Applicant's Case</u>

31.1 On 11 October 2013, an Order was made that that the claim be stayed and the hearing on 14 October 2013 be vacated as the claimant had failed to lodge a trial bundle with the Court. The Order stated that if no application had been made to restore the claim by 4.00pm on 29 November 2013 then the claim would be struck out and the claimant would be liable for the defendant's costs.

31.2 In a memo, dated 14 October 2013, from the First Respondent to the Third Respondent, the First Respondent asked that the Third Respondent take over conduct of the matter and set out details of some of the action which needed to be taken to progress the matter. In particular, the First Respondent stated that "we need to apply for relief from sanctions".

31.3 On 11 November 2013 the Third Respondent drafted a file note, in which he recorded that he had spoken to the First Respondent, who had stated that the trial bundle had been "accidentally hand delivered to Sheffield". In addition, the Third Respondent's note recorded that he could not determine if a response to a Part 18 request had been completed.

31.4 On 18 November 2013 the Third Respondent wrote a letter to defence solicitors explaining that the trial bundle had been delivered to the wrong court. He enclosed a Consent Order for their approval that AS be given permission to rely upon his witness statement. The letter stated: "The only remedy which the Claimant may now seek is for relief from sanctions."

31.5 In a letter of the same date, the Third Respondent wrote to AS to confirm he had taken over conduct of the matter and would apply for the matter to be relisted. He did not provide AS with any details of why the trial had not gone ahead on 14 October 2013 (i.e. the stay). Nor did he explain the procedural consequences, including the need to apply for relief from sanction. So far as relevant, the letter simply stated:

> "Please note I have taken over conduct of your claim from my colleague Mr [JL]…
>
> … Liability is admitted and Court proceedings have been issued. All that falls to be determined is the value of your claim…
>
> … A trial of the matter was due to take place on 14 October 2013, but was taken out of the list by the Court.
>
> I am now in the process of applying to the Court to re-list the trial, hopefully with the consent of the Defendant, and shall notify you once the application has been made".

31.6 It was averred that the Third Respondent's letter to AS was less than candid as to the true reason why the trial had not proceeded on 14 October 2013, namely, that it had been vacated and proceedings stayed as a result of the Firm's failure to lodge the trial bundle at the correct court. Further, that as a result of those failings by the Firm, the client now required relief from sanction under the CPR.

31.7 Mr Mulchrone submitted that on any view, AS should clearly have been made aware of the stay, the reasons for it, and that consequently there was an application for relief from sanction (not least because such application was more likely to be granted if the client was able to satisfy the court that he personally had not been at fault).

31.8 In failing adequately to inform his client of these matters, which were well known to him, the Third Respondent failed to act with integrity in breach of Principle 2. He also failed to act in the client's best interests and/or to provide a proper standard of service, in breach of Principles 4 and 5. Further, the conduct alleged constituted a failure to achieve all or any of the following mandatory outcomes of the Code:

- Outcome 1.1 ("you treat your clients fairly");
- Outcome 1.2 ("you provide services to your clients in a manner which protects their interests in their matter, subject to the proper administration of justice");
- Outcome 1.16 ("you inform current clients if you discover any act or omission which could give rise to a claim by them against you").

<u>The Third Respondent's Case</u>

31.9 The Third Respondent denied allegation 3.1. He explained that the matter was being dealt with by the First Respondent. On 14 October 2013, following the Court Order of 11 October 2013, the First Respondent asked the Third Respondent to deal with the case and to make an application for the stay to be lifted and to apply for relief from

sanctions. Following a review of the file, the Third Respondent informed the Defendant's solicitors that he had taken over conduct of the matter. He sought their consent to the application to lift the stay and for permission for AS to rely on his statement of 10 July 2013.

31.10 On 18 November 2013, he wrote to AS explaining that he now had conduct of the case, and advising that the trial had been removed from the list by the Court. He stated in both his oral and written evidence that he had expected the First Respondent to have informed AS of the contents of the Court Order of 11 October 2013.

31.11 At that time he worked under the direct supervision of the First Respondent. The First Respondent reviewed the letter of 18 November 2013 to the client and did not alert the Third Respondent to any issues with the letter. The Third Respondent stated that it was for the First Respondent, as the solicitor with conduct when the Court Order was made, to inform AS of that Order and the reasons for its imposition.

31.12 Mr Bradley submitted that the Third Respondent's evidence had been clear. There had been no evidence that rebutted what had been stated by him both in his oral and his written evidence. The Third Respondent had conceded that AS should have been kept informed, however as the solicitor with conduct of the case, that responsibility fell to the First Respondent. In the circumstances, there was no evidence that the Third Respondent had breached the Principles or failed to achieve the Outcomes as alleged.

The Tribunal's Findings

31.13 The Tribunal considered the letter sent by the Third Respondent to AS dated 18 November 2013. That letter stated (amongst other things):

> "I have taken over conduct of your claim … I have undertaken a full and detailed review of your claim …A trial of the matter was due to take place on 14 October 2013, but was taken out of the list by the Court."

31.14 The Tribunal considered that in order for the Third Respondent to have undertaken a "full and detailed review of the claim" as asserted, he would have reviewed the file. In any event, a solicitor who had taken over conduct of a matter would be expected to have reviewed the file. Had he done so, the Third Respondent would have known that AS had not been informed of the Court Order of 11 October 2013, or the reasons that his case was no longer listed. Whilst the Third Respondent had not been the solicitor with conduct of the case when the order was imposed, he had become so shortly after and had written to both the client and the other side to inform them that he had taken over conduct of the matter. It was incumbent upon him to ensure that AS was fully up-to-date with matters pertaining to his claim.

31.15 The Third Respondent's letter to AS did not explain that the matter had been "removed from the list" as a result of the Firm's failings or that the trial had, in fact, been vacated and proceedings stayed as a result of the Firm's deficiencies. Nor did it explain that as well as applying for the matter to be relisted, there was an application for relief from sanction as a result of further failings by the Firm. The Third Respondent conceded, and the Tribunal agreed, that the letter should have been more informative. The

Tribunal considered the letter sent by the Third Respondent to AS to have been inadequate.

31.16 As detailed above, the Tribunal considered that it was the Third Respondent's responsibility as the solicitor with conduct of the matter, to inform AS as to the true status of his matter. In failing to do so, the Third Respondent failed to act in AS's best interests and failed to provide him with a proper standard of service in breach of Principles 4 and 5. Further, he had failed to achieve the Outcomes as alleged.

31.17 The Tribunal accepted the Third Respondent's evidence as regards his belief that the First Respondent had already informed AS about the stay and the application for relief from sanction. It noted that the letter sent to AS by the Third Respondent had been checked by the First Respondent. The Tribunal accepted the Third Respondent's evidence that at the time, he genuinely believed that the First Respondent had informed AS of the errors made in relation to his claim. It also accepted that with hindsight and the experience he had gained, he now realised that the letter sent by him was inadequate, but that he was not aware of that at the time. He relied on the First Respondent to ensure that correspondence sent by him was appropriate. The Tribunal did not find that the Third Respondent's conduct was in breach of Principle 2. Whilst his conduct had been lacking, in the circumstances, it had not breached the ethical standards of the profession. Accordingly, the Tribunal found allegation 3.1 proved beyond reasonable doubt save that it did not find that the Third Respondent's conduct lacked integrity; the allegation of a breach of Principle 2 was thus dismissed.

32. **Allegation 3.2 – the Third Respondent failed to inform Client AS, adequately or at all, of the outcome of a hearing on 7 February 2014, including the failure, with costs, of applications for relief from sanction and/or to lift the stay; and he therefore: breached Principles 2, 4 and/or 5 of the Principles; failed to achieved Outcomes 1.1, 1.2 and 1.16 of the Code, or any of them.**

<u>The Applicant's Case</u>

32.1 An Order was made on 7 February 2014 dismissing the Firm's application for relief from sanctions and for the stay to be lifted. AS was ordered to pay the Defendant's costs, to be assessed in default of agreement. The FIO found nothing on the file to show that the client had been advised of the outcome of the hearing at this time. As the solicitor who had "taken over conduct" of the claim, and who retained conduct at the time of the hearing on 7 February 2014, it was the Third Respondent's responsibility to inform his client of the outcome of this hearing and the consequent failure, with costs, of the claim.

32.2 On 13 March 2014 defence solicitors served a Notice of Commencement of Assessment of Bill of Costs and a bill totalling £12,079.00. Points of dispute were required to be served by 4 April 2014. The FIO found nothing on file to show what action, if any, the Firm had taken in respect of dealing with the defendant's costs.

32.3 In interview with the FIO, the Third Respondent indicated that he had simply returned the file to the First Respondent following the failed application for relief from sanction, with the comment "Roger, it hasn't worked, here's the file back… Your case, you need

to deal with it". The file then apparently lay dormant until July 2015, when the client complained and demanded an update.

32.4 As noted above, the First Respondent left the Firm in or around July 2014. According to the Second Respondent, "all [the First Respondent's] files were transferred to" the Third Respondent. The Third Respondent accepted that "the firm asked me to take over [the First Respondent's] active files", yet nothing was done on this file until the client complained in July 2015, around a year after the Third Respondent had resumed conduct.

32.5 By failing to inform AS, adequately or at all, of the outcome of the hearing on 7 February 2014, including the failure, with costs, of the applications for relief from sanction and/or to lift the stay, the Third Respondent failed to act with integrity in breach of Principle 2. He also failed to act in the client's best interests and/or to provide a proper standard of service, in breach of Principles 4 and 5. Further, the conduct alleged constituted a failure to achieve all or any of Outcomes 1.1, 1.2 and 1.16 of the Code.

The Third Respondent's Case

32.6 The Third Respondent denied allegation 3.2. Following the failed application to allow AS to rely on his witness statement, the matter was not re-listed as without any witness evidence, the claim was bound to fail. At that point, the Third Respondent returned the file to the First Respondent for him to re-assume conduct of the matter and to report to the client and to the Partners. The Third Respondent explained that he had agreed with the First Respondent that where he took on a matter and was successful, he would retain conduct of that matter. If an application was unsuccessful, he would return conduct of the matter to the First Respondent. As this was such a case, conduct of the matter passed back to the First Respondent.

32.7 Any failure to inform AS adequately or at all of the outcome of the hearing on 7 February 2014 was that of the First Respondent. The only further action taken by the Third Respondent in relation to this file after the First Respondent had re-assumed conduct of it was to send the bill of costs to the costs draftsman in accordance with the First Respondent's instruction.

32.8 The Third Respondent explained that he was not aware that the First Respondent had failed to report the outcome to the Client or the Partners until a complaint was received from the client in an email dated 16 July 2015.

32.9 Mr Bradley submitted that it was clear from the Third Respondent's uncontroverted evidence that as a result of the failed application, and in line with the agreement he had with the First Respondent, the matter was given back to the First Respondent for him to resume conduct. It was thus for the First Respondent to inform AS as to the result of the applications. The lack of any further work on the file (other than sending the matter to the costs draftsman) was further evidence, it was submitted, of the Third Respondent's lack of involvement in the matter after the failed applications. Thus, as it was the First Respondent's responsibility to inform AS of the outcome of the hearing on 7 February 2014, the Third Respondent had not breached the Principles or failed to achieve the Outcomes as alleged.

The Tribunal's Findings

32.10 The Tribunal accepted the Third Respondent's evidence as to the arrangement between him and the First Respondent. It determined that once the hearing on 7 February 2014 was unsuccessful, the file was returned by the Third Respondent to the First Respondent who took over conduct of the matter. It was thus the First Respondent's obligation to report the outcome of that hearing to AS. Accordingly, the Tribunal found allegation 3.2 not proved, thus the allegation was dismissed.

33. **Allegation 3.3 – the Third Respondent failed to give adequate notice to Client SS that the trial of his claim would take place on 14 October 2014 and he therefore: breached Principles 4 and/or 5 of the Principles; failed to achieve Outcomes 1.1, 1.2 and 1.16 of the Code, or any of them.**

The Applicant's Case

33.1 As detailed above, all of the First Respondent's files "were transferred to" the Third Respondent after the First Respondent was expelled from the Firm. There was no activity on this file until October 2014. In interview with the FIO, the Third Respondent stated:

> "I was aware that there was a, um, trial coming, a trial window that, that had been, it had been moved from the trial window because just no trial had been set. So I was waiting for another order to come in."

33.2 In a letter dated 5 June 2018, the Third Respondent confirmed that on 24 September 2014 his assistant "placed an Order confirming new trial date on the file (14th October 2014 at Rotherham County Court)". The Third Respondent that stated he – the solicitor with conduct who was awaiting such an order – was unaware of this at the time.

33.3 The Third Respondent further stated that he learned of the trial date on 7 October 2014 (a Tuesday), when he received an email from the Defence solicitors chasing the trial bundle. He prepared the trial bundle and attempted settlement but he did not attempt to alert the client to the imminent trial.

33.4 An attendance note dated 8 October 2014 recorded discussions with the other side including about the imminent trial but the Third Respondent did not attempt to alert the client to the same.

33.5 No activity appeared to have occurred on Thursday 9 October 2014. In particular, the Third Respondent did not attempt to alert the client to the imminent trial. On Friday 10 October 2014, the Third Respondent wrote to the client and a witness to advise that the trial was listed for Tuesday 14 October 2014. This constituted only one working days' notice to the client that the trial was listed for that date.

33.6 In circumstances where the Third Respondent had known of the fixture since Tuesday 7 October 2014 at the very latest, it is averred that this was wholly inadequate. As noted above, on Monday 13 October 2014 the Firm received a telephone call confirming that the trial had been transferred from Rotherham to Barnsley County

Court. At 14.22, the Firm asked Mr R of S9 Autos to inform the client and his witness. He responded at 15.33 by querying if those individuals were aware of the trial at all, as he himself had only learned of it on Friday 10 October 2014. He subsequently queried "When were they initially advised of the hearing date?".

33.7 Internal emails within the Firm indicated that "There is no contact number for client or witness". However, as noted above, the file contains multiple telephone attendance notes recording calls to and from Client SS.

33.8 At 16:38, the Third Respondent stated: "The client and his witness are aware. The letter that went out on Friday was next day special."

33.9 The client did not attend trial and his claim was consequently struck out with costs. It subsequently transpired that the client had moved house and was unaware of the notice of hearing sent on Friday 10 October 2014. Had this been sent earlier, as it could and should have been, there would have been more time to trace the client.

33.10 By failing to give Client SS adequate notice of the trial date, the Third Respondent failed to act in his best interests and/or to provide a proper standard of service, in breach of Principles 4 and 5. Further, the conduct alleged constituted a failure to achieve all or any of Outcomes 1.1, 1.2 and 1.16 of the Code.

<u>The Third Respondent's Case</u>

33.11 This matter had not been listed in the original trial window. A new trial window or trial date was awaited. On 24 September 2014 the order with a new trial date was received by the Firm. It was placed on the file by HM, the Third Respondent's assistant. A number of tasks had been delegated to the assistants, one of which was to inform clients and witnesses of hearing dates once received. HM did not inform the Third Respondent that the trial listing had been received.

33.12 The Third Respondent only became aware of the listing on 7 October 2014 after receipt of an email from the other side in relation to the trial bundle. He prepared a trial bundle and attempted to negotiate a settlement. He instructed HM to send a letter to the client informing him of the trial date. The letter did not go out until 10 October 2014. Had he realised earlier that the client had not been informed, he would have sent the letter earlier. However, even if he had done so, it was unlikely to have made much difference as the client was no longer resident at the address that the Firm held for him.

33.13 On the 13 October 2014, Counsel instructed by the Third Respondent was informed that the trial venue had been changed. It was too late to send a letter to the client so the Third Respondent tried to locate a telephone number to inform him. Whilst there were a number of telephone attendance notes on the file, there was no number on the file for the client. The Third Respondent checked the physical file and the Firm's electronic case management system. As he had been unable to contact the client, the Third Respondent instructed Counsel to request as adjournment. That application was made and refused.

33.14 Mr Bradley submitted that there was no real factual dispute between the Applicant and the Third Respondent. The delay in the notification of the client was due to a systemic failing. Mr Bradley pointed to the issues with causation in this matter; even if a letter had been sent on 24 September 2014, it was unlikely to have been received by the client as the Firm did not have his new address. Matters were further complicated by the change in the trial venue the day before the trial was listed. The telephone attendance notes on the file were created by the First Respondent. Given allegation 1.2, it was not beyond the realms of possibility that those attendance notes were not genuine. It was the Third Respondent's evidence that no number could be located on either the physical or the electronic file.

The Tribunal's Findings

33.15 The Tribunal noted that there was no factual dispute between the parties. The Tribunal considered that SS should have been informed of the trial listing on 24 September 2014 when the notification was received by the Court. The Tribunal accepted that this task had been delegated to the Third Respondent's assistant, however, as the solicitor with conduct of the matter, it was the Third Respondent's responsibility to ensure that the client had been informed of the hearing date. The Tribunal believed that the Third Respondent was not aware of the listing when it was received by the Firm and that the first he became aware was when he received the email from the Defendant's solicitors chasing the trial bundle. Thereafter, the Third Respondent took all appropriate steps in the conduct of the matter including liaising with the Defendant's solicitors, preparing the trial bundle and instructing Counsel. The Tribunal considered that whilst the delay was regrettable, it did not amount to professional misconduct on the part of the Third Respondent. Accordingly, the Tribunal found allegation 3.3 not proved, thus the allegation was dismissed.

34. **Allegation 3.4 - On 21 October 2014 the Third Respondent told Client SS that his claim had been struck out because the Firm did not have up to date contact details for him, or words to that effect, which was disingenuous and/or misleading, and he therefore: breached Principles 2 and/or 5 of the Principles; failed to achieve Outcomes 1.1, 1.2 and 1.16 of the Code, or any of them.**

The Applicant's Case

34.1 In a letter dated 21 October 2014, the client was notified of the outcome but not of counsel's/the Third Respondent's concerns as to the case generally [366]. So far as relevant, the letter stated:

> "As you did not attend the trial on 14 October 2014, your claim was struck out and the Defendant was awarded their costs assessed in the sum of £4831.95 …
>
> … As you didn't advise us of your change of address and we don't hold a telephone number for you, we were unable to reach you to inform you of the trial. This ultimately led to your case being struck out".

34.2 As noted above, the file contained multiple telephone attendance notes recording calls to and from SS. In any event, it was disingenuous and/or misleading for the Third Respondent to effectively 'blame' the client for the failure of the claim in circumstances where:

- The Third Respondent had done little or nothing to progress the matter between assuming conduct in July 2014 and learning of the trial date on 7 October 2014;
- The Firm had been on notice of the trial date since 24 September 2014 but had not informed the client or the introducer;
- The Third Respondent had not given adequate notice of the trial date as set out above;
- As a result, there was no time to trace the client to advise him of the change of trial venue;
- The Third Respondent had not advised the client about his/counsel's concerns regarding the case generally.

34.3 It was clear that there were a number of failings in the Firm's handling of this matter which should have been but were not brought to the Client's attention at this time, including: the failure to take out ATE insurance; the failure to comply with the CPR/use an accredited interpreter for the witness statement and particulars of claim; the failure to realise that the trial was listed until only a week beforehand despite the notice of hearing being on the file since 24 September 2014; and failure to notify the client of the listing at all until one working day beforehand.

34.4 As noted above, on 6 November 2014 the client complained. A subsequent letter from the Third Respondent to the client, dated 14 November 2014 effectively maintained that Client SS was to blame for the failure of the claim (for failing to keep his contact details up to date). The letter went on to say that there was "a possibility that your case could be reinstated following an application, although this would have to be done at your own cost" and to give negative advice on the merits. Such advice, if indicated, should clearly have been given in advance of the trial. The Third Respondent had had ample opportunity to do so.

34.5 By telling SS that his claim had been struck out because the Firm did not have up to date contact details for him, or words to that effect, which was disingenuous and/or misleading, the Third Respondent failed to act with integrity contrary to Principle 2 and/or to provide a proper standard of service, contrary to Principle 5. Further, the conduct alleged constituted a failure to achieve all or any of Outcomes 1.1, 1.2 and 1.16 of the Code.

<u>The Third Respondent's Case</u>

34.6 The Third Respondent denied allegation 3.4.

34.7 He had discussed with Counsel the prospects of success, the lack of any ATE policy and the deficiencies in the documents. As SS did not attend the trial, those matters were not considered or determined. The case was struck out pursuant to CPR 39.3, which gave the Court the power to dismiss a claim where the Claimant failed to attend. The failure of SS to attend was the sole basis upon which the claim was dismissed. Accordingly, the letter to the client accurately reflected the reasons for the claim being struck out.

34.8 Mr Bradley submitted that it was the Third Respondent's genuine belief that claim had been struck out due to the client's failure to attend the trial; his oral and documentary evidence had been entirely consistent on that point. Given his genuine belief, it could not be said that in telling the client that his claim had been struck out as a result of his failure to attend, the Third Respondent had been either misleading or disingenuous. Further, there was no evidence that he had breached the Principles or failed to achieve the Outcomes as alleged.

The Tribunal's Findings

34.9 The Tribunal noted that the claim was struck out pursuant to CPR 39.3 as SS failed to attend the trial. It was the Applicant's case that in failing to inform SS of the deficiencies in his matter, the Third Respondent had committed professional misconduct. The Tribunal did not agree with that submission. Whilst it would have been better if the concerns about the case had been raised with SS prior to trial, it was clear from the Third Respondent's evidence that he only reviewed and considered the matter when he discovered the trial listing – the deficiencies in the case were not known to him before. It was also clear that the only reason the matter was struck out was on the basis of SS's failure to attend. The letter sent by SS to the client informing him of the outcome was accurate, indeed it was not the Applicant's case that the letter contained anything that was untruthful.

34.10 The Tribunal considered that it would have been preferable for the Third Respondent to fully inform SS about the outcome and any other issues, however his failure to do so in the circumstances was neither misleading nor disingenuous, nor was it professional misconduct. Accordingly the Tribunal found allegation 3.4 not proved and thus dismissed the allegation.

35. **Allegation 3.5 – the Third Respondent failed, adequately or at all, to: notify clients and/or the Firm of his connection M&S Vehicle Hire Ltd namely, that his wife was a director and shareholder in that company; inform the Firm of a referral arrangement between his clients and M&S Vehicle Hire Ltd; and he therefore: breached Principles 2 and/or 3 of the Principles; failed to achieve Outcomes 1.15, 6.1, 6.2 and 12.4 of the Code, or any of them.**

The Applicant's Case

35.1 Mr Mulchrone referred to the facts detailed at allegation 1.9 above. By failing to notify the Firm and/or clients of these matters the Third Respondent failed to act with integrity contrary to Principle 2. Acting with integrity would have required the Third Respondent to make full and frank disclosure of his connection to his clients and the Firm's partners. Failure to do so meant that the Third Respondent caused or allowed clients to retain and

incur liabilities towards a hire company in which his wife had a direct financial interest, a situation where there was a risk of an own interest conflict, which inevitably compromised his independence. The Third Respondent therefore also breached Principle 3. He also failed to achieve Outcomes 1.15, 6.1, 6.2 and 12.4 of the Code.

The Third Respondent's Case

35.2 In late 2013 the First Respondent informed the Third Respondent that his wife was setting up a vehicle credit hire company. He wanted the Third Respondent's wife to become involved. The Third Respondent agreed. The First Respondent assured him that he would take care of anything required from a compliance perspective. He also informed the Third Respondent that the other partners were fully aware of the position and had given their approval. The First Respondent explained that all prospective hirers would be advised that they had a choice to survey the market for other credit hire providers and that the First Respondent and Third Respondent were linked to the company by marriage to the Directors. If an existing client asked the Firm to source them a hire vehicle, M&S would be recommended and the client would be advised of the connection.

35.3 The Third Respondent stated that he was always open about his connection to M&S with any clients who had been placed in a hire vehicle by M&S. It was not until the First Respondent was expelled from the Firm that the Third Respondent had any doubt about the assurances given to him by the First Respondent. At that time he informed the partners.

35.4 Mr Bradley submitted that this allegation ought to be considered in the context of the working relationship between the First and Third Respondents. It was clear that the Third Respondent looked to the First Respondent for leadership and trusted him. The First Respondent had provided assurances as regards compliance; the Third Respondent relied upon that. The First Respondent was a partner in the Firm, and thus in terms of notification, the Third Respondent should be able to rely on the First Respondent's knowledge being the knowledge of the Firm.

The Tribunal's Findings

35.5 The Tribunal noted that there was no documentary evidence to support the Third Respondent's assertion that clients had been informed of his connection with M&S. The Tribunal considered that the Third Respondent was aware of his obligation to inform his clients of his connection to an organisation to which he referred them. The Third Respondent stated that he had "separated himself as much as possible" from M&S. However, this was not sufficient to comply with his obligations. The fact that his wife had not, on his evidence, made any money from the company was not relevant to his obligations to his clients. For the reasons detailed at allegation 1.9 above, the Tribunal found that the Third Respondent's conduct was in breach of Principles 2 and 3, and that he had failed to achieve the Outcomes as alleged.

35.6 The Tribunal did not find that the Third Respondent had failed to inform the Firm of his connection with M&S, or that he had failed to inform the Firm of a referral arrangement between his clients and M&S. The Tribunal considered that as the First Respondent was a partner in the Firm, the Third Respondent was entitled to rely on his

knowledge of the arrangement as being the knowledge of the Firm. Accordingly, the Tribunal found allegation 3.5.1 proved beyond reasonable doubt, save as in regards to the Firm. The Tribunal found allegation 3.5.2 not proved, and thus that element was dismissed.

Previous Disciplinary Matters

36. The First Respondent had appeared at the Tribunal on 2 previous occasions. On 30 October 2008 (Case No 9956-2008) the First Respondent was suspended from practice for 6 months and ordered to pay costs in the sum of £9,295.00. On 22 September 2016 (Case No 11506-2016) the First Respondent was ordered to pay a fine in the sum of £7,000 and costs in the sum of £7,000.

37. The Second and Third Respondents had no previous disciplinary record at the Tribunal.

Mitigation

38. <u>The Second Respondent</u>

38.1 The Second Respondent had an unblemished record of 44 years. The proven matters had taken place some time ago in the early days of the introduction of the compliance regime. He had not intentionally misled any clients. He had no reason not to inform the Applicant in full of the First Respondent's misconduct. He had co-operated in full with the Legal Ombudsman and with the Applicant's investigation. He had paid costs and compensation where appropriate on behalf of the clients. The appropriate sanction in this matter was at the lower end of the scale. In all the circumstances it was submitted that a Reprimand was the appropriate sanction.

39. <u>The Third Respondent</u>

39.1 The Tribunal had found a number of matters the Third Respondent faced not proved. A clear thread throughout the Third Respondent's evidence was his lack of experience at the time of his misconduct. There had been no further allegations or investigations against him since that time. He had been active in updating the Firm's systems to ensure that there would be no future systemic failings. He had co-operated with the Applicant throughout the investigation and the proceedings. The Tribunal had found one instance where the Third Respondent's conduct was deemed to be in breach of Principle 2. In all the circumstances, it was submitted that a Reprimand was the appropriate penalty.

Sanction

40. The Tribunal had regard to the Guidance Note on Sanctions (December 2018). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

41. The First Respondent

41.1 The First Respondent had failed to keep his clients properly informed and had fabricated attendance notes so as to disguise his deficiencies in the handling of cases. He had misled the Court, clients and the other side. His failings had caused clients claims to be struck out. The Tribunal considered that his misconduct had been motivated by personal gain and personal protection to the detriment of his clients. His misconduct was planned, and was in breach of his position as his clients' trusted advisor. He was in direct control and wholly responsible. He was an experienced solicitor who knew what was expected of him as a solicitor and a litigator in Personal Injury matters. The Tribunal found his culpability to be high.

41.2 The First Respondent's conduct had been a complete departure from the standards of integrity, probity and trustworthiness expected of him, and as such had caused harm to the reputation of the profession. The foreseeable harm arising from his conduct was significant. It was clear that in failing to lodge documents on behalf of his clients, he risked their claims being struck out.

41.3 The First Respondent's conduct was aggravated by his proven dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

> "34. There is harm to the public every time that 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"."

41.4 The First Respondent's conduct was also aggravated by its deliberate and calculated nature. It had been continuing over a period of time. He had sought to conceal his failings by fabricating telephone attendance notes. The First Respondent knew that his conduct was in material breach of his obligation to protect the public and the reputation of the profession. He had appeared at the Tribunal on two previous occasions on one of which he had been suspended from practice. The Tribunal did not find any mitigating features.

41.5 Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

41.6 The Tribunal did not find any circumstances (and indeed none were submitted) that were in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the dishonesty findings, the only appropriate and proportionate sanction in order to protect the public, and maintain

public confidence in the integrity of the profession and the provision of legal services, was to order that the First Respondent be struck off the Roll.

42. The Second Respondent

42.1 The Tribunal found that he Second Respondent was motivated by his desire to minimise the Firm's exposure regarding the mishandling of client files. His conduct in that regards was planned; the letters sent to clients were carefully crafted so as to minimise the Firm's deficiencies. He was in direct control of the responses, either drafting them himself, or approving those drafted by others. He was an experienced solicitor who understood his obligation, but failed to be candid. He had been culpable for his misconduct.

42.2 He had caused harm to the reputation of the profession and harm to the Firm's clients. The Tribunal considered that the Second Respondent had mitigated the harm to clients by ensuring that they suffered no financial loss as a result of the Firm's failings. Clients were paid compensation and costs awarded against the clients were settled by the Firm. He had co-operated with the investigation. The Tribunal determined that whilst he had not answered the Applicant's questions in full, he had no reason to withhold the reasons for the First Respondent's expulsion from the Firm. The Tribunal did not consider that a Reprimand was a sufficient sanction; the Second Respondent had been found to have lacked integrity. The Tribunal considered that neither the protection of the public nor the protection of the reputation of the legal profession justified a Suspension or striking the Second Respondent off the Roll. A financial penalty was the appropriate sanction in all the circumstances. The Tribunal had regard to its Indicative Fine Bands. It assessed the Second Respondent's conduct as being more serious and thus falling into Indicative Fine Band Level 3. The Tribunal found that the appropriate and proportionate fine was £10,000.

43. The Third Respondent

43.1 At the time of his misconduct, the Third Respondent was relatively inexperienced. He had relied on the First Respondent to ensure regulatory compliance, however, that reliance was not justification for his failings as regards his obligations to his clients. The Tribunal considered that the Third Respondent was the least culpable of the Respondents. He had caused harm to the reputation of the profession in acting in circumstances where his independence had been compromised and in so doing he stood to benefit financially. The Tribunal found that the potential for harm caused by the Third Respondent's conduct was greater than the harm caused by the Second Respondent's conduct. The Tribunal noted the concessions made by the Third Respondent during his oral evidence, however those concessions did not demonstrate significant insight. The Tribunal did not consider that a Reprimand was a sufficient sanction; the Third Respondent had been found to have lacked integrity. The Tribunal considered that neither the protection of the public nor the protection of the reputation of the legal profession justified interfering with the Third Respondent's ability to practice. A financial penalty was the appropriate sanction in all the circumstances. The Tribunal had regard to its Indicative Fine Bands. It assessed the Third Respondent's conduct as being more serious and falling at the bottom of its Indicative Fine Band Level 3. The Tribunal found that the appropriate and proportionate fine was £7,501. The Tribunal considered the means information provided by the Third Respondent. In

light of his financial circumstances, the Tribunal considered that it was appropriate to reduce the fine to £4,000.

Costs

44. Mr Mulchrone applied for costs in the sum of £67,803.05. Mr Engelman submitted the Tribunal should not make each respondent jointly liable for the whole of the costs, to reflect the culpability of the parties. He made no submissions as regards the quantum. He argued that the majority of the allegations related to the First Respondent, and that he ought to bear the majority of the costs. Further, the Tribunal had found an allegation of a Principle 2 breach not proved against the Second Respondent. Mr Bradley submitted that the quantum was not excessive. He agreed that any order for costs should be several with the First Respondent being required to pay the majority of the costs.

45. The Tribunal considered that the costs should be apportioned according to the Respondents' culpability. It considered the apportionment of 60% to the First Respondent, 30% to the Second Respondent and 10% to the Third Respondent reflected their culpability for their misconduct when considering the case as a whole. The Tribunal found the costs claimed were not excessive and thus ordered that the First Respondent pay costs in the sum of £40,681.84, the Second Respondent pay costs in the sum of £20,340.91 and that the Third Respondent pay costs in the sum of £6,780.30.

Statement of Full Order

46. The Tribunal Ordered that the Respondent, ROGER PAUL JACKSON, 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 £40,681.84.

47. The Tribunal Ordered that the *[SECOND RESPONDENT]*, solicitor, do pay a fine of £10,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £20,340.91.

48. The Tribunal Ordered that the Respondent, *[THIRD RESPONDENT]*, solicitor, do pay a fine of £4,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,780.30.

Dated this 13th day of August 2019
On behalf of the Tribunal

P. Lewis
Chairman