SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11935-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

STEPHEN ANTHONY HOGAN — Respondent

Before:

Ms A. Horne (in the chair)
Ms N. Lucking
Dr P. Iyer

Date of Hearing: 30–31 July 2019

Appearances

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

Andrew Blatt, solicitor of Murdochs Law, 45 High Street, Wanstead, London E11 2AA for the Respondent who did not attend.

JUDGMENT

Allegations

1. The allegations made against the Respondent by the Solicitors Regulation Authority ("SRA") were that:

1.1. Between May 2014 and 26 April 2018 he practised as a solicitor without authorisation in breach of Rule 1.1 of the SRA Practice Framework Rules 2011 ("SPFR") and/or any or all of Principles 2, 4, 6 and 7 of the SRA Principles ("the Principles");

1.2. Between May 2014 and 26 April 2018 he carried out reserved legal activities when he was not authorised to do so in breach of Rule 8.1 of the SPFR and/or any or all of Principles 2, 6 and 7 of the Principles;

1.3. Between 1 November 2017 and 26 April 2018, he practised as a solicitor without a practising certificate in breach of Rule 9.1 of the SPFR and/or any or all of Principles 2, 6 and 7 of the Principles.

2. Between 13 July 2015 and 12 November 2015 he misled the Court by stating in Court forms and/or at Court that he was a solicitor (either at Setfords and/or when trading as Divorce Assistant), when Setfords were not instructed and/or Divorce Assistant was not authorised in breach of any or all of Principles 1, 2, 4 and 6 of the Principles and a failure to achieve Outcome 5.1 of the SRA Code of Conduct 2011 ("the Code").

3. Between May 2014 and 26 April 2018 he misled clients by failing to inform them that:

3.1. he was not authorised to practise as a solicitor; and/or

3.2. they were not represented by Setfords.

He thereby breached any or all of Principles 2, 4 and 6 of the Principles and/or failed to achieve Outcome 1.1 of the Code.

4. Between May 2014 and 26 April 2018 he provided a poor standard of service to clients in that he:

4.1. failed to keep records of his dealings on client matters and/or a file of all correspondence and documents relating to each client matter; and/or

4.2. failed to respond to Client G's complaint about his handling of her matter.

He thereby breached any or all of Principles 4, 5, 6 and 10 of the Principles and failed to achieve any or all of Outcomes 1.2, 1.5, and 1.11 of the Code.

5. Whilst trading as Divorce Assistant, he failed to take out and maintain professional indemnity insurance in breach of Rule 1.3 of the SRA Indemnity Insurance Rules 2013 and in doing so breached Principle 7 of the Principles and failed to achieve Outcome 1.8 of the Code.

6. Whilst trading as Divorce Assistant, he failed to comply with the SRA Accounts Rules 2011 in that he:

6.1. held client money in a personal bank account;

6.2. did not establish and maintain proper accounting systems;

6.3. did not keep proper accounting records;

6.4. did not deliver annual accounts reports;

6.5. did not ensure that accounting records showed all dealings with client money and any office money relating to any client matter;

6.6. did not ensure that all dealings with client money were appropriately recorded in a client cash account and on the client side of a separate ledger for each client;

6.7. did not ensure that the current balance on each client matter was clearly shown or ascertainable from his records.

He thereby breached any or all of Rules 1.2 (a), (b), (e), (f) and (i), 13.1, 14.1, 29.1, 29.2, 29.4, 29.9 and 32A.1 of the SRA Accounts Rules 2011 ("SAR 2011") and any or all of Principles 7 and 10 of the Principles.

7. Allegations 1, 2 and 3 were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the allegations.

Documents

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

- Rule 5 Statement and Exhibit GLB1 dated 19 March 2019
- Respondent's Answer dated 13 May 2019
- Applicant's Reply to the Respondent's Answer dated 21 May 2019
- Applicant's Schedules of Costs dated 19 March, 23 July and 31 July 2019
- Respondent's Witness Statement and Exhibits dated 8 July 2019

Preliminary Matters

9. Amendments to the Rule 5 Statement

9.1 The Tribunal noted that there were a number of typographical and grammatical errors in the allegations in the Rule 5 Statement. The parties agreed the amendments. The amendments did not alter the substance of the allegations. In the circumstances, the Tribunal agreed to the amendments made. The amended allegations appear at paragraphs 1 – 6 above.

10. Reliance on the Statement of the Respondent

10.1 The Respondent did not attend the hearing. Mr Blatt applied for his statement to be admitted under Section 2 of the Civil Evidence Act 1995. Mr Thomas did not object, but he reminded the Tribunal that, as the Respondent had not attended and subjected himself to cross-examination, the Tribunal would need to consider what weight it would give to that evidence. The Tribunal granted the application.

Factual Background

11. The Respondent was admitted to the Roll in July 1997. He did not hold a current practising certificate, as he had not renewed his practising certificate after it expired on 31 October 2017. The Respondent was engaged as a consultant solicitor at Setfords Solicitors ("Setfords") from 24 June 2013 to 21 December 2015. From May 2014 to May 2018, the Respondent traded as Divorce Assistant from his home address. Divorce Assistant was neither authorised nor regulated by the SRA.

Setfords

12. Setfords engaged consultant solicitors who often have a client following. The fees generated are shared between the consultant solicitor and Setfords, with the consultant solicitor retaining most of the profit. The consultant solicitors are provided with support in business development and marketing, administration, secretarial, compliance, management, legal, technical and IT support.

Divorce Assistant

13. During May 2014 the Respondent set up a website in the name of Divorce Assistant and began trading. The website is no longer online, but it offered to help clients obtain an uncontested divorce for "only £180." The website stated:

> "Divorce Assistant will help you obtain your uncontested divorce efficiently and cheaply, without involving expensive solicitors or the need to attend Court.
>
> In most cases divorces are uncontested and an online solution can be a simple and cheap procedure.
>
> By using our online service the divorce assistant will guide you through the legal procedure for obtaining your divorce in England and Wales.
>
> With over 25 years' experience gained exclusively in processing divorces the divorce assistant will provide you with confidential, accurate and reliable support through your divorce by managing every step.
>
> For a single payment of £180.00 the divorce assistant will ensure that all Court documents are completed accurately, from issuing your petition – to obtaining your decree absolute. Giving you total peace of mind.
>
> The solution to your straightforward and cost effective divorce.

Divorce Assistant will:

- Allocate one person to deal with your divorce from start to finish
- Provide a free email support service
- Provide a questionnaire and guide you through the answers to enable the start of proceedings
- Double check the information provided
- Complete your divorce petition
- Submit your completed documents to court
- Review the response to your petition
- Prepare your statement of evidence
- Lodge your statement of evidence with the court
- File your application for a decree nisi
- Submit notification of pronouncement of decree nisi
- Advise on timeframe for submission of application for decree absolute
- Complete your application for a decree absolute
- Submit your application for a decree absolute.

By using divorce assistant to manage each stage of your divorce you can be sure that you obtain your decree absolute as quickly as possible."

14. The website also stated:

> "As a former Court clerk with many years experience [The Respondent] qualified as a solicitor in 1997. He has worked exclusively in the area of family law his entire professional career. This considerable level of experience, comprehensive knowledge and understanding of the rules and procedure has enabled him to represent and guide his client through the complexities of the justice system to achieve the most favourable outcome for them…
>
> …[the Respondent] is aware that instructing a solicitor is a very personal matter and particularly at the stressful time of a relationship breakup. [The Respondent] is committed to endeavouring to make it as simple as possible to buy the legal service to assist and tailor this to his client's budget.
>
> [The Respondent] is fully conversant with and able to advise on all aspects of family law and the issues arising from the breakdown of a relationship – whether the parties were married or not. [The Respondent] is also able to advise and assist in recording practical agreements when a couple live together and with settling the terms of pre/post nuptial agreements."

Report to the SRA by Setfords

15. On 21 December 2015 the SRA received a complaint from David Rogers, Managing Director and Compliance Officer for Legal Practice ("COLP") at Setfords, about the Respondent. Mr Rogers explained that he had received a telephone call from a lady who informed him that the Respondent had acted on behalf of her mother, Client A, in advising on and completing a Lasting Power of Attorney.

16. Mr Rogers checked Setfords' systems in order to locate the client details and could not see that Setfords had acted on behalf of Client A since no file had been opened and no money had been received on account. Mr Rogers explained in his witness statement:

> "Upon further investigation, I was able to establish that [the Respondent] had been sending correspondence to [Client A] using his Setfords email addresses…in which he stated that he was employed as a consultant lawyer with the Firm. The Respondent directed [Client A] to the Firm's website to confirm that he was employed by the Firm. He provided the telephone number for the Firm as well as his personal home number and mobile number but all correspondence was done via email."

17. Mr Rogers subsequently established that the Respondent had, from December 2014 to October 2015, been carrying out work for other individuals without authorisation from Setfords, and had been personally benefiting from money paid by these individuals. Mr Rogers explained that Setfords did not hold any files for the clients the Respondent had been corresponding with and did not receive any funds from them on account in order to act on their behalf.

18. Mr Rogers established that the Respondent had been sending correspondence to ten individuals using his Setfords' email address. He stated: "the Firm were not aware of [the Respondent] dealing with the above individuals and we did not have any record of them on our systems as clients of the Firm."

19. In his witness statement of 22 November 2017, Mr Rogers explained: "Further examination of [the Respondent's] emails revealed that he had been acting for clients using the Firm's email address and asking clients to send money to his personal bank account. None of the clients identified in the emails were clients of the Firm as no file had been opened for them and no money had been received by the Firm, despite several clients making reference in their emails that they had sent the relevant funds to his account."

Forensic Investigation

20. On 23 January 2018, and following receipt of numerous letters from the SRA requiring an explanation as to his conduct, the Respondent emailed a Forensic Investigation Officer ("FI Officer") at the SRA, explaining:

> "I confirm that I have carried on a business on a self-employed basis under the name Divorce Assistant since May 2014. This trading entity, which primarily involves providing advice and assistance in completing Court forms and procedure, and is not regulated/unregistered. In the vast majority of instructions, work was undertaken over the telephone or through exchange of emails….
>
> …I have only ever operated a single bank account in connection with the business with Santander Online Banking (account number [xxxx6758]/sort code 09.06.66). I do not have a general client account or client deposit

account. Similarly I do not hold any trust accounts; client's own accounts receivership accounts; office accounts or office loan accounts.

I am and never have been a trustee for any client matter.

I have no formal Books of Account; cash books, journals, ledgers or other books of account and bank reconciliations.

I can also confirm that I have no accountants report; no insurance documentation or any practice accounts. There is no equity structure/profit sharing arrangement in place with any third party. I do not maintain a 'firm's register of breaches' nor do I have any third party managed accounts." (Exhibit GLB page 58)

21. The Respondent attached to his email a copy of the bank statements for the period 6 February 2014 to 31 December 2017. He also attached a "List of clients (together with contact addresses) that [he had] provided assistance to between 2014 and the present date" ("The List").

22. The List set out 25 clients and made reference to how the client came to instruct the Respondent. It also provided the date of instruction, a sentence on what the matter was about, and the hourly rate or fixed fee.

23. Upon a review of cases in The List it was apparent that the Respondent had:

- used his Setfords' email address when corresponding with individuals (even though Setfords confirm they had no record of the clients on their systems);
- undertaken reserved legal activities including the conduct of litigation and/or the exercise of a right of audience and/or reserved instrument activities;
- requested that monies be paid into his bank account (as he did not operate a client account); and
- charged clients significantly more than the fee of £180 than was advertised on his Divorce Assistant website.

24. On 24 January 2018 the SRA began an investigation into the Respondent's conduct. On 29 June 2018 the SRA produced a Forensic Investigation Report ("FI Report"). It concluded that:

- Between May 2014 and January 2018 the Respondent carried out work for up to 25 clients, including reserved legal activities, when he was not authorised to do so;
- Between May 2014 and January 2018 the Respondent received at least £60,551.96 in fees – these monies were paid into the Respondent's personal bank account;
- In at least two instances the Respondent held client funds, which he did not have the authority to hold;

- The Respondent failed to keep a daily cash book and did not record any financial transactions on to client ledgers. There were subsequently no accountant's reports, journals, ledgers or bank reconciliations.

25. *Client A*

25.1 Client A is named on The List. It was Client A's complaint that caused Mr Rogers to investigate the Respondent's conduct. The List showed that Client A was a 'personal referral'. This accorded with an email from her daughter to Setfords explaining the Respondent was recommended to her by a friend, who is also referred to on The List.

25.2 On 29 May 2015 the Respondent sent an email from his Setfords' email account requesting that Client A transfer the sum of £470 to his account, which represented the monies to be paid to the Office of the Public Guardian (totalling £220) and the balance of his fees. He requested that this be forwarded to his 'Santander Business Bank' and gave details of his bank account. Client A's daughter, IR, explained in an email dated 15 December 2015 to the Compliance Manager at Setfords, that the Respondent had been instructed in relation to an LPA. The required LPA documentation was signed and returned to the Respondent by the end of June 2015. The Respondent was chased about registering the document from June to November 2015. When the Office of the Public Guardian was contacted, it was discovered that the initial request for the LPA was not filed until 24 October 2015.

25.3 In her complaint, IR stated: "This man is a fraud....and should never be allowed to practice law on any level. I feel we have been conned by this man and would appreciate any return of funds that can be achieved."

25.4 Whilst the Respondent had previously emailed from his Setfords address, he also emailed from a Divorce Assistant email address. In an email dated 30 October 2015 from s.hogan@divorce-assistant.co.uk the Respondent sent an email to IR, entitled 'Lasting Power of Attorney for your mother'. In this he stated:

> "Further to our latest discussion over the telephone on Wednesday morning, I have now since spoken with the Office of the Public Guardian concerning the registration of the two Lasting Powers of Attorney prepared for your mother. I have been informed that I can expect to hear from them further during the course of next week. I will keep matters under review and be in touch with you as soon as I receive notification. In the meantime, I attach for your records my receipted invoice as requested."

25.5 During the SRA investigation, the SRA was provided with an undated invoice to IR totalling £970 which stated:

> "If you wish to pay your Bill by bank transfer then please use the details below:
> Divorce Assistant
> Santander Business Banking
> Account No: xxxx4727. Sort Code: 16-20-30"

25.6 Mr Rogers stated that Setfords were not acting on behalf of Client A as no file had been opened for her and no money had been received from her. The Respondent had provided bank details under Divorce Assistant, however those details did not relate to his Divorce Assistant account.

26. *Client B*

26.1 It was unclear how Client B came to instruct the Respondent in his matter. Documents on Client B's matter were provided by Mr Rogers, who explained that Setfords had no record of his being a client, despite the Respondent emailing Client B from his Setfords email address.

26.2 The correspondence demonstrated that in or before April 2015, Client B instructed the Respondent in order to finalise his divorce, and in particular to tie up a consent order which dealt with the sale of a property by him and his estranged wife. The chronology is as follows:

- On 24 April 2015 Client B emailed the Respondent attaching a property contract, a divorce petition, an initial consent order, notice of proceedings, response to the initial consent order and various emails.

- Client B emailed the other side's solicitor requesting a copy of a signed consent order, and copies of all documents that had been sent since the beginning of the proceedings. He stated: "I am due to meet with my solicitor tomorrow ..."

- On 30 April 2015 the Respondent emailed Client B from his Setfords email address where his email signature provided '[Respondent], Consultant Family Solicitor, Setfords Solicitors'.

- On 3 May 2015 the Respondent emailed once again from his Setfords email address, stating: "I am pleased to read that the advice and assistance provided has resulted in the early release of the monies due to you from the sale proceeds ... We have of course spoken over the telephone on a couple of occasions, and I have also taken time to consider the papers in your case which has enabled me to advise on the course of action to be pursued. In total a couple of hours has been expended by me in dealing with matters. With this in mind I propose to raise a nominal account, if this is acceptable to you? Perhaps I can ask you to telephone me to discuss."

- On 7 May 2015 the Respondent emailed Client B stating: "As agreed I propose to limit the charges for the work undertaken to the sum of £250. The details for the purpose of a bank transfer are as follows:
  Santander Business Bank
  Account No: [xxxx6758]
  Sort code: 09-06-66".

- On 7 May 2015 Client B confirmed payment in the agreed amount of £250. The bank statement the Respondent provided to the SRA also showed that on 7 May 2015 a payment of £250 was made by Client B into the Respondent's Santander bank account.

27. *Client C*

27.1 Client C provided a witness statement to the SRA. She was not named on The List. Correspondence pertaining to this matter was provided by Mr Rogers.

27.2 Client C explained that in November 2015 she contacted Setfords Solicitors by telephone for advice about a financial remedy order and child arrangements in her divorce proceedings. Setfords put her in touch with the Respondent who "began acting for her":

27.3 On 17 November 2015 the Respondent emailed Client C an introductory email from his Setfords account, in which he stated:

> "Further to our initial discussion over the telephone yesterday afternoon in connection with your query concerning the terms of both a financial remedy order and a child arrangements order made in earlier Court proceedings. I would be only too pleased to assist in advising you further and dealing with matters on your behalf.
>
> I confirm that I am a consultant family lawyer with Setfords Solicitors with a number of years experience gained exclusively in the area of family law.
>
> Although the firm's office is based in Guildford, I work on a self-employed basis remotely from my home address in Worcestershire. The practice provides me with regulatory, secretarial and administrative support. Further information regarding the business and confirmation of my status with the practice can be accessed via the firm's website at the address www.setfords.co.uk. You will find me listed under 'Our People' and the specific sector of 'Family Law'.
>
> I explained that often instructions can very often be taken over the telephone or dealt with by exchange of email. This has the advantage of reducing the overall legal fees. Furthermore I can work at a time that is convenient or best suited to you. I am also willing to arrange a suitable payment plan with you which could involve agreeing a mutually acceptable instalment arrangement.
>
> To enable me to formally open a file, I would be grateful if you could in the first instance provide me with details of your full name; date of birth; address and current occupation along with like details for your former husband. It was agreed that you would also kindly forward on to me a copy of the two court orders along with the completed D81 (Statement of information for a Financial remedy order) to my home address is [Respondent's home address].
>
> I trust that the above information is of assistance to you. If you should have any other queries please do not hesitate to contact me with the details. I can be contacted by email at the address below or by telephone. The main number at Setfords is 01483 408780 and my extension is 2138. Alternatively you can reach me on my direct line number which is [Respondent's home number] or my mobile – [Respondent's mobile number]."

27.4 On 22 November 2015 Client C responded, explaining she had posted copies of the orders for the Respondent to take a look at, and she looked forward to "what you can advise in a way forward."

27.5 On 10 December 2015 the Respondent acknowledged receipt of the papers and explained he had reviewed them, and referred to a telephone conversation between them earlier that day. The Respondent requested further clarity on some other matters so that he could "formulate a suitable letter to be sent to your former husband's solicitor setting out your intention for the financial remedy order to be revisited."

27.6 Client C stated:

> "I waited and waited for [the Respondent] to prepare a draft letter to send to my former husband's solicitor but I never heard back from him.
>
> In January 2016 I rang Setfords Solicitors but they told me they had no record of ever acting for me. I was devastated to hear this.
>
> I never heard back from Mr Hogan again. I sent him original documents which I have never got back. I sent him my change of name certificate when I changed my name…I also sent him my divorce agreement. [The Respondent] still has those documents and has not returned them to me.
>
> ....
>
> I did not pay any fees to [the Respondent]. The only fees I paid were to Setfords Solicitors as I explain … above."

27.7 Client C also stated: "the signature and details about Setfords Law at the end of [the Respondent's] emails suggest that he was acting as a solicitor of Setfords Solicitors. I thought that was the capacity in which [the Respondent] was acting for me."

27.8 Mr Rogers confirmed that Setfords were not aware of the Respondent dealing with Client C and had no record on their system of Client C being a client of Setfords. Specifically referring to Client C and the Respondent's request that papers be sent to his home address, Mr Rogers stated: "I confirm that no lawyers at [Setfords] use their personal home address for receipt of papers."

28. *Client D*

28.1 In or around May 2015 Client D instructed the Respondent to assist with a child contact issue that had arisen between her and her ex-husband. Client D also wanted the Respondent's assistance on her son's change of surname. Client D appeared on The List, which recorded that the referral was made via a 'website enquiry' and that the Respondent charged at a rate of '£150 per hour'.

28.2 It was unclear whether the website enquiry was made through Divorce Assistant or Setfords, but correspondence appears to have been sent to Client D using the Respondent's Setfords' email address.

28.3 On 15 May 2015 the Respondent emailed Client D from his Setfords' email address confirming his advice, and stating that if she required further assistance, she should contact him using the details provided.

28.4 Bank statements provided by the Respondent to the SRA showed that £350 was paid into the Respondent's Santander bank account by Client D on 20 May 2015.

28.5 On 2 July 2015 the Respondent informed Client D that they needed to submit position statements to the Court, and that he would formulate a statement for her approval.

28.6 On 8 July 2015 Client D emailed the Court, stating:

> "I write in request that you formally add my solicitor [the Respondent] of Setfords solicitors, to the court information so that I can have him in attendance with me on the day of the final hearing listed for 15 July 2015@10am."

28.7 On 13 July 2015 the Respondent emailed Clarkson Hirst (her ex-partner's solicitors) to inform them he was instructed to represent the interests of Client D. On the same date the Respondent signed a Notice of Acting. In the signature box was the Respondent's signature and it was handwritten 'Setfords Solicitors'. In the box 'position or office held' the Respondent had written 'consultant family solicitor.'

28.8 On 14 July 2015 the Respondent emailed Client D stating:

> "I confirm that I now have all the documents which are referred to in the bundle that has been lodged with the Court.
>
> I take this opportunity of attaching for your attention and completeness a copy of the Case Summary and chronology that has been drafted. These documents are brief in content to say the least, and I am not sure that they will actually assist the Court in determining the issues.
>
> ...
>
> If you have any comments or observations on any of the attached papers, please feel free to contact me with details of the same. In the meantime aside from beginning my preparation for the hearing tomorrow I will also let you have shortly a breakdown of the costs incurred thus far and projection of costs for representation in Court."

28.9 An order dated 15 July 2015 provided that the final hearing went part heard with a revised date set for 1 October 2015. The Respondent was listed as appearing on behalf of Client D. His home landline and personal mobile number were listed.

28.10 On 16 July 2015 the Respondent emailed Client D and stated "I trust that the accommodation made in respect of my charges is acceptable to you. If you have any queries relating to the same, please do not hesitate to contact me further in the first instance."

28.11 Client D emailed the Respondent in reply stating: "We have forwarded the first payment into your account the sum of £500 the remaining balance will be paid at the beginning of next month I hope that this is okay."

28.12 Bank statements provided by the Respondent to the SRA showed a payment of £500 was made by Client D on 16 July 2015, with a further payment made of £1,000 on 18 July 2015. Both payments were made into the Respondent's Santander bank account.

28.13 On 19 July 2015 Client D emailed the Respondent stating "just wanted to confirm that the remainder of the funds have been transferred to your account." On 20 July 2015 Client D sent a letter to the Respondent, confirming she had "transferred the remaining outstanding balance into your account."

28.14 On 10 September 2015 Client D asked the Respondent 'how things had gone with the court'.

28.15 On 30 September 2015 the Respondent emailed Client D from his Setfords email with a draft position statement, which he stated he intended "to place before the court for consideration at the next hearing scheduled to take place tomorrow morning."

28.16 On 1 October 2015 the Respondent represented Client D in Court to attend a child arrangement and specific issue hearing. Two orders dated 1 October 2015 refer to Respondent's Counsel as being the Respondent, together with his personal mobile number and home landline number. In the Final order the document expressly states that the Respondent appeared before the court.

28.17 A costs schedule from 15 July 2015 to 1 October 2015 was on the file, with costs listed from 15 July 2015 to 1 October 2015. The rate was listed as being £175 per hour, with a total payable of £1,850.

28.18 On 2 October 2015 Counsel for the ex-husband emailed the Respondent to check and approve the orders.

28.19 Bank statements provided by the Respondent to the SRA show a payment of £1,850 was made by Client D on 10 October 2015 into the Respondent's Santander bank account.

28.20 Mr Rogers confirmed that "the Firm did not receive any payment from [Client D] into our account". He provided a copy of the Notice of Acting compiled by the Respondent, and explained that "the Firm do not hold any files for [Client D] and she is not a client of the Firm. The Respondent sent the email from his personal email account to the Firm's email account…It appeared to me that [the Respondent] had been using the Firm's email account as a front to make it appear to clients that he was progressing their matters through the Firm. In fact [the Respondent] appeared to be carrying out work without authorisation from the Firm and personally benefitting from the money paid by clients."

29. *Ms D/Client E*

29.1 Ms D provided a witness statement to the SRA. She explained that she contacted Setfords Solicitors by telephone during December 2014 on behalf of her then partner, Client E, following a separation from his wife. Client E appeared on The List, which detailed his referral as being via a 'website enquiry'. The Respondent emailed Ms D from his Setfords' email address.

29.2 The emails provided by Ms D showed that the Respondent received a settlement sum from Client E's wife, which he then paid into Client E's account. The Respondent's fee was deducted before the payment was made to Client E.

29.3 Ms D also stated: "At all times when I was dealing with [the Respondent] I thought he was a Setfords Solicitor and working for [Client E] in that capacity … The signature and details about Setfords Law at the end of the [Respondent's] emails suggest that he was acting as a solicitor of Setfords Solicitors. I thought that was the capacity in which [the Respondent] was acting for [Client E]."

29.4 In an email dated 9 March 2018 from the Respondent to the FI Officer, the Respondent stated:

> "24/04/15 £10,000
>
> Payment received on behalf of [Client E] in respect of his negotiated interest in property held with former partner. The sum of £9,085 was paid to [Client E] on 28/4/15 (as recorded in copy Bank Statements provided) less deduction for agreed fees in the sum of £915 – which was a verbal agreement."

29.5 The bank statements provided by the Respondent showed the transfer of £10,000 on 24 April 2015, with payment being made to Client E of £9,085 on 28 April 2015.

30. *Client F*

30.1 Client F appeared on The List as a "personal contact". He was also referred to by Mr Rogers. At a meeting with the FI Officer, the Respondent explained that he had known Client F for 5 or 6 years, and had represented him when at his previous firm. Client F continued to instruct the Respondent in relation to matters other than family law, as well as asking for assistance on family law matters.

30.2 Client F instructed the Respondent to act on a child arrangements issue pertaining to Client F's son, and responding to a threat of obtaining a specific issue order brought by the son's mother.

30.3 On 18 June 2015 Client F forwarded the Respondent a letter from the son's mother's solicitors. The letter requested that her son's passport be provided within 7 days so that their son could go on an overseas visit, failing which they would "apply to the Court for a specific issue order and to seek the cost of that application."

30.4 On 24 June 2015 the Respondent, writing from his Setfords' email address, sent Client F an email attaching what he stated was a draft reply to the son's mother's solicitor "following …several recent discussions over the telephone".

30.5 The following day the Respondent sent an email from his home email to what Mr Rogers asserts was the Respondent's Setfords email account. It enclosed a "Schedule of Costs" detailing charges totalling £500 incurred from 8 June 2015 to 25 June 2015. It was not clear if this schedule was used in court proceedings or more by way of an invoice setting out the Respondent's fees.

30.6 The Santander bank statements provided by the Respondent to the SRA show that Client F paid the following amounts into the Respondent's bank account:

- £817.50 on 21 August 2014;
- £500 on 29 June 2015;
- £75 on 23 October 2015;
- £275 on 21 January 2016;
- £285 on 8 November 2016;
- £500 on 15 December 2016;
- £1,100 on 9 March 2017;
- £250 on 14 June 2016;
- £525 on 30 August 2017.

Complaints

31 During the investigation, the Respondent notified the SRA that he had received two complaints whilst trading as Divorce Assistant:

31.1 *Client G*

31.1.1 The Respondent provided a letter of complaint from Client G dated 11 September 2017. Client G was the partner of Client H. In her complaint, Client G explained that:

- the Respondent had promised to take the sale of the house back to court, so the price could be reduced, and to address the problem with the estate agents in order to speed up the sale of a property;
- since the end of July 2017, the Respondent had not replied to calls, messages or emails;
- the problem had accrued for two years, and had an impact on slowing down the process to try to complete and draw a line under the financial settlement;
- the Respondent had "under estimated" MJ's ex-husband's game play that he would not sell the property;

- the situation had caused great upset and loss of confidence, financial problems and an inability to close what was a nasty divorce and move on with her life.

31.1.2 The Respondent disclosed a Schedule of Costs which included a fee of £1,170 for an attendance at Court on 12 May 2016. The Respondent's bank statements showed that Client G's father made the following payments to the Respondent:

- £910 on 12 January 2015;
- £300 on 12 February 2015;
- £750 on 5 May 2015;
- £3,255 on 12 November 2015;
- £245 on 26 November 2015;
- £2,649 on 5 April 2016;

31.1.3 Client G made a payment of £3,500 on 27 May 2016.

31.1.4 On 20 June 2018 the SRA wrote to Client G to determine (i) whether the Respondent had ever replied to her complaint letter, (ii) whether paperwork had ever been returned, (iii) whether the Respondent had represented her in court, and (iv) how much was paid to the Respondent in fees.

31.1.5 Client G responded to the SRA by email dated 23 June 2018, explaining that her partner had been to the Ombudsman, but was told that the Respondent did not exist on their records. In answer to the questions, she explained:

- The Respondent had not replied to the letter, or to emails and calls made before that. As he had not replied matters had not been resolved;

- There had been no contact with the Respondent since July 2017;

- No paperwork had been returned. Her new solicitor had to apply to Court for copy documents, causing delay and additional cost;

- "I instructed [the Respondent] to act for me in January 2015 to deal with my divorce by the end of April 2015 he had competed [sic] my divorce. As this was going along he started looking in to sort the finances out, he was being confident that these will be sorted out quickly and he has handled worse cases. From very early on he built up a trust with me, he became almost a friend so when in June 2015 I got together me and my partner John who was also going through a divorce I recommended [the Respondent] to deal with this";

- He had represented her in Court 5 times;

- He signed a hand written copy of a final settlement order as her Solicitor;

- Up until May 2016 she had paid the Respondent £8,609.00. Whilst promising to recoup those costs from her ex-husband, the Respondent failed to do so.

31.1.6 *Client G's Partner (Client H)* - On 28 February 2017, £25,421.96 was paid into the Respondent's bank account. On 9 March 2018 the Respondent explained:

> "Payment received on behalf of [Client H] in respect of negotiated matrimonial settlement. The sum of £18,000 was paid to [Client H] on the 7/3/17 (as recorded in copy Bank Statements provided) less deduction for agreed fees in the sum of £7,421.96."

31.1.7 *Client G's ex-husband* - On 30 December 2015 the SRA received a complaint from Client G's ex-husband about the Respondent. He stated "I suspect that Mr Hogan is not operating within the law to get results see enclosed statement to the Court." Although the Respondent was not acting for him, his complaint notification included an enclosure which was an Application form, dated 12 November 2015, which the Respondent had filed at court on behalf of Client G. The Court document was entitled 'Notice of Intention to Proceed with an Application for a Financial Order'. The solicitor's details were given as the Respondent at Divorce Assistant. His home address was provided as the address for service. In the signature box the Respondent gave his full name, that his firm was Divorce Assistant, and he had signed the document. In the box where it is stated 'position or office held' the Respondent has provided 'solicitor'.

31.2 *Client I*

31.2.1 The Respondent provided a letter dated 11 August 2016, which he had sent to the Legal Ombudsman following a complaint brought by Client I about the service he provided. The letter was on Divorce Assistant headed notepaper. He explained the nature of Client I's matter. At the time he was "engaged as a consultant family solicitor with Setfords Solicitors". He also "operated a separate business Stephen Hogan t/a Divorce Assistant – a form completion advisory service provider". He gave Client I "the option of instructing me as a solicitor with Setfords or in the alternative capacity". After considering the difference in the fees, Client I opted for the Respondent to assist him in obtaining an uncontested divorce and a financial clean break order, to reflect any agreement reached with his wife, with the completion of the relevant forms and advising on the procedure. The Respondent quoted a fixed fee of £500 for the divorce and £600 for dealing with the financial aspects of the marriage (exclusive of the Court fees).

31.2.2 As regards the work undertaken, the Respondent explained that, following receipt of the divorce papers, Client I's evidence in support of his petition was settled and lodged with the Court. The Respondent also drafted a Consent Order; statement of information for a consent order, along with the requisite application on behalf of his wife for an application for a financial remedy order, marked for 'dismissal purposes only' to comply with the rules of Court

and enable a formal clean break order to be made by the Court. Following the approval and signing of the documents by Client I's wife, the financial papers were lodged with the Court.

31.2.3 The Respondent accepted that there was a failure to respond to email communications and telephone calls and offered to pay Client I a settlement of £350. The Legal Ombudsman directed that payment be made by the Respondent to Client I in that amount.

31.2.4 The bank statements provided by the Respondent to the SRA demonstrated that Client I made the following payments to the Respondent:

- £300 on 7 November 2014;
- £660 on 26 January 2015;
- £900 on 23 March 2015.

32. *Meeting between the Respondent and the FI Officer*

32.1 On 26 April 2018 the Respondent was interviewed by the FI Officer. He explained:

- There was an overlap between Setfords and Divorce Assistant. When he had clients of his own he gave them the option of working through Setfords or through himself, and that most of his client base either came through people who he had worked for at his previous firm or who had passed his details on;

- The vast majority of clients were introduced through Divorce Assistant; he did not think he had received any leads from the website, and that every client was known to him or were friends of friends, or friends of previous clients;

- The whole premise of Divorce Assistant was to provide advice in terms of helping people to complete forms; so a lot of it could be done by exchange of emails. The Respondent could then insert the information into forms that went to Court;

- It was as simple as clients giving him the information needed to complete the forms;

- He did not have a client care letter. He gave clients an indication of likely fees, and estimates or an indication of a fixed fee for the whole process;

- As regards authorisation "It didn't really go through my head because it was very much, I thought I could simply just deal with matters less formally than a solicitor's advice simply just by providing advice and assistance rather than representing as a solicitor....so I didn't necessarily think that I would need to get regulated. When I, when I got involved with Setfords there was quite a lot of information sent through to me in terms of I suppose their role as the, as the firm who were dealing with all the regulatory issues...and obviously having worked in, in private practice previously, I'm aware that obviously there is certain niceties and formalities have to be observed...But I was trying to effectively place myself in the market whereby I could, probably a better way of putting it, undercut high street solicitor and, and the hourly rate that they would charge or...fees they

would charge. And I suppose I didn't go through all of the formalities of setting up formally with the Law Society or the SRA."

- He told people he was a solicitor as he had a practising certificate at the time because "it continues while I was in Setfords."

- He had put himself at Court as acting as a solicitor as he had "misunderstood the rules".

- He had, "with hindsight" probably not made it as clear as he could have done that there was a distinction between being a solicitor and acting as a solicitor: "It wasn't the intention to mislead...it wasn't necessarily something that was at the forefront of the instructions. Because I think clients were very much of the view that well, it was a fee and anything they could save on, a hire [sic] fee, that that was the most important thing to them. I suppose you'd be able to do the odd bit of rapport with people and I suppose they need to be able to know that you can do on, what you need to do as it were. But no, I didn't make it crystal clear that with hindsight I don't think that was the case that I wasn't acting in the capacity as solicitor."

- He did not recall ever saying that he either did, or did not, hold professional indemnity insurance.

- He accepted that he had conducted reserved legal activity and that Divorce Assistant went beyond its premise of form filling: "I think, I think that has to be the case and that has to be right, yes....I think that has to be the case and that has to be right, yes...I think on possibly, may be a half a dozen matters." The Respondent explained that in relation to Clients G and H that "it probably went beyond that";

- With Clients J and K he had carried out some work which was not "necessarily his area of expertise." The Respondent went on to refer to the work for Client F and explained that on occasions he had assisted on areas that weren't confined to family work;

- The Respondent considered he was getting correspondence from the other side's solicitors on the Client G and H cases, but he thought they were the only matters where he was engaging with third parties on a client's behalf.;

- He thought he or his opponent had rung the Law Society and been told that, as he had a Practising Certificate, he could go along to Court. The Respondent confirmed that he had represented Clients G and H in Court;

- When asked by the FI Officer "would representing clients at court, would that fall into a reserved activity?" the Respondent replied: "it was certainly beyond what the intention was with the Divorce Assistant, I accept that, yes."

- When asked by the FI Officer "with hindsight do you think the work, some of the work that's been undertaken, was reserved activity for which you should have applied for authorisation?" The Respondent answered "Yes";

- The Respondent explained he was at the time of the interview working on one matter which was a small claims matter, and that he had "just prepared a witness statement for him, helped him with his statement on that and, collated some paperwork for him." The Respondent stated he submitted the statement to Court;

- When asked by the FI Officer "did you question yourself the, did you consider whether you needed to be authorised at that point where it would crossover?" he replied: "I didn't, I, it wasn't at the forefront of my mind I accept and admit. I think it was a case that I just wanted to not let the client down because after so far and said it was a case of well I was still assisting. I though [sic] still assisting in the background in terms of just drafting papers and helping her out. But, it got into the court processing yes, at that point, when it took a different turn as it were, I accept that yes, that that's when I should have taken a step back as it were or made sure she had alternative representation."

- The Respondent informed the FI Officer that there were no "paper records as such."

- As regards whether he was concerned about holding client monies when not authorised to do so, the Respondent stated: "to be frank, I didn't necessarily see it as client monies in that sense, because I was giving it straight away to, to him. So, but I do appreciate that there is a difference between client monies and, and you know office account and client account."

Witnesses

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

    - David Rogers - Managing Director and COLP at Setfords

34. 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

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

Dishonesty

36. 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."

37. When considering dishonesty the Tribunal firstly established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

38. 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".

39. **Allegation 1.1 - Between May 2014 and 26 April 2018 he practised as a solicitor without authorisation in breach of Rule 1.1 of the SPFR and/or any or all of Principles 2, 4, 6 and 7 of the Principles.**

The Applicant's Case

39.1 Mr Thomas referred to the matters detailed in the factual background above. It was apparent that, whilst trading as Divorce Assistant, the Respondent:

- advised clients on their matters;
- received payment in respect of fees into his bank account;
- drafted legal documents on behalf of clients, some of which he lodged with the Court;
- liaised with solicitors on the other side of matters;
- attended court on behalf of clients;
- held money on account;

- made payments out of his bank account in order to progress client matters where needed.

39.2 Whilst some emails and letters were sent from Divorce Assistant, others were sent by the Respondent from his Setfords' email address. Mr Rogers maintained the individuals the Respondent was emailing from his Setfords' email, were not clients of Setfords as there was no matter set up in the individual's name, and no funds received on account. The Respondent had not sought to dispute this (save in relation to Client D), regardless of whether, or not, the clients considered themselves to be clients of Setfords by virtue of the emails they received.

39.3 Mr Thomas submitted that, in order to regulate the profession effectively, it was fundamental that solicitors adhered to their regulatory obligations, one of which is to ensure they are authorised. Compulsory authorisation ensured that clients and the general public remained confident that legal services provided by the regulated community would be delivered to the required standard and in a principled manner.

39.4 The Respondent failed to follow the correct process (or indeed any process) in order to become authorised by the SRA, so that he could trade and practise as Divorce Assistant. He instead began trading and practising without authorisation.

39.5 Rule 1.1 of the SPFR provided:

> "You may practise as a solicitor from an office in England and Wales in the following ways only:
>
> (a) as a sole practitioner of a recognised sole practice;
> (b) as a solicitor exempted under Rule 10.2 from the obligation for the solicitor's practice to be a recognised sole practice;
> (c) as a manager, employee, member or interest holder of an authorised body provided that all work you do is:
> (i) of a sort the body is authorised by the SRA to carry out; or
> (ii) done for the body itself, or falls within Rule 4.1 to 4.11, and where this sub-paragraph applies, references in Rule 4 to "employer" shall be construed as referring to that body, accordingly;
> (d) as a manager, employee, member or interest holder of an authorised non-SRA firm, provided that all work you do is:
> (i) reserved legal activity of a sort the firm is authorised by the firm's approved regulator to carry out or any other activity that is not precluded by the terms of your authorisation from the firm's approved regulator; or
> (ii) done for the firm itself, or falls within Rule 4.1 to 4.11, and where this sub-paragraph applies, references in Rule 4 to "employer" shall be construed as referring to that firm, accordingly;
> (e) as the employee of another person, business or organisation, provided that you undertake work only for your employer, or as permitted by Rule 4 (In-house practice)."

39.6 In practising in the way that he had, the Respondent was in clear breach of Rule 1.1 of the SPFR. Accordingly this was also in breach of Principle 7, as he failed to comply with his legal and regulatory obligations. Consequently, in failing to become

authorised, and practising regardless, there was a clear failure to act in his clients' best interests in breach of Principle 4

39.7 The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services. Firms and individuals must have appropriate systems and controls, so as to protect the public and safeguard the reputation of the legal profession. Public confidence in solicitors and the provision of legal services was likely to be undermined by solicitors who did not seek to become authorised. The Respondent therefore breached Principle 6.

39.8 A solicitor acting with integrity would not have practised as a solicitor without authorisation. The Respondent informed the FI Officer, in his meeting with her on 26 April 2018, that he thought he could simply deal with matters less formally than a solicitor would, simply by providing advice and assistance ,rather than representing as a solicitor, so he consequently "did not think he would need to get regulated". The Respondent went so far as informing the Court that he was a solicitor on more than one occasion, and therefore he must have known he needed to be authorised in order to do this. It is of concern that the Respondent was also aware of the SRA's investigations into his conduct on or before 3 May 2017 (when he first corresponded with the SRA) and yet he continued to trade as Divorce Assistant and practice as a solicitor whilst unauthorised.

The Respondent's Case

39.9 The Respondent admitted allegation 1.1

The Tribunal's Findings

39.10 The Tribunal found allegation 1.1 proved beyond reasonable doubt on the facts. The Tribunal considered the Respondent's admission to be properly made.

40. **Allegation 1.2 - Between May 2014 and 26 April 2018 he carried out reserved legal activities when he was not authorised to do so in breach of Rule 8.1 of the SPFR and/or any or all of Principles 2, 6 and 7 of the Principles.**

The Applicant's Case

40.1 Mr Thomas referred to the matters detailed in the factual background above. It was clear that the Respondent not only attended Court when he was not authorised to do so, but he also conducted litigation by progressing matters through the courts, liaising with solicitors on the other side, and dealing with ancillary matters.

40.2 In order to regulate the profession effectively it was fundamental that solicitors adhere to their regulatory obligations, one of which was to ensure they only carried out reserved work if authorised to do so. This ensured that clients and the general public remained confident that legal services provided by the regulated community would be delivered to the required standard and in a principled manner.

40.3 During the meeting with the FI Officer the Respondent acknowledged he was carrying out reserved legal activities. Under section 14 of the Legal Services Act 2007, it is an offence to carry out reserved legal activities without authorisation. It is also a breach of Rule 8.1 of the SPFR to undertake reserved legal work without having a practising certificate in force. Consequently the Respondent failed to comply with his legal and regulatory obligations in breach of Principle 7.

40.4 The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services, in breach of Principle 6.

40.5 A solicitor acting with integrity would not have carried out reserved legal activities when he was not authorised to do so. The Respondent's behaviour was repeated, systematic and involved numerous clients. Furthermore, he acknowledged in his interview with the FI Officer that attending Court went beyond the intentions of Divorce Assistant.

The Respondent's Case

40.6 The Respondent admitted allegation 1.2

The Tribunal's Findings

40.7 The Tribunal found allegation 1.2 proved beyond reasonable doubt on the facts. The Tribunal considered the Respondent's admission to be properly made.

41. **Allegation 1.3 - Between 1 November 2017 and 26 April 2018, he practised as a solicitor without a practising certificate in breach of Rule 9.1 of the SPFR and/or any or all of Principles 2, 6 and 7 of the Principles.**

The Applicant's Case

41.1 Mr Thomas referred to the matters detailed in the factual background above. The Respondent's Practising Certificate for the year 2016/2017 ended on 31 October 2017. He did not thereafter renew his Practising Certificate.

41.2 In an email to the SRA dated 23 January 2018 the Respondent stated he was still acting for five clients. During the meeting between the Respondent and the FI Officer on 26 April 2018, the Respondent admitted he was then still working on one matter, and had just drafted a witness statement on a client's behalf for his small claims matter.

41.3 The Respondent was an experienced solicitor with 20 years post qualification experience. He would have understood that solicitors can only practise if they have a certificate in force. Mr Thomas submitted that the Respondent did understand this because he previously practised with one, and during the meeting with the FI Officer asserted that he thought he was entitled to attend court as he had a Practising Certificate in place whilst also at Setfords.

41.4 The Respondent failed to renew his Practising Certificate in spite of the fact he was still acting for clients and, as set out above, such work went further than form filling. This was not only in breach of Rule 9.1 of the SRA Practice Framework Rules 2011 but also accordingly a failure to comply with his legal and regulatory obligations in breach of Principle 7. The conduct alleged also amounted to a breach of Principle 6; firms and individuals have appropriate systems and controls, so as to protect the public and safeguard the reputation of the legal profession. Public confidence in solicitors and the provision of legal services was likely to be undermined by solicitors who practised without the necessary requirements, including a requirement to hold a Practising Certificate.

41.5 A solicitor acting with integrity would not have practised as a solicitor without a Practising Certificate. The Respondent understood the importance of the Certificate: during the interview with the FI Officer, the Respondent stated that he considered he was permitted to go to Court as he had a Practising Certificate in place at that time. He was therefore well aware of the requirement to hold a Certificate, indeed he had been a solicitor for a long time and previously practised with a Certificate in force. In practising without a Practising Certificate in force, the Respondent breached Principle 2.

The Respondent's Case

41.6 The Respondent admitted allegation 1.3.

The Tribunal's Findings

41.7 The Tribunal found allegation 1.3 proved beyond reasonable doubt on the facts. The Tribunal considered the Respondent's admission to be properly made.

42. **Allegation 2 - Between 13 July 2015 and 12 November 2015 he misled the Court by stating in Court forms and/or at Court that he was a solicitor (either at Setfords and/or when trading as Divorce Assistant), when Setfords were not instructed and/or Divorce Assistant was not authorised in breach of any or all of Principles 1, 2, 4 and 6 of the Principles and a failure to achieve Outcome 5.1 of the Code.**

The Applicant's Case

42.1 Mr Thomas referred to the client matters detailed above, and in particular the matters of Clients D, E F, G and H.

42.2 The Respondent was not authorised to act as a solicitor whilst trading as Divorce Assistant, and consequently he was not allowed to state he was a solicitor on Court forms. Mr Rogers maintained that Client D was not a Setfords' client as there was no record of her on Setfords' systems and no money on account. Accordingly the Respondent was not permitted to state that he was acting as a solicitor at Setfords when he was not representing the client in that capacity.

42.3 The Respondent's express assertions that he was acting as a solicitor in Client D's matter and/or Client G's matter were simply not correct, and had the result of misleading the Court. This was a clear failure to uphold the proper administration of justice in breach of Principle 1, and was also a failure to achieve Outcome 5.1 (not to deceive or knowingly mislead the Court).

42.4 His conduct also breached Principle 6. Court documents, which were public records, would show that the Respondent was acting as a solicitor when this was not the case. In misleading the Court, the Respondent failed to maintain the trust the public placed in him and in the provision of legal services. He also failed to act in the best interest of his clients in breach of Principle 4.

42.5 A solicitor acting with integrity would not have misled the Court by representing in Court forms and/or at Court that he was acting as a solicitor. At the time the Respondent expressly asserted that he was acting as a solicitor at Setfords in Client D's matter, he had already received payment of funds into his own account and considered her a Divorce Assistant client (indeed Client D is on The List). The Respondent therefore deliberately misled the Court in making the statement that he was a solicitor at Setfords. He also deliberately misled the Court on Client G's matter when stating he was acting as a solicitor at Divorce Assistant when he was not so authorised.

The Respondent's Case

42.6 The Respondent admitted allegation 2, save that he did not accept that Client D was a client of Divorce Assistant.

The Tribunal's Findings

42.7 The Tribunal found allegation 2 proved beyond reasonable doubt on the facts. The Tribunal considered the Respondent's admission to be properly made. The Tribunal found that Client D was a Divorce Assistant Client. Its reasons are detailed below in its findings as to dishonesty.

43. **Allegation 3 - Between May 2014 and 26 April 2018 he misled clients by failing to inform them that: (3.1) he was not authorised to practise as a solicitor; and/or (3.2) they were not represented by Setfords. He thereby breached any or all of Principles 2, 4 and 6 of the Principles and/or failed to achieve Outcome 1.1 of the Code.**

The Applicant's Case

43.1 There was no evidence that the Respondent informed clients that he was not authorised to practise as a solicitor. It was clear from the clients' complaints and/or witness statements that they believed that the Respondent was acting in the capacity of a solicitor, often as a solicitor at Setfords. At the meeting between the FI Officer and the Respondent, the Respondent stated that he did not make it crystal clear that he was not acting in the capacity as a solicitor. Witness statements from Client C and Ms D both stated that they believed the Respondent was acting as a solicitor practising from Setfords.

43.2 Had the Respondent's clients been informed he was not authorised to act as a solicitor and/or that Divorce Assistant was not a firm authorised by the SRA, they might have chosen to appoint a different solicitor to act in relation to their matter. Many of the clients were going through what would have been stressful periods in their lives, dealing with relationship breakdowns and childcare issues, and they needed to be able to rely on the Respondent as their solicitor and put their trust in the fact he had the necessary authorisations. Any client receiving emails from the Respondent at his Setfords' email address would believe the Respondent was acting for them as a solicitor at Setfords, unless expressly informed otherwise.

43.3 In trading as a different entity, and taking client funds for personal gain, and in asserting that he was acting as a solicitor but failing to inform his clients that he was either not authorised by Setfords to act in their matter, or that Divorce Assistant was not authorised by the SRA, the Respondent was in flagrant breach of Principle 4; he failed to act in his clients' best interests. He also failed to treat his clients fairly in breach of Outcome 1.1 of the Code.

43.4 The Respondent had sent emails from his Setfords email address with no express assertion that he was acting as a solicitor in a different capacity, and had failed to inform his clients he was unauthorised and yet acted as their solicitor on their matters, often conducting litigation and sometimes attending Court. Such conduct, it was submitted breached Principle 6; public confidence in him and in the provision of legal services was undermined by such conduct.

43.5 A solicitor acting with integrity would not have:

- misled clients by failing to inform them that he was authorised to practise. The Respondent has provided that it was not his intention to mislead, but he did not make it clear that he was not authorised to act for them as a solicitor. Clients should have been expressly informed about the true position so that they could assess whether they wanted the Respondent to proceed to work on their matter.

- misled clients by failing to inform them that they were not represented by Setfords. The Respondent wrote many emails from his Setfords email account, he therefore must have known that clients would believe that they were being represented by Setfords in the absence of his expressly advising them otherwise.

43.6 In so doing, the Respondent had failed to act with integrity in breach of Principle 2.

The Respondent's Case

43.7 The Respondent admitted allegation 3, save that he did not accept that Client D was a client of Divorce Assistant.

The Tribunal's Findings

43.8 The Tribunal found allegation 3 proved beyond reasonable doubt on the facts. The Tribunal considered the Respondent's admission to be properly made. The Tribunal found that Client D was a Divorce Assistant client. Its reasons are detailed below in its findings as to dishonesty.

44. **Dishonesty as regards allegations 1, 2 and 3**

The Applicant's Case

44.1 Mr Thomas agreed that the appropriate test for dishonesty was that set out in Ivey above. He submitted that as an experienced solicitor of some 20 years standing, it was implausible that the Respondent did not know or believe that he needed to be authorised or that he needed a Practising Certificate. The Tribunal could be sure that the Respondent's conduct was dishonest for the following reasons:

- He must have known that he needed to be authorised if he was to practise as a solicitor, for he explained in his meeting with the FI Officer on 26 April 2017 that he "could simply just deal with matters less formally than a solicitor's advice simply just by providing advice and assistance rather than representing as a solicitor....so I didn't necessarily think that I would need to get regulated." Accordingly, at the time he represented to the Court that he was a solicitor either on Client D's matter and/or Client G's matter, he knew he should have been authorised in order to do so, yet failed to seek authorisation. In addition, by 3 May 2017 he knew his conduct was being investigated and that there was a concern was that he was practising unauthorised. Despite this he continued to act for clients and practice as a solicitor.

- He must have known that he needed to be authorised to carry out reserved legal activities, and yet he carried out such activities without authorisation. Indeed the Respondent was asked in his meeting with the FI Officer dated 26 April 2017 whether he considered representing clients in court fell into reserved legal activities to which the Respondent replied, it "certainly went beyond the intentions of Divorce Assistant". Therefore the Respondent clearly understood there were limits to what he could and could not do whilst trading as Divorce Assistant. He must therefore have known that he needed authorisation for some of the activities he undertook.

- He knew that he was misleading the Court by telling them that he was acting as a solicitor at Setfords in Client D's matter. The Respondent had already received payment from Client D for his services, which were paid into the Respondent's Santander bank account upon his request. Whilst Client D may have thought she was a Setfords' client, in view of the payment taken it is clear it was not the Respondent's belief that she was a client of Setfords.

- As to the Respondent's assertion that he believed Client D to be a Setfords client, Mr Thomas referred to the numerous and significant payments made to the Respondent's account in relation to her matter. Client D was named by the Respondent as a Divorce Assistant client on The List he provided to the SRA. Mr Thomas referred the Tribunal to the Respondent's Answer where he stated: "On the one occasion that the respondent represented a client (Client D) at court and described himself as Setfords this simply was an error". However, in his statement, the Respondent stated: "My first email to the client was from my Setfords email. I told the Court I was acting as Setfords. Setfords would have received direct all paperwork from the Court following the Notice of Acting filed on behalf of this client and they could have challenged me at any time as to why a

file had not been opened. Accordingly, I did not misrepresent the position to the court. The SRA say I knew I was misleading the Court. I did not know or believe that I misled the Court. It is also the case that this is the explanation that I gave to … the SRA in my email sent on the 4" September 2018 (explanation of conduct) in which state 'I confirm I acted for [Client D] whilst at Setfords. I do not accept that this was without authority of the firm. She was a client of mine that came from a personal referral I believe'. The SRA also state that I must have believed Client D to be a Divorce Assistant client as payment was paid to the Divorce Assistant account. I do not know why this was. I think that I simply made a mistake in this regard. The likelihood is that I failed to open a Setfords file (symptomatic of my failure to manage paperwork) as was also the case with Client C where no file was opened". Mr Thomas submitted that these explanations were contradictory; either stating that he was acting for Client D at Setfords was a mistake, or believing her to be a Divorce Assistant client was a mistake; it could not be both.

- He must have known that he was misleading the Court by telling them that he was a solicitor at Divorce Assistant, as Divorce Assistant was unauthorised. In his meeting with the FI Officer on 26 April 2017 he stated he "could simply just deal with matters less formally than a solicitor's advice simply by providing advice and assistance rather than representing as a solicitor…" so he did not think that he "would need to get regulated". Therefore when he asserted in Client G's matter that he was a solicitor at Divorce Assistant he knew he was representing the client as a solicitor and that he needed to be authorised.

- He must have known or at least suspected that he was misleading clients by failing to inform them that he was not authorised to practise as a solicitor; as above, once he asserted in Client D and/or Client G's matter that he was representing as a solicitor he knew he needed to be authorised. Therefore he knew he should have informed clients if he was not authorised to act.

- He knew he was misleading clients by sending emails from his Setfords' email address, and yet failing to inform them that they were not represented by Setfords. It is unconscionable to suggest that any client receiving emails from Setfords would have believed they were coming from anywhere but Setfords. There is no evidence the Respondent outlined to these clients that he was trading as another entity and that Setfords were not representing them.

- He knew he needed a Practising Certificate to practise as a solicitor, for he had previously held Practising Certificates, and yet he carried on practising without a Certificate.

44.2 Mr Thomas submitted that on any objective basis, ordinary decent people would consider any or all of the behaviour outlined above to be dishonest.

The Respondent's Case

44.3 The Respondent denied dishonesty. Mr Blatt submitted that there was little factual dispute between the Respondent and the Applicant, the only issue related to whether

Client D was a client of Setfords or Divorce Assistant. The only other issue between the parties was that of dishonesty.

44.4 At the core of the Applicant's case on dishonesty was that the Respondent used his Setfords email address so as to mislead clients into believing that Setfords was acting for them. Mr Blatt submitted that it was clear that the Respondent operated in a mess, which led to his making mistakes. This could be seen, for example, on the Client A matter where he used the Setfords pro forma for bills issued by him as Divorce Assistant, but failed to change the bank account details to those of Divorce Assistant and instead left the Setfords client account details on the bill as the account into which payment should be made.

44.5 It was noted that the SRA had not alleged that the Respondent had misappropriated monies or overcharged the clients. It was submitted that his work as a solicitor was conducted competently, the real issue was his inability to cope with the running of Divorce Assistant. The Respondent had admitted the underlying allegations and facts (save as regards Client D); he accepted that he had overstepped the mark by going further than he should have done without getting authorised, however he had not done so dishonestly.

44.6 In order for the Tribunal to find dishonesty proved, it would need to find that the submissions as regards dishonesty, as particularised in the Rule 5 Statement, were correct as regards the Respondent's knowledge and belief. It would then need to find that ordinary honest people would find such conduct to be dishonest. Mr Blatt submitted that ordinary and honest people would want a cheaper service that was properly provided; they would not be concerned if that service were to be provided by Divorce Assistant or by Setfords.

44.7 As regards the Applicant's submissions:

- It was the Applicant's case that the Respondent must have known that he needed to be authorised if he was to practise as a solicitor. It was the Respondent's case that many solicitors would fail to distinguish between being authorised, practising as a solicitor and being on the Roll. Many would not understand that when providing advice to a friend, they would need to be authorised and any advice provided would come under the banner of the firm in which they were employed. Many would provide advice without considering that such advice and assistance would need to be authorised.

- He believed that the work he did for Client D was under his auspices as a consultant as Setfords. There was no other reason for his putting himself on the Court record as a solicitor with Setfords. It was accepted that there was no client care letter from Setfords on this matter, but this was a result of the Respondent's muddled and messy way of working. The payment bill sent to the client and the payments into his account were also an error, symptomatic of his disorganisation.

- As regards Client G, he accepted that he had overstepped the mark, however he had not deliberately set out to mislead the Court. He did not consider whether the work he was conducting as Divorce Assistant required him to be authorised. He accepted that his failings lacked integrity, however they were not dishonest.

44.8 In relation to the Applicant's submission that the Respondent must have known that he needed to be authorised to carry our reserved legal activity, Mr Blatt submitted that the Client G matter started as a matter that was consistent with the type of work that the Respondent envisaged Divorce Assistant undertaking. As Client G stated, the Respondent considered that the matter would be concluded quickly. The Respondent had not anticipated that the matter would become more complex, such that his conduct of the matter would require him to be authorised. As regards Client D, as detailed above, the Respondent believed that he acted for her under his Setfords consultancy, thus he was able to undertake all the work he did on her behalf.

44.9 Given that the Respondent believed he was acting for Client D as a Setfords consultant, he did not knowingly or deliberately mislead the Court. The payments made to him were made to him in error. Mr Blatt submitted that if the Tribunal accepted the Respondent's evidence as regards Client D, it could not find that his conduct in her matter was dishonest. Mr Thomas had referred to an inconsistency between the Respondent's Answer and his statement in the proceedings. Mr Blatt submitted that the Respondent's muddled thinking had led to his getting the position wrong in his Answer. The correct position was that set out in his statement.

44.10 As regards the submission that the Respondent must have known that he was misleading the Court, it was the Respondent's case that he did not realise or believe that he needed to be authorised. The Tribunal was referred to the Respondent's statement:

> ""Divorce Assistant" was a concept that assumed
>
> a. That basic divorce was mostly a form filling exercise that could be undertaken much more cheaply than having to go to a solicitor;
> b. That most people would be happy to be "assisted" rather than represented if this cut down the costs;
> c. That if matters became contentious then this aspect could be done through a traditional solicitors practice;
> d. It was never meant to be in any way what I perceived as a traditional legal practice. I was not operating it as a legal practice, or so I thought.
>
> I did not address the technical issues. I simply did not consider what the status of my role would be in "Divorce Assistant". Because I simply did not appreciate or comprehend that rules and regulations would have to be considered I never considered the position or sought to address the position. I was a solicitor and never appreciated the technical rules of being in anything but a traditional firm.
>
> Indeed, probably like an awful lot of solicitors I was never cognizant of the technical authorization rules. I knew the Code generally and the Principles generally but that is as far as the regulations affected me. I knew about confidentiality, conflict of interest, undertakings and the usual day to day matters that impinged upon me as a solicitor."

44.11 The Respondent accepted that he should have instructed counsel or another to attend Court and undertake the advocacy. However, what had commenced as a

straightforward matter had become more complex. At the time he did not recognise the need for him to instruct someone to attend Court to represent Client G; he believed it was ok for him to appear.

44.12 As regards the submission that the Respondent knew or suspected he was misleading clients by failing to inform them that he was not authorised to practise as a solicitor, Mr Blatt repeated the submissions made above as regards Client D. In relation to Client G it was submitted that the Respondent had not appreciated that he needed to be regulated to conduct the work he undertook on Client G's behalf.

44.13 The Applicant considered that the Respondent knew he was misleading clients by sending emails from his Setfords email address, but then failing to inform clients that they were not represented by Setfords. It was the Respondent's case that his administration in relation to these matters was a mess. He used whichever email account was in front of him at the time. Mr Blatt submitted that there were matters in which the Respondent had used each of his Divorce Assistant email address, his Setfords email address and his personal email address. The Respondent would always offer his clients the choice of whether they wanted to instruct Divorce Assistant or Setfords.

44.14 The Respondent did not renew his Practising Certificate in 2017 as he did not intend to continue in practise. He was thereafter finishing the matters on which he was instructed, as he felt it was his obligation to do so. He did not consider that this was wrong, as they were being completed under the Divorce Assistant banner.

44.15 Mr Blatt submitted that the case against the Respondent was not a complex one. The Respondent had elected not to attend the hearing as he was terrified, and did not have the strength to appear. He believed that the best account for the Tribunal to consider was that contained in his written evidence; his oral evidence would not improve on what was contained therein. The Respondent was fully aware of the potential prejudice he faced in failing to attend and allow himself to be cross-examined. Mr Blatt summarised that, whilst it was clear, and admitted, that the Respondent had breached a number of Rules and Principles, he had not acted dishonestly.

The Tribunal's Findings

44.16 The Tribunal considered what weight it should give to the Respondent's statement, given that he had failed to attend the hearing. The Tribunal had regard to Practice Direction No. 5 which provides:

> "The Tribunal has taken careful note of the dicta of the President of the Queen's Bench Division (Sir John Thomas) at paragraphs 25 and 26 of the Judgment in Muhammed Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin). In the words of the President, "ordinarily the public would expect a professional man to give account of his actions". The Tribunal directs for the avoidance of doubt that, in appropriate cases where a Respondent denies some or all of the allegations against him (regardless of whether it is alleged that he has been dishonest), and/or disputes material facts, and does not give evidence or submit himself to cross-examination, the Tribunal shall be entitled to take into account the position the Respondent has

chosen to adopt as regards the giving of evidence when reaching its decision in respect of its findings. This directions applies regardless of the fact that the Respondent may have provided a written signed statement to the Tribunal."

44.17 The Tribunal noted the reasons for the Respondent's non-attendance as submitted by Mr Blatt. It did not consider that fear of the proceedings was a sufficient justification for his failure to attend. In the circumstances, the Tribunal, whilst taking account of the Respondent's written evidence, gave it less weight than it would have, had the Respondent attended and submitted himself to cross-examination.

44.18 The Tribunal found that the Respondent knew he was "crossing the line" between what was intended to be a form filling concept, and practising as a solicitor for an unauthorised entity. On any analysis of the type of work the Respondent undertook as Divorce Assistant, it was obviously operating as a solicitors practice, and thus required authorisation. The Respondent described setting up Divorce Assistant so as to take advantage of what he considered a lacuna in the market for an entity which was providing assistance of such limited scope that it did not need to be authorised. That being the case, he would have been aware when Divorce Assistant moved away from that premise and was conducting reserved legal activities. The Tribunal agreed with Mr Thomas' assessment that, given the Respondent's answers in his interview, he was aware from the outset that there was a line beyond which authorisation was required. The Tribunal found that it was not credible that the Respondent gave no thought to the issue of authorisation/regulation, or that he was unaware of this at the time.

44.19 The Tribunal considered the Respondent's statement, and in particular the passages referred to by Mr Blatt as regards dishonesty - "...most people would be happy to be "assisted" rather than represented if this cut down the costs; ... if matters became contentious then this aspect could be done through a traditional solicitors practice". Such passages, the Tribunal determined, clearly demonstrated that the Respondent was fully aware of the limitations of what Divorce Assistant could do if it remained unauthorised. There were aspects of the work that he anticipated, at the outset, would need to be undertaken by a traditional firm, or for matters to be briefed to Counsel. The Tribunal considered that, on his own case, the Respondent knew that in order to undertake contentious work for clients, he would need to be authorised and regulated.

44.20 The Tribunal did not accept that the Respondent considered Client D to be a Setfords client as:

- He had placed her on The List he provided to the SRA of Divorce Assistant clients;
- He had received several payments into his Santander account for her matter, none of which he forwarded to Setfords. He was fully aware of the payments into the account;
- He had not opened a Setfords file in her matter, despite his having opened files and followed the Setfords procedures on other matters.

- It had been the evidence of Mr Rogers, and was accepted by the Tribunal, that without a file being opened, no bill could be sent on a Setfords matter. There were a number of emails between the Respondent and Client D relating to payment of the Respondent's costs.

44.21 The Tribunal noted that, as part of his defence, the Respondent sought to blame Setfords for failing to bring to his attention the fact that he had not opened a file for Client D on the Setfords system. He sought to rely on the Court orders which he submitted must have gone to Setfords. During the hearing it was clear that there was no evidence to show that the Orders had been sent to Setfords. It was equally clear that a number of the Orders had, in fact, been emailed to the Respondent, either from the other side, or on one occasion from one email account belonging to the Respondent to another email account also belonging to him.

44.22 The explanation the Respondent provided as regards Client D was convoluted, incredible and inconsistent. The Tribunal noted the inconsistency between his Answer and his Statement. It did not accept Mr Blatt's explanation of the Answer being in error. The submission made by the Respondent in his Answer was clear; the submission made in his statement was equally clear and entirely opposite to what had been said in the Answer. Either the Respondent believed Client D was a Setfords client and he had not misled her or the Court or he believed she was a Divorce Assistant client. If the former was the case, why had he not opened a file for her at Setfords (which he had done for other clients previously), why had he asked her to pay his fees into his Santander account, and why had be not forwarded the monies she paid to him to Setfords? If he believed she was a Divorce Assistant client, there could be no explanation for why he put himself on the Court record as Setfords. The two positions were irreconcilable.

44.23 In his statement, the Respondent asserted: "The SRA also state that I must have believed Client D to be a Divorce Assistant client as payment was paid to the Divorce Assistant account. I do not know why this was. I think that I simply made a mistake in this regard. The likelihood is that I failed to open a Setfords file (symptomatic of my failure to manage paperwork) as was also the case with Client C where no file was opened. When Client D paid the monies into my Divorce Assistant bank account I simply failed to account for this to Setfords mistakenly believing that I was working for her under the Divorce Assistant model. Why I gave the Divorce Assistant bank details to her I did not know and I am even unable to recall the circumstances in which the bank details were conveyed". The Tribunal rejected this explanation. The Tribunal considered that the Respondent knew that Client D was not a Setfords client. When he completed the Notice of Acting, he knowingly listed Setfords as the solicitors with conduct when that was not the case. Accordingly, the Tribunal found that when he had misled the Court, he had done so deliberately. The Tribunal also considered that the Respondent had communicated with Client D from his Setfords account so that she would believe that she was being represented by Setfords.

44.24 That the Respondent had practised as a solicitor and carried out reserved legal activities without authorisation was plain, and had been properly admitted by him. He described himself as a solicitor on the Divorce Assistant website, and referred to his experience as such. Any member of the public reading that website and considering instructing the Respondent would believe that he was a practising solicitor, who was

practising in compliance with his regulatory obligations. It was of no assistance to the Respondent to state that the website did not say that he was authorised. The website did not say that he was not authorised, nor that, whilst he was a solicitor, he was not authorised to practice as one under Divorce Assistant. The Tribunal found that the Respondent knew he could not practise as a solicitor or carry out reserved legal activities without authorisation. On Client G's matter he had knowingly done so, and thus had misled his client and the Court, as he was not authorised.

44.25 The Tribunal found the Respondent's submissions as regards his not knowing that he required a Practising Certificate in order to practise wholly incredible; the Respondent was of significant post qualification experience. It was simply inconceivable that he would not know of the requirement that he have a Practising Certificate in order to practise. Thus the Tribunal found that the Respondent had knowingly practised without a Practising Certificate.

44.26 The Tribunal found that the Respondent's admitted misconduct as regards allegations 1, 2 and 3 was not the result of messy and muddled thinking. The Respondent was aware of his obligations in all regards, but chose to act in breach of those obligations. The Tribunal did not accept Mr Blatt's submission that members of the public would not consider the Respondent's conduct to be dishonest. The Tribunal found that members of the public, whilst wanting to obtain good services at a competitive rate, would expect a solicitor who describes himself as such in order to obtain business, to be a solicitor capable of acting as such. Honest and ordinary people would consider misleading the court and clients, and knowingly acting in breach of regulatory obligations, to be dishonest.

44.27 Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct as regards allegations 1, 2 and 3 was dishonest. Accordingly, in addition to finding those allegations proved, the Tribunal found that the Respondent's conduct was aggravated by reason of his dishonesty.

45. **Allegation 4 - Between May 2014 and 26 April 2018 he provided a poor standard of service to clients in that he: (4.1) failed to keep records of his dealings on client matters and/or a file of all correspondence and documents relating to each client matter; and/or (4.2) failed to respond to Client G's complaint about his handling of her matter. He thereby breached any or all of Principles 4, 5, 6 and 10 of the Principles and failed to achieve any or all of Outcomes 1.2, 1.5, and 1.11 of the Code.**

The Applicant's Case

45.1 The Respondent informed the SRA that there was "no paper record as such", that he worked from his laptop and that the "work undertaken was in the main conducted by exchange of emails." He provided no evidence that client care letters were sent to individuals. He appeared to have no organised system for maintaining client records. Most of the papers reviewed by the SRA had been provided by Mr Rogers, with a limited number of papers being provided by the Respondent, despite repeated requests from the SRA to the Respondent to obtain information and/or documents, culminating in a section 44B Notice being issued on 22 November 2017.

45.2 The lack of care shown by the Respondent in keeping proper records caused considerable stress to clients, some of whom lost original papers. The disregard he showed towards client's property and files was in breach of Principle 4 (acting in the best interests of clients), Principle 5 (providing a proper standard of service to clients) and Principle 10 (protection of client assets). It was furthermore contrary to Outcome 1.2 (to provide services to your clients in a manner which protects their interests) and Outcome 1.5 (providing a competent service to clients). Such conduct was also in breach of Principle 6. In failing to maintain client records in any sensible, organised or adequate way the Respondent failed to maintain the trust the public placed in him and in the provision of legal services.

45.3 Client G spent a considerable amount of money on the legal services provided by the Respondent. Notwithstanding the fees paid, the Respondent had a duty to reply to any complaint made by his client. The Respondent failed to respond to Client G. In so doing he failed to act in her best interests, in breach of Principle 4. Such disregard demonstrated a failure to provide a proper standard of service, in breach of Principle 5 and furthermore a failure to achieve Outcome 1.11, which provided that complaints should be dealt with promptly, fairly, openly and effectively. His conduct was also in breach of Principle 6. It was clear that in failing to reply to the complaint, the Respondent had failed to maintain the trust Client G placed in him and in the provision of legal services.

The Respondent's Case

45.4 The Respondent admitted allegation 4.

The Tribunal's Findings

45.5 The Tribunal found allegation 4 proved beyond reasonable doubt on the facts. The Tribunal considered the Respondent's admission properly made.

46. **Allegation 5 - Whilst trading as Divorce Assistant, he failed to take out and maintain professional indemnity insurance in breach of Rule 1.3 of the SRA Indemnity Insurance Rules 2013 and in doing so breached Principle 7 of the Principles and failed to achieve Outcome 1.8 of the Code.**

The Applicant's Case

46.1 Rule 1.3 of the SRA Indemnity Insurance Rules 2013 required all solicitors to take out and maintain professional indemnity insurance. The Respondent informed the SRA that he did not have professional indemnity insurance whilst he practised at Divorce Assistant, and could not recall informing clients that he did not have it. His failure to take out insurance was not only in breach of Rule 3.1 of SRA Indemnity Insurance Rules 2013 but also a breach of Principle 7 (a failure to comply with legal and regulatory obligations) and Outcome 1.8 of the Code (that clients must have the benefit of professional indemnity insurance).

The Respondent's Case

46.2 The Respondent admitted allegation 5.

The Tribunal's Findings

46.3 The Tribunal found allegation 5 proved beyond reasonable doubt on the facts. The Tribunal considered the Respondent's admission properly made.

47. **Allegation 6 - Whilst trading as Divorce Assistant, he failed to comply with the SRA Accounts Rules 2011 in that he: (6.1) held client money in a personal bank account; (6.2) did not establish and maintain proper accounting systems; (6.3) did not keep proper accounting records; (6.4) did not deliver annual accounts reports; (6.5) did not ensure that accounting records showed all dealings with client money and any office money relating to any client matter; (6.6) did not ensure that all dealings with client money were appropriately recorded in a client cash account and on the client side of a separate ledger for each client; and (6.7) did not ensure that the current balance on each client matter was clearly shown or ascertainable from his records. He thereby breached any or all of Rules 1.2 (a), (b), (e), (f) and (i), 13.1, 14.1, 29.1, 29.2, 29.4, 29.9 and 32A.1 of the SAR 2011and any or all of Principles 7 and 10 of the Principles.**

The Applicant's Case

47.1 The Respondent confirmed that he operated a bank account which was not a client account. He explained that he only operated one business account. The absence of records made an audit trail pertaining to client funds impossible. In failing to keep adequate, or any, client records the Respondent was in breach of Principle 10 (an obligation to protect client funds). He also breached Rules 1.2 (a) (keeping other people's money separate from you or your firm), (b) (keeping money safe in a bank or building society as a client account), (e) (establishing and maintaining proper accounting systems and proper internal controls over the systems), (f) (keeping proper accounting records to show accurately the position with regard to the money held for each client and (i) (delivering annual accountants' reports), 13.1 (that you must keep a client account if you hold client monies), 14.1 (client money must be paid into a client account without delay), 29.1 (keeping accounting records properly written up), 29.2 (recording all client money on ledgers), 29.4 (recording all office money on ledgers), and 32.1 (obtaining an accountancy report) of the SAR 2011.

The Respondent's Case

47.2 The Respondent admitted allegation 6.

The Tribunal's Findings

47.3 The Tribunal found allegation 6 proved beyond reasonable doubt on the facts. The Tribunal considered the Respondent's admission properly made.

Previous Disciplinary Matters

48. None.

Mitigation

49. The Respondent had made admissions to the allegations, save for dishonesty. He had admitted numerous breaches of Principle 2 and thus accepted that he had acted without integrity. In his statement he explained that he did not belittle his admitted breaches. "They are serious and I accept that I am not really the right type of person to be a solicitor. Maybe I have never had the right personality for the practicalities of the role. For the record I wish to come off the roll and never be restored. I accept that in qualifying and participating in the profession I was a square peg in a round hole. This is not to say that I was not technically competent, which I was, but not the type of man who could cope with the day to day organizational politics and pressures that the reality of the profession inflicts upon individuals. I was neither cut out for the networking, the politics of a small firm or the adherence of the day to day regulation and management of being a solicitor. This is recognized now. However, it was not readily apparent to me when I aspired to be in the law or during the early years of being a practicing solicitor."

50. The Respondent had not directed his mind to the question of authorisation of Divorce Assistant. He had attempted to run Divorce Assistant in conjunction with being a consultant solicitor with Setfords. He was in need of the boundaries that existed in a traditional practice, he did not have this with Setfords.

Sanction

51. 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.

52. The Tribunal noted that the Respondent had referred to delays in receiving payments from Setfords. The Tribunal considered that the Respondent had diverted Setfords leads to Divorce Assistant so that he did not have to share the fees generated by their cases with Setfords; his motivation was personal financial gain. He had chosen to create a vehicle with the specific intention of avoiding compliance, regulation and the requirement to have insurance. He had used that vehicle to practise as a solicitor, and undertake reserved legal activities, rather than referring those clients to bodies authorised to act. He had done so in order to retain the fees generated by those clients. The Tribunal found his conduct to have been planned; he was aware of the proper course of action but chose, time and again, not to take that course, but to act in breach of his professional obligations. He had breached the trust placed in him by clients who were relying on his representing their interests in his capacity as a solicitor, when he was not so authorised to act. He had direct and full control of the circumstances giving rise to his misconduct. He was an experienced solicitor who had always practised under a Practising Certificate. He was also aware of the authorisation requirements but chose to ignore them. The Tribunal found the Respondent to be highly culpable for his misconduct.

53. He had caused harm to clients and to the reputation of the profession; this was clearly demonstrated in the complaints and statements of his former clients. Some of his clients discovered only after complaints were made that they were not, in fact, being represented by Setfords, notwithstanding that the Respondent had been communicating with them from his Setfords email address, and placing himself on the Court record under the Setfords umbrella. Those clients were, in fact instructing an individual who had no professional indemnity insurance. The harm caused by the Respondent was entirely foreseeable.

54. The 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"."

55. The Tribunal also found that his conduct was further aggravated by the deliberate, calculated and repeated nature of his misconduct, which had continued over a period of time. The Respondent knew that his conduct was in material breach of his obligations. He compounded his misconduct by failing to deal with client complaints properly or at all.

56. In mitigation, the Tribunal considered that the admissions to the underlying allegations demonstrated insight on the Respondent's part. It noted that he had no previous matters before the Tribunal and there were no other investigations into his conduct.

57. 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."

58. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors

Costs

59. Mr Thomas applied for costs in full. The costs schedule dated 23 July 2019, listed costs in the sum of £42,825.00. Mr Thomas explained that this costs schedule was erroneous, as it had not included the Applicant's internal supervision costs in the sum of £1,200. A new costs schedule, dated 31 July, was uploaded to the electronic system and which detailed costs in the sum of £44,025.00 including the £1,200 for supervision costs. The Tribunal noticed that the costs schedule previously uploaded to the electronic system, and stated to be the costs schedule at issue, listed costs in the sum of £30,525.24. The fixed fee element on that schedule was listed as £18,500 whereas on the later schedules it was listed as £34,500. Mr Thomas explained that the case had changed category, hence the change in the fixed fee.

60. Mr Blatt referred to the schedule. It stated: "The SRA has instructed Capsticks LLP on the basis of a fixed fee. The fixed fee applied to each instruction is determined based on the complexity of a case at the outset of the case. In exceptional circumstances the fixed fee can be revised if additional or unforeseen matters arise throughout the course of the case which change the complexity of the case." There could be no reason for a change in the nature of the fixed fee post service of the case; the issues had been narrowed following the Respondent's Answer to the Rule 5 Statement. As to the supervision costs, they should not be additional to the amount already claimed by the SRA.

61. Mr Thomas explained that the supervision costs were ordinarily claimed. The hourly rate was £75 per hour. The SRA costs of Investigations Regulations 2011 contained a table which set out standard charges. For cases between 8–16 hours a charge of £1,350 was appropriate. In this case, the SRA had spent 16 hours on supervision but rather than charge the set fee, had charged at an hourly rate of £75 thus producing the charge of £1,200. Further, the costs schedule that had been uploaded to the electronic system as being that at issue was the incorrect version. Mr Blatt had noted that the version was unsigned. The original version as contained in the Tribunal's file was in the sum of £50,925.24. That was the sum that Mr Thomas was instructed to seek to recover.

62. Mr Blatt referred the Tribunal to the means information together with supporting documentation submitted by the Respondent. The only asset he had was the equity in the matrimonial home. As a result of the Tribunal's findings, the Respondent would lose his current employment. He had a dependant daughter who was at University and was about to enter her final year. Whilst the Applicant stated that it was reasonable when it came to costs recovery, it was unlikely that the first mortgagee would agree to a second charge being taken out. It would be unfair for the Respondent to be forced to sell his home in order to satisfy any costs order. In the circumstances, it was appropriate for any order the Tribunal made as regards costs not to be enforced without leave of the Tribunal.

63. The Tribunal considered that it was unfair for the Respondent to be expected to pay the largest figure contained in the various schedules, given that the Applicant had submitted 4 different costs schedules. The Tribunal considered that the appropriate costs schedule was the one dated 31 July 2019 that listed costs in the sum of £44,025.

64. The Tribunal noted that the costs of in-house Counsel together with all the work undertaken by instructed solicitors was included in the fixed fee claimed. However, the fixed fee was a commercial arrangement between the SRA and its instructed solicitors. In undertaking a summary assessment of costs, the Tribunal had to consider what it considered to be reasonable in all the circumstances. The Tribunal considered that the SRA's investigation and supervision costs should be paid in full. The Tribunal determined that proportionate costs in this matter, given the Respondent's significant admissions at the outset, were £25,000 + VAT. Accordingly, the Tribunal considered that costs in the sum of £39,525.00 were appropriate and proportionate. The Tribunal noted that there was considerable equity in the Respondent's matrimonial home. Whilst his daughter was still studying, she was an adult. The Tribunal did not consider that in the circumstances it was appropriate to accede to Mr Blatt's request as to costs. Accordingly, it made an order for costs to be paid immediately. The Tribunal was aware that the Applicant took a realistic and pragmatic view to costs recovery, and expected that it would come to a reasonable arrangement with the Respondent as regards the costs.

Statement of Full Order

65. The Tribunal Ordered that the Respondent, STEPHEN ANTHONY HOGAN, 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 £39,525.00.

Dated this 14th day of August 2019
On behalf of the Tribunal

A. Horne
Chair