SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 11942-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY — Applicant

and

MILAN PATEL — Respondent

Before:

Mr D. Green (in the chair)
Mr P. S. L. Housego
Mr S. Marquez

Date of Hearing: 20 - 21 August 2019

Appearances

Alistair Willcox, solicitor, of the Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations faced by the Respondent were that he, whilst the sole director and owner of ALD Legal Limited, of First Floor, 2 Peterborough Road, Harrow, Middlesex, HA1 2BQ ("the firm");

1.1 Between 1 May 2016 and 30 June 2016, misappropriated client money by using funds held for client Mr AB to make 13 improper payments totalling £226,972.52 which had no connection to Mr AB, in breach of Rules 1.2(c), 20.1 and 20.6 of the SRA Accounts Rules 2011 and in breach of all or alternatively any of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011. The facts and matters relied on in support of this allegation appear at paragraphs 24 to 39.

1.2 Caused or permitted a minimum client account cash shortage in the sum of £177,235. 19 to exist as at 15 June 2016 in breach of Rules 1.2(c), 20.1 and 20.6 of the SRA Accounts Rules 2011 and in breach of all or alternatively any of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

1.3 Between 1 April 2016 and 30 September 2016, failed to act in the best interests of his client Mr AB in the purchase of 19 Larkfield Avenue by failing to inform Mr AB of the true nature of the sale of 19 Larkfield Avenue, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011.

1.4 Breached all or alternatively any of Principles 2, 3, 4, 5 and 6 of the SRA Principles 2011 and also failed to achieve Outcomes 3.1, 3.4 and 3.5 of the SRA Code of Conduct 2011 by acting in circumstances where there was a conflict of interest and/or a significant risk of a conflict of interest because he: a). failed to disclose to his client Mr AB his commercial relationship with Mr HB and that he was acting for Mr HB on a sub-sale transaction; and b). failed to advise his client Mr AB to seek independent legal advice.

1.5 Between 1 April 2016 and 30 September 2016, failed to provide his client Mr AB with a proper standard of service in relation to the purchase of 19 Larkfield Avenue and provided him with misleading information as to the status of his matter, in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011 and failing to achieve Outcomes 1.2, 1.5 and 1.12 of the SRA Code of Conduct 2011.

1.6 On the matter of Mr AB, failed to have sufficient regard for his duties under Regulations 9.2, 14.1 and 14.2 of the Money Laundering Regulations 2007 and/or the SRA's warning notices on money laundering and terrorist financing, in breach of all or alternatively any of Principles 2, 6 and 8 of the SRA Principles 2011, and failing to achieve Outcome 7.5 of the SRA Code of Conduct 2011 because he:

a. received funds in the sum of £500,000.00 into the firm's client account without first having obtained any client identification on that matter; and

b. failed to carry out any enhanced due diligence checks and enhanced ongoing monitoring in relation to Mr AB; and

c. failed to establish the source of the funds received from Mr AB.

1.7 Between 1 October 2016 and 30 April 2017, on the matters of P0545/1, P0545/2 and P0544/1, the Respondent permitted the firm's client bank account to be used as a banking facility in that payments were made into and out of the client account in circumstances in which there was no underlying legal transaction to explain that activity on the client account, in breach of all or alternatively any of Rule 14.5 of the SRA Accounts Rules 2011 and Principles 2, 6 and 10 of the SRA Principles 2011.

2. In addition, allegations 1.1, 1.2, 1.3, 1.4, 1.5 and 1.7 inclusive are advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegations.

Documents

3. The Tribunal considered the following documents filed and served by the respective parties.

Applicant

- Rule 5 Statement dated 3 April 2019 and Exhibit AHJW1
- Witness statement of David Payne dated 29 July 2019.
- Statement of costs dated 6 August 2019.
- Her Majesty's Land Registry entry in respect of the Respondent's registered address.
- "Zoopla" valuation of the Respondent's registered address.
- Bankruptcy search in respect of the Respondent.

Respondent

- None

Preliminary Matters

4. Mention of matters beyond the scope of the Allegations within Exhibit AHJW1

4.1 Mr Willcox applied for two matters contained in the Applicant's bundle of documents in support of the Rule 5 Statement to be removed. The first was in relation to an administrative sanction, namely a "Rebuke" that was imposed on the Respondent in 2013. The second was mention in the decision of an authorised officer of the Applicant pertaining to the immediate imposition of practising certificate conditions on the Respondent's practising certificate dated 18 July 2018. Mr Willcox submitted that both of those documents were erroneously included in the bundle and that this had occurred because of an administrative oversight. Mr Willcox invited the Tribunal to disregard the offending documents and submitted that it was able to do so without prejudice to the Respondent.

The Tribunal's Decision

4.2 The Tribunal was well aware of the fact that the Respondent was not in attendance and as such considered the application with the utmost care and caution. The

Tribunal approached the application on the basis that if the Respondent had been in attendance and/or legally represented objection would have been raised to the Tribunal proceeding to hear the case in light of the prejudicial nature of the documents.

4.3 The Tribunal noted on record that it had sight of the first document when reading into the case. As an experienced Division of the Tribunal it was cognisant of the potential prejudice to the Respondent by its inclusion and as such did not read the document in detail, was not aware of the reasons for the "Rebuke" and knew no more than the fact that it was imposed.

4.4 With regards to the second document the Tribunal did not recollect the matters contained therein until the present application was made.

4.5 The Tribunal recognised that the position with regards to the first document differed in that its inadvertent inclusion was potentially prejudicial to the Respondent by its very nature of representing a "Rebuke.". However, the Tribunal had not read into the detail upon which the "Rebuke" was predicated, was not aware of the reasons for and circumstances surrounding its imposition and had regard to the fact that it was imposed some six years prior conduct complained of in the proceedings.

4.6 The Tribunal did not consider that there was any prejudice to the Respondent by the inadvertent inclusion of the second document in the papers. This was due to the fact that the Tribunal was not aware of and could not recollect in any detail the content of either document. The Tribunal did not refresh its memory of the contents when considering the application.

4.7 The Tribunal was experienced in matters of this nature being arbiters of fact and law. The Tribunal found that it was well able to put out of its mind both documents so as to avoid any prejudice, real or perceived, being caused to the Respondent.

4.8 Consequently the Tribunal granted the application for the offending documents to be redacted from the hearing bundle.

5. Application to proceed in absence

5.1 The Respondent did not attend the hearing and Mr Willcox made an application for the matter to proceed in his absence.

5.2 Applicant's Submissions - Mr Willcox applied for the matter to proceed in the Respondent's absence. He submitted that Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 ("SDPR") had been satisfied in that the Respondent had been personally served with proceedings on 22 May 2019. It was submitted that good service had therefore been effected in accordance with the Rules which triggered the Tribunal's power to proceed in the Respondent's absence.

5.3 Mr Willcox submitted that Tribunal should have regard to R v Hayward, Jones and Purvis [2001] QB, CA at paragraph 22(5) for guidance as to how it should exercise its discretion to proceed. Mr Willcox submitted that the Respondent was aware of the date of the hearing as; (a) he was personally served with proceedings which, in the

Standard Directions, cited the substantive hearing date and (b) he had made an application to adjourn the hearing on 14 August 2019. It was submitted that the Respondent had voluntarily waived his right to attend the substantive hearing. Mr Willcox further relied upon GMC v Adeogba [2016] EWCA Civ 162 at paragraph 19 in support of his submission that fairness to the regulator required the matter to proceed against the Respondent in his absence in the light of all of the attendant circumstances.

The Tribunal's Decision

5.4 The Tribunal considered the representations made by the Applicant. The Tribunal accepted that the Respondent was aware of the date of the hearing as (a) he had been personally served with the proceedings papers, (b) he attended the Case Management Hearing on 21 June 2019 at which directions were issued to progress the matter to the substantive hearing date and (c) he had made a recent application to adjourn the substantive hearing which was refused. The Tribunal was therefore satisfied that SDPR Rule 16(2) was engaged.

5.5 The Tribunal adopted the criteria for exercising its discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB, CA by Rose LJ at paragraph 22(5). The relevant parts are set out below:-

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case namely:
>
> (1) A defendant has, in general, a right to be present at his trial and a right to be legally represented.
>
> (2) These rights can be waived, separately or together, wholly or in part, by the defendant himself. They may be wholly waived if, knowing, or having the means of knowledge as to when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him. They may be waived in part if, being present and represented at the outset, the defendant , during the course of the trial, behaves in a such a way as to obstruct the course of the proceedings and/or withdraws his instructions from those representing him.
>
> (3) The trial judge has a discretion as to whether a trial should take place or continue in the absence of the defendant and/or his legal representatives.
>
> (4) The discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
>
> (5) In exercising that

(6) plainly waived his right to appear;

(ii) whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings;

(iii) the likely length of such an adjournment;

(iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;

(v) .....;

(vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;

(vii) the risk of the jury reaching an improper conclusion about the absence of the defendant;

(viii) the seriousness of the offence, which affects defendant, victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

(ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;

(x) the effect of delay on the memories of witnesses;

(xi) ....."

5.6 The Tribunal had further regard to GMC v Adeogba; GMC v Visvardis [2016] EWCA Civ 162, in which Sir Brian Leveson P affirmed that the principles set out in Jones provided a useful starting point in regulatory proceedings. He further stated that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a Respondent namely;

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

> [23] ...that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interest of the public also taken into account."

5.7 The Tribunal was satisfied that the Respondent had been properly served with the proceedings papers. The Tribunal was further satisfied that he knew of the substantive hearing date and noted that he had not (a) renewed his application to adjourn and (b) advanced any health issues which may have militated against his ability to attend. The Tribunal concluded that the Respondent had plainly waived his right to attend the hearing and that he had done so deliberately and voluntarily. The Tribunal found that the Respondent was unlikely to attend in the future if the matter was adjourned. The Tribunal was cognisant of the serious nature of the allegations faced by the Respondent, which included dishonesty, and the overarching public interest in the expeditious adjudication of the same.

5.8 Having considered all attendant circumstances the Tribunal was satisfied that it could properly exercise its discretion to proceed in the Respondents absence.

Factual Background

6. The Respondent was admitted to the Roll of Solicitors in December 2005. The Respondent did not hold a practising certificate for 2018/2019 and in respect of the preceding year, 2017/2018, he held a practising certificate with conditions. At the material time of the allegations the Respondent was working as a solicitor within and was sole director of ALD Legal Solicitors, Harrow.

7. On 31 October 2016, Freeman Solicitors Limited ("Freemans") sent a report to the SRA. Freemans had been instructed by AB in relation to a potential claim against the Respondent and the Firm arising out of the misuse of his funds and a secret profit made by the Respondent or the Firm in that regard.

8. AB, resident of Saudi Arabia, had instructed the Respondent to purchase a property on his behalf in the UK. The Respondent requested funds from AB in May 2016 for the purpose of this transaction but failed to update AB as to the progress of the matter post completion with regards to title registration. In that regard AB was told by the Respondent that he had submitted an application to the Land Registry but, due to Brexit and the privatisation of the Land Registry, there had been a delay. When the property was eventually registered in AB's name, the application was submitted on 8 August 2016 and completed on 9 August 2016.

9. Freemans stated that they had requested their client's file of papers from the Respondent. Having reviewed the file of papers, Freemans discovered two invoices. The first invoice was in the sum of £35,000 plus Vat to a company known as HB Consultants. This sum represented the Firm's commission in finding an off-market property. Freemans stated, however, that the TR1 showed HB Consultants Limited as sellers of the property. The second invoice was in the sum of £5,000 for chattels when the property was not habitable, and no fixtures form had been provided in the file. Freemans referred to the completion statement which the Respondent had created and sent to AB prior to completion.

10. Freemans stated that, when AB became concerned about the delay, he instructed an estate agent to check the property on the Land Registry website. Upon doing that, he discovered that the property had been registered in the name of HB Consultants Limited in June 2016. Freemans stated that they had, on their client's behalf, written to the firm on 28 October 2016. A summary of this initial complaint to the Firm is that:

- AB's funds had been used to purchase a property in someone else's name and then resold to him at a higher price.
- The Respondent made a secret profit out of the transaction and failed to disclose that to AB.
- The Respondent had lied to AB about the progress of the transaction.
- The Respondent had failed to act in the best interests of AB.
- The Respondent had provided invoices for agent fees and chattels but had paid the Stamp Duty Land Tax on the full price of £500,000.
- The Respondent had failed to provide any VAT receipts, lists of chattels or any financial records in the copy file which he had sent to Freemans.

11. Freemans requested a "full and forensic investigation" into the matter by the Applicant.

12. Having considered the report received from Freemans, an Investigation Officer in the SRA's Investigations Department commissioned David Payne, a Forensic Investigation Officer ("the FIO"), to carry out a forensic inspection of the Firm. The FIO commenced his inspection on 27 March 2017 and it concluded with his final report ("the FIR"), on 21 December 2017.

13. The FIO visited the Firm on 27 March, 5 and 25 April 2017. On 4 May 2017, the FIO met with the Respondent who declined to participate in a formal recorded interview to discuss the FIO's findings. On 29 June 2017 the FIO sent the Respondent an e-mail in which he stated that he considered that a formal interview, recorded with an audio device, was appropriate. The Respondent replied on 3 July 2017 and stated:

> "I have already made my position clear that I am not willing to conduct such an interview."

14. The FIO replied on 17 July 2017 and asked the Respondent to reconsider his position. He proposed a formal interview during the week commencing 31 July 2017. The Respondent replied, stated that he had taken legal advice on the suggestion of a formal interview, that his position remained the same and that he wished to answer the FIO's questions in writing.

15. On the 13 November 2017, the Respondent wrote to the FIO and advised him as follows:

"Dear Mr Payne

Re: ALD Legal Limited - Investigation No: AI/1189682-2017

I am writing as a matter of courtesy to let you know that ALD Legal Limited has closed with immediate effect from the 13th November 2017. I have been preparing for an orderly closure for some little time and I can confirm that all the clients have transferred to new solicitors and that the client account balance is nil and has been for a few weeks now. I would be grateful, therefore, if any further correspondence could be sent to my private home address and email which is ..... My home/personal email address is ..... Correspondence or emails sent to the old office address at ..... will not reach me..."

16. The FIO replied on the same day and stated as follows:

"Dear Mr Patel Thank you for your e-mail. Can you confirm whether you have submitted a Firm Closure Notification form to us...?"

17. The Respondent forwarded to the FIO a copy of the e-mail attaching the Firm Closure Notification form which he had completed and sent to the SRA's Authorisation Department.

Witnesses

18. The Tribunal received live evidence from David Payne, Forensic Investigation Officer ("FIO"). His evidence is quoted or summarised in the Findings of Fact and Law below. The written evidence referred to will be that which was relevant to the findings of the Tribunal, and to the facts in dispute between the Parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the submissions. 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.

Relevant Legal Framework

(a) Dishonesty

When the Tribunal was required to consider the issue of dishonesty, it applied the test promulgated in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] namely:

"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."

(b) Integrity

When the Tribunal was required to consider whether the Respondent had lacked integrity it applied the test promulgated in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366 by Jackson LJ at [100] namely:

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

Findings of Fact and Law

19. 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.

20. **Allegation 1.1 - Misappropriation of client money by way of improper payments**

The Applicant's Case

20.1 Having inspected the firm's books of account, the FIO discovered that on the inspection date of 28 February 2017 there was no cash shortage. However, on 15 June 2016, there was "a minimum cash shortage on client account of £177,235.19 namely:

- Liabilities to clients £674,889.96
- Client Cash Available £497,654.77
- Cash shortage £177,235.19

20.2 The FIO was unable to determine "the exact cause" of the minimum cash shortage but was able to ascertain that it was connected to "13 improper payments charged to AB's... ledger totalling £226,972.52 between 10 May 2016 and 24 June 2016."

20.3 On 10 May 2016, £500,000.00 was received into the client account from AB for the purchase of 19 Larkfield Avenue. Prior to receipt of the £500,000.00, the balance on client account was £6,803.53. No transactions relating to AB's matter took place until the completion date of 20 June 2016, yet by 15 June 2016 "the balance on the entirety of the firm's client account had fallen to £322,764.81." The 13 payments made totalled £226,972.52 and as the total amount of money previously held for AB was £500,000.00, there was a shortage of £177,235.19. The 13 improper payments comprised 12 bank payments totalling £218,972.52 and one inter ledger transfer of £8,000.00 to matter reference M1 101/1.31.

20.4 Mr Willcox submitted that the 13 payments were improper as:

- AB had not authorised those payments.
- None of the payments were shown on the completion statement for the purchase sent to AB on 14 June 2016.
- There were no documents and no financial information on the client file of papers that explain, or referred to, those payments.
- It appeared that the payments had been concealed from AB.

20.5 The FIO discussed the improper payments with the Respondent who denied that a client account shortage existed for the period 10 May 2016 to 24 June 2016. The Respondent indicated that errors made were made on the ledger relating to AB as the Firm did not have a bookkeeper at that material time. He further stated that the errors were corrected by 3 October 2016 however the FIO noted that the client ledger showed "no reversals or corrective postings." The Respondent suggested that some of the payments debited to AB's ledger related to client NM and that a separate client account in the name of NM was operated pursuant to Rule 15.1(b) of the SRA Accounts Rules 2011 in which sufficient funds were held to offset the payments erroneously recorded on the ledger B0921/1.

20.6 The FIO stated that Rule 15.1(b) did not permit a firm to offset a deficit in the general client account against funds held in an account. The Respondent failed to provide the FIO with any evidence that showed that such an account was being operated by the Firm. The ledger in the name of NM was opened on 13 May 2016 and held a nil balance until 24 June 2016, when £8,000.00 was transferred from AB's ledger.

20.7 The FIO "found no evidence that any other matter ledger in the name of NM or another client held a sufficient balance to offset the improper payments made in relation to AB's matter." The Respondent did not identify the person who had made the improper payments and asserted to the FIO "that he alone is named on the firm's office and client account bank and solely able to effect electronic transfers." The Respondent did not provide the FIO with an explanation for the variance between the figure which appeared on the client ledger, bill in the sum of £2,727.48 transferred from client to office account on 24 June 2016, and the figure which appeared on the completion statement £1,970.00 to cover fees and disbursements. The amount stated on the invoice from HB Consultants Limited, dated 20 June 2016 did not accord with any of the transfers on the client ledger and it was not clear to the FIO "how such a sum was remitted to HB Consultants Limited."

20.8 There were no documents in the client file that referred to Wedlake Bell LLP (payments of: £2,406.00 on the 16 May 2016 and £1,054.02 on the 26 May 2016), ELS Legal LLP (a payment of £18,912.50 on 10 May 2016) or Cluttons LLP (a payment of £6,000.00 on 15 June 2016), or that explained how the payments were linked to the purchase of 19 Larkfield Avenue. Further, three improper payments totalling £62,000.00 (which is understood to be £63,000.00) held the description "MP/S..." or "AS." The FIO stated that "Mr AS" appeared in memoranda held on the client file in relation to a viewing of 19 Larkfield Road. However, there were no

documents that referred to the amounts involved or that offered explanations as to the payments made.

20.9 Mr Willcox submitted that the Respondent's conduct set out above breached Rules 1.2(c), 20.1 and 20.6 of the SRA Accounts Rules 2011 and Principles 2,4,5,6 and 10 of the SRA Principles 2011.

The Respondent's Position

20.10 Having failed to file an Answer to the Rule 5 Statement, the Respondent provided no response to the allegation.

The Tribunal's Decision

20.11 The Tribunal carefully considered the submissions made and the documentary evidence before it. The Respondent at no stage, during the course of the investigation, had disputed that he made the payments as alleged. It was plain to the Tribunal that those payments were entirely unconnected to the AB matter. The fact that the Respondent replaced AB's money subsequent to its use was irrelevant. The fact remained that the Respondent used AB's money in a manner for which it was not intended. He used one client's money for another client and for his own purposes. The Tribunal had no hesitation in finding that he used AB's money for matters beyond that which it was deposited without the authorisation, knowledge or consent of AB. The Tribunal determined that Allegation 1.1 was proved beyond reasonable doubt.

20.12 Rule 1.2 (c) of the Solicitors Accounts Rules placed an obligation on solicitors only to use client money for that client's matter. The Tribunal found that the Respondent undoubtedly failed to comply with that obligation and as such had breached that Rule.

20.13 Rule 20.1 of the Solicitors Accounts Rules mandated solicitors to only use client money for client purposes. It naturally followed on the basis of the facts found proved that the Respondent failed to do so and as such had breached the same.

20.14 Rule 20.6 of the Solicitors Accounts Rules provided that a solicitor cannot overdraw a client account for any particular client. The Tribunal found that the Respondent had not overdrawn the client account at the material time. He had made improper payments, used AB's money in a manner for which it was not intended but replaced the same prior to the purchase of 19 Larkfield Avenue. The Tribunal determined that the mischief sought to be addressed in Rule 20.6 differed from what was alleged in Allegation 1.1. The balance of the Respondent's client account was essentially the £500,000.00 deposited by AB and the client account was never overdrawn, therefore Rule 20.6 had not been breached and as such was not proved.

20.15 Principle 2 imparted a duty on the Respondent to act with integrity. The Tribunal applied the test promulgated in Wingate which required solicitors to act with adherence to the ethical standards of the legal profession. The Tribunal found that solicitors were well aware of the strict prohibition in using client money for purposes other than that which it was intended. Similarly the sacrosanct nature of the client account was well known within the profession. The Respondent's failure to abide by

those basic principles and his improper use of AB's money demonstrated a flagrant disregard of the same. The Tribunal therefore found beyond reasonable doubt that the Respondent lacked integrity in that regard.

20.16 Principle 4 required the Respondent to act in AB's best interests. The Tribunal determined that it could not have been in AB's best interests unknowingly to have been forced to make a loan of his funds to a third party whose identity was not known to him. The Tribunal concluded that breach of Principle 4 was proved beyond reasonable doubt.

20.17 Principle 5 required the Respondent to provide a proper standard of service to AB. The Tribunal found that using AB's money for improper payments without his knowledge was so opposed to his benefit that it could not be said to be in his best interests. The Tribunal concluded that breach of Principle 5 was proved beyond reasonable doubt.

20.18 Principle 6 required the Respondent to behave in manner that upheld the trust the public placed in him and in the provision of legal services. Solicitors should be capable of being trusted to the ends of the earth. The Tribunal determined that the public would have been horrified to learn of the flippant manner in which the Respondent used AB's money, as would the profession. Both the public and the profession expected funds placed into a client account to be used for the transaction for which it was deposited. It should not, under any circumstances, have been misappropriated by the Respondent. Principle 10 required the Respondent to protect AB's money and assets. His conduct directly contravened that principle. The Tribunal therefore concluded that breach of Principles 6 and 10 were proved beyond reasonable doubt.

20.19 The Tribunal applied the Ivey test in its consideration of whether the Respondent's conduct was dishonest. The Tribunal found that the Respondent's state of knowledge of the facts at the material time was that he was well aware that he was using AB's funds to make payments on behalf of other clients and for his own purposes. The Tribunal determined that ordinary, decent people would conclude that his conduct was dishonest.

20.20 The Tribunal therefore found the allegation of dishonesty in respect of Allegation 1.1 proved beyond reasonable doubt.

21. Allegation 1.2 - Cash shortage in the client account

The Applicant's Case

21.1 Mr Willcox submitted that during the investigation and up until the Forensic Investigation Report was prepared, the FIO did not know whether the shortage detailed above had been replaced. The position at that time was summarised by the FIO as "no documents in the client file explain how these transactions are related to the purchase of 19 Larkfield Avenue, and Mr Patel has offered no explanation for the amounts involved." Mr Willcox submitted that absent any evidence to the contrary there was a cash shortage in the client account which contravened Rules 1.2(c), 20.1

and 20.6 of the SRA Accounts Rules 2011 and Principles 2,4,5,6 and 10 of the SRA Principles 2011.

The Respondent's Position

21.2 Having failed to file an Answer to the Rule 5 Statement, the Respondent provided no response to the allegation.

The Tribunal's Decision

21.3 The Tribunal found that the balance of the client account was minimal prior to AB's deposit of £500,000.00. The shortage in that account arose as a consequence of the 13 improper payments made by the Respondent amounting to around £277,000.00. This caused a shortfall in the client account of £177,235.19. The Respondent accepted that he was the Compliance Officer for Legal Practice ("COLP"), Compliance Officer for Finance and Administration ("COFA") and the Money Laundering Reporting Officer ("MLRO") within the Firm at the material time. The Tribunal was in no doubt that he "caused or permitted" the shortfall, was solely responsible for the same and as such found the factual matrix of Allegation 1.2 proved beyond reasonable doubt.

21.4 The Tribunal further found that for the same reasons set out in respect of Allegation 1.1, his conduct rendered him in breach of Rules 1.2(c), 20.1 and 20.6 of the Solicitors Accounts Rules as well as Principles 2, 4, 5, 6 and 10 of the Principles.

21.5 The Tribunal applied the Ivey test in its consideration of whether the Respondent's conduct was dishonest. The Tribunal found that the Respondent's state of knowledge of the facts at the material time was that he was well aware that he was using AB's funds to make payments on behalf of other clients and for his own purposes, which resulted in a shortage in the client account. The Tribunal determined that ordinary, decent people would conclude that his conduct was dishonest. The fact that the Respondent subsequently replaced the shortfall did not, the Tribunal concluded, make his conduct retrospectively honest, because the issue of dishonesty arose when the payment out was made.

21.6 The Tribunal therefore found the allegation of dishonesty in respect of Allegation 1.2 proved beyond reasonable doubt.

22. **Allegation 1.3 - Failure to act in the best interests of AB**

The Applicant's Case

22.1 Mr Willcox relied upon Freeman's report to the Applicant in which they stated:

> "We are writing to inform you that we have been instructed by Mr AB a potential claim against Milan Patel and ADL Solicitors in relation to misuse of his funds and a secret profit made by Mr Patel or the Firm.... When our client have got concerned about the delay he has instructed an estate agent to check the property on the land registry website he found that the property was registered in BH consultant ltd *(sic)* name in June 2016."

22.2 Mr Willcox submitted that where Freemans refer to "BH consultant Ltd" they in fact meant to refer to HB Consultants Limited.

22.3 The Respondent received instructions from AB to act for him on his purchase of 19 Larkfield Avenue, Harrow, HA3 8NQ from HB Consultants Limited on or around 20 April 2016 to the beginning of May 2016. HB was the sole director and owner of HB Consultants Limited. The Respondent stated that he had sent a client care letter to AB by way of email dated 29 April 2016 however the FIO was unable to locate a copy of the same and AB, through Freemans, advised that he never received one.

22.4 AB's deposit of £500,000.00 was received into the client account on 16 May 2016 in respect of the purchase. Completion took place on 20 June 2016 and prior to that the Respondent issued and sent AB a completion statement on 14 June 2016. It stated that the purchase price for the property was £500,000.00 and acknowledged that sum had been received by the Firm from AB. It stated that £16,970.00 was due on completion (in respect of stamp duty, land registry fees, legal fees, office copy entries and searches) and requested that full remittance be paid into the firm's client account and provided the details of the same.

22.5 The contract of sale recorded a different purchase price of £460,000.00, payment for chattels at £5,000.00 and detailed an invoice dated 20 June 2016 in the sum of £35,000.00, from HB Consultants Limited to the Firm, which stated that an "off market property brokerage and arrangement fee regarding the sale of 19 Larkfield for the sum of £35,000 inclusive of VAT" was payable.

22.6 Mr Willcox advised the Tribunal that a sub-sale transaction took place on the day of completion whereby the property was transferred from the seller to HB Consultants Limited with the price having been paid on 20 June 2016 of £438,000.00. It was then resold to AB at the higher price. A telephone attendance note produced by an investigation officer at the SRA on 5 December 2016, following a telephone conversation with the Respondent, recorded that "He [the Respondent] sold the property to HB Consultants who then simultaneously sold it to the clients. The sole director of HB Consultants is HB - Mr Patel has no connection to him."

22.7 AB was not made aware of the sub-sale transaction and only discovered that it had taken place through his own enquiries following completion when he became concerned as to the delay in the matter and instructed an estate agent to undertake enquiries with Her Majesty's Land Registry. Further, the Respondent did not inform Mr AB about the sum of £5,000.00 relating to chattels and the sum of £35,000.00 relating to an "agency fee".

22.8 In his written replies to questions put by the SRA, as to the date on which he became aware of the sub-sale, the Respondent contended that he found out "on the evening of the 14th June 2016 after 17:35 following receipt of the first email sent on that date and time and initial subject to contract communication from the vendor's solicitors which stated in the body of the e-mail that the vendor was in the process of purchasing the property."

22.9 The FIO found no evidence that the Respondent "sought to inform the client" of the sub-sale prior to completion taking place. The FIO stated that the e-mail which the Respondent sent to AB attaching the completion statement failed to mention a sub-sale transaction or of a lower purchase price from the original seller.

22.10 In their letter to the Firm dated 28 October 2016, Freemans stated that the Respondent failed to act in AB's best interests in that:

- The invoice from HB Consultants Limited to the firm was a "straightforward fraud to defraud" AB.
- AB should not have had to pay £35,000.00 "in a property in which he found himself," and that the property was "in the market and was not off market."
- The £5,000.00 claimed for chattels was not required as the property was "in an uninhabitable state and there was no furniture whatsoever at the property."
- The completion statement was silent with regards to the chattels and brokerage fee.
- The Respondent utilised AB's funds "for the benefit of the firm and made a secret profit" in that he requested funds from the client well in advance of the completion date and then used that money to purchase *the same property* Mr AB had found and then resold it to him at a higher price.

22.11 Mr Willcox adopted and advanced the points made by Freemans. He further submitted that following Freeman's complaint to the Firm, the Firm offered to refund the legal fees in the sum of £1,200.00 to AB. The cheque in that sum was sent to AB but was not honoured.

22.12 A copy of the cheque in the sum of £1,200.00 which the letter from the firm was stamped with "Refer to drawer". Freemans advised the SRA that the cheque was not honoured.

22.13 Mr Willcox submitted that the Respondent had breached Principles 2, 4, 5 and 6 of the SRA Principles 2011.

The Respondent's Position

22.14 Having failed to file an Answer to the Rule 5 Statement, the Respondent provided no response to the allegation.

The Tribunal's Findings

22.15 The Tribunal determined that AB understood he was buying 19 Larkfield from HB Consultants Ltd for £500.000.00. In fact AB deposited £500,000.00 into the Firm's client account, which sum was paid out, and which enabled HB Consultants Ltd to buy the property for £438.000.00. What then followed was a transfer from HB Consultants Ltd to AB at £460,000.00, to which contract AB was not made privy. The Tribunal was in no doubt that AB was oblivious to the fact that the original sale

was for a purchase price of £460,000.00, and that he paid £500,000 for the same property, which had been purchased with part of the £500,000 he had paid to the Respondent's firm.

22.16 The Tribunal found that the Respondent misled AB in asserting that there was "something to clear off the title." The issue with regards title pertained to the first sale, the sub sale, to HB Consultants Ltd. The Respondent further misled AB in August 2016 that there was a delay in registration of his title to the property because of "Brexit" and the "centralisation of the Land Registry". The reality was that the application for registration of title was not made until September 2016. Although the contract of sale recorded a purchase price of £460,000.00 the Respondent persuaded the Land Registry to enter into proprietorship register that the property had sold for £500,000.00.

22.17 The Respondent proceeded to add to the price the invoice for £35,000.00, which stated that it was "VAT inclusive" although no VAT number was provided, which sum was not paid directly and no reason given why that invoice was rendered to, or due from, the buyer, HB Consultants Ltd. HB himself owned that company, not the seller. The addition of the invoice for £35,000.00 was found by the Tribunal to have been to conceal the true purchase price. Similarly the inclusion of £5,000.00 for chattels, which was not subject to stamp duty in any event, was a further deception to conceal the true purchase price. This was further exacerbated by the fact, which was not disputed by the Respondent during the investigation, that the property was uninhabitable and contained no chattels. If either of these disbursements were genuine they would, and should, have been included in the completion statement. They were not.

22.18 The Tribunal did not accept the Respondent's assertion that he was unaware of the sub sale to HB Consultants until 16 June 2016. The Tribunal determined that he had received instructions from AB to act for him on his purchase from HB Consultants Limited on or around 20 April 2016. The Tribunal further determined that the Respondent had a personal connection with HB as they were business partners in HBMP Limited. HB Consultants Limited were also a client of the Firm. Taking all of these factors into account the Tribunal concluded that the Respondent must have been aware of the sub sale in advance of 16 June 2016, failed to advise AB of that fact and sought, through his conduct, to conceal the true nature of the transaction from him.

22.19 The Tribunal therefore found the factual matrix of Allegation 1.3 proved beyond reasonable doubt.

22.20 The Tribunal found that no solicitor acting with integrity would have sought to make and conceal a profit from the client. The Respondent had thereby breached Principle 2 as his conduct plainly lacked integrity.

22.21 Principle 4 required the Respondent to act in the best interests of AB. The Tribunal found that the manner in which the sub sale was effected could not have been in AB's best interests as (a) he was unaware of the same, (b) he paid £62,000.00 above the true purchase price of the property, (c) "disbursements" which AB was not liable for were claimed and purportedly paid and (d) AB was required to undertake his own

investigation into the transaction and instruct Freemans to resolve his complaint as a consequence of the Respondent's conduct. It was plain to the Tribunal that the Respondent's conduct was contrary to AB's best interests and as such rendered him in breach of Principle 4. The Tribunal further found the Respondent breached Principle 5, as his conduct fell far short of the proper standard of service to AB which was required, and Principle 6, as his conduct significantly undermined the trust placed in him as a solicitor and in the provision of legal services.

22.22 The Tribunal applied the Ivey test in its consideration of whether the Respondent's conduct was dishonest. The Tribunal found that the Respondent's state of knowledge of the facts at the material time was that he was well aware that HB Consultants Limited purchased the property for £438,000.00 then immediately re-sold it to AB for £500,000.00. The Respondent deceived AB by act and omission in outright untruths with regards to the £35,000.00 invoice and the £5,000.00 for non-existent chattels. AB was entirely unaware at the material time of the profit being made on the sub sale by HB who was, unknown to him, the Respondent's client and business partner in HBMP Limited. The Tribunal determined that ordinary, decent people would conclude that his conduct was dishonest.

22.23 The Tribunal therefore found the allegation of dishonesty in respect of Allegation 1.3 proved beyond reasonable doubt.

23. **Allegation 1.4 - Conflict of interest**

The Applicant's Case

23.1 The Respondent failed to act in AB's best interests in failing to notify AB of his commercial relationship with HB and failing to advise AB to seek independent legal advice in that regard. At the material time, HB was a director of HB Consultants Limited. HB Consultants Limited was also a client of the Firm across the duration of the AB matter.

23.2 Furthermore, the Respondent and HB were both directors of a company by the name of HBMP Developments Limited between 19 November 2015 and 11 November 2016. On 11 November 2016, HB resigned and transferred his 50 ordinary shares to the Respondent.

23.3 Mr Willcox submitted that the Respondent had breached Principles 2, 3, 4, 5 and 6 of the SRA Principles 2011 and failed to achieve Outcomes 3.1, 3.4 and 3.5 of the SRA Code of Conduct 2011.

The Respondent's Position

23.4 Having failed to file an Answer to the Rule 5 Statement, the Respondent provided no response to the allegation.

The Tribunal's Decision

23.5 The Tribunal concluded that the reasons given in respect of Allegation 1.3 demonstrably showed that there was a significant risk of conflict in the Respondent

acting for AB given his commercial relationship with HB. The Tribunal found that the Respondent failed not only to disclose his commercial relationship with HB to AB and consequently failed to advise AB to seek independent legal advice in that regard. The Tribunal did not find an actual conflict had arisen, in that the Firm did not act for HB Consultants Limited in respect of the sub sale. Harrow Law was instructed, but there was plainly a significant risk of conflict by virtue of the Respondent's ongoing commercial relationship with HB in HBMP Limited and the fact that at throughout the material time HB Consultants remained a client of the Firm on other matters.

23.6 The Tribunal therefore found the factual matrix of Allegation 1.4 proved beyond reasonable doubt and that it demonstrated a lack of integrity, contrary to Principle 2.

23.7 The Tribunal further found that the Respondent had plainly allowed his independence to have been compromised, contrary to Principle 3. Outcome 3.4 required the Respondent to decline to act if there was a significant risk of an own interest conflict. The Respondent continued to act for AB therefore failed to achieve Outcome 3.4. Outcome 3.5 required the Respondent to decline to act if there was a significant risk of a client conflict. Having determined that there was a significant risk of client conflict, in the light of the Respondent's commercial relationship with HB, whose company was selling the property to AB, the Tribunal concluded that the Respondent failed to achieve Outcome 3.5. None of the exceptions in Outcomes 3.6 and 3.7 applied to the material facts.

23.8 The Tribunal found that the Respondent's conduct was a flagrant disregard of AB's best interests and as such breached Principle 4. The Tribunal determined that the concealment of material facts from AB was a significant departure from the proper standard of service required of the Respondent which AB was entitled to receive contrary to Principle 5 and thus subsequently undermined the trust placed in the Respondent and in the provision of legal services contrary to Principle 6.

23.9 Outcome 3.1 required the Respondent to have effective systems and controls in place to enable him to identify and assess potential conflicts of interests. The Tribunal found that the mischief sought to be addressed in that regard was to prevent a solicitor from acting accidently in a situation where there was a risk. In present case the Tribunal determined that the Respondent was fully aware of risk and conflict and acted regardless. The Tribunal had not been provided with any evidence of systems and controls that were in place at the material time and no evidence that there were not. In any event, the Tribunal determined that the presence or otherwise of systems and/or controls were not relevant given the fact that the Respondent had personal knowledge of HB and was intrinsically involved in the sub sale to HB Consultants Limited. The Tribunal therefore found the failure to achieve Outcome 3.1 not proved beyond reasonable doubt.

23.10 The Tribunal applied the Ivey test in its consideration of whether the Respondent's conduct was dishonest. The Tribunal concluded that the Respondent's state of mind as to the facts at the material time was that he was well aware of the conflict of interest, yet proceeded to act nonetheless. The Tribunal determined that his motivation for so doing was to enable HB to make a £35,000.00 profit on the sub sale at AB's expense. The Tribunal determined that ordinary, decent people would conclude that his conduct was dishonest.

23.11 The Tribunal therefore found the allegation of dishonesty in respect of Allegation 1.4 proved beyond reasonable doubt.

24. **Allegation 1.5 - Failure to provide a proper standard of service**

The Applicant's Case

24.1 Mr Willcox drew the Tribunal's attention to an e-mail from the Respondent to AB on 3 June 2016 and timed at 12:38 in which he stated *inter alia*:

> "Sorry for the slight delay...the slight delay is the sellers *(sic)* solicitors are just clearing an item on the title deeds before we complete."

24.2 Reference was also made to an attendance note, produced by the Respondent and dated 20 April 2016, which stated:

> "Conversation with AMS where by further to our previous conversations in this matter he stated that he had somebody interested in investing in to off market properties and through the introduction by Dr S, he had somebody from Saudi Arabia interested in purchasing off market properties. MP informed him that there was an off market property which HB had, namely 19 Lakefield Avenue in Harrow, for sale as the seller wanted to sell the property immediately as seller was in mortgage arrears and we understand was threatened possession by the lender. MP stated that he understood that the property has full planning permission for a loft extension and three meters at the rear extension. AMS stated that he would pass on the information and wanted to view the property. MP stated that HB had the keys and gave AMS HB's contact details for the viewing." (sic)

24.3 Mr Willcox submitted that the Respondent would have been well aware when he e-mailed AB on 3 June 2016 that a sub-sale transaction was going to take place and as such, his email to AB that "... the slight delay is the sellers solicitors are just clearing an item on the title deeds before we complete" was misleading. The Respondent failed to provide AB with the true and complete picture in relation to his matter, which was known to the Respondent at that time. The FIO confirmed that there were "no documents in the client file to state what item [on the title] needed to be cleared, how Mr Patel became aware of it, or any evidence of steps taken by Mr Patel to address it." There were no copies of any requisitions on title questionnaires in the client file.

24.4 The Respondent asserted that he only became aware of the sub-sale transaction on 14 June 2016. This was not accepted but even if that were the case, the Respondent took no steps between 14 June 2016 and the completion date of 20 June 2016 to make AB aware of the sub-sale, such as including full details of it in the completion statement, which was also misleading.

24.5 Mr Willcox submitted that the Respondent's failure to send AB a copy of the contract prior to exchange further evidenced the fact that the Respondent intended to mislead him in respect of the true purchase price of the property.

24.6 The Respondent signed the contract without the express authority of AB. The FIO found no evidence that the Respondent either "sought or was given the express authorisation by the client" to sign the contract on his behalf, that he contacted AB to discuss the purchase price or the terms of the contract before he signed it.

24.7 The Respondent asserted that he did not retain a copy of the signed contract and he did not provide a copy of it when requested to do so by Freemans. He further asserted that authority was given by AB in a telephone conversation but the FIO was unable to locate any documentary evidence to suggest that "such a call took place, and no date was given by Mr Patel."

24.8 Mr Willcox submitted that the Respondent further misled AB in respect of the application for registration of title. The Respondent told Mr AB, in an e-mail dated 12 August 2016, that he had, "...spoken to the land registry today due to various issues with the land registry centralisation, the application is in process and may take another one week... I am chasing them, and as soon as we get the completion documents I will send them to you..." The application for registration was in fact dated 5 September 2016 and the client ledger showed that the fee was not paid to the Land Registry until 6 September 2016. The application for registration was not lodged until 8 September 2016.

24.9 Mr Willcox therefore submitted that the Respondent provided AB with misleading information and failed to provide him with a proper standard of service, in breach of Principles 2, 4, 5 and 6 of the SRA Principles 2011 and failing to achieve Outcomes 1.2, 1.5 and 1.12 of the SRA Code of Conduct 2011.

The Respondent's Position

24.10 Having failed to file an Answer to the Rule 5 Statement, the Respondent provided no response to the allegation.

The Tribunal's Decision

24.11 The Tribunal found that the Respondent provided AB with misleading information with regards his purchase of 19 Larkfield Avenue in that:

- He stated in an email dated 3 June 2016 that "...the slight delay is the sellers solicitors ... clearing an item on the title deeds before we complete." This matter had to be resolved prior to the sub sale of the property to HB Consultants Limited, and was unrelated to the sale to AB;

- The attendance note dated 20 April 2016 recorded that AB was told HB wanted to sell 19 Larkfield Avenue immediately as the seller was in mortgage arrears. Having distinguished in that note between HB and the seller, the Tribunal found that the Respondent would have known on 20 April 2016 that a sub sale between the seller and HB Consultants Limited would take place, but failed to advise AB of that fact. In addition he misled AB to believe that the delay in completing the transaction was an issue with the title, when there was none.

- Even if the Respondent's assertion, that he was unaware of the sub sale until 14 June 2016, was correct; he made no attempt to appraise AB of that fact prior to completion on 20 June 2016.

- He failed to send AB a copy of the contract of sale prior to exchange and the Tribunal found that this was to mislead him, and conceal the true purchase price of 19 Larkfield Avenue.

- He signed the contract of sale with no authorisation from AB to do so.

- He stated in an email dated 12 August 2016 that the delay in registration of title was perpetuated due to "various issues with the land registry" when in fact the application was not lodged until later - 8 September 2016, as evidenced by matter ledger.

24.12 In the light of these findings the Tribunal concluded that the factual matrix of Allegation 1.5 was proved beyond reasonable doubt and that it demonstrated a lack of integrity, contrary to Principle 2.

24.13 The Tribunal found that the Respondent's conduct was a flagrant disregard of AB's best interests and as such breached Principle 4 and Outcome 1.2 which required the Respondent to provide services to AB in a manner that protected his interests and was subject to the proper administration of justice. The Tribunal found that misleading and deceiving AB was plainly contrary to his best interests and fell far below the proper standard of service to which AB was entitled, contrary to Principle 5. The Tribunal further found that the Respondent's conduct inevitably diminished the trust vested in him as a solicitor and in the provision of legal services contrary to Principle 6.

24.14 The Tribunal further found that by misleading AB and introducing delay into the matter the Respondent failed to achieve Outcome 1.5 in that his conduct demonstrated a failure to deliver a competent and timely service which took into account AB's needs and circumstances. On the contrary, the Respondent's conduct prevented AB from making informed decisions about the services he required, how his matter should have been handled, and the options available to him. The Respondent therefore failed to achieve Outcome 1.12.

24.15 The Tribunal applied the Ivey test in its consideration of whether the Respondent's conduct was dishonest. The Tribunal concluded that the Respondent's state of mind as to the facts at the material time was that he was well aware that (a) the matter which needed to "be cleared off the title" was in relation to the sub sale and not AB's purchase and that (b) the delay in registration of title was caused by the lateness of the Respondent's application to the Land Registry in that regard. Notwithstanding these facts the Respondent relayed to AB that the delay was attributable to the issue on title, the centralisation of the Land Registry and Brexit; matters which he knew were not true. The Tribunal determined that ordinary, decent people would conclude that his conduct was dishonest.

24.16 The Tribunal therefore found the allegation of dishonesty in respect of Allegation 1.5 proved beyond reasonable doubt.

25. **Allegation 1.6 - Failure to have sufficient regard to the Money Laundering Regulations 2007**

The Applicant's Case

25.1 The Firm received £500,000.00 from AB on 10 May 2016 by way of a bank transfer. The FIO found that the Respondent requested identification evidence from AB on 3 June 2016. The FIO confirmed that there was no evidence that the Firm "took any steps to return the funds to the remitter, raise a Suspicious Activity Report, or conduct any other due diligence procedures in respect of AB." Similarly, there was no evidence to suggest that a risk assessment had been carried out.

25.2 The Respondent sent a further email to AB on 14 June 2016 in which he repeated the request for identification evidence from AB. A copy passport and copy bank statement was received from AB on 15 June 2016 by which time the client account shortage referred to in allegation 1.1 already existed.

25.3 Mr Willcox submitted that additional red flags which called for enhanced due diligence and a risk assessment were that; (a) the Respondent had never met AB in person, (b) AB lived in Saudi Arabia and (c) the Respondent had only spoken to him on the telephone. The Respondent's failures rendered him in breach of Regulations 14.1 and 14.2 of the Money Laundering Regulations 2007.

25.4 The Respondent had provided the FIO with a copy of the Firm's Money Laundering Policy, but no evidence that the policy had been followed. Therefore, the only conclusion to be drawn was that the Respondent was in breach of the firm's own policy.

25.5 Mr Willcox therefore submitted that the Respondent had breached Principles 2, 6 and 8 of the SRA Principles 2011 and had failed to achieve Outcome 7.5 of the SRA Code of Conduct 2011.

The Respondent's Position

25.6 Having failed to file an Answer to the Rule 5 Statement, the Respondent provided no response to the allegation.

The Tribunal's Decision

25.7 The Money Laundering Regulations that the Respondent was alleged to have breached were:

Regulation 9(2)	"...a relevant person [the Respondent] must verify the identity of the customer (and any beneficial owner) [AB] before the establishment of a business relationship or the carrying out of an occasional transaction..."
Regulation 14(1)	"A relevant person [the Respondent] must apply on a risk sensitive basis enhanced customer [AB] due diligence measures and enhanced monitoring –

(a) .....
(b) In any other situation which by its nature can present a higher risk of money laundering or terrorist financing."

Regulation 14(2) "Where the customer [AB] has not been physically present for identification purposes, a relevant person [the Respondent] must take specific and adequate measures to compensate for the higher risk, for example, by applying one or more of the following measures –

(a) ensuring that the customer's [AB's] identity is established by additional documents, data or information;
(b) supplementary measures to verify or certify the documents supplied, or requiring confirmatory certification by a credit or financial institution which is subject to the money laundering directive.
(c) Ensuring that the first payment is carried through an account opened in the customer's [AB's] name with a credit institution.

25.8 The Tribunal found that AB's deposit of £500,000.00 was received into the firm's client account on 10 May 2016 by way of a bank transfer. The Respondent first asked AB for identification in an email dated 3 June 2016, nearly 4 weeks after that deposit. The Tribunal determined that AB had not supplied any identification documents to the Respondent until at least 14 June 2016, 4 days prior to completion on the sale of 19 Larkfield Avenue, because the Respondent sent him a further email on that date chasing identification evidence. At this stage the £500,000.00 deposit had been under the custody and control of the firm for in excess of 5 weeks. During that period the Respondent took no steps to return the funds to AB, or to raise a Suspicious Activity Report. Nor did the Respondent undertake any risk assessment with regard to the funds. On the contrary, the Respondent used some of those funds to make improper payments in the intervening period between the deposit being made on 10 May 2016 and receipt of AB's identification evidence on 15 June 2016. In so doing the Tribunal found that the Respondent failed in his duties as COLP, COFA and MLRO and failed to have sufficient regard for his duties under Regulations 9(2), 14(1) and 14(2) of the Money Laundering Regulations 2007.

25.9 The Tribunal therefore found the factual matrix of Allegation 1.6 proved beyond reasonable doubt.

25.10 The Tribunal further found that no solicitor acting with integrity could have so acted. The Firm had a money laundering policy in place to which the Respondent failed to adhere. AB resided in Saudi Arabia which, the Tribunal concluded, cried out for enhanced due diligence to have been undertaken by the Respondent. The risk of money laundering was well known within the profession, by way of warning cards and guidance published by the Applicant and the Tribunal found that the Respondent could not have been oblivious to these. As COLP, COFA and MLRO within the Firm, having failed to comply with the Firm's own policy and having failed to comply with the money laundering regulations, the Tribunal concluded that the Respondent's

conduct lacked integrity and failed to achieve Outcome 7.5, which required him to comply with legislation applicable to the Firm.

25.11 The Tribunal further determined that the Respondent's derogation from his duties undermined the trust vested in him and in the profession contrary to Principle 6. The Tribunal additionally concluded that his conduct rendered him in breach of Principle 8 in that he failed to run his business and carry out his various roles effectively and in accordance with proper governance and sound risk management principles.

26. **Allegation 1.7 - Use of the client account as a banking facility**

The Applicant's Case

26.1 During the course of his inspection of the firm, the FIO discovered evidence to suggest that, in relation to the matters of P0545/1, P0545/2 and P0544/1, the Respondent had used the firm's client account as a banking facility to make payments totalling £536,239.50.

P0545/1

26.2 The Respondent told the FIO that CP and MP, the clients to whom this matter relates, were his parents. The ledger in respect of CP and MP detailed the subject matter as "Finance" and the Respondent was stated as being the fee earner. The Respondent described his retainer with CP and MP as follows;

> "The underlying transaction relates to the acquisition and redevelopment with joint venture partners and the redemption and grant of legal charges over the property at 77 Preston Road, Wembley, HA9 8JZ, which is owned by Mr CP and Mrs MP. Mr and Mrs C M Patel are parents to the solicitor Mr Milan Patel."

26.3 During the course of his inspection the FIO found evidence that the Firm "made transfers at the instruction of the clients that did not relate to the underlying legal transaction." The ledger indicated that, on 23 December 2016, £283,871.00 was received into client account from Amud & Co Solicitors. This sum was not then sent to CP and MP but, instead, was distributed to the third parties. The Respondent was asked to explain the purpose of the payments and how each transfer related to the underlying legal transaction. The Respondent stated that:

> "Payments are to creditors and or lenders to the client whose borrowing was being repaid by virtue of the new loans and joint venture agreements. One significant repayment is to solicitors Grant Saw solicitors LLP in redemption of an existing loan. The payments to individual creditors to whom the client had promised repayment from the funds realised by the mortgage and joint venture agreement would be paid by their solicitors as the funds were realised in the hands of their solicitors. The details and identities of recipients are clearly itemised on the copy client ledger sheet provided. Evidence of identity is provided in the binder served with this response...

> ...The payment to Taylor Wimpey is, as the identity of the payee indicates, the balancing payment for the purchase of a property."

26.4 The FIO found evidence within the matter file confirming CP and MP's instructions to the Respondent to make the payments that he did. The Respondent provided the FIO with a witness statement from CP and MP, but it failed to address how the payments authorised were directly connected to the underlying transaction. On 21 September 2018, the FIO enquired of Taylor Wimpey the basis of the payments made to them by the Firm. Taylor Wimpey replied on 24 September 2018 namely that the money they had received in the sum of £150,259.53 was "in respect of the purchase of Plot 124, The Square, Milton Keynes by the customer NM and BNM."

P0545/2

26.5 The ledger in respect of CP and MP detailed the subject matter as "Finance" and the Respondent was stated as being the fee earner. The Respondent described his retainer with CP and MP as follows:

> "The underlying transaction relates to the further redevelopment of real property with joint venture partners and the redemption and grant of legal charges (remortgage) over the property at 18 Hillcroft Crescent, Wembley, HA9 8EE, which is owned by Mr CP and Mrs MP. Mr and Mrs C M Patel are parents to the solicitor Mr Milan Patel."

26.6 However, during the course of his inspection, the FIO found evidence that the firm "made transfers at the instruction of the clients that did not relate to the underlying legal transaction" namely:

- £488,804.00 was received from Singhania & Co Solicitors on 1 March 2017.
- £333,350.00 was sent to Underwoods Solicitors on 1 March 2017.
- All but £150.00 of the remainder was remitted not to the clients themselves, but rather was distributed to a series of third parties.

26.7 Mr Willcox further referred the Tribunal to an attendance note dated 1 March 2017 stated that:

> "Date: 1 March 2017
>
> Attendance with clients, client signed documentation and read through all documents explaining implications.
>
> Clients wanted the following transfers
> HB Consultants £10,000
> S Patel £12,944.00
> London Essence £5,760.00
> Malibu Limited £10,000.00
> Y Miah £16,000.00
> K Mashru £16,100.00

M Patel £5,000.00
Rickon Limited £20,000.00
H Bhogaita £15,000.00
Marcin Dolcim £10,000.00
V Patel £17,500.00
S Maxdi £17,000.00."

26.8 When asked by the FIO to explain the purpose of the payments and how each transfer related to the underlying legal transaction, the Respondent stated that "Payments and receipts are linked to the underlying transactions for which the client instructed ALD Legal Limited..."

26.9 Mr Willcox submitted that the repayment of third-party creditors of the clients was not the purpose of the retainer and, whilst the clients produced a witness statement stating that the transfers had been authorised by them, the witness statement did not demonstrate that the payments which they had authorised had a direct connection to an underlying legal transaction.

P05441/1

26.10 The Respondent was instructed by JP. A client care letter, dated 28 August 2016 cited the purpose of the retainer as being "Restructuring of business finance and redemption of mortgages." It was provided by the Respondent to the SRA with his response dated 6 October 2017.

26.11 Mr Willcox submitted this this contradicted the client care letter obtained by the FIO in the course of his inspection dated 7 November 2016 which cited the purpose of the retainer as:

> "Redemption of Portfolio of Mortgages."

26.12 The Client ledger set out the matter description as "39 Hampton Street" and the Respondent was the fee earner.

26.13 When asked by the FIO to explain what the purpose of his retainer with JP he stated:-

> "The underlying transaction for the client JP concerned the restructuring of the partly secured and partly unsecured business finance JP had in place for a property development business... JP gave instructions that he had agreed with a number of creditors that payments would be made to them direct from solicitors..."

26.14 An analysis of the client ledger revealed "that funds were received from various sources and remitted to various third parties" upon the apparent instructions of JP.

26.15 The FIO identified, on the client file, a number of transfer chits for the payments citing various reasons such as "owes business partner," "reduce loan," "owes partner," "construction work," "e-commerce bill," "litigation fees." There was no evidence on file to indicate that any of these payments were predicated on an underlying legal transaction.

26.16 Mr Willcox submitted that as a consequence of these matters Respondent breached Rule 14.5 of the SRA Accounts Rules 2011 and Principles 2, 6 and 10 of the SRA Principles 2011.

The Respondent's Position

26.17 Having failed to file an Answer to the Rule 5 Statement, the Respondent provided no response to the allegation.

The Tribunal's Decision

26.18 The Tribunal accepted the evidence adduced by the Applicant in respect of payments made in and out of the client account. The Tribunal scrutinised the assertions made by the Respondent in the course of the investigation in that regard namely that he (a) was instructed by the various clients to make the payments that he did, (b) the purpose of the transactions was to settle debts with various creditors. The Tribunal found that the purpose of the transaction did relate to an underlying legal transaction. The Tribunal was not provided with any retainers between the Respondent and clients CP, MP or JP which evidenced the underlying legal transaction. Notwithstanding that fact, 27 transactions to third party creditors were made on behalf of clients CP, MP and JP between 28 November 2016 and 1 March 2017. The Tribunal concluded that absent an underlying legal transaction, the clients could have and should have settled their liabilities with the third party creditors directly. The Respondent did not need to be, and indeed should not have been, instructed to effect the same. In so doing, the Tribunal found that the Respondent had allowed the client account to be used as a banking facility in contravention of Rule 14.5 of the Solicitors Accounts Rules 2011.

26.19 The Tribunal therefore found the factual matrix of Allegation 1.7 proved beyond reasonable doubt.

26.20 The Tribunal found that the Respondent's conduct demonstrated a lack of integrity in that no solicitor acting with integrity would have allowed the client account to have been used as a banking facility repeatedly and over a protracted period of time. The Tribunal concluded that the Respondent had breached Principle 2.

26.21 The Tribunal was in no doubt that trust in the Respondent and in the provision of legal services was undermined as a consequence of the Respondent's conduct. The public expect solicitors to comply with the profession's rules regarding the client account. The Tribunal therefore found that the Respondent breached Principle 6.

26.22 Principle 10 required the Respondent to protect the money and assets of clients CP, MP and JP. The Tribunal considered carefully whether the Respondent had failed in that regard, but concluded that he had (a) acted in accordance with the clients' instructions, (b) gave effect to their wishes and (c) had not acted to their detriment or disadvantage. The Tribunal concluded that whilst the Respondent had improperly in the way he had used the client account, it was in a manner requested by the clients and so he had not failed to protect their money and assets. The Tribunal therefore found that he had not breached Principle 10, and so this allegation was found not proved.

26.23 The Tribunal applied the Ivey test in its consideration of whether the Respondent's conduct was dishonest. The Tribunal found that the Respondent's state of knowledge of the facts at the material time was that clients CP, MP and JP wanted him to use their deposited funds to pay the creditors on their behalf. The Respondent used their funds for that purpose, in accordance with their instructions. Whilst this amounted to a significant regulatory breach of the Solicitors Account Rules and Principles set out above, the Tribunal determined that ordinary, decent people would not – on these facts – conclude that his conduct was dishonest.

26.24 The Tribunal therefore found this allegation of dishonesty not proved beyond reasonable doubt.

27. **Dishonesty**
In addition, allegations 1.1, 1.2, 1.3, 1.4, 1.5 and 1.7 inclusive are advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegations.

The Applicant's Case

27.1 Mr Willcox further submitted that the Respondent's actions were dishonest in accordance with the test for dishonesty laid down in Ivey in relation to allegations 1.1, 1.2, 1.3, 1.4, 1.5 and 1.7 inclusive in that:

- As a solicitor of over 10 years' post qualification experience at the material time, he must be taken to have fully understood his professional obligations when dealing with clients and when handling client money and the sacrosanct nature of the client account.

- He must also have understood the impropriety inherent in paying away other people's money without their authority as he did on multiple occasions, causing a shortage on the client account.

- He failed to inform his client about the sub-sale transaction, of which he must be taken to have been fully aware, in advance of exchange of contracts.

- He did not disclose to AB his commercial relationship with HB, and he did not advise AB to seek independent legal advice, and the reason he did so was to conceal his own misdemeanours.

- He issued his client with a completion statement which did not show the true picture of the transaction.

- He gave an untruthful account when updating AB about the registration application to the Land Registry, because he did not want the client to find out about the sub sale.

- He signed the contract for sale without the authority of his client because he knew that if it was sent to AB, he would discover the true purchase price and the true nature of the transaction.

- He would have known that his client trusted him and took him at his word. However, he abused that trust by misleading him, by providing information that was not true and by using his money without authority.

- He must have been fully aware that the client account must not be used as a banking facility however on three matters, two of which were connected to family members, he still proceeded to make payments out of the client account which were totally unconnected to the matters on which he was acting.

27.2 Mr Willcox submitted that the Respondent's behaviour was demonstrable of dishonest conduct within the meaning of the Ivey test.

The Respondent's Position

27.3 Having failed to file an Answer to the Rule 5 Statement, the Respondent provided no response to the allegation.

The Tribunal's Decision

27.4 The Tribunal found that Allegations 1.1 – 1.5 as drafted were different ways to address the same mischief which was subjectively and objectively dishonest for the reasons set out above.

27.5 Dishonesty was found not proved in respect of Allegation 1.7.

Previous Disciplinary Matters

28. On 11 December 2012 the Respondent faced allegations before the Tribunal which included; (a) failure to act in the best interests of a client, (b) failure to supervise and/or manage, (c) breach of client confidentiality, (d) failure to disclose serious professional misconduct to the Applicant, (e) failure to comply with an undertaking, (f) lack of integrity and (g) recklessness, He was sanctioned to pay a fine of £15,000.00 and costs in the sum of £36,952.88.

Mitigation

29. No mitigation was advanced by the Respondent.

Sanction

30. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.

31. The Tribunal was cognisant of the previous finding recorded against the Respondent and noted that the misconduct in that regard related to his role as sole director in another firm. The findings included a lack of integrity and recklessness in 2012. The

Tribunal concluded that the previous findings were highly relevant to these proceedings.

32. The Tribunal had made five findings of a lack of integrity and of dishonesty in relation to the deception of AB. The Respondent's motivation for his dishonest conduct was personal financial gain. It was planned, premediated and concealed over a protracted period of time. The Tribunal concluded that the Respondent was solely culpable and had no one to blame but himself. Significant harm was caused to AB who had to undertake his own investigation into the purchase of 19 Larkfield Avenue, instruct an estate agent to undertake enquiries with Her Majesty's Land Registry and to instruct Freemans to pursue a complaint on his behalf. AB was not reimbursed for the legal fees that he had paid the Respondent, nor for the inflated purchase price of the property. The Respondent's conduct caused substantial harm to the reputation of the legal profession and undermined the fundamental tenet that solicitors should be able to the trusted to the ends of the earth. There were no mitigating features to the case and no exceptional circumstances were advanced.

33. The Tribunal therefore concluded that the only appropriate sanction to meet the overarching public interest was an order striking the Respondent off the Roll of Solicitors.

Costs

34. Mr Willcox referred the Tribunal to the schedule of costs dated 6 August 2019 in which £30,152.30 was claimed. Mr Willcox reduced that amount by £2,740.20 to reflect the fact that the hearing concluded in 2 as opposed to 4 days. The revised figure claimed was £27,412.10.

The Respondent's Position

35. The Respondent failed to file and serve a statement of means.

The Tribunal's Decision

36. The Tribunal concluded that the revised costs claimed were reasonably incurred by the Applicant and proportionate to the case. The Tribunal was unable to assess any means of the Respondent to meet the costs liability, because he had provided no information although asked to do so if he considered his means relevant. The only information available to the Tribunal was the Respondent's claim that he was in receipt of Universal Credit, had been made bankrupt, but jointly owned a property valued at £1,200,000.00. The Tribunal therefore ordered that the Respondent pay the costs claimed in full.

Statement of Full Order

37. The Tribunal Ordered that the Respondent, MILAN PATEL, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £27,412.10.

Dated this 2nd day of October 2019
On behalf of the Tribunal

D. Green
Chairman

JUDGMENT FILED WITH THE
LAW SOCIETY
04 OCTOBER 2019