SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11957-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JOHN KNIGHT First Respondent
[SECOND RESPONDENT] Second Respondent
[THIRD RESPONDENT] Third Respondent

Before:

Mr W. Ellerton (in the chair)
Mr D. Green
Mr M. R. Hallam

Date of Hearing: 24-26 September 2019

Appearances

Nimi Bruce, barrister of Capsticks, 1 St. Georges Road, London, SW19 4DR, for the Applicant.

Stephen Innes, barrister of 4 New Square, Lincoln's Inn, London, WC2A 3RJ for the Second and Third Respondents.

The First Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations made against the First Respondent were that, whilst practising initially as a solicitor at Wosskow Brown Solicitors LLP and later as a director at Wosskow Brown Legal Services Limited ("the Firm"):

1.1 Between May 2014 and November 2015, he caused or allowed the Firm's client account to be used as a banking facility in respect of the BHSLL project; and in so doing he breached all or any of Rule 14.5 of the SRA Accounts Rules 2011 ("the Accounts Rules") and Principles 6 and 8 of the SRA Principles 2011 ("the Principles").

1.2 From May 2014 to November 2015, without adequately assessing the risk, he involved himself and the Firm in the BHSLL project, which bore hallmarks of being a dubious investment scheme; and in so doing he breached all or any of Principles 6 and 8 of the Principles.

1.3 Between February 2015 and January 2016, he caused or allowed the Firm's client account to be used as a banking facility in respect of the CL project; and in so doing he breached all or any of Rule 14.5 of the Accounts Rules and Principles 6 and 8 of the Principles.

1.4 In or about April 2016, and ahead of a visit to the Firm by the Applicant's Forensic Investigation Officer ("FIO"), he created or caused to be created documents in respect of the BH matter which were misleading, and which he knew were misleading, including all or any of:

(a) a memo dated 5 October 2014;
(b) a file note dated 5 October 2014; and
(c) a memo dated 8 October 2014;

and in so doing he breached all or any of Principles 2, 6 and 7 of the Principles.

1.5 In August 2017, in a response through his solicitors to an Explanation With Warning ("EWW") letter, he referred to and placed reliance upon documents which were misleading, and which he knew were misleading, including all or any of:

(a) a memo dated 5 October 2014;
(b) a file note dated 5 October 2014; and
(c) a memo dated 8 October 2014;

and in so doing he breached all or any of Principles 2, 6 and 7 of the Principles.

1.6 Between July 2015 and January 2017, he amended and/or produced documents, or arranged for such documents to be amended and/or produced, relating to legal charges to show incorrect dates, in order to circumvent the deadline for registering such charges with Companies House, including all or any of:

(a) a memo dated 5 October 2014;
(b) a legal charge and Companies House form MR01 in the SI/NW matter;
(c) a legal charge and Companies House form MR01 in the CSS/B matter;

(d) a mortgage deed and Companies House form MR01 in the OP/P matter;

and in so doing he breached all or any of Principles 2, 5 and 6 of the Principles.

2. By reason of the facts and matters set out at paragraphs 1.4, 1.5 and 1.6 above, or any of them, he acted dishonestly; but dishonesty was not a necessary ingredient to prove those allegations.

3. The allegations made against the Second Respondent were that, whilst practising initially as a member and later as a director and the COFA at the Firm:

3.1 Between May 2014 and November 2015, he failed adequately to supervise the First Respondent in respect of the BHSLL matter, in that the First Respondent caused or allowed the Firm's client account to be used as a banking facility in respect of the BHSLL project; and in so doing he breached all or any of Rule 14.5 of the Accounts Rules and Principles 6 and 8 of Principles.

3.2 Between May 2014 and November 2015, he failed adequately to supervise the First Respondent in respect of the BHSLL project, which bore hallmarks of being a dubious investment scheme; and in so doing he breached all or any of Principles 6 and 8 of the Principles.

4. The allegations made against the Third Respondent were that, whilst practising initially as a member and later as a solicitor at the Firm:

4.1 Between October 2013 and April 2016, he caused or allowed the Firm's client account to be used as a banking facility in respect of the GB ledger; and in so doing he breached all or any of Rule 14.5 of the Accounts Rules and Principles 6 and 8 of the Principles.

4.2 Between March 2013 and July 2016, he caused or allowed the Firm's client account to be used as a banking facility in respect of the AC ledger; and in so doing he breached all or any of Rule 14.5 of the Accounts Rules and Principles 6 and 8 of the Principles.

Preliminary Matters

5. <u>First Respondent's Medical data</u>

5.1 On 28 July 2019 the First Respondent had sent some medical data relating to himself to the Tribunal. He had asked that it be kept confidential. The starting point was that any material served in proceedings must be served on all parties in the interests of transparency and fairness. The First Respondent had not been told that he needed to make an application to the Tribunal for this procedure to be departed from.

5.2 The Division of the Tribunal hearing this matter had not been given sight of the medical data pending resolution of this matter.

5.3 At the outset of the hearing the Tribunal informed those parties who had attended, that was the Second and Third Respondents and the Applicant, of the position. The parties told the Tribunal that they were content for the Tribunal to see the medical data without it being shared with the Second and Third Respondent. If the Tribunal took the view

that there was material contained in that data that impinged in any way on the case against the Second and Third Respondents then Mr Innes told the Tribunal that he may then ask to have sight of it.

5.4 On that agreed basis the Tribunal read the entirety of the medical data. It included a print-out of the First Respondent's GP records and letters between his GP and Capsticks. The Tribunal found no reference contained in any of the documentation that referred to the Second and Third Respondents or the allegations against them. The Tribunal was satisfied that disclosure of the First Respondent's medical data would breach his right to privacy. There were no factors to counter that as there was nothing contained in those documents which was in any way prejudicial (or indeed of assistance) to the Second and Third Respondents. Although the First Respondent had not formally made an application for the medical data not to be shared with the Second and Third Respondents, because he had not been aware he needed to, the Tribunal treated his request for privacy as such an application. The Tribunal granted that application on the basis that disclosure of the material, which was of no relevance to the case against the other Respondents, could cause exceptional hardship to the First Respondent.

5.5 During the course of the hearing there was brief discussion of the First Respondent's health. That part of the hearing took place in private and the Tribunal directed that the audio discs of the private section of the hearing should not be disclosed to non-parties.

6. Application to proceed in absence

6.1 The First Respondent did not attend the hearing and was not represented. Ms Bruce applied for the matter to proceed in his absence.

6.2 Ms Bruce told the Tribunal that the First Respondent had been properly served. Throughout the proceedings he had been entirely co-operative but he had also been adamant that he did not want to attend the hearing. On 19 September 2019 the Applicant had written to the First Respondent and asked him to confirm that he was aware of the hearing, that he did not intend to attend and that he agreed that the Tribunal could proceed in his absence in the knowledge that he was at risk of being struck-off. The First Respondent had replied to that email the same day and confirmed that he agreed with the contents. He had indicated that he wanted the matter concluded without additional costs being incurred.

6.3 On the morning of the hearing the First Respondent had returned home from work to put his signature to a Statement of Agreed Facts. Ms Bruce submitted that the Tribunal could be satisfied that the First Respondent had robustly submitted that he did not want to attend and that in those circumstances the Tribunal should proceed in his absence.

6.4 Mr Innes had no representations in relation to this application.

The Tribunal's Decision

6.5 The Tribunal considered the submissions made by Ms Bruce and the indication given by the First Respondent. The Respondent was aware of the date of the hearing and SDPR Rule 16(2) was therefore engaged. The Tribunal had regard to the Solicitors

Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
> (ii) …;
> (iii) the likely length of such an adjournment;
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
> (v) …;
> (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
> (vii) …;
> (viii) …;
> (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
> (x) the effect of delay on the memories of witnesses;
>
> (xi) …;"6.6 In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a Respondent.

At [19] he stated:

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

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

6.8 The First Respondent had clearly been served with the papers and was aware of the hearing date. He was also aware of the possible outcomes and had been engaging with the Applicant as recently as the morning of the hearing. He had communicated his

active and informed decision not to attend. The Applicant had specifically warned the First Respondent of the risk of a strike-off if matters were proved and he had responded to acknowledge his understanding of that position.

6.9 The Tribunal had reviewed the medical materials which did not indicate an unfitness to attend, participate, instruct solicitors or make the decisions he had made. The Tribunal was satisfied that the First Respondent had voluntarily absented himself.

6.10 The First Respondent had not sought and did not want an adjournment. In any event, adjourning matters would not result in his attendance and would only delay matters. This would not be to his benefit and would have a negative impact on the other two Respondents.

6.11 The Tribunal was satisfied that it was in the interests of justice to proceed in the absence of the First Respondent and therefore granted Ms Bruce's application.

Factual Background

7. Wosskow Brown Solicitors LLP was authorised on 1 July 2006. The Second and Third Respondents were members and initially, the First Respondent was an employee. The Second Respondent was nominated as the COLP and COFA of the LLP no later than November 2012, and continued to perform these roles at the time of the FIO's visit. On 19 November 2015, Wosskow Brown Legal Services Limited was authorised, and the assets of the LLP were transferred to it. At the time of the FIO's First visit, the LLP was still active but was running down its work. In this Judgment "the Firm" is used to refer to both entities.

8. The First and Second Respondents were also directors and owners of WB Legal Services Limited from authorisation. The Second Respondent was the COFA (but not the COLP). The Third Respondent was a director and owner from 1 January 2017. Authorisation of WB Legal Services was revoked on 31 July 2017.

9. The First Respondent was the fee earner in respect of the BHSLL and CL matters. He was admitted to the roll on 2 April 2013, having been trained by the Firm and having previously been an office junior at the Firm. The First Respondent had been appointed the Money Laundering Reporting Officer (MLRO) of the Firm approximately 6 months after qualification, and that he had become the head of the property department in September 2015. He had a number of personal difficulties throughout 2015 which culminated in a period of absence from the Firm from November 2015 to February 2016.

10. The Second Respondent was admitted to the roll on 3 July 2000. He had been the head of the property department and was the First Respondent's named supervisor in respect of the BHSLL matter.

11. The Third Respondent was admitted to the roll on 2 October 1989. He was not involved directly in the BHSLL or CL matters.

BHSLL Care Home Scheme

12. In May 2014, the Firm started acting on behalf of Company A in respect of the re-development of a defunct care home in South Yorkshire ("the Care Home"). The plan was to create a 52-room care facility with communal living areas. Funds to develop and refurbish the site were sought from investors ("the Purchasers") who would purchase leases on individual rooms. Mr F was a director and shareholder of Company A. A developer company was appointed ("the Developers") of which Mr F was also a director. Completion was planned for January 2015, but there were insufficient funds to complete, and the Developers entered liquidation in February 2015. On 4 November 2015, an Administrator was appointed in respect of Company A. The property was subsequently sold and Company A was dissolved. The Care Home's marketing literature had included a brochure which stated on its front page: "All sales are direct with the vendor, all funds are administered through UK solicitors". The five- year assured income was stated at 8-10%. The "buy back option" was said to be: "You are getting back up to 10% per annum PLUS a further 8% per annum if the developer buys it back in year 5, an astonishing 18% per annum."

13. The Firm had drawn up a Reservation Agreement for use with the Purchasers and duly acted in the sale of 50 unit leases. Money was received into the Firm's client account from the Purchasers. On 29 September 2014, costs in the sum of £21,840 were paid to the Firm by way of a client to office account transfer.

14. There was an initial meeting between the Firm and Mr F in May 2014. A file note of this meeting recorded the fact that Company A had no bank account and would be looking to the Firm to receive deposits from the Purchasers and to make payments in respect of invoices presented by those acting on behalf of Mr F. A client care letter was issued on 15 May 2014. This letter set out how the Firm would hold funds from Purchasers in the client account and these "may be released to you and utilised by you for the ongoing development of the premises". The Firm was to "... administer payments in and out of the account for the continued development of the premises". Minus transfers, in excess of £1.7 million was paid out of the client account for the Care Home matter. No funds were sent directly to the client developer. The payments included expenses for the development of the Care Home, commissions paid for the introduction of purchasers, a director's loan to Mr F of £6,000, and a payment to HMRC in respect of corporation tax for another of his companies. The Firm received instructions and invoices by email from Mr F's employees and these were authorised by the First Respondent.

15. In October 2014, the Care Home matter file was reviewed by Partner X, another partner at the Firm. He highlighted concerns about the payments the Firm was being asked to make and commented: "we should not be used as a bank. Please advise client." Partner X referred the matter to the Second Respondent for consideration. However, the conclusion at that time was that the transactions were not in breach.

16. The First Respondent had attended the initial meeting with Mr F in May 2014 and made the file note afterwards. In October 2014, the First Respondent was made aware of the concerns of Partner X about the Firm's arrangements with Company A. Despite this, he and the Second Respondent allowed the use of the client account to continue. In the Statement of Agreed Facts put before the Tribunal, the First Respondent admitted that

he caused or allowed the Firm's client account to be used as a banking facility in respect of the Care Home matter, and that this breached Rule 14.5 of the Accounts Rules. The First Respondent had been admitted to the Roll 13 months prior to being instructed in the Care Home matter. He had no previous experience of a project of this scale and complexity. He subsequently experienced significant personal difficulties during this period.

17. The Second Respondent had been the First Respondent's supervisor, head of the Property Department, and a partner of the Firm. In October 2014, the Second Respondent was made aware of concerns on behalf of Partner X about the Firm's arrangements with Company A. In the Statement of Agreed Facts, the Second Respondent admitted that he had failed adequately to supervise the First Respondent in respect of the Care Home matter, in that the First Respondent caused or allowed the Firm's client account to be used as a banking facility.

18. The Applicant's case was that there were a number of warning signs in the Care Home matter. However it was not the Applicant's case that the Care Home project was, in fact, a fraud, or that the First and Second Respondents believed or suspected that the project was other than a genuine commercial venture. The Applicant's case was that the risk factors were not managed appropriately. The Firm's ongoing risk assessment information had been marked as low throughout the development. When Partner X reviewed the matter file in October 2014, he had found that due diligence undertaken on the client had been inadequate. The First Respondent had admitted that without adequately assessing the risk, he had involved himself and the Firm in a project which bore the hallmarks of being a dubious investment scheme.

Company B Matter

19. Company B was set up by the Firm in October 2014. Mr F was a director. The company purchased a property, again in South Yorkshire, over which legal charges were used to secure loans from investors. These loans were intended to be used to complete property refurbishments after the Developers (as mentioned in the Care Home matter above) had entered liquidation. The Firm had drawn up loan agreements and a legal charge. Company B did not have its own bank account and funds received from investors were not passed on to the client. £230,408 was paid from the Firm's client account to a company conducting the refurbishments and to another company of which Mr F was a director. The Firm subsequently instructed an external consultant to review the matter file and made a report to the SRA in May 2016. The First Respondent was the fee earner in respect of the Company B Loans matter. In the Statement of Agreed Facts the First Respondent admitted that he caused or allowed the Firm's client account to be used as a banking facility in respect of the Company B Loans matter.

Misleading Documents

20. The investigation of the Firm commenced with a visit by the FIO on 28 April 2016. Prior to this, letters had been sent to the Firm giving notice of the visit and the need for the Firm to provide documents. During the investigation, the FIO recovered a number of documents in respect of the Firm's handling of the Care Home matter. The documents purported to be contemporaneous notes/correspondence and they included:

- A memo from the First Respondent to Partner X, dated 5 October 2014, setting out the First Respondent's views on the banking facility point;

- A file note, dated 5 October 2014, setting out the First Respondent's response to Partner X's file review;

- A memo purportedly from Partner X to the Second Respondent, dated 8 October 2014, commenting on the First Respondent's response to the file review.

21. The First Respondent replied to an EWW letter by way of a letter from his solicitors on 24 August 2017. In that letter the First Respondent placed reliance on each of these documents. However, the Firm provided information to the SRA which showed that all three documents had been created on the First Respondent's work computer in April 2016, 18 months after the events they purportedly recorded. In the Statement of Agreed Facts, the First Respondent admitted that, ahead of the visit by the FIO to the Firm, he created documents in respect of the Firm's handling of the Care Home matter which were misleading and which he knew were misleading. He further admitted that his conduct was dishonest. He further admitted that he had relied on these documents when replying to the EWW, which he again admitted was dishonest.

Registration of Legal Charges

22. The Firm acted for three corporate clients (Companies S, C and O) in the purchase of properties in Middlesex, Sheffield and Manchester. Each purchase was completed with the benefit of a mortgage. There was a 21-day window for registering the charges with Companies House, beginning with the day after the charge was created. In relation to Company S, a charge deed dated 30 June 2015 was certified by the Firm on 3 July 2015. Two attempts on behalf of the Firm to register a charge with Companies House were unsuccessful, by which point the 21-day window had closed. Further documents were then lodged showing the charge date as 28 July 2015. The relevant form (MR01) was completed in the First Respondent's name.

23. In relation to Company C, the SRA had been provided with a MR01 form, which listed the First Respondent as the contact at the Firm, with a charge creation date of 27 September 2016. A version of the legal charge also bore this date. However, material submitted to Companies House included an MR01 form signed by the First Respondent with a charge creation date of 22 November 2016. The charge was subsequently registered by Companies House on 25 November 2016.

24. In relation to Company O, a copy of the mortgage deed obtained from the Firm showed the date to be 2 December 2016. However, on 20 December 2016, the mortgage company raised a concern that they were unable to locate their charge on the Companies House Register. A further MR01 form obtained by the SRA showed the charge creation date as being 4 January 2017. A copy of the mortgage deed sent with the MR01 showed both the 2 December 2016 and the 4 January 2017 dates.

25. In the Statement of Agreed Facts, the First Respondent admitted that the documents had been amended and/or produced by him or on his instructions. By inserting a later, incorrect date to the charge, the objective was to engineer a new window for registration at Companies House after the original, correct window had closed. The First

Respondent had admitted that the documents were falsified and that his conduct was dishonest.

Client B Ledger

26. The Third Respondent was the fee earner in this matter, where Client B was a close family member. The matter initially concerned the purchase of a property but was marked as closed on 11 September 2013. It was reopened the following month and was left open for other transactions. The total paid into the account was £744,512.95, of which £394,588.75 represented deposits other than transfers. The total paid out of the account was £749,512.96, of which £123,925.38 represented payments other than transfers. Activity on the Client B ledger included a number of loans to the Firm, partners of the Firm and other individuals, and repayments of the same. Other transactions related to the payment of personal expenses such as paying a cruise holiday balance, paying for the rental of a timeshare property, sending funds to the Third Respondent's bank accounts or credit cards, building work and payments for vehicles. The payments on the ledger did not relate to an underlying transaction in which the Firm was acting.

27. In the Statement of Agreed Facts, the Third Respondent admitted that he caused or allowed the client account to be used as a banking facility.

Company AC Ledger

28. The Firm had a client ledger in respect of Client AA with a matter reference of AC Limited. Both AA and AC were companies which offered vehicle hire, storage and recovery services. The ledger was opened on 9 September 2008 and the final transaction on the ledger was listed as 18 July 2016. The Firm acted on behalf of clients involved in accidents and recovered funds from Third-party insurers in respect of care hire and storage. These monies were ultimately owed to Company AC but were held and collected in the client account. The Firm transferred money to a range of individuals on the instructions of the owner of Companies AA and AC. Throughout the lifetime of the ledger, in excess of £1 million was paid into the client account for the "AC" matter and in excess of £900,000 was paid out. Payments were made to a director or associated company, for commission or to suppliers and for the purchase of vehicles, IT services and insurance premiums. Company AC was not the client of the Firm in respect of any of the underlying transactions. A consultant to the Firm was named as the fee earner on the matter, but in reality no fee earning activities were undertaken. The consultant was supervised by the Third Respondent in respect of matters including Company AC.

29. In the Statement of Agreed Facts, the Third Respondent admitted that as supervisor of the Company AC matter he caused or allowed the Firm's client account to be used as a banking facility in respect of that ledger.

Live Witnesses

30. Second Respondent

30.1 The Second Respondent gave evidence in relation to Allegation 3.2, which was contested.

30.2 He confirmed that the contents of his witness statement were true to the best of his knowledge and belief. He explained that the nature of his supervisory relationship with the First Respondent had been that the First Respondent dealt with commercial property work and residential work and the Second Respondent supervised the residential property work. There was also a roaming supervisor, partner X, who would cherry pick files for review. The Second Respondent told the Tribunal that he would speak to the First Respondent about day-to-day matters often several times a day. He would also assist when needed. The Second Respondent had no doubt that the First Respondent was a good lawyer at the time. The Second Respondent told the Tribunal that the conveyancing team consisted of 21 people across three offices including secretaries and assistants.

30.3 The Second Respondent told the Tribunal that the firm had worked on property developments before but only on the purchaser side. The opportunity arose to act for the developer and the Second Respondent believed that this would be prudent as he wished to have a balanced portfolio having regard to what had happened after the 2008 property crash. The Second Respondent did not meet any of the people involved but he was aware that the purpose of the development was for assisted living and a scheme in which a lot of people were buying leases was not uncommon. The Second Respondent told the Tribunal that the return rates of 8 to 10% were not uncommon. The additional 8% growth was capital growth and so again he did not believe this to be unrealistic.

30.4 The brochure was prepared by the estate agents and was not a professional document. It did not put the Second Respondent on notice that the scheme may be a sham. The Second Respondent was aware that investors who changed their mind were given refunds. The Second Respondent told the Tribunal that he had admitted allegation 3.1 which related to the firm's client account being used as a banking facility. The Second Respondent told the Tribunal that at the time the arrangement made sense but he was now embarrassed to be saying that and he recognised that this amounted to a fundamental mistake on his part. Those at the firm had thought that these payments were part of the underlying transaction that he accepted that there was in fact no legal transaction and that he had made a "terrible mistake" which he deeply regretted. The supervision had been in place but it had not worked, as everybody had agreed that this was the way forward.

30.5 In cross-examination the Second Respondent accepted that the role of COLP and COFA were significant roles which carried a number of obligations. He agreed that good governance was critical and that he also had a specific obligation to the First Respondent as his line manager. The Second Respondent agreed that his supervisory arrangement of the First Respondent was not distant.

30.6 Ms Bruce reminded the Second Respondent that the wording of allegation 3.2 referred to inadequate supervision. The Second Respondent stated that he believed that the supervision was adequate but that the situation had been assessed incorrectly by everybody involved. However, on a day-to-day basis there were no complaints and the client care was good. Ms Bruce made clear that it was not the Applicant's case that he was a bad supervisor, rather that in respect of this project he had admitted that there were errors of judgement. The Second Respondent clarified that the admission related to the banking facility and not to the allegation that the scheme bore the hallmarks of being dubious.

30.7 Ms Bruce took the Second Respondent to the SRA Warning Notice on High Yield Investment Fraud dated 10 September 2013 ("the Warning Notice") and put to him that the very high rate of return and disproportionate reward referred to in that Warning Notice was engaged in this case. The Second Respondent disagreed. Ms Bruce also highlighted further points in the warning notice including the involvement of lawyers and firms in a way which would lend credibility to a scheme and the types of legal service that included money moving through the client account. She put to the Second Respondent that this was a scheme which involved a client that did not have a bank account and that this in and of itself was a red flag. The Second Respondent agreed, with hindsight, that this was the case.

30.8 Ms Bruce put to the Second Respondent that firms had to be particularly careful when acting outside their usual areas of expertise. The Second Respondent stated that the rules did not refer to the bullet points. They had assessed the matter and identified the two red flags, namely the absence of a bank account and money moving to the client account. In respect to the bank account, one was due to be in place before completion and in respect of the client account he believed that this was the way to deal with the transactions. This reduced the impact of the red flags and had cemented his view that this was the appropriate way to handle matters. The Second Respondent denied that he had failed to supervise adequately but told the Tribunal that he had misinterpreted the rule. The Second Respondent told the Tribunal that he admitted that he had got it wrong but he still did not believe that the scheme was dubious. He told the Tribunal one bullet point did not make a scheme high-risk. The investors were not novices, they were experienced investors.

30.9 Ms Bruce took the Second Respondent to a letter sent by the First Respondent to the SRA in which he had stated that the assessment of the scheme as low risk was wrong and it should have been assessed as medium risk as the firm was dealing with a new company. That risk should subsequently have been elevated to high risk. The Second Respondent agreed with that assessment. However he continued to deny allegation 3.2.

Findings of Fact and Law

31. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair hearing and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

32. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of both parties, which are briefly summarised below. The Tribunal also noted the contents of the Statement of Agreed Facts, approved by all the parties.

General Approach

Integrity

When the Tribunal was required to consider whether the First Respondent had lacked integrity it applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

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

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

Dishonesty

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

> "the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ….. When dishonesty is in question the fact-finding Tribunal must First ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly the Tribunal established the actual state of the First Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.

- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

33. **Allegation 1.1 - Between May 2014 and November 2015, he caused or allowed the Firm's client account to be used as a banking facility in respect of the BHSLL project; and in so doing he breached all or any of Rule 14.5 of the SRA Accounts Rules 2011 ("the Accounts Rules") and Principles 6 and 8 of the SRA Principles 2011 ("the Principles").**

33.1 The First Respondent had admitted this Allegation. The Tribunal was satisfied beyond reasonable doubt that the admission was properly made, having regard to the evidence. It reviewed the ledger cards which showed the movements of the monies and noted that

the developer had no bank account. The Tribunal found this Allegation proved in full beyond reasonable doubt.

34. **Allegation 1.2 - From May 2014 to November 2015, without adequately assessing the risk, he involved himself and the Firm in the BHSLL project, which bore hallmarks of being a dubious investment scheme; and in so doing he breached all or any of Principles 6 and 8 of the Principles.**

34.1 The First Respondent had admitted this Allegation. The Tribunal considered the SRA Warning Notice and the matters listed therein. This was not an exhaustive list. The Tribunal did not find that the rate of returns advertised in the brochure was, in itself, suspicious. They were not fantastical and the likelihood of the properties being let was high, due to demand for this type of accommodation.

34.2 However, the absence of a bank account and the use of the client account as a banking facility were clearly significant hallmarks that the scheme may be dubious. This should have resulted in the scheme being elevated to a very high risk scheme. The Tribunal was satisfied that the First Respondent's admission was properly made having regard to the evidence. The Tribunal found this Allegation proved in full beyond reasonable doubt.

35. **Allegation 1.3 - Between February 2015 and January 2016, he caused or allowed the Firm's client account to be used as a banking facility in respect of the CL project; and in so doing he breached all or any of Rule 14.5 of the Accounts Rules and Principles 6 and 8 of the Principles.**

35.1 The First Respondent had admitted this Allegation. The Tribunal was satisfied that the First Respondent's admission was properly made having regard to the evidence. The Tribunal found this Allegation proved in full beyond reasonable doubt.

36. **Allegation 1.4 - In or about April 2016, and ahead of a visit to the Firm by the Applicant's Forensic Investigation Officer ("FIO"), he created or caused to be created documents in respect of the BH matter which were misleading, and which he knew were misleading, including all or any of:**

(a) a memo dated 5 October 2014;
(b) a file note dated 5 October 2014; and
(c) a memo dated 8 October 2014;

and in so doing he breached all or any of Principles 2, 6 and 7 of the Principles.

36.1 The First Respondent had admitted this Allegation. The Tribunal was satisfied that the First Respondent's admission was properly made having regard to the evidence. The Tribunal was satisfied beyond reasonable doubt that creating false documents, or causing them to be created, was a clear example of a lack of integrity. The Tribunal found this Allegation proved in full beyond reasonable doubt.

37. **Allegation 1.5 - In August 2017, in a response through his solicitors to an Explanation With Warning ("EWW") letter, he referred to and placed reliance upon documents which were misleading, and which he knew were misleading, including all or any of:**

(a) a memo dated 5 October 2014;
(b) a file note dated 5 October 2014; and
(c) a memo dated 8 October 2014;

and in so doing he breached all or any of Principles 2, 6 and 7 of the Principles.

37.1 The First Respondent had admitted this Allegation. The Tribunal was satisfied that the First Respondent's admission was properly made having regard to the evidence and its finding in relation to Allegation 1.4. The Tribunal found this Allegation proved in full beyond reasonable doubt.

38. **Allegation 1.6 - Between July 2015 and January 2017, he amended and/or produced documents, or arranged for such documents to be amended and/or produced, relating to legal charges to show incorrect dates, in order to circumvent the deadline for registering such charges with Companies House, including all or any of:**

(a) a memo dated 5 October 2014;
(b) a legal charge and Companies House form MR01 in the SI/NW matter;
(c) a legal charge and Companies House form MR01 in the CSS/B matter;
(d) a mortgage deed and Companies House form MR01 in the OP/P matter;

and in so doing he breached all or any of Principles 2, 5 and 6 of the Principles.

38.1 The First Respondent had admitted this Allegation. The Tribunal was satisfied that the First Respondent's admission was properly made having regard to the evidence. The Tribunal was satisfied beyond reasonable doubt that amending documents, or arranging for them to be amended so as to give a misleading impression and thus circumvent an important deadline, was another clear example of a lack of integrity. The Tribunal found this Allegation proved in full beyond reasonable doubt.

39. **Allegation 2 - By reason of the facts and matters set out at paragraphs 1.4, 1.5 and 1.6 above, or any of them, he acted dishonestly; but dishonesty was not a necessary ingredient to prove those allegations.**

39.1 This alleged dishonesty in relation to Allegations 1.4, 1.5 and 1.6. The First Respondent had admitted this Allegation.

39.2 In respect of Allegations 1.4 and 1.5, which both related to the same set of documents, the Tribunal found that the First Respondent knew that the documents were not contemporaneous as he would have known what day it was when he was creating them or causing them to be created. The First Respondent knew that the purpose of the documents was for them to be provided to the SRA, both at the inspection visit and in correspondence. The First Respondent therefore also knew that the context in which he was creating the documents was a regulatory investigation.

39.3 The Tribunal was satisfied beyond reasonable doubt that this conduct would be considered dishonest by the standards of ordinary decent people. The Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt in relation to Allegations 1.4 and 1.5.

39.4 In relation to Allegation 1.6, the Tribunal again found that the First Respondent knew that the dates on the documents being provided to Companies House were incorrect. He knew that the purpose of amending and/or producing the documents was to mislead Companies House into concluding that the charges had been registered within time, when in fact they had not.

39.5 The Tribunal was satisfied beyond reasonable doubt that this conduct would be considered dishonest by the standards of ordinary decent people. The Tribunal therefore found the allegation of dishonesty proved beyond reasonable doubt in relation to Allegation 1.6.

39.6 The Tribunal therefore found Allegation 2 proved in full beyond reasonable doubt.

40. **Allegation 3.1 - Between May 2014 and November 2015, he failed adequately to supervise the First Respondent in respect of the BHSLL matter, in that the First Respondent caused or allowed the Firm's client account to be used as a banking facility in respect of the BHSLL project; and in so doing he breached all or any of Rule 14.5 of the Accounts Rules and Principles 6 and 8 of Principles**

40.1 The Second Respondent had admitted this Allegation and the Tribunal found that admission to have been properly made. The Tribunal found Allegation 3.1 proved in full beyond reasonable doubt.

41. **Allegation 3.2 - Between May 2014 and November 2015, he failed adequately to supervise the First Respondent in respect of the BHSLL project, which bore hallmarks of being a dubious investment scheme; and in so doing he breached all or any of Principles 6 and 8 of the Principles.**

Applicant's Submissions

41.1 Ms Bruce relied on the submissions set out in the Rule 5 Statement in support of the Applicant's case in relation to this Allegation.

41.2 Ms Bruce referred the Tribunal to the SRA Warning Notice and to the promotional material related to the Care Home scheme. She also referred to the witness statement of Partner X.

41.3 Ms Bruce submitted that as early as October 2014, when Partner X drew concerns about the client account to his attention, the Second Respondent had an opportunity to consider the matter and form an assessment of its risk. The instruction continued without any adequate review of risk taking place.

41.4 The SRA Warning Notice encouraged caution where a firm was being asked to act in an area outside its usual expertise. The following matters were highlighted as warning signs:

> "The involvement of lawyers and their firms (…) lends credibility to the scheme
>
> "Types of legal service that promoters might request include (…) moving monies through client account
>
> "The promoters of fraudulent arrangements will often want you or your firm to hold 'investor funds' in your client account
>
> "Be particularly careful if you are asked to act in an area outside of your usual expertise"

41.5 The marketing brochure had stated: "All sales are direct with the vendor, all funds are administered through UK solicitors." The investment was described as "an exciting, high yielding property Investment…" The brochure stated that "each property is individually UK land registered property".

41.6 The 5-year assured income was stated at 8-10%. The "buy back option" was described as follows:

> "You are getting back up to 10% per annum PLUS a further 8% per annum if the developer buys it back in year 5, an astonishing 18% per annum."

41.7 Despite this, the Firm had assessed the risk as low throughout. When Partner X had reviewed the file, he had found that the due diligence undertaken had not been to the required standard.

41.8 Ms Bruce submitted that the following warning signs that the scheme may be dubious were present:

- The Firm's client account was used extensively for basic transactions in Mr F's matters in breach of Rule 14.5;
- The developer did not have its own bank account;
- It would have been much simpler for investors to invest in the development as a shareholder. By structuring the scheme in the way it was provided an opportunity for mixing funds from different sources which could be a form of "layering" – a technique used by money launderers;
- The sale of leases could be seen as a way of engineering an underlying transaction in order to justify the Firm holding funds, with the purpose of avoiding Rule 14.5;
- The project brochure made prominent reference to the funds being held in the vendor's solicitors' account, thereby drawing on the reputation of the profession to add credibility to the scheme;
- The Firm had no previous experience of a project of this type;
- The advertised assured returns (up to 18%) were high, at a time when interest rates were low;

- The Purchasers' investment was initially unsecured;

41.9 Ms Bruce submitted that there was therefore a risk that the scheme was a dubious investment scheme, which ought to have been kept under review by the Firm. By inadequately supervising the First Respondent, the Second Respondent had failed to correct the First Respondent's low assessment of risk in the matter. In doing so he had indirectly allowed the Firm to be associated with the Care Home scheme, which bore hallmarks of a dubious investment scheme. The Second Respondent had therefore failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services, in breach of Principle 6 as the public would expect a supervisor of someone in the position of the First Respondent to ensure that risk was properly assessed in a matter.

41.10 The Second Respondent had therefore also failed to carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8.

Second Respondent's Submissions

41.11 Mr Innes invited the Tribunal to accept the Second Respondent's evidence and to find Allegation 3.2 not proved. He made the following points in support of this submission;

- The Second Respondent accepted the buck "stopped with him". This was important because even if the Tribunal found there to have been a failing on the part of the Second Respondent, it should not be that he didn't take his role seriously.

- The Care Home scheme did not bear the hallmarks of a dubious investment scheme.

- In respect of the SRA Warning Notice, not all the bullet points were relevant and some related to schemes of a very different nature to this. Some individual bullet points were neutral if considered in isolation and were capable of being innocuous. There was not enough to find that any one of these characteristics meant that the Care Home scheme had the hallmarks of a dubious investment scheme.

- Some criticisms of the scheme were not justified. The high rate of return had been explained and the rate was not exceptional considering that the development was for use as a care home. This usage also reduced the risk to investors.

- The brochure was drafted in-house by an estate agent and was fairly typical.

- The Firm was not a one man band and it had experience in conveyancing and commercial property. The First Respondent was well-regarded by the Second Respondent.

- Those investors who changed their minds got refunds, which showed the good faith of developers. All these factors gave reassurance to the Second Respondent.

- It made better sense to buy the lease rather than shares in the company as this was considered more secure.

41.12 Mr Innes invited the Tribunal to take into account that the Firm and the Second Respondent had tried to conduct themselves properly and that their systems had largely worked. They had made a mistake but had not believed that it was a dubious investment scheme. Mr Innes reminded the Tribunal that it was not alleged that the scheme was actually dubious.

The Tribunal's Findings

41.13 The Second Respondent had denied this Allegation.

41.14 He had told the Tribunal that he did not consider that the Care Home scheme bore the hallmarks of being dubious scheme. The Tribunal had already found that it did bear the hallmarks of being dubious for the reasons set out in relation to Allegation 1.2. The Tribunal found that the Second Respondent's judgement was wrong in relation to that.

41.15 In considering the question of adequate supervision, the Tribunal did not accept the equation that the Second Respondent had made between there being systems in place and an absence of complaints and adequate supervision of the First Respondent.

41.16 The Second Respondent had been guilty of a fundamental failing in not realising that the client account use was inappropriate. If his supervision had been adequate and effective he would have been able to identify that the Care Home scheme had the hallmarks of being dubious. The Second Respondent was the COLP and COFA and it was no answer to say that everyone agreed with his conclusions. The Second Respondent owed responsibility to others including the First Respondent. He should have asked himself the right questions at the time, consistent with his duty to stand back and be objective. The Tribunal noted that in his evidence the Second Respondent came close to admitting the Allegation when he accepted that the system of supervision had not worked.

41.17 The Tribunal found the factual basis of Allegation 3.2 proved beyond reasonable doubt.

41.18 Principle 6

41.18.1 The Tribunal found that it was fundamental to the trust the public placed in solicitors to have adequate and effective supervision in place. The public, and indeed other solicitors, would expect firms to adhere to these rules. The Second Respondent had responsibilities as a solicitor and as COLP and COFA. The failure to adequately supervise was bound to undermine the trust the public placed in the provision of legal services. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

41.19 Principle 8

41.19.1 The Tribunal found the breach of Principle 8 proved beyond reasonable doubt as a matter of logic based on its factual findings.

42. **Allegation 4.1 - Between October 2013 and April 2016, he caused or allowed the Firm's client account to be used as a banking facility in respect of the GB ledger; and in so doing he breached all or any of Rule 14.5 of the Accounts Rules and Principles 6 and 8 of the Principles.**

42.1 The Third Respondent had admitted this Allegation and the Tribunal found that admission to have been properly made. The Tribunal found Allegation 4.1 proved in full beyond reasonable doubt.

43. **Allegation 4.2 - Between March 2013 and July 2016, he caused or allowed the Firm's client account to be used as a banking facility in respect of the AC ledger; and in so doing he breached all or any of Rule 14.5 of the Accounts Rules and Principles 6 and 8 of the Principles.**

43.1 The Third Respondent had admitted this Allegation and the Tribunal found that admission to have been properly made. The Tribunal found Allegation 4.2 proved in full beyond reasonable doubt.

Previous Disciplinary Matters

44. In respect of the First and Second Respondents there was no record of any previous disciplinary findings by the Tribunal.

45. The Third Respondent had appeared before the Tribunal on 10 January 2012 [Case Ref: 10572-2010], when he had admitted that he had:

> "1.1 Acted in a conflict or potential conflict of interest situation contrary to Rule 3.01 of the Solicitors' Code of Conduct 2007 ("SCC") and/or Principle 15.03 and/or Principle 15.04 of the Guide to the Professional Conduct of Solicitors 1998 ("the Guide");
>
> 1.2 Breached Rule 1.03 SCC and/or Rule 1(a) of the Solicitors' Practice Rules 1990 ("SPR") in acting in a conflict of interest situation;
>
> 1.3 By his actions compromised or impaired or acted in a way which was likely to compromise or impair any of the following, contrary to Rule 1 SPR:
>
> (a) His independence or integrity;
>
> (d) His good repute or that of the solicitors' profession;
>
> (f) His duty to the Court;
>
> It was also alleged that the Respondent was grossly reckless with regard to his responsibilities and duties under the Insolvency Act 1986 and the SAR;
>
> 1.4 [Withdrawn];

1.5 Permitted his firm's client account to be used to provide banking facilities to clients in breach of Rule 15 of the Solicitors' Accounts Rules 1998 ("SAR")."

46. The Tribunal had ordered that the Third Respondent pay a fine of £10,000.00, and it had further ordered that he pay the costs in the sum of £30,000.00.

47. A copy of the Tribunal's judgment from the 2012 matter was provided to the present Tribunal.

Mitigation

48. First Respondent

48.1 The Tribunal had read the First Respondent's correspondence and the medical evidence that he had provided. The Tribunal had regard to all those matters when considering sanction.

49. Second Respondent

49.1 In the course of giving evidence on the contested Allegation, the Second Respondent had also addressed matters relevant to mitigation. The Tribunal had not considered those when deciding if Allegation 3.2 was proved, but it did take those matters into account when considering sanction. The Second Respondent was also recalled to address a further matter relevant to mitigation. He told the Tribunal that following the 2012 judgment in respect of the Third Respondent, the Firm had called in an expert recommended by Lexcel to help them change the way they operated. This expert had then retired in 2016, by which time he had re-written the office manual and done the training on a number of aspects. The Firm now had someone coming in once a week.

49.2 In addition, Mr Innes made the following submissions in relation to the Second Respondent's culpability:

- The responsibility was for a lack of supervision initially, rather than direct involvement in the scheme;
- Partner X drew the problems to the Second Respondent's attention and so to that extent the system had worked;
- Since the Third Respondent's previous appearance, changes had been put in place as set out in the Second Respondent's evidence;
- Not all the warning signs of a dubious investment scheme were present;
- There had been no breach of trust or advantage taken of a vulnerable person;
- There had been no misleading of the SRA.

49.3 Mr Innes told the Tribunal that no harm had been intended. The client was the developer and no harm had been caused to them. It was not the use of the client account that caused the development to fail.

49.4 Mr Innes reminded the Tribunal that the Second Respondent had no previous matters before the Tribunal and had co-operated with the SRA. He submitted that the Second Respondent had shown genuine insight and remorse. He was hard working and was supporting a number of employees and a business. He was genuinely sorry and had taken steps to try to improve matters.

50. Third Respondent

50.1 The Third Respondent also gave evidence in mitigation. He explained various matters relating to his health. He also gave lengthy evidence about the circumstances of his 2012 appearance before the Tribunal, though he was clear that he did not seek to go behind those findings.

50.2 The Third Respondent explained that he had left the client account open so that the staff could access it if an emergency arose while he was away on a cruise holiday.

50.3 The Third Respondent stated that he was keeping "a good eye" on the Firm but was no longer seeing clients. He told the Tribunal that he had always done his best. It was very difficult as it was a "different world to the real world" He stated that he accepted with hindsight that he had been wrong and he apologised. He told the Tribunal that it would not happen again, noting that he was 75.

50.4 Mr Innes further submitted in relation to culpability that this had been an inadvertent breach brought about by the Third Respondent's wish to ensure that the Firm was running smoothly while he was away. It was not pre-meditated and no vulnerable person had been taken advantage of.

50.5 There had been no direct harm caused and no loss to anyone. The 2012 matter had not been motivated by personal gain and the Tribunal was referred to the Third Respondent's evidence on this point. Mr Innes submitted that the Third Respondent had shown insight and had made early admissions. He reminded the Tribunal of the Third Respondent's health issues. The Third Respondent had spent much of his working life helping people.

50.6 In respect of the Second and Third Respondents, Mr Innes referred the Tribunal to the Tribunal cases of SRA v Walton-Knowles [Case Ref: 11788-2018], SRA v Sagger and Sofi Case Ref: [11737-2017] and SRA v Allanson Case Ref: [11815-2018]. The fines in these cases had ranged from £5,000 and £7,000 (Sagger and Sofi respectively) to £17,000 in Allanson. Mr Innes submitted that the cases that were the closest in terms of the facts were Sagger and Sofi and Patel v SRA [2012] EWHC 3373 (Admin). In Patel a fine of £7,500 had been upheld on appeal.

50.7 In this case, Mr Innes submitted that the appropriate penalties would be fines within the Level 2 band or at the lower end of Level 3 in respect of each of the Second and Third Respondents.

Sanction

51. The Tribunal had regard to the Guidance Note on Sanctions (December 2018). The Tribunal assessed the seriousness of the misconduct by considering the Respondents' culpability, the level of harm caused together with any aggravating or mitigating factors.

52. First Respondent

52.1 In assessing culpability, the Tribunal identified the following matters:

- The First Respondent's motivation in respect of the banking facility matters did not involve personal financial gain. He was relatively junior and was inadequately supervised, a factor which reduced his culpability.

- The misconduct was not necessarily planned in relation to the banking facility matters.

- The motivation for the creation and amendment documents was very different however. He was covering his tracks and acting out of self-interest. Lack of adequate supervision was no excuse for such conduct and he was also more experienced by that point.

- The forging of documents was clearly planned and he had done it more than once. In one case the intention was to mislead an SRA investigation and in the other it was to mislead Companies House.

- The matters relating to the documents amounted to a very significant breach of trust.

- The First Respondent had direct control and responsibility for all his conduct.

52.2 In terms of harm caused, there was no evidence of direct harm to an individual. The Care Home scheme did not fail due to his actions. However the reputation of the profession was seriously harmed by the breaches of the rules designed to protect client accounts.

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

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

52.4 The impact on the reputation of the profession by the First Respondent's dishonest conduct was significant.

52.5 The matters were aggravated by the fact that they were deliberate calculated and repeated and had continued over a period of time. The First Respondent ought to have known that he was in material breach of his obligations.

52.6 The Tribunal found that the matters were mitigated by the First Respondent's previously unblemished career and the fact that he had made admissions, albeit once he had been caught. The lack of adequate supervision was also a factor that the Tribunal noted.

52.7 The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the First Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.

52.8 The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal had regard to the Respondent's personal circumstances at the material time.

52.9 The First Respondent had undertaken a series of quite deliberate acts of dishonesty and nobody else was involved in that. There was no evidence that his health issues impacted on, or caused, his dishonesty. There was no evidence of undue pressure being applied to him. There were no exceptional circumstances. The Tribunal found there to be nothing that would justify an indefinite suspension. The only appropriate and proportionate sanction was that the First Respondent be Struck Off the Roll.

53. Second Respondent

53.1 In assessing culpability, the Tribunal identified the following matters:

- The Second Respondent had been in a senior position with significant responsibilities.

- He was the direct supervisor of the First Respondent and was the COLP and COFA. The lack of adequate supervision in these matters was abysmal.

53.2 In relation to harm caused, there was an impact on the First Respondent in relation to his handling of the Care Home scheme. The lack of adequate supervision also set a poor example to other, more junior staff. The reputation of the profession was inevitably harmed when this failing was on the part of a COLP and COFA.

53.3 The misconduct was aggravated by the fact that it had continued for 18 months and the Second Respondent ought reasonably to have known that he was not discharging his duties properly.

53.4 The matters were mitigated by the fact that he had a previously unblemished career. The Tribunal had listened to his evidence carefully and recognised that he had made some admissions and expressed remorse. However, the Tribunal did not consider that he had fully appreciated the magnitude of his failings and the effect of these on the Firm. He had shown insight in relation to Allegation 3.1 but less in relation to Allegation 3.2.

53.5 The Tribunal found that making 'no order' or imposing a Reprimand was insufficient to reflect the seriousness of the misconduct. The level of culpability, the potential for significant harm, the fact that these were not simply minor breaches of regulation and the need to protect the reputation of the legal profession required a greater sanction.

53.6 The Tribunal agreed with the submission of Mr Innes that the appropriate sanction was a financial penalty. The Tribunal considered the level of the fine with reference to the Indicative Fine Bands. The Tribunal rejected the submission that it could be placed with in Level 2 (moderately serious) or Level 3 (more serious). The Tribunal considered that given the Second Respondent's key position of responsibility in the Firm and the length of time over which his failure to adequately supervise had continued, the conduct was very serious. The Tribunal had in mind his lack of insight in relation to Allegation 3.2 and the fact that the Second Respondent had known that this was a relatively new aspect of work which was relatively unfamiliar to the Firm. The Tribunal determined that the appropriate level was Level 4, with the appropriate sum in all the circumstances being £25,000.

53.7 The Tribunal also found that it was necessary for the protection of the public for there to be a Restriction Order in respect of the Second Respondent. The failure to adequately discharge his roles as COLP and COFA by way of inadequate supervision had resulted in the First Respondent allowing the client account to be operated as a bank account. The sanctity of the client account was a crucial protection for the public. There had been a sufficient risk to the public such as to make conditions necessary. The Tribunal therefore ordered that the Second Respondent should not hold the role of COLP or COFA for an indefinite period. The Second Respondent would have liberty to apply for those restrictions to be lifted when he could demonstrate that such risk no longer existed.

54. <u>Third Respondent</u>

54.1 In assessing culpability, the Tribunal identified the following matters:

- The motivation had been the Third Respondent's convenience and sloppiness.
- There had been an element of planning as it had been deliberate.
- The Third Respondent had direct control and responsibility for these matters and was a very experienced solicitor.

54.2 The harm caused was similar to that in relation to Allegation 1.1, in that any misuse of the client account inevitably damaged the reputation of the profession.

54.3 The misconduct was aggravated by the fact that it was deliberate and repeated. It had continued over a long period of time and significant sums had passed through the client account that should not have.

54.4 The fact that the Third Respondent had a previous matter at the Tribunal was a significant aggravating factor. The matters before this Tribunal had begun in March 2013, just over a year after he had been sanctioned for similar conduct. This was effectively a continuation of that misconduct.

54.5 The Tribunal had not been impressed by the Third Respondent's evidence. He had given the impression that he did not take matters sufficiently seriously and had made glib assertions about 'wanting to do the right thing'. The Tribunal concluded that he had learnt no lessons from his previous appearance and had no genuine insight.

54.6 The Tribunal did recognise that the Third Respondent had made open and frank admissions at an early stage and had co-operated with the SRA. The Tribunal also took account of the Third Respondent's health issues, but noted that it was not the basis of the misconduct.

54.7 The Tribunal again found that making 'no order' or imposing a Reprimand was insufficient to reflect the seriousness of the misconduct. The level of culpability, the potential for significant harm and the fact that this was his Second appearance before the Tribunal meant that the protection of the public and the reputation of the legal profession required a greater sanction.

54.8 The Tribunal again agreed with the submission of Mr Innes to the extent that the appropriate sanction was a financial penalty. The Tribunal considered the level of the fine with reference to the Indicative Fine Bands. The prolonged nature of the misconduct and the fact that the previous financial penalty had had no effect on his conduct meant that this was a matter that was very serious. It therefore fell within Level 4. The lack of insight was such that the Tribunal was required to place it within the middle part of that range. The appropriate penalty in all the circumstances was £35,000.

54.9 The Tribunal then considered whether that should be reduced on account of the Third Respondent's means. He had given evidence on this and had not been challenged on this or on his statement of means.

54.10 The Tribunal noted that he owned a 7% share in the Firm. The Third Respondent had not provided bank statements and had not given sufficient information about his outgoings. While he clearly had debts, the value of the 7% share was unknown. The Tribunal did not find that it had sufficient information so as to justify a reduction in the level of fine.

54.11 The Tribunal also found that it was necessary for the protection of the public for there to be a Restriction Order in respect of the Third Respondent due to the prolonged misuse of the client account. The Tribunal therefore ordered that the Third Respondent not hold client monies or be a signatory on any client account for an indefinite period. The Third Respondent would also have liberty to apply for those restrictions to be lifted when he could demonstrate that such risk no longer existed.

Costs

Applicant's Submissions

55. Ms Bruce told the Tribunal that the Applicant's costs were £67,322.50 and she invited the Tribunal to order that each of the three Respondents pay the Applicant's costs. Ms Bruce suggested that each Respondent pay one third of the total.

56. The First Respondent had faced the more serious Allegations, but in terms of correspondence, and the hearing, the costs incurred were higher in respect of the Second and Third Respondents. Therefore any costs ratio which might have been in favour of the Second and Third Respondents was evened out.

57. Ms Bruce explained that the fixed fee for Capsticks was based on factors including the complexity of the case and the number of Respondents. Ms Bruce confirmed that the Tribunal should make a reduction to reflect the fact that the hearing had taken three days and not the estimated four.

Second and Third Respondent's Submissions

58. Mr Innes submitted that the costs should be apportioned with 50% being borne by the First Respondent and the remainder being paid by the Second and Third Respondents. He told the Tribunal that much of the Rule 5 Statement related to the First Respondent, as had been clear from the time taken to open the case at the hearing.

59. In relation to the level of costs, Mr Innes noted that the investigation costs equated to 244 hours on the part of the SRA investigator, which he submitted was high given the admissions and the co-operation provided to the SRA. Mr Innes submitted that the Capsticks fixed fee, though "not wildly out of proportion" was on the high side.

The Tribunal's Decision

60. The Tribunal summarily assessed the costs. It concluded that the legal costs incurred were entirely reasonable subject to the reduction for the case going shorter. That reduction equated to £5,400 inclusive of VAT.

61. The investigation costs were relatively high given the relative lack of complexity to the case. The Tribunal concluded that the work done did not require that number of hours having regard to the evidence produced. The Tribunal reduced the hours by 20%, which equated to £2,936.

62. This brought the reduction to £8,336, leaving a total sum of £58,986.48.

63. The Tribunal then considered the question of apportionment. The First Respondent had made admissions and had also faced more serious Allegations. The Second Respondent had contested one matter and the Third Respondent had made admissions. Taking all matters in the round, the Tribunal found that the liability for costs should fall equally on the three Respondents.

64. The Tribunal determined that the First Respondent should pay one Third of the costs. The Second and Third Respondents should pay their share of costs on a joint and several basis. They were both still Members of the Firm and it was appropriate that the order was made in those terms.

65. The Tribunal had already considered means when assessing the appropriate level of fines. There was no basis to reduce the level of costs further due to the Second or Third Respondents' means.

66. In respect of the First Respondent, the Tribunal noted that he had an income and that the SRA took a proportionate approach to enforcement. There was therefore no basis to reduce the costs to be paid by him

Statement of Full Order

67. First Respondent

1. The Tribunal Ordered that the First Respondent, JOHN KNIGHT, 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 £19,662.16.

68. Second Respondent

1. The Tribunal Ordered that the *[SECOND RESPONDENT]*, solicitor, do pay a fine of £25,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £39,324.32, to be paid on a joint and several basis with the Third Respondent.

2. The Tribunal further Ordered that the Second Respondent shall for an indefinite period be subject to conditions imposed by the Tribunal as follows:

2.1 The Second Respondent may not:

2.1.1 Be a Compliance Officer for Legal Practice or a Compliance Officer for Finance and Administration;

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

69. Third Respondent

1. The Tribunal Ordered that the *[THIRD RESPONDENT]* solicitor, do pay a fine of £35,000.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £39,324.32, to be paid on a joint and several basis with the Second Respondent.

2. The Tribunal further Ordered that the Third Respondent shall for an indefinite period be subject to conditions imposed by the Tribunal as follows:

2.1 The Third Respondent may not:

2.1.1 Hold client money;

2.1.5 Be a signatory on any client account;

3. There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 30th day of October 2019
On behalf of the Tribunal

W. Ellerton
Chairman