SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11967-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

SHOHAAB DAR Respondent

Before:

Mr P. Lewis (in the chair)
Mr J. A. Astle
Mrs L. McMahon-Hathway

Date of Hearing: 29-30 October 2019

Appearances

Andrew Bullock, barrister of Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent was not represented.

JUDGMENT

Allegations

1. The Allegations against the Respondent were that:-

1.1 on or around 22 October 2018, having provided his personal bank account details to Client S and Client M, he received £1,000 into his personal bank account in relation to Client S and Client M's matter and subsequently failed to account for that money to the Firm or return it to Client S and/or Client M. In doing so he breached:

1.1.1 Any or all of Principles 2, 6 and 10 of the SRA Principles 2011; and
1.1.2 Any or all of Rules 7.1 and 14.1 of the Solicitors Accounts Rules 2011.

1.2 in failing to issue a claim on behalf of Client S and Client M within the appropriate limitation period, and/or in failing to promptly inform either Client S, Client M or his employer of this, he failed to act in the best interests of Client S and Client M and/or failed to provide them with a proper standard of service. In doing so he:

1.2.1 Breached any or all of Principles 4 and 5 of the SRA Principles 2011; and
1.2.2 Failed to achieve Outcomes 1.2 and 1.5 of the SRA Code of Conduct 2011.

1.3 He failed to respond promptly or at all to communications sent to him by the SRA in the period 26 April 2018 to 7 November 2018. In doing so he:

1.3.1 Breached Principle 7 of the SRA Principles 2011; and
1.3.2 Failed to achieve Outcome 10.6 of the SRA Code of Conduct 2011;

1.4 He made repeated statements to the SRA that he would provide responses to the correspondence sent to him and the requests for information being made which he did not then comply with or provide. In doing so he breached any or all of Principles 2 and 6 of the SRA Principles 2011.

1.5 Allegation 1.1 was advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the Allegation.

Preliminary Matters

2. Respondent's Application to Adjourn

Respondent's Submissions

2.1 The Respondent applied for an adjournment, telling the Tribunal that he needed further time to prepare. He submitted that the Allegations against him were very serious and having looked at them, there were a number of things in the papers that were "not quite correct". The Respondent submitted that it would be useful to be able to provide information in order to set out his version of events. The Respondent told the Tribunal that he had not been able to get legal advice. He had found the case "overwhelming" and submitted that he had faced a tight timescale. Following a case management hearing on 23 July 2019 the Respondent had hoped that he would be able to put in a proper response within 21 days of that hearing, but this had not proved possible. The

Respondent sought a further 3 to 4 weeks in order to prepare this response as he had a lot of ground that he wished to cover. The Respondent submitted that it was in the interests of justice to allow him the additional time and he assured the Tribunal that he would comply with any directions that it made. In response to a query from the Tribunal, the Respondent stated that an example of a point of dispute between himself and the Applicant was that it was alleged in the Rule 5 statement that the money was not returned to the Client. However this was incorrect as it had in fact been returned later. The Respondent also told the Tribunal that he had informed the Client about the limitation period and that although he had not managed the lodging of the claim correctly, he had taken steps to assist the Client as much as he could.

Applicant's Submissions

2.2 Mr Bullock opposed the application. He reminded the Tribunal that the proceedings had been lodged on 24 May 2019 and certified as showing a case to answer on 31 May 2019, on which date standard directions had been issued giving the Respondent until 4 July 2019 to lodge his answer. The Respondent had not done so and the matter had been listed for non-compliance hearing on 23 July 2019 at which he had been given a further 21 days. Mr Bullock reminded the Tribunal that the 21 days had been at the Respondent's suggestion. The Respondent had not complied and the Tribunal had therefore made an 'unless order', preventing the Respondent filing an Answer without leave of the Tribunal. Mr Bullock submitted that the Respondent had been given ample time to prepare for the hearing and not taken opportunities to do so even when granted an extension at his own request.

2.3 Mr Bullock submitted that it was not clear whether there was any factual dispute between the parties. It was therefore unclear what purpose was likely to be served by an adjournment. In relation to the points of dispute that the Respondent had raised, Mr Bullock confirmed that the Applicant accepted that the money was returned to the Client, albeit after the proceedings had been lodged. As to the question of whether the Client was informed of the limitation period, Mr Bullock submitted that this was not a relevant issue. The relevant point was whether or not the Client had been advised promptly that the deadline had been missed. The real issue was whether breaches of principles and Allegations of dishonesty were proved. This would ultimately be a matter for submissions and the Respondent would be no better placed to explain his position in a few months' time. Mr Bullock told the Tribunal that notwithstanding the Respondent's failure to file a witness statement and the existence of the 'unless order' he would not seek to prevent him giving his account of matters from the witness box.

Respondent's Further Submissions

2.4 In response to a request for clarification from the Tribunal, the Respondent stated that he had been presented with new material in the form of emails which had been sent to him by the Applicant which he had read on the Friday before the hearing. These were emails between the Applicant and the firm.

The Tribunal's Decision

2.5 The Tribunal had regard to the Policy and Practice Note on Adjournments (2002) ("the 2002 Policy") and noted the submissions made by both parties.

2.6 The 2002 Policy made clear the lack of readiness would not generally be a justification for an adjournment. The Tribunal noted that the Respondent had neither complied with nor sought to vary the directions made at the case management hearing in July. The issues in the case appeared to be narrow and the Respondent had not identified any facts which were actually in dispute. The Respondent was facing serious Allegations and there was a public interest in ensuring that they were dealt with in a timely fashion. The Respondent had provided no good reason why he had not addressed himself to these matters earlier. Any adjournment of this matter would achieve nothing more than delay, which was not in the interests of justice. The Tribunal therefore found no basis on which to adjourn the matter and refused to the Respondent's application.

Factual Background

3. The Respondent was admitted to the Roll as a solicitor on 15 November 2002. At the time of the hearing he held a Practising Certificate subject to conditions. At the material time the Respondent had been an Associate Solicitor at 2on Limited, 15 New Bridge Street, London, EC4V 6AU (the Firm). In relation to Allegation 1.3 and 1.4 it was relevant that, from 22 January 2010 to 13 December 2014, the Respondent had been the sole principal of Glade Law Limited, CityPoint, 1 Ropemaker Street, London, EC2Y 9HT ("GLL"). GLL closed on 11 December 2014.

Allegations 1.1 and 1.2 – Client S and Client M

4. In June 2018, the Respondent had accepted instructions on behalf of the Firm from Client S and Client M. The proposed proceedings related to a claim under the Equality Act 2010 for discrimination on racial grounds in relation to goods and services. The claim was subject to a limitation period of 6 months. The date by which proceedings had to be issued was 22 October 2018. The issue fee for the claim was £1,000. The Firm's procedures meant that only Mr S, the Firm's director, had access to the Firm's Client account. In addition, the Firm's procedures required employees to notify Mr S in good time of any disbursements to be raised and that all cheque requests were to be sent to him. The Respondent did not speak to Mr S about this matter on or in advance of 22 October 2018.

5. The Respondent asked Client S if he could provide a cheque for the Court Fee. Client S informed the Respondent that he did not have a cheque book. The Respondent then asked Client S to transfer £1,000 to the Respondent's personal bank account on the basis that the Respondent would pay the issue fee for the claim out of his own personal funds. At 5:37 pm on 22 October 2018 the Respondent sent Client S a photograph of a cheque, made out from his personal account to HMCTS, in the sum of £1,000. The accompanying text stated "[h]i [Client S] details are here. Thanks. [Respondent]".

6. Client S responded by a text at 9:35am on 23 October 2018 asking for confirmation of the sort code and bank account number. Client S also asked "And please scan/send the confirmation of the court notice". The Respondent replied, stating "I'm going down to the court to obtain that confirmation this morning", Client S transferred £1,000 to the Respondent the same day.

7. The Court returned the application to the Firm by letter dated 23 October 2018, stating that the Firm had not enclosed the Court fee. On 2 November 2018 the Court informed the Respondent that as the cheque was not cashed, it was unable to confirm the issue date of 22 October 2018.

8. In the meantime Client S had been chasing the Respondent for an update. This included emails and text messages on several occasions between 25 October 2018 and 19 November 2018.

9. The Respondent did not return the £1,000 to Client S until 30 May 2019, by which time the matter had been referred to the Tribunal by the Applicant.

Allegations 1.3 and 1.4

10. On the closure of GLL, the Respondent entered into an agreement with the Professional Indemnity Insurer, Travelers Insurance ("Travelers"), to provide run-off cover for a period of 6 years from 1 October 2014 to 30 September 2020. Travelers made a report to the SRA dated 22 February 2018 in which they stated that they had received a letter of claim against the Firm dated 28 April 2017. They had made "numerous" requests made to the Respondent over the course of 11 months. During this period the Respondent had failed to provide them with any comments, correspondence or documents relating to the claim. On 26 April 2018 the SRA had emailed the Respondent requesting confirmation as to whether the file had been provided to Travelers. The SRA requested a response by 3 May 2018. On 10 May 2018 the Respondent emailed the Investigating Officer, apologising and stating that he would come back with a response "very soon". The same day the SRA emailed the Respondent requesting a response by 12pm on 16 May 2018. The Respondent did not respond to this email. On 30 May 2018 the SRA emailed the Respondent requesting a response by 12pm on 1 June 2018 and was reminded of his regulatory obligations to deal with the SRA in a timely and co-operative manner. The Respondent did not respond to this email

11. On 30 June 2018 the SRA emailed the Respondent and asked him to confirm the location of the file and provide an explanation as to why he had failed provide the file to Travelers. The SRA reminded the Respondent of his regulatory obligations and that the SRA may investigate his conduct as a result of his failure to cooperate with the written notices that had been issued to him by. The Respondent did not respond to this email. On 20 July 2018, the SRA emailed the Respondent asking for a response to the various emails and reminders that had been sent to him by 5pm on 27 July 2018. The Respondent did not respond to this email. On 31 July 2018 the SRA telephoned the Respondent's mobile telephone. A voicemail message was left asking the Respondent to urgently return the call.

12. On 31 July 2018 the Respondent telephoned the SRA and left a voicemail message acknowledging the SRA's earlier call. On 1 August 2018, the SRA telephoned the Respondent. In the telephone call, the Respondent recalled receiving the previous emails from the SRA but stated that he had not seen the SRA's email of 20 July 2018. He said that he would check his email account and respond that day. The Respondent did not make further contact with the Investigation Officer.

13. On 30 August 2018 the SRA telephoned the Respondent's mobile telephone. The Respondent apologised and said that he had forgotten to respond. The Investigation Officer warned the Respondent that this was his last opportunity to respond, otherwise a formal investigation into his conduct would commence. The Respondent told the Investigation Officer that he would check his emails and respond. The Respondent was provided with the Investigation Officer's email address and telephone number to contact in the event of any queries.

14. On 6 September 2018, the Respondent emailed the SRA and acknowledged receipt of the SRA's email of 20 July 2018. The Respondent informed the Investigation Officer that he would provide a response to the SRA by 10 September 2018. The Respondent did not provide a response.

15. On 12 September 2018 the SRA emailed the Respondent and informed him that it was now moving to formal investigation. The same day the Respondent emailed the SRA apologising for his failure to respond and promising to do so by 14 September 2018. In his email the Respondent stated that he would not be seeking any further extensions of time to provide a response. On 13 September 2018, the SRA emailed the Respondent and confirmed that it would wait until 14 September 2018 for a response.

16. On 14 September 2018 the Respondent emailed the SRA stating that he had made "very good progress and am almost ready to come back to you however I have not yet completed what I need to in order to provide my response. I am continuing to work on it and will continue to do so tonight and tomorrow. I intend to be able to respond in full by Monday [17 September 2018]." The Respondent did not provide a response to the SRA by that date.

17. On 19 September 2018 the Respondent emailed the SRA stating that he was still collating the information and hoped to work again on it over Friday (21 September 2018) and the weekend. The Respondent said he would continue to update the SRA. The Respondent did not provide a response to the SRA by 21 September 2018.

18. On 28 September 2018, the SRA sent the Respondent an Explanation With Warning ("EWW") letter requesting an explanation of his conduct. The Respondent was given until 5pm on 15 October 2018. The Respondent did not provide a response.

19. On 16 October 2018, the Respondent emailed the SRA requesting an extension of time to provide a response to the EWW by 26 October 2018. The SRA refused the request.

Live Witnesses

20. <u>The Respondent</u>

20.1 The Respondent told the Tribunal that Client S and M had come to the firm with an unusual case of non-employment discrimination. The Respondent had engaged a specialist barrister and had been discussing the case with her right up until the working day before the deadline for lodging the claim, which was 22 October 2018. The Respondent had spoken to a colleague that day who had told him that he would need to obtain a cheque from the managing partner for the court fee. The managing partner was

not available and the Client did not have a cheque book. In order to ensure that the case was filed on time the Respondent had written the cheque for the court fee from his personal bank account. He had taken a photograph of the cheque on his phone. It was arranged with the Client that money would be transferred into the Respondent's personal bank account to reimburse him. The Respondent stated that he had returned the money to the Client in May 2019. The Respondent had been unsure as to whether the court would subsequently locate the cheque, which he believed they had misplaced, and present it for payment. This would prove that the cheque had been filed with the rest of the paperwork before the deadline. The Respondent stated that this would have been "fantastic evidence" to show that he had sent the fee with the paperwork. The Respondent stated that he genuinely did not think that he had acted to the detriment of his Client or to the firm. If anything, he had thought that he was helping the Client in a difficult situation. He was also helping the firm as a missing the deadline could have caused difficulty for it as well.

20.2 In relation to Allegation 1.2, the Respondent told the Tribunal that he felt very strongly that if the claim had been accepted by the court there would not be a problem. He did not know for certain what had occurred at the court. He had arrived at the court just before, or just at, 5.00pm and had given the paperwork including the cheque to a member of staff who had said that they would take it to the issuing office. The Respondent accepted that he should have gone back to the Client much sooner to explain the situation, but stated that at the time he was waiting to hear from the court.

20.3 In relation to Allegation 1.3, the Respondent told the Tribunal that he had been looking for the file but could not locate it. The files had been in a locked room and after the Respondent moved house the storage was spread over a couple of rooms. Some of the files were also stored in a garage. The Respondent had not known what had happened to the file and told the Tribunal that it may have been accidentally moved into a section where the files were subsequently destroyed. He never ascertained exactly what had happened to it. The Respondent told the Tribunal that he had not replied to the correspondence because he did not want to give an incorrect answer. The Respondent accepted that from the point of view of the SRA this looked like non-cooperation but he told the Tribunal that he had no intention to deliberately mislead and he was anxious to find the paperwork. He accepted however that he should have been more forthcoming. In relation to Allegation 1.4 the Respondent told the Tribunal that he ought to have provided the information at a much earlier stage and that it was not a good way for a solicitor to deal with their regulator.

20.4 In relation to the Allegation of dishonesty the Respondent told the Tribunal that he was surprised and distressed to be accused of this. He did not see that what he had done was dishonest and he therefore strongly denied the Allegation.

20.5 In cross-examination Mr Bullock put to the Respondent that the firm already had £1,000 on account from which it could pay the issuing fee. The Respondent denied this and stated that the £1,000 had been on account of costs and had been used up within the first week of instructions. Mr Bullock asked the Respondent why, on 22 October 2018, when he had emailed the Client at 9:50am, he had not asked him to pay the issuing fee. The Respondent told the Tribunal that he had spent the whole of that morning finalising the claim forms. He had asked a colleague about issuing the claim forms and had been told that the cheque-book was held by the managing partner. It was after this point that

he contacted the Client and asked the Client for a cheque and was informed that the Client did not have a cheque book. Mr Bullock asked the Respondent if part of his concern to get the claim form in on time was the fact that a year previously he had been given a verbal warning by the firm for missing a limitation deadline. The Respondent confirmed that this was in his mind at the time.

20.6 Mr Bullock asked the Respondent how it could be that the cheque had not been in the envelope when it was opened the next morning by the court. The Respondent stated that when the Court staff opened the envelope they may not have picked out the cheque. The Respondent confirmed that he was "100% certain" that the cheque had been in the envelope when he handed it to court staff. Mr Bullock put to the Respondent that if he had forgotten to enclose the cheque, one way to conceal this would be to send a photograph of the cheque to the Client. The Respondent told the Tribunal that he considered this to be an inappropriate question and he denied the suggestion. He told the Tribunal that he had sent the photograph of the cheque to the Client in order that he would reimburse him for the court fee.

20.7 The Respondent confirmed that the following day, 23 October 2018, Client S had paid £1,000 into his personal bank account by way of reimbursement him of that fee. Mr Bullock took the Respondent to the letter from the court, received by the firm on 25 October 2018, which referred to the court fee not having been enclosed. Mr Bullock put to the Respondent that by that date there was therefore a question as to whether the cheque had been received. The Respondent confirmed that this was correct. Mr Bullock then took the Respondent to his email to the court on 1 November 2018 in which he had said that he would resend the cheque and the claim forms. Mr Bullock put to the Respondent that by that date at the latest the Respondent knew that the payment had not been received. The Respondent agreed with this. The Respondent also agreed that by this stage there was no reason why the replacement cheque could not have been drawn on the office account. Mr Bullock put to the Respondent that after 1 November there was therefore no good reason why he should keep hold of the £1,000 in his personal bank account. The Respondent stated that the question was whether the cheque that was with the court would subsequently be cashed. For that reason he was waiting to see what would happen. Mr Bullock put to the Respondent that he could have cancelled the cheque with his bank. The Respondent stated that if the cheque was cashed then it would have proved that the claim had been lodged on time together with the fee.

20.8 The Respondent confirmed that he had not asked Client S if he could keep the £1,000 in his personal account. The Respondent also confirmed that it was clear from the exchanges of text messages that Client S was dissatisfied and wanted an update on the status of his claim. Mr Bullock put to the Respondent that once Client S was threatening to complain about him the Respondent would not have thought that the Client would be happy about the retention of his £1000. The Respondent stated that it had never been discussed but agreed that the Client probably would not be happy about it.

20.9 The Respondent had left his employment on 26 November 2018 and told the Tribunal that he was in a very difficult situation which had resulted in an inability to repay the money. The Respondent accepted that this was "far from ideal" and he agreed with the suggestion by Mr Bullock that he had been treating the £1,000 as a loan. The Respondent stated that this had not been the right thing for him to have done but that

he had repaid the money as soon as he could. He denied deliberately deciding to hold onto the funds, he was just unable to repay them.

20.10 Mr Bullock put to the Respondent that in continuing to hold onto the £1,000 as a loan he had acted dishonestly. The Respondent told the Tribunal that he had not in fact been treating it as a loan, despite what had said earlier, and he did not feel that he was dishonest. He stated that there had been no discussion about it with the Client. The managing partner had advised him to repay it as quickly as possible, which he had taken to mean as soon as he was able. The Respondent was asked whether, as at 26 November 2018, he still had the money in his account. The Respondent stated that he did not recall precisely the position.

20.11 The Respondent told the Tribunal that facing a similar situation again he would do things differently; specifically he would let the Client know more promptly what was going on and would provide a better standard of service. He would have responded much more quickly to the Client's requests for information.

20.12 Mr Bullock put to the Respondent that he had only repaid the Client in order to forestall proceedings being brought against him by the SRA. The Respondent denied this and stated the fact that he had repaid the Client on the last day before which the SRA had stated they would issue proceedings was not a calculation of his part.

20.13 In respect of Allegations 1.3 and 1.4, the Respondent accepted that when a solicitor was asked to do something by the SRA they should do it within the timeframe set down by the SRA. The Respondent accepted that he had been asked for a file on 26 April 2018 and that it would be in one of three places; at home, in archive or destroyed. The Respondent agreed that if it was at home he could have found it relatively easily by looking in his house. If it was in archive he accepted that he could locate it by sending an email. If it was at neither location then he could safely assume that it had been destroyed. Mr Bullock put to the Respondent that he could have replied immediately to the SRA following the letter of 26 April to that effect. The Respondent agreed that he should have done this. Mr Bullock took the Respondent to his email of 10 May 2018 in which he had said that he would get back to the SRA very soon. It was put to the Respondent that he could not have had any serious intention of doing so as he could have responded within around one month. The Respondent stated that he had every intention of doing what he said he would on each occasion when he was in communication with the SRA. He wanted to be able to be certain as to the whereabouts of the file, but accepted that he should have given an answer and been more helpful. There followed similar cross-examination in respect of a series of telephone attendance notes beginning on 1 August 2018. The Respondent denied the suggestion that he had not intended to respond. Mr Bullock then took the Respondent to an email he had sent on 6 September 2018 in which he had said he would provide a response by 10 September 2018 (to the email of 20 July 2018). The Respondent stated that he had fully intended to provide that full response within the time period he had set out. The Respondent denied that he had been "kicking the can down the road" to avoid confessing to having lost a file.

Findings of Fact and Law

21. The Applicant was required to prove the Allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and, where applicable, written submissions of both parties, which are briefly summarised below.

22. **Allegations 1.1 and 1.5**

Applicant's Submissions

22.1 Mr Bullock submitted that a solicitor with integrity would always treat Client money as sacrosanct. They should therefore not allow Client funds to be intermingled with their own personal funds because of the obvious dangers, including the lack of accounting controls that would otherwise exist in relation to a Client account and the risk of funds being inadvertently dissipated.

22.2 In the event that notwithstanding the above, a solicitor found themselves in a positon where funds had become intermingled, then they should resolve the situation as soon as possible by returning funds to Client. They should not simply allow those funds to sit in their account. The Respondent had done none of this and had also not paid the court fee to resolve it that way.

22.3 It was also the Applicant's case that the Respondent's failure to pay the monies into the Firm's Client account without delay was in breach of Rule 14 of the SRA Accounts Rules 2011. It was submitted that the Respondent had failed to maintain the trust that the public placed in him and the provision of legal services and that he had therefore breached Principle 6.

22.4 Mr Bullock further submitted that the Respondent had acted dishonestly in relation to this Allegation. He referred the Tribunal to the test in Ivey v Genting Casinos (UK) t/a Crockfords [2017] UKSC 67. Mr Bullock submitted that the Respondent had knowledge of the following matters:

- From 23 October 2018 he was in receipt of funds belonging to Client S;
- The purpose for which the money had been paid to him was to reimburse him for payment of the court fee on 22 October 2018;
- From 2 November 2018 at the latest he knew that the payment of the court fee had not in fact been made;
- The Respondent had not sought Client S's permission to retain the money in his personal account after 2 November 2018;

- From 19 November 2018 at the latest he knew that Client S was unhappy with his services and would have been unlikely allow him to retain the money if he had been asked.

- The Firm also held money on Client account from which the disbursement could have been paid in the future if necessary; there was therefore no longer any good reason for him to retain funds in his personal account;

- He was able to contact Client S and would have been able to arrange repayment if necessary; prior to May 2019 he had not done so.

22.5 Mr Bullock submitted that the position was that from November 2018 to May 2019 the Respondent had £1,000 in his personal account which did not belong to him and that was intermingled with own funds without permission. This would be considered dishonest by objective standards and there had been no explanation until the hearing as to why the Respondent did this. The Respondent could have put his case as early as 24 January 2019 and his failure to do so may be relevant.

Respondent's Submissions

22.6 The Respondent gave evidence and relied on that evidence in support of his case.

22.7 The Respondent told the Tribunal that he had always been honest and had sought to uphold the high ethical standards of the profession. The Respondent submitted that he had not acted dishonestly. He had written the cheque from his own account in order to help the Client to avoid missing the deadline. There was no attempt to conceal the payment. The Respondent iterated the points made in his evidence about the sequence of events leading up to and including his delivery of the claim form and cheque at the Court on 22 October 2018.

22.8 The Respondent submitted that this demonstrated that he was trying to act in the best interests of Client S.

22.9 The Respondent told the Tribunal that the court may have mislaid the cheque in which case it could have been located later. He submitted that he had been giving the Client prompt information at this point about the status of the claim.

22.10 The Respondent accepted that he should have repaid the Client sooner than he did. The Client had already expressed his unhappiness about other matters but had not raised any issue with regards to the £1,000. The payment was never chased by the Client at all. In the circumstances there was no express breach of his duties to provide a good standard of service to the Client. The Respondent submitted that he had not lacked integrity or undermined trust in him.

22.11 In relation to the Allegation of dishonesty, the Respondent reminded the Tribunal of the standard of proof. He told the Tribunal that he had not made false statements or deliberately misled or concealed information. He reminded the Tribunal of his explanation for payment of the Court fee and submitted that this demonstrated that there was no dishonesty. He had not taken the money without agreement. It was money which was to be paid back to him following his payment of the court fee. The expectation was

that the payment would be reimbursed and this had happened. There was no dishonesty in repaying the payment later than originally anticipated in circumstances where there was no further request from the Client.

22.12 The Respondent described the circumstances of this case as unique. The combination of the firm's procedures alongside a Client who did not have a chequebook made them so.

22.13 The Respondent further submitted that this was not Client money as it represented a payment for a disbursement.

The Tribunal's Findings

22.14 There was no significant dispute between the parties as to the factual elements of this Allegation. The Respondent agreed that he had provided his personal bank account details to Client S and it was common ground that the Respondent had then received the sum of £1,000 into his personal bank account from Client S. It had not been disputed that the Respondent had failed to account to the Firm for that money. At the time the Rule 5 statement had been drafted, the money had not been returned to the Client. It was agreed that this money was returned on 30 May 2019. The fact that it was eventually returned was not a defence to the Allegation, which was framed in terms of "on or around 22 October 2018".

22.15 The Respondent had been instructed by the Firm on 21 November 2018 to return the monies without delay, having retained it at that stage for almost a month and having told the Court that a replacement cheque would be issued.

22.16 The Tribunal considered the argument advanced by the Respondent to the effect that the payment was not Client money as it was payment of a disbursement. The Tribunal rejected this submission as being without merit. Any monies paid by a Client should be treated as Client money in strict compliance with the SAR. Moreover, it was obvious to the Respondent within a matter of days that the cheque had not been presented for payment and the disbursement had therefore not been paid.

22.17 The Tribunal found the factual basis of Allegation 1.1 proved beyond reasonable doubt.

22.18 Principle 2

22.18.1 In considering the question of integrity, the Tribunal applied the test 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".

22.18.2 The Tribunal found that not returning monies or accounting to the Firm for monies belonging to a Client and retained in his personal bank account amounted to a clear lack of integrity. The Respondent had taken the responsibility for paying the court fee and had received the money from the Client on the understanding that this was reimbursement for that payment. The Respondent had not in fact made the payment as the cheque had not been cashed. The Tribunal was not required to make a finding as to why it had not been cashed as the key point was that the money had to be returned to the Client immediately. The Respondent had given conflicting explanations as to why he had not returned it. The first was that he was waiting to see if the cheque was presented for payment by the Court at a later date. The second was that he did not have the funds to repay it. The Tribunal found the first explanation unconvincing and unsatisfactory. The Respondent could have cancelled the cheque and if the Court had subsequently presented it for payment he would have been notified through his bank, thus providing the proof he would have wanted that he had submitted it correctly in the first place.

22.18.3 The second explanation was equally unsatisfactory as it showed that the Respondent had failed to ring-fence the funds. Instead he had used the funds as a loan without the Client's permission, something he had accepted in evidence before subsequently denying it.

22.18.4 The Tribunal found beyond reasonable doubt that the Respondent had clearly departed from an ethical code and as such he had lacked integrity and breached Principle 2.

22.19 Principle 6

22.19.1 It followed from the Tribunal's factual findings that the trust the public placed in the Respondent and in the profession was undermined by this conduct. The Tribunal therefore found the breach of Principle 6 proved beyond reasonable doubt.

22.20 Principle 10 and Rule 14.1 of the SAR

22.20.1 It again followed from the Tribunal's factual findings that the Respondent had failed to protect Client monies and assets as he had not paid the monies into a Client account. The Tribunal found the breach of Principle 10 and of Rule 14.1 proved beyond reasonable doubt.

22.21 Rule 7.1 of SAR

22.21.1 The Tribunal had found that the £1,000 was Client monies and on that basis it was monies that was being improperly withheld from a Client account by virtue of being in the Respondent's bank account. The Respondent was therefore aware of the breach from the moment he received the funds into his personal account. The date on which the Respondent was informed that the issuing fee had not been paid was 25 October 2018. The duty to rectify was live at that point at the very latest, but in reality existed at the point of receipt. The Tribunal did not consider that repayment eight months later could be

described in any way as prompt. The Tribunal found the breach of Rule 7.1 proved beyond reasonable doubt.

22.22 Dishonesty (Allegation 1.5)

22.22.1 The test for considering the question of dishonesty was that set out in Ivey 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 knowledge or 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."

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

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

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

22.22.3 The Respondent's state of knowledge was that he knew that the money had been paid into his personal bank account. He also knew that the Client's intended purpose was to reimburse him for the issuing fee.

22.22.4 On 25 October 2018 the Respondent had received the letter from the Court informing him that as far as it was concerned the fee had not been paid. The Respondent may well have believed that the Court was in error on this point. However that did not change the fact that he knew that this was the Court's position. It was reinforced by the fact that the Respondent knew that the cheque had not been presented for payment and so the £1,000 remained in his personal bank account.

22.22.5 The Respondent's understanding of the Court's position was clear from the correspondence between the two. This culminated in the Respondent agreeing to re-issue a replacement cheque.

22.22.6 The Respondent, on one version of his explanation, made a conscious decision to retain the funds in the hope that the Court would find the original cheque and present it for payment. The Respondent knew that he had not discussed these developments with his Client. The Respondent also knew that the Firm had told him to return the money to the Client without delay. The Respondent knew that he had not followed this instruction and that he continued to retain the funds.

22.22.7 On the other version of the Respondent's explanation, he had been unable to return the funds due to financial hardship. The Respondent had given contradictory evidence as to whether he had treated the £1,000 as a loan. The Tribunal was satisfied beyond reasonable doubt that he had made that decision and rejected his evidence to the contrary. The Respondent knew, on his own evidence, that he had not discussed the retention of the monies with the Client. The fact that the Client had not 'chased' him could not be taken as consent.

22.22.8 At all times the Respondent knew how to return the funds to the Client, as he eventually did so in May 2019. The Tribunal noted that at this time the Respondent knew of the intended referral to the Tribunal. The Tribunal was satisfied that there was a causal link between the two events and rejected the Respondent's evidence to the effect that it was a coincidence.

22.22.9 The Tribunal found that the Respondent's conduct would be considered dishonest by the standards of ordinary decent people. At the heart of this case was the fact that he had retained money belonging to someone else without permission or good reason. The Tribunal found the Allegation of dishonesty proved beyond reasonable doubt.

22.23 The Tribunal found Allegations 1.1 and 1.5 proved in full beyond reasonable doubt.

23. **Allegation 1.2**

Applicant's Submissions

23.1 The Applicant's case was that the Respondent would have been aware that the limitation deadline had been missed by 2 November 2018. However, despite repeated contact from Client S, specifically requesting confirmation that the claim had been issued within time, the Respondent did not inform either Client S or Client M that he had failed to do so.

23.2 The Respondent had failed to issue the claim on behalf of Client S and Client M within the limitation period and he had also failed to disclose this to the Clients. This disclosure was only rectified by the Clients raising a complaint. The Applicant's case was that this demonstrated a failure by the Respondent to act in best interests of the Clients, and that he failed to provide a proper standard of service in breach of Principles 4 and 5 and Outcomes 1.2 and 1.5

Respondent's Submissions

23.3 The Respondent's case was that he had not missed the deadline and so he challenged the underlying basis of the Allegation. However in his evidence he had accepted that he had not made the Client aware of the problem with the issuing fee soon enough. The Respondent relied on his evidence in relation to this Allegation.

The Tribunal's Findings

23.4 The Court's position had been that the claim was not lodged in time. There was no evidence that the cheque was ever found and even on the Respondent's evidence he had brought the papers to the Court at the very last minute. The Respondent had admitted that he did not tell his employers, even as late as 12 November 2018 when he was aware that he, and they, faced the possibility of a claim for professional negligence.

23.5 The Tribunal had been taken to the messages from the Client to the Respondent, chasing him for a response as evidenced by the messages on 23 and 31 October and 5, 6 and 12 November 2018. The Respondent did not tell the Client that the claim had missed the deadline, or even that the Court was of this view and that he was trying to establish that this was not the case.

23.6 The Respondent had accepted in evidence that he should have told the Client of the situation sooner and should have provided a better standard of service. The Tribunal agreed with that assessment and found the factual basis of Allegation 1.2 proved beyond reasonable doubt.

23.7 Principles 4 and 5 and Outcomes 1.2 and 1.5

23.7.1 The Tribunal was satisfied beyond reasonable doubt that the Respondent had not acted in the best interests of his Clients or provided a proper standard of service. This was evident from the facts of the case and the messages from Client S in the course of trying to obtain information to which they were entitled. The Respondent had not protected the interests of his Clients and had not demonstrated competence in his work. The Tribunal therefore found the breaches of Principles 4 and 5 and the failure to achieve Outcomes 1.2 and 1.5 proved beyond reasonable doubt.

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

24. **Allegation 1.3**

Applicant's Submissions

24.1 Mr Bullock took the Tribunal through the communications between the Respondent and the SRA. He submitted that the Respondent would have been aware of his duty to deal with the SRA in an open, co-operative and timely manner. The Respondent had been reminded of his obligations on more than one occasion. The Respondent was engaging with the SRA's Investigation Officer over a period of between four to six months, during which period he had failed to answer the queries or provide any

substantive information. This included a failure by the Respondent to answer the Allegations raised in an EWW dated 28 September 2018.

Respondent's Submissions

24.2 In his closing submissions the Respondent reiterated what he had said in his evidence, namely that he did not want to give an inaccurate answer to the SRA. However he had also accepted that he ought to have given more information to the SRA in a timely manner.

The Tribunal's Findings

24.3 The Respondent had admitted that he had failed to respond to the requests for information made of him by the SRA. In doing so he had effectively admitted this Allegation. The Tribunal had seen the numerous requests from the SRA to the Respondent. By the Respondent's own admission there had been no adequate response to any of them. The Tribunal found that this was a clear breach of the Respondent's duty to co-operate with his legal and regulatory obligations as required by Principle 7 and Outcome 10.6. The Tribunal found Allegation 1.3 proved in full beyond reasonable doubt.

25. **Allegation 1.4**

Applicant's Submissions

25.1 Mr Bullock submitted that the Respondent had demonstrated a pattern of behaviour in which he made promises to the SRA that he did not keep and had no real intention of keeping. If he had such an intention then he could have kept those promises. At the very least the Respondent had made no real effort to comply with the requests for information. Mr Bullock submitted that a solicitor of integrity would take his responsibilities very seriously, something the Respondent had failed to do.

Respondent's Submissions

25.2 The Respondent again accepted that he ought to have provided the responses in the time-frames he had promised and that he had not done so. He denied lacking the intention to do so and had told the Tribunal that all the promises he had made had been given in good faith. The Respondent relied on his oral evidence in support of his case. He reiterated that he had not intended to frustrate the SRA, but he accepted that his conduct had not been good enough.

The Tribunal's Findings

25.3 The Respondent had, again, admitted in evidence that he had not responded to the SRA when he said he was going to and he accepted that this was wrong.

25.4 The SRA had emailed the Respondent on 26 April, 10 May, 30 May, 30 June, 20 July, 6 September and 13 September. It had telephoned him on 31 July, 1 August, 9 August and 30 August and had sent an EWW letter on 28 September. Despite all of that, the Respondent had never provided the SRA with the information they were seeking.

25.5 It was clear from this that the repeated promises made by the Respondent bore no relation to his actual conduct. The Tribunal found the factual basis of Allegation 1.4 proved beyond reasonable doubt.

25.6 Principle 2

25.6.1 The Tribunal again approached the issue of integrity with reference to the test in Wingate.

25.6.2 The Respondent had promised deadlines to the SRA to which he had never stuck. The Tribunal was satisfied that the Respondent had made a choice not to give the information when he could have given a full explanation of the position. The Tribunal found that in doing so the Respondent had been evasive in his dealings with the SRA. A solicitor of integrity would have immediately notified the SRA of the fact that he could not locate the file and would have engaged with them openly about this. It lacked integrity to fail to give an answer even when he had promised one by a certain date on numerous occasions. The Respondent had told the Tribunal that he was aware of his obligations and so his failure was not accidental. The Tribunal also noted that the reason the SRA was involved was because the Respondent had already ignored insurer's requests for file for several months. The Tribunal found beyond reasonable doubt that the Respondent had lacked integrity and had breached Principle 2.

25.7 Principle 6

25.7.1 The trust the public placed in the profession hinged on solicitors complying with their regulatory obligations and dealing with the SRA in a straightforward, open and co-operative manner. The Respondent had manifestly failed to do so in this case and the Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

25.8 The Tribunal found Allegation 1.4 proved in full beyond reasonable doubt.

26. **Allegation 1.5**

26.1 The submissions and findings in relation to this Allegation are dealt with under Allegation 1.1, the only instance in which dishonesty was alleged.

Previous Disciplinary Matters

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

Mitigation

28. The Respondent told the Tribunal that the matters that had been alleged in this case did not reflect the best of his practice always. He told the Tribunal that he had always behaved ethically. The Respondent stated that he had a significant level of legal knowledge and he could use this to the benefit of society. He urged the Tribunal not to impose the most serious sanctions open to it. The Respondent told the Tribunal that he had tried to be as forthcoming and contrite as possible in these proceedings.

29. The Respondent stated that the matters leading to the finding of dishonesty were a "one-off". He had genuinely thought that he was helping the Client. It was a distinct, discreet issue that did not reflect his practice. He told the Tribunal that he had no intention to permanently deprive the Client of the funds, but accepted that the length of time in repayment was longer than it should have been. The Respondent was "extremely sorry" for that. He told the Tribunal that he would continue to update himself on correct practices and would attend courses to fully acquaint himself with his obligations. At the material time he had been without support or guidance.

30. In terms of his personal circumstances, the Respondent told the Tribunal that his family included two young children and they would be affected if he lost his livelihood.

Sanction

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

32. In assessing culpability the Tribunal found that the Respondent's motivation had been that while he initially received the money into his account in order to assist the Client, he then retained it as he was unable to return it. On his own admission he had treated it as a loan. He had therefore not planned to keep the money, but had done so in response to circumstances over which he had direct control and responsibility. This was a very serious breach of trust as Client money was being held in the personal bank account of the Client's solicitor.

33. The Respondent was an experienced solicitor and was fully culpable for his conduct. The Tribunal did not find that he had misled the regulator but he had effectively omitted to have any meaningful communication with it at all.

34. In terms of the harm caused, the Tribunal noted that the Client eventually received his money returned but only after a delay that was wholly unjustified. This type of conduct did nothing positive for the reputation of the profession and the damage caused to it was absolutely predictable.

35. The misconduct was aggravated by the Respondent's dishonesty. His conduct had been deliberate and calculated once it was apparent that the Court fee had not been paid, especially once the Respondent had been told by his managing partner to return the money to the Client as soon as possible. In relation to his lack of co-operation with the SRA it was also repeated. The misconduct continued over a significant period of time in respect of all Allegations.

36. The Client was in a vulnerable position and the Respondent, by failing to engage with either the Client or the SRA had concealed his wrongdoing from them. The loss to the Client was £1,000 (until the money was returned) and the loss to the Firm was £6,000 as explained by the managing partner in his unchallenged statement to the Tribunal. The Respondent ought reasonably to have known that he was in material breach of his obligations.

37. The misconduct was mitigated by the fact that the Respondent had acknowledged some failings in relation to his conduct. The Tribunal noted that he had a previously unblemished career in terms of disciplinary matters. However the Tribunal found that he lacked insight and had not made open or frank admissions to the Allegations.

38. 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 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. 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"."

39. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal found none. This was a prolonged period of dishonesty and there was nothing in the circumstances of the misconduct or the Respondent's personal situation that could justify a lesser sanction. The only appropriate and proportionate sanction was that the Respondent be Struck Off the Roll.

Costs

Applicant's Submissions

40. Mr Bullock applied for costs in the sum of £8,433.50 based on the schedule provided to the Respondent and the Tribunal. He submitted that this figure was reasonable for a two-day hearing involving Allegations of dishonesty. He submitted that the supervision costs would have been lower if the Respondent had replied to correspondence at any stage.

41. The Rule 5 statement and accompanying documents needed to be prepared with care particularly when such serious Allegations were being made.

42. Mr Bullock told the Tribunal that the schedule had in fact under-estimated the costs of travelling to the Tribunal. He did not seek to revise the schedule.

43. Mr Bullock submitted that taking all the factors into account including the Respondent's conduct in only engaging at a very late stage, the costs were reasonable.

Respondent's Submissions

44. The Respondent submitted that the costs claimed were excessive and invited the Tribunal to reduce them.

45. He submitted that 126 units for drafting and dictating seems a lot for the level of documentation. He noted that the supervision costs were high, at 8 hours 42 minutes and 10 hours 12 minutes. He also queried the estimated costs of preparation for the hearing and noted there was no breakdown of the disbursements.

46. The Respondent further submitted that in any event he could not afford to pay the costs due to his financial circumstances. He confirmed that he had not provided a personal financial statement.

The Tribunal's Decision

47. The Tribunal noted the submissions of both parties and reviewed the cost schedule provided by Mr Bullock.

48. The Respondent had contested the hearing and the Allegations had been proved in full. The Rule 5 statement was properly drafted and the costs had increased due to the Respondent's failure to engage. This had resulted in a non-compliance hearing in July. The figure of just under £8,500 was modest and could in no way be regarded as excessive or disproportionate.

49. In relation to the Respondent's means, the Tribunal noted that the Standard Directions had required the Respondent, if he wished his means to be taken into account, to file a personal financial statement on the Tribunal and the Applicant 28 days before the hearing. The Respondent had, again, not complied with the direction and had therefore waived his right to argue that he could not pay the costs. He had given no explanation as to his failure to comply.

50. The Tribunal found there to be no basis to reduce or defer payment and it ordered that the Respondent pay the Applicant's costs in full in the usual way.

Statement of Full Order

51. The Tribunal Ordered that the Respondent, SHOHAAB DAR, 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 £8,433.50.00

Dated this 11th day of December 2019
On behalf of the Tribunal

P. Lewis
Chairman