SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11969-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

KEISHA HACKETT Respondent

Before:

Mr P. Jones (in the chair)
Mr E. Nally
Mr M. R. Hallam

Date of Hearing: 17 December 2019

Appearances

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

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

The allegations against the Respondent made by the Applicant were set out in a Rule 5 Statement dated 3 June 2019. The allegations were that:

1. That while in practice as a solicitor and director of Hackett Law Limited ("the Firm"), between approximately December 2016 and December 2017:

1.1 She failed to assess Client A's eligibility for legal aid funding, adequately or at all, and acted instead on a private retainer. She therefore breached Principles 4, 5 and 6 of the SRA Principles 2011 ("the Principles") or any of them.

1.2 On one or more occasions, she:

1.2.1 caused or allowed Client A (or his associates) to pay money into her personal bank account;

1.2.2 failed to account for those funds to Duncan Lewis Solicitors ("DLS"), with whom she and/or the Firm held a contract for services;

She therefore breached all or any of:

1.2.3 Rules 1.1, 1.2(a), 1.2(b) and 13.1 of the SRA Accounts Rules 2011 ("the Accounts Rules")

1.2.4 Principles 2, 4, 6 and 10 of the Principles.

1.3 She failed to return outstanding monies in the sum of £150.00 to Client A, promptly or at all, and therefore breached all or any of:

1.3.1 Rule 14.3 of the Accounts Rules;

1.3.2 Principles 2, 4, 6 and 10 of the Principles.

2. In addition, allegations 1.2 and 1.3 were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but proof of dishonesty was not required to establish the allegations or any of their particulars.

Documents

Applicant

- Application and Rule 5 Statement with exhibit "RTM1" dated 3 June 2019
- Rule 14 letter and enclosures dated 12 November 2019
- Witness statement of Jason Bruce with exhibits "JB1 -JB12" dated 11 August 2019
- Witness statement of Rohena Wallace with exhibits "RW1-RW10" dated 14 October 2019
- Witness statement of Client A with exhibits "MM1 -MM7" dated 20 August 2019
- Schedules of Costs dated 3 June 2019 and 29 October 2019

Respondent

- Respondent's letter to SRA dated 26 March 2019
- Respondent's settlement e-mail to DLS dated 8 March 2019
- Character references from FGN dated 23 March 2018
  - UO dated 23 March 2018
  - MD dated 20 March 2018
  - KA dated 19 March 2018
  - RR dated 23 March 2018
  - JB dated 19 March 2018

Preliminary Matters

Application to proceed in absence

The Applicant's Application

3. The Respondent had not attended for the hearing and the Applicant's representative, Mr Mulchrone applied to proceed in the Respondent's absence and relied upon the decisions in General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 16231 which in turn approved the principles set out in R v Hayward, R v Jones, R v Purvis QB 862 [2001], EWCA Crim 168 [2001] namely that proceeding in the absence of the Respondent was a discretion which a Tribunal should exercise with the utmost care and caution bearing in mind the following factors:

   - The nature and circumstances of the Respondent's behaviour in absenting herself from the hearing;
   - Whether an adjournment would resolve the Respondent's absence;
   - The likely length of any such adjournment;
   - Whether the Respondent had voluntarily absented herself from the proceedings and the disadvantage to the Respondent in not being able to present her case.

4. It was held in Adeogba that in determining whether to continue with regulatory proceedings in the absence of the accused, the following factors should be borne in mind by a disciplinary tribunal:-

   - the Tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;
   - the fair, economical, expeditious and efficient disposal of allegations was of very real importance;
   - it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and

- there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.

5. In Mr Mulchrone's submission the Tribunal had evidence before it that the Respondent had been correctly served with the proceedings and all relevant statements to be used in evidence and the means to access this password protected material and also access to the same material on CaseLines (the electronic case management system used by the parties and the Tribunal).

6. Mr Mulchrone submitted that the Respondent was aware of the hearing date but that she had voluntarily absented herself and he referred to an e-mail from the Respondent sent to the Applicant and copied to the Tribunal dated 25 November 2019 in which the Respondent acknowledged service of the material and indicated that she would not be attending the hearing.

7. Mr Mulchrone submitted that whilst there was no doubt the Tribunal would have been assisted by the Respondent's presence at the hearing the Respondent had given an account in interview with DLS and had served an Answer to the allegations and that any detriment to the Respondent in the Tribunal hearing the matter in her absence was thereby reduced. Applying Adeogba and in fairness to the Regulator and in the interests of justice it was appropriate for the Tribunal to hear the case in the Respondent's absence and without delay.

The Respondent's Position

8. Other than her e-mail of 25 November 2019 the Respondent had not made any submissions in respect of the Tribunal proceeding in her absence.

The Tribunal's Decision

9. With respect to the application to proceed in her absence the Tribunal noted that the Respondent had previously made two applications for the matter to be determined on the papers; that she had made no application to adjourn the hearing and no applications for a video-link or telephone hearing.

10. The Tribunal considered the factors set out in Jones in respect of what should be considered when deciding whether or not to exercise the discretion to proceed in the absence of the Respondent and also Adeogba.

11. The Tribunal observed that under Rule 16(2) of the Solicitors (Disciplinary Proceedings) Rules 2007 the Tribunal had the power, if satisfied service had been effected, to hear and determine the application in the Respondent's absence.

12. The Tribunal considered the Respondent had been correctly served and was aware of the date of the proceedings; that she had voluntarily absented herself and that an adjournment would not resolve her absence.

13. Whilst she would have the disadvantage of not being present to represent herself the Tribunal would be assisted by her Answer, and the account she gave in the internal investigation by DLS.

14. The Tribunal decided that it should exercise its power under Rule 16(2) to hear and determine the application in the Respondent's absence.

Factual Background

15. The Respondent, who was born in September 1976, and was a solicitor, having been admitted to the Roll on 15 June 2016. She held a current practising certificate, free from conditions, and was accredited by the Law Society to conduct Immigration and Asylum work (level 2).

16. At all relevant times she was a director of the Firm, which held a contract for consultancy services with DLS. The Firm was dissolved on 29 January 2019.

17. At all relevant times the Respondent provided legal services to clients of DLS. In particular, she advised and assisted Client A with his application for asylum and an associated appeal.

18. On 17 October 2017, Client A reported to the SRA concerns that he had been defrauded by the Respondent. His complaint raised the following issues:

- the Respondent had not offered him legal aid, for which he believed he had been eligible;
- the Respondent instructed him to transfer £2,400.00 into her personal bank account;
- he did not receive an invoice for this payment or a breakdown of the work involved;
- he paid a further £300.00 to the Respondent in cash but did not receive a receipt;
- during an initial consultation, the Respondent charged him £1,530.00 but he did not receive an invoice or breakdown of the work done.

19. On or after 21 November 2017, Client A sent to the SRA a copy of his letter of complaint to DLS, complaining about fees charged by the Respondent, the manner in which they were charged, and the professional conduct of the Respondent in his asylum application.

20. On 6 December 2017, the SRA's Investigation Officer contacted DLS in respect of the report from Client A. The next day, DLS replied to confirm that the matter was being investigated under their internal complaints procedure and that if a self-report was required they would attend to this.

21. On 3 January 2018, following its internal investigation, DLS reported the Respondent to the SRA.

Witnesses

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

Findings of Fact and Law

23. 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 her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

24. **Allegation 1.1: The Respondent failed to assess Client A's eligibility for legal aid funding, adequately or at all, and acted instead on a private retainer.**

The Applicant's Case

24.1 In his witness statement Client A said that he sought the legal services of DLS in relation to applying for asylum status within the United Kingdom.

24.2 The Respondent worked through her Firm as a consulting solicitor for DLS and she was assigned by DLS to act for Client A in this matter. On 12 December 2016 Client A met with the Respondent at the Firm's Harrow office, to discuss the process involved in his asylum application and any subsequent appeal.

24.3 At the meeting Client A asked the Respondent whether he would be eligible for legal aid and he explained to the Respondent that he was unemployed and that he believed he was eligible for legal aid.

24.4 The Respondent told Client A that he did not meet the criteria to be eligible for legal aid and the Respondent charged Client A a fixed fee of £1,530.00 to assist in his asylum application.

24.5 Client A also said that he was made to pay £300.00 cash to the Respondent for her appearance at Client A's screening interview with the Home Office and he additionally complained that he received no receipt for this transaction.

24.6 Further, when handling Client A's asylum appeal, the Respondent instructed him to pay DLS's fixed fee of £2,400.00, directly into the Respondent's personal bank account, and again Client A received no receipt for this transaction. Additionally, for the purpose of his asylum appeal, Client A was made to pay £150.00 for what the Respondent described to him as a "barrister's fee".

24.7 Client A said that the failure to assess his eligibility for legal aid (to which he thought he was entitled) caused him to incur a significant financial burden because in order to finance his asylum application, and subsequent appeal he had had to borrow sums of money from friends and family members, which was extremely stressful to repay.

24.8 Client A stated that following his complaint he was reimbursed and compensated by DLS.

24.9 In her statement, Ms Rohena Wallace, a supervising solicitor at DLS said that DLS held an agreement with the Legal Aid Agency, which allowed it to provide civil legal aid to cover specific types of civil dispute matters, as set out in Schedule 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("LASPO").

24.10 All asylum cases were in scope for legal aid and it was common practice for all fee earners within the Firm to assess any potential clients who require assistance with their asylum applications for legal aid dependent upon the client's circumstances.

24.11 The file would either be classed as a legal aid file or private client file, indicating that a preliminary assessment had taken place and this could have been done by a having a telephone discussion with the client or through email correspondence. In the case of the client being filed under the legal aid category, Ms Wallace would then have expected to see an attendance note between the client and fee earner outlining a detailed assessment of the client's financial circumstances and evidence covering the 1 month computation period which demonstrated that the client was eligible for legal aid.

24.12 As of December 2016, Ms Wallace said that the Respondent had been working at the Firm as a consultant solicitor within the Immigration Department since May 2016; and the Respondent had also worked within the Immigration department since 2013 as a paralegal and the Respondent would have been fully acquainted with her obligation to assess a client for legal aid.

24.13 Ms Wallace said that she would have expected to see evidence that this assessment had taken place on Client A's case, however, on review of Client A's files it was not clear why the Respondent had concluded that Client A was not eligible for legal aid as he was not working in the UK and he had no money in his bank account.

24.14 Ms Wallace interviewed the Respondent at the offices of DLS on 6 December 2017. At this meeting the Respondent admitted to Ms Wallace that she did not undertake any assessment for Client A's entitlement to free legal advice, despite being aware that it was custom and practice within the Firm.

24.15 Ms Wallace said that the Respondent stated that she did not undertake this assessment because Client A had informed the Respondent that his brothers were willing to assist him with paying for his legal advice.

24.16 While representing the client with his asylum application, the Respondent received a payment of £300.00 in cash from Client A for legal services and rather than ensuring that this was paid into a designated DLS client account, the Respondent paid it into her own personal bank account and provided the client with no receipt or bill of costs in respect of the monies paid.

24.17 As the Respondent had not followed office procedures, DLS was unaware that Client A had paid money for such services until Client A made his complaint to them.

24.18 In his statement Mr Jason Bruce, DLS Practice Director, said that he conducted a further interview with the Respondent on 19 December 2017 and that he had wanted to establish why the Respondent had categorised Client A's case as a private client matter (rather than a legal aid matter) and why there was no evidence on the file of an assessment being carried out on Client A's eligibility for public funding.

24.19 ln light of the fact that the Respondent had approximately 5 years of experience in handling legal aid and privately paid immigration cases with DLS Mr Bruce said that he was satisfied that the Respondent had had sufficient knowledge and experience of the relevant legal aid rules in relation in such cases and that there was no reasonable explanation why this eligibility assessment was not undertaken either at the outset of the retainer or during the course of it. The Respondent had handled about 60 privately paid immigration cases in an appropriate way and without problem.

24.20 In the interview with Mr Bruce the Respondent confirmed that she had understood the requirements for legal aid eligibility and her obligation to properly assess each client for their legal aid eligibility where a legal issue has been deemed to be in scope.

24.21 Mr Bruce then discussed with the Respondent, the payment of £2,400.00 by Client A directly into the Respondent's personal bank account. This fee was the fixed amount owed for the legal services performed for Client A's second matter, his asylum appeal, as established in the client care letter sent to Client A on 27 July 2017 by the Respondent *(exhibit "JB8")*.

24.22 Mr Bruce stated that the DLS Office Manual ("the Manual") *(exhibit "JB1")* outlined DLS' expectations for employees and representatives, when carrying out work on its behalf of the Firm. The Manual set out that all costs incurred as a result of time spent on a client's case should be recorded on the respective profit cost ledger in accordance with the firm's time recording procedures to ensure that there was always an accurate record of costs incurred. Further, it set out that payment to consultants was based on a fee share percentage of the profit costs incurred and detailed the company procedures on how consultants would be paid by the firm and the steps that a consultant would have to take to effect payment.

24.23 The Manual confirmed that payment would be made by DLS to the consultant 6 weeks after the end of the month in which the invoice was rendered by the consultant. Under this agreement the Respondent would then receive 60% of profit cost fees billed in private immigration work and 50% for legal aid immigration work.

24.24 As per the Consultancy Agreement the fees collected for these matters belonged initially to DLS and the Respondent would have been required to submit the completed case into DLS for billing by its billing department.

24.25 Once DLS had received the fees and was content with the work done and that it was evidenced on file, then then it would pay the 60% or 50% to the Respondent on receipt of an invoice. Mr Bruce stated that in no instance would any monies incurred for DLS work be paid by a client directly to a lawyer/consultant.

24.26 Mr Bruce was concerned that there was no record of the transactions relating to Client A on the DLS client account and that this appeared to support Client A's complaint that the fees for his appeal matter had been paid directly into the Respondent's personal bank account, rather than the DLS client account.

24.27 In interview with the Respondent Mr Bruce wished to establish whether the Respondent had instructed Client A to pay the fee of £2,400.00 in to her personal bank account, and why she subsequently failed to pay this fee to DLS.

24.28 Mr Bruce was concerned to find out whether this was due to the Respondent being unaware of her responsibilities, as set out in the Manual and in her Consultancy Agreement with DLS, or whether the Respondent had acted in this way in the knowledge of her obligations. If the latter was the case, then, Mr Bruce considered that this omission could appear as a deliberate attempt to defraud DLS of monies to which it was entitled.

24.29 The Respondent did not provide Client A with any receipt or bills of costs or information in relation to the monies paid and DLS was unaware that Client A had paid the monies until receipt of his complaint.

24.30 Further, having requested £550.00 from Client A for payment of counsel's fees into her personal bank account, she then negotiated a lower fee of £400.00 for counsel's services but then failed to return the balance of the client money in the sum of £150.00.

24.31 At the date of interview the Respondent had worked at the Firm for about 5 years, in which time she had dealt with many private clients and handled their fees in the correct way.

24.32 The Respondent confirmed to Mr Bruce that she was aware of DLS's procedures for handling client monies but she believed that the fees paid to her fell outside the remit of her service agreement and that therefore she had not owed the money to DLS.

24.33 Mr Bruce stated that he found this explanation impossible to reconcile with her legal obligations under the service level agreement with DLS and the fact that DLS was on record as acting. The Respondent fully accepted that, having received the full fees, she had not transferred 50% of her fee but did not accept that her actions were intended to defraud DLS.

24.34 Mr Bruce established with the Respondent that she had had full knowledge as to how she was expected to handle privately funded client monies; that she did not assess Client A's legal aid eligibility and that an account which she had referred to as a business account had in fact been a debit account which the Respondent had used for both personal and business matters and that any client monies deposited in that account would have been mixed with the Respondent's personal funds upon receipt.

24.35 With respect to Allegation 1.1 Mr Mulchrone for the Applicant submitted that the Respondent's conduct amounted to breaches of the following:

Principle 4 of the Principles

24.35.1 A solicitor must act in the best interests of each client. Client A had been an impecunious asylum seeker (i.e. an applicant for refugee status) earning, on his account, only £550.00 per month (gross). He could not afford to pay privately and had had to borrow the money from friends. In the circumstances he was clearly vulnerable. In any event, it was not in his best interests to retain the Respondent privately in circumstances where his eligibility for legal aid had not been assessed, adequately or at all.

Principle 5 of the Principles

24.35.2 A solicitor must provide a proper standard of service to their clients. On any view this was not a proper standard of service. A proper standard of service would have involved a full assessment of the client's means and entitlement to legal aid.

Principle 6 of the Principles

24.35.3 A solicitor must behave in a way that maintains the trust the public places in them and in the provision of legal services.

24.35.4 Public confidence in the Respondent and in the provision of legal services would have been undermined by her failure to assess Client A's eligibility for legal aid adequately or at all.

24.35.5 Members of the public would expect solicitors to identify and explain all reasonable funding options and recommend that which is in their client's best interests.

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

24.36 The Tribunal noted that the Respondent had not actively engaged with the proceedings and that she relied on matters set out in her letter dated 26 March 2018 which had been in response to the Applicant's "Explanation With Warning" letter dated 9 February 2018 containing earlier iterations of the allegations. This letter was taken by the Tribunal to be her response to the allegations.

24.37 The Respondent denied allegation 1.1.

24.38 The Respondent stated she met with Client A on 12 December 2016 to provide him with advice on an asylum matter. Client A had been in the UK since September 2006 on a student visa and had previously been assisted by solicitors to extend his student visa.

24.39 The Respondent formed the view that Client A did not qualify for legal aid and that Client A provided the Respondent with instructions during the course of the initial attendance that he could afford the legal fees because his brothers provided him with support and that he had always instructed solicitors and barristers on a private basis, having made several in-country applications over the years for student visas in the UK.

24.40 The Respondent considered that the Respondent had become upset after his asylum claim was dismissed and by the fact that the Respondent and counsel could find no error of law in the Judge's determination.

24.41 The Respondent said that she charged Client A a fixed fee £1,500.00 excluding disbursements to assist him with his asylum claim and that Client A paid that sum plus £30.00 card fee using his debit card without hesitation. The fee of £1,500.00 did not include the Respondent's attendance at interview.

24.42 The Respondent explained to Client A that he could attend his interviews alone. The screening interview was arranged for 4 January 2017 and few days prior to the interview Client A asked the Respondent to attend with him and in respect of which the Respondent provided a quote of £300.00. Client A paid this fee directly to the Respondent in cash after the interview.

24.43 Client A attended his substantive interview alone on 1 June 2017 with further representations being submitted to the Home Office on 5 June 2017. The decision to refuse the granting of asylum dated 5 July 2017 was received by Client A on 13 July 2017.

24.44 During the substantive asylum interview and at the appeal hearing Client A informed the Home Office and the Immigration Judge that he was not an economic migrant, because he always received financial support from his brothers throughout his stay in the UK. Following the refusal the Respondent quoted Client A with a fixed fee of £2,600.00 excluding counsel's fees to deal with any appeal. This fixed fee was in the sum charged by DLS for such matters.

24.45 Client A indicated that he felt the fees were high and he requested a discount.

24.46 The Respondent informed Client A that the fee could not be discounted and Client A indicated that he would think about the fee and discuss it with his brothers and then contact her to let her know if he wished to proceed.

24.47 In due course Client A made contact with the Respondent to negotiate a lower fee. Client A also asked whether the Respondent could first lodge his appeal and whether she would accept payment at a later date on the basis that he was expecting funds from his brother.

24.48 The Respondent explained to Client A that the DLS fee could not be discounted and that payment subsequent to the work being carried out was not possible through DLS.

24.49 Consequently the Respondent offered Client A the option of a discounted fee of £2,400.00 through her "business account" to lodge the appeal by the deadline date. The estimated fee for counsel was £400.00 which Client A also agreed to pay and he made a payment to the Respondent's business account in August 2017.

24.50 Subsequently Client A became anxious that the best counsel possible should be instructed on the appeal. The counsel who was then instructed charged a fee of £550.00 and Client A made an additional payment of £150.00 into the Respondent's business account with respect to counsel's fees. In due course the Respondent negotiated a reduced fee with counsel's clerk who set the fee at £400.00.

The Tribunal's Findings

24.51 Having carefully considered the evidence the Tribunal found that the Respondent did not assess Client A for legal aid funding adequately or at all.

24.52 The Respondent was aware that Client A had paid privately for his legal advice and assistance for past matters and she had assumed he would do so again. The Respondent accepted in her interview with Ms Wallace and later with Mr Bruce that she did not undertake any assessment for Client A's entitlement to free legal advice, despite being aware that it was custom and practice within DLS to do so.

24.53 The Tribunal agreed with the conclusion drawn by Ms Wallace that there was no sufficient reason to not undertake a formal assessment for legal aid given that Client A was not working in the UK, had no money in his bank account and was being supported by family and friends. The Respondent would have had a greater knowledge of the legal aid system than her client in this instance and she should have undertaken a formal assessment of the Client A's financial situation.

24.54 The retainer letter sent by the Respondent to Client A on 27 July 2017 made only a passing and oblique reference to the availability of legal aid funding and it was clear that this letter was agreeing a fixed fee in which Client A would pay £2,400.00 for the Respondent to work on a private retainer.

24.55 At paragraph 7 of the retainer letter the Respondent promised:

> *"...[to] advise and assist you in obtaining your desired objective in this legal matter. Our advice given will always take into account your needs and circumstances and ensure that throughout your case, you are always in a position to make informed decisions about the options available to you..."*

24.56 The Tribunal considered that the Respondent had failed in this promise at the outset by not assessing Client A for his eligibility for legal aid funding.

24.57 Having found the factual basis of the allegation proved the Tribunal considered whether the Respondent had breaches any, or all, of Principle 4, Principle 5 and Principle 6 of the Principles.

24.58 Principle 4 required the Respondent to act in the best interests of her client. The Tribunal considered that it had not been in the best interests of Client A to borrow money from his brothers and friends in order to fund his asylum, application and appeal when he could potentially have been eligible for legal aid.

24.59 By not assessing Client A's eligibility for legal aid and not taking into account his needs and circumstances as the Respondent had promised to do in her retainer letter to him the Respondent had not acted in Client A's best interests and she was in breach of Principle 4 of the Principles.

24.60 To comply with Principle 5 the Respondent had had to provide a proper standard of service to Client A. By making a wrong assumption that Client A would pay privately for his legal work on the basis that he had done so in the past rather than carrying out an assessment of his financial eligibility for legal aid in circumstances where Client A was not working in the UK, had no money in his bank account and was being supported by family and friends, the Respondent had clearly not provided a proper standard of services and the Tribunal was satisfied that she was in breach of Principle 5 of the Principles.

24.61 Principle 6 required the Respondent to behave in a way that maintained the trust the public placed in the Respondent and in the provision of legal services. Client A had trusted the Respondent to be as good as her word (as set out in the retainer letter) and to advise him on the best way to fund his case. The Respondent failed to do so and by not carrying out a legal aid eligibility assessment the Respondent took advantage of Client A's lack of knowledge and vulnerability. The public would expect a solicitor to advise their client on the most cost effective way to fund their case and would be shocked to learn that, as in this case, the solicitor had not done so.

24.62 The Tribunal found allegation 1.1 proved in full to the requisite standard, namely beyond reasonable doubt.

25. **Allegation 1.2 – the Respondent caused or allowed Client A or associates to pay money into her personal bank account and failed to account for it to DLS with whom she and/or the Firm held a contract for services**

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

25.1 Mr Mulchrone submitted that it was apparent from the evidence that the Respondent had caused or allowed Client A or his associates to pay her money which she had then paid into her personal bank account on more than one occasion. She had also failed to account for the monies to DLS, notwithstanding that she was fully aware of their procedures and the obligations upon her to do so.

25.2 Mr Mulchrone asserted that the Respondent had failed to keep client money safe and therefore failed to comply with Rule 1.1 of the Account Rules which states that "*The purpose of these rules is to keep client money safe. This aim must always be borne in mind in the application of these rules.*"

25.3 It was also submitted that the Respondent had also failed to keep Client A's money in a client account and/or separate from her own/the Firm's money, in breach of Rules 1.2(a), 1.2(b) and/or 13.1 of the Accounts Rules.

25.4 Rule 1.2 (a) and (b) of the Accounts Rules states that:

> *"You must comply with the Principles set out in the Handbook, and the outcomes in Chapter 7 of the SRA Code of Conduct in relation to the effective financial management of the firm, and in particular must:*
>
> *(a) keep other people's money separate from money belonging to you or your firm;*
> *(b) keep other people's money safely in a bank or building society account identifiable as a client account (except when the rules specifically provide otherwise)"*

25.5 Rule 13.1 of the Accounts Rules states that:

> *"if you hold or receive client money, you must keep one or more client accounts (unless all the client money is always dealt with outside any client account in accordance with rule 8, rule 9, rule 15 or rule 16).*

25.6 Mr Mulchrone submitted that the Respondent's conduct also amounted to breaches of the following:

Principle 2 of the Principles

25.6.1 By paying Client A's money into her personal account and failing to account to DLS in respect of those funds, the Respondent failed to act with integrity i.e. with moral soundness, rectitude and steady adherence to an ethical code. In Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession and that this involves more than mere honesty. The duty to act with integrity applies not only to what solicitors say but also what they do.

25.6.2 In the Respondent's case it was submitted by the Applicant that acting with integrity would have required the Respondent to account for client money as required by the Accounts Rules and her obligations to DLS. It would not involve paying client money into her personal account under any circumstances. By failing to account to DLS and paying the money into her personal account instead, the Respondent had breached Principle 2 of the Principles.

Principle 4 of the Principles

25.6.3 It was submitted that it was not in Client A's best interests for his funds (or funds advanced on his behalf or for his benefit) to be paid into the Respondent's personal bank account and mingled with her own. Client A's interest would have been better served by paying his funds into a DLS client account where they could have been properly accounted for and that by not doing so the Respondent had breached Principle 4 of the Principles.

Principle 6 of the Principles

25.6.4 The Applicant submitted that public confidence in the Respondent and the provision of legal services would be undermined by knowledge that the Respondent had paid client money into her personal account and had failed to account to DLS for the same: she had therefore breached Principle 6 of the Principles.

Breach of Principle 10 of the Principles

25.6.5 Under this Principle a solicitor must protect client money and assets. The purpose of the Accounts Rules is to safeguard client money and the Applicant submitted that by paying client money into her personal account and by failing to account for it to DLS as required by the Accounts Rules and her obligations to DLS, the Respondent had breached Principle 10 of the Principles.

The Respondent's Case

25.7 In her written response to the Applicant dated 26 March 2018 the Respondent accepted breaches of the Accounts Rules which had "been inadvertent". The Respondent stated that in relation to the £300.00 Client A had been adamant that he did not want to attend the screening interview by himself and he insisted on the Respondent attending with him and in respect of which a fee of £300.00 was agreed.

25.8 The fee was paid in cash due to the short notice and because Client A could not deposit it at the bank prior to his interview. The Respondent stated that she had paid the money into her business account, but overlooked the error in not providing Client A with a receipt which she accepted she should have done.

25.9 In relation to the sums of £2,400.00 and £550.00 with respect to counsel's fees, the Respondent stated that the monies were paid into her "business account", which was a NatWest account. The Respondent accepted that she had used this account for both her business and personal use. This was the same account that DLS paid monies in settlement of her invoices and from which the Respondent paid all of her business expenses since she had commenced work as a consultant in May 2016.

25.10 The Respondent accepted that she breached Rule 1.1; 1.2 (a) & (b) and 13.1 of the Accounts Rules to the extent that money was not paid into a client account as required.

25.11 In making the admission that she had acted contrary to the Accounts Rules the Respondent accepted that she had breached Principles 4, 6 and 10 of the Principles but not Principle 2, given that the breach was inadvertent.

The Tribunal's Findings

25.12 The Tribunal found the factual basis of the allegation proved to the requisite standard, namely beyond reasonable doubt with respect to the breaches of the Accounts Rules and breaches of Principles 4, 6 and 10 of the Principles and that the admissions of the Respondent with respect to those breaches had been properly made.

The Tribunal's Findings on Breach of Principle 2 of the Principles in Allegation 1.2

25.13 With respect to the breach of Principle 2 of the Principles, lack of integrity, the Tribunal found that in accordance with the test set out in Wingate v Solicitors Regulation Authority v Malins the Respondent had lacked integrity and that this had not been the result of mere inadvertence.

25.14 The Respondent had deliberately and knowingly paid the money into an account which was not a client account but rather one that the Respondent used for both business and personal purposes. In doing so the Respondent had demonstrated a flagrant breach of the Accounts Rules. The Accounts Rules were created to protect and safeguard client money and the Tribunal agreed with the assertion that by breaching the Accounts Rules in this manner the Respondent could not have accounted for client money as required by the Accounts Rules and her obligations to DLS. The Tribunal considered that there were no circumstances apparent in this case which would have permitted the Respondent in paying client money into her personal account; by doing so she had lacked integrity.

25.15 The Tribunal therefore found the factual basis of this part of the allegation proved to the requisite standard, namely beyond reasonable doubt and that the Respondent had lacked integrity in breach of Principle 2 of the Principles.

25.16 The Tribunal found allegation 1.1 proved in full to the requisite standard, namely beyond reasonable doubt.

26. **Allegation 1.3 – the Respondent failed to return outstanding monies in the sum of £150.00 to Client A, promptly or at all**

The Applicant's Case

26.1 With respect to this allegation the Applicant relied on matters previously set out in paragraph 24.1 to 24.35. The Applicant submitted that the Respondent had failed to return the difference between what Client A had paid for counsel's fees and the fee the Respondent actually negotiated with counsel.

26.2 The Applicant submitted that the irresistible inference was that the Respondent had kept this money for herself and thereby breached Accounts Rules as follows:

26.2.1 Rule 12.2(c) of the Accounts Rules confirms that client money includes money held or received for payment of unpaid professional disbursements.

26.2.2 Rule 14.3 of the Accounts Rules provides that client money must be returned to the client promptly, as soon as there is no longer any proper reason to retain those funds. Payments received after a solicitor has already accounted to the client, for example by way of a refund, must be paid to the client promptly and on the basis that the Respondent failed to repay the £150.00 promptly or at all it was submitted that she had breached this rule.

26.3 Further, it was submitted that the Respondent's conduct amounted to a breach of:

Principle 2 of the Principles

26.3.1 The Applicant submitted that by not returning the difference between what Client A had paid for counsel's fees and the fee the Respondent actually negotiated with counsel the Respondent had failed to act with integrity as defined in Wingate v Solicitors Regulation Authority v Malins. This was client money to which she was not entitled and it had been her duty was to return it promptly with an explanation as to why it was not required. The Respondent failed to do so and had breached Principle 2 of the Principles.

Principle 4 of the Principles

26.3.2 It was submitted that by failing to return the £150.00 to Client A the Respondent failed to act in Client A's best interests, which lay in receiving back money back on account of professional disbursements which had not materialised.

Principle 6 of the Principles

26.3.3 The Applicant submitted that such conduct would undermine public confidence in the Respondent and the provision of legal services and that she had therefore breached Principle 6 of the Principles.

Principle 10 of the Principles

26.3.4 The Applicant also submitted that the alleged failure to return the money constituted a further failure to protect Client A's money, in breach of Principle 10 of the Principles.

The Respondent's Case

26.4 In her written response to the Applicant dated 26 March 2018 the Respondent accepted breaches of the Accounts Rules and admitted that as a consequence she had breached Principles 4, 6 and 10 of the Principles but not Principle 2.

26.5 The Respondent stated that the breaches had been inadvertent and occurred as a consequence of simple error. As the fee represented a fixed fee and the Respondent had negotiated a reduced rate with counsel's clerk the Respondent stated that she had not readily appreciated at the time that the balance needed to be returned to Client A. The Respondent sincerely apologised for her error.

The Tribunal's Findings

26.6 The Tribunal found the factual basis of the allegation proved to the requisite standard, namely beyond reasonable doubt, with respect to the breaches of the Accounts Rules and breaches of Principles 4, 6 and 10 of the Principles and that the admissions of the Respondent with respect to those breaches had been properly made.

The Tribunal's Findings on Breach of Principle 2 of the Principles in Allegation 1.3

26.7 With respect to the breach of Principle 2 of the Principles, lack of integrity, the Tribunal found that in accordance with the test set out in Wingate v Solicitors Regulation Authority v Malins the Respondent had lacked integrity and that, as with allegation 1.2, this had not been the result of mere inadvertence.

26.8 The Respondent had deliberately and knowingly failed to return the money to Client A to whom it was rightfully owed.

26.9 Again, the Tribunal considered this failure to be a flagrant breach of the Accounts Rules which were there to protect and safeguard client money. This was client money to which the Respondent had not been entitled and she had been under a duty to return it promptly with an explanation as to why it was not required and that by failing to do so the Respondent had not acted with integrity

26.10 The Tribunal therefore found the factual basis of this part of the allegation proved to the requisite standard, namely beyond reasonable doubt and that the Respondent had lacked integrity in breach of Principle 2 of the Principles.

27. **Dishonesty with respect to Allegations 1.2 and 1.3**

27.1 As the factual basis for allegations 1.2 and 1.3 had been found the allegation of dishonesty with respect to both allegations fell to be considered.

The Applicant's Case on Dishonesty

27.2 Allegations 1.2 and 1.3 were advanced by the Applicant on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct and that proof of dishonesty was not required to establish the allegations or any of their particulars.

27.3 The Applicant relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, which applies to all forms of legal proceedings, namely that the accused has acted dishonestly by the ordinary standards of reasonable and honest people:

> *"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 fact-finder 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.*

27.4 For the reasons set out in Allegations 1.2 and 1.3 the Applicant asserted that the Respondent, as the solicitor with conduct of Client A's matter, and in all the circumstances, must have known and did know:

- that she had caused or allowed Client A or his associates to pay money into her personal bank account;
- that doing so was in breach of the Accounts Rules and seriously improper;
- that she had failed to account to DLS in respect of those funds;
- that she was required to account to DLS for those funds;
- that she had failed to issue receipts in respect of the payments made by/ on behalf of Client A or any of them;
- that she had received £150.00 from Client A in excess of the amount she actually negotiated in respect of counsel's fees;
- that she was required to return those monies to Client A without delay;
- that she had not returned the monies to Client A but simply kept them for herself.

27.5 The Applicant submitted that ordinary, decent people would consider this behaviour to be dishonest.

The Respondent's Case on Dishonesty

27.6 In her written response to the Applicant dated 26 March 2018 the Respondent accepted that in some respects she had breached the Accounts Rules and certain, identified Principles, however, the Respondent denied that she had acted dishonestly.

27.7 The Respondent observed that in the Ivey case the Tribunal would have first have to establish (subjectively) her state of knowledge or belief as to the facts, and whether such belief was genuinely held. Once this had been established the Tribunal could then go on to assess dishonesty by the objective standards of ordinary decent people.

27.8 With respect to her state of mind the Respondent had, at the relevant time, found herself in extremely difficult and traumatic personal circumstances. In April 2015 the Respondent had separated from her husband and they divorced in December 2015. The Respondent became the sole carer of her young son (born in March 2012) and she could only work on a part-time basis as a consultant with DLS.

27.9 During the period covered by the allegations the Respondent became involved in a number of legal proceedings with her ex-husband which involved her obtaining a non-molestation order against him. The proceedings caused her much anxiety, stress and worry and had an adverse effect upon her and her work such that she accepted that she was not able to devote the time that she would have otherwise have done to her work and her accounting requirements. The Respondent said that it had been very difficult

for her to balance the needs of caring for her child with her obligations and duties to her client whilst working on a part time basis as a self-employed consultant.

27.10 The difficulties the Respondent faced affected her judgment and may have led her to make honest mistakes. In hindsight whilst accepting that she did act in certain respects contrary to the Accounts Rules and the Principles the Respondent genuinely considered that at the time the way in which she acted was acceptable and she had no intention to deprive DLS of its funds or mislead Client A.

27.11 The Respondent asserted that any error of judgment in her approach to Client A would have been informed by the circumstances existing at the time in her personal life and the pressures she was under.

27.12 The Respondent produced character references which spoke to her honesty and professionalism. The Respondent stated that the character references demonstrated that she did not have propensity to behave in the dishonest manner alleged by the Applicant and they lent credibility to her explanation that she had not acted dishonestly in any way. The Respondent asserted that individually and collectively the character references demonstrated that she was a person of integrity, probity and trustworthiness.

<u>The Tribunal's Finding on Dishonesty with respect to Allegations 1.2 and 1.3</u>

27.13 The Tribunal considered this aspect of the Applicant's case with great care. The Respondent had not given evidence in person on this crucial issue and the Tribunal had only the Respondent's letter she sent to the Applicant before it upon which to base an assessment of her account.

27.14 The Tribunal had found that the Respondent had caused or allowed Client A to pay money into her personal bank account and had failed to account for it to DLS with whom she and/or the Firm held a contract for services *(allegation 1.2)* and that the Respondent failed to return outstanding monies in the sum of £150.00 to Client A, promptly or at all *(allegation 1.3)*.

27.15 The Tribunal ascertained the Respondent's actual knowledge or belief as to the facts. The Respondent had worked with DLS for 5 years and she had been very well acquainted with their procedures and the Respondent had correctly submitted approximately 60 privately funded transactions in accordance with DLS's procedures over that period of time.

27.16 The Respondent had by her own admissions accepted that she paid money into her personal bank account and had failed to account for it to DLS and that she had failed to return outstanding monies to Client A. It had been the Respondent's case that these failures had been the result of inadvertent mistakes brought about in some way by her stressful circumstances of her private life which had impinged on her work. However, the Tribunal observed that whilst the Respondent had no doubt been under stress there was no evidence that her mental state was so impaired that she had lost control of her actions and had not realised what she was doing.

27.17 The Tribunal considered in depth the character references which spoke to her lack of propensity for dishonesty.

27.18 However, the Tribunal noted that the Respondent had refused Client A's request to negotiate the DLS fees down from £2,600.00 to £2,400.00 but had instead made a calculated offer to him to handle this aspect of his case through her own account for £2,400.00.

27.19 This fact militated against an explanation of an inadvertent mistake on the Respondent's part and, given the Respondent's familiarity with DLS' procedures, she must have known that what she was doing with respect to Client A was not a mistake. The Respondent had deliberately and knowingly negotiated a lower fixed price than that offered by DLS and that the money paid to her by Client A would go into her own and unprotected account in contravention of the well-established Accounts Rules and her agreement with DLS.

27.20 There was no reasonable explanation to justify her failure to follow the Accounts Rules or DLS's procedures in relation to the £300.00 and £2,400.00 matters and the Respondent had known it was wrong to pay the £300.00 cash from the client into her personal debit account.

27.21 The Respondent provided no receipt or costs information in respect of that transaction or the bank transfer of £2,400.00 and she had misled DLS in not informing them of the payment of £2,400.00 made to her personal bank account by the client for a DLS retainer.

27.22 The failure to refund Client A the £150.00 may, on its own, have been inadvertent but when viewed with the Respondent's behaviour with respect to the other sums it was beyond reasonable doubt that this too had been a deliberate decision on the Respondent's part.

27.23 Having established the Respondent's state of knowledge the Tribunal considered whether the Respondent's conduct had been honest or dishonest by applying the (objective) standards of ordinary decent people. In the light of its factual findings and its conclusions in relation to the Respondent's knowledge the Tribunal was sure that the Respondent had been dishonest by the standards of ordinary decent people with respect to allegations 1.2 and 1.3.

27.24 The Respondent had known full well what she was doing and that she had taken Client A's money and placed it in her own unprotected account for her own benefit and in contravention with her agreement with DLS. The Respondent by her training as a solicitor and her knowledge of the operation of DLS's systems would have known this to be wrong and that ordinary decent people would consider the Respondent's actions to be dishonest.

27.25 Dishonesty in allegations 1.2 and 1.3 was proved beyond reasonable doubt.

Previous Disciplinary Matters

28. There were no previous matters.

Mitigation

29. The Tribunal proceeded on the basis that the matters raised in the Respondent's letter to the Applicant dated 26 March 2018 and referred to in paragraphs 27.6 to 27.12 above would have been mitigation upon which the Respondent would have wished to rely had she been present at the hearing to put her own case. These were matters to which the Tribunal gave consideration.

30. The Respondent stated in her letter that she had been through a difficult and traumatic period in her personal life which she conceded may have contributed to her professional failings. However, since 21 January 2018 the Respondent had relocated with her son to the United States of America where she was working as a teacher. The Respondent had ceased to offer legal services.

31. The Respondent apologised for any identified shortcomings in her conduct and requested that these be viewed in the context of the personal difficulties she had experienced. The Respondent's breaches were claimed to have been inadvertent and the consequence of error and that she was not in any sense a risk to the public.

32. The Respondent had also provided the Tribunal with six character references which spoke highly of the Respondent's character and professionalism.

33. DLS had paid money back to Client A, including compensation, in the sum of £4,700.00 and the Respondent had made good some of the loss by reimbursing DLS £3359.77.

Sanction

34. The Tribunal referred to its Guidance Note on Sanctions (November 2019) when considering sanction. The Tribunal was mindful of the three stages it should follow when approaching sanction, namely the seriousness of the misconduct, the purpose for which sanctions are imposed by the Tribunal, and the sanction which appropriately fulfils that purpose in light of the seriousness of the misconduct.

35. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.

36. In assessing culpability, the Tribunal found that the motivation for the Respondent was personal financial benefit. This motivation had manifested in more serious form in Allegations 1.2 and 1.3 where dishonesty had been proved in which the Respondent had caused or allowed Client A to pay money into her personal bank account and had failed to account for it to DLS with whom she and/or the Firm held a contract for services *(allegation 1.2)* and that the Respondent had failed to return outstanding monies in the sum of £150.00 to Client A, promptly or at all *(allegation 1.3)*.

37. The misconduct had not been spontaneous or inadvertent but had been calculated and had required planning and thought. The Tribunal considered that the Respondent had been very much in a position of trust and had breached the trust she owed to Client A and DLS.

38. Whilst she had only been qualified since 2016 she had had sufficient experience to know what was required of her. The Respondent had correctly carried out work on 60 cases for DLS and was well acquainted with DLS' systems and procedures. Any solicitor would have known that it was not permissible to mix monies from a client with the solicitor's personal money and that the protection of client money was of utmost importance. The Respondent should have known better- and did know better. Whilst there was no evidence that the Respondent had misled the Regulator the Tribunal assessed the Respondent's culpability as high.

39. The Tribunal next considered the issue of harm. Contrary to the correct procedure the Respondent did not assess Client A's eligibility for legal aid as she should have done and Client A suffered distinct prejudice by then having to borrow money he could ill afford to repay in order to fund his asylum application and then his subsequent appeal.

40. Harm was caused to DLS who did not receive monies to which it was entitled under the agreement the Respondent had with DLS.

41. The Respondent was aware of Client A's circumstances and the harm caused to him by her misconduct would have been entirely foreseeable. Further, the damage to the reputation of the profession by the Respondent's misconduct was significant as the public would trust a solicitor to provide accurate and cost effective advice and the Respondent's failure to do so was a marked departure from the complete integrity, probity and trustworthiness expected of a solicitor.

42. The Tribunal assessed the harm caused as high.

43. The Tribunal then considered aggravating factors. The Tribunal found that the Respondent had on two occasions lacked integrity and had acted dishonestly.

44. The Respondent's actions, which had been for personal gain, had been deliberate and calculated. The Respondent had taken advantage of Client A who, as an asylum seeker and with very little knowledge of the legal system, had been an inherently vulnerable person.

45. There had been limited concealment of the Respondent's wrong doing which came to light only after Client A had made his complaint to DLS.

46. The Respondent ought to have known that her conduct in failing to assess Client A for legal aid funding and then dishonestly taking payments from him was a material breach of the Respondent's obligations to protect the public and the reputation of the legal profession.

47. The Tribunal also considered mitigating factors. It was noted that the Respondent had an otherwise unblemished record and that the Respondent had produced positive testimonials which spoke about her professionalism and integrity and she had made a degree of open and frank admissions.

48. The sums involved had been relatively modest and the misconduct had not been over a protracted period of time.

49. There was evidence that the Respondent had made good some of the loss by reimbursing DLS £3,359.77 of the £4,700.00 it had paid to Client A. It was noted by the Tribunal however that the Respondent had deducted £1,340.33 *'profit costs'* which the Respondent believed had been due to her. In the context of her wrongdoing the Tribunal considered that the Respondent's insistence on retaining this money demonstrated that she had not understood fully the seriousness of her actions and that therefore she lacked genuine insight into her misconduct.

50. The Respondent had not voluntarily notified the Regulator.

51. There was no evidence that the Respondent's misconduct was the result of deception by a third party.

52. The overall seriousness of the misconduct was high: it could not be otherwise given the findings of dishonesty. Additionally, there were findings that the Respondent had lacked integrity and failed to uphold public trust in the provision of legal services in various different ways.

53. As the Respondent had been found to have been dishonest, the Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the Roll.

54. The Tribunal considered that this was been a sad case in which the sums involved were relatively small. However, the Respondent had taken catastrophic decisions resulting in the Tribunal's findings of dishonesty and that although the Respondent may have been under some personal pressure at the relevant time, these had not been a "moment of madness" but were instead deliberate, wilful and calculated acts for her own benefit.

55. There was no evidence before the Tribunal that the Respondent had been suffering from a physical or psychological illness which would have affected her judgement and she had advanced no specific exceptional circumstances to militate against the imposition of the ultimate sanction, namely striking off the Roll

56. The Respondent had had adequate experience in the profession and she ought to have known the duties she owed to Client A and DLS of complete integrity, probity and trustworthiness.

57. Having found that the Respondent had acted dishonestly, and in view of the other serious findings made against her, the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions to protect the public. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> "*to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".*

58. The Tribunal determined that the findings against the Respondent, including dishonesty, required that the appropriate sanction was strike off from the Roll.

Costs

59. The Applicant applied for costs in the amount £22,775.00. Mr Mulchrone stated that this comprised of SRA supervision costs of £575.00 and the Capsticks' fixed fee of £18,500.00 + VAT. The case had not required a forensic investigation.

60. Mr Mulchrone explained that by dividing the amount of the fixed fee (£18,500) by the number of hours spent in preparing and presenting the case (127 hours) would give a notional hourly rate of £145.44 per hour which, in the circumstances of the case, was not excessive and were reasonable and proportionate and he invited the Tribunal to award the Applicant its costs as claimed.

61. The Tribunal summarily assessed costs to consider whether they were reasonable and proportionate in all the circumstances of this case. The Tribunal had heard the case and it was appropriate for the Tribunal to determine the liability for costs and the quantum of any costs it ordered to be paid.

62. The Tribunal considered that the case had been well presented and properly brought by the Applicant however it considered that the Applicant's assessment of the preparation costs was too high and the Tribunal observed that the claim for 127 hours work equated to about 3 weeks' work.

63. However, having read all the papers and acquainted itself with the issues in the case the Tribunal considered that this had not been a particularly complex case for the Applicant to prepare and there had only been three witnesses involved whose evidence had been read. The Respondent had not caused the Applicant to incur extra expense (in fact no forensic investigation had been required in this case) and the Respondent had made admissions. The only issues which had fallen to be determined in depth by the Tribunal were the allegations that the Respondent had breached Principle 2 of the Principles and the allegations of dishonesty. In the event this case took little over half a day to be determined by the Tribunal.

64. The Tribunal considered that in reality this case would have taken no more than two weeks to prepare and it reduced the number hours required for preparation accordingly and to a figure of £11,500.00.

65. The Tribunal noted that the Respondent had been afforded the opportunity to provide evidence as to her means but she had not filed a statement of means and the Tribunal had no information this regard.

66. The Tribunal considered that it was appropriate for the Applicant to recover a proportion of its costs and assessed that it was reasonable and proportionate for the Respondent to pay the costs of and incidental to this application and enquiry in the sum of £ 14,375.00.

Statement of Full Order

67. The Tribunal ORDERS that the Respondent, Keisha Hackett, solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £14,375.00.

Dated this 17th day of January 2020
On behalf of the Tribunal

P. Jones
Chairman

JUDGMENT FILED WITH THE LAW SOCIETY
20 JAN 2020