SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11996-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

MBOLOKELE NSIMBA Respondent

Before:

Mr G. Sydenham (in the chair)
Mr D. Green
Dr S. Bown

Date of Hearing: 18 and 19 November 2019

Appearances

Rory Mulchrone, Counsel of Capsticks Solicitors LPP, 1 St. Georges Road, London, SW19 4DR, instructed by the Solicitors Regulation Authority of the Cube, 199 Wharfside Street, Birmingham B1 1 RN for the Applicant

Andrew Otchie, Counsel of 12 Old Square Chambers, 12 Old Square, London, WC2A 3TX, for the Respondent

---

JUDGMENT

Allegations

1. The allegations against the Respondent were that while in practice as a Solicitor at Cadem Hope Ltd ("the Firm") between around March 2018 and May 2018 he:

Improper Payments

1.1 Caused or allowed improper payments to be made from the client and/or office account to third parties in circumstances where the payments were:

1.1.1 drawn from conveyancing transactions or an unknown source of funds;

1.1.2 made to entities that were not parties to the conveyancing transactions;

1.1.3 made to entities that were not clients of the Firm;

1.1.4 not made subject to any or any adequate due diligence by him;

1.1.5 made to entities with no connection to the Firm that he could explain;

1.1.6 made in pursuance of transactions that bore the hallmarks of property fraud.

And in doing so breached any or all of Principles 2, 6 and 10 of the SRA Principles 2011 ("the Principles") and Outcome 7.5 of the SRA Code of Conduct 2011 ("the Code") and Rule 20 of the SAR 2011.

Shortage on Client Account

1.2 The Respondent caused or allowed a shortfall of £5,738,657.38 on the client account which has not been replaced and in so doing breached all or any of Principles 2, 6 and 10 of the Principles and breached Rules 6 and 7 of SAR 2011.

Control of the Firm

1.3 The Respondent caused or allowed one or more of the individuals ("the Individuals") named in Schedule 1 to assume control of the Firm by:

1.3.1 permitting them access to the Firm in circumstances where he had not carried out any or adequate due diligence into their background and/or qualifications;

1.3.2 taking instructions from the Individuals;

1.3.3 failing to take any or adequate steps to monitor and/or control the activities of the Individuals in respect of the Firm;

1.3.4 failing to take any or adequate steps to ensure compliance with SAR 2011;

1.3.5 failing to take any or adequate steps to ensure compliance with the Money Laundering Regulations 2007;

1.3.6 failing to make and/or retain appropriate financial records

and in so doing breached all of any of Principles 2, 6, 7 and 8 of the Principles and 8.5(c) and 8.5(e) of the SRA Authorisation Rules ("the Authorisation Rules") Rule 1(f) and 29 of the SRA Accounts Rules 2011 ("the Accounts Rules").

Dishonesty

2. In addition, in respect of allegation 1.1 and 1.3 above, dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the allegations.

Recklessness and Manifest Incompetence

3. In addition, in respect of allegations 1.1 and 1.3 above, this was advanced on the basis that the Respondent's conduct was reckless and was manifestly incompetent. Recklessness and manifest incompetence was alleged as an aggravating feature of the Respondent's conduct but was not an essential ingredient in proving this allegation.

Documents

Applicant

- Application and Rule 5 Statement with exhibit "NXB1" dated 29 July 2019
- Schedules of Costs dated 29 July 2019 and 14 November 2019

Respondent

- Respondent's Answer dated 30 September 2019
- Judgment in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366
- Judgment in Barlow Clowes International Ltd (in liquidation) and others v Eurotrust International Ltd [2005] UKPC 37
- Judgment in Twinsectra Ltd v Yardley and others [2002] UKHL 12
- Judgment in Ivey v Genting Casinos (UK) Ltd [2017] UKSC 67
- Judgment in Attorney General of Zambia (for and on behalf of the Republic of Zambia) v Meer Care & Desai (a firm) and others [2008] EWCA Civ 1007

Factual Background

4. The Respondent was born in March 1967. He was admitted to the Roll in August 2009 and worked as an immigration solicitor. From April 2016 until 30 May 2018 he ran an immigration firm called First Choice Legal Services Ltd. The Firm was subject to intervention on 30 May 2018. The Firm (Cadem Hope Ltd) was incorporated in 2012. Ms CD, a solicitor, was the director and secretary of the company from 2012 and also managed the Firm.

5. The Respondent took over the Firm in December 2017, having entered into an agreement to purchase it from Ms CD for the sum of £10,000. He became the manager of the Firm and was registered at Companies House as a director. This Firm was also subject to intervention on 30 May 2018.

6. The Respondent's practising certificate was suspended on 29 May 2018 and the Respondent did not apply to lift the suspension**.**

7. Ms CD remained at the Firm until 18 March 2018. She was still the COLP and COFA when two concerning transactions came to light. These related to two properties, 22 Holden Avenue and 25 Casselden Road. Ms CD was concerned that an attempted fraud had been perpetrated as the firm's seller clients were not the genuine owners of the properties. She reported these matters to the SRA on 13 March 2018 and 19 March 2018 respectively. At this time, funds were still held on the firm's client account and these funds were returned to the buyers' solicitors with the Respondent's agreement.

8. Following Ms CD's departure from the Firm, further concerning transactions took place.

9. In total a sum of £5,739,157.44 was received by the Firm in respect of ten conveyancing transactions. The firm also received an unidentified receipt into the client bank account of £487,327.00. The proceeds of these transactions were then improperly paid from the client bank account to third parties (£6,168,878.53) or incorrectly held in the office bank account (£20,500.00, the Mr and Mrs Hoppe transaction) leading to a minimum client account shortage of £5,738,657.38.

10. The Respondent did not replace the shortage.

11. The Respondent was interviewed about the concerns giving rise to this matter on 19 June 2018 and 13 July 2018. He has also provided a response to an Explanation With Warning letter ("EWW") sent on 12 December 2018 with the response being dated 25 January 2019.

12. In summary, the Respondent asserted that he was approached, in October 2017, by a gentleman known to him as Mr M who held himself out to be a mortgage adviser. Mr M asked the Respondent if he would be interested in running a conveyancing firm. When the Respondent said he did not have any experience in conveyancing Mr M told him that he knew two other solicitors who did have experience. Mr M introduced him to Mr B (who he was told was a solicitor) and Mr W (apparently a "legal caseworker").

13. Mr M and Mr B initially contacted the firm, Cadem Hope Ltd. They met Ms CD and it was agreed that the Respondent would pay £10,000 for the firm. This was to be paid by the Respondent in instalments. Mr M and Mr B verbally agreed to pay the Respondent a salary of £2,800 per month and a commission of 15%. There were no emails (and no other documents provided) confirming this agreement. In return The Respondent was to supervise the solicitors working in the Firm.

14. The Respondent said he went into the Firm twice or three times a week for two or three hours. With hindsight, he did not think his supervision of the firm had been sufficient. From 1 March to 7 May 2018, the Respondent said he made all payments from the firm's client bank account. He said that he did this on the instructions of Mr M, Mr B and Mr W. In May 2018, the Respondent was introduced to a person he knew as Mr H. The Respondent believed that Mr H was a solicitor. Mr H was added as a signatory to the firm's client bank account around 7 May 2018.

15. The Respondent travelled to the Democratic Republic of Congo on 7 May 2018. After this date, the remaining contents of the Firm's client account were transferred to third parties. The firm was abandoned and all paperwork was removed.

16. During the intervention on 30 May 2018, no accounting records were recovered. The client account at that point contained around £500.06.

17. The investigation of Mr Sean Grehan ("the FIO") commenced on 2 July 2018 and the Forensic Investigation Report ("FIR") was produced on 8 November 2018.

Witnesses

18. The Applicant's witness, Sean Grehan (FIO) and the Respondent both gave oral evidence to the Tribunal. The written evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below as are their responses to the Tribunal's questions asked of them in clarification. The oral and written evidence referred to will be that which was relevant to the findings of the Tribunal, and to the facts in dispute between the Parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the submissions. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

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

20. **Allegation 1.1 – Improper Payments to Third Parties**

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

20.1 The ten conveyancing matters which are relevant to this allegation are set out in Table 1 below.

Table 1

No	Client	Matter	Minimum Liability	Section
1	Landmark Fulmer Ridge Ltd	S/O 2B Fulmer Drive, Gerrards Cross, SL9 7HJ	£140,000.00	E.5.1
2	Montpelier Mews Ltd	S/O 11 Montpelier Mews, London, SW7 1HB	£3,131,157.44	E.5.2
3	Mr Esteban	S/O 4 Baron Hurst, Epsom, Surrey, KT18 7DU	£450,000.00	E.5.3
4	Smart Projects (UK) Ltd	S/O 17 Windsor Road, Gerrards Cross, SL9 7NB	£814,000.00	E.5.4
5	Joint Clients:-			
	Mr Musa	S/O 17 Monega Road, London, E7 8EN		
	Mr Amir	S/O 142 Hatherley Gardens, London, E12 6DP		
	Mr Saleem	S/O 103 Fourth Avenue, London, E12 6DP	£895,000.00	E.5.5
6	Joint Clients:-			
	Mr Dickson	S/O 21 Ronnie Lane, London, E12 5RY		
	Mr Atsutse	As above	£250,000.00	E.5.6
7	Mr and Mrs Sharma	S/O 86 Scott Street, Tipton, DY4 7AG	£7,500.00	E.5.7
8	Mr Sleigh	S/O 23 Avebury Avenue, Leicester, LE4 OFQ	£6,500.00	E.5.8
9	Mr and Mrs Hoppe	P/O 2 Winchester Road, Alton, GU34 5HD	£20,500.00	E.6.1
10	Ms Norris	P/O 74 Basingbourne Road, Fleet, GU52 6TQ	£24,500.00	E.5.9
			£5,739,157.44	

20.2 The FIO identified eight sellers *(clients 1-8 in Table 1*) and two purchasers *(clients 9-10 in Table 1)* in property transactions conducted between around March 2018 to May 2018.

20.3 The Applicant did not put its case on the basis that the payments in from clients 1 to 8 were dubious nor did it suggest that the payments were made in anything other than good faith.

20.4 All of the sums under the column "minimum liability" were paid into the client account save for the Mr and Mrs Hoppe payment (item 9 which was paid into the office account.

20.5 At the time of the intervention therefore, £5,718,157.38 should have been held on the client account but was not (there was £500.06 in the client account at the date of the intervention).

20.6 The FIO noted that none of the ten property transactions had completed and in particular:

20.6.1 In relation to matters 1,3,4,6 and 7 the genuine owner of the property being sold had contacted the purchaser's solicitors to inform them that they had no knowledge of the sale and completion did not take place.

20.6.2 In relation to matters 2,3,4,5 and 6 the Firm had received full "completion funds" but no completion had taken place on any of the transactions.

20.6.3 In relation to matters 2, 3, 5 and 6 the Firm had given an undertaking to the purchaser's solicitor to redeem the charge(s) registered against the property. The Firm had not made any payments to redeem any of the charges for which they had provided undertakings but the money was paid out of the client account and again completion did not take place.

20.7 It was submitted that between around March to May 2018 the £5,739,157.44 had been improperly paid to third parties set out in the Table 2 below and that this sum of money was therefore lost to the clients itemised in Table 1.

Table 2

Date	Payee	Payment Reference[2]	Amount
27 March 2018	Goder Cleaning Ltd	n/a	£60,023.00
27 March 2018	Aurora C and B Ltd	2B Fulmer Drive	£45,023.00
27 March 2018	NONREF	n/a	£40,042.50
16 April 2018	Edealz Ltd	74 Basing Road	£28,500.00
24 April 2018	Muhmmed Amjad	4 Baron Hurst	£65,036.00
26 April 2018	Euro Traderz Ltd	11 Mont Mews Rd	£485,023.00
26 April 2018	Chillies London Ltd	11 Mont Mews Roa	£442,023.00
26 April 2018	Edealzz Ltd	11 Mont Mews Rd	£456,750.21
26 April 2018	The Professional	11 Mont Mews Rd	£475,363.82
26 April 2018	Aurora C and B Ltd	4 Baron Hurst	£346,355.00
26 April 2018	Lila Devi Binzan	TT Mont Mews Rd	£975,042.50
27 April 2018	Best Linkage Trading Ltd	11 Mont Mews	£95,027.50
30 April 2018	MDS Pharmaceutical	4 Baron Hurst	£45,000.00
30 April 2018	Best Linkage Trading Ltd	11 Mont Mews	£85,027.50
04 May 2018	The Professional	17 Windsor Road	£408,200.00
04 May 2018	Vencis Consultant Ltd	17 Windsor Road	£400,000.00
09 May 2018	London Tex Ltd	17 Monega Road	£487,327.00
09 May 2018	Best Linkage Trading Ltd	12 Martindale Rd	£54,027.50
09 May 2018	Best Linkage Trading Ltd	21 Ronnie Lane	£98,027.50
09 May 2018	HK Global Technology Ltd	17 Monega Road	£400,027.50
10 May 2018	London Tex Ltd	17 Monega Road	£487,327.00
10 May 2018	Medwell Business SO	21 Ronnie Lane	£136,125.00
10 May 2018	Damac International Ltd	21 Ronnie Lane	£13,402.50
11 May 2018	Horv Digital	n/a	£9,500.00
16 May 2018	Polbud Business SO	11 Montpellier	£20,150.00
16 May 2018	Damac International Ltd	11 Montpellier	£10,527.50
			£6,168,878.53

20.8 The Applicant accepted that the sums in the two tables above did not match exactly (£5,739,157.44 and £6,168,878.53 respectively). However, the FIO identified a further potential liability to clients in the form of a payment of £487,327.00 paid into the client account on 9 May 2018 which was not included in the table as the source of the sum was unknown and this brought the difference in the two figures closer together.

20.9 The FIO identified that none of the entities itemised in Table 2 had any relation or link to matters in which the Firm had acted.

20.10 The Respondent was unable to produce contact details for the clients the Firm had acted for in the ten property transactions. He did not hold any financial records in respect of the payments made to third parties nor did he maintain any client ledgers, further, the Firm did not have an accountant and had not conducted any client bank account reconciliations.

20.11 The Respondent did not hold any information in relation to the third party entities in respect of which payments were made. The Respondent had made the payments on the instructions of Mr W, a conveyancing fee earner, who gave instructions as to which payments were to be made and where.

20.12 The Applicant used two examples of the improper transactions to illustrate the dubious nature of all the transactions which it was said bore the hallmarks of property fraud and of which the Respondent should have been aware.

Landmark Fulmer Ridge Ltd – Sale of 2B Fulmer Drive, Gerrards Cross, SL9 7HJ ("the Landmark sale")

20.13 The client matter for the above case was not recovered during the intervention into the Firm but the Firm did hold a file in the name of the purchaser, Ms S. It was not known why the Firm held a file in the name of the purchaser Ms S when the client was Landmark Fulmer Ridge Ltd. The file was incomplete and did not contain any correspondence with the Firm's client. The FIO obtained a copy of the client matter file held by the purchaser's solicitor, Sethi Partnership Solicitors. This revealed the following:

- The contract was dated 19 March 2018
- The seller was Landmark Fulmer Ridge (represented by the Firm)
- The purchaser was Mr and Mrs S (represented by the Sethi Partnership Solicitors)
- The deposit was £140,000.00 and the balance payable was £1,275,000
- The completion date was 17 May 2018 (or earlier by agreement)
- Contracts were exchanged at 12.10pm between the Sethi Partnership and Mr W from the Firm
- The contract had been signed on behalf of Landmark Fulmer Ridge Ltd by the Firm

20.14 Companies House records for Landmark Fulmer Ridge Ltd detailed:

- Mr DS was a director from 28 June 2018 to present
- Mr MS was a director from 13 May 2015 to 29 June 2018
- The sole shareholder was Landmark (Holdings) Ltd

20.15 Mr S, the purchaser was a consultant solicitor at Sethi Partnership Solicitors.

20.16 A land registry search revealed:

- The proprietor was Landmark Fulmer Ridge Ltd
- The property had been purchased for £1,750,000.00 on 3 August 2015
- There was a registered charge dated 3 August 2015 in favour of the Bank of Baroda

20.17 Prior to and up to the exchange of contracts the Sethi Partnership Solicitors had corresponded by way of email with Mr W. Following exchange, the Sethi Partnership Solicitors had corresponded by way of email with Mr B.

20.18 On 16 March 2018 Mr W provided the Sethi Partnership Solicitors with the Firm's bank account details by way of an email. Between 18 May 2018 and 21 May 2018 a chain of e-mails between the Sethi Partnership Solicitors and Mr B detailed Mr and Mrs S's unsuccessful attempt to view the property.

20.19 An email of 15 June 2018 detailed that a Mr J of Sethi Partnership Solicitors had spoken to Mr DS, director of Landmark who had stated that the property was not for sale (i.e. it was off the market and not available to purchase).

20.20 Completion did not take place and the deposit of £140,000.00 was not returned to the Sethi Partnership Solicitors by the Firm.

20.21 The Applicant submitted that this example illustrated the way in which buyers were duped into paying for properties which were the subject of entirely fictional sales. The beneficiaries of those sales were the third parties set out in Table 2 who were entirely unconnected to the transactions.

20.22 It was said that the Respondent allowed the improper transactions to take place and that those transactions bore the hallmarks of fraud.

Mr N – Purchase of 74 Basingbourne Road, Fleet GU52 6TQ

20.23 No client matter file was recovered but the Firm's bank account detailed that Mr N had paid £24,500 to purchase the property. Mr N had instructed the Firm to act in the purchase of 74 Basingbourne Road for £349,950.00 in January 2018. Pursuant to the sale Mr N paid £24,500.00 into the Firms' client account (the Respondent providing the details).

20.24 Contracts were exchanged on 19 April 2018 and completion was set for 22 May 2018. Since 8 May 2018 Mr N had tried to contact the Firm and on 21 May 2018 he attended the Firm's office. It was closed and there was no sign of anyone there. The Firm's client bank account statement confirmed that no payments had been made to Mr N (the Firm's client) or Womble Bond Dickson (who acted for the seller).

20.25 The Applicant submitted that this example showed how a buyer was duped into paying money for a property and that when the sale fell through the buyer discovered that the Firm was simply a shell and that he had no redress.

20.26 The Applicant submitted that the Respondent's conduct amounted to the following:

Breach of Principle 2 of the Principles

20.27 By causing or allowing improper payments to be made from the client and/or office account to third parties in the circumstances described the Respondent had acted without integrity in breach of Principle 2 of the Principles.

20.28 Further, the Applicant submitted that by failing to apply anti-money laundering principles diligently and continuing to act in the particular circumstances of the transaction, where there was, objectively, a significant risk that money laundering was taking place the Respondent failed to act with integrity

20.29 Mr Mulchrone submitted that the test for "integrity" in the context of disciplinary proceeding against solicitors was set out by the Court of Appeal in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366 where it was said that integrity connotes adherence to the ethical standards of one's own profession. i.e. with moral soundness, rectitude and steady adherence to an ethical code.

20.30 Mr Mulchrone submitted that a solicitor acting with integrity would not have caused or allowed improper payments to be made from the client and / or office account, and would have ensured they had conducted adequate source of funds checks and due diligence checks; that the payments were made to parties to the conveyancing transactions; that the payments were made to clients (where appropriate) or entities that the Firm could explain.

Breach of Principle 6 of the Principles

20.31 By reason of matters set out above it was submitted that the Respondent had behaved in a way that failed to maintain the trust the public places in him and the provision of legal services. The public would be alarmed by the conduct of a solicitor who had drawn from conveyancing transactions or an unknown source of funds in pursuance of transactions that bore the hallmarks of property fraud and had made payments to entities that were not parties to the conveyancing transactions; were not clients of the Firm, and with no explainable connection to the Firm, and had not been made subject to any or any adequate due diligence by the Respondent in circumstances.

20.32 A solicitor who had wished to maintain the trust of the public in the provision of legal services would have applied diligently with the anti- money laundering principles and not acted where there was an objective and significant risk that money laundering was taking place.

Breach of Principle 10 of the Principles

20.33 It was submitted that the Respondent had failed to protect client money and assets in circumstances where buyers were duped into paying money for a property and left with no redress and that beneficiaries of those sales were third parties entirely unconnected to the transaction.

Failure to achieve Outcome 7.5 of the Code

20.34 By failing to comply with anti-money laundering legislation applicable to the Firm the Respondent had failed to comply with Outcome 7.5 of the Code which states that a solicitor:

> "must comply with legislation applicable to [their] business, including anti-money laundering and data protection legislation."

Breach of Rule 20 SAR

20.35 The Respondent had not withdrawn client money from the client account for a proper purpose.

Recklessness

20.36 The Applicant relied upon the test for recklessness which was set out in the case of Brett v SRA [2014] EWHC 1974. At paragraph 78 in that case, Wilkie J said that for the purposes of the Brett appeal, he adopted the working definition of recklessness from the case of R v G [2004] 1 AC 1034. He said that the word recklessness is satisfied: with respect to (i) a circumstance when the solicitor is aware of a risk that it exists or will exist and (ii) a result when the solicitor is aware that a risk will occur and it is, in circumstances known to them, unreasonable for them to take the risk.

20.37 The Applicant asserted that the facts and matters set out in this case demonstrated that the Respondent was reckless. The Respondent was aware that he had not checked the relationships between Firm clients and third parties, to whom payments were made, and had not had knowledge of the third parties. The Respondent was also aware that Ms CD had made a complaint to the SRA about dubious transactions. In such circumstances, the Respondent was aware of a risk occurring and that it was unreasonable for him to maintain practising in this manner.

Manifest incompetence

20.38 It was said that the Respondent's conduct was manifestly incompetent as no competent solicitor would have made such improper payments. Competent conduct in these circumstances would have involved, at the very least sound financial governance, carrying out thorough due diligence checks on the Individuals, and carrying out proper and adequate checks on all transactions being undertaken by the Firm. By reason of such manifest incompetence, the Respondent breached Principle 6 of the Principles.

The Respondent's Case

20.39 The Respondent admitted the conduct set out above. By failing to apply anti-money laundering principles diligently and continuing to act in the particular circumstances of the transaction, where there was, objectively, a significant risk that money laundering was taking place the Respondent accepted that he had failed to act with integrity *(Principle 2 of the Principles*).

20.40 The Respondent accepted that he had behaved in a way that failed to maintain the trust the public placed in him and the provision of legal services *(Principle 6 of the Principles*) and had failed to protect client money and assets in circumstances where buyers were duped into paying money for a property and left with no redress and that beneficiaries of those sales were third parties entirely unconnected to the transaction *(Principle 10 of the Principles*).

20.41 By failing to comply with anti-money laundering legislation applicable to the Firm the Respondent accepted that he had failed to comply with Outcome 7.5 of the Code and breached Rule 20 of SAR.

20.42 The Respondent also accepted that by not checking the relationships between Firm clients and third parties, to whom payments were made in circumstances where he was aware that Ms CD had made a complaint to the SRA about dubious transactions

he had acted recklessly and with manifest incompetence in breach of Principle 6 of the Principles.

The Tribunal's Findings

20.43 The Tribunal found the factual basis of the Allegation 1.1 proved to the requisite standard, namely beyond reasonable doubt, and that the admissions of the Respondent with respect to the breaches of the Principles; failure to achieve Outcome 7.5 of the Code; breach of Rule 20 SAR and admissions as to recklessness and manifest incompetence had all been properly made. Accordingly Allegation 1.1 was proved.

21. **Allegation 1.2 - Shortage on the Client Account**

The Applicant's Case

21.1 The Applicant submitted that the Respondent's conduct amounted to the following:

Breach of Principle 2 of the Principles

21.2 By causing or allowing a shortfall of £5,738,657.38 to arise on the client account, and failing to replace the shortage, in the circumstances described above it was said that the Respondent had acted without integrity as set out in Wingate v Solicitors Regulation Authority v Malins and it was submitted that had the Respondent been acting with integrity he would not have allowed a shortfall to arise on the client account in the first place, and in the event that a shortfall had arisen, he would have ensured it had been replaced promptly, especially as he was the Firm's Principal.

Breach of Principle 6 of the Principles

21.3 It was submitted that the Respondent had behaved in a way that failed to maintain the trust the public places in him and the provision of legal services. Public confidence in the profession was likely to be diminished by solicitors who allow shortfalls to arise on their client accounts, and who fail to remedy the situation by replacing the shortage promptly.

Breach of Principle 10 of the Principles

21.4 It was submitted that the Respondent had failed to protect client money and assets, in breach of Principle 10 of the Principles.

Breach of Rule 6 of the SAR

21.5 The Rules states that: "*All the principals in a firm must ensure compliance with the rules by the principals themselves and by everyone employed in the firm"*.

21.6 As the Firm's Principal it was said that the Respondent had himself failed to comply with the rules and that he had also failed to ensure compliance with the rules by everyone employed in the Firm.

Breach of Rule 7 of the SAR

21.7 This Rule states that:

> "Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account.
>
> In a private practice, the duty to remedy breaches rests not only on the person causing the breach, but also on all the principals in the firm. This duty extends to replacing missing client money from the principals' own resources, even if the money has been misappropriated by an employee or another principal and whether or not a claim is subsequently made on the firm insurance or the Compensation Fund."

21.8 The Applicant asserted that the Respondent's had failed to replace the shortage.

The Respondent's Case

21.9 The Respondent admitted the conduct set out above.

21.10 The Respondent accepted that by causing or allowing a shortfall of £5,738,657.38 to arise on the client account failing to replace the shortage he had failed to act with integrity *(Principle 2 of the Principles)*; behaved in a way that failed to maintain the trust the public placed in him and the provision of legal services *(Principle 6 of the Principles)* and had failed to protect client money and assets *(Principle 10 of the Principles)* and that by failing to ensure that he and everyone employed in the Firm had complied with the rules he was in breach of Rule 6 SAR 2001. Finally, by failing to replace the shortage he admitted that he was in breach of Rule 7 SAR 2011

The Tribunal's Findings

21.11 The Tribunal found the factual basis of the Allegation 1.2 proved to the requisite standard, namely beyond reasonable doubt, and that the admissions of the Respondent with respect to the breaches of the Principles and breaches of Rules 6 and 7 SAR 2011. Accordingly Allegation 1.2 was proved.

22. **Allegation 1.3 - Relinquishing control of the Firm**

The Applicant's Case

22.1 In relation to this allegation the Applicant placed reliance on matters aforesaid with respect to Allegations 1.1 and 1.2. The Applicant also relied upon the Respondent's account he gave to the FIO in interview as follows:

22.2 The Respondent explained the operation of the Firm as follows Mr M and a Mr W ran the Firm and he considered that Mr B was "the boss". Mr H (a purported solicitor) joined the Firm as joint manager from 1 May 2018.

22.3 The Respondent treated Mr B as his boss. Mr M and Mr W ran the Firm and when they asked him to do something he just did it. The Respondent made all the payments from the Firm's client bank account from 1 March 2018 to 7 May 2018. After 7 May 2018 the payments were made by Mr M, Mr B and Mr H.

22.4 Once a transaction had completed the Respondent would be provided with a list in a typed format which was held on the client matter file and which would detail the payments to be made. The piece of paper contained the name of the company, their bank details and the amounts to be paid. The Respondent would then make the transfer.

22.5 The Respondent did not check the relationship between the Firm's clients and the third parties to whom the payments were to be made, nor did he have any knowledge of those third parties (company structures, shareholders etc.,).

22.6 The Respondent went to the Congo from 7 May 2018 to 6 June 2018 and Mr H ran the Firm in his absence, the Respondent having added him to the Firm's banking mandate for this purpose.

22.7 The Respondent was aware that Ms CD had made a complaint to the SRA about dubious transactions but that Mr H had looked at the relevant file and had told him it was "perfect".

22.8 The FIO was not able to identify any of the Individuals who had controlled the Firm but did establish via photo identification documents the Mr H who the Respondent dealt with was not a solicitor.

22.9 The Applicant submitted that the Respondent's conduct amounted to the following:

Breach of Principle 2 of the Principles

22.10 By causing or allowing one or more of the Individuals to assume control of the Firm, in circumstances described above the Respondent acted without integrity, in breach of Principle 2 of the Principles. A solicitor acting with integrity would have carefully checked with whom he was in business and not allowed anyone to take control of his Firm.

Breach of Principle 6 of the Principles.

22.11 By causing or allowing one or more of the Individuals to assume control of the Firm the Respondent behaved in a way that failed to maintain the trust the public places in him and in the provision of legal services.

Breach of Principle 7 of the Principles

22.12 The Respondent had failed to comply with his legal and regulatory obligations and deal with his regulators and ombudsmen in an open, timely and co-operative manner by reporting failures of the SAR 2011 and breaches of the Principles.

Breach of Principle 8 of the Principles

22.13 The Respondent had failed to run his business effectively and in accordance with proper governance and sound financial and risk management principles.

Failed to comply with Rules 8.5(c) and 8.5(e) of the Authorisation Rules

22.14 The Respondent had failed adequately to carry out his role as Compliance Officer for Legal Practice (COLP) *(8.5 (c))* and as Compliance Officer for Finance and Administration *(8.5 (e))*.

22.15 The COLP of an authorised body must take all reasonable steps to ensure compliance with the terms and conditions of the authorised body's authorisation except any obligations imposed under the SRA Accounts Rules and ensure compliance with any statutory obligations of the body, its managers, employees or interest holders or the sole practitioner in relation to the body's carrying on of authorised activities; and record any failure so to comply and make such records available to the SRA on request.

22.16 The COFA of an authorised body must take all reasonable steps to ensure that the body and its managers or the sole practitioner, and its employees comply with any obligations imposed upon them under the SAR and record any failure so to comply and make such records available to the SRA on request.

Breach of Rule 1(f) SAR

22.17 The Respondent failed to keep proper accounting records to show accurately the position with regard to the money held for each client and trust

Breach of Rule 29 SAR

22.18 The Respondent failed to deal with adequately or at all client money and keep proper accounting records and carry out reconciliations of the client account.

Recklessness

22.19 The facts and matters set out above demonstrated that the Respondent was reckless. The Respondent was aware that he had given the Individuals access to the Firm, and that he had relinquished control, despite being Principal of the Firm. The Respondent was aware he was not checking the relationships between Firm clients and third parties, to whom payments were made, and did not have knowledge of the third parties. The Respondent was also aware that Ms CD had made a complaint to the SRA about dubious transactions. In such circumstances, the Respondent was aware of a risk occurring and that it was unreasonable for him to maintain practising in this manner.

Manifest Incompetence

22.20 The Respondent's conduct was manifestly incompetent. No competent solicitor would relinquish their control of the Firm as Principal and neither would they put their name

to a substantial and new area of work for a Firm, conveyancing, without being qualified to do so. Competent conduct in these circumstances would have involved, at the very least, sound financial governance, carrying out thorough due diligence checks on the Individuals, and carrying out proper and adequate checks on all transactions being undertaken by the Firm. By reason of such manifest incompetence, the Respondent breached Principle 6 of the Principles.

The Respondent's Case

22.21 The Respondent admitted the conduct alleged by the Applicant and he accepted that by causing or allowing one or more individuals to assume control of his Firm he acted without integrity *(Principle 2 of the Principles)*; behaved in a way that failed to maintain the trust the public placed in him and the provision of legal services *(Principle 6 of the Principles)*; failed to comply with his legal and regulatory obligations and deal with his regulator and ombudsmen in an open, timely and c-operative manner *(Principle 7 of the Principles)* and that he had failed to run his business effectively and in accordance with proper governance and sound financial and risk management principles *(Principle 8 of the Principles)*.

22.22 Further, in breach of Rule 1 (f) and Rule 29 of SAR 2011 he had failed to keep proper accounting records to show accurately the position with regard to the money held for each client and had failed to keep properly written up accounting records, recording all dealings with client money.

22.23 The Respondent admitted he had been reckless and had been manifestly incompetent for the reasons set out by the Applicant.

The Tribunal's Findings

22.24 The Tribunal found the factual basis of the Allegation 1.3 proved to the requisite standard, namely beyond reasonable doubt, and that the admissions of the Respondent with respect to the breaches of the Principles and breaches of Rules 1 (f), 29 SAR 2011, recklessness and manifest incompetence had all been properly made. Accordingly Allegation 1.3 was proved.

23. **Dishonesty - Allegation 1.1 and Allegation 1.3**

23.1 Mr Mulchrone for 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 person 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."

23.2 The Applicant submitted that the Respondent had been dishonest. The transactions which the Respondent facilitated bore the hallmarks of property fraud. It was submitted by the Applicant that the transactions related to apparently fictitious sellers *(Table 1: 1,3,4,6 and 7)* which would have been revealed if appropriate checks were made. The Respondent signed cheques and made payments to third parties with no apparent connection to the Firm and the Respondent simply accepted this and went along with it.

23.3 The way in which the Firm was organised, arranged and managed by the Individuals, requiring the Respondent to make payments to order bore the hallmarks of fraud. It was a hallmark of fraud that the Respondent had no prior knowledge of conveyancing and he was chosen as a figurehead for the Firm and to "supervise" the work. There had been large amounts of money changing hands and sent to third parties who were neither parties to the conveyancing transactions nor clients of the firm *(see table 2 above)*.

23.4 The complaint by Ms CD to the SRA related to suspected fraud and this should have alerted the Respondent to the risk of fraud, nevertheless, following Ms D's complaint and her departure from the Firm the transactions continued apace.

23.5 The dubious nature of the approach by the Individuals to the Respondent to purchase the Firm and to "sign off" large payments of money and the fact that charges on properties were not discharged prior to money transfers being made were all factors indicating fraud and were factors of which the Respondent was aware.

23.6 The Applicant alleged that by causing or allowing one or more of the Individuals to assume control of the Firm, in the circumstances described above, the Respondent had acted with dishonesty. The Applicant submitted that before entering into a speculative venture with individuals who were, on his own account, complete strangers to him, the Respondent should at the very least have carried out identity checks, done a thorough Google search; on their backgrounds; conducted a search of records held by Companies House and asked to see a practising certificate for Mr B or for personal and professional references. That he did not do any of this was persuasive evidence that he knew fraud was being perpetrated.

23.7 Mr Mulchrone for the Applicant submitted that it was inconceivable that such suspicious circumstances would not have alerted the Respondent to the risk of fraud and that the Respondent's assertion that he was an innocent victim is not credible. Mr Mulchrone submitted that the Respondent had closed his eyes to the obvious conclusion that the Firm was being used for fraudulent purposes.

23.8 Mr Mulchrone submitted that on the Respondent's own account the Respondent had failed to monitor or control the activities of the individuals M, B, W and H or ensured compliance with his regulatory responsibilities, including compliance with the Accounts Rules and the Money Laundering Regulations 2007. A solicitor acting

honestly would have prevented the individuals from having access to the Firm and would have ensured compliance with his regulatory responsibilities.

23.9 In his evidence before the Tribunal Mr Grehan, FIO, confirmed that in his 12 years' of experience as a financial investigative officer he had dealt with 4 or 5 instances where a firm had been take over and utilised for fraud with or without the complicity of the manager of the firm however he could not comment whether this had in fact taken place in this case.

The Respondent's Case

23.10 The Respondent denied acting dishonestly and denied that he had ever been involved in any fraudulent activity. The Respondent said that he had genuinely trusted the Individuals, and whilst he may have been extremely foolish, ignorant and naïve, he had not been dishonest.

23.11 The Respondent stated that he was used by organised criminals in a sophisticated crime in which they exploited his weaknesses, inexperience and lack of knowledge for their own ends. The Respondent said that he was not a party to this criminal activity but was instead a victim of it and that Mr B was now known to be implicated in a similar hijacking of a solicitor's firm.

23.12 The Respondent said that he was approached in October 2017, months before the transactions took place, by Mr M, holding himself out as a mortgage broker. Mr M employed flattery and the lure of regular if not spectacular income for the Respondent. Mr M said that he had been made aware of the Respondent by one of the Respondent's immigration clients and his initial meeting with Mr M had been at a restaurant in Harrods. Mr M appeared every inch the successful and a trustworthy businessman.

23.13 In November 2017 the Respondent was next introduced by Mr M to Mr B. This time the meeting took place at a McDonald's restaurant in East London where Mr B attended driving a Bentley motor car. The Respondent had naturally been impressed and genuinely believed that Mr B had been a solicitor.

23.14 The Respondent accepted that he made no checks into the backgrounds Mr M or Mr B.

23.15 Mr M and Mr B identified the conveyancing firm Cadem Hope Ltd for the Respondent to purchase and he did so in December 2017 for £10,000 from Ms CD.

23.16 Following the purchase of the Firm Ms CD continued as an account signatory and manager at the firm and had no cause to raise with the Respondent any suspicions over the identities or activities of Mr M and Mr B. The Respondent relied on Ms CD's greater experience and knowledge in conveyancing and to an extent she too may have been duped by the sophisticated methods of Mr M and B.

23.17 The Respondent said that none of the events complained of occurred during Ms CD's joint management of the firm, which ended on 17 March 2018 and this appeared to suggest that Mr M and Mr B had been wary of her knowledge and experience and had therefore waited for her to leave before carrying out the majority of the transactions.

23.18 The Respondent set out his contention that the Firm had been hi-jacked by sophisticated fraudsters and disputed the assertion that he had closed his eyes to the obvious in order to receive a regular salary and commission as the level of reward offered to him was low by the standards of a solicitor and not a life-changing amount. In the Respondent's view the low level of reward was an indication that he had expected the regular, but low wage to continue for the long term, whereas Mr W and Mr B appeared to have planned a short bonanza with large rewards for themselves, before clearing the offices and leaving Respondent to take the responsibility for their criminal activity.

23.19 The Respondent stated that he had lacked experience and knowledge of conveyancing and had believed what Mr M and Mr B told him. He also later relied on the knowledge of Mr W and Mr H who were brought into the Firm by M and B as he believed that they were more experienced and knowledgeable in property matters, running a client account, and complying with the rules.

23.20 In his practise as an immigration solicitor the Respondent said he had not been required to run a client account and had had neither experience nor knowledge to pick up any of the "hallmarks of property fraud". The Respondent had no knowledge of the Accounts Rules, the Principles, or anti-money laundering regulations requirements and therefore he had none of the basic skills to enable him to identify a proper or improper recipient of client money in a conveyancing transaction.

23.21 The Respondent denied that his account was not credible. He denied that his purchase of a business operating in an area of law of which he had no prior knowledge with two business partners he did not know and who had supplied his firm with clients and fee earners upon whom he had made no checks was inherently dubious and made no commercial sense. The Respondent maintained that he had not been dishonest and that he had trusted Mr M and Mr B and had relied on their supposed expertise and business acumen.

23.22 The Respondent accepted that when he had purchased the Firm he had not carried out an audit of the accounts to establish the Firm's liabilities and he had sought no legal advice during its purchase. The Respondent also accepted that he had never met a conveyancing client and had taken no steps to check the veracity of the instructions despite signing off cheques for large amounts to third parties unconnected to the transactions.

23.23 The Respondent said that when Ms CD had made her complaints to the SRA he had delegated the investigation of the maters underlying the complaints to her, however, he accepted that he had made no attempt to enquire into the progress of her investigation or continue with the investigation after she had left the Firm.

The Tribunal's Findings

23.24 The Tribunal considered the evidence with care. In accordance with the test set out in Ivey v Genting Casinos the Tribunal first ascertained the Respondent's actual state of knowledge or belief as to the facts.

23.25 The Respondent had been approached by Mr M and Mr B out of the blue and in circumstances where he accepted he had carried out no due diligence by making checks on their identities or backgrounds. On the basis of trust alone in Mr M and Mr B the Respondent then agreed to purchase a conveyancing practise identified for this purpose by Mr M and Mr B and engage in this area of law despite having no prior experience or expertise in conveyancing.

23.26 The Respondent carried out no audit of the Firm with respect to its ongoing liabilities and he later became the COLP and COFA of the Firm with supervisory responsibilities over its staff (who he did not engage personally) yet only visited the office two or three times a week each time for a maximum of two or three hours.

23.27 The Respondent accepted that he had never met with a single conveyancing client nor checked the veracity of their instructions or whether the transactions were genuine but relied on others to do so. He signed cheques which were made in large sums *(see table 2 above)* to third parties who were not clients of the Firm, parties to the transaction or known to the Respondent.

23.28 Despite being put on notice of two potentially fraudulent transactions by Ms CD's complaints to the SRA on 13 March 2018 and 19 March 2018, and his confirmation that he had delegated the investigation to Ms CD, further concerning transactions took place for which he continued to sign the cheques. Indeed three payments, two on 27 March 2018 and one on 11 May 2018, had no payment reference so it was unknown to which transaction they related.

23.29 The Respondent had accepted that he had no grasp of the accounts rules or anti-money laundering regulations.

23.30 Having established the Respondent's state of knowledge the Tribunal considered whether the Respondent's conduct was honest or dishonest by applying the (objective) standards of ordinary decent people. In the light of its factual findings and 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.

23.31 The Tribunal listened carefully to the Respondent's evidence and found him to be an unpersuasive witness and evasive in his responses to the questions put to him and he had found it difficult to answer how he had paid out such huge sums of money without making a single check to satisfy himself of the genuine nature of the transactions or to protect client money

23.32 The Tribunal considered that the Respondent's account that he had simply trusted the individuals who had controlled his firm to be inherently implausible. The Respondent's account had demonstrated no basis upon which a true relationship of trust could have been established and contrary to his assertion that he had taken a

passive role the evidence suggested strongly that he had actively involved himself in the enterprise and became an instrument of fraud.

23.33 The inescapable conclusion was that he had consciously closed his eyes to the activities of the Individuals which he knew to be fraudulent and he had failed to ask the questions any honest solicitor would have asked. The Firm had not been hi-jacked by fraudsters but had been purchased from the outset as a vehicle for fraud.

23.34 A solicitor acting with honesty would have been on notice of the risk following the two complaints to the SRA made by Ms CD and would have quickly divested himself of his relationship with Mr M and Mr B and not involved himself in further dubious transactions as the Respondent had done.

23.35 The Tribunal therefore found dishonesty proved to the required standard on the evidence with respect to Allegations 1.1 and 1.3

Previous Disciplinary Matters

24. There were no previous matters.

Mitigation

25. Mr Otchie said on the Respondent's behalf that the Respondent had had a hitherto unblemished career and that he should be afforded credit for his admissions to the allegations and his co-operation with the Regulator.

26. Mr Otchie urged the Tribunal to consider this as one of those small number of cases where, although dishonesty had been found, the Tribunal should take an exceptional course and not order the Respondent's strike off from the Roll. It was submitted that there had been no evidence that the Respondent had involved himself directly in the dishonesty or that he had not taken more than a merely passive role. It was said on his behalf that he had not benefitted to any large extent financially from his involvement other than taking his salary which did not amount to more than £20,000 in total.

27. Mr Otchie informed the Tribunal that the Respondent had been made bankrupt in June 2019 and had no means to pay a fine or costs.

Sanction

28. The Tribunal referred to its Guidance Note on Sanctions (December 2018) when considering sanction. The Tribunal was mindful of the three stages, 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 the light of the seriousness of the misconduct.

29. The Tribunal assessed the seriousness of the misconduct. The Tribunal took into account the Respondent's culpability, the harm caused by the misconduct and any aggravating and mitigating factors.

30. The Respondent's level of culpability was high and he was motivated by the lure of substantial personal financial gain. His actions were not spontaneous but had been considered and planned from the purchase of the Firm to conclusion. The Respondent had been breach of a position of trust: he had held client money and released it to third parties without making even rudimentary checks before doing so.

31. The Respondent had had direct control of, and responsibility for, the circumstances giving rise to the misconduct. He had agreed to go into business with individuals, who on his account, he did not know and about whom he had made no checks to satisfy himself of their identities and histories. Whilst he explained that he had no experience in conveyancing and handling client money he was a solicitor of ten years' experience and should have been alive to the risks in this endeavour. However, any solicitor of any experience would have known that what he was doing defied common sense to a degree that it represented stark misconduct.

32. Whilst the Respondent had not misled the Regulator it was noted that he had taken no steps to follow up on the investigation he had delegated to Ms CD into the fraudulent transactions identified and reported by her to the SRA.

33. The harm had been substantial with huge sums of money passing through his firm and an amount in the region of £5.7 million remained outstanding. Not a penny had been re-paid. The impact of the Respondent's misconduct upon those directly or indirectly affected by it, the public and the reputation of the legal profession was significant. The Respondent's conduct was a breath taking departure from the standards of integrity, probity and trustworthiness expected of a solicitor and the harm caused was entirely foreseeable particularly as the Respondent should have been alerted to the risk following the complaints made to the SRA by Ms CD but nevertheless he went on to involve himself in a further ten transactions of a dubious nature. If he had acted on Ms CD's complaint to the SRA then many millions of pounds could have been saved.

34. There were a number of aggravating factors. Dishonesty had been alleged and proved. The misconduct was deliberate, calculated and repeated over ten transactions from March 2018 to May 2018 in which he effected the transfer of significant sums from the client account whilst not making the most basic checks to satisfy himself that the transfers were authorised. The Respondent had been an active participant in a fraudulent enterprise in which payments were made to third parties unrelated to the transactions.

35. There was no specific evidence that the Respondent had taken advantage of vulnerable persons and no evidence that he had concealed his wrong doing although the Respondent could have done more to ensure that the matter referred to the SRA was investigated himself.

36. The Respondent must have known or ought reasonably to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the profession and this was one of the worst examples of such misconduct the Tribunal had seen. Whilst it was noted that the Respondent had no previous adverse disciplinary findings against him the extent of the impact on those affected by his misconduct was enormous and this was evident from the evidence

relating to the scale and rapidity of the transactions and the amount of money which had been paid by the Respondent to third parties and ultimately not recovered.

37. The Tribunal could not identify any mitigating factors save that the Respondent and made admissions to all the alleged misconduct but not to dishonesty which he had contested. The Respondent had shown no real insight and had given no credible explanation for his misconduct.

38. The Respondent's misconduct was extremely serious.

39. Whilst the Tribunal was required to start with the least serious sanction, namely No Order, it was clear that No Order, a Reprimand, Fine or Restriction Order did not reflect the seriousness of the misconduct and nor did they provide sufficient protection to the public or the reputation of the profession. For the same reason a suspension was insufficient.

40. There had been admissions to, amongst other things, recklessness and manifest incompetence and the seriousness of that misconduct was itself very high. Dishonesty had also been alleged and proved. A finding of dishonesty will almost invariably lead to striking off save in exceptional circumstances: Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin). There were no exceptional circumstances in this case and the appropriate sanction was for the Respondent's name to be struck off the Roll of Solicitors.

Costs

41. The Applicant applied for its costs in the sum of £33,235.00. Mr Mulchrone stated that this was a lower figure than the sum set out in the costs schedule dated 29 July 2019 of £52,435.00 because on a later review of the case the fixed fee claimed by Capsticks Solicitors at Part B of the schedule and originally set at £34,500.00 had been revised to a lower fixed fee of £18,500.

42. The downward revision was on the basis that it was considered that the original sum claimed was not proportionate to the complexity of the case. The case had been presented by Capsticks in house counsel whose fees were to be taken from the fixed fee.

43. 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 (156.5 hours) would give a notional hourly rate of £118 per hour which, in the circumstances of the case, was not excessive and Mr Mulchrone invited the Tribunal to consider the costs to determine whether they were reasonable and proportionate.

44. The Tribunal summarily assessed costs. It had heard the case over two days and it was appropriate for the Tribunal to determine the liability for costs and the quantum of any costs it ordered to be paid. The Tribunal observed that the Applicant had very sensibly reduced the costs to reflect the complexity of the case and the costs now claimed appeared to be reasonable and proportionate. The case had been well presented and properly brought by the Applicant.

45. The Tribunal noted that the Respondent had been afforded the opportunity to provide evidence as to his means but had not filed a statement of means and the only information the Tribunal had in this regard was from Mr Otchie who had informed the Tribunal that the Respondent was bankrupt. The Tribunal ordered that the Respondent pay the costs of and incidental to this application and enquiry fixed in the sum of £ 33,235.00.

Statement of Full Order

46. The Tribunal ORDERED that the Respondent, MBOLOKELE NSIMBA, 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 £33,235.00.

Dated this 9th day of December 2019
On behalf of the Tribunal

G. Sydenham
Chairman