SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 11999-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JOHNBOSCO EBERECHUCKWU ONYEME Respondent

Before:

Mr S. Tinkler (in the chair)
Mrs C. Evans
Mrs L. McMahon-Hathway

Date of Hearing: 21 and 22 November 2019

Appearances

Grace Hansen, barrister in the employ of Capsticks LLP, 1 St George's Road, Wimbledon SW19 for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that, while in practice as a solicitor at World Secure Solicitors Limited ("the Firm"):

1.1 Between 12 June 2018 and 11 July 2018 he authorised improper transfers in conveyancing transactions totalling up to £1,694,476.15 from the Firm's client account when he knew or ought to have known that that the conveyancing transactions were dubious and thereby breached any or all of Rule 20 of the SRA Accounts Rules 2011 ("SAR 2011") and any or all of Principles 2, 6 and 10 of the SRA Principles 2011 ("the Principles").

1.2 From 12 June 2018 he caused a shortfall on the client account, totalling up to £1,152,273.78, which he failed to replace promptly upon discovery, and thereby breached any or all of Rule 7 of the SAR 2011 and any or all of Principles 2, 6 and 10 of the Principles.

1.3 Between around 10 April 2018 and 7 August 2018 he failed to maintain client ledgers in breach of any or all of Rules 1.2(f), 29.1, 29.2 of the SAR 2011 and Principle 8 of the Principles.

1.4 Between around 10 April 2018 and 7 August 2018 he failed to carry out client account reconciliations in breach of Rule 29.1 and 29.12 of the SRA and Principle 8 of the Principles.

2. In addition, allegations 1.1 and 1.2 were advanced on the basis that the Respondent's conduct was dishonest and/or reckless and/or manifestly incompetent. Dishonesty or recklessness were alleged as an aggravating feature of the Respondent's misconduct but were not essential ingredients in proving the allegations.

Documents

3. The Tribunal reviewed all the documents submitted by the parties, which included:

- Notice of Application dated 22 August 2019
- Rule 5 Statement and Exhibit NXB 1 dated 22 August 2019
- Respondent's Answer dated 3 October 2019
- Applicant's Reply to the Respondent's Answer of 18 October 2019
- Applicant's Schedule of Costs dated 13 November 2019

Factual Background

4. The Respondent, who was born on in 1965, was a solicitor having been admitted to the Roll in November 2004. The Respondent did not hold a current Practising Certificate.

5. According to Companies House records, the Respondent acquired World Secure Limited ("the Company") on 18 December 2017, which he renamed World Secure Solicitors Limited ("the Firm") on 9 January 2018. The Firm commenced trading on

10 April 2018, at which time the Respondent was the only solicitor at the Firm, the sole director and manager, the COLP, the COFA and the MLRO.

6. On 7 August 2018, the SRA intervened into the Respondent's practice and into the Firm.

Witnesses

7. The following witness gave oral evidence:

- Johnbosco Onyeme – the Respondent

8. The written and oral evidence of the witness 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 and made notes of the 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

9. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral together with the submissions of both parties.

Dishonesty

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

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

11. When considering dishonesty the Tribunal firstly established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

12. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … [Professionals] are required to live up to their own professional standards … Integrity connotes adherence to the ethical standards of one's own profession".

Recklessness

13. The test applied by the Tribunal was that set out in R v G [2003] UKHL 50 where Lord Bingham adopted the following definition:

> "A person acts recklessly…with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur and it is, in the circumstances known to him, unreasonable to take that risk."

14. This was adopted in the context of regulatory proceedings in Brett v SRA [2014] EWHC 2974 (Admin).

15. **Allegation 1.1 – Between 12 June 2018 and 11 July 2018 he authorised improper transfers in conveyancing transactions totalling up to £1,694,476.15 from the Firm's client account when he knew or ought to have known that that the conveyancing transactions were dubious and thereby breached any or all of Rule 20 of the SAR 2011 and any or all of Principles 2, 6 and 10 of the Principles.**

The Applicant's Case

15.1 The Respondent employed an unknown woman who had stolen the identity of a solicitor. The bogus Solicitor ("Solicitor A") then purported to conduct four dubious conveyancing transactions for the Firm. The purchase price for two of those transactions (Property 1 and Property 2) was received into the Firm's client account, however the sums were never transferred to the seller or those with a genuine charge on the property, but were sent to third parties, partly in purported reliance upon forged copies of the Land Registry register of title. As a result, £1,152,273.78 from the proceeds of the sales of Property 1 and Property 2 were transferred from the client account to recipients who were not entitled to those sums.

15.2 In relation to two further transactions (Property 3 and Property 4), the Respondent authorised the transfer of sums received into the Firm's client account in the absence of any evidence that there was a genuine underlying transaction. These sums were not transferred because the Firm's bank had already blocked the Firm's bank accounts.

15.3 Ms Hansen submitted that it was the Respondent's position, in effect, that he was a victim of Solicitor A's identity fraud. The Respondent states that he believed Solicitor A was a qualified and regulated solicitor and therefore relied upon the

information provided to him by Solicitor A in order to transfer sums received into the client account, and assumed that the information she provided to him was correct. It was the Applicant's primary position that the Respondent had knowledge of the dubious or improper nature of the transactions and therefore acted dishonestly in authorising the transfer of sums in relation to those transactions. The allegation of dishonesty was based upon inferences drawn from the evidence.

15.4 Alternatively, it was alleged that the Respondent was reckless in authorising the transfer of sums in that the Respondent was aware of the risk that the transactions were dubious and therefore acted unreasonably in authorising the transfer of sums in relation to those transactions. The allegation of reckless was also based upon inferences.

15.5 Alternatively, if the Tribunal did not draw the inferences in relation to dishonesty or recklessness, the Tribunal was invited to find that the Respondent acted with manifest incompetence because he ought to have realised that the transactions were dubious and therefore ought not to have authorised the transfers.

Solicitor A

15.6 The circumstances of the Respondent hiring Solicitor A were discussed at length during his recorded interview. In summary, the Respondent stated that:

- he received an unsolicited call from Solicitor A, who he had never met, offering to do conveyancing work for the Firm;
- the Respondent could not recall when Solicitor A contacted him, other than in "May";
- the Respondent did not have indemnity insurance to conduct residential conveyancing matters, so contacted his insurance brokers to amend his insurance;
- Solicitor A attended the offices of the Firm, and provided her driving licence and a utility bill;
- the Respondent obtained a copy of Solicitor A's practising certificate;
- the Respondent was aware that the Solicitor A's area of practice was crime;
- the Respondent did not ask Solicitor A what her expertise in conveyancing matters was, nor did he ask her for a CV or references; and
- the Respondent agreed a consultancy agreement with Solicitor A, in which it was agreed that the Firm would pay Solicitor A 70% of fees for her own clients and 30% of fees for clients of the Firm ("the Consultancy Agreement").

15.7 The Respondent's explanation, it was submitted, was implausible. It is not plausible that a solicitor, who had been in sole practice for around one month, would hire an unknown solicitor, who did not do work that the sole practitioner engaged in, for an unadvertised position. It was even more incredible that the Respondent did not question why Solicitor A was contacting him to do residential conveyancing work, when the

Respondent was aware (apparently from Solicitor A's Find a Solicitor Page on the Law Society's website) that Solicitor A's area of practice was crime. It was also implausible that the Respondent hired an individual who was not known to him without obtaining a copy of her CV or requiring any references.

15.8 In addition, the documentary evidence obtained from the Firm had discrepancies surrounding Solicitor A's start date:

- Solicitor A contacted the Respondent at some point in May;
- the Consultancy Agreement was dated 1 May 2018;
- the Respondent notified the SRA that Solicitor A had been engaged by the Firm on 31 May 2018; and
- client care letters in the name of Solicitor A are dated 24 May 2018 and 29 May 2018.

15.9 There were further discrepancies in relation to the payment of the fees: the Respondent received the entirety of the fees in respect of Property 2 (despite the Consultancy Agreement requiring that fees be split between the Respondent and Solicitor A); and the Respondent paid £1,500 to Solicitor A on 5 July 2018, a sum which bore no relationship to the fees she was entitled to under the Consultancy Agreement.

15.10 Ms Hansen invited the Tribunal to reject the Respondent's explanation as to how Solicitor A was hired, and conclude, given the absence of a plausible explanation and the inconsistent documentation on the basic issue of when Solicitor A started working for the Firm that the Respondent knew that Solicitor A would conduct dubious or improper transactions, or that the Respondent knew that there was a risk that Solicitor A would do so.

Client B/Property 1

15.11 Solicitor A had conduct of the sale of Client B's property ("Property 1"). It was not apparent how Client B came to instruct the Firm, however there was evidence that the Respondent was aware of Client B before he came to the Firm.

15.12 The Respondent's former firm had provided emails between the Respondent's email address at the Previous Firm and the email address of Client B. Those emails were dated from 22 March 2018 to 6 April 2018. From these emails it was apparent that Client B instructed the Respondent in relation to his divorce (as a result of which Client B was ordered to sell Property 1) and intended to instruct the Respondent in relation to the sale of Property 1.

15.13 However, the Respondent notified Client B on 4 April 2018 that his former firm could not act in relation to the sale of Property 1 because residential conveyancing was outside scope of the former firm's insurance. The Respondent recommended that Client B contact Firm D to act for him.

15.14 The Firm began trading six days after the Respondent told Client B that the former firm could not act for him in relation to the sale of Property 1. Client B subsequently instructed the Firm to act for him in the sale of Property 1. A client care letter in the name of Solicitor A was sent to Client B dated 24 May 2018 (before the date on which the Respondent stated that Solicitor A began working at the Firm). The client care letter referred to Solicitor A having an assistant, however the Respondent had confirmed that only he and Solicitor A worked for the Firm.

15.15 On 15 June 2018 a sum of £95,000 was received into the Firm's client account, which was understood to represent the deposit for the purchase of Property 1. On the same day £92,640 was transferred from the client account to the office account and £92,610 was sent by CHAPs to Person O. The Respondent authorised the CHAPS transfer.

15.16 There was an undated and unsigned invoice on the file from Person O requesting payment in the sum of £92,610 for building works completed in 2015, 2016 and 2017. There was no correspondence on the file indicating how the invoice from Person O was obtained by the Respondent or by the Firm. Further, there was no evidence of instructions from Client B to pay the sum or that the payment was properly required on behalf of Client B. Accordingly, it was submitted, the transfer to Person O from the client account was an improper transfer.

15.17 On 19 June 2018, £855,101.96 was received into the Firm's client account, which was the purchase price for Property 1. Solicitor A sent a completion statement to the Respondent the following day, which detailed the following charges in respect of:

- Company P – £264,982.89;
- Company Q – £244,889.25;
- Company R – £134,358;
- Person S – £76,011;
- Company T – £121,556; and
- Person O – "Invoice as per Court Order" – £92,610.

15.18 The file contained a copy of the Land Registry register of title, which showed charges to Company P, Company Q, Company R and Person O. There was no charge in respect of Person S or Company T. There was a charge in respect of Company U.

15.19 The Respondent requested AML checks in respect of Company Q, and some documents were provided. The file contained further information in respect of Company P, Company R and Company T (in respect of Company T, the file contained an email from Solicitor A to the Respondent attaching further information, but that information was not included within the file itself). Ms Hansen submitted that none of the material provided any explanation as to why those companies would have a charge over Property 1.

15.20 The file also contains redemption statements, provided by Companies P, Q, R and T. The Respondent authorised CHAPs transfers in the sums within the completion statement to Companies P, Q and R on 21 June 2018 and to Company T on 27 June 2018.

15.21 The file contained a letter from Client B, requesting the transfer of £76,011 to Person S, without any explanation. The Respondent authorised a CHAPs transfer to Person S on 27 June 2018. The file did not contain a copy of any court order in relation to Person O.

15.22 The copy of the Land Registry register of title showed a charge on the Property in respect of Company U. On 21 June 2018, Solicitor A emailed the Respondent, providing an address for Company U in Dubai. An account number, sort code and the sum £197,564.37 was handwritten on the email. The file contained an application for an overseas payment to Company U in the sum of £197,564.37, signed by the Respondent on 21 June 2018. This sum was never transferred from the Firm's accounts.

15.23 On 18 July 2018 the solicitors acting for the buyer of Property 1 provided a copy of the Land Registry register of title, which differed from that on the Firm's file and did not include any of the companies or individuals to whom the Respondent had transferred sums.

15.24 The copy of the Land Registry register of title which Solicitor A had provided to the Respondent was not genuine. The payees listed on the forged copy of the register of title (Company P, Company Q, Company R, Person O and Company U) were therefore not entitled to the proceeds of the sale of Property 1 under Rule 20.1 SAR 2011. Accordingly the transfers made by the Respondent were improper transfers.

15.25 Ms Hansen submitted that the Respondent realised, or ought to have realised, that the transfers were dubious, and improper, for some, or all, of the following reasons:

- the transfers to Companies P, Q, R and Person O were made in purported reliance upon a forged copy of the register of title;

- the transfers to Companies P, Q and R were made when there was no explanation as to why these companies (in which Client B had no involvement and which operated respectively in wholesale of grain, tobacco, seeds and animal feeds; repair and cleaning of footwear, leather goods, textile and furs; and non-financial management consultancy) had a charge over Property 1;

- there was a discrepancy in the reasons for sums being owed to Person O in that an invoice was provided for past building work, without reference to a court order whereas the completion statement referred to a court order, but there was no court order on file;

- no explanation was provided for the transfer of sums to Person S, or any information as to the identity of Person S;

- there was a discrepancy in the reasons for transferring sums to Company T in that a redemption statement was provided, but Company T was not listed within the copy of the register of title;

- there was no explanation as to why Company T was entitled to the proceeds of the sale of Property 1;

- Company U was not listed within the completion statement;

- the completion statement left a remainder of £1,506.82, there were therefore insufficient funds to attempt to transfer £197,564.37 to Company U;

- there was no evidence as to the sum Company U was entitled to from the proceeds of Property 1; and

- the attempted transfer to Company U was made in purported reliance upon a forged copy of the register of title.

15.26 The Respondent did not seek to resolve any of these discrepancies or seek any further clarification or explanation from Solicitor A. These failures are relied upon as evidence that the Respondent did not adequately supervise Solicitor A.

15.27 Whilst there was no direct evidence that the Respondent knew that the copy of the register of title was not genuine, the Tribunal was invited to infer that the Respondent knew, or ought to have known, that the transactions conducted by Solicitor A were dubious and/or that the transaction for Client B was dubious. Accordingly, there was no reason to authorise the transfer of the proceeds of the sale of Property 1 to the seven payees under Rule 20.1 of the SAR 2011, and the transfers and attempted transfer were therefore improperly authorised.

Client C/Property 2

15.28 Solicitor A had conduct of the sale of Client C's property ("Property 2"). It was not apparent how Client C came to instruct the Firm, however there was evidence that the Respondent was aware of Client C before he came to the Firm.

15.29 The Respondent's former firm was involved in relation to the sale of Property 2, as evidenced by a letter from the buyer's solicitors, Firm E, to the former firm dated 26 March 2018. Firm D were instructed by Client C at some time in April 2018, but notified Firm E that the matter was being transferred to the Respondent's Firm on 8 May 2018. A client care letter in the name of Solicitor A was sent to Client C on 29 May 2018 (i.e. before the date that the Respondent notified the SRA that Solicitor A had started working at the Firm). The client care letter referred to Solicitor A having an assistant when there was no assistant at the Firm. The assistant named in this client care letter was different to the one named in the client care letter sent to Client B. It was not apparent from the client file when Client C instructed the Firm, or in what circumstances. There was no explanation as to why there was a gap of over 20 days between Firm D stating that the Firm was instructed and the Firm sending a client care letter to Client C.

15.30 Client C provided a copy of his passport to the Firm, however the copy contained a stamp from a Justice of the Peace. It was therefore evident that Client C did not provide his original passport to the Firm, merely a photocopy. The Respondent confirmed in interview that he would not accept the passport copy for the purpose of identity.

15.31 On 12 June 2018 Solicitor A sent an email to the Respondent attaching the Completion Statement, which included:

- purchase price - £230,000;
- sum received from the buyer (due to an indemnity policy) - £229,800;
- a charge on the property in respect of Person F - £217,856.54;
- the Firm's fees - £660;
- agent's fees for Person G - £10,547; and
- sum owed to Client C - £730.46.

15.32 Solicitor A sent a further email that day to the Respondent, confirming that payment must be sent to Person F and attaching a copy of the Land Registry register of title and a redemption letter.

15.33 The copy of the Land Registry register of title showed a charge to Mr F of Company H. The text of the name of Person F, Company H and the address of Company H did not appear to be in the same font and/or size as other similar text in the copy of the register of title.

15.34 The redemption letter was sent from Person I, Head of Operations, Redemptions on a document headed "Person F T/A Company H" and requesting that the sum of £217,856.54 be transferred to Person F.

15.35 The Respondent transferred the sum apparently owing to Person F from the client account to the office account that day, and from the office account to Person F the following day, 13 June 2018, by CHAPS.

15.36 On 20 July 2018 Firm E (the solicitors acting for the buyer) wrote to the Firm, notifying them that a mortgage in favour of Bank of Scotland had not been redeemed and attaching a copy of the Land Registry register of title, showing that Bank of Scotland, not Person F, had a charge on Property 2.

15.37 The copy of the Land Registry register of title which Solicitor A had provided to the Respondent was not genuine and Person F did not have a charge on Property 2. There was therefore no reason to transfer the proceeds of the sale of Property 2 to Person F under Rule 20.1 SAR 2011. Accordingly, the transfer made by the Respondent was an improper transfer.

15.38 Ms Hansen submitted that the Respondent realised, or ought to have realised, that the transfer was dubious, and improper, for some, or all, of the following reasons:

- there was insufficient evidence of Client C's identity (which the Respondent either did not check, adequately or at all, or did not challenge);

- the transfer to Person F was made in purported reliance upon a forged copy of the register of title;

- there were concerns with the genuineness of the copy of the register of title on its face; and

- there was no explanation as to why Person F, who apparently traded as Company H, which appeared to be a jewellery business, had a charge over Property 2.

15.39 As with Client B, the Respondent did not seek any explanation as to why Person F, trading as Company H, had a charge over Property 2.

15.40 Ms Hansen further submitted that it was to be inferred from the Respondent's involvement with Client B's sale of Property 1 and Client C's sale of Property 2, prior to either client instructing the Firm (and indeed prior to the Firm commencing trading) that the Respondent's involvement with those transactions was not limited to supervising Solicitor A. It was inferred that the Respondent had knowledge of the clients and/or transactions and/or circumstances of those transactions, which was not apparent from review of the client files maintained by the Firm. Clients B and C appeared to have been Solicitor A's first clients at the Firm. The fact that the Respondent knew of Client B and Client C prior to the apparent arrival of Solicitor A at the Firm further undermined the credibility of the Respondent's explanation as to how Solicitor A was hired, in that it suggested that the Respondent may have also known Solicitor A.

Property 3

15.41 On 9 July 2018 £250,000 was received into the Firm's client account from Firm J, with reference to Property 3. The following day, Solicitor A emailed the Respondent, requesting that payments totalling £249,638 be made to Company K, Person L and Company M. The Respondent refused to, without having sight of the file. However the following day the Respondent completed CHAPs transfer forms as requested by Solicitor A.

15.42 The Respondent confirmed in interview with the FIO that there was no client file for Property 3 and he did not have sight of any documents other than the email from Solicitor A.

15.43 In the absence of any evidence that Company K, Person L and Company M were entitled to sums, or even any evidence of a legitimate underlying transaction, there was no proper basis under Rule 20.1 of the SAR 2011 for the Respondent to authorise the transfer of those sums and therefore the authorisation of the transfers was improper.

15.44 These payments were never made out of the client account because the Firm's accounts were blocked.

Property 4

15.45 On 10 July 2018 £98,000 was received into the Firm's client account with reference to deposit Property 4. The following day Solicitor A emailed the Respondent requesting that £95,000 be transferred to Company N. The Respondent authorised a CHAPs payment the same day.

15.46 There was no client file for this transaction, the only document found by the FIO was an Order for Possession, which made no reference to Company N. In the absence of any evidence that Company N was entitled to the sum, or even any evidence of a legitimate underlying transaction, there was no proper basis for the Respondent under Rule 20.1 of the SAR 2011 to authorise the transfer and therefore the authorisation of the transfer was improper.

15.47 Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by solicitors facilitating fraudulent transactions, where the solicitor did not challenge information provided to him either adequately or at all. The Respondent therefore breached Principle 6. In addition, the Respondent's conduct amounted to a breach of the requirement to protect client money, in that the Respondent authorised the transfer of client money on an improper basis.

15.48 His actions amounted to a failure to act with integrity in that he:

- authorised the transfer of large sums of monies having inadequately supervised Solicitor A;
- authorised the transfer of sums from the client account despite having not created client ledgers;
- authorised the transfers of sums in relation to Property 1 in the absence of adequate evidence as to the payees entitlement to sums;
- authorised the transfer of sums in relation to Property 2 in the absence of adequate evidence of Client C's identity;
- authorised the transfer sums when on its face there were discrepancies in the evidence provided of Person F's charge on Property 2;
- authorised the transfer of sums in relation to Property 3 and/or Property 4 when a client file had not been created;
- knew (or ought to have known) that a client file had not been created for Property 3 and/or Property 4;
- the Respondent had not received any explanation or any evidence as to why the prospective payees were entitled to sums in relation to Property 3 and/or Property 4; and
- the Respondent had seen no evidence the any underlying transaction had taken place in relation to Property 3 or Property 4.

The Respondent's Case

15.49 The Respondent denied allegation 1.1. The Respondent accepted the factual matrix, namely that transfers were authorised and made on the dates and in the amounts detailed by the Applicant. He denied that he had breached the Principles or SAR 2011 as alleged.

Solicitor A

15.50 The Respondent submitted that the Applicant's assertion and subsequent invitation to the Tribunal to find that the explanation for the hiring of "Solicitor A" implausible was unfounded. The Applicant was committed to proving that the Respondent had connived with Solicitor A when this was not the case. He was contacted by Solicitor A, who told

him that she would like to work with him and that she had a caseload that she would bring to the Firm. The Respondent asserted that it was "commonplace in the black community to hire a Solicitor if it can be shown that there is a practising certificate and the person can earn fees for the firm."

15.51 Solicitor A provided a copy of her Practising Certificate, her driver's licence and a utility bill as proof of her identity and address. The Respondent also checked on the Law Society website, and found that Solicitor A specialised in crime. The Respondent did not consider that he was also required, or ought, to google Solicitor A; he trusted that the documents he had been presented with were genuine. The Respondent explained that he hired Solicitor A as he found her name on the Roll and because she could earn fees for the Firm. He conducted the interview of Solicitor A to the best of his ability, and was satisfied that he was engaging a qualified Solicitor. As to Solicitor A specialising in crime, the Respondent submitted that Solicitors in England and Wales undertook studies in Conveyancing irrespective of whether they specialise in it or not

15.52 As Solicitor A stated that she would be undertaking conveyancing transactions, the Respondent contacted both the SRA and his insurers to inform them of this. The insurers provided the Respondent with a new employee questionnaire which was completed by Solicitor A. The Respondent explained, during cross-examination, that the SRA asked how he would supervise Solicitor A, given that he did not have any experience in conveyancing. He informed the SRA that as conveyancing transactions had two parties, he would be able to monitor the quality of Solicitor A's work by virtue of the correspondence received from the other sides solicitors. If there was anything in that correspondence that suggested Solicitor A was not conducting the transactions competently, he would be on notice and would take appropriate action.

Client B/Property 1

15.53 The Respondent accepted that Client B had been a client at his former firm. Client B was in the process of selling a property. He wanted the former firm to take over the conduct of that sale. The Respondent advised him that given where he was in the process, he should remain with his other solicitors and that the former firm did not have the appropriate insurance to conduct conveyancing matters. The Respondent denied that he had ever advised Client B in relation to divorce proceedings, or having confirmed that the former firm would act on his behalf.

15.54 An email dated 22 March 2018 was provided by the Respondent's former firm to the Applicant. The email stated:

> "Dear [Client B],
>
> Further to our telephone conversation, I can confirm that we are willing to act on your behalf with respect to your divorce. I understand by the conversation that you have been ordered to sell the property known as [Property 1] for £950,000 and for the balance of the funds to be held on account by the conveyancing solicitor after redeeming the loans and charges. You also informed me that the balance that will be held representing your equity in the property will be in the region of £80,000.00 (Eighty thousand pounds only). On the basis of the above, we can act on your behalf up to the sum of £10,000.00

(Ten thousand pounds only). Our Authority to Act form is attached and I look forward to receiving a signed copy of it."

15.55 The email was sent in the Respondent's name. The Respondent denied sending this email to Client B. He explained that he did not even understand the content of the email. As he had never conducted any divorce matters before, he would not have accepted instructions on a divorce matter. The Respondent did not recall receiving an email from Client B with the Authority to Act form completed and attached.

15.56 The only contact the Respondent had with Client B at the Firm, was when Client B attended the Firm with his passport for identification verification. The Respondent explained that the Client B matter was one of the matters that Solicitor A brought to the Firm. It had not occurred to him to ask either Solicitor A or Client B how it was that he came to be a client of the Firm.

15.57 As regards the payments made, the Respondent confirmed that:

- The payment to Person O was made on the basis of an undated invoice in the sum of £92,610 provided to him by Solicitor A;
- There was no Court Order for Person O contained within the file;
- Payments to Companies P, Q and R were made in accordance with the redemption statement and the register of title;
- The payment to Person S was made on the express written instructions of Client B;
- The payment to Company T would only have been made at the request of Solicitor A – that email was not contained in the hearing bundle;
- Whilst Company U did not appear on the redemption statement, it did appear on the register of title. The authorisation of the payment to that company was proper in the circumstances;
- He did not know, and could not have been expected to know, that the register of title document on which he relied was forged;
- His duty was to satisfy the charges as contained on the register of title as he had undertaken to do. It was not for him to question the nature or amount of the charges, or the number of charges registered against the property;
- He had not noticed any discrepancies;
- He had no knowledge (nor ought he to have known) that the transaction was dubious.

Client C/Property 2

15.58 The Respondent accepted that Client C may have been a client at the Respondent's former firm, however he had not had any contact with Client C at the former firm, and the Applicant had produced no evidence to show that there was any pre-existing relationship between the Respondent and Client C prior to Client C becoming a client of the Firm.

15.59 The Respondent transferred monies on the basis of the register of title and completion statement he received from Solicitor A. It was not obvious that the register of title was not genuine. The Respondent transferred monies to Person F in the belief that Person F was entitled to those monies as per the charge listed on the register of title.

15.60 As to the Applicant's assertion that inferences could be drawn on the basis that the Respondent knew Clients B and C before they instructed the Firm, the Respondent submitted that there was no evidence to substantiate this and no inference should be drawn.

15.61 As soon as the Respondent was contacted by Firm E and informed that the charge in favour of the Bank of Scotland had not been redeemed, he made a self-report to the SRA. In the report he explained that he had engaged Solicitor A. He had been notified by the bank that the Firm's account was on hold and the copy of the register of title received from Firm E was at variance with that provided by Solicitor A. He had been unable to make any contact with Solicitor A.

Properties 3 and 4

15.62 The Respondent explained that he authorised the payments on these matters following the receipt of requests for payment from Solicitor A. She confirmed that funds had been received following which the Respondent authorised payment. The Respondent accepted that he had made some mistakes, however those mistakes were as a result of the trust that he had placed in Solicitor A. With the benefit of hindsight, the Respondent considered that he had let himself down and that he could have done better. He accepted that his conduct had been negligent.

The Tribunal's Findings

15.63 The Tribunal examined each of the payments made in relation to each of the properties.

Property 1

15.64 The Tribunal did not find that the Respondent knew, or ought to have known that the register of title document that he had been provided with was forged. Further, the Tribunal did not consider that the Respondent was under any legal or professional duty to question the legitimacy of the charges listed on what the Respondent reasonably considered to be an official document produced by the Land Registry.

15.65 The Tribunal examined each of the payments authorised by the Respondent. The Tribunal found that the payments made to Companies P, Q and R were made pursuant to the redemptions statement and register of title. The Tribunal did not find that the

Respondent either knew, or ought to have known that those payments were dubious. The Tribunal found that Respondent believed that the letter from Client B in relation to Person S was a genuine instruction, and he neither knew nor ought he to have known that the payment was dubious. This was notwithstanding that that payment may have been in breach of Rule 14.5 of the SAR 2011.

15.66 The Tribunal found that whilst the Respondent did not know that the payment to Company T was dubious, he ought to have known. Company T did not appear in the charges section of the register of title, nor was there any express request from Client B to make any payment to Company T. The Tribunal found that in those circumstances, the Respondent was under a duty to make further enquiries prior to authorising any payment.

15.67 The Tribunal similarly found that whilst the Respondent did not know that the payment to Person O was dubious or improper he ought to have known. Person O appeared on the register of title as having a charge over Property 1. In the absence of any explicit instructions from Client B, the monies purportedly due to Person O would only have been due on completion and not on receipt of the deposit monies. The Respondent confirmed in his evidence that he authorised the payment of Person O based on the undated invoice relating to building works. He also accepted that the document he had in the papers which he considered to be a Court order, would not have passed as such on proper scrutiny of that document. He did not realise this until he was going through all the documents in the case with his insurers.

15.68 As regards Company U, the charge appeared on the register of title, but was not included in the redemption statement. It was clear that following the other payments, there were insufficient funds to redeem that charge. The Respondent made no enquiries of Solicitor A as to why there was no redemption statement from Company U, or why the amount due did not appear on the redemption statement. The Tribunal found that the Respondent ought to have made enquiries of Solicitor A. Whilst he did not know that the payment was improper, and notwithstanding that Company U appeared on the register of title, the Tribunal found that the Respondent ought to have known that the payment was dubious or improper.

Property 2

15.69 The Tribunal examined the document the register of title document with care. It was not immediately plain on the fact of the document that the text relating to the purported charge in favour of Person F was of a different font type and size to the rest of the document. There was nothing about the document that caused, or ought to have caused the Respondent to know that the document was anything other than genuine.

15.70 The Respondent was under no legal or professional duty to enquire into the nature of the charge or the holder of the charge. His authorisation of the payment was made pursuant to the documents provided and in the discharge of the undertaking provided to redeem all charges. Accordingly, the Tribunal found that the Respondent neither knew, nor ought he to have known that the register of title document that had been provided to him by Solicitor A was not genuine.

Properties 3 and 4

15.71 The Tribunal noted that as regards Property 3, the Respondent, on 10 July 2018, asked Solicitor A to provide him with the file prior to authorising any payments. It was clear from the Respondent's oral evidence, and his responses to the FIO during his interview, that the Respondent was not in possession of the file before the payments were authorised by him. It was also clear that he authorised the payments on the basis of the information that was provided to him by Solicitor A in the absence of any supporting documentation. Similarly, as regards Property 4, the Respondent authorised payments without seeing any of the underlying documents.

15.72 The Tribunal accepted the Respondent's evidence that he had trusted that Solicitor A was providing him with accurate information based on genuine transactions and thus did not find that the Respondent knew that the transactions were dubious or improper. The Tribunal considered that the Respondent ought to have been in possession of the necessary documentation prior to authorising the transfers. He ought to have known that there was no proper basis for authorising the payments and thus ought to have known that the transactions were dubious and improper.

15.73 The Tribunal found beyond reasonable doubt that all the complained of payments authorised by the Respondent were improper and in breach of Rule 20 of the SAR 2011the Respondent had authorised transfers which were improper.

15.74 That his conduct was in breach of Principle 10 was plain. The Tribunal found beyond reasonable doubt that in authorising improper payments, the Respondent had failed to protect client money. Such conduct failed to maintain the trust the public placed in him and in the provision of legal services. Members of the public would not expect a solicitor to release client monies without having all the necessary and relevant documentation before doing so. Nor would members of the public expect a solicitor to release funds in breach of the accounts rules that were designed to protect client monies. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct was in breach of Principle 6.

15.75 The Tribunal found that as regards the authorisations made by the Respondent when he ought to have known that they were dubious, the Respondent's conduct lacked integrity, as it fell well below the standards expected of him by members of the public and other members of the profession. No solicitor acting with integrity would authorise the release of significant amounts of client monies without first having the documentary evidence to demonstrate that to release those monies was proper. Nor would a solicitor acting with integrity release client funds without any evidence of an underlying legal transaction. The Respondent knew that he was required to verify the transactions on Properties 3 and 4 by examining the underlying documents as evidenced by his own emails to Solicitor A, yet the next day he allowed the payments without having seen any verification. He failed to do so. This was not the conduct of a solicitor acting in compliance with his duty to act with integrity. The Tribunal thus found beyond reasonable doubt that the Respondent's conduct lacked integrity in breach of Principle 2.

15.76 Accordingly the Tribunal found allegation 1.1 proved beyond reasonable doubt, but only in relation to those payments where the Respondent ought to have known that the payment was dubious/improper.

16. **Allegation 1.2 - From 12 June 2018 he caused a shortfall on the client account, totalling up to £1,152,273.78, which he failed to replace promptly upon discovery, and thereby breached any or all of Rule 7 of the SAR 2011 and any or all of Principles 2, 6 and 10 of the Principles.**

The Applicant's Case

16.1 By virtue of the improper transfers made in relation to Property 1 and Property 2 there was a shortfall in the client account in the sum of £1,152,273.78. Rule 7 of the SAR 2011 required the Respondent to replace these sums promptly upon discovery of the shortfall, however, as of the date of the hearing, the Respondent had not replaced any of the missing sums.

16.2 The latest date that the Respondent was aware of a shortfall was 18 July 2018, when he was provided with the genuine copy of the register of title for Property 1 and reported these matters to the SRA.

16.3 The Respondent's conduct failed maintain the trust placed by the public in him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by a allowing a loss of client money and failing to rectify that loss. Such conduct amounted to a breach of Principle 6. Further, in failing to rectify the shortfall, the Respondent had failed to protect client monies in breach of Principle 10.

16.4 The Respondent's actions amounted to a failure to act with integrity. A solicitor, and principal of a firm, acting with integrity would not allow a shortfall to arise in the client account in the circumstances in which he did and would use his best endeavours to rectify the shortfall.

The Respondent's Case

16.5 The Respondent denied allegation 1.2. He accepted that there was a shortfall on the client account but did not accept that it was in the amount as detailed by the Applicant given that there were funds in the client account when the Firm was intervened into. The Respondent explained that he had not been able to rectify the shortage as he did not have the funds to do so.

The Tribunal's Findings

16.6 Rule 7 of the SAR 2011 required 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". The Tribunal found beyond reasonable doubt that a shortfall existed in the Firm's client account and that the shortfall had not, as the Respondent accepted, been remedied promptly on discovery. Indeed, the shortfall remained outstanding as at the date of the hearing. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent had breached Rule 7 of the SAR.

The Tribunal further found beyond reasonable doubt that the Respondent, in allowing a shortfall to arise and thereafter failing to remedy the shortfall promptly on discovery, had failed to protect client monies in breach of Principle 10. Public confidence in the Respondent and in the profession was undermined in circumstances where, having allowed a shortfall to arise, the Respondent failed to remedy the shortfall. The Tribunal thus found beyond reasonable doubt that the Respondent's conduct was in breach of Principle 6.

16.7 The Tribunal considered that a solicitor acting with integrity, in the knowledge that a shortfall had arisen in the client account, that shortfall being caused by the authorisation of improper payments in the circumstances of this case, would thereafter comply with the requirements of Rule 7. The Respondent had made no efforts to remedy the shortfall although as he had been made bankrupt he had little ability to do so. The Tribunal found that the Respondent's conduct in allowing the short fall to arise did not adhere to the ethical standards of the profession and thus found beyond reasonable doubt that the Respondent's conduct in that respect lacked integrity in breach of Principle 2.

Allegations 1.1 and 1.2 – Dishonesty, Recklessness and Manifest Incompetence

Dishonesty

The Applicant's Case

16.8 Ms Hansen submitted that the Respondent's conduct in respect of all the property transactions were dishonest, as he knew that transactions were dubious in that they involved improper transfers to recipients who were not entitled to the sums of monies transferred.

16.9 Ms Hansen highlighted the following matters:

- the Respondent knew of Client B and Client C prior to the Firm commencing trading;
- the Respondent had not been able to provide a credible explanation as to how he created the Firm;
- the Respondent had not been able to provide a credible explanation as to how or why he hired Solicitor A to do conveyancing work, in circumstances where the Firm (which had only been trading for around a month) did not conduct conveyancing work, Solicitor A lacked expertise in conveyancing, the Respondent did not know Solicitor A, the Respondent had not requested any references from Solicitor A, and there was a discrepancy in the dates when Solicitor A started working for the Firm;
- the Respondent's supervision of Solicitor A was inadequate, particularly in the circumstances that she was hired in;
- the Respondent transferred significant sums of money with insufficient evidence that recipients were entitled to those sums and without having made sufficient enquiry as to their entitlement to receive the sums;

- the Respondent did not ensure that adequate identity checks were carried out on Client C and recipients of sums (including Mr F, Person O, Person S and Company U);

- the Respondent failed to maintain client ledgers and there were no client files in respect of Property 3 and 4 yet he still authorised payments;

- the Respondent authorised transfers in relation to Property 2 despite obvious concerns with the bona fides of the Land Registry register of title;

- the Respondent authorised a transfer to Person O despite discrepancies in the reasons for Person O's entitlement to funds;

- the Respondent authorised a transfer to Company U when there were insufficient remaining funds from the sale of Property 1;

- there was a discrepancy between fees paid and the fees to which the Firm and Solicitor A were entitled to under the Consultancy Agreement; and

- there was a discrepancy in the Respondent's own self-report to the SRA in that he stated that Solicitor A completed transactions "to her credit" despite the fact that he was making the report because concerns had been raised that a forged copy of the register of title has been used in relation to Property 1 and charges had not been discharged.

16.10 The Tribunal was invited to find that the Respondent knew that the Firm was being used as a vehicle for dubious transactions. That knowledge was the reason for the Respondent's failure to adequately interrogate multiple and obvious discrepancies and shortcomings with the documentation in the transactions, and his failure to interrogate Solicitor A's expertise. It was inferred from the discrepancies in the payment of fees that the Respondent knew that the benefit that he and Solicitor A would make from the transactions was not limited to their fees. The Respondent intended to conceal his own involvement in the transactions by self-reporting to the SRA concerns with Solicitor A's conduct.

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

16.11 The Respondent denied that his conduct had been dishonest. He explained that he had not set up the Firm with a view to facilitating dubious transactions. Nor had he connived with Solicitor A, Client B or Client C. He was the victim of a fraud perpetrated by Solicitor A. He had employed her in good faith, trusting that she was the solicitor she claimed to be. He had acted on her instructions, believing those instructions to the genuine instructions of her clients, and had authorised the transfer of monies believing those monies to be properly due. When he discovered that the legitimate charge on Property 1 had not been discharged, he immediately made a self-report to the SRA. This was not, as the Applicant submitted, a calculated self-report such as to conceal his involvement in, and knowledge of the dubious transactions.

The Tribunal's Findings

16.12 As detailed in its reasons at allegation 1.1 above, the Tribunal did not find that the Respondent knew that the transactions were dubious or improper. Ms Hansen had made it clear that the case on dishonesty was based on inferred knowledge.

16.13 The Tribunal did not find that knowledge of the dubious or improper nature of the transactions could be inferred. The Tribunal considered that the Respondent believed that the transactions were genuine and legitimate. The Tribunal determined that reasonable and honest people would not consider that a solicitor had acted dishonestly where he had authorised improper payments that he believed to be proper. Nor would reasonable and honest people consider that a solicitor was dishonest in allowing a shortfall to arise on a client account by virtue of authorising improper payments that he believed to be proper. The Tribunal did not find that the Respondent's conduct had been dishonest. Accordingly the allegation that the Respondent's conduct in respect of allegations 1.1 and 1.2 had been dishonest was dismissed.

Recklessness

16.14 Recklessness was alleged in the alternative to dishonesty. It was submitted that the Respondent was aware of the risk that the transactions were dubious and the transfers were not proper transfers and therefore acted unreasonably in authorising the transfers, for the following reasons:

- the Respondent did not ensure that adequate identity checks were carried out on Client C and recipients of sums (including Mr F, Person O, Person S and Company U);
- the Respondent did not challenge the obvious concerns with the bona fides of the Land Registry register of title for Property 2;
- the Respondent authorised a transfer to Person O despite discrepancies in the reasons for Person O's entitlement to funds;
- the Respondent authorised a transfer to Company U when there were insufficient remaining funds from the sale of Property 1;
- Solicitor A was not experienced in conveyancing transactions, the Respondent did not know her and the Respondent did not request any references for her;
- the Respondent's supervision of Solicitor A was inadequate, particularly in the circumstances that she was hired in;
- the Respondent transferred significant sums of money with insufficient evidence that recipients were entitled to those sums and without having made sufficient enquiry as to their entitlement to receive the sums; and
- the Respondent failed to maintain client ledgers and there were no client files in respect of Property 3 and Property 4 yet he still authorised payments.

16.15 It was unreasonable for the Respondent to authorise the transfer of sums in circumstances when he was aware of the risk that the transactions were dubious. Accordingly the Respondent acted recklessly in authorising the transfer of sums.

The Respondent's Case

16.16 The Respondent denied that his conduct had been reckless; he accepted that his conduct had been negligent. The Applicant had failed to show any motive for the Respondent to act recklessly. The Respondent did not appreciate at any time that there was any risk that the transactions were dubious or improper.

The Tribunal's Findings

16.17 The Tribunal considered that the Respondent appreciated that there was a risk as regards the Property 3 and Property 4 transactions. This was evident as regards Property 3 from the Respondent's email of 10 July 2018 when following a request for payments to be made, the Respondent stated:

> "Thank you for the instruction. I will (sic) like to have the file before me before authoring (sic) any payment…"

16.18 The following day the Respondent authorised the transfer in the absence of the file that he had requested. In his interview, the Respondent stated that he made the payments because Solicitor A showed him that the funds had been received.

16.19 The Tribunal determined that in asking for the documentary evidence to support the payments, the Respondent perceived that there was a risk that without that evidence, the payments were not properly required. Despite that knowledge the Respondent authorised payments for Properties 3 and 4. The Tribunal found that the Respondent's conduct was unreasonable given his state of knowledge; he had perceived the risk but had gone on to unreasonably take that risk. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct as regards the payments authorised for Property 3 and Property 4 had been reckless. The Tribunal did not consider there was evidence in relation to the earlier transfers that the Respondent was aware that there was a risk. He trusted Solicitor A. He was not therefore reckless in relation to the first two (of the four) transfers. By the time the requests were made in relation to property 3 (and then 4), he perceived a risk and went on to take that risk in proceeding without examining the physical file.

Manifest Incompetence

16.20 Manifest incompetence was alleged in the alternative to recklessness. If the Respondent did not realise that there was a risk the transfers were improper, he ought to have so realised. The Respondent ought to have:

- ensured that Solicitor A was competent to carry out conveyancing transactions;
- adequately supervised Solicitor A's conduct of transactions;

- ensured that adequate identity checks were carried out on Client C and recipients of sums (including Mr F, Person O, Person S and Company U);

- challenged concerns with the bona fides of the Land Registry register of title for Property 2;

- sought an explanation for the discrepancy in reasons for Person O's entitled to funds;

- refused to transfer sums to Company U in the absence of sufficient funds;

- sought sufficient evidence and adequate explanations for recipients entitlement to funds prior to authorising transfer;

- maintained client ledgers; and

- ensured client files were created in respect of Property 3 and Property 4.

16.21 Had the Respondent done any of all of the above, he ought to have realised that that the transactions were dubious and refused to authorise the transfers.

The Respondent's Case

16.22 The Respondent denied that his conduct had been manifestly incompetent. He accepted that he had made some errors of judgement and that his conduct had been negligent.

The Tribunal's Findings

16.23 The Tribunal found that in making payments to Company T in the absence of any charge on the register of title or an express instruction from the client, and thus causing a shortfall on the client account, the Respondent had been manifestly incompetent. No competent solicitor would pay away client monies without there being any proper justification for so doing.

16.24 The Tribunal also found that in paying away deposit monies to Person O on the basis of an invoice, when Person O was not entitled to any monies until, on the face of the documents, completion had taken place, and in thus causing a shortfall on the client account, the Respondent had been manifestly incompetent.

16.25 Further, in authorising payment to Company U when following the payments already made as regards Property 1, there were insufficient funds to pay Company U, the Respondent had been manifestly incompetent.

16.26 Accordingly, the Tribunal found beyond reasonable doubt that the Respondent's conduct as regards the payments authorised for Company T, Person O and Company U, that the Respondent had been manifestly incompetent, for the reasons set out at paragraph 16.23. The Tribunal did not consider the other payments to be manifestly incompetent.

17. **Allegation 1.3 - Between around 10 April 2018 and 7 August 2018 he failed to maintain client ledgers in breach of any or all of Rules 1.2(f), 29.1, 29.2 of the SAR 2011 and Principle 8 of the Principles.**

Allegation 1.4 - Between around 10 April 2018 and 7 August 2018 he failed to carry out client account reconciliations in breach of Rule 29.1 and 29.12 of the SRA and Principle 8 of the Principles.

The Applicant's Case

17.1 Rule 29.2 of the SAR 2011 required the Respondent to record all dealings with client money in a client ledger account for each client. Rule 29.12 of the SAR 2011 required that client accounts are reconciled at least once every five weeks.

17.2 The FIO confirmed that the Respondent had not maintained any client matter ledgers or completed any client account reconciliations. The Respondent appeared to accept in interview that he had not yet created any client matter ledgers. Accordingly there were breaches of Rule 1.2(f) and Rule 29.12 of the SAR 2011.

17.3 Rule 29.1 of the SAR 2011 required proper accounting records be kept. In failing to maintain client ledgers, the Respondent had failed to keep proper accounting records.

17.4 The Respondent's failures to maintain client ledgers or complete client account reconciliations were failures to effectively run the business of the Firm in breach of Principle 8.

The Respondent's Case

17.5 The Respondent denied allegations 1.3 and 1.4. In his answer he accepted that he had been negligent in the handling of the client account by not maintaining a proper ledger. During his oral evidence the Respondent explained that all of the transactions went through the Firm's bank account and were thus plain for everyone to see. He agreed that he had not maintained individual ledgers for clients. He explained that he was in the process of transferring all the information to a software program that would have maintained client ledgers. The Respondent did not accept that he was required to undertake reconciliations as "the time hadn't come for reconciliation". He had first received monies into his client account on 12 June 2018. From the date of his self-report to the SRA he ceased to act on any matters and thus was not required to undertake client account reconciliations.

The Tribunal's Findings

17.6 The Tribunal found beyond reasonable doubt that the Respondent had failed to maintain individual client ledgers, nor had he kept proper accounting records to show accurately the position with regard to money held for each client.

17.7 The Respondent had not undertaken any reconciliation of the client account as he was required to do. His submission that as he had stopped working on client matters he was no longer under an obligation to comply with Rule 29.12 was misconceived. It was clear beyond doubt that the Respondent had failed to keep accounting records detailing

his dealing with client money properly written up. Accordingly, the Tribunal found beyond reasonable doubt that the Respondent was in breach of Rules 1.2(f), 29.1, 29.2 and 29.12 of the SAR 2011.

17.8 The Tribunal found beyond reasonable doubt that in failing to maintain client ledgers, complete client account reconciliations and keep client records properly written up, the Respondent had failed to run his business or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8.

17.9 Accordingly, the Tribunal found allegations 1.3 and 1.4 proved beyond reasonable doubt.

Previous Disciplinary Matters

18. None.

Mitigation

19. The Respondent accepted that his conduct had been negligent. He had been admitted to the Roll in 2004 and had never fallen foul of any Rules or Principles before. He apologised for letting the SRA and the profession down, and for falling short of his requirements as a solicitor. He submitted that he could have been more diligent in his conduct of the matters in question. He had no previous residential conveyancing experience and relied on Solicitor A being an honest and competent solicitor. He had been the victim of Solicitor A's fraudulent scheme, of which he had no knowledge. He had set up his Firm in good faith and had likewise employed Solicitor A in good faith. He had contacted the SRA when he recruited Solicitor A to inform it that the Firm would also be undertaking conveyancing work. He had likewise informed his insurers. He had obtained all the evidence as regards her identification and ability to practise that he considered necessary when recruiting Solicitor A.

20. He was happy that the Tribunal had accepted that his conduct had not been dishonest.

Sanction

21. The Tribunal had regard to the Guidance Note on Sanctions (6th Edition). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

22. The Tribunal determined that the Respondent was motivated by his desire to take advantage of an opportunity to add an income stream to the Firm from a solicitor that was unknown to him, practising in an area of law that was unfamiliar to him. His actions were unplanned but were both permissive and reactive. He had allowed the Firm to be used as a vehicle to facilitate dubious conveyancing transactions. He acted on the information provided to him without, in relation to Property 3 and Property 4, having any underlying documents evidencing that the payments were properly required. The Respondent was in breach of his position of trust as the custodian of client monies.

He was the sole person who could and did authorise the release of client funds. Whilst he was not experienced in residential conveyancing, he was an experienced solicitor who was aware of his obligations as regards client monies. The Respondent's conduct allowed over £1 million of client monies to be improperly dissipated. His conduct as regards the stewardship of client monies had been reckless. He had authorised the

23. His conduct had caused harm to the reputation of the profession. On Property 1 the seller's mortgage was not redeemed. It was reasonably foreseeable that where legitimate charges were not redeemed, there would be harm and loss caused to individuals.

24. The Respondent's conduct was aggravated by its repetition (albeit over a relatively short period of time). The Respondent ought to have known that he was in material breach of his obligation to protect the public and the reputation of the profession.

25. The Tribunal considered that Solicitor A was knowingly involved in fraudulent transactions without the Respondent's knowledge. However, whilst the Respondent was in some respects a victim, he had, by his failures, allowed Solicitor A to perpetrate the frauds through his Firm. He had allowed himself and the Firm to be manipulated resulting in the misappropriation of client monies. He had acted with manifest incompetence in relation to some payments of client monies to people who were not entitled to it. He had been completely reckless in relation to payments on Property 3 and Property 4 to people who had absolutely no right to that money.

26. In mitigation, the Respondent had voluntarily notified the Applicant, and had no previous disciplinary history. The Tribunal considered that whilst the Respondent had shown some insight, he failed to recognise the seriousness of his misconduct.

27. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. The Tribunal determined that the Respondent's conduct had been a complete departure from the standards of complete integrity, probity and trustworthiness required of solicitors. The Tribunal regarded the breach of the absolute obligation to safeguard client money, which was quite distinct from the Respondent's duty to act honestly, as extremely serious.

28. His failure properly to monitor client money had led to its misappropriation or misuse by others. The Tribunal had regard to the comments of Bingham LCJ in Weston v Law Society [1998] Times, 15th July:

> "….the Tribunal had been at pains to make the point, which was a good one, that the solicitors' accounts rules existed to afford the public maximum protection against the improper and unauthorised use of their money and that, because of the importance attached to affording that protection and assuring the public that such protection was afforded, an onerous obligation was placed on solicitors to ensure that those rules were observed".

29. The Tribunal determined that given the level of recklessness and lack of integrity displayed by the Respondent as regards his duties and responsibilities, notwithstanding

that his conduct had not been dishonest, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

30. Ms Hansen applied for costs in the sum of £31,834.00. This consisted of the SRA's internal costs of £9,634.00 for the investigation and supervision of the matter and a fixed fee of £18,500 + VAT for Capsticks. Ms Hansen submitted that the SRA's internal costs were proportionate and appropriate for the work it had undertaken in investigating the matter. Whilst Capsticks did not work to an hourly rate, it had undertaken approximately 104 hours in the preparation and presentation of the case which equated to a notional hourly rate of £177 per hour.

31. As to dishonesty and some of the particulars of the allegations being found unproven, those matters were properly brought. As to the Respondent's means, his statement of means had not been supported by any documentary evidence. It was accepted that the Respondent did not possess the means to immediately satisfy any costs order, however, the Applicant would take account of his means when making arrangements for him to pay.

32. The Respondent submitted that whilst he had been in receipt of state benefits, he had not received any payments over the preceding four weeks. He had only very recently had a Bankrupcy order discharged. His wife was in employment, however that money belonged to her and was not money that he could claim.

33. In considering costs, the Tribunal had regard to the observations of Nicol J at paragraph 42 of the decision in Broomhead v SRA [2014] EWHC 2772 (Admin):

> "However, while the propriety of bringing charges is a good reason why the SRA should not have to pay the solicitor's costs, it does not follow that the solicitor who has successfully defended himself against those charges should have to pay the SRA's costs. Of course there may be something about the way the solicitor has conducted the proceedings or behaved in other ways which would justify a different conclusion. Even if the charges were properly brought it seems to me that in the normal case the SRA should have to shoulder its own costs where it has not been able to persuade the Tribunal that its case is made out. I do not see that this would constitute an unreasonable disincentive to take appropriate regulatory action."

34. The Tribunal considered that it was appropriate to reduce the fixed fee charged by Capsticks on the basis that it had failed to make out dishonesty, and had failed to show that the Respondent had been reckless or manifestly incompetent in relation to a number of the transactions that he authorised. The Tribunal considered that £3,000.00 was an appropriate and proportionate reduction in all the circumstances and thus awarded a fee of £15,500.00 + VAT. The Tribunal agreed that the internal costs claimed by the SRA were reasonable and proportionate. The Tribunal thus determined that the appropriate costs in this matter were in the sum of £27,734.00.

35. The Tribunal then took into account the Respondent's means, his age, his ability to pay and the likelihood of his obtaining employment in the future. The Tribunal determined that given the Respondent's limited means, it was appropriate to reduce the costs to a figure of £15,000.00. Such an amount properly reflected the Respondent's current financial circumstances and future prospects.

Statement of Full Order

36. The Tribunal Ordered that the Respondent, JOHNBOSCO EBERECHUKWU ONYEME, 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 £15,000.00.

Dated this 20th day of December 2019
On behalf of the Tribunal

S. Tinkler
Chair