SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12002-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

COLIN KENNETH GROOMS Respondent

Before:

Mr E. Nally (in the chair)
Mr J. P. Davies
Dr S. Bown

Date of Hearing: 21 January 2020

Appearances

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

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

The Respondent faced the following Allegations made by the Applicant:-

Allegation 1: Practising without Authorisation

1. The Respondent's practising certificate expired on 31 October 2017. He continued to practise after 31 October 2017 until at least March 2018 despite not having the authorisation to do so. His practice was in breach of section 20 and/or 21 of the Solicitors Act 1974. In doing so, the Respondent breached:

1.1 Principle 1, in that he did not uphold the Rule of law;

1.2 Principle 2, in that he acted without integrity;

1.3 Principle 6, in that he did not behave in a way that maintained the trust the public placed in him and the provision of legal services;

1.4 Principle 8, in that he did not run his business in accordance with proper governance principles.

1.5 Rules 9.1 and 9.2 of the Practice Framework Rules (PFR) and failed to achieve Outcome 5.1 of the SRA Code of Conduct 2011.

Allegation 2: Practising without Insurance

2. The Respondent's insurance expired on 30 September 2017. He was covered by the 30 day Extended Indemnity Period, which expired on 30 October 2017. As the Respondent did not obtain alternative cover, the cessation period (expiring on 29 December 2017) applied afterwards. During the cessation period he should not have taken on new work, and after that period he should not have been doing any work at all. Nevertheless, the Respondent continued to work until March 2018, and took on at least one new matter. In doing so, the Respondent breached:

2.1 Principle 6;

2.2 Principle 8;

2.3 Rule 5.1 of the IIR, in that he did not make sure that his firm had qualifying insurance;

2.4 Rule 5.2 of the Indemnity Insurance Rules (IIR), in that he took on new work during the cessation period.

Allegation 3: Failure to keep proper Accounts

3. The Respondent did not keep proper accounts from at least 2012 to the closure of his practice. In doing so, the Respondent breached:

3.1 Principle 6;

3.2 Principle 8;

3.3 Principle 10, in that he did not protect client money and assets.

3.4 Rule 1.2(e) of the Solicitors Accounts Rules (SAR), in that he did not have proper accounting systems;

3.5 Rule 20.1 of the SAR, in that he made payments from client account that he should have made from office account, leaving a shortage on client account;

3.6 Rule 29.1 of the SAR, in that he did not keep properly written up accounting records;

3.7 Rule 29.2 of the SAR, in that he did not properly record dealings with client money;

3.8 Rule 29.12 of the SAR, in that he did not carry out reconciliations every five weeks, and could not provide a list showing liabilities owed to clients.

Allegation 4: Not co-operating with the Legal Ombudsman

4. The Legal Ombudsman wrote two letters to the Respondent in April 2017 and the Respondent did not reply to either. In doing so, the Respondent failed to comply with:

4.1 Principle 6;

4.2 Principle 7, in that he did not deal with his ombudsman in an open and co-operative manner.

Dishonesty

5. The SRA alleged dishonesty in relation to Allegation 1 but proof of dishonesty was not required in order to establish that allegation or any of its particulars. If proved, dishonesty was an aggravating feature of the misconduct.

6. The case proceeded under the Solicitors (Disciplinary Proceedings) Rules 2007

Preliminary Matters

Application to proceed in absence

7. Mr Johal told the Tribunal that the Respondent had not complied with any directions. His Answer had been due on 21 October 2019 and again on 15 November 2019 following an extension. He had sent in some correspondence, which was in the hearing bundle, in which he had not expressed any intention to attend the hearing. He had made references during the investigation to health problems but had provided no medical evidence concerning that. Mr Johal submitted that the Respondent had voluntarily absented himself.

8. The Tribunal identified a mobile telephone number for the Respondent in the papers, which Mr Johal used to contact the Respondent. Mr Johal told the Tribunal that the Respondent had told him that he would not be attending and that he (the Respondent)

wanted the matter to proceed. He had referred to health issues but was not seeking an adjournment.

9. Mr Johal invited the Tribunal to proceed in the absence of the Respondent.

The Tribunal's Decision

10. The Tribunal retired to consider its preliminary finding while Mr Johal telephoned the Respondent. Upon hearing of the Respondent's comments to Mr Johal, the Tribunal confirmed that its preliminary view was confirmed as its decision in the matter.

11. It was clear from the correspondence from the Respondent that he was aware of the date of the hearing and SDPR Rule 16(2) was therefore engaged. The Tribunal had regard to the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22(5) which states:

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

12. In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

> "…It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay

> to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".

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

14. The Respondent had been served with all the documents, including the date of the hearing, and had referred to them in his correspondence. He had commented in those letters responding to the FI report. The Tribunal noted that the Respondent had not applied for an adjournment and had not provided any evidence of health issues. The Tribunal was satisfied that the Respondent had voluntarily absented himself. That view was fortified by the telephone contact by Mr Johal with the Respondent.

15. If the matter was to be adjourned there was no realistic prospect that he would attend. The adjournment would therefore delay the case by several weeks or months for no useful purpose. There was a public interest in these serious matters being heard in a timely manner.

16. The Tribunal noted that the Respondent had made several submissions in his letters and it would take those into account when determining the Allegations. The disadvantage to him by not being present was therefore mitigated.

17. In all the circumstances the Tribunal was satisfied that it was in the interests of justice to proceed in the Respondent's absence.

Factual Background

18. The Respondent was admitted to the Roll on 15 February 1993. From 14 February 2011 until 8 December 2017 the Respondent practised on his own account as Colin Grooms Solicitors. His final practising certificate expired on 31 October 2017. The Respondent ran his firm as a sole practitioner and apart from an administrative assistant and a stepson, who both helped on an occasional basis, the Respondent had no members of staff.

19. On 31 October 2017, the Respondent's final practising certificate expired. On 9 November 2017, the Respondent sent a Firm Closure Notification form to the SRA, stating that his firm would cease to practise on 8 December 2017. In August 2017, the Legal Ombudsman (LeO) had contacted the SRA because the Respondent had not replied to LeO's letters relating to a client complaint. On 29 June 2018, the Respondent told the SRA that he was still winding down his firm, and he had around £7,000 on client account. He however had no live matters outstanding. On 10 July 2018, a Forensic Investigation Officer of the SRA inspected the Respondent's practice. On 11 September 2018 the FI officer produced a formal report, the FI Report.

Allegation 1

20. The Respondent did not have a practising certificate in place after 31 October 2017. On 6 November 2017 the Respondent told the SRA that he intended to close his practice on 8 December 2017. The Applicant's case was that the Respondent continued to practise after 8 December 2017. He had a number of files, including litigation files, at least one of which he opened after that date.

21. In the case of Mr JRG the Respondent sent letters and invoices to a client, and filed papers at Court, between 7 December 2017 and 26 March 2018. On 11 April 2018, after closing his practice, the Respondent wrote to Court saying he was still on the record, although his firm had closed. On 4 December 2017 the Respondent signed the covering letter for Mr JRG's application for a decree nisi as "Colin Grooms Family Law – Principal" and the application as "Solicitors for Petitioner"

22. In the case of Mrs AJS, on 30 November 2017 the Respondent signed the covering letter for Mrs AJS' application as "Colin Grooms Solicitors" and the application as "Solicitors for Petitioner".

23. On 16 November 2017 the Respondent sent a client care letter to a Mr RLB. The cessation period for the Respondent had started on 30 October 2017, when the extended indemnity period expired and ended on 29 December 2017. For this new client, the Respondent signed himself as "Colin Grooms Solicitors" in a notice of acting he sent to the Court on 19 December 2017 and as "Solicitor for the Respondent". He sent an invoice on 20 December 2017 covering work from 15 November 2017.

Allegation 2

24. The Respondent's insurance cover expired on 30 September 2017 (with a 30 day extended indemnity period following). As the Respondent did not obtain further cover, his practice entered into a 60 day cessation period and his practising certificate expired on 31 October 2017. As the Respondent was closing his practice, he needed to pay insurance run-off cover. His insurance expired on 30 September 2017 and his insurance went into the 30 day Extended Indemnity Period, which expired on 30 October 2017. His insurers had therefore provided the run-off cover but the Respondent had not paid for it. On 23 July 2018 he said he could not afford the £3,000 cost of the premium.

25. The Applicant's case was that the Respondent had been practising without professional indemnity insurance in place.

Allegation 3

26. The SRA had investigated the Respondent in 2015 because his accountants had sent in two qualified reports, the first covering 1 April 2012 to 31 March 2013 and 1 April 2013 to 31 March 2014. The reports showed the following:

- The firm had not completed client account reconciliations (2012-13);
- The firm had paid office expenses from client account by mistake (2012-13);
- The firm had overdrawn client balances (2012-13 and 2013-14);
- The firm had paid interest into the client account by mistake (2012-3 and 2013-14);

- The firm kept client money at the end of a matter without telling the client (2012-13);
- The firm had a shortage on client account (£4,598.73 on 31 March 2013 and £1,982.44 on 31 March 2014)

27. The SRA had therefore warned the Respondent for failings in his accounts. The Allegations related to the Respondent's failure to deal properly with his accounts since that warning.

28. The Respondent no longer had an office address so the SRA's inspection took place at a hotel as a mutually agreed venue. The Respondent presented the firm's accounts. He had recorded these by hand in a notebook which dated back to 2013 and, apart from bank statements, this notebook was the entire set of accounts available. The Respondent said he had earlier notebooks but could not find them. The Respondent also produced bank accounts for the client account, covering the period from 2 January 2015 to 17 July 2018.

29. The Respondent could not provide the following:

- a client matter list;
- the total amount owed to clients;
- a list of all transactions passing through client account;
- the figures to reconcile the client account.

30. According to the bank statements, as at 10 July 2018, the balance in the client account was £7,042.57. However according to his handwritten ledger, the balance was £1,158.38, and accordingly there was a discrepancy of £5,884.19. As at 7 December 2018 the Respondent's accountant could not account for a client account balance of over £3,000.

31. Between 14 September 2016 and 14 June 2017, the Respondent made 35 monthly direct debit payments from his client account relating to his credit card payment machine. The Applicant's case was that these should have come from the office account.

32. On 15 August 2018, the Respondent said that he would repay the shortfall. He had not done yet so because he did not know how much had gone out of the account.

Allegation 4

33. On 25 November 2016 a former client of the Respondent complained to him. She did not receive a reply and so she complained to the LeO. On 5 April 2017 and 18 April 2017, the LeO wrote to the Respondent. The Respondent did not reply to either letter.

34. On 10 August 2017 the LeO told the SRA that it had tried to contact the Respondent in writing, by email, and by telephone, without success. The same day, the SRA emailed the Respondent to ask him to reply to the LeO, and to explain why he had not replied earlier. The Respondent did not reply. On 6 September 2017, the SRA called the Respondent, who said he had not received the email of 10 August. He said he would reply by 15 September 2017. The Respondent did not do so. The SRA tried on

28 September 2017, 25 October 2017, 31 October 2017, 17 November 2017, and 2 February 2018 to contact the Respondent

35. On 11, 12, and 19 July 2018 the Respondent told the SRA that he had tried to telephone the LeO, but had been kept on hold and had left a message.

36. On 12 December 2018 the Respondent said that he could not reply to the LeO's request for the file as his client's new solicitors had asked for it. He was worried about the risk of posting a bulky file and invited the client's new solicitors to collect the file and they did not do so.

Witnesses

Natalie Garrard (FI Officer)

37. The FI Officer confirmed that her FI report was true and, save for a minor typographical error, accurate. She confirmed that the only dealings that she had with the Respondent were recorded in her handwritten notes, exhibited to her FI report.

Findings of Fact and Law

38. 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.

39. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of both parties, which are briefly summarised below.

40. **Allegation 1**

Applicant's Submissions

40.1 Mr Johal told the Tribunal that the Respondent should not have practised without a practising certificate, that certificate having expired on 31 October 2017. He had told the SRA that he would close his practice on 8 December 2017 but had continued to practise until March 2018.

40.2 Rule 9.1 of the PFR stated that a practising solicitor must have a certificate in force. Rule 9.2 of the PFR defined practising as including being held out (whether explicitly or implicitly) as a practising solicitor.

40.3 The Respondent had signed correspondence as a solicitor in letters after 31 October 2017. He had also signed application forms as a solicitor when acting in divorce matters. Mr Johal submitted that the Respondent was therefore practising without a certificate and acting as a solicitor in breach of the rules. The Respondent was also in breach of the Solicitors Act. In doing so the Respondent was not upholding the rule of law and had therefore breached of Principle 1.

40.4 Mr Johal submitted that the Respondent had lacked integrity in that he had held himself out to courts, clients, and others that he was a practising solicitor, capable of dealing with legal matters. He had implied that he was covered by professional indemnity insurance and that he was properly regulated. The Respondent had therefore not been behaving in accordance with the ethical standards of the profession. A member of the profession would not act or describe themselves as a solicitor when they did not have the right authorisation to practice

40.5 Mr Johal submitted that by practising without authorisation, the Respondent did not behave in a way that maintained the public's trust in him, in breach of Principle 6 as the public would expect solicitors to be properly authorised and to have the protection of regulation accordingly.

40.6 Mr Johal submitted that the Respondent had not run his business in accordance with business governance principles, in breach of Principle 8, as evidenced by his failure to practise in a regulated entity and ensuring he had proper authority to act.

40.7 Mr Johal further submitted that the Respondent had acted dishonestly according to the standards of ordinary decent people.

40.8 The Respondent had continued to practise for a period of 5 months, despite telling the SRA and his insurers that the Firm would close in December 2017. In that time he had no practising certificate and no insurance in place. The Respondent would have been aware that he needed both in order to be able to practise. He had continued to hold himself out as a solicitor afterwards, describing himself as such in correspondence. The Respondent told parties and the Court that he was a solicitor despite his knowing he did not have the required qualification. In doing so the Respondent deliberately misled those parties and the Court.

40.9 If he had changed his mind about closure he could have informed the SRA and should have done so. The SRA had written to the Respondent in February 2018 so he had an opportunity to do so then. Mr Johal submitted that the Respondent's behaviour was therefore dishonest by objective standards.

Respondent's Submissions

40.10 The Respondent had not filed an Answer with the Tribunal. However it had sight of letters from the Respondent dated 1 October 2019, 6 October 2019 and 14 October 2019. The letter dated 6 October 2019 was presumably dated in error as it was received by the Applicant on 9 September 2019. It is referred to in this Judgment as the "September letter" so as to recount the Respondent's submissions in chronological order.

40.11 In the September letter, the Respondent had, in summary, made the following points relevant to Allegation 1:

- He did not challenge the FI report;
- He denied ever having been dishonest and noted he had never been accused of dishonesty previously;

- He denied practising for several months without a practising certificate;
- What he had actually been doing was running down the business;
- He did not have the £3,000 required to pay for the run-off insurance cover;
- He had contacted most of his clients, by letter or telephone to inform them of the situation so that nobody was "left high and dry";
- He enclosed a reconciliation of the client account.

40.12 In the letter dated 1 October 2019 the Respondent had made the following points:

- He again stated that he did not challenge the FI report and stated that he had fully co-operated with the FI Officer;
- He again denied being dishonest;
- He accepted he had been "careless" and had made "mistakes" but had not been dishonest in "simply helping my clients at a time when they needed my help";
- He apologised for his "shortcomings".

40.13 In the letter dated 1 October 2019 the Respondent repeated some of the points made in his earlier letters and also referred to health issues.

The Tribunal's Findings

40.14 The Tribunal had seen the evidence that the Respondent's practising certificate had expired at the end of October 2017 and this had not been challenged by the Respondent.

40.15 The Tribunal noted that the Allegation was pleaded in terms of lack of 'authorisation' and referred to sections 20 and 21 of the Solicitors Act 1974 ("the 1974 Act"), which referred to 'qualification'.

40.16 The Tribunal noted that section 1 of the 1974 Act stated as follows:

> "No person shall be qualified to act as a solicitor unless—
>
> (a) he has been admitted as a solicitor, and
>
> (b) his name is on the roll, and
>
> (c) he has in force a certificate issued by the Society in accordance with the provisions of this Part authorising him to practise as a solicitor (in this Act referred to as a "practising certificate")."

40.17 The Tribunal was satisfied beyond reasonable doubt that by virtue of (c), the Respondent was not qualified for the purposes of the 1974 Act after 31 October 2017.

The Tribunal therefore treated the words 'qualified' and 'authorised' as having the same meaning for the purposes of this case.

40.18 In considering the meaning of "practising" the Tribunal had been referred to Piper Double Glazing Ltd v DC Contracts [1994] 1 All ER 177 by Mr Johal. The following section of that Judgment was relevant:

> "In these circumstances, it seems clear to me that the words 'acting as a solicitor' are limited to the doing of acts which only a solicitor may perform and/or the doing of acts by a person pretending or holding himself out to be a solicitor. Such acts are not to be confused with the doing of acts of a kind commonly done by solicitors, but which involve no representation that the actor is acting as such."

40.19 The question for the Tribunal was whether the work being undertaken by the Respondent amounted to acting as a solicitor.

40.20 There were a number of examples set out in the FI report that the Respondent had not challenged, despite his denial of the Allegation. This included the cases of JRG, AJS and RLB.

40.21 In the case of JRG, on 31 January 2018, the Respondent had written to the Court on the Firm's headed paper. That letter enclosed a Statement of Information form for a Consent Order and was signed by the Respondent as the petitioner's solicitor. The letter itself referred to the Respondent "leaving the profession on or before the end of February 2018", despite the Respondent having been no longer authorised.

40.22 The Respondent had clearly prepared the Statement of Information form himself as he confirmed as much in his letter to the client dated 6 January 2018.

40.23 The Respondent's argument that he had not been practising was undermined by the invoice sent to his client an invoice for "professional charges" covering the period 1 February 2018 to 24 March 2018.

40.24 The Respondent had written in his correspondence to the Tribunal that he was winding the business down and was not practising. However this was further contradicted by the documentary evidence in the case of RLB, a client that he took on after on 16 November 2017, more than two weeks after his practising certificate had expired. The Tribunal noted the letter of engagement, which it found to be clear evidence of practising. Further, on 19 December 2017 the Respondent sent a Notice of Acting to the Court. This was a complete contradiction of what the Respondent subsequently told the FI Officer on 10 July 2018 when he said that he had not taken on any new clients and was an act that went beyond simply winding down the Firm. He was proactively engaged in representing his client in divorce proceedings.

40.25 The SRA Guidance 'Closing down your practice' stated as follows:

> "Following the closure of your practice, you should take care not to practise or be held out as practising when tying up loose ends. For example, you will not be practising if you submit bills of costs, account to clients for monies held on

their behalf, deal with outstanding balances under the Accounts Rules or arrange for the disposal or safekeeping of old files and documents. However, if you were to respond to a query from the Land Registry or apply for registration in respect of a client's matter, you will be practising."

40.26 The Tribunal was satisfied beyond reasonable doubt that the Respondent had continued to practise when he was not authorised to do so after 31 October 2017 until at least March 2018. The Tribunal found the factual basis of Allegation 1, together with the breaches of Rules 9.1 and 9.2 of the PFR and sections 20 and 21 of the 1974 Act proved beyond reasonable doubt.

40.27 *Principle 1*

40.27.1 The Tribunal found this Principle breached on the basis of its factual findings as set out above.

40.27.2 The Respondent had breached the statutory provisions of the 1974 Act by continuing to practise. In doing so he had held himself out as a practising solicitor in Court documents at a time when he was not authorised to do so. This had the effect of misleading the Court and the other side in proceedings. The Tribunal was satisfied beyond reasonable doubt that in doing so the Respondent had failed to uphold the rule of law and the proper administration of justice.

40.28 *Principle 2*

40.28.1 In considering whether the Respondent had lacked integrity, the Tribunal applied the test set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

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

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

40.28.3 The failure to adhere to basic regulatory obligations, by continuing to practise when unauthorised, fell within the nature of conduct described in Wingate.

40.28.4 The Respondent had filled in a form in which he set out his intentions regarding the cessation of the practice and the route towards orderly closure. He had then acted contrary to those stated intentions. The Respondent knew that he had issues with his professional indemnity insurance, including the fact

that he was unable to afford run-off cover. Despite this he had filled in a form for the Court in which he went on record and continued acting for clients in a way that went well beyond the SRA guidance in respect of closing a firm.

40.28.5 The Tribunal was satisfied beyond reasonable doubt that in doing so the Respondent had lacked integrity and it found the breach of Principle 2 proved.

40.29 *Principle 6*

40.29.1 It followed as a matter of logic that the trust the public placed in the provision of legal services was seriously undermined when fundamental parts of the regulatory machinery were being circumvented in the way they had been by the Respondent. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

40.30 *Principle 8*

40.30.1 The Tribunal was satisfied beyond reasonable doubt that the Respondent had clearly failed to manage the business in accordance with sound financial risk management principles given that he was practising without authorisation or insurance at the material time. The breach of Principle 8 was therefore proved.

40.31 *Outcome 5.1*

40.31.1 The Tribunal had found that the Respondent had misled the Court for the reasons set out above. The Respondent's state of knowledge when doing so is set out below under consideration of the allegation of dishonesty. The Tribunal found beyond reasonable doubt that the Respondent had failed to achieve Outcome 5.1.

40.32 Dishonesty

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

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

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

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

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

40.32.3 The Tribunal considered first of all the Respondent's state of knowledge at the material time.

40.32.4 The Respondent was obviously aware that he had notified SRA that he was ceasing practice on 8 December 2017 as was evident from the closure notification form which he had completed.

40.32.5 As an experienced solicitor the Respondent would know that he required a practising certificate and professional indemnity insurance in order to be able to practise. Until 31 October 2017 he had held both and so it was clear to the Tribunal that the Respondent was aware of these requirements. The Respondent had admitted as much in his meeting with the FI Officer on 23 July 2018.

40.32.6 The Tribunal found that the Respondent knew that he was continuing to act. He was aware that he had not altered his letterhead and that he had completed a Notice of Acting in relation to RLB.

40.32.7 It was in the knowledge of all the matters above that the Respondent had continued to engage in litigation on behalf of existing and new clients, as evidenced by the fact that he was billing them for this work. It was clear that his intentions had changed as his correspondence referred to retiring in February 2018, which also did not happen.

40.32.8 The Respondent made no attempt to notify the regulator that his intentions had changed or to correct the information given on the closure notice form.

40.32.9 The Tribunal had rejected the Respondent's defence that he was not practising but simply winding down the practice; that was inconsistent with the contemporaneous documentary evidence.

40.32.10 The Respondent had commented generally on his honesty and had also done so with reference to his practice history. However he had not engaged nor dealt with the specific examples set out in the Rule 5 statement.

40.32.11 The Tribunal found beyond reasonable doubt that the Respondent's conduct in continuing to practise without authorisation was done knowingly and was not an oversight or a simple error. The Tribunal was satisfied beyond reasonable doubt that this conduct would be considered dishonesty by the standards of

ordinary decent people and therefore found the allegation of dishonesty proved.

40.33 Allegation 1 was therefore proved in full beyond reasonable doubt.

41. **Allegation 2**

Applicant's Submissions

41.1 Mr Johal told the Tribunal that if a firm could not obtain qualifying insurance, Rule 5.2 of the Indemnity Insurance Rules (IIR) gave an extra 30 days, the extended indemnity period, essentially to close the practice. During this period the Respondent should not have accepted any instructions as his insurance had expired on 30 September 2017 and the extended indemnity period expired on 30 October 2017. The Respondent therefore should not have done any work after then.

41.2 As described in the case of RLB, the Respondent had taken on at least one new matter in that time. He had not obtained fresh cover nor had he paid for run-off cover. The Respondent had therefore breached rules 5.1 and 5.2 of the IIR in doing so.

41.3 Mr Johal submitted that by breaching the IIR, the Respondent had not behaved in a way that maintained the public's trust in him, as his behaviour risked leaving clients without insurance protection. He invited the Tribunal to find that the Respondent had breached Principle 6.

41.4 Mr Johal further submitted that the Respondent had breached Principle 8 by failing to obtain insurance or to pay for run-off cover.

Respondent's Submissions

41.5 The Respondent's submission in relation to this Allegation were brief and are summarised above under Allegation 1.1.

The Tribunal's Findings

41.6 The Tribunal had already found in relation to Allegations 1.1 that the Respondent had continued to practise until at least March 2018, with the examples of JRG and RLB cited. The Respondent had not denied that he did not have professional indemnity insurance in place during that period. His explanation that he could not afford it was not a defence.

41.7 In addition to the Respondent's comments, the Tribunal noted the evidenced from Travellers about the expiry of the policy, the extended period of 30 days followed the cessation period. The Tribunal also noted his comments in his meetings with the FI Officer as recorded in her unchallenged FI report. The Tribunal found the factual basis of Allegation 2 including the breach of the IIR proved beyond reasonable doubt.

41.8 *Principle 6*

41.8.1 The Tribunal found that the public would expect solicitors to hold professional indemnity insurance and not to practise without it. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

41.9 *Principle 8*

41.9.1 It followed as a matter of logic that the absence of professional indemnity insurance put client at serious risk and the Tribunal therefore found the breach of Principle 8 proved beyond reasonable doubt.

41.10 Allegation 2 was proved in full beyond reasonable doubt.

42. **Allegation 3**

Applicant's Submissions

42.1 Mr Johal submitted that by failing to comply with the SAR, in the ways set out above, the Respondent had not behaved in a way that maintained the public's trust in him and so had breached Principle 6 as the public would expect solicitors to have accounts in order and compliant with the SAR.

42.2 Mr Johal also submitted that the Respondent had breached Principle 8 by his failure to keep proper books and not using accounts properly. By not protecting client money and assets the Respondent was also in breach of Principle 10. He had a shortfall on client account in two qualified reports, so at least some client money had not gone to the clients.

Respondent's Submissions

42.3 The Respondent had accepted errors and shortcomings and had referred to a number of specific clients. He stated that he had written to SW in an attempt to return money to her and he had also stated that he was owed money by two other clients. However he had not engaged with the specifics of the Allegation in any of his letters.

The Tribunal's Findings

42.4 The Tribunal found that it was abundantly clear from the documents exhibited to the Rule 5 statement and the FI report that the Respondent had breached the SAR as alleged in the relevant sections of the Rule 5 statement. The Respondent himself did not challenge the FI report. The Tribunal noted that he had been advised previously about his accounts and the breaches had continued despite this. The Tribunal found the breach of the SARs together with Principles 8 and 10 proved beyond reasonable doubt as he had clearly not run his business in accordance with the SAR, which existed to protect client money and assets.

42.5 *Principle 6*

42.5.1 The failure to manage the client account was a clear breach of the Rules, the purpose of which was to protect clients. The Tribunal was satisfied beyond reasonable doubt that this fundamentally undermined the trust the public placed in the provision of legal services and found the breach of Principle 6 proved.

42.6 Allegation 3 was proved in full beyond reasonable doubt.

43. **Allegation 4**

Applicant's Submissions

43.1 Mr Johal told the Tribunal that the Respondent had never replied to the LeO. He submitted that this was a breach of Principle 7, which required solicitors to deal with the LeO in an open and co-operative manner. Mr Johal submitted that the public would expect solicitors to reply those with regulatory functions. In failing to have done so, the Respondent had breached Principle 6.

Respondent's Submissions

43.2 In his September letter, the Respondent made the following points in relation to the LeO:

- The client had not raised a grievance with him;
- The Respondent did not recall being asked to send the file to the LeO;
- The Respondent had "no idea" what the LeO had sought from him as he had been focussed on closing down his office at the time;

The Tribunal's Findings

43.3 The Tribunal noted that the Respondent's submissions primarily addressed the originating complaint to the LeO and not his failure to respond to the LeO. Insofar as he addressed the Allegation at all it was to explain that he could not recall what may have been required of him as he was busy closing down his firm. The Tribunal had found that he was not simply closing down his firm, but in any event this was no defence to refusing to engage with the LeO and reply to its correspondence. The Tribunal also noted that in April 2017 the Respondent was not, even on his own case, preparing to close.

43.4 The Tribunal was satisfied beyond reasonable doubt that the evidence of correspondence attached to the FI report proved that the Respondent had not replied to the two letters in April 2017. The Tribunal found the factual basis of Allegation 4 proved.

43.5 *Principle 6*

43.5.1 The LeO is a statutory route of redress for members of the public. The failure to co-operate with it, particularly during an investigation, inevitably damaged the trust in the profession. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

43.6 *Principle 7*

43.6.1 This Principle required the Respondent to comply with his legal and regulatory obligations and deal with his regulators and ombudsmen in an open, timely and co-operative manner. It followed from the Tribunal's factual findings that he had not done so and the Tribunal found the breach of Principle 7 proved beyond reasonable doubt.

43.7 Allegation 4 was proved in full beyond reasonable doubt.

Previous Disciplinary Matters

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

Mitigation

45. The Respondent did not provide mitigation specifically. However the Tribunal had regard to all that he had said in his letters, as summarised above, when considering sanction.

Sanction

46. The Tribunal had regard to the Guidance Note on Sanctions (November 2019). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

47. In assessing culpability, the Tribunal found that the Respondent's motivation included an element of helping clients and wanting to wind down the practise. However he had not done so properly, as reflected in the Tribunal's findings.

48. The misconduct was planned in that the Respondent chose not to renew his Practising Certificate and deliberately decided not to renew his professional indemnity insurance. Further, the Respondent had chosen to take on clients and carry on practising.

49. There had been a breach of trust in respect of the Respondent's duty to the Court and to his clients. He had exposed his clients to risk by practising when not authorised and not insured.

50. The Respondent had complete control and responsibility for the circumstances and was a very experienced solicitor. In failing to notify the regulator that his plans had changed he had deliberately misled by it by that omission.

51. In assessing the harm caused, the Tribunal noted that the Respondent's clients ended up being represented by an unqualified, uninsured solicitor. The Court was misled as were other parties to any litigation. The Respondent had been unable to reconcile the client account. He had also failed to give a response to the LeO. This caused huge damage to the reputation of the profession as it was a significant departure from the standards expected of solicitors.

52. The matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

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

53. The misconduct had been deliberate, calculated and repeated and had continued over several months. The Respondent knew that he was in material breach of his obligations at the material time. The loss to clients had not been quantified beyond the obvious fact of the shortfall on the client account.

54. The misconduct was mitigated by the fact that there had been a degree of co-operation with the FI Officer and the Respondent had no previous findings against him at the Tribunal. He had not made admissions but he had confirmed that he did not challenge the FI report. The Tribunal did not consider that this amounted to significant insight.

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

56. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Respondent had not advanced any exceptional circumstances and none existed on the evidence before the Tribunal. The health reasons alluded to in correspondence did not appear to relate to his misconduct and in any event, was unsupported by any evidence. The Tribunal found there to be nothing that would justify a lesser sanction. The only appropriate and proportionate sanction was that the Respondent be struck-off the Roll.

Costs

57. Mr Johal applied for costs in the sum of £10,918.55 as set out in the cost schedule served in advance of the hearing. Mr Johal invited the Tribunal to reduce this to take account of the fact that the hearing had not lasted the entire day.

58. The Respondent had not served a detailed Statement of Means and had provided no information since October 2019.

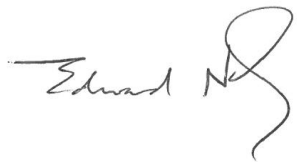
59. The Tribunal assessed the costs and was satisfied that the amount claimed was reasonable and proportionate. It reduced the total by £260 to reflect two hours of advocacy that had not taken place, in line with Mr Johal's request.

60. There was no basis to make a further reduction in relation to the Respondent's means. The Tribunal therefore ordered cots in the sum of £10,658.55.

Statement of Full Order

61. The Tribunal Ordered that the Respondent, COLIN KENNETH GROOMS, 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 £10,658.55.

Dated this 12th day of February 2020
On behalf of the Tribunal



E. Nally
Chairman