The Respondent appealed the Tribunal's decision dated 26 February 2021 to the High Court (Administrative Court). The appeal was heard by Mrs Justice Cockerill on 12 January 2022 and Judgment was handed down on 21 January 2022. The appeal was dismissed. Guise v Solicitors Regulation Authority [2022] EWHC 124 (Admin)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12031-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

TONY NORMAN GUISE Respondent

Before:

Mr P Lewis (in the chair)
Mr M N Millin
Dr S Bown

Date of Hearing: 18 - 25 January 2021

Appearances

David Collins, barrister, of Capsticks Solicitors LLP, 1 St George`s Road, London, SW19 4DR, for the Applicant

Mr Guise represented himself.

JUDGMENT

Allegations

1. The allegations against Mr Guise made by the SRA were that:

1.1 Between or around 23 July 2014 and 14 August 2015, he made one or more unauthorised transfers of monies from CLAN Commercial Services Limited ("CCS") as set out in Schedule 1. He thereby breached all or any of Principles 2 and 6 of the SRA Principles 2011.

1.2 Between or around 13 November 2014 and 5 August 2015, he made one or more unauthorised transfers of monies from the client account of Guise Solicitors Ltd ("the Firm"), as set out in Schedule 2. He thereby breached all or any of 20.1 of the SRA Accounts Rules 2011, and Principles 2, 4, 6 and 10 of the SRA Principles.

In addition, Allegations 1.1 and 1.2 are advanced on the basis that Mr Guise's conduct was dishonest. Dishonesty is alleged as an aggravating feature of Mr Guise's misconduct but is not an essential ingredient in proving the allegations.

Documents

Applicant

- Rule 5 Statement and Exhibit DJC1 dated 22 November 2019
- Reply to the Answer dated 31 January 2020.
- Statement of Ms S Dunn dated 16 April 2020 and Exhibit SD1.
- Statement of Mr MB dated 16 April 2020and Exhibits MB1-MB3.
- Statements of Client A dated 25 May 206 and 29 November 2017.
- Skeleton argument dated 4 January 2021.
- Schedule of Costs dated 8 January 2021.

Respondent

- Respondent's amended Answer to the Rule 5 Statement dated 22 April 2020.
- Statement dated 17 April 2020.
- Skeleton argument dated 4 January 2021.
- Authorities bundle.

Factual Background

2. Mr Guise, was born in July 1957 and admitted to the Roll of Solicitors in July 1986. At the material time he was a Director of Guise Solicitors Ltd ("the Firm"). Mr Guise was the Firm's Compliance Officer for Legal Practice (COLP) and Money Laundering Reporting Officer (MLRO). The Firm closed on 31 May 2016. As at the date of the substantive hearing Mr Guise did not hold a practising certificate.

3. The conduct complained of came to the attention of the Applicant via two separate reports. On 17 November 2015, the Applicant received a report on behalf of the Commercial Litigation Association ("CLAN"). On 12 May 2016, the Applicant received a second report from Mr S Don acting on behalf of Client A.

4. The allegations levelled at Mr Guise were predicated on the transfer of funds in 2014 and 2015 from CLAN Commercial Services ("CCS"), totalling £20,200.00, in respect of Allegation 1.1, and the Firm's Client Account totalling £353.000.00, in respect of Allegation 1.2. Mr Guise accepted that he was responsible for making the disputed transfers. The only issues that fell to be determined by the Tribunal were (a) whether Mr Guise was authorised to do so and (b) if not, whether he did so dishonestly.

5. **Witnesses**

For the Applicant

- Natalie Garrard: Forensic Investigation Officer ("FIO")
- Ms S Dunn
- Mr MB
- Client A

For Mr Guise

- None

Relevant Legal Framework

Integrity

6. When required to do so, the Tribunal applied the principles/legal test promulgated in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366 namely:

> "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 arbiter 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."

Dishonesty

7. When required to do so, the Tribunal applied the principles/legal test promulgated in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] namely:

> "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 fact finder by applying the (objective) standards of ordinary decent people. There is no

> requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

Findings of Fact and Law

8. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to Mr Guise's right 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.

9. The Tribunal considered all the material placed before it in evidence and submissions. The evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below in so far as it was relevant to the findings of the Tribunal, and to matters in dispute between the Parties.

10. **Allegation 1.1 – Between or around 23 July 2014 and 14 August 2015, he made one or more unauthorised transfers of monies from CLAN Commercial Services Limited ("CCS") as set out in Schedule 1. He thereby breached all or any of Principles 2 and 6 of the SRA Principles 2011.**

The Applicant's Case

10.1 Mr Collins submitted that in addition to his position as the director, COLP and MLRO of Guise Solicitors Ltd ("the Firm"), Mr Guise was the sole director of two companies which were involved in developing Cloud platforms conducting civil litigation and arbitration namely iCourt Ltd ("iCourt") and eARB Ltd ("eARB").

10.2 Mr Guise's activities in civil litigation also extended to founding the Commercial Litigation Association ("CLAN") which was designed to facilitate professional networking amongst those interested in dispute resolution. At all material times, Mr Guise was the director of CLAN and held the banking mandate.

10.3 As part of its work, CLAN organised events for the legal profession. It was agreed in 2014 that those events would be operated by Clan Commercial Services ("CCS"). Mr Collins submitted that, although linked through those events, CCS was a separate limited company, with its own Articles of Association, directorship, shareholding and tax liabilities. The directors of CCS at the material time were Mr Guise and Ms S Dunn, neither of whom were entitled to derive any income or salary from their directorship.

10.4 Ms S Dunn provided statements to both the Police and to the Applicant in which she confirmed the separation between CCS and CLAN. She further explained how funds would be distributed and managed in that CCS retained funds to cover operational costs with the balance to be distributed between Annecto Legal Limited ("Annecto") (90%) and CLAN (10%). The division of funds reflected the fact that Annecto carried out all the administrative work, delivered the training, and underwrote the risk on behalf of CCS. Ms S Dunn made plain in both statements that CCS operated independently of CLAN in that CLAN briefed CCS as to what was required in respect of conferences, training and events which CCS delivered. Both Mr Guise and Ms S Dunn held the banking mandates for CCS. CCS operated using online banking

which required a one-time password for new payees in respect of which authorisation codes were sent to Ms S Dunn's mobile telephone. Mr Collins therefore submitted that if Mr Guise had tried to transfer funds from CCS to an account other than CLAN, an established payee on the CCS online banking mandate, he needed Ms S Dunn to provide the authorisation code.

10.5 Mr MB was a member of the CLAN Executive. He provided statements to the police and the Applicant in which he confirmed that CCS and CLAN were separate legal entities. He explained that payments to CLAN would be made by CCS raising an invoice for the same following reconciliation of funds received post conferences, training and events.

10.6 Mr Collins submitted that, in respect of the July 2014 transfers, Mr Guise admitted to Ms S Dunn and Mr MB that he had transferred the disputed funds, by three transactions totalling £8,400.00, and that it had been a 'mistake'. The funds were returned on 7 August 2014 and Mr Guise was permitted to remain on the bank mandate, but was told by Ms S Dunn and Mr MB that he should not transfer funds without authorisation from them.

10.7 In August 2015 further funds were transferred to Mr Guise's accounts via CLAN, by two transactions totalling £16,000. An initial £8,000, was transferred from CCS's savings account, which had been reserved to meet CCS's tax liabilities, on 12 August 2015 and immediately forwarded to Mr Guise's own company iCourt. A further £8,000 was transferred on 14 August 2015. As with the July 2014 transfers, once in CLAN's accounts the money was forwarded but on that occasion the funds were sent directly to Mr Guise's personal current account.

10.8 The 2015 transfers were identified by Ms S Dunn towards the end of August 2015, she contacted Mr Guise to obtain an explanation as to why funds reserved for tax liabilities had been transferred without her authorisation. Mr Guise assured her that the totality of the disputed transactions would be returned.

10.9 The funds had still not been received by 6 October 2015, and Ms S Dunn raised the issue at the monthly CLAN teleconference. Mr Guise was present on the call and stated that the funds had been moved to iCourt for the purposes of '*development work'*, and that he would return the funds the following day.

10.10 On 4 November 2015, the disputed funds had still not been received. CCS notified Mr Guise by letter that formal action would be taken if the funds were not repaid. Mr Guise, in a meeting with two members of CLAN's executive committee, denied receiving the letter of 4 November 2015, but confirmed that he would pay the money back to CCS and that the money had been used to pay for "geeks/developers" in relation to work completed for iCourt.

10.11 By 17 November 2015 the disputed funds had not been returned to CCS. A report was therefore made to the Applicant by the six solicitor members of the CLAN executive Committee, setting out the complaint regarding the disputed transactions.

10.12 By way of an email dated 1 December 2015 to Ms S Dunn, Mr Guise denied any wrong doing and asserted that the monies had been applied for the purposes for which CLAN and CCS were founded. Notwithstanding that assertion, Mr Guise stated that:

> "…I have agreed to inject £16,000 in [CCS] and I expect to have done that by the end of this month…"

10.13 The funds were not returned by 14 December 2015 and Mr MB and Ms S Dunn attended the Firm's offices. The meeting was recorded on Mr MB's mobile telephone and Mr Guise reiterated that (a) he would return the money and (b) that it had been invested.

10.14 Mr Guise was interviewed by the Police under caution on 18 February 2015. In interview Mr Guise confirmed that (a) Ms S Dunn would not have been aware of the transfers, (b) that he did not notify CCS of the transfers, (c) that, in response to the question as to whether he benefited from a wage or salary from iCourt, he told the police that he may benefit going forward if the business was successful but only through his shareholdings and (d) he had not personally benefitted from CCS's monies. Mr Guise reiterated to the police that the £16,000 transferred in August 2015 was for the development of IT platforms.

10.15 Mr Collins stated that following Mr Guise's refusal to disclose his personal bank details, the Firm's bank details and iCourt's bank details, a production order was obtained by the Police. Mr Guise contended that his refusal was predicated on concerns as to client confidentiality. The Applicant subsequently obtained copies of those bank accounts via a s44B Production Notice.

10.16 With regards to the relationship between iCourt and CCS, Mr Collins submitted that whilst there were discussions regarding iCourt at CLAN meetings, CCS's focus – as a separate entity - was on training and events. Mr Collins contended that Mr Guise never had authority to use CCS money for anything to do with an IT platform for the civil justice system.

Principle Breaches

10.17 Principle 2 required Mr Guise to act with integrity. Mr Collins submitted that by knowingly transferring funds without authorisation from CCS to accounts owned or controlled by Mr Guise, Mr Guise failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. Mr Collins relied upon Wingate, in which it was said that "integrity connotes adherence to the ethical standards of one's own profession", to support that contention.

10.18 Principle 6 required Mr Guise to behave in a way that maintained the trust placed in him and in the provision of legal services by the public. Mr Collins submitted that public confidence in Mr Guise, in solicitors at large and in the provision of legal services was likely to be undermined by Mr Guise appropriating monies to which he was not entitled.

Dishonesty

10.19 Mr Collins submitted that Mr Guise's actions were dishonest in that:

- Mr Guise knew that the funds were held by CCS to pay for the organisation's tax liabilities
- Mr Guise knew that he was not authorised to make one or more of the disputed transfers
- The funds were transferred into Mr Guise's own account for Mr Guise's own personal benefit at a time when Mr Guise's personal accounts were overdrawn.

10.20 Against that context, Mr Collins averred that ordinary, decent people would consider Mr Guise's conduct to have been dishonest.

10.21 Mr Collins called and relied upon the evidence of the following witnesses in support of his submissions.

10.22 **Natalie Garrard**: Forensic Investigation Officer ("FIO")

10.22.1 Ms Garrard confirmed that the content of her Forensic Investigation Report ("FIR") dated 29 June 2016 and supplementary statement dated 16 September 2019 were true to the best of her knowledge and belief. She adopted both documents as her evidence in chief before the Tribunal.

10.22.2 In response to further questions posed by Mr Collins, Ms Garrard stated that she had been an FIO for nearly 6 years, prior to that she was an Accounts Manager at Lloyds for 3 years and prior to that was a police officer specialising in financial crime for 13 years.

10.22.3 Ms Garrard confirmed that she had analysed the bank statements for the following accounts:

- The Firm's Office bank account and Deposit account.
- The Firm's Client bank account and Deposit account.
- Two bank accounts for iCourt and a loan account.
- Two bank accounts for eARB.
- Two personal accounts held in Mr Guise's name.
- A personal loan account held in Mr Guise's name.
- CCS current account and savings account.

10.22.4 Ms Garrard summarised the flow of money emanating from CCS on 23 July 2014 as three payments of (a) £4,200.00 from the CCS current account to CLAN current account; (b) £2,000.00 from CLAN current account to the Firm's Office account; (c) £2,200.00 from CLAN current account to iCourt account. Thereafter, £2,200.00 was transferred from iCourt to Mr Guise's personal bank account which, prior to the transfer, was overdrawn by £240.00. Upon receipt of the funds into his personal

current account Mr Guise made a debit card transaction from his current account in the sum of £2,200.00.

10.22.5 Ms Garrard summarised the flow of money emanating from the CCS savings account on 12 August 2015 in the sum of £8,000.00 to CLAN then immediately forwarded onto iCourt. On 14 August 2015 a further £8,000.00 was transferred from the CCS savings account to CLAN then immediately forwarded onto Mr Guise's personal current account.

10.22.6 Mr Guise put to Ms Garrard that on her first visit to the Firm on 25 April 2015 she "…kindly explained … those businesses [CLAN, CCS, iCourt and eARB] and the underlying dispute [were] not matters with which the [Applicant] is concerned…" Ms Garrard rejected that assertion and stated that (a) she did not recall herself or her colleague saying that, (b) she checked her notes and there was no record of that conversation, (c) her job was to collate the evidence pertinent to the reported complaint which was essentially the transactions were unauthorised and (d) she did not decide which allegations were ultimately levelled against Mr Guise and referred to the Tribunal.

10.22.7 Mr Guise put to Ms Garrard that she was not independent of the Applicant. Ms Garrard rejected that assertion and stated that she was independent, her report was factual and she expressed no opinion therein.

10.22.8 Mr Guise put to Ms Garrard that she had coached witnesses which she rejected. Mr Guise asked whether she was aware of colleagues employed by the Applicant or Capsticks coaching witnesses and she replied that she could only answer for herself.

10.22.9 Mr Guise put to Ms Garrard that she was "working with [Mr Collins]" in relation to her supplementary witness statement. Ms Garrard replied that she received an email from Mr Collins with further evidence attached (bank statements obtained after her FIR had been finalised) for her to review which she did.

10.22.10 Mr Guise put to Ms Garrard that her analysis of the bank statements was incomplete and did not "serve a purpose" as she did not determine what the funds derived from the disputed transfers were spent on. Ms Garrard rejected that assertion and stated that she was asked to look at what happened to the disputed transactions, where they went from CCS accounts to other accounts but not what they were ultimately spent on. Mr Guise suggested that Ms Garrard should have looked at all of the accounts, including a joint account held in his and his wife's name, and review all of the bank statements not just the disputed transactions. Ms Garrard reiterated that her role was to "follow the money" in relation to the disputed transactions which is what she did. Mr Guise put to Ms Garrard that she made a deliberate choice not to review his joint bank account. Ms Garrard stated that she made a conscious decision to review relevant accounts solely under the control which were relevant to the investigation.

10.22.11 Mr Guise asked Ms Garrard whether she had found evidence of loans taken out by the Firm to which she replied "not from the office account". Mr Guise asked Ms Garrard whether she had found evidence of an overdraft facility on the Firm's office account, to which she replied "it was not usual to see that from the bank statement". Mr Guise asked Ms Garrard whether she found evidence of defaulting

payments on the Firm's office account to which she replied "no". Mr Guise asked Ms Garrard whether she found evidence of the Firm's liabilities or "crown debts" such as VAT, PAYE and the like. Ms Garrard replied that she did not on the face of the bank statements but that she did not review any other correspondence or notices that could have emanated from HMRC.

10.22.12 Mr Guise put to Ms Garrard that if she had been thorough and professional in her investigation she would have looked beyond the bank statements. Ms Garrard rejected that assertion and stated that the remit of her investigation was led by the Applicant and that she would have only extended beyond that if she had reason to suspect further breaches had occurred.

10.22.13 Ms Garrard made plain that she was tasked by the Applicant to forensically investigate alleged unauthorised transactions as particularised in the Allegations before the Tribunal.

10.23 **Ms S Dunn**: (Director of CCS)

10.23.1 Ms S Dunn confirmed that the content of her witness statement dated 16 April 2020 and the police statements exhibited thereto were true to the best of her knowledge and belief. She adopted them as her evidence in chief before the Tribunal.

10.23.2 In response to supplementary questions posed by Mr Collins, Ms S Dunn confirmed that (a) she was required to authorise any transactions from the CCS accounts before they were effected, (b) she required sight of an invoice prior to giving authorisation for a transaction, (c) that process was agreed with her assistant as Annecto was responsible for the reconciliation of bank statements and (d) Mr Guise was fully aware of that process at the material time as it was common practice for funds to be received by CCS and payments to third parties to be made from CCS accounts in that manner with the remaining funds to be distributed to Annecto and CLAN.

10.23.3 Ms S Dunn averred that payments to Annecto and CLAN would be agreed with Mr Guise and an invoice raised for the requisite sum. Ms S Dunn stated that, in respect of the disputed transactions, no invoices were raised, no agreement was reached and Mr Guise did not have authority to transfer funds from CCS in the manner that he did. Ms S Dunn further stated that the consequence of the disputed transactions was that CCS did not have sufficient funds to meet its corporation tax liabilities.

10.23.4 Mr Guise put to Ms S Dunn, and she accepted, that the only client of CCS was CLAN and that the only money received by CCS emanated from CLAN's activities. Mr Guise suggested that CCS would receive payment for CLAN membership and events, take a fee from the same and pay the remainder to CLAN. Ms S Dunn stated that process was correct but was subject to there being sufficient funds in CCS accounts to meet third party liabilities such as the cost of hosting events and monies owed to Her Majesty's Revenue and Customs.

10.23.5 Mr Guise put to Ms S Dunn that she had an interest in CLAN activities, wanted to make money from CLAN events and that she, along with Mr MB, were the only people "earning" from CCS. Ms S Dunn stated that her interest was limited to

ensuring that regular events took place and that the surplus money derived from that was shared between CLAN and Annecto respectively.

10.23.6 Mr Guise put to Ms S Dunn that when she challenged him about the disputed transactions in 2014, he did not promise not to do it again. Ms S Dunn stated that she "believe[d] that he did".

10.23.7 Mr Guise challenged Ms S Dunn's recollection of their meeting at Paul's Café, London, on 20 November 2014 and asserted that it was not an "important" meeting as she had not taken any notes of the same. Ms S Dunn did not accept that contention and stated that it was an "informal meeting to give [Mr Guise] an opportunity to put [his] position on the table" following the disputed 2014 transactions.

10.23.8 Mr Guise asked Ms S Dunn whether she always told the truth to which she replied that she tried to but that she accepted she sometimes got it wrong. Mr Guise asserted that she had "lied to the police" by stating that Mr MB took his phone out of his pocket (when recording their meeting on 14 December 2015). Ms S Dunn denied that assertion and stated that as far as she could remember that is what Mr MB did. Mr Guise put to Ms S Dunn that she, along with Mr MB, had "falsely imprisoned" him in his office on 14 December 2015. Ms Dunn denied that assertion in its entirety.

10.23.9 Mr Guise put a number of share certificates for CLAN, eARB and iCourt spanning 2013-2016 to Ms S Dunn and asked her to reconcile the discrepancies between them and CCS's financial statement for the year ending January 2019. Ms S Dunn stated that all documents lodged at Companies House were true to the best of her knowledge and belief. She further stated that the accounts were not filed by her, they were prepared and filed by CCS's accountant.

10.23.10 Mr Guise put to Ms S Dunn an attendance note dated 11 April 2018, prepared by JZM; an employee of Capsticks LLP. Ms S Dunn stated that she recalled a conversation with Capsticks but couldn't recall the date and that any information she gave was true to the best of her knowledge and belief. Mr Guise suggested that it was not as she gave a different account as to shareholding to JZM than that which she set out in her police statements. Ms S Dunn rejected that suggestion and stated that the shareholding changed from when she made statements to the police in 2016 and when her witness statement on behalf of the Applicant, via Capsticks LLP, was prepared.

10.23.11 Mr Guise put to Ms S Dunn that she, along with Mr MB, concocted a story about him stealing money and reported him to the Applicant as a means by which to remove him from CLAN's directorship which in turn would increase Annecto's profits. Ms S Dunn denied those assertions in their entirety.

10.23.12 Mr Guise put to Ms S Dunn that she had "blackmailed" the executive members of CLAN, namely seven solicitors, into reporting him to the Applicant by the threat that she would report them if they failed to do so. Ms S Dunn denied so doing and stated that she advised the CLAN executive that she was "reviewing whether she had to report the whole of the executive committee for misconduct".

10.23.13 Mr Guise referred Ms S Dunn to CLAN's Articles of Association as authority for the disputed transactions that he had effected, in particular paragraph 3.1 thereof which stated:

> "…Any expenditure (or commitment to do such) exceeding £10,000.00 in respect of any one item or project or series of related items or projects…"

10.23.14 Ms S Dunn stated that she was unaware of that document as she had nothing to do with CLAN or how CLAN managed its finances.

10.23.15 Mr Guise put to Ms S Dunn that there was no documentary evidence to support her suggestion that profit held by CCS (once Annecto and CLAN had been paid) was "ring-fenced to pay corporation tax liabilities". Ms S Dunn stated that there was no mechanism to do so, it was held in the CCS savings account for that purpose and that Mr Guise was aware of that.

10.24 **Mr MB:** (Director of CLAN and Annecto)

10.24.1 Mr MB confirmed that the content of his witness statement dated 16 April 2020 and the police statements exhibited thereto were true to the best of his knowledge and belief. He adopted them as his evidence in chief before the Tribunal.

10.24.2 Mr Guise put to Mr MB, and he accepted, that (a) the only client of CCS was CLAN, (b) the only funds deposited into CCS accounts emanated from CLAN membership/events and (c) CCS took its fee from those events and paid the balance to CLAN.

10.24.3 Mr Guise suggested to Mr MB that a number of elements in his police statements contained inaccuracies with regards to ownership of CLAN, shareholdings and the relationship between CLAN and Annecto. Mr MB stated that the evidence contained in his police statements reflected his understanding of all matters contained therein at the time of making those statements.

10.24.4 Mr Guise put to Mr MB that the report made to the Applicant was done with the intention to remove his CLAN directorship. Mr MB denied that fact and stated that the report was made because Mr Guise used CCS funds as his "personal piggy bank" and when challenged in 2014 he accepted that he had made a mistake and repaid the funds with a promise not to make unauthorised transactions again. Mr MB further stated that he and Ms S Dunn had tried to resolve the matter amicably but that after the 2015 transactions and Mr Guise's position in that regard it became apparent that the solicitor executives of CLAN were "putting themselves at risk by not reporting" him to the Applicant. Mr Guise asserted that Mr MB and Ms S Dunn "concocted a story about theft". Mr MB rejected that assertion and stated, repeatedly, that Mr Guise had "stole[n] CCS money".

10.24.5 Mr Guise put to Mr MB that he had threatened the solicitor executives of CLAN and coerced them into reporting him to the Applicant. Mr MB stated that he "had no recollection of that whatsoever".

10.24.6 Mr Guise put to Mr MB that, at their meeting on 20 November 2014 he did not promise not to make transactions from CCS to CLAN again. Mr MB stated that CCS was a limited company in respect of which he, Ms S Dunn and Mr Guise were directors. He further stated that Mr Guise took money from CCS without authorisation from him or Ms S Dunn, and when they discovered that fact a meeting took place at Paul's Café at which meeting Mr Guise promised to repay the monies taken and not to do it again. Mr MB made plain that Mr Guise "absolutely made that promise to [him] and Ms S Dunn at Café Paul when [they] met to discuss face to face" the disputed transactions of 2014.

10.24.7 Mr Guise put to Mr MB that he was "wrongfully imprisoned" by him and Ms S Dunn on 14 December 2014; Mr MB rejected that suggestion. Mr Guise put to Mr MB that he was not aware that the conversation on that date was recorded. Mr MB stated that it was "blindingly obvious", in that he held his mobile telephone in front of him, despite the fact that he did not state out loud that he was recording the conversation. Mr Guise referred Mr MB to the Settlement Agreement entered into by CLAN and CCS on 25 May 2016 and asked "how much did CLAN record as due to [him] for wrongful imprisonment". Mr MB stated that there was none and that the Agreement was based on a commercial decision to recoup as much of the disputed transactions as possible following months of promises made by Mr Guise to return the full amount but failing to do so.

10.24.8 Mr Guise put to Mr MB that the disputed transactions represented investment from CCS into iCourt which was agreed with the CLAN executives. Mr MB rejected that assertion and stated that Mr Guise had "taken money from CCS without authorisation" which he saw from the CLAN accounts. Mr MB stated that Mr Guise was able to make further unauthorised transfers in 2015 as CLAN was still on the CCS mandate for online banking as an "existing paying" which thereby vitiated the need for an authorisation code to be sent to Ms S Dunn.

10.24.9 Mr Guise suggested to Mr MB that monies held by CCS belonged to CLAN. Mr MB rejected that suggestion and asserted it was not CLAN money, it was CCS money which was why it was deposited into CCS's accounts. Mr Guise asked Mr MB to direct the Tribunal to any evidence to support the fact that monies held by CCS was reserved for its tax liabilities. Mr MB stated that the best evidence was the fact that after 90% of CCS money was transferred to Annecto and 10% to CLAN, the remainder was reserved to meet CCS expenditure which was largely tax liabilities.

10.24.10 Mr Guise referred Mr MB to CLAN's Articles of Association as authority for the disputed transactions that he had effected, in particular paragraph 3.1 as set out above, as authority for the disputed transactions. Mr MB commented that those Articles of Association related to transactions from CLAN accounts and that there was no such provision in CCS's Articles of Association.

10.24.11 Mr Guise suggested to Mr MB that the disputed transactions from CCS to CLAN represented short term loans. Mr MB did not accept that fact and stated that they were neither loans nor investments, they were unauthorised transactions that Mr Guise made then subsequently had to repay. Mr Guise suggested to Mr MB that CLAN had authority to use CCS money for investment in iCourt. Mr MB did not

accept that fact and stated CLAN had no authority over money from an entity over which it had no control.

Application to Stay Proceedings as an Abuse of Process

Mr Guise's Application

10.25 Mr Guise made an application for the proceedings to be stayed as an abuse of process. His application was predicated on three grounds; (i) unfairness due to bad faith on the part of the witnesses which was endorsed by the Applicant, (ii) the inadmissibility of NG's (FIO) evidence and (iii) lack of jurisdiction.

10.26 Mr Guise stated that the Applicant had no published guidance in relation to when proceedings should be stayed on the grounds of unfairness. He referred the Tribunal to guidance used in that regard by the Crown Prosecution Service and the Health and Safety Executive. He further relied upon the Attorney-General's Reference (no 2 of 2001) [2004] 2 AC 72 to support the contention that proceedings should be stayed in circumstances where:

(1) A fair hearing was no longer possible; or
(2) It was otherwise unfair to continue to try the accused.

10.27 *Unfairness/Bad Faith*

10.27.1 Mr Guise submitted that Ms S Dunn and Mr MB had sought to deceive the police, the Applicant and Companies House. The evidence that they provided was presented to the Tribunal without any attempt to "root out the bad evidence".

10.27.2 Mr Guise submitted that the Applicant had adopted the bad faith of Ms S Dunn and Mr MB by its failure to investigate. Mr Guise submitted that the Applicant should have secured evidence from the solicitor executives of CLAN which would have supported his contention that they had been blackmailed into reporting him to the Applicant.

10.27.3 Mr Guise further submitted that the Applicant failed to analyse and evaluate the inconsistencies in Ms S Dunn and Mr MB's various police statements relied upon either properly or at all. He contended that no attempt was made to address those inconsistencies despite the fact that he had drawn them to the Applicant's attention during the course of the investigation, his Answer to the Rule 12 Statement, his witness statements and skeleton argument. Mr Guise maintained that those inconsistencies detrimentally impacted on the witnesses' credibility. Mr Guise advanced one example of those witnesses "obviously lying" in the inconsistent account of their recording the conversation when they "wrongfully imprisoned" him. Mr Guise asserted that it could not have been "blindingly obvious" that they were recording as they did not announce that they were so doing.

10.27.4 Mr Guise stated that there were clear inconsistencies, the Applicant's failure to investigate the inconsistencies rendered the proceedings unfair and the failure to examine all of the evidence in and of itself amounted to an abuse of process.

10.27.5 Mr Guise averred that had the witness evidence been evaluated "no proceedings would have commenced because of the inconsistencies, contradictions and lies of the witnesses".

10.27.6 Mr Guise relied upon the Tribunal's decision in Nabeel Sheikh (11821/2018) in particular:

> "…
>
> [124.15] The Tribunal found that the Applicant was under a duty to investigate and to ensure that only allegations that were supported by the evidence were placed before the Tribunal. It failed to do so in relation to these proceedings…"

10.27.7 Mr Guise cited that excerpt as authority for the proposition that the Applicant was under a duty to (a) investigate reports properly, (b) evaluate the evidence adduced and (c) not act as a "cipher" for the complainants' evidence. He averred that the Applicant failed in all respects in that there were inconsistencies in the various witness statements which "on the face of it showed that the Applicant was being lied to and called out for further investigation". Mr Guise acknowledged that "not every lie will be a bar [to proceedings being issued] but if there was deceit and perjury, as there was on the instant facts, the Applicant should not bring [proceedings] before the Tribunal…"

10.28 *Inadmissibility of NG's (FIO) evidence*

10.28.1 Mr Guise submitted that the Forensic Investigation Report ("FIR") and Supplementary Statement made by NG referred to an "independent forensic investigation". Mr Guise stated that neither document demonstrated independence as:

- NG was an employee of the Applicant.
- NG failed to analyse all of Mr Guise's bank statements.
- NG ignored transactions and the joint bank account Mr Guise held with his wife as it would "tend to undermine the Applicant's case".

10.28.2 Mr Guise submitted that the FIR should be disregarded by the Tribunal in light of the observations made.

10.28.3 Mr Guise asserted that the Supplementary Statement may have carried greater weight if it had been independently undertaken and if the investigation had been complete. Mr Guise averred that it was the opposite and amounted to an incomplete and subjective exercise that purposely omitted evidence that contradicted the "Applicant's narrative" that he was short of money and used the disputed transactions to support his lifestyle and the Firm. Mr Guise further averred that the exhibit cover sheets post-dated the date which the Supplementary Statement was signed by NG which rendered it inadmissible.

10.28.4 Mr Guise therefore submitted that the Supplementary Statement and its exhibits should be disregarded by the Tribunal.

10.29 *Lack of jurisdiction*

10.29.1 Mr Guise relied upon Beckwith v Solicitors Regulation Authority [2020] EWHC 3231 (Admin) as (a) a "modern statement of the scope of the Applicant's regulatory powers" and (b) to support the proposition that Principle 2 (integrity) and Principle 6 (public trust) was only engaged if the individuals conduct in their private life touched upon his practice or the profession of which he was a member.

10.29.2 Mr Guise asserted that the regulatory arm of the Applicant did not extend to his conduct in relation to CLAN and consequently that the Principles were not engaged as CLAN was an unregulated entity with no connection to the practice of solicitors.

10.29.3 Mr Guise further relied upon the Applicant's enforcement strategy regarding the private life of solicitors which provides that:

> "…Our key role is to act on wrongdoing which relates to an individual or a firm's legal practice. We will not get involved in complaints against a solicitor which relate solely to, for example, their competence as a school governor or their involvement in a neighbour dispute…"

10.29.4 Mr Guise therefore submitted that the disputed transfers, between two unregulated entities, was beyond the scope of the Applicant and, as such, the Tribunal had no jurisdiction to adjudicate upon them.

The Applicant's Position

10.30 Mr Collins reminded the Tribunal that the power to stay a case for an abuse is an exceptional power to be used sparingly and as a "remedy of last resort". Mr Collins submitted that the burden was on Mr Guise to satisfy the Tribunal that it would be unfair to try him given the circumstances of the case. Mr Collins submitted that Mr Guise had failed to discharge that burden on a balance of probabilities.

10.31 *Unfairness/Bad Faith*

10.31.1 Mr Collins submitted that Mr Guise's submissions in respect of "fair trial" were misconceived in that (a) questions as to the reliability of Applicant's witnesses were for the trial of the issue and (b) there was no impediment to Mr Guise testing the Applicant's witnesses or the Tribunal fairly adjudicating the case.

10.31.2 Mr Collins contended that the Applicant had carried out its own independent forensic investigation and had satisfied itself, on the basis of all the available evidence (including but not limited to the evidence of the complainants themselves), that there was a case to answer. Mr Collins stated that position was further borne out by virtue of the fact that the Tribunal had certified the case as demonstrating a case to answer.

10.31.3 Mr Collins submitted that Mr Guise had not met the threshold required for the proceedings to be stayed as an abuse of process. The trial process was well equipped to test the evidence of the witnesses through cross examination and as such the hearing should proceed.

10.32 *Inadmissibility of NG's (FIO) evidence*

10.32.1 Mr Collins reminded the Tribunal that there had been no specific application by Mr Guise to exclude NG's evidence. NG's evidence was extensively relied upon in the Rule 5 Statement as well as the pleadings served and filed by Mr Guise. A Civil Evidence Act Notice was served on Mr Guise in respect of NG on 27 December 2019 but no objection was raised with regards to inadmissibility.

10.32.2 Mr Collins submitted that the relevance and probative value of NG's evidence to the contested issues, namely the provenance of the disputed transactions and where they were disseminated, was made plain in the Rule 5 Statement and by the manner in which he opened the case for the Applicant.

10.32.3 Mr Collins contended that there was no basis upon which the Tribunal should, as Mr Guise appeared to be inviting them to, exclude the documentary and oral evidence received from NG. That evidence was tested at length by Mr Guise's cross examination of her which the Tribunal could fairly take into account in reaching its decision in respect of the Allegations.

10.33 *Jurisdiction*

10.33.1 Mr Collins reminded the Tribunal that it retained jurisdiction to hear the application against Mr Guise under s47 of the Solicitor's Act 1974.

10.33.2 It was well established that professional misconduct may include certain matters outside of a professional's practice and the Applicant's rules expressly and on their face extend to matters outside of a solicitor's practice. Mr Collins referred the Tribunal to the following provisions:

(i) Paragraph 3(a) of the Introduction to the Applicant's Handbook 2011 provides in relation to the Principles that "In some circumstances they apply outside practice”.

(ii) Paragraph 2.6 of the Applicant's Principles provides in relation to Principle 2 that “Personal integrity is central to your role as the client's trusted adviser”.

(iii) Paragraph 2.10 of the Applicant's Principles provides in relation to Principle 6 that "Members of the public should be able to place their trust in you. Any behaviour either within or outside your professional practice which undermines this trust damages not only you, but also the ability of the legal profession as a whole to serve society”.

(iv) Paragraph 5.1 of the Applicant's Principles, headed “Application of the SRA's Principles outside practice” provides "In relation to activities which fall outside practice, whether undertaken as a lawyer in some other business or private capacity, Principles 1, 2, and 6 apply to you if you are a solicitor”.

10.33.3 With regards to NG's evidence, Mr Collins reminded the Tribunal that she denied having “assured” Mr Guise that the disputed transactions were beyond the scope of his position as a solicitor and in respect of non-regulated entities CLAN and CCS

therefore were beyond the regulatory remit of the Applicant. Mr Collins further averred that NG's role was to carry out an investigation as directed by the Applicant, to provide a forensic analysis and produce a report/witness statement that was based on fact as opposed to assumptions or opinion.

10.33.4 With regards to Beckwith in which it was held that Principle 2 and 6 did not have "unfettered application across all aspects of a solicitor's private life", it went on to provide that the Principles apply when the private conduct "realistically touches on her practice of the profession (Principle 2) or the standing of the profession (Principle 6)". Mr Collins therefore submitted that the conduct alleged at Allegation 1.1, dishonestly transferring funds from CCS was plainly capable of engaging the Applicant's Principles in that:

(i) The integrity and honesty of solicitors in managing funds was integral to the profession.

(ii) The disputed funds were appropriated by Mr Guise via CLAN, in which the Respondent was a solicitor member, and Mr Guise's Firm.

(iii) CCS, whilst not a law firm, provided training and conferences to the legal profession;

10.33.5 Mr Collins rejected Mr Guise's assertion that the alleged conduct was analogous to "complaints against a solicitor which relate solely to, for example, their competence as a school governor or their involvement in a neighbour dispute". Mr Collins submitted that there was a clear nexus between the provenance of the disputed funds, the lack of authorisation in that regard and Mr Guise's position as a solicitor.

10.33.6 Mr Collins submitted that Allegation 1.1 plainly could amount to a breach of the Principles and proper approach was for the Tribunal to determine the issue following consideration of all the evidence.

The Tribunal's Findings

10.37 The Tribunal applied the legal principles promulgated in the well-established authorities set out below.

10.38 In R v Maxwell [2011] 1 WLR 1837 at [13], Lord Dyson summarised the two categories of case which justify a stay of a prosecution that would otherwise be an abuse of process:

> "It is well established that the Court has the power to stay proceedings in two categories of case, namely
>
> (i) where it will be impossible to give the accused a fair trial, and
> (ii) where it offends the Court's sense of justice and propriety to be asked to try the accused in the particular circumstances of the case…"

10.39 The Tribunal determined that in the first category of case, if it concluded that Mr Guise could not receive a fair trial, the Tribunal was duty bound to stay the proceedings without more. No question of balancing of competing interests arose.

10.40 In the second category of case, the Tribunal determined that it must stay the proceedings if it concluded that in all the circumstances (a) a trial would offend the Tribunal's sense of justice and propriety (per Lord Lowry in R v Horseferry Road Magistrates' Court ex p Bennett [1994] 1 AC 42, 74g) or (b) that to proceed would undermine public confidence in the Tribunal proceedings and bring it into disrepute (per Lord Steyn in R v Latif [1996] 1 WLR 104, 112f).

10.41 A permanent stay should be "the exception, rather than the rule" and "no stay should be granted in the absence of serious prejudice to the defence so that no fair trial can be held": per Rose LJ in R v S (SP) [1996] EWCA Crim 756 at [21], which summarised the views of the Court of Appeal in Attorney-General's Reference (no 1 of 1990) [1992] QB 630.

10.42 It was for Mr Guise to show on the balance of probabilities that he would suffer "serious prejudice" as made plain in Attorney-General's Reference (no 1 of 1990) [1992] QB 630 at 644a-b.

10.43 The Tribunal applied Attorney-General's Reference (no 2 of 2001) [2004] 2 AC 72 at [25] (emphasis added) in which it was held:

> "The category of cases in which it may be unfair to try a defendant of course includes cases of bad faith, unlawfulness and executive manipulation of the kind classically illustrated by R v Horseferry Road Magistrates' Court ex p Bennett [1994] 1 AC 42, … It would be unwise to attempt to describe such cases in advance. They will be recognisable when they appear. Such cases will however be very exceptional, and a stay will never be an appropriate remedy if any lesser remedy would adequately vindicate the defendant's Convention rights".

10.44 *Unfairness/Bad Faith*

10.44.1 **The Applicant's Evaluation/Review of the Evidence** - The role of the Applicant was to consider which aspects of the complaint made against solicitors necessitated investigation. The Applicant performed that function and appointed NG to undertake a forensic investigation into the disputed transactions.

10.44.2 The Tribunal accepted that Ms Garrard followed the Applicant's instructions, gathered information, afforded the Respondent the opportunity to respond both during face to face interview and in correspondence before reaching the conclusions that she did in her FIR. The Tribunal found that Ms Garrard's report was factual and did not contain inadmissible opinion evidence.

10.44.3 With regards to Ms Garrard's supplementary statement, she was instructed by Mr Collins to review all relevant bank statements and set out the flow of funds from CCS to CLAN and then thereafter. Ms Garrard did this and produced a factual supplementary statement in that regard. The fact that Mr Collins sought this

additional evidence demonstrated to the Tribunal that the Applicant's case was being reviewed, analysed and evaluated prior to being lodged at the Tribunal. Mr Guise had not suffered serious prejudice by the manner in which the investigation progressed.

10.44.4 The Tribunal did not accept Mr Guise's assertions that the Applicant failed to explore the "inconsistencies" in Ms S Dunn and Mr MB's various witness statements. The Tribunal noted that there were some discrepancies between the police statements and the statements provided to the Applicant as well as between the witnesses. However, those inconsistencies were not material to the allegations. Examples of the inconsistencies included share allocation and matters noted in the minutes of the CLAN Executive meetings. All of the inconsistencies were put to Ms S Dunn and Mr MB under cross examination. The Tribunal as a finder of fact was able to evaluate their responses. Mr Guise had not suffered serious prejudice as a result of the same.

10.44.5 It was plain to the Tribunal that the Applicant had, contrary to Mr Guise's contentions, reviewed and evaluated the evidence post issue of the proceedings. That was evidenced by the disclosure made upon Mr Guise's request to the Applicant which was acceded to without requiring a formal direction from the Tribunal. The Applicant's Statement of Costs also demonstrably showed the time spent reviewing the case.

10.44.6 **Applicant's failure to obtain witness statements from the CLAN Executive -** The Tribunal did not accept Mr Guise's submissions that the solicitor members of the CLAN Executive were "blackmailed" into reporting him to the Applicant by Ms S Dunn. Her position was plain from the contemporaneous documentary evidence which stated that she was "reviewing whether she had to report the whole of the executive committee for misconduct". The Tribunal rejected the suggestion that Ms S Dunn's position was tantamount to blackmail. The Tribunal further rejected the Respondent's assertions that had witness statements been obtained from the six solicitor members of the CLAN Executive, they would have resiled from their initial position as set out in the report to the Applicant and would in fact have supported Mr Guise's defence. The Tribunal was also cognisant of the fact that there "was no property in a witness" and therefore, if Mr Guise believed that the CLAN Executive could have provided evidence to support his position, it was open to him to obtain it rather than claim unfairness at the Applicant's decision not to.

10.44.7 **Applicant's deliberate decision to issue proceedings pre 25 November 2019 -** The Solicitors (Disciplinary Proceedings) Rules 2019 came into force on 25 November 2019. The most significant amendment to the Rules was the change in the standard of proof for proceedings before the Tribunal. Pre 25 November 2019, the Applicant was (as in this case) required to prove the allegations beyond reasonable doubt. Post 25 November 2019, the Applicant was required to prove the allegations on a balance of probabilities. Mr Guise submitted that the Applicant lodged the proceedings pre 25 November 2019 with the deliberate intention of "avoiding the disclosure of documents which would've been exculpatory". There was no evidence before the Tribunal to suggest that material evidence had been withheld by the Applicant. Mr Guise sought to persuade the Tribunal that it was unfair of the Applicant to have issued proceedings before the 25 November 2019.

The Tribunal rejected that assertion in its entirety and determined that in so doing, the Applicant had to discharge the burden of proving the allegations to a higher standard which in and of itself was more favourable to Mr Guise.

10.44.8 **The difference between "reserved" and "book marked"-** Mr Guise sought to persuade the Tribunal that the Applicant had unfairly amended its case during the course of opening submissions. He averred that the Rule 5 Statement referred to CCS monies being "reserved" for tax liability purposes yet, when Mr Collins opened the case, those monies were referred to as being "book marked".

10.44.9 The Tribunal rejected that assertion and found that the terms were synonymous. The language deployed by Mr Collins did not vitiate the underlying submission which was that CCS retained funds to pay corporation tax and other expenses of the entity.

10.44.10 The interchangeable use of the terms did not cause any, let alone serious, unfairness to Mr Guise.

10.44.11 The Tribunal refused Mr Guise's application for proceedings to be stayed as an abuse of process on the ground of unfairness/bad faith.

10.45 *Inadmissibility of NG's Evidence*

10.45.1 The Tribunal paid significant regard to the fact that (a) having received the Civil Evidence Act Notice in respect of NG on 17 December 2019, Mr Guise did not lodge an application for it to be excluded prior to the commencement of the substantive hearing, (b) Mr Guise did not make an application for the evidence to be excluded as a preliminary issue at the outset of the substantive hearing and (c) the Tribunal had already received NG's oral evidence which was subjected to extensive cross examination by Mr Guise.

10.45.2 Having received NG's oral evidence, the Tribunal determined that it was properly admitted and the weight to be attached to it was a matter properly left to the Tribunal within the confines of the trial process. There was no unfairness or bad faith that caused serious prejudice to Mr Guise by admitting NG's evidence and assessing its probity in the usual manner.

10.45.3 The Tribunal therefore refused Mr Guise's application for proceedings to be stayed as an abuse of process on the ground of inadmissible evidence.

10.46 *Jurisdiction*

10.46.1 Mr Guise sought to persuade the Tribunal that it did not have the jurisdiction to determine Allegation 1.1 as it (a) related to conduct disassociated with his role as a solicitor and (b) related to CCS and CLAN which were not subject to the Applicant's regulatory powers.

10.46.2 The Tribunal carefully considered Mr Guise's submissions that the misconduct alleged did not relate to his practice as a solicitor or in the provision of legal services. The Tribunal rejected that submission and determined that CLAN was, on Mr Guise's own account, a membership body for solicitors and barristers in the field

of commercial litigation. It was intrinsically linked to Mr Guise's position as a solicitor and engaged the profession at large. Further, Allegation 1.1 related to the dishonest use of CCS funds, derived from membership fees and payments for legal conferences, seminars and events. The Tribunal determined that dishonest misconduct, if proved, on the part of a solicitor undoubtedly had a detrimental impact on that solicitor as well as public trust in the profession and fell well within the Tribunal's jurisdiction to adjudicate upon.

10.46.3 Mr Guise relied upon a purported conversation between himself and Ms Garrard when she visited the Firm on 25 April 2015 in which she "…kindly explained … those businesses [CLAN, CCS, iCourt and eARB] and the underlying dispute [were] not matters with which the [Applicant] is concerned…". The Tribunal noted that Ms Garrard denied that there was a conversation along those lines and relied upon the fact that it was not documented in any of her investigation notes that it was. The Tribunal was cognisant of the fact that any dispute in the evidence was a matter for the Tribunal to determine in due course and did not impinge on its jurisdiction to hear the same.

10.46.4 The Tribunal concluded that the Applicant was charged with regulating the conduct of solicitors. Such conduct included, but was not limited to a solicitor's practice. Conviction cases are but one example of such conduct. Allegation 1.1 referred to actions with the Applicant alleged were dishonest and as such was plainly within the scope of the Applicant's regulatory powers and plainly within the scope of the Tribunal's adjudicative function.

Submission of No Case to Answer

Mr Guise's Application

10.47 Mr Guise relied upon both limbs of the test promulgated in R v Galbraith [1981] 1 WLR 1039 namely that (a) there was no evidence upon which a properly directed Tribunal could find the allegation proved or (b) there was some evidence but that it was weak, tenuous and inconsistent. Mr Guise submitted that the only issue that fell to be determined was whether he was authorised to make the disputed transactions and his submissions were predicated on that fact.

10.48 *No evidence*

10.48.1 Mr Guise submitted that NG's statement dated 16 September 2019, which supplemented her FIR, was irrelevant in that it related to the use of the funds derived from the disputed transactions. Mr Guise averred that the Tribunal, properly directed, should put this statement and the exhibits appended thereto "out of its mind" as it held "no probative" value. Mr Guise contended that the "attribution of money to [him] and to iCourt could only be properly understood by an accountant" and that NG's statement was insufficient in that regard. Mr Guise surmised that NG's evidence was either wholly irrelevant or inadmissible as the use to which he put the disputed funds was not material to Allegation 1.1.

10.48.2 Mr Guise submitted that he was not required to obtain the agreement of Ms S Dunn with regards to the disputed transactions despite the Applicant stating that he did by virtue of CCS's Articles of Association. Mr Guise contended that as neither Ms S Dunn nor the Applicant had referenced the specific Article it relied upon, there was no evidence upon which it could be said that he had no authority to make the disputed transactions.

10.48.3 Mr Guise submitted that, in relation to CCS money being reserved in order to meet tax liabilities, both Ms S Dunn and Mr MB "had no idea how money was book marked". Mr Guise contended that "book marked" was the term used by Mr Collins in his opening address to the Tribunal. There was no evidence to suggest that money was "reserved" or "book marked" by CCS. Mr Guise made plain that he did not accept that the terms "reserved" and "book marked" were synonymous and, as the Applicant's case was that it was "book marked", there was no evidence to support that contention.

10.48.4 Mr Guise submitted that there was no evidence before the Tribunal to support the Applicant's case in the following respects:

- That the 2014 disputed transactions were unauthorised.
- That he accepted that the 2014 disputed transactions "were a mistake" as there were no records of meetings that took place between him, Ms S Dunn and Mr MB nor was there any record in the CLAN minutes of meetings.
- Due to the inadmissibility of NG's evidence there was no evidence, for example from an accountant, which set out the use of the disputed funds.

10.49 *Tenuous evidence*

10.49.1 In the alternative, Mr Guise submitted that CLAN was a shadow director of CCS and he was authorised by virtue of CCS's Articles of Association to unilaterally transfer funds up to £10,000.00. Mr Guise relied upon that provision in CCS's Articles as demonstrably showing "the reality of what happened" such that, he submitted, the Applicant's evidence in that regard was inherently tenuous.

10.49.2 With regards to NG's evidence, Mr Guise submitted that it was irrelevant, lacked probity and fundamentally flawed as it did not take into account the representations he had made during the forensic investigation.

10.49.3 With regards to Ms S Dunn and Mr MB's evidence, Mr Guise submitted that it was dishonest, predicated on blackmail and inconsistent therefore held little or no probative value. Mr Guise denied their evidence that he had been told in 2014 that he was not authorised unilaterally to transfer money out of the CCS bank account without authorisation from Ms S Dunn.

10.49.4 Mr Guise submitted that the evidence of Ms S Dunn and Mr MB was "tenuous given their proclivity to lie to the police, the Applicant and the Tribunal".

10.49.5 Mr Guise stated that the Applicant should have obtained witness statements from the six solicitor members of CLAN's Executive Board who would have confirmed that the disputed funds were properly invested in iCloud as agreed at Board meetings.

10.49.6 In summary, Mr Guise submitted that the totality of the evidence he faced with regards to Allegation 1.1 was "nine witness statements, live evidence and documentary evidence which was tenuous because evidence exists to support [his case]" which was not obtained. Mr Guise further submitted that there were inconsistencies in the witness evidence both in respect of their various statements and between each other. Mr Guise averred that the oral evidence of the Applicant's witnesses was "flawed by poor memory, given recklessly without reference to the facts or contemporaneous documentary evidence" and further that the witnesses "couldn't explain the inconsistencies" in the numerous iterations of their evidence.

10.50 For all of the reasons set out above Mr Guise submitted that the Tribunal, properly directed, should find that he has no case to answer.

The Applicant's Position

10.51 Mr Collins submitted that the Galbraith test required the Tribunal to consider if a reasonable Tribunal reasonably directed could find that Mr Guise undertook the disputed transfers without authorisation. Mr Collins submitted that it could on the basis of the oral evidence of NG, Ms S Dunn and Mr MB who were all subjected to extensive cross examination by Mr Guise.

10.52 Mr Collins submitted that all of the Applicant's witnesses had come up to proof and, both individually and collectively, repeatedly confirmed that Mr Guise did not have the authority to make the disputed transfers.

10.53 Mr Collins averred that the assessment of the Applicant's witnesses fell squarely within the domain of the Tribunal to assess reliability, the trial process enabled the Tribunal to carry out that assessment and as such the matter should proceed.

The Tribunal's Findings

10.54 The Tribunal noted that a "case to answer" was defined in Rule 2(1) of the Solicitors (Disciplinary Proceedings) Rules 2007 as "an arguable or prima facie case." That fell to be determined by using the test promulgated in R v Galbraith [1981] 1WLR 1039:

> "…
>
> (1) If there is no evidence that the crime alleged has been committed by the defendant, there is no difficulty. The judge will of course stop the case.
>
> (2) The difficulty arises where there is some evidence but it is of a tenuous character, for example because of inherent weakness or vagueness or because it is inconsistent with other evidence.
>
> (a) Where the judge comes to the conclusion that the prosecution evidence, taken at its highest, is such that a jury properly directed

could not properly convict upon it, it is his duty, upon a submission being made, to stop the case.

(b) Where however the prosecution evidence is such that its strength or weakness depends on the view to be taken of a witness's reliability or other matters which are generally speaking within the province of the jury and where on one possible view of the facts there is evidence upon which a jury could properly come to the conclusion that the defendant is guilty, then the judge should allow the matter to be tried by the jury…. There will of course, as always in this branch of the law, be borderline cases. They can safely be left to the discretion of the judge…"

10.55 Applying the first limb of the Galbraith test, namely that there was no evidence upon which the Tribunal could "convict", the Tribunal rejected that submission. There was plainly some evidence before the Tribunal which could lead to it finding Allegation 1.1 proved. That evidence emanated from Ms Garrard and her analysis of the "flow of money". It was accepted that the transactions had occurred. The issue was authority. Ms S Dunn gave evidence that the Respondent was not authorised to transfer funds from CCS to CLAN unilaterally. Mr MB, under extensive cross examination, maintained his position which can be summarised thus; "you [Mr Guise] took the money, we [Mr Guise, Mr MB and Ms S Dunn] met, you stated it was a mistake, you agreed not to do it again, you did". Mr MB went on to state that Mr Guise "treated the accounts like a personal piggy bank which of course they were not".

10.56 With regards to the second limb of the Galbraith test, the evidence was tenuous such that no reasonable Tribunal reasonably directed could "convict", the Tribunal rejected that submission. The evidence of Ms S Dunn and Mr MB was not inherently weak or vague. It was evidence from which the Tribunal was capable of concluding that the Respondent could be, to use the language of Galbraith, convicted.

10.57 The Tribunal determined that there was a case for Mr Guise to answer in respect of Allegation 1.1.

Mr Guise's Case

10.58 Mr Guise confirmed that he was aware of the Solicitors Disciplinary Tribunal Practice Direction No. 5 (dated 4 February 2013) which provides that:

> "…The Tribunal directs, for the avoidance of doubt that, in appropriate cases where a Respondent denies some or all of the allegations against him (regardless of whether it is alleged that he has been dishonest), and/or disputes material facts, and does not give evidence or submit himself to cross examination, the Tribunal shall be entitled to take into account the position Mr Guise has chosen to adopt as regards to the giving of evidence when reaching its decision in respect of its findings. This direction applies regardless of the fact that Mr Guise may have provided a written signed statement to the Tribunal…"

10.59 Mr Guise did not give evidence.

10.60 In closing submissions to the Tribunal Mr Guise relied on that which he averred in respect of the submission of no case to answer. He further submitted that the Tribunal should disregard Ms Garrard's evidence on the basis that it was not relevant to the issue of whether or not he was authorised to make the disputed transactions.

10.61 With regards to the evidence of Ms S Dunn and Mr MB, Mr Guise submitted that both witnesses had "made clear" that their memory was poor as the matters in question were 5-6 years ago. Mr Guise submitted that the fallibility of recollection was such that it rendered their evidence unreliable. Mr Guise contended that Ms S Dunn and Mr MB conspired together to commit criminal offences, by lying to the police, to the Applicant and the Tribunal as well as their "blackmail" of the CLAN Executives and "wrongful imprisonment" of him on 14 December 2014 when they "covertly" recorded the conversation on Mr MB's mobile telephone.

10.62 Mr Guise further submitted that CLAN was a shadow director of CCS and that gave him authority to undertake the disputed transactions as "CLAN was entitled to deal with CCS money as it saw fit".

The Tribunal's Findings

10.63 The Tribunal carefully considered the evidence before it and the submissions of the parties. Mr Guise did not dispute making the disputed transactions. The Tribunal found that he made them on his admission and the oral evidence before it. The only issue that fell to be considered was whether he was authorised to do so.

10.64 The Tribunal found the evidence of Ms Garrard, Ms S Dunn and Mr MB to have been honest, reliable, clear and that they were both credible. The inconsistencies with regards to shareholding of the various companies did not vitiate their credibility. That evidence related to a peripheral matter.

10.65 Ms S Dunn's evidence was clear and consistent. She stated, and the Tribunal found, that Mr Guise had no authority to make unilateral transfers from CCS accounts. The Tribunal found that Mr Guise was aware of that fact because after the 2014 disputed transfers were discussed at Paul's Café on 20 November 2014 he admitted his mistake and promised to return the funds. Notwithstanding that promise Mr Guise made further unauthorised transfers from CCS accounts in 2015.

10.66 Mr MB's evidence was clear and consistent. He stated repeatedly that Mr Guise did not have authorisation to make the disputed transfers and that Mr Guise used CCS funds as his "personal piggy bank".

10.67 The Tribunal paid significant regard to the fact that the Respondent did not give evidence to the Tribunal. The Tribunal determined that that the failure of the Respondent to give evidence was capable of giving, and did in fact give, rise to the inference that he had no innocent explanation or at least no innocent explanation that would withstand the scrutiny of questioning.

10.68 The Tribunal considered the submissions of Mr Guise. The Tribunal rejected his submission that CLAN was a shadow director of CCS and rejected Mr Guise's submission that he had "inherent and intrinsic authority to use CCS money as he [saw] fit". The Tribunal found that he was not entitled to make the disputed transfers because the oral evidence of Ms S Dunn and Mr MB was clear and consistent.

10.69 The Tribunal rejected Mr Guise's submission that he was not aware that the meeting on 14 December 2014 was being recorded; the Tribunal preferred the evidence of Mr MB, which was corroborated by Ms S Dunn, that it was "blindingly obvious" that the meeting was being recorded.

10.70 The Tribunal rejected Mr Guise's submission that the reduction in the amount repaid by him in accordance with the Settlement Agreement dated 25 May 2016 reflected the fact that he was "wrongfully imprisoned". The Tribunal preferred the evidence of Mr MB that CLAN and CCS made a commercial decision to accept a sum less than the total amount of the disputed transactions to see an end to the matter.

10.71 The Tribunal rejected Mr Guise's submission that Ms S Dunn "blackmailed" the six solicitor members of the CLAN Executive into reporting him to the Applicant. The Tribunal preferred Ms S Dunn's evidence, corroborated by the email dated 13 November 2015 from DH, that she was "reviewing whether she had to report the whole of the executive committee". Mr Guise in these proceedings submitted (in terms) that the complaint made by the executive of CLAN was brought in consequence of undue and improper pressure by Ms S Dunn, ergo the claim was without merit. Mr Guise submitted also that the Applicant had failed to properly investigate this matter by their failure to interview (all or some of) the Executive. Such interviews, it was submitted, would be entirely exculpatory of the Respondent. The Tribunal rejected both of these submissions.

10.72 The Tribunal found the factual matrix of Allegation 1.1 proved beyond reasonable doubt.

Principle Breaches

10.73 Principle 2 required Mr Guise to act with integrity. Whilst the Tribunal was not sure that the disputed transactions of 2014 were not a mistake, the 2015 transactions were deliberate and made by the Respondent when he knew he did not have authority to make them. The Respondent's actions in making the 2015 transactions plainly lacked integrity as Mr Guise was well aware that he was not entitled to undertake the same.

10.74 The Tribunal therefore found the breach of Principle 2 proved beyond reasonable doubt.

10.75 Principle 6 required Mr Guise to behave in a manner which maintained the trust the public vested in him and in the provision of legal services. The Tribunal determined that the unauthorised use of monies by Mr Guise undermined public trust in him, it further undermined public trust in the provision of legal services as the public was entitled to expect that solicitors would access money without authorisation.

10.76 The Tribunal therefore found the breach of Principle 6 proved beyond reasonable doubt.

Dishonesty

10.77 The Tribunal firstly considered Mr Guise's knowledge/belief of the facts at the material time. The Tribunal found that prior to the 2014 disputed transactions Mr Guise may have believed that he was authorised to undertake them and that they may have been a mistake. That belief was undoubtedly vitiated after the meeting in Paul's Café with Ms S Dunn and Mr MB on 20 November 2014 at which the position was made plain that he was not authorised to make unilateral transactions from CCS accounts. Mr Guise, at that meeting, acknowledged his mistake, promised to return the funds and not to do it again. Thereafter he knew that he was not authorised to make unilateral transactions from CCS accounts yet he proceeded to do so in 2015. The Tribunal determined that, by the standards of the ordinary reasonable man, Mr Guise's conduct in respect of the 2015 transactions was dishonest.

10.78 The Tribunal found dishonesty proved beyond reasonable doubt.

11. **Allegation 1.2 - Between or around 13 November 2014 and 5 August 2015, he made one or more unauthorised transfers of monies from the client account of Guise Solicitors Ltd ("the Firm"), as set out in Schedule 2. He thereby breached all or any of 20.1 of the SRA Accounts Rules 2011, and Principles 2, 4, 6 and 10 of the SRA Principles.**

The Applicant's Case

11.1 Client A reported Mr Guise to the Applicant in respect of unauthorised transfers made from his client account held at the Firm to Mr Guise's accounts during 2014 and 2015.

11.2 On 4 November 2014, Client A received a remittance of approximately £600,000 following a divorce and sale of a property. Shortly thereafter, Mr Guise broached the prospect of his iCourt business with Client A firstly in person and subsequently by email dated 13 November 2014. In that email Mr Guise stated:

> "…When we met last week I raised the possibility of you making a loan to me for £50,000 from the settlement monies to assist in developing a business called iCourt Limited (in which I am a director and shareholder) which provides a Cloud based platform to enable Court users to access the Court file in civil proceedings.
>
> There is no comparable system on offer in England and Wales today. I promised to send you an explanatory paper and that is attached; the document was prepared for law firms who would be the majority of users in this market. The document is not an invitation to invest and I explained that if the money were to be taken as a loan the interest rate payable would be 10% simple with a balloon payment at the end of 12 months…

> Pending confirmation of how you would prefer this sum treated I have taken £40,000 on account today and will agree the basis of the payment with you when we meet next week.…"

11.3 Mr Collins submitted that despite no agreement having been reached with Client A, Mr Guise transferred £40,000.00 from Client A's account. In fact, Client A did not respond to that message at the material time, due to his work as a ship inspector which limited his internet access and ability to access/reply to emails. Mr Collins contended that when Client A met with Mr Guise later in November 2014 he made plain that he was not interested in investing in or lending Mr Guise monies for iCourt/eARB as he required his settlement to provide for his family. Client A requested funds from his client account for that purpose in the sums of £88,000.00, £110,000 and £4,330.50 which were undertaken by Mr Guise.

11.4 Client A instructed Mr Guise to make a further payment of £80,000 from his client account by way of an email dated 6 November 2015, from the Firm's client account to Client A's account in the following terms:

> "…can you pl*(sic)* transfer £80,000 (eighty thousand pounds) from the proceeds of … from my client account to my following account…
> I have long loans and debts which are accruing high interests and also effected *(sic)* my credit history. Appreciate if you can transfer it today and I will settle all the debts at my end. Please text me when transferred…"

11.5 On 11 December 2015, Client A sent a further email to Mr Guise in which he stated:

> "…I again request you if you can pl*(sic)* transfer £80,000 from my client account to my Barclays account…"

11.6 On 21 March 2016, Client A requested funds by email in which he stated:

> "…As we discussed in our last meeting, can you please transfer £93,000 (ninety three thousand pounds) in my following account as I have couple of CCJs, creditors chasing and past debts to pay…"

11.7 On 11 April 2016 £93,000.00 was transferred to Client A's personal bank account, the funds did not come from the Firm's client account but instead were sent from an account belong to eARB.

11.8 On 9 May 2016, Client A received an email from Mr Guise stating that the Firm would cease trading on 31 May 2016 as Mr Guise was concentrating on developing IT platforms for the conduct of civil litigation and arbitration proceedings. Client A wrote to Mr Guise on the same date to highlight the delay in transferring the remaining funds to his account and his concern regarding the monies held by the firm arising from the settlement of Property A. Client A requested the balance of his client account to be credited to his account no later than 12 May 2016.

11.9 Client A instructed Mr S Don to assist in recovering the balance of funds from Mr Guise. Mr S Don wrote to Mr Guise on 12 May 2016 highlighting that the Firm

had retained Client A's funds and that the Firm had refused to provide a Statement of Account.

11.10 On 13 May 2016, Mr S Don received a 'Statement of Account' drawn up relating to Client A's matters. The Statement of Account details the payments as transfers with the reference "YP S[****] GUISE SOLS". Client A reviewed that Statement of Account and noted that (a) it did not reflect the £93,000.00 paid to him on 11 April 2016 and (b) he did not authorise 23 payments made out of his client account between 13 November 2014 and 5 August 2015 totalling £441,500.00 ("the disputed payments").

11.11 On 20 May 2016, Mr S Don wrote to the Firm requesting clarification as to where the disputed payments had been sent. Mr Guise replied on 23 May 2016 but failed to provide the information requested. No mention was made of Client A's alleged investments or loans in or to iCourt/eARB.

11.12 After the Firm ceased trading (with a nil balance on the client account) Mr S Don received correspondence from the Firm (dated 1 June 2016) which stated that Client A had agreed to invest and loan to IT cloud based companies and the nil balance of his settlement monies for the sale of the property after liabilities to HMRC and payments of '*certain other sums*'. It was stated that the agreement was reached in November 2014 and discussed again in January 2015 when Client A requested repayment of £93,000. Mr Guise asserted that this was repayment of monies loaned to eARB. Mr Collins submitted that this was a curious feature of the transfers as none of the disputed funds were ever transferred straight from the client account to eARB.

11.13 Ms Garrard attended the Firm on 25 April 2016 and conducted an initial interview. Following a review of the documents obtained from the Firm a second interview was conducted on 3 June 2016.

11.14 During in the course of the second interview, Mr Guise repeated that the funds were transferred to iCourt and eARB as part of an investment/loan agreement and had been spent on the two platforms. Mr Guise confirmed that Client A had not received a return on his investment because there was no cash flow through the company and stated that the proportions as to which was loaned and which was an investment were never finalised. Mr Guise asserted that a written agreement was produced, although it had not been signed by Client A. Mr Guise agreed to look for the written agreement and send them the following week.

11.15 Mr Collins submitted that no copy of a written contract (either signed or unsigned) had been produced by Mr Guise to the Applicant to evidence an agreement for the investment or loan of over a quarter of a million pounds of Client A's monies. The only documentary evidence adduced by Mr Guise were the emails of 13 November 2014 referred to above and four brief attendance notes dated 30 January 2015, 5 June 2015, 5 November 2015 and 11 November 2016; the contents of which were disputed by Client A. Mr Collins submitted that the last attendance note must have been intended to refer to 11 November 2014 as (a) it described initial discussions, (b) the Firm had closed in May 2016 and (c) Client A had disputed the funds by November 2016.

11.16 The 11 November note was described under matter 'Issues arising from the sale of 118 Ebury St' which indicated that anything to do with Client A's settlement funds would be recorded on the file. The note recorded Client A as being interested in investing on the basis that he wanted a return better than he could get in a bank, but wanted a split between a loan and investment, and that subject to him i) agreeing the determination of that split, and ii) taking independent legal advice, Client A was content to apply the balance of his settlement.

11.17 The next note, 30 January 2015, recorded that terms had not been agreed but that Client A had taken independent legal advice despite the fact that no formal agreement was ever produced or signed. Client A accepted that a meeting took place on that date but there was no discussion regarding IT platforms and the purpose of the meeting was to get hold of Mr Guise and his funds out of the client account.

11.18 The note for 5 June 2015, simply stated 'reported as to the progress of the Platforms in brief'. Client A's account was that a meeting occurred on that date but there was no discussion in relation to Platforms. The aim of the meeting was to chase up the transfer of his funds repeatedly requested on previous occasions.

11.19 The note for Thursday, 5 November 2015, similarly recorded that the terms of investment and loan had not yet been agreed. Client A's evidence was that a meeting had occurred on that date as he urgently needed access to his funds and there was no discussion regarding an investment. Client A sent text messages the following day reiterating the request for the money to be transferred.

11.20 Mr Collins submitted that the attendance notes were created to fabricate an agreement. In particular:

- The withdrawal on £40,000 on 13 November 2014 was expressly taken without the client's authority.

- Even on the basis of the disputed notes £60,000 (payments 13 November 2014 – 7 January 2015, inclusive) was taken before purported confirmation of legal advice.

- All the funds were taken, as Mr Guise accepted, before any agreement as to what the actual arrangement was;

- No reference was made to loans or investments following Client A's requests for funds to be sent to him (e.g. 'as you will be aware the funds you request have already been invested/loaned as instructed and are not available');

- The note of the initial discussion was (incorrectly) dated 2016 as opposed to 2014 and corresponded to the year of the Applicant's investigation following Client A's formal report.

- No copy of the agreement was ever produced (for a deal worth over a quarter a million pounds), no correspondence on updates on the purported investment or

loan, no apparent transfer of shareholdings or note of security and that Mr Guise practiced in commercial litigation and acted as his Firm's COLP and MLRO.

11.21 Mr Collins further submitted that if the money been invested, this would have been evidenced in the flow of funds. The FIO's analysis demonstrated a consistent pattern of funds being transferred directly from the Firm's client account, arriving in iCourt (which either did not have funds or significant funds) before being forwarded to Mr Guise's current account.

11.22 Mr Collins referred the Tribunal Ms Garrard's analysis of the "flow of money" in respect of which Mr Guise did not take issue in either his Answer to the Rule 12 Statement, the witness statements or skeleton argument filed at the Tribunal.

11.23 One example contained within that analysis showed £15,000 having been transferred on 4 July 2015 from the Client account to iCourt which only held £1,500 prior to the transfer. Those funds were dissipated on 7 July 2015 (£5,000.00), 9 July 2015 (£3,000.00) and 13 July 2015 (£2,000.00) to merchants such as Amazon, the Globe, Garden Centres and Dirty Martini. Mr Collins averred that iCourt's account was only put in funds again upon receipt of the next disputed payment of £10,000.00 on 20 July 2015.

11.24 Mr Collins submitted that Ms Garrard further analysed the position in respect of the relevant accounts. The disputed payments from Client A's account, totalling £279,300.00, were transferred from iCourt to Mr Guise's current account with only £56,000 remaining in iCourt to pay direct debts, loans and assorted payments. Of the funds received into Mr Guise's current account almost £240,000.00 was dissipated on merchants such as hotels, restaurants, retailers and loan repayments. The disputed payments amounted to over half the total £534,000 received by Mr Guise over the period 2 Jan 2014 to 1 July 2016. A period in which the account was still repeatedly overdrawn and such that direct debts were declined.

11.25 In summary, Mr Collins submitted that the apparent business opportunity, iCourt, did not maintain a credit balance during that period, ignoring the existing loan account where interest was being paid off on £100,000 bank facility, to the extent that iCourt's direct debits were regularly declined and Client A's settlement funds propped up the company and providing 75% of its cash flow.

Accounts Rules Breaches

11.26 The Solicitors Accounts Rules 2011, r.20.1states:

> "…Client money may only be withdrawn from a client account when it is:
>
> (a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held);
>
> (b) properly required for a payment in the execution of a particular trust, including the purchase of an investment (other than money) in accordance with the trustee's powers;

(c) properly required for payment of a disbursement on behalf of the client or trust;

(d) properly required in full or partial reimbursement of money spent by you on behalf of the client or trust;

(e) transferred to another client account;

(f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing;

(g) transferred to an account other than a client account (such as an account outside England and Wales), or retained in cash, by a trustee in the proper performance of his or her duties;

(h) a refund to you of an advance no longer required to fund a payment on behalf of a client or trust (see rule 14.2(b));

(i) money which has been paid into the account in breach of the rules (for example, money paid into the wrong separate designated client account) - see rule 20.5 below;

(j) money not covered by (a) to (i) above, where you comply with the conditions set out in rule 20.2; or

(k) money not covered by (a) to (i) above, withdrawn from the account on the written authorisation of the SRA. The SRA may impose a condition that you pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received…"

11.27 Mr Collins submitted that all of the funds were transferred directly to iCourt from the client account which represented a clear breach of Rule 20.1.

Principle Breaches

11.28 Principle 2 required Mr Guise to act with integrity. Mr Collins submitted that by transferring client funds from the Client Account without authorisation, Mr Guise failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. Mr Collins submitted that a solicitor acting with integrity would have ensured that authorisation was obtained from Client and instructions from him to transfer funds from the Client Account prior to so doing.

11.29 Principle 6 required Mr Guise to behave in a way that maintained the trust placed in him and in the provision of legal services by the public. Mr Collins submitted that, by transferring funds from the Client Account without authorisation, public confidence in Mr Guise, in solicitors and in the provision of legal services was likely to be undermined. The public expected solicitors to ensure that client assets are kept safe and funds only be transferred upon authorisation and instruction.

11.30 Principle 4 required Mr Guise to act in the best interests of Client A. Principle 10 required Mr Guise to protect Client A's money and assets. Mr Collins submitted that by transferring client funds from the Client Account without authorisation or instruction from Client A to do so, Mr Guise failed to act in Client A's best interests and failed to protect Client A's money.

Dishonesty

11.31 Mr Collins submitted that Mr Guise's actions were dishonest in that:

- Client A had never agreed to invest iCourt or eARB. The client had expressly and repeatedly refused to invest.
- Mr Guise must have known that he did not have authorisation from Client A to make the transfers that he did.
- The monies were transferred at a time when Mr Guise was required to service loans.
- Transfers occurred at a time when Mr Guise's relevant accounts were overdrawn.
- The funds were transferred for Mr Guise's own personal benefit, and/or to the benefit of organisations in which he held an interest.

11.32 Against that context, Mr Collins averred that ordinary, decent people would consider Mr Guise's conduct to have been dishonest.

11.33 Mr Collins called and relied upon the evidence of Client A in support of his submissions.

11.34 **Client A**

11.34.1 Client A confirmed that the content of his witness statements dated 26 May 2016 and 29 November 2017 were true to the best of his knowledge and belief. He adopted them as his evidence in chief before the Tribunal.

11.34.2 In response to supplementary questions put to him by Mr Collins Client A gave further evidence.

11.34.3 With regards to his employment as a ship inspector, he was regularly required to travel to China and the Far East for inspections, there was no Wi-Fi access on board ships thus his internet access was limited to when he was at the hotel pre and post inspection and that time was limited and did not enable him to access and respond to the "hundreds" of emails that he had received.

11.34.4 With regards to his domestic circumstances, Client A stated that at the material time he had just come out of a "very bad and very long" divorce, he needed the settlement funds to rebuild his life and to provide a home for his new wife and young children.

11.34.5 With regards to his meeting with Mr Guise on 7 November 2014, there was a discussion in which Mr Guise "casually asked me about investing" when he walked Client A to the lift. Client A stated that he "categorically said no, said [he] needed to rebuild his life with the settlement and never wanted to invest in iCourt or any of [Mr Guise's] companies".

11.34.6 When he received Mr Guise's email dated 13 November 2014 (which referred to investment in iCourt and Mr Guise having taken £40,000.00 from the Client Account), he thought he was travelling inspecting ships in Europe or China which was why he did not immediately reply. It was usual for him to go 2 weeks to 1 month without full access to his emails as he was inspecting ships abroad. He believed that he returned to the UK mid-December 2014.

11.34.7 When he received notification from Mr Guise that the Firm was going to close on 31 May 2016 he was "absolutely shocked and concerned. [He] called Mr Guise but there was no reply" and he wasn't aware of what was going on. The subject matter of that email, populated by Mr Guise, was "iCourt".

11.34.8 Mr Guise put to Client A that he had agreed to invest in iCourt. Client A emphatically rejected that assertion and stated that there absolutely was not any such agreement to invest. Mr Guise put the disputed payments to Client A and asserted that they were all authorised. Client A rejected that assertion and stated that they absolutely were not authorised.

11.34.9 Mr Guise put to Client A that he did not reply to the email of 13 November 2014 because there was an agreement by him to invest in iCourt. Client A rejected that assertion and stated that "[Mr Guise] knew my modus operandi regarding working on ships, [he] spoke to [Mr Guise] in December and told [Mr Guise] that [he] didn't want to invest and [Mr Guise] said that [Mr Guise] hadn't taken any money because it was a proposal…" Mr Guise put to Client A that he did have access to emails as evidenced in the email dated 13 November 2014 to the Firm. Client A stated that internet access was limited to when he was in the hotel lobby waiting for the ship but once on board he had no access.

11.34.10 Mr Guise suggested to Client A that he did not object to the investment at the material time. Client A rejected that assertion and stated that he did object when they spoke about it.

11.34.11 Mr Guise put to Client A that all of the Attendance Notes, referred to above, accurately reflected meetings on the given dates and discussions that occurred. Client A maintained that the attendance notes were false and that the only discussion that took place between them regarding iCourt investment was on 7 November 2014 whilst waiting for the lift. Client A stated that the Attendance Notes were "all part of [Mr Guise's] ploy" and that Mr Guise's personality was such that he "never listened and always talked about" himself.

11.34.12 Mr Guise took Client A to the text messages dated Tuesday 3 to Wednesday 11 November and Wednesday 30 March to Friday 5 May. Mr Guise put to Client A that he mistakenly referred to them as messages from 2014 – 2015 in his witness statements as opposed to 2015 – 2016. Client A stated that when he met with

Ms Garrard, in the presence of his solicitor Mr S Don, they asked for his mobile telephone which he gave and they printed off what they needed from it so any mistake in that regard was theirs. Mr Guise put to Client A that he "created" the text messages after the event to which Client A replied "absolutely not".

11.34.13 Mr Guise took Client A to the decision of the Applicant's Compensation Fund application dated 18 June 2019 in which his claim for compensation (with regards to the disputed payments) was rejected. Mr Guise put to Client A that the emails that he submitted to the Appeal Panel were fabricated post refusal of his initial claim to the Fund determined on 21 August 2018. Client A rejected that assertion. Mr Guise asked Client A why the production of emails was delayed, in that they had not been submitted to the Firm upon request or in support of the initial claim if they had existed then. Client A stated that he was guided by the legal advice given by Mr S Don, numerous searches were undertaken of his email account and the most thorough revealed the emails which he submitted in support of his appeal.

11.34.14 In re-examination, Mr Collins asked Client A whether his financial position, as at the date of the hearing, had improved. Client A stated that it had not, in fact it had worsened as he remained in a one-bedroom flat with his wife and two young children with no funds to buy a family home.

Application to Stay Proceedings as an Abuse of Process

<u>Mr Guise's Application</u>

11.35 Mr Guise made an application for the proceedings to be stayed as an abuse of process. His application was predicated on the ground of unfairness/bad faith on the part of Client A and the Applicant.

11.36 Mr Guise relied upon the legal framework and legal principles as set out above at paragraph 10.26.

11.37 Mr Guise submitted that Client A had lied to the police and to the Applicant in the witness statements he had made and that the Applicant should have been alive to that fact as Mr Guise had advanced that position during the investigation meetings and correspondence thereafter. Mr Guise stated that he had made plain to the Applicant that Client A would "dissemble and deceive" which should have "rung alarm bells" with the Applicant to analyse and evaluate Client A's evidence. Mr Guise averred that the Applicant failed to do so, failed to "appraise" Client A's allegations and "enabled" Client A to deceive.

11.38 Mr Guise submitted that Client A's evidence had evolved over time, was inconsistent and based upon false emails and text messages that only came to light as the investigation progressed.

11.39 Mr Guise stated that there was further bad faith on the part of the Applicant in its failure to "consider the evidence afresh" after the Appeal Panel to the Solicitors Compensation Fund dismissed Client A's claim for compensation as it found that there was an investment agreement between Client A and iCourt.

11.40 Mr Guise submitted that the Applicant's failure to evaluate Client A's evidence before issuing proceedings amounted to bad faith on its part which inevitably resulted in unfairness to in the adjudication process such that the Tribunal should "stop the proceedings".

The Applicant's Position

11.41 Mr Collins relied upon his submissions, as set out above at paragraph 10.30 in respect of Mr Guise's application for Allegation 1.1 to be stayed as an abuse of process. Mr Collins submitted that it was not "unfair" to proceed with Allegation 1.2 nor would it offend the Tribunal's "sense of propriety to do so". Mr Collins submitted that the assessment of Client A's evidence was a matter that should properly be determined by the Tribunal and that the trial process enabled it to do so.

11.42 With regards to the AP Decision, Mr Collins submitted that it made its determination on the papers, did not receive oral evidence, was focused on whether compensation should be awarded to Client A (as opposed to whether Mr Guise was guilty of misconduct, and was not binding on the Tribunal. Mr Collins submitted that the AP Decision did not vitiate the proceedings before the Tribunal. Mr Collins averred that Mr Guise had not discharged the burden incumbent on him to satisfy the Tribunal that proceedings should be stayed as an abuse of process; the exceptional threshold simply had not been met.

The Tribunal's Findings

11.43 The Tribunal applied the principles and legal tests set out above at paragraphs 10.38 –10.43.The Tribunal firstly considered whether there was bad faith on the part of Client A which was adopted by the Applicant in its failure to analyse, review and evaluate Client A's evidence. The Tribunal was not satisfied that Mr Guise had discharged the burden of proving that Client A had fabricated his evidence, falsified emails and misled in relation to the text messages exhibited to his statement. The Tribunal found that the elaboration of Client A's evidence was a natural consequence of oral evidence before the Tribunal which was tested by way of cross-examination. The Tribunal concluded that the assessment of Client A's evidence fell to be determined within the parameters of the trial process and that did not cause serious, or any, prejudice to Mr Guise.

11.44 The Tribunal rejected Mr Guise's submission that the Applicant failed to review its case against him following the AP Decision and that failure led to unfairness. The Tribunal was cognisant of the fact that it was not bound, to take into account, a decision made by another panel for a different purpose. The Applicant was required to investigate alleged dishonest misconduct. The AP Decision was in respect of Client A's application for relief from the Solicitors Compensation Fund. They were two distinct processes with different purposes and which relied upon different evidence. The AP Decision was made on the papers. The Applicant completed its investigation and lodged the Rule 5 Statement at the Tribunal for certification. The Tribunal certified the case and received oral evidence that was tested in cross examination. The Tribunal was required to assess the credibility of the evidence received and adjudicate upon the allegations. The Tribunal considered that there was no unfairness, prejudice or serious prejudice caused to Mr Guise in that regard.

11.45 The Tribunal therefore dismissed Mr Guise's application to stay Allegation 1.2 as an abuse of process.

Submission of No Case to Answer

Mr Guise's Application

11.46 Mr Guise relied upon the legal framework and legal principles as set out above at paragraph 10.47.

11.47 Mr Guise submitted that both limbs of the Galbraith test were engaged in respect of Client A's evidence but acknowledged that he was "not suggesting that Client A's evidence was inadmissible". Mr Guise prefaced his submissions on the fact that all he was required to address was whether Client A gave him authority to use the funds secured from the sale of his former matrimonial home for iCloud investment and/or short term loan.

11.48 *No evidence*

11.48.1 Mr Guise relied upon an email from him to Client A at 10:34am on 13 November 2014 in which he stated:

> "…When we met last week I raised the possibility of you making a loan to me of £50,000.00 from the settlement monies to assist in developing a business called iCourt Limited… I promised to send you an explanatory paper and that is attached … The document not an invitation to invest and I explained that if the money were to be taken as a loan the interest rate payable would be 10% with a balloon payment at the end of 12 months…
>
> If you prefer the loan option then my professional rules require me to inform you that you must obtain independent legal advice prior to the loan being entered into. I can recommend a friend of mine who is a solicitor…
>
> Pending confirmation of how you would prefer this sum to be treated I have taken £40,000.00 on account today and will agree the basis of the payment when we meet next week…"

11.48.2 Mr Guise further relied upon text messages between himself and Client A dated 5-6 May [year not cited] which provided:

> "…
>
> [Client A] Morning Tony, I have sent email again yesterday and Tuesday and haven't hear *(sic)* from you and would appreciate it if you *(sic)* manage to speak to utility appointed lawyer…
>
> [Mr Guise] Thanx [Client A] I'm on it and will update u later today
>
> [Client A] Morning Tony any update on loan pls… Sorry on utility bill…"

11.48.3 Mr Guise submitted that the evidence referred to above demonstrably showed that he had Client A's authority to make the transfers that he did and as such there was no case for him to answer in respect of Allegation 1.2.

11.49 *Tenuous evidence*

11.49.1 In the alternative, Mr Guise submitted that the evidence of Client A was so tenuous that no Tribunal properly directed could find Allegation 1.2 proved.

11.49.2 Mr Guise submitted that the totality of the evidence he faced emanated from Client A's witness statements, the Appeal Panel Decision of the Solicitors Compensation Fund ("the AP Decision") and contemporaneous documentary evidence. Mr Guise contended that the evidence relied upon by the Applicant did not reveal a case for him to answer, it conversely supported his position that there was authorisation.

11.49.3 Mr Guise averred that Client A's evidence, both documentary and oral, was "flawed by bad memory", inconsistent and outright lies. Mr Guise asserted that Client A had fabricated emails and was misleading regarding the text messages that he put before the Tribunal. Mr Guise submitted that Client A's evidence was predicated on his desire to "undo the commercial agreement" that he had entered into. Mr Guise further submitted that Client A significantly changed his position in relation to email access during the course of his oral evidence before the Tribunal which in turn undermined his credibility. Mr Guise stated that Client AS was "making it all up as he goes along".

11.49.4 Mr Guise relied upon the AP Decision to demonstrate the tenuous nature of Client A's evidence. The AP Decision determined that "…On a balance of probabilities, it [was] reasonable for [the AP] to conclude that Tony Guise believed [Client A] had invested in his cloud based platforms…" Mr Guise submitted that the AP Decision was the correct one on the lower standard of proof, the civil standard, which inevitably meant that there was no case to answer on the higher criminal standard of proof applicable to the Tribunal proceedings.

11.49.5 In summary, Mr Guise submitted that the Applicant's case against him was based entirely on Client A's flawed recollection, inconsistent and fabricated evidence such that there was no case for him to answer in respect of Allegation 1.2.

The Applicant's Position

11.50 Mr Collins submitted that Client A had come up to proof and given clear evidence that he did not enter into an agreement to invest in Mr Guise's cloud based platforms. Mr Collins submitted that Client A had remained firm, under extensive cross examination, of that fact. Assessment of weight to be attached to Client A's evidence should properly be left to the Tribunal at the conclusion of the evidence and submissions in the case. Mr Collins averred that there plainly was a case to answer in respect of Allegation 1.2.

11.51 Mr Collins submitted that the submissions made by Mr Guise with regards to the AP decision were misconceived in that the Compensation Fund is a discretionary fund operated by the Applicant for a different purpose and with a different function to that of the Tribunal. The Compensation Fund considered Client A's application on the papers and did not receive any oral evidence as the Tribunal had done. In any event, Mr Collins submitted that the Tribunal was neither bound nor inhibited by the AP Decision.

The Tribunal's Findings

11.52 The Tribunal applied the principles and legal tests as set out above at paragraphs 10.54 – 10.56.

11.53 The Tribunal firstly considered Mr Guise's submission that there was no evidence upon which a reasonable Tribunal properly directed could "convict". The Tribunal rejected that submission. There was direct oral evidence from Client A that no authorisation was given to Mr Guise to invest in iCloud.

11.54 The Tribunal secondly considered Mr Guise's submission that the evidence of Client A was so tenuous that no Tribunal properly directed could "convict". Mr Guise averred that there was by reference to the email of 13 November 2014 and the text messages between 5-6 May [year unknown]. That dispute in the evidence fell properly to the Tribunal to assess and adjudicate upon at the close of Mr Guise's case. The Tribunal rejected that submission.

Mr Guise's Case

11.55 Mr Guise confirmed that he was aware of the Solicitors Disciplinary Tribunal Practice Direction No. 5 (dated 4 February 2013) as set out above at paragraph 10.58.

11.56 Mr Guise did not give evidence.

11.57 In closing submissions to the Tribunal Mr Guise relied on that which he averred in respect of the submission of no case to answer. He further submitted that there was clear authorisation on the part of Client A to invest his settlement funds into iCloud.

11.58 Mr Guise averred that, in his evidence, Client A was "making it up as he goes along" and contradicted himself in relation to his internet access in late 2014. Mr Guise maintained that the emails relied upon by Client A were fabricated as a consequence of the Compensation Fund's refusal of his claim at first instance. Mr Guise contended that thereafter Client A fabricated the emails to support his appeal to the Appeal Panel. Mr Guise submitted that the content of the emails did not match the instructions given to him by Client A and that they were "crafted by him to meet his own needs". Mr Guise submitted that "no reliance could be placed on Client A's evidence".

11.59 Mr Guise contended that the Tribunal could not find Allegation 1.2 proved beyond reasonable doubt as the AP Decision was in his favour on a balance of probabilities.

The Tribunal's Findings

11.60 The Tribunal carefully considered the evidence before it and the submissions of the parties. The Tribunal paid significant regard to the fact that Mr Guise did not dispute making the disputed transactions. The only issue that fell to be considered was whether he was authorised by Client A to do so.

11.61 Mr Guise did not give evidence to the Tribunal. The Tribunal determined that that the failure of the Respondent to give evidence was capable of giving, and did in fact give, rise to the inference that he had no innocent explanation or at least no innocent explanation that would withstand the scrutiny of questioning.

11.62 The Tribunal considered the submissions of Mr Guise in that context.

11.63 Mr Guise submitted that Client A was a liar and a sophisticated cheat who falsified emails to support his allegations and who was motivated by animus. The Tribunal rejected those submissions and found Client A to have been a clear, consistent and credible witness. The Tribunal accepted Client A's evidence that he did not find the "falsified" emails. The Tribunal rejected Mr Guise's submission that Client A had "created" the text messages to reflect that they were exchanged in 2014/15 as opposed to 2015/16. The Tribunal accepted Client A's evidence that the mistake as to the year was that of Ms Garrard and/or Mr S Don who took his mobile telephone in May 2016 and printed off what they required.

11.64 The Tribunal rejected Mr Guise's submission that Client A had "elaborated" his evidence regarding internet access and ability to respond to emails in November 2014. The Tribunal accepted Client A's evidence that, when inspecting ships abroad, he had limited access to his emails whilst on land and no access when on board the ship. The Tribunal did not consider the explanation given by Client A to be an "elaboration" rather that it was a more detailed explanation borne out of extensive cross-examination.

11.65 Mr Guise submitted that Client A agreed to invest in his Cloud based platforms. Client A's evidence was that he did not and that the only discussion he had with Mr Guise was whilst "waiting for the lift" after a meeting on 7 November 2014. Client A testified, and the Tribunal accepted, that he made plain to Mr Guise that he did not want to invest or lend any of his settlement monies to Mr Guise as he needed it to rebuild his new life with his young family.

11.66 The Tribunal rejected Mr Guise's submission that the AP Decision was relevant and persuasive in the proceedings. Having now heard all the evidence in this matter the Tribunal determined that it should give no weight to that decision as (a) its purpose was wholly distinct to that of the Tribunal, (b) the AP made a decision on the documents, (c) the AP did not hear any oral evidence which was tested and (d) the Tribunal was required to considered the allegations independently and objectively based upon the evidence before it.

11.67 The Tribunal found that Client A received settlement funds in the region of £600,000.00 following his divorce which was paid into the Firm's client account on or around 4 November 2014. Client A met with Mr Guise on 7 November 2014

when he made clear that he needed all of those funds to rebuild his life. On 13 November 2014 Mr Guise notified Client A that he had “taken £40,000.00” from the settlement monies for iCloud. Meetings took place between Client A and Mr Guise at various locations in London thereafter when Client A reiterated that he did not wish to invest in or loan to iCloud. No agreement to invest or loan monies was ever created and/or produced to the Tribunal. On 6 November 2015, 11 November 2015 and 21 March 2016 Client A requested various sums from his client account. On 9 May 2016 Mr Guise notified Client A via email that he was closing the Firm. On 13 May 2016 Client A received a Statement of Account showing 23 transactions between 13 November 2014 and 5 August 2015 which totalled £441,500.00 of his settlement funds having been taken without his authorisation.

11.68 The Tribunal therefore found Allegation 1.2 proved beyond reasonable doubt.

Breach of Rule 20.1 of the Solicitors Accounts Rules 2007

11.69 Rule 20.1 provides the circumstances in which a solicitor may withdraw client money from the Client Account. Having found that Mr Guise made 23 transfers from the Client Account without Client A’s authorisation, the Tribunal determined that each transfer fell outside of the acceptable circumstances set out in Rule 20.1.

11.70 The Tribunal therefore found the breach of Rule 20.1 proved beyond reasonable doubt.

Principle Breaches

11.71 Principle 2 required Mr Guise to act with integrity. The Tribunal determined that no solicitor acting with integrity would have withdrawn any funds, let alone £441,500.00, from a Client Account without the clients instructions to do so. Mr Guise demonstrably lacked integrity as he did just that.

11.72 The Tribunal therefore found the breach of Principle 2 proved beyond reasonable doubt.

11.73 Principle 6 required Mr Guise to behave in a way that maintained the trust placed in him and in the provision of legal services by the public. The Tribunal determined that public trust in Mr Guise and in the provision of legal services was significantly undermined by Mr Guise unauthorised use of Client A’s settlement funds.

11.74 The Tribunal therefore found the breach of Principle 6 proved beyond reasonable doubt.

11.75 Principle 4 required Mr Guise to act in the best interests of Client A. The Tribunal determined that the unauthorised use of £441,500.00 was not in Client A’s best interests as it deprived him of funds that he desperately needed in order to rebuild his life with his new family.

11.76 The Tribunal therefore found the breach of Principle 4 proved beyond reasonable doubt.

11.77 Principle 10 required Mr Guise to protect Client A's money and assets. The Tribunal determined that Mr Guise failed to protect Client A's money. The settlement funds were all that he had to rebuild his life. He was prevented from so doing as a consequence of the unauthorised transactions. Client A has not been able to recover the lost funds to date.

11.78 The Tribunal therefore found the breach of Principle 10 proved beyond reasonable doubt.

Dishonesty

11.79 The Tribunal firstly considered Mr Guise's knowledge/belief of the facts at the material time.

11.80 The Tribunal determined that (a) as at 7 November 2014 Mr Guise knew that Client A did not want to invest in or loan any of his settlement monies to iCourt (b) Mr Guise knew that Client A required his settlement monies to rebuild his life and (c) Client A made numerous requests for funds to be transferred to him for that purpose. Additionally there was no evidence on the client file to suggest that Client A instructed Mr Guise to use any of his settlement monies as an investment or loan and there was no investment or loan agreement entered into. In the given context the Tribunal determined that, by the standards of the ordinary reasonable man, Mr Guise's conduct was dishonest.

11.81 The Tribunal therefore found dishonesty proved beyond reasonable doubt.

Previous Disciplinary Matters

12. None.

Mitigation

13. Mr Guise acknowledged that in light of the Tribunal's findings, the inevitable sanction appropriate for dishonest misconduct was an Order striking him of the Roll of Solicitors. Mr Guise submitted that there was no mitigation that he could advance which could militate against such an Order.

Sanction

14. Cognisant of the Respondent's position regarding sanction, the Tribunal referred to and relied upon its Guidance Note on Sanctions (Eighth Edition).

15. With regards to culpability, the Tribunal determined that Mr Guise's conduct in respect of both allegations was motivated by self-interest as evidenced by his financial position at all material times and his desire to advance iCourt. Each of the unauthorised transactions were planned, repeated and deliberate; they represented a grave breach of the trust vested in him by CCS and Client A. With regards to Allegation 1.1, Ms S Dunn and Mr MB removed Mr Guise from the banking mandate after the unauthorised 2014 transactions in an attempt to prevent recurrence. Mr Guise found a way around that by transferring CCS funds to CLAN,

who remained on the mandate, then from CLAN to various other accounts held by him. The unauthorised transactions with regards to Client A were simply egregious. Mr Guise was solely responsible for all of the unauthorised transaction, was an extremely experienced solicitor having been admitted to the Roll in 1986, director of the Firm, COLP, MLRO, sole director in CLAN, sole director in eARB, sole director in iCloud and joint director with Ms S Dunn in CCS. The Tribunal found that Mr Guise was solely culpable for the dishonest misconduct found proved.

16. With regards to harm, the Tribunal determined, in respect of Allegation 1.1, that CCS, the general public and the reputation of the profession was significantly harmed as a consequence of Mr Guise's dishonest misconduct. In respect of Allegation 1.2, the Tribunal determined that the harm caused to Client A was profound. Mr Guise embarked on a dishonest course of conduct which was an egregious abuse of his position and which took severe advantage of Client A. Client A essentially lost his life savings, has not been able to recover any of the money taken without his permission and has been unable to rebuild his life. Client A remained, as at the date of the substantive hearing, in a one bedroom flat with his wife and two young children as a consequence of Mr Guise's dishonest misconduct. That in and of itself caused significant harm to the reputation of the profession. The Tribunal found that the entirety of the harm caused to CCS, Client A, the public and the reputation of the profession was intentional on the part of Mr Guise and eminently foreseeable.

17. The Tribunal identified a number of aggravating features to the case namely (a) dishonesty was found proved, (b) the misconduct was deliberate, calculated and repeated over a protracted period of time, (c) Client A was vulnerable and (d) Mr Guise knew or ought reasonably to have known that his conduct was a material breach of the duty incumbent on him to protect the public and the reputation of the profession.

18. The only mitigating feature to the case was that Mr Guise had a previously unblemished professional record.

19. Weighing all of the attendant findings in the balance, the Tribunal determined that the misconduct found proved was at the highest level of seriousness. The Tribunal had found that Mr Guise dishonestly transferred money into bank accounts that he held without authorisation on numerous occasions between 2014 and 2016.

20. In light of those findings the Tribunal determined that neither a reprimand, financial penalty, restrictions on practice nor a suspension order sufficiently met the seriousness of the misconduct. The Tribunal therefore concluded that the appropriate and proportionate sanction was an order striking the Respondent off the Roll of Solicitors.

Costs

21. Mr Collins applied for costs in the sum of £55,824.81 as particularised in the Applicant's Statement of Costs dated 8 January 2021.

22. Mr Guise did not oppose the application.

The Tribunal's Findings

23. The Tribunal carefully considered the Schedule of Costs and paid significant regard to the fact that Mr Guise did not oppose the costs claimed either in principle or with regards to quantum. The Tribunal determined that the costs claimed were reasonable and proportionate for a six day contested hearing set against a protracted procedural background in which numerous interlocutory applications were made and considered at Case Management Hearings.

24. The Tribunal therefore granted the application.

Statement of Full Order

25. The Tribunal Ordered that Tony Norman Guise, 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 £55,824.81.

Dated this 26th day of February 2021
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
26 FEB 2021

P Lewis
Chair