The First Respondent appealed the Tribunal's Order dated 3 June 2021 to the High Court (Administrative Court). The appeal was heard on 12 July 2022 by Mr Justice Linden and Judgment was handed down on 1 August 2022. The appeal was dismissed. Ete v Solicitors Regulation Authority Limited [2022] EWHC 2070 (Admin)(QB).

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12034-2019

BETWEEN:

SOLICITORS REGULATION AUTHORITY LIMITED Applicant

and

CHARLES JAMES ETE First Respondent
HENRY ONOTERE MUME Second Respondent

Before:

Mr E Nally (in the chair)
Mr P Jones
Ms E A Chapman

Date of Hearing:
8 to 12 March and 1 to 3 June 2021

Appearances

Nimi Bruce, barrister, of Capsticks Solicitors LLP, 1 St Georges Road, London, SW19 4DR, for the Applicant.

Kevin Metzger, barrister, of Great James Street Chambers, 20 Old Bailey, London, EC4M 7AN for the First Respondent.

The Second Respondent represented himself.

JUDGMENT

Allegations

1. The allegations against the First Respondent were made in a Rule 12 Statement dated 5 December 2019 and were that while in practice as a Partner at Charles Ete & Co Solicitors ("the Firm") and Pride Solicitors Ltd ("Pride Solicitors"):

1.1 In or around May and July 2018 he caused or allowed payments to be made from the Firm's client account which were:

1.1.1 Made other than in accordance with Rule 20.1 of the SRA Accounts Rules 2011 ("the SARs");

1.1.2 Improper; and in breach of Principles 2, 6, and 10 of the SRA Principles 2011 ("the Principles");

1.2 In 2018 he caused, allowed, or acted in transactions which bore hallmarks of fraud, in breach of Principles 2, 6, and 10;

1.3 In 2018 he caused or allowed a minimum client account shortage of £1,236,335.64 to arise on the Firm's client account, which was not replaced promptly on discovery or at all, in breach of Principles 2, 6 and 10, and Rules 6 and 7 of the SARs;

1.4 In 2018 he caused or allowed the Firm's client bank account to be used as a banking facility in breach of Principles 2 and 6, and Rule 14.5 of the SARs;

1.5 In 2018 he failed to exercise any or adequate supervision or control over an individual using the name of Person A, in breach of Principles 2, 6 and 8, and failed to achieve Outcome 7.8 of the SRA Code of Conduct 2011;

1.6 In 2018 he failed to take any or adequate steps to verify the identity and regulatory status of the individual using the name of Person A before allowing said individual to practice as a solicitor and in doing so breached Principles 6 and 8;

1.7 In 2018 he misled insurers in correspondence dated 10 July 2018 in breach of Principles 2, 6 and 8 (it was further alleged as an aggravating feature that the alleged actions were dishonest);

1.8 In 2018 he failed to appoint a COLP (Compliance Officer for Legal Practice) and COFA (Compliance Officer for Finance and Administration) at Pride Solicitors, in breach of Principles 7 and 8 and Rule 8.5(b) and (d) of the SRA Authorisation Rules 2011; and

1.9 In 2018 he failed to cooperate fully with the SRA and its intervention agents, in breach of Principles 2 and 7.

2. The allegation against the Second Respondent, made in the same Rule 12 Statement, was that while in practice as a solicitor at the Firm:

2.1 In 2018 he failed to undertake his role as COFA effectively, and in accordance with proper governance and sound risk management principles, in breach of Principles 8 and 10, and in breach of Rule 1.2(e) of the SARs.

Documents

3. The Tribunal considered all of the documents in the case which included:

Applicant

- Application and Rule 12 Statement dated 5 December 2019 with exhibits;
- Reply to the Answers served by both Respondents dated 13 February 2020 with exhibit;
- Correspondence between the Applicant and the First Respondent relating to a Civil Evidence Act Notice dated 14 January 2020;
- Statements of Costs dated 5 December 2019, 26 August 2020 and 1 March 2021;
- A "late submissions" bundle comprising 33 pages.

First Respondent

- Preliminary Answer to the Rule 12 Statement dated 14 January 2020;
- Answer to Rule 12 Statement dated 28 January 2020;
- Respondent's witness statements (from contested intervention proceedings) dated 28 February 2019 and 12 May 2019 with exhibits;
- Statement of means dated 11 August 2020;
- Submissions made at the conclusion of the Applicant's case;
- A letter from Clyde and Co dated 24 July 2020.

Second Respondent

- Preliminary Answer to the Rule 12 Statement (undated);
- Statement of means (undated).

Preliminary Matters

4. Pursuant to the Tribunal's *Practice Direction: Remote and Hybrid Hearings* and directions made previously by differently constituted Panels of the Tribunal, the hearing was held remotely via video-link. During the hearing there were minor connectivity issues, mainly affecting the Second Respondent who participated from Nigeria. Proceedings were paused where required to ensure the Second Respondent was present throughout. As previously directed, and at the First Respondent's request, the hours of the hearing were limited throughout to 10a.m. to 4p.m. Proceedings were also paused where required to enable the First Respondent to attend to caring responsibilities and so that he could participate without distraction.

5. Both the Applicant and the First Respondent sought to adduce additional documents relating to allegation 1.8. Mr Metzger and Ms Bruce both submitted that fairness required that if the documents from one party were admitted into evidence then the documents from the other should also be admitted. The Tribunal accepted this

submission and considered that the interests of justice favoured admission of all the documents into evidence as the material may have assisted the Tribunal with the issues to be determined. The Tribunal considered it would then be able to assess each document in context and afford such weight as was appropriate in all the circumstances.

6. A submission of no case to answer was made on behalf of the First Respondent at the conclusion of the Applicant's case. The submission was made in relation to all nine allegations. The First Respondent relied upon the case of R v Galbraith [1981] 1 WLR 1039 in which a two-limbed approach to a submission of no case to answer was set out.

   - Mr Metzger submitted that the second limb of Galbraith applied to allegations 1.1, 1.2, 1.3 and 1.4 on the basis that it was submitted that only tenuous evidence had been called by the Applicant supporting the allegation such that that a reasonable tribunal, properly directed, could not conclude that the allegations were proven;

   - He further submitted that the first limb of Galbraith applied to allegations 1.5, 1.6, 1.7, 1.8 and 1.9 on the basis that it was submitted no evidence had been called by the Applicant such that there was no evidence before the Tribunal upon which a reasonable tribunal, properly directed, could conclude that the allegations were proven.

7. The Tribunal dismissed the application in relation to all allegations. The key submissions and the reasons for the Tribunal's decision are summarised below under the relevant allegations.

Factual Background

8. The First Respondent was admitted to the Roll of Solicitors in 1997. He was the sole equity partner and owner of the Firm. When the Applicant intervened into the Firm the First Respondent's practising certificate was suspended. The First Respondent was the only person on the bank mandate at the Firm.

9. The Second Respondent was admitted to the Roll of Solicitors in 2008. He was a salaried partner at the Firm and was COLP and COFA from December 2016.

10. The First Respondent was the sole principal and owner of Pride Solicitors. Pride Solicitors was established in 2014 and acquired by the First Respondent in 2018.

11. The Applicant received reports from third parties about conveyancing transactions at the Firm. An investigation into Pride Solicitors was carried out following concerns about a client account shortfall.

Witnesses

12. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence

should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following three witnesses gave oral evidence:

- Helen Maskell, the Applicant's Forensic Investigation Officer ("FIO") who conducted the investigation into the Firm;
- The First Respondent; and
- The Second Respondent.

13. David Payne, a second FIO who conducted the investigation into Pride Solicitors, did not give oral evidence. The Tribunal had access to his signed interim and final reports.

Findings of Fact and Law

14. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations on the balance of probabilities. The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The First Respondent

15. **Allegation 1.1: In or around May and July 2018 the First Respondent caused or allowed payments to be made from the Firm's client account which were:**

1.1.1. Made other than in accordance with Rule 20.1 of the SARs;
1.1.2. Improper; and in breach of Principles 2, 6 and 10.

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

15.1 The first four allegations related to the sale of two properties, Prestwold Road and Morley Crescent. The purported sellers were SC and MT respectively. It was alleged that the First Respondent authorised the payment of sale proceeds from the Firm in breach of the Rules and Principles set out above.

15.2 Rule 20.1 sets out various conditions, at least one of which must be met for client money to be withdrawn from a client account. The Applicant's case was that none of the eleven conditions were met and that the following Principles were breached by the First Respondent authorising the payments:

- *Principle 2 – You must act with integrity;*
- *Principle 6 – You must behave in a way that maintains the trust the public places in you and in the provision of legal services; and*
- *Principle 10 – You must protect client money and assets.*

The Sale of Prestwold Road and purported client SC

15.3 The First Respondent was instructed in May 2018. The sale price was £98,499. The Applicant submitted that due diligence was at the heart of all conveyancing.

15.4 Ms Bruce highlighted the following from the file of the transaction, and referred the Tribunal to the relevant documents:

- An email sent from SC's Gmail account enclosed a copy of his passport for ID purposes. His date of birth was shown.

- On 16 May 2018 the First Respondent wrote to SC stating that a certified copy of his identity documents would be needed if SC could not attend the Firm's offices.

- A certified copy was provided (stamped by a solicitor at another firm on 17 May 2018). A file note confirmed that the First Respondent phoned this solicitor to confirm she had seen SC.

- On 18 May 2018 the First Respondent carried out an anti-money laundering ("AML") identity search on SC. The personal identity check was returned as "identified" but there was a warning that the date of birth could not be verified. There was also no match returned for the electoral roll.

- In interview on 17 December 2018, Ms Maskell, the Applicant's FIO, asked the First Respondent if he had found the warning concerning. He had said that he did not on the basis he had his client's passport and the AML results did not strike him as unusual.

- The purchaser's solicitors, Highcross Law, wrote to the First Respondent on 18 May 2018 and asked whether satisfactory ID checks had been completed.

- On 21 May 2018 the First Respondent made an attendance note stating that his client had attended the office and brought his passport and utility bills (copies of which were made). His client was also recorded as having "dropped signed TR1" (a TR1 form being the Land Registry form used for transferring ownership of registered title).

- The First Respondent replied to the Highcross Law letter on 22 May 2018 and stated:

  > *"We confirm AML checks have been carried out to satisfy AML requirements, by way of our Clients Passport [sic] which was certified by IEC Solicitors whom we contacted, and they confirmed that they certified his Passport"* and *"We confirm we carried out an electronic search on our Client, and the AML search came back as 'Passed' and 'Identified' in relation to his identity.*"
  >
  > The Applicant submitted that it was unclear why no reference was made to SC having attended the Firm's office the previous day.

- On 21 May 2018 the First Respondent received an email from the SC providing the TR1 form "signed as requested".

- On 24 May 2018 the First Respondent sent an email to SC requesting that he sign the TR1 before an adult UK resident witness.

15.5 On 25 May 2018, at 12.05 pm, contracts were exchanged and the sale was simultaneously completed. Shortly before completion, the alleged SC had emailed the First Respondent stating:

> *"Please transfer the proceeds of sale after your disbursements of my above property to the following account... Pindi Car Centre Ltd.... "*

15.6 On 25 May 2018 the Firm received £98,499 from Highcross Law. The focus of this first allegation was the paying of money to third parties. Ms Bruce highlighted the following in relation to SC and the third party:

- On 25 May 2018 a payment of £96,099 was made by the Firm to Pindi Car Centre Ltd. £2,400 of the purchase monies received was retained for the Firm's fees.

- The First Respondent stated in interview with Ms Maskell that he understood the payment to Pindi Car Centre Ltd was a personal investment being made by his client.

- On 30 May 2018 the First Respondent emailed Pindi Car Centre Ltd confirming that the balance of £96,099 (the completion monies less his fees) had been paid.

- A Companies House check made by Ms Maskell was said to have revealed no link between SC and Pindi Car Centre Ltd. In interview the First Respondent had said this did not concern him, particularly as the relevant account was in the UK and a connection with the company would not be revealed prior to the purchase of shares by SC. The Applicant submitted this lack of connection should have prompted further enquiries.

15.7 On 30 May 2018, five days after completion of the sale, the First Respondent forwarded an email to his client SC stating:

> *"Please see attached the TR1 form. Please urgently sign and get it witnessed by a [sic] adult, and return to us urgently via 1st Class special delivery today. We ...we need this one signed with the original signature".*

The Applicant submitted that it was again unclear why the alleged SC was being asked to sign another TR1 after completion. The further TR1 was returned by the alleged SC to the First Respondent the following day.

The Sale of Morley Crescent and purported client MT

15.8 The First Respondent was instructed in April 2018, initially by email. The sale price was £350,000.

15.9 Ms Bruce highlighted the following from the file of the transaction, and again referred the Tribunal to the relevant documents:

- On 18 April 2018 the First Respondent asked purported MT to bring her original passport or full UK driving licence and a utility bill in her name to the Firm's office.

- The following day, MT sent an email to the First Respondent stating: *"docs all signed and filled in"*.

- On 26 April 2018 the First Respondent again requested MT's identification documentation and a current utility bill. Ms Bruce stated, by reference to the relevant documents, that MT appeared to have signed the client care letter (sent out by the First Respondent on 26 April 2018) on 22 June 2018, after contracts were exchanged and on the completion date. The Applicant highlighted that MT did not appear to have raised any query about why the fees charged were higher than would usually be charged for a conveyance of this nature.

- On 11 May 2018 the First Respondent received an email from the alleged MT providing the buyer's name and the address of ST Solicitors. MT stated: *"Please find above info and contact the buyer urgently as they want contracts today, I will follow up with my ids to you by Monday, please contact me if need any more info"*.

- On the same day, without having seen ID from MT, the First Respondent contacted ST Solicitors and provided a draft contract and other documents.

- On 14 May 2018 the First Respondent made a file note stating: *"[MT] Clent [sic] attended our offices brings original passport and copies checked and obtain the copies from client"*.

- On 8 June 2018 contracts were exchanged by the First Respondent and ST Solicitors. The Applicant stated that the signature on the contract differed from that on the passport – there was an additional "L".

- The deposit sum of £35,000 was sent to the Firm by ST Solicitors by cheque and completion was set for 22 June 2018.

- There were two AML ID checks on file. One was dated 11 June 2018 (three days after exchange) and the second was dated 22 June 2018 (14 days after the exchange of contracts and on the actual date of completion).

- The first AML search revealed that whilst MT was identified at the address searched against, the date of birth could not be verified and there was no match on the electoral roll.

- In the second AML search, the status was again listed as "passed" but with the caveat "there are warnings present, see below". The warnings were that "the Date of Birth entered conflicts with a data source" and that MT had been found on a previous but not current electoral roll.

- As with the previous matter, in interview on 17 December 2018 with Ms Maskell, the First Respondent stated that he was not concerned because identity had been confirmed, his client had come to see him and had brought ID.

15.10 The Applicant's case (based on the completion statement from the file) was that completion took place on 22 June 2018. ST Solicitors transferred the remaining balance of £315,000 to the Firm's bank account with a covering letter and an email.

15.11 On 22 June 2018 the Firm requested details from the client of where to pay the sale proceeds and a forwarding address. MT replied on the same day with an attachment which purported to be an authorisation to pay the sale proceeds to a third party: Blue Management International Ltd. Ms Bruce highlighted the following in relation to MT and the third party:

- The client file was said to contain no other documents or information relating to Blue Management International Ltd until mid-August 2018.

- Following a request from the First Respondent to MT for written instructions regarding payment of the balance of sale proceeds, MT provided a handwritten note providing authority and giving account details.

- This handwritten note contained an incorrect version of MT's name – the signed name was missing the letter "p", whilst the manuscript spelling of the name was correct. There was said to be no evidence to show that the First Respondent raised any queries about the incorrect spelling of MT's surname in the signature.

- There was no evidence on the file that the First Respondent enquired into the identity of Blue Management International, despite the fact that they were not an entity that had previously been involved in the sale process.

- In the interview with Ms Maskell on 17 December 2018 R1 said of her client's instruction *"at the time I think she said something about buying, buying in some care home that she wants to buy"*.

- Following the interview Ms Maskell wrote to the First Respondent on 21 December 2018 raising outstanding queries, one of which was whether he could provide any further attendance notes. Following this email, the First Respondent produced an attendance note, which stated: *"Tel log 22.06.18 Tel from [MT] she ask [sic] if I received her email with account details to make payment of funds due to her I said yes. I asked her why she is paying Blue Management she says she is buying a care home, she does not want to loose [sic] the deal, they want payment from her [solicitors?] hence her..."*.

- On 22 June 2018 the First Respondent transferred the sum of £346,500 to Blue Management International Ltd. On the same date a client account to office account transfer of £3,500 was made for the Firm's fees.

- A Companies House search conducted by Ms Maskell showed no connection between MT and Blue Management International Ltd.

- Following enquiries made by the Land Registry, the First Respondent provided the Land Registry with a copy of the passport identification document which was purportedly provided by MT. The passport photograph pages were included. Person MT's sex was recorded as being 'M' (which was at odds with all other available

information and documentation). There was also no middle name recorded in the passport, despite the fact that there was a middle name in the official Land Registry office copy entries.

15.12 The Applicant's case was that in both of these transactions the actual owners of the properties that the First Respondent had been instructed to sell denied any knowledge of the purported sale.

Breaches of the SARs and Principles

15.13 It was submitted that any reasonable solicitor would have questioned the instructions given by both clients and undertaken appropriate due diligence checks on the third parties. The First Respondent was alleged to have breached Rule 20.1 of the SARs as none of the circumstances set out in that rule such that the payment of client money could be made were applicable.

15.14 By causing or allowing improper payments to be made it was alleged that the First Respondent failed to act with integrity (Principle 2). It was submitted that the payments were objectively improper and were all caused or allowed by the First Respondent. Such conduct was alleged to amount to manifest incompetence and a breach of Principle 6 and also a failure to protect client money and assets (Principle 10).

The First Respondent's Case

Submission of no case to answer

15.15 Mr Metzger submitted on the First Respondent's behalf that the evidence called by the Applicant was of such a tenuous character that a reasonable Tribunal, properly directed, could not conclude that the allegation was proven. As stated above, it was submitted that accordingly the 'second limb' of the Galbraith test applied.

15.16 The First Respondent did not dispute that the relevant payments were made. His case was that he was instructed to make them by those who instructed him.

15.17 Mr Metzger acknowledged that the Applicant's case that those who instructed the First Respondent were not the genuine owners of the two properties may be accepted by the Tribunal. However, it was said to be unclear exactly how it was alleged that the First Respondent had breached Rule 20.1 of the SARs. Rule 20.1 is a lengthy rule which was not reproduced in the Rule 12 Statement. Without such particulars it was submitted that the alleged breach could not be made out.

15.18 Further, in the absence of such clarity it was submitted that the consequential breaches of the Principles could similarly not be made out. The evidence of impropriety, in the face of apparent client instructions, was too tenuous and the particulars of the alleged breach too imprecise for the Tribunal, if properly directed, to find the allegations proved.

15.19 Further, Mr Metzger submitted that allegations 1.1 and 1.4 were mutually exclusive. Allegation 1.4 was that the First Respondent caused or allowed the Firm's client account to be used as a banking facility. Mr Metzger submitted that if it was correct

that the payments made to third parties amounted to using the Firm's client account as a banking facility for clients, then it could not also be the case that the payments offended Rule 20.1. A client instruction such that a banking facility was provided, whilst potentially problematic for the reasons set out in allegation 1.4, nevertheless amounted to an instruction which would satisfy Rule 20.1.

The Applicant's reply to the submission of no case to answer

15.20 In reply to the submission of no case to answer, Ms Bruce provided a summary of the main points outlined above (which are not repeated here) and submitted that a case to answer had been raised.

15.21 Ms Bruce also submitted that observations made by Lord Justice Davis in SRA v Sheikh [2020] EWHC 3062 (Admin) were relevant. By reference to paragraphs 9, 10 and 56 of that case she submitted that the question for the Tribunal was could a reasonable Tribunal, taking the Applicant's case at its highest, infer guilt. By reference to paragraphs 62 and 66 Ms Bruce submitted that the First Respondent's bare assertions as advanced through Counsel could not have weight when it was open to him to give evidence and also that the Tribunal should take a holistic approach as to whether a case to answer had been shown.

The Tribunal's Decision on the submission of no case to answer

15.22 The Tribunal did not accept that the evidence supporting the allegation was such that taken at its highest the Applicant's contentions could not be found proved. As it had been invited to do, the Tribunal applied the second limb of Galbraith to the Applicant's case (its strength or weakness being dependant on the view to be taken of witness reliability and whether on one view of the facts the Tribunal could conclude the allegations against the First Respondent were proved).

15.23 The Tribunal considered that taken at its highest, there was evidence that the acknowledged payments made by the First Respondent from the Firm's client account which were improper and in breach of Rule 20.1 of the SARs. There was documentary evidence before the Tribunal indicating that the two sales with which the allegation was concerned were fraudulent. This was in the form of representations to that effect made by solicitors acting for those who claimed ownership of the two properties. The Tribunal had been taken to documents in which certain irregularities were present, for example with regards to the spelling of one purported client's name and the gender of the other purported client. Evidence had been presented that that there was no connection between the third parties to whom payments were made and the relevant clients and that the client instructions to make these payments were such that suspicion may, on one view of the evidence, have been aroused.

15.24 Whilst the Respondent may have had a credible explanation, the Tribunal considered that the evidence raised questions to be answered. The Tribunal considered that taken at its highest, these factors taken together raised a case to answer for all elements of allegation 1.1.

The Respondent's substantive case

15.25 The allegation was denied. The crux of the First Respondent's case was that he had done everything required to verify his client. Mr Metzger described the First Respondent as having been steadfast in this evidence to this effect.

15.26 The First Respondent had completed an AML check where the identity of his clients (SC and MT) had been confirmed. The AML check service utilised by the Firm sometimes failed or 'referred' individuals whose details the First Respondent entered. The First Respondent's evidence was that where this was the case, he would not proceed with the transaction.

15.27 However, in the cases with which allegation 1.1 was concerned, both individuals instructing him were passed by the system. The First Respondent's evidence was that the warnings described by the Applicant were noted but were not concerning to him. He stated that the FIO and the Applicant's case more generally suffered from a lack of understanding of the conveyancing and AML processes.

15.28 In any event, the First Respondent's case was that the AML check he ran at the Firm was an additional check which went beyond his core obligations as a solicitor. He had obtained valid ID for both of his clients. Client care letters had been sent to both clients' addresses and returned, acknowledged, with instructions to proceed. In his formal Answer to the allegations the First Respondent stated that in cases where issues were raised after a client care letter had been sent he did not proceed with the matter. His consistent evidence was that he considered he had no reason to doubt that his clients were genuine.

15.29 The third parties to whom payment was made were based in the UK. In his evidence the First Respondent made repeated reference to this being one reason why he did not consider that the requests to make the payments for the stated reasons were problematic. In addition, in both cases his verified client had given a clear instruction for him to pay the sale proceeds in the way he had. In both cases he had received a coherent explanation for, and a clear written instruction to carry out, the payments. In the circumstances, in the face of such a clear request, the First Respondent considered himself obliged to comply with his clients' instructions. In his evidence he described feeling concerned that if he did not make the payment as instructed by MT he may be liable to a claim for the lost investment opportunity.

15.30 It was submitted that Rule 20.1 of the SARs covered the payments made. The First Respondent's evidence was that he genuinely believed the payments were in accordance with the rules.

15.31 Mr Metzger submitted that the payments had been made based on the documents before the First Respondent. Whilst the First Respondent was an experienced solicitor, only around one percent of his practice was conveyancing. The First Respondent was the person who had to sign all such payments off in the Firm. It was submitted to be inconceivable that in these circumstances he would knowingly allow himself to become involved to any extent in a fraud when his Firm would be on the line.

15.32 Whilst with the benefit of all of the material now before it, the Tribunal may conclude that the First Respondent had been provided with what Mr Metzger described as "wrongful ID", he submitted that, judged at the time, the First Respondent's conduct was comprehensible and reasonable. He had viewed successful AML checks in both cases and had seen what appeared to be documentary evidence of ownership of the properties. The First Respondent's evidence was that he never acted in cases where the AML check was 'referred' or failed. In these circumstances Mr Metzger submitted that the burden of proof on the Applicant was not discharged and he invited the Tribunal to conclude that the First Respondent's actions were not out-with the SARs and did not amount to a breach of the Principles as alleged.

The Tribunal's Decision

15.33 The Tribunal noted that in his oral evidence the First Respondent did not accept, even at the date of the hearing, in the light of the information gathered by the Applicant and with the benefit of hindsight, that those who instructed him were not the genuine SC and MT. He suggested in his oral evidence that those claiming to be the genuine SC and MT in their dealings with the Applicant may themselves be imposters. Given that both purchases had failed, title did not transfer, and the solicitors acting for the intended purchasers were obliged to take steps to recover the purchase monies paid to (and out of) the Firm, the Tribunal considered that this showed a fanciful unwillingness or inability to objectively assess the evidence.

15.34 The First Respondent had also stated that the mismatches in the documents and the errors in the paperwork were not such that he was concerned about the transaction or considered his actions in making the requested payments were improper. The Tribunal accepted that the AML check was a voluntary step taken by the Firm and the First Respondent's evidence that where a client failed this check or was 'referred' he would not proceed. However, in the circumstances of these two transactions, the Tribunal considered that the concerns raised by the surrounding circumstances were such that the First Respondent should have investigated further and responded appropriately. The 'red flags' in the documentation summarised under the Applicant's case above included dates of birth not being verified (and conflicting with another data source in one case), absence from the electoral roll, two misspellings of a client name, a middle name being missing in a passport and the sex of an apparently female client appearing as 'M' in the passport provided.

15.35 The Tribunal noted that the First Respondent had declined to give the information on which his identification was based to the solicitors acting for both of the purchasers when queries and concerns were raised.

15.36 The First Respondent did not take any additional steps to verify his clients nor to query the instruction, troubling on its face, to pay the sale proceeds directly to a third party. The dates on which the AML checks were completed were odd; they were very late in the process in both transactions. The clear implication, the Tribunal considered, was that the First Respondent did have concerns and some awareness of risk. He nevertheless failed to investigate the various inconsistencies and made the payments to third parties.

15.37 The Tribunal considered that the First Respondent was on notice that the payments to the third parties put the purchase money at risk. Sending the purchase money to his purported clients would be one thing, problematic in this case given the issues with the client identification, but paying the money to unrelated third parties inevitably introduced yet further additional risk. The First Respondent had acknowledged in his evidence that he was aware of the Applicant's Warning Notice on the improper use of a client account as a banking facility which focused to a large extent on payments made on a client's instructions that did not relate to the underlying legal transaction.

15.38 The Tribunal was troubled by the First Respondent simultaneously setting significant store by the ID pass generated by the AML check and the fact that in his evidence he minimised its significance when the potential 'red flags' were put to him. He both relied upon it as a major plank in his rebuttal of the suggestion he acted improperly and also asserted that the inconsistencies were not troubling and that the AML check itself was an optional additional step taken by the Firm.

15.39 The Tribunal reviewed Rule 20.1 of the SARs carefully. The full rule was not set out in the Rule 12 Statement but reads:

> *"20.1 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."

15.40 Mr Metzger had submitted that the Applicant had not particularised the alleged breach save for saying that the conditions in Rule 20.1 SARs were not met. The Tribunal noted that Mr Metzger had not stated which condition it was submitted that the First Respondent had met. In any event, the Tribunal reviewed every alternative condition which must be met before a payment may be made from client account. The Tribunal considered that it was self-evident that the only potentially applicable conditions were (a) and (f) (given that Rule 20.2 relates to payments not exceeding £500).

15.41 The Tribunal did not consider that the condition in Rule 20.1 (a) was met as it could not be said given the context in which the payments were made that the payments to third parties were "*properly required for a payment to or on behalf of the client"*. Judged at the time of the payments, given the inconsistencies about the identification of both clients and given the instructions to make the payments to unrelated third parties was concerning in terms of the timing of the request, the urgency, the relative informality, the fact the payment did not relate in any way to the conveyancing transaction and the lack of any good reason at all why the payment should be made to the third party rather than to the purported clients, the payments could not be said to be "properly required". The weight of evidence of concerns which should have prevented the payments to the third parties was overwhelming and comfortably met the requisite standard that it was more likely than not that the payments were improper. Rule 20.1 (a) could not provide authority for such an improper payment.

15.42 The Tribunal similarly did not consider that the condition in Rule 20.1 (f) was met given the concerns and inconsistencies about the First Respondent's clients' identities, and the 'red flags' about the payments themselves as summarised above. Rule 20.1 (f) required that a client's instructions for a withdrawal to be made for their "convenience" be made in writing. The Tribunal noted that the First Respondent had received brief instructions in writing, by way of an email and a handwritten note. The Tribunal did not accept that the concerns over the clients' identities and the inherently concerning nature of the requests for payment to unrelated third parties out of any obvious context to the transaction could be remedied by brief and informal written instructions. The First Respondent had not himself confirmed these inherently concerning instructions in writing to his purported clients. Considered in context the Tribunal was satisfied to the requisite standard that the payments made were not in accordance with Rule 20.1 (f).

15.43 Accordingly, the Tribunal was satisfied on the balance of probabilities that the payments were made other than in accordance with Rule 20.1 of the SRAs and that the alleged breach was proved.

15.44 Principle 10 requires that a solicitor must "protect client money and assets". By making payments from client account which were not in accordance with the SARs the Tribunal considered that the First Respondent had inevitably failed to protect client money. The

fact that the payments were made on the instruction of his purported clients was not a satisfactory or complete answer to the alleged breach. The Tribunal considered that the key obligation was to protect client money. The money in question had been received from other firms of solicitors in conveyancing transactions. There were sufficient doubts about the identities of his clients, and about the request for payment to unrelated third parties as set out above, that the Tribunal found the obligation to "protect" client money meant, in this factual context, that the sales monies should not have left the Firm's client account in the way they did. The First Respondent was sufficiently on notice that the transactions may be fraudulent that the sales monies should not have been paid out of the Firm's client account (whether on the instruction of the purported client or not). The Tribunal found proved on the balance of probabilities that the First Respondent had failed to protect client money and assets in breach of Principle 10.

15.45 Principle 6 requires solicitors to behave in a way that maintains the trust the public places in them and in the provision of legal services. The Tribunal had found the payments made to third parties to be improper. The consequences for the intended purchasers who paid the money to the Firm and did not acquire title to the properties was very significant. Conveyancing requires complete probity and propriety from the solicitors involved in what are, for most people, very significant financial transactions. The public would rightly expect appropriate care to be exercised by solicitors in such transactions and that only proper payments would be made. The Tribunal considered the First Respondent's failures to follow up on the red flags summarised above to be improper. He did not react during the life of the transactions as the red flags emerged. He did not do enough to question, and confirm in writing, the instructions to make payments to unrelated third parties which on their face, and even more so in this context, should have aroused suspicion. When the representatives of the intended buyers raised questions over the identities of the First Respondent's clients, he should have done more to investigate and assist them. The Tribunal found on the balance of probabilities that the First Respondent had breached Principle 6 as alleged.

15.46 Principle 2 requires solicitors to act with integrity. The Tribunal found that the First Respondent's conduct as summarised above was cavalier with regards to safeguarding client funds and acting on potential red flags raising concerns about the transactions to the extent that he thereby failed to adhere to the minimum basic ethical standards of the profession. The Tribunal had regard to the test for conduct lacking integrity set out in Wingate & Evans v SRA v Malins [2018] EWCA Civ 366 and in particular the comment that solicitors were not required to be paragons of virtue. However, the Tribunal was satisfied to the requisite standard that his conscious carelessness and failure to respond appropriately with further enquiries, following what were concerning questions as to the identity of his clients, and the making of improper payments to unrelated third parties in those circumstances, amounted to a failure to meet the minimum ethical standards of the profession. The Tribunal found the alleged breach of Principle 2 proved on the balance of probabilities.

16. **Allegation 1.2: In 2018 the First Respondent caused, allowed, or acted in transactions which bore hallmarks of fraud, in breach of Principles 2, 6, and 10.**

The Applicant's Case

16.1 To a large extent, the "hallmarks of fraud" alleged by the Applicant in this second allegation were the same factors which were alleged to have made the payments in allegation 1.1 "improper". The detail of the transactions is not set out again; the various 'red flags' highlighted by Ms Bruce to support the contention that the transactions bore the hallmarks of fraud are set out below in outline only.

16.2 The question marks over the client ID as summarised above under allegation 1.1 were again relied upon. There were said to be indicators of issues around the clients' identities including inconsistencies identified in the AML checks. For example, MT's passport provided her sex was recorded as being 'M', and there was no middle name recorded, despite the fact that there was a middle name in the Land Registry office copy entries. Ms Bruce submitted that the most telling red flags were the requests, late in the process, to send the sale proceeds to unrelated third parties as set out above.

16.3 The Applicant submitted in relation to SC:

- The First Respondent did not make any enquiries to clarify discrepancies in identification documents and with signatures (or he failed to be aware of such discrepancies).

- The First Respondent requested certified copies of SC's passport which was subsequently provided. The First Respondent carried out an AML check, which identified warning signs, including: not being able to verify the date of birth on the passport with any of the search results, and not finding SC on the electoral roll. There was said to be no evidence of the First Respondent raising any queries with SC following receipt of the search results, or of any additional checks being carried out.

- The use of an intermediary (his wife) by purported SC was described as a further red flag.

- As described above, the First Respondent received an email from SC, shortly before completion, asking that the sale proceeds should be transferred to Pindi Car Centre Ltd's bank account. The First Respondent was told by SC that this account was for "investment purposes only". The First Respondent did not carry out any checks in relation to whether there was a connection between SC and Pindi Car Centre Ltd.

16.4 The Applicant submitted in relation to MT:

- MT initially contacted the First Respondent by email on 18 April 2018 and the Respondent stated that he met MT. The First Respondent asked MT to provide identity documents but before such documentation was received, the First Respondent had contacted ST Solicitors and provided a draft contract, property information form, contents and fittings form, and office copies of the title deed, and a plan of the property.

- The Applicant's case was that it appeared that on 14 May 2018 MT attended the Firm and brought her original passport and copies, which were checked. Three days

after contracts were exchanged, an ID check was undertaken by the First Respondent. This revealed that whilst MT was identified at the address entered, the date of birth could not be verified and there was no match on the electoral roll. A second ID check was undertaken on 22 June 2018 (14 days after exchange, and on the actual date of completion), in which the status was listed as 'passed' but with the caveat there were warnings present. The warnings were that "the Date of Birth entered conflicts with a data source" and that MT had been found on a previous but not current electoral roll. There was said to be nothing on the file which showed that the First Respondent was concerned about the warnings or undertook any further investigation.

- The First Respondent received an email request from MT to transfer the balance of sale proceeds to Blue Management International Ltd. The company had not been previously involved in the sale process. The First Respondent provided a telephone attendance note dated 22 June 2018 which recorded him asking MT why the payment was being made and MT responding that "she is buying a care home" and "did not want to lose the deal". There was said to be no connection between MT and this company according to the Companies House records reviewed by Ms Maskell.

- Ms Bruce submitted that the refusal of purported MT to allow her identification documents to be provided to ST solicitors who were acting for the buyer in the transaction was a further red flag.

16.5 There was submitted to be no obvious explanation for how these payments related to the conveyancing transactions and why the payments had to be made to these third party companies which had had no previous involvement in the conveyancing transactions. It was alleged that the First Respondent had therefore caused or allowed transactions which bore obvious indicators of fraud. It was alleged that the First Respondent had thereby:

- failed to act with integrity in breach of Principle 2;

- failed to maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6; and

- failed to protect client money and assets in breach of Principle 10.

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

Submission of no case to answer

16.6 At the conclusion of the Applicant's case Mr Metzger again submitted that there was no case to answer (again by reference to the 'second limb' of the Galbraith test).

16.7 Mr Metzger reminded the Tribunal that the First Respondent was not obliged to prove anything. The Applicant's FIO, Ms Maskell, had accepted during cross examination that the terms 'hallmarks of fraud' and 'improper' were first used by her in connection with the relevant transactions in her investigation reports. Mr Metzger asked the Tribunal to note that the First Respondent did not have the opportunity to answer the

allegations and criticisms of his conduct, other than in the investigatory meeting with Ms Maskell in December 2018, until after the Applicant's intervention into his Firm. His livelihood of twenty years had been taken away before he had had the opportunity to contest the allegations made. Mr Metzger submitted that the First Respondent's right to a fair hearing had thereby not been respected.

16.8 As to the evidence which had been adduced to support allegation 1.2, Mr Metzger submitted that it was tenuous. The Applicant relied upon returns from the AML checks when these were acknowledged to be an additional validation step that the Firm was not obliged to take. In any event, in both cases the AML checks had stated that his clients were identified and passed, albeit with warnings. As to the warnings, Ms Maskell had acknowledged that there was no specific guidance as to what steps should have been taken. The First Respondent's evidence was that he had not been concerned about these warnings as he had seen valid ID for both clients. For example, the date of birth queries in the AML checks were not concerning as the First Respondent had copies of his clients' passports. Mr Metzger submitted that it was unclear how someone not currently being on the electoral roll was said to be an indicator of fraud.

16.9 Further, in both cases the First Respondent's evidence was that buyer and seller appeared to know one another. This was a factor which provided further reassurance to him on the basis that if they knew one another then questions and risks as to identity did not have the same force.

16.10 The Firm had appropriate anti-money laundering policies and Ms Maskell had stated in her evidence that nothing came to mind in terms of breaches of those policies. Mr Metzger submitted that the alleged hallmarks of fraud were viewed as such with the benefit of hindsight. The evidence that they should have reasonably been viewed as such at the time was submitted to be tenuous.

16.11 It was submitted that, properly directed, the Tribunal could not find the allegation proved on the evidence adduced and so applying the second limb of Galbraith there was no case for the First Respondent to answer.

The Applicant's reply to the submission of no case to answer

16.12 In reply to the submission of no case to answer, Ms Bruce again provided a summary of the main points of the Applicant's case (which are not repeated here) and invited the Tribunal to consider the paragraphs in Sheikh previously mentioned.

The Tribunal's Decision on the submission of no case to answer

16.13 The Tribunal did not accept that the evidence supporting the allegation was such that taken at its highest the Applicant's contentions could not be found proved. As it had been invited to do, the Tribunal applied the second limb of Galbraith to the Applicant's case (its strength or weakness being dependant on the view to be taken of witness reliability and whether on one view of the facts the Tribunal could conclude the allegations against the First Respondent were proved).

16.14 The Tribunal considered that taken at its highest, there was evidence that there were factors which indicated potential fraud and which required investigation. The evidence listed under the Tribunal's findings under allegation 1.1 as to why there was a case to answer that the payments made were improper also provided evidence of potential red flags which at least raised a case to be answered by the First Respondent. The indicators of potential issues with the clients' identities were potential indicators of fraud, as were the late requests to pay the proceeds of sale in full to unconnected third parties. The Tribunal considered that the evidence raised questions to be answered. The Tribunal considered that taken at its highest, these factors taken together raised a case to answer for all elements of allegation 1.2.

The First Respondent's substantive case

16.15 The allegation was denied. The First Respondent's case on this allegation mirrored that for allegation 1.1. He considered that there were no 'hallmarks of fraud'. This was a characterisation which was added with the benefit of hindsight. At the time, he had valid client ID, made AML checks which identified his clients and did not consider that the requests for payments to third parties were problematic for the reasons already set out. The warnings on the AML checks were not concerning because he had valid ID for these clients. As noted above, Mr Metzger queried how absence from an electoral roll could be said to be an indicator of fraud.

16.16 The First Respondent's evidence was that he had queried the requests for the payments to be made to third parties. He had had been told that the payments relating to both SC and MT were for investment purposes. The payments were made to UK banks. The First Respondent's genuine belief at the time, which he maintained consistently throughout his evidence, was that the payments were in accordance with the SARs by virtue of his clients' instructions. In fact, he considered himself obliged to comply with the instructions.

16.17 Mr Metzger also submitted that in each relevant case the buyer and seller appeared to know one another and that this was relevant to the assessment of risk. The crux of the First Respondent's case was that he had diligently taken the steps to verify his clients and had received appropriate replies to his questions about the purpose of the payment to third parties and that, viewed at the time, there were no 'hallmarks of fraud' and none of the alleged breaches were made out.

<u>The Tribunal's Decision</u>

16.18 The alleged indicators of issues relating to the client identity checks, in particular for clients SC and MT, were relied upon by the Applicant. The Tribunal accepted the submission made by the Applicant that a female client (MT) being identified as male in the proffered passport was a significant factor which should have aroused suspicion. Similarly, the fact that the passport did not have a middle name recorded was concerning when the official Land Registry document showing ownership of the property to be sold did record a middle name.

16.19 The Tribunal found the First Respondent's evidence on these points, which included stating that he did not make assumptions about gender reassignment and that a passport did not need to record a middle name to be unpersuasive answers to the suggestion that

the issues were potential hallmarks of fraud. The Tribunal found that these factors raised concerns which warranted further investigation and that they were (rebuttable) indicators of potential fraud in that they clearly raised issues about the identity of MT.

16.20 The Tribunal considered that these factors combined with the request for the proceeds of sale to be paid to apparently unconnected third parties was a further, exacerbating, indicator of potential fraud. The Tribunal regarded this instruction as a very clear and obvious red flag to which any solicitor would be alive. The First Respondent acknowledged in his evidence that he was familiar with the Applicant's Warning Notice on the use of client bank accounts as banking facilities which expressly covers the risk of money laundering when payments are made which are unrelated to the underlying transaction. The fact that purported client MT had stated that there was some urgency and she "did not want to lose the deal" only added to the hallmarks of potential fraud.

16.21 The First Respondent had carried out the ID check on SC three days after contracts were exchanged. This struck the Tribunal as very odd; an enforceable contract for sale having come into being by that stage. It was similarly odd that a second ID check was carried out on the actual day of completion (and the date on which the sale proceeds were paid away to the third party). The First Respondent had acknowledged in his evidence that he attempted to retrieve the funds paid to Blue Management (in the MT matter) from his bank. Whilst the First Respondent stated that he sought simply to maintain the status quo the Tribunal accepted the submission that these efforts indicated an awareness that there were at least question marks over the transaction and the payment.

16.22 With regards to the identity of purported client SC, the results of the AML check, to which the Tribunal had been referred, stated that it had not been possible to verify the date of birth on the passport and that SC was not being recorded on the electoral roll. If this were the extent of the concern, the Tribunal considered there would be some force in Mr Metzger's submission that these would be insufficient to be characterised as hallmarks of fraud. However, the Tribunal considered that when considered in context, in particular the late request for the proceeds of sale to be paid to an unrelated third party, they were issues to which any solicitor should have been alive as potential indicators of fraud.

16.23 During his evidence the First Respondent gave consistent and dogged evidence that he was following his clients' instructions and that he had no cause for concern at the time about the transactions. He stated that he feared being sued by his clients if he did not comply with their instructions or being criticised by the Applicant for failing to do so. The Tribunal found this evidence implausible and did not accept that the First Respondent could ever have reasonably entertained those concerns.

16.24 The Tribunal found that the issues summarised above did amount to hallmarks of potential fraud and that the First Respondent continued to act and did not make adequate investigations into the issues raised. For the reasons set out in their findings under allegation 1.1, the Tribunal found that it followed that the alleged breaches of Principles 6 and 10 were proved to the requisite standard. Despite the warning signs of potential fraud the First Respondent had continued to act and had paid the purchase monies received for property sales to third parties with inadequate checks having been made.

16.25 The Tribunal again had regard to the case of Wingate. The Tribunal found that failing to take adequate steps when confronted with red flags and hallmarks of potential fraud amounted to a failure to adhere to the ethical standards of the profession. The Tribunal found that any solicitor when presented with such hallmarks of fraud would take steps to protect the money involved and investigate the issues which had arisen. The First Respondent had failed to do so and the Tribunal found on the balance of probabilities that the First Respondent's conduct lacked integrity in breach of Principle 2.

16.26 Mr Metzger had stated that the First Respondent's right to a fair hearing was denied during the intervention process by virtue of the stated inability to challenge the allegations against him at that stage. No such submissions were made in respect of the proceedings and allegations before the Tribunal and the parties did not adduce evidence on this issue; accordingly the Tribunal did not make any findings on this issue.

17. **Allegation 1.3: In 2018 the First Respondent caused or allowed a minimum client account shortage of £1,236,335.64 to arise on the Firm's client account, which was not replaced promptly on discovery or at all, in breach of Principles 2, 6 and 10, and Rules 6 and 7 of the SARs.**

The Applicant's Case

17.1 The Applicant relied on the First Respondent being the only signatory on the Firm's client account. It was submitted that he was therefore unable to disassociate himself from the alleged shortage on that account.

17.2 The Applicant's case was that at the date of the Applicant's intervention into the Firm (8 January 2019) the shortage on the Firm's client account was £1,236,335.64. This was comprised of:

- improper payments from the client bank account as at 31 October 2018 (£448,499) (relating to the SC and MT matters); and

- further improper payments identified after 31 October 2018 (£787,836.64).

17.3 In relation to SC and MT, the improper payments were alleged to be those made to the unrelated third parties (as well as the transfers made for the Firm's costs). The fee transfers were submitted to be improper because the true owners of the properties did not give instructions for the sales, and therefore bills could not have been delivered to them and fees properly due. The First Respondent acknowledged that he attempted to retrieve the funds paid to Blue Management (in the MT matter) back from his bank. It was submitted therefore that the First Respondent was aware and appeared to accept that the payment to Blue Management was improper.

17.4 The FIO, Ms Maskell, identified four further property sale matters undertaken initially at Pride Solicitors, but completed via the Firm's client bank account. In one case, involving DR, the monies were returned by the First Respondent to the source and no shortage arose. On the remaining three cases, the alleged further potential shortage figure of up to £787,836.64 was calculated by reference to the list of conveyancing matters and the contracted sale prices provided to Ms Maskell by the First Respondent on 12 December 2018.

17.5 The Applicant's case was that not all monies due under the contracts were received by the Firm. For example, on one matter, there was a gifted deposit. Further, the matter ledgers showed a small balance remained on account for all three matters. The additional shortage figure was calculated based on the monies allegedly improperly paid out of the client bank account to entities appearing on altered Office Copy Entries. These further three matters thus mirrored the pattern described in more detail in relation to SC and MT in that money was paid out of the Firm's client account in circumstances where it was alleged that it should not have been.

17.6 None of these sums had been replaced at the time of the Firm's closure. It was alleged that a shortage on the client account was thereby created and not remedied.

17.7 Under Rule 7.1 of the SARs there is a duty to remedy a breach of the SARs promptly on discovery. This duty was submitted to have been engaged when the First Respondent discovered the shortage or improper payments. It was alleged that he had failed to do so (stating that he did not accept the shortage and could not replace the shortage). Rule 6 of the SARs imposed a requirement on him as the Firm's Principal to ensure compliance with the SARs and it was alleged that he had also failed to comply with this obligation.

17.8 It was alleged that the First Respondent paid away client money leading to a combined client account shortage as set out above and that he therefore failed to act with integrity in breach of Principle 2; failed to behave in a way that maintained the public trust in him in breach of Principle 6; and failed to protect client money and assets in breach of Principle 10.

The First Respondent's Case

Submission of no case to answer

17.9 Mr Metzger again submitted that there was no case to answer (again by reference to the 'second limb' of the Galbraith test). The submission mirrored that summarised above in relation to allegations 1.1 and 1.2. Again, the thrust of the submission was that the evidence of impropriety or hallmarks of fraud was tenuous.

The Applicant's reply to the submission of no case to answer

17.10 In reply, Ms Bruce again provided a summary of the main points of the Applicant's case and invited the Tribunal to consider the same paragraphs in Sheikh.

The Tribunal's Decision on the submission of no case to answer

17.11 The Tribunal again applied the second limb of Galbraith to the Applicant's case. The Tribunal did not accept that the evidence supporting the allegation was such that taken at its highest the Applicant's contentions could not be found proved. This was for reasons which echoed those set out above in relation to allegations 1.1 and 1.2. In those allegations reasons why a case to answer that the payments were made improperly in breach of the SARs are set out. The Tribunal considered that taken at its highest, there was accordingly evidence that a client account shortage may have thereby arisen and that the evidence presented raised a case to be answered for all elements of allegation 1.3.

First Respondent's substantive case

17.12 The alleged breaches were all denied. In his Answer, the First Respondent stated that there was no shortage on the Firm's client. This was for the reasons set out in relation to the previous allegations. His case was that he acted with the genuine belief that these were genuine clients, and that he had genuine instructions for the payments made. He maintained that there was therefore nothing to suggest there was a shortage.

17.13 In his pleadings and his oral evidence the First Respondent emphasised that where conveyancing matters were disputed, and he was informed before completion, the funds were returned to the sender. He took issue with the figures quoted by the Applicant as to the amount of the alleged shortfall, but more fundamentally disputed that any shortfall had arisen on the basis that he acted in good faith, on the instructions of verified clients in the normal course of the transactions and in compliance with the SARs.

17.14 Mr Metzger submitted that some of the payments were made by the First Respondent to remove charges on the relevant properties, as he understood it on the instruction of his clients. Mr Metzger submitted that it was implausible that the First Respondent would knowingly carry out such actions had he any knowledge or suspicion that there was or may be anything fraudulent about the transactions. As stated above, his involvement in the transaction was plain and it was submitted to be implausible that he would act as alleged in the certainty that his actions would be scrutinised.

17.15 Mr Metzger further submitted that from the date of the Applicant's intervention into the Firm the First Respondent was simply unable to take any remedial action and so it was not appropriate for this period to be relied upon as constituting a breach of the SARs.

<u>The Tribunal's Decision</u>

17.16 The Tribunal had accepted and found in relation to allegation 1.1 that payments had been improperly made out of the Firm's client account (in relation to SC and MT). The payments had been found to have breached the SARs. On that basis, the Tribunal was satisfied that the combined sum of the two third party payments involved therefore represented a shortage on the Firm's client account. The First Respondent had had conduct of these transactions and had made the payments which gave rise to a client account shortfall. The Tribunal found proved that he had caused the relevant shortfall caused by the improper payments made to the two third parties.

17.17 With regards to the additional payments relied upon by the Applicant, the position was different. The First Respondent had made the relevant payments, but had done so based on the papers with which he was provided by Person A (who features in subsequent allegations). The Tribunal had some sympathy with the First Respondent's position here. However, he had allowed payments to be made based on documents provided to him which he had not scrutinised sufficiently. Having been referred to the relevant Land Registry office copy entries, showing ownership of the relevant properties, it appeared to the Tribunal to be more likely than not that these documents had been doctored. The documents were immediately implausible and unconvincing on their face.

17.18 The issues with one of these further transactions came to the Applicant's attention following a report made to them by law firms acting for those who had paid purchase monies but who had not received title to the properties as the purported seller (the client of Pride Solicitors) was not the genuine owner of the relevant property. The two further properties in respect of which allegedly improper payments were identified were highlighted by Ms Maskell during her investigation. The Tribunal accepted that evidence had been presented which proved that it was more likely than not that a substantial client account shortage also existed in respect of these properties and associated payments.

17.19 The Tribunal did not make specific findings on the precise size of the client account shortage. It found, as a result of the above, that this was inevitably very substantial and amounted to several hundred thousand pounds. For the reasons set out in relation to the previous allegations, given that the payments were improper, in breach of the SARs, and a large client account shortage was thereby created, the Tribunal found proved to the requisite standard that the First Respondent had failed to protect client funds in breach of Principle 10.

17.20 For the same reasons, the Tribunal found proved to the requisite standard that the First Respondent had demonstrably failed to ensure compliance with the SARs in breach of Rule 6 of those rules. The Tribunal accepted that he did not have scope to take remedial action after the intervention, but the First Respondent had failed to take prompt action to remedy the breaches of the SARs in breach of Rule 7.1 of those rules. The improper payments relating to SC and MT had been made in or around May and July 2018 as set out in allegation 1.1. The intervention happened in January 2019. The First Respondent had failed to take remedial action. Notwithstanding the fact that the First Respondent had consistently maintained, up to and throughout the hearing, that there was no client account shortage, the Tribunal had found that improper payments had been made and it found that as a matter of fact, remedial action to address the shortfall thereby created had not been taken by the date of the intervention. On that basis the Tribunal found on the balance of probabilities that the breach of Rule 7.1 of the SARs had been proved.

17.21 Client money is sacrosanct in a solicitors practice and the Tribunal accepted the submission that the creation of a client account shortage by the making of improper payments, and the failure to remedy it promptly, would undermine public trust in the First Respondent and in the provision of legal services. The alleged breach of Principle 6 was accordingly proved to the requisite standard. The Tribunal considered that the consequences of allowing a shortage to accrue on client account were so serious, and the obligation on all solicitors to be vigilant in protecting client money so fundamental to the basic ethical requirements of the profession, that the failure by the First Respondent to prevent such a sizeable shortfall developing, in the circumstances summarised under this and the previous two allegations, amounted to a failure to act with integrity applying the test in Wingate. The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

18. **Allegation 1.4: In 2018 the First Respondent caused or allowed the Firm's client bank account to be used as a banking facility in breach of Principles 2 and 6, and Rule 14.5 of the SARs.**

The Applicant's Case

18.1 Ms Bruce submitted that in order for a payment to be made to a third party there needed to be a sufficient nexus with the legal services provided. Ms Maskell echoed this in her evidence. The Applicant's case was that there were no legal services attached to the flow of money from the Firm to the third parties in the SC and MT matters. The First Respondent did not provide any legal services in relation to the purported investments. The analogy urged on the Tribunal by Mr Metzger, of a client buying a Porsche with sale proceeds, was unpersuasive.

18.2 In the Rule 12 Statement it was further submitted that there was no adequate explanation recorded on the client file about why it was necessary for the payments to be made by the Firm (rather than the Firm paying the money to the clients for them to make the payments themselves). There was said therefore to be an absence of proper instructions. The retainer was submitted to be insufficient to allow the First Respondent to "process funds freely through the client account".

18.3 The terms of the Applicant's Warning Notice on Rule 14.5 of the SRA Accounts Rules 2011 were submitted to be clear on the prohibition on providing banking facilities through a client account. This guidance was issued in December 2014 and was updated on 6 August 2018.

18.4 It was alleged that the First Respondent failed to act with integrity in that he did not make the necessary enquiries as to the third parties to whom the payments were being made in breach of Principle 2. It was also alleged that the First Respondent failed to behave in a way which maintained the trust the public placed in him and the provision of legal services, in breach of Principle 6 and that by allowing the client account to operate as a banking facility, the First Respondent breached Rule 14.5 of the SARs.

The First Respondent's Case

Submission of no case to answer

18.5 Mr Metzger again submitted that there was no case to answer (again by reference to the 'second limb' of the Galbraith test). The submission mirrored that summarised above in relation to allegations 1.1, 1.2 and 1.3. Again, the thrust of the submission was that the evidence of the use of the client account as a banking facility was tenuous in circumstances where the First Respondent had simply been giving effect to clear client instructions.

The Applicant's reply to the submission of no case to answer

18.6 In reply, Ms Bruce provided a summary of the main points of the Applicant's case and relied upon the paragraphs in Sheikh previously identified.

The Tribunal's Decision on the submission of no case to answer

18.7 The Tribunal again applied the second limb of Galbraith to the Applicant's case. The Tribunal did not accept that the evidence supporting the allegation was such that taken at its highest the Applicant's contentions could not be found proved. The terms of the

Applicant's Warning Notice on the improper use of a banking facility was clear and the alleged lack of any nexus between the payments out of client account and the underlying legal transaction appeared to the Tribunal to raise a case to answer. The Tribunal considered that taken at its highest, there was accordingly evidence that a banking facility may have been provided and that the evidence presented raised a case to be answered for all elements of allegation 1.4.

The First Respondent's substantive case

18.8 The allegation was denied. As set out above, the First Respondent's evidence was that he had enquired as to the reason for the payments and had received what he considered to be satisfactory responses. He was acting on his clients' instructions. These instructions had been confirmed to him in writing. He made the point again that the payments were made to UK bank accounts. The First Respondent submitted that the allegation was flawed and without foundation.

18.9 Mr Metzger had submitted in relation to allegation 1.1 that that allegation and allegation 1.4 were mutually exclusive. In other words, having found allegation 1.1 proved, that the First Respondent had caused or allowed improper payments to be made, the Tribunal could not also find that he had caused or allowed the Firm's client account to be used as a banking facility. Improper payments could not constitute a banking facility.

<u>The Tribunal's decision</u>

18.10 Rule 14.5 of the SARs states:

> *"You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities."*

The terms of the Applicant's Warning Notice on the improper use of a banking facility were extremely clear as to the scope, operation and rationale of this rule.

18.11 The Tribunal accepted Ms Bruce's submission that no link had been advanced by or on the First Respondent's behalf between the payments made to third parties at the behest of SC and MT and the underlying legal transaction conducted by the First Respondent. His case had been that he had carried out the instruction of his clients and made the payments and that he had genuinely considered that this was permitted by the SARs.

18.12 The Tribunal rejected the submission from Mr Metzger that allegations 1.1 and 1.4 were mutually exclusive. It was not inconsistent for payments to be made improperly and for the payments to be unrelated to the underlying legal service provided such that a banking facility had in effect been provided.

18.13 The Tribunal found that the payments made to third parties were not in relation to the underlying transaction and were not linked to a service forming part of the Firm's normal regulated activities. The payments were made at the request and for the convenience of the clients. For the reasons set out in the Warning Notice at length, this was not permitted. It was objectionable in itself, created a risk of money laundering and

created additional risks in the context of a risk of insolvency. There being no adequate reason for the payments which were made in breach of the SARs and no link to the underlying transaction, the Tribunal found proved to the requisite standard that the First Respondent had breached Rule 14.5 of the SARs.

18.14 The Tribunal considered the operation and protection of the client account to be the bedrock of legal practice. Even outwith issues with the client identities which were the focus of the previous allegations, the Tribunal considered that in such circumstances, it was clear that the money should be returned to the client for them to make any unrelated payment themselves. The vital importance of the proper administration of the client account, which went to the heart of the basis of public trust in the profession, meant that public trust in the First Respondent and in the provision of legal services would be undermined by his failure to observe the most basic requirements such as not allowing the client account to be used as a banking facility. The Tribunal found to the requisite standard that his conduct amounted to a breach of Principle 6. Again, as with previous allegations, the Tribunal considered that the essential ethical requirements of the profession were engaged by conduct which failed to protect client funds and administer the client account appropriately, given this was the bedrock of legal practice and public trust. Applying the test in Wingate again, the Tribunal found proved to the requisite standard that the First Respondent's conduct had lacked integrity in breach of Principle 2.

19. **Allegation 1.5: In 2018 the First Respondent failed to exercise any or adequate supervision or control over an individual using the name of Person A, in breach of Principles 2, 6 and 8, and failed to achieve Outcome 7.8 of the Code.**

The Applicant's Case

19.1 Person A was employed as a solicitor at Pride Solicitors from 12 October 2018. In early October 2018 the previous owner of Pride Solicitors introduced the First Respondent to Person A and a contract was signed shortly thereafter. The First Respondent told Ms Maskell in their interview in December 2018 that he could not recall where Person A had been working previously. The First Respondent had been provided with a CV and had been given details of two referees but had not investigated these as he had not had time. The First Respondent checked Person A's name on the Roll of solicitors and said he "didn't have a particular reason to doubt" the result which was returned. The First Respondent was said not to hold Person A's bank details despite an arrangement under which Person A was paid 50% of the fees on matters he had handled.

19.2 There were four transactions with which this allegation was concerned (the four transactions at Pride Solicitors mentioned in allegation 1.4, including one in which the purchase monies were returned to the sender). The four matters were conducted by Person A at Pride Solicitors, who acted for the purported sellers in each case. The purchase monies were paid into the client account of the Firm. In the three matters where the money was not returned to the intended purchaser, the purchase monies were paid away to third parties and not used to redeem charges on the properties in question. As summarised in the previous allegation, these payments were said to have given rise to a shortage of £787,836.64 on the Firm's client account.

19.3 The First Respondent had stated that his intention was to merge the two firms of which he was a director and principal. To avoid losing business after he bought Pride Solicitors, during a delay in that firm's bank mandates being transferred to him, he agreed that Pride Solicitors matters would be completed via the Firm. Person A brought the First Respondent the files for completion.

19.4 The First Respondent had stated that although files were transferred to the Firm for completion, it was not necessarily the case that the First Respondent or the Firm assumed conduct of or responsibility for the files. In terms of supervision undertaken on the files, the First Respondent said that he reviewed all of Person A's files in the preceding 2-3 weeks, and if something was missing he would raise this with Person A and Person A would produce it, but there was nothing which caused concern.

19.5 Ms Bruce submitted that the allegation was framed to say that the First Respondent did not exercise adequate control, and this meant that the First Respondent could not disassociate himself from the payments. In the interview with Ms Maskell he had accepted that he had sole control of the Firm's client account. The Tribunal was directed to documents demonstrating the First Respondent's personal involvement in the completion of the three transactions.

19.6 Ms Bruce described the First Respondent as the "gateway" to the money changing hands and submitted this was enough for the allegation to be proved. The Applicant's case was that the First Respondent was obliged to exercise greater control and supervision than the facts suggested was the case. It was alleged that the First Respondent's failure to exercise any or adequate supervision or control over Person A enabled him to conduct conveyancing transactions bearing the hallmarks of vendor fraud, and the First Respondent paid purchase monies to third parties, giving rise to a client account shortage. It was submitted that the First Respondent should have ensured there was an adequate system of supervision and control at Pride Solicitors to ensure that checks were being undertaken as to the correct party to whom to send sale proceeds. The absence of one was alleged to amount to a failure to run Pride Solicitors in accordance with proper governance and sound financial and risk management principles in breach of Principle 8 and a failure to achieve Outcome 7.8 of the Code which requires an adequate system for supervising clients' matters, to include the regular checking of the quality of work by suitably competent and experienced people.

19.7 In failing to exercise any or adequate supervision or control over Person A's work the First Respondent allowed Person A to make the improper payments described above from the client account to third parties, and it was submitted that therefore the First Respondent demonstrated a lack of integrity, in breach of Principle 2. His failure to carry out checks on Person A's work was also submitted to amount to manifest incompetence and a breach of Principle 6. In displaying manifest incompetence in the running of his firms, the First Respondent was alleged to have failed to behave in a way that maintained the trust the public placed in him and the provision of legal services in breach of Principle 6.

The First Respondent's Case

Submission of no case to answer

19.8 Mr Metzger submitted on the First Respondent's behalf that there was no evidence called by the Applicant which supported the allegation and accordingly a reasonable Tribunal, properly directed, could not conclude that the allegation was proven. As stated above, it was submitted that accordingly the 'first limb' of the Galbraith test applied.

19.9 The First Respondent had taken over Pride Solicitors with Person A already employed and the firm already operating. All of the transactions with which the allegation was concerned were carried out under the auspices of Pride Solicitors (albeit completion was effected via the Firm). Person A carried out the relevant transactions and then presented the First Respondent with requests for payment and the relevant supporting materials.

19.10 Mr Metzger submitted that the Applicant had not stipulated how the First Respondent was expected to exercise control and supervision. Mr Metzger invited the Tribunal to consider that Person A had represented himself as a solicitor with twelve years' experience and whether someone with this experience required day to day supervision or control. Mr Metzger submitted that a solicitor with less than three years' experienced required this greater level of supervision and control but someone with twelve years' experience did not. Mr Metzger submitted that had the First Respondent had any suspicion that Person A was not the experienced solicitor he represented himself to be then it was inconceivable that he would have put his career at risk by effecting completions as requested by Person A. In the alternative, as the Applicant contended that Person A was not a solicitor then it was submitted that the First Respondent would not have been required to supervise him in accordance with the stated Principles.

19.11 It was submitted that there was no evidence of a failure to exercise adequate supervision or control (or alternatively no such obligation arose) and that there was accordingly no case to answer by application of the first limb of the Galbraith test.

The Applicant's reply to the submission of no case to answer

19.12 In reply, Ms Bruce provided a summary of the main points of the Applicant's case and relied upon the paragraphs in Sheikh previously identified.

The Tribunal's Decision on the submission of no case to answer

19.13 The Tribunal did not accept that there was no evidence supporting the allegation provided. As it had been invited to do, the Tribunal applied the first limb of the Galbraith test to the Applicant's case.

19.14 The Tribunal considered that there was evidence that the First Respondent had sole control of the client account from which the various payments were made, that the payments may have given rise to a significant client account shortfall, that he was required to authorise the payments requested by Person A and that the documents to which the Tribunal was referred suggested that he carried out some review of the papers

with which he was presented. The Tribunal considered that this evidence comfortably met the threshold of raising a case to answer.

19.15 The fact that Person A may not have been the experienced solicitor he represented himself as being did not provide a complete answer to the allegation that the supervision and control were inadequate in these specific circumstances. As with the applications made in relation to the previous allegations, whilst the First Respondent may have had a credible explanation, the Tribunal considered that the evidence raised questions to be answered for all elements of allegation 1.5.

The First Respondent's substantive case

19.16 The allegation was denied. The First Respondent's evidence was that the individual using the name of Person A was introduced to him by a solicitor (a previous owner of Pride Solicitors). Person A was introduced to the First Respondent as a qualified Solicitor with over 5 years' experience in conveyancing and someone who had been on the Roll of solicitors since 2006.

19.17 The First Respondent's case was that Person A was introduced as someone with conveyancing experience and someone who was therefore qualified to supervise that department. He referred the Tribunal to minutes of the meeting where the previous owner of Pride Solicitors had introduced Person A in these terms. In his oral evidence the First Respondent noted that after three years' post-qualification experience a solicitor is permitted to supervise a practice and his case was that his reliance on Person A was reasonable in the circumstances,

19.18 In addition, the First Respondent's evidence was that he checked the paperwork with which he was presented and did not have any concerns. The requests for payment were fully documented. The First Respondent had conducted a Law Society search to check Person A's credentials and reasonably believed Person A to be a qualified solicitor of several years standing.

19.19 Mr Metzger submitted that allegations 1.5 and 1.6 were mutually exclusive. It could not be said both that the First Respondent failed to take adequate steps to verify the identity and status of Person A (allegation 1.6) and that he failed to exercise adequate supervision or control over him. It should be one or the other. In any event, there was submitted to have been no material before the Tribunal which confirmed that the money paid out in respect of charges on the three properties highlighted by the Applicant was not paid to the correct entities. There was no suggestion that the First Respondent was in any way 'skimming' any of these sums.

19.20 The Applicant had highlighted differences in the Land Registry office copy entries in support of the contention that the transactions conducted by Person A, where the First Respondent completed the payments out when presented with the relevant paperwork, bore the hallmarks of fraud. Mr Metzger submitted that the differences which had been highlighted were unremarkable and it was to be expected that different results were returned at different times as the position reflected a 'snapshot' of ownership and charge details at a moment in time for the relevant properties. There was no suggestion that the charges would not in fact have been paid off.

19.21 With regards to the example where the First Respondent had contacted his bank in order to seek to stop the onward payment, the First Respondent was being cautious and seeking to preserve the status quo whilst queries about the transaction were resolved. The First Respondent's actions were based on an experienced and qualified solicitor having completed the relevant legal work and presented the completed paperwork to him with a request for the financial aspects of the transaction to be completed. Given Person A's experience, the degree of supervision and control was submitted to be entirely appropriate.

The Tribunal's Decision

19.22 Outcome 7.8 of the Code required that as Principal the First Respondent should:

> *"have a system for supervising clients' matters, to include the regular checking of the quality of work by suitably competent and experienced people".*

19.23 The Tribunal recognised that the First Respondent took some steps to verify the work that Person A had completed on the conveyancing matters. However, by the First Respondent's own evidence, conveyancing was not his usual area of practice. The Tribunal considered that a perfunctory glance at the paperwork at the stage when Person A requested that payments be made was inadequate. The First Respondent had acknowledged that he did not exercise more extensive supervision or assume any greater involvement in the transaction.

19.24 The First Respondent had stated in his oral evidence that Person A's conduct and demeanour was consistent with his introduction as an experienced solicitor and that "he knew a solicitor when he saw one". The Tribunal considered the context to be highly significant. The First Respondent was not a conveyancing specialist and in October 2018 he was new to Pride Solicitors. He had been introduced to Person A and had seen his name on the Law Society's website but this was the extent of the information he had. Conveyancing transactions inevitably involve the transfers of large sums of money. In such a context, the need for a system of control and supervision was heightened. The First Respondent had not taken any steps to check the experience or competence of Person A. For someone who had the authority to run conveyancing files with autonomy, subject only to a perfunctory check by the First Respondent when payment was sought, the system of control and supervision for Person A was completely inadequate. The Tribunal found proved on the balance of probabilities that the First Respondent had thereby breached Outcome 7.8 of the Code.

19.25 Principle 8 requires:

> *"You must run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles".*

For the reasons set out directly above the Tribunal found proved to the requisite standard that the First Respondent had breached Principle 8 by failing adequately to supervise and control Person A. The lack of supervision and checking of his experience was a failure to run the firms according to sound financial and risk management principles. The general observation of the First Respondent about the Applicant's

guidance that someone with three years' post-qualification experience may manage a practice did not change the position. What was necessary in a particular context was dependent on the specifics of that context. The arrangements that the First Respondent had put in place were inadequate.

19.26 The Tribunal accepted the submission that the failure to carry out meaningful checks on Person A's work and experience amounted to manifest incompetence and a breach of Principle 6. The Tribunal found proved to the requisite standard that displaying such manifest incompetence in the running of his firms in the context of an individual given a free rein to conduct legal work in which significant sums of client and purchaser money was inevitably involved, amounted to a failure to behave in a way that maintained the trust the public places in the First Respondent and the provision of legal services. The alleged breach of Principle 6 was thus proved on the balance of probabilities.

19.27 The Tribunal considered the potential adverse consequences of someone unverified and unsupervised working on conveyancing matters were entirely foreseeable. The context was described above and the Tribunal found the lack of supervision to be extraordinary. By reference to the test set out in Wingate, and the foreseeable potential consequences for those whose money was involved, the Tribunal found the failures summarised above to be so profound as to amount to a failure to adhere to the basic minimum ethical standards of the profession. The First Respondent had failed to meet his basic responsibilities as Principal of both firms to such an extent that his conduct lacked integrity. The Tribunal found the alleged breach of Principle 2 proved to the requisite standard.

20. **Allegation 1.6: In 2018 the First Respondent failed to take any or adequate steps to verify the identity and regulatory status of the individual using the name of Person A before allowing said individual to practice as a solicitor and in doing so breached Principles 6 and 8.**

The Applicant's Case

20.1 Ms Bruce stated that it was undisputed that the First Respondent did not take up references when Person A was recruited. She noted that this was despite a firm in which he previously worked being intervened into by the Applicant. Ms Bruce summarised various points relied upon by the Applicant about the background to the recruitment of Person A:

- She submitted that taking up references was a very basic step that all employers should take (particularly those in the legal sector where employees may deal with large amounts of client money);

- She submitted in the circumstances there was a clear duty to check the background of Person A;

- She noted that it appeared that the First Respondent did not have Person A's bank details with which to make payments to him (from the interview with the Ms Maskell);

- She submitted that it was not a difficult task to check the background of someone working in the legal sector and that the Panel Members would all have professional experience of doing so;

- She described the First Respondent as having "let Person A loose" with client money;

- She submitted that the CV held on file would only have come to attention when Person A was already working at Pride Solicitors (it made reference to that position).

20.2 The Applicant accepted that Person A was already at Pride Solicitors when the First Respondent's association with that firm began but Ms Bruce submitted that this did not absolve him of the need to make appropriate checks once he assumed responsibilities as the employer.

20.3 More detail was provided in the Rule 12 Statement. On 18 December 2018 the First Respondent provided Mr Payne (the second FIO) with a copy of the practising certificate for Person A. This practising certificate used the SRA ID number for a genuine solicitor (Person B) who worked as in-house counsel for a bank. Person B set out in a witness statement that he has had no contact with either of the Respondents nor the former owner of Pride Solicitors. The fonts used for the name, date of admission and SRA ID in the fraudulent practising certificate differed from those of the genuine certificate of Person B (which also has a background pattern which was absent in the fraudulent certificate).

20.4 On 21 December 2018 Mr Payne collected Person A's personnel file, held at the reception of the offices where Pride Solicitors Ltd had relocated. Included in the documents was a scanned copy of a driving licence, the image on which differed in appearance from Person B and the date of birth differed from that held on SRA records for Person B. Included in the documentation was a CV in the name of Person A.

20.5 As a result of the above, it was alleged that the First Respondent had failed to run the firms in accordance with proper governance and sound financial and risk management principles (in breach of Principle 8). The alleged failures to carry out checks on Person A were further submitted to amount to manifest incompetence (and a breach of Principle 6). It was submitted that in displaying manifest incompetence in the running of his firms, the First Respondent failed to behave in a way that maintained the trust the public placed in him and the provision of legal services (in breach of Principle 6).

The First Respondent's Case

Submission of no case to answer

20.6 Mr Metzger again submitted on the First Respondent's behalf that there was no evidence called by the Applicant which supported the allegation and accordingly a reasonable Tribunal, properly directed, could not conclude that the allegation was proven. It was submitted that accordingly the 'first limb' of the Galbraith test applied.

20.7 The points made in relation to allegation 1.5 were submitted to apply again and were relied upon in relation to allegation 1.6. Mr Metzger submitted that the crux of this allegation was the steps that the First Respondent had taken to verify Person A's status. He had taken a printout of the Law Society 'find a solicitor' facility which showed Person A's apparent status as an experienced qualified solicitor. It was submitted that none of the evidence presented by the Applicant cast doubt on this search result nor demonstrated what it was said that the First Respondent should have found when seeking to verify Person A's status. Person A had been introduced as an experienced solicitor by a former owner of the firm and Mr Metzger invited the Tribunal to consider what else the First Respondent could reasonably be expected to do.

20.8 It was submitted that there was no evidence of a failure to exercise adequate supervision or control (or alternatively no such obligation arose) and that there was accordingly no case to answer by application of the first limb of the Galbraith test.

The Applicant's reply to the submission of no case to answer

20.9 In reply, Ms Bruce again provided a summary of the main points of the Applicant's case and relied upon the paragraphs in Sheikh previously identified.

The Tribunal's Decision on the submission of no case to answer

20.10 The Tribunal did not accept that there was no evidence supporting the allegation provided. As it had been invited to do, the Tribunal applied the first limb of the Galbraith test to the Applicant's case.

20.11 The Tribunal considered that there was evidence that the First Respondent delegated control of conveyancing cases in which large sums of money were involved to Person A, that he had seemingly not taken up written references for Person A and that some evidence of potential anomalies in the practising certificate held by Pride Solicitors for Person A had been presented. The Tribunal considered that as the allegation had been pleaded in the alternative, to include the allegation that the steps taken were inadequate, the evidence presented met the threshold of raising a case to answer on the balance of probabilities. Had the allegation simply been that the First Respondent had failed to take "any" steps then the Tribunal considered there may not have been a case to answer. The Tribunal considered that the evidence raised questions to be answered for all elements of allegation 1.6.

The First Respondent's substantive case

20.12 The allegation was denied. The First Respondent maintained that he took reasonable steps to verify the identity and regulatory status of Person A.

20.13 As recorded in relation to the previous allegation, Person A was introduced to the First Respondent by the previous owner of Pride Solicitors as a solicitor with a good number of years' standing. The First Respondent's evidence was that he considered this to be an adequate reference as far as he was concerned. The First Respondent also made enquiries of the Law Society and it was confirmed that Person A was a solicitor who had been on the Roll since 2006. He stated that he therefore had no reason to suspect

that Person A was not an experienced solicitor. In his Answer, the First Respondent also stated that he did hold Person A's bank details.

20.14 Mr Metzger submitted that the First Respondent had evidently taken some steps to verify the identity and status of Person A. He had his CV and practising certificate and had the previous owner of Pride Solicitors vouching for him. The First Respondent's genuine confidence in Person A's credentials was demonstrated by the fact that the First Respondent intended to appoint him as COLP and COFA of Pride Solicitors. Mr Metzger described the Applicant's case as being steeped in speculation and submitted that the burden of proof had not been discharged.

The Tribunal's Decision

20.15 As set out in relation to the previous allegation, the Tribunal considered that the adequacy of the steps taken in a particular situation would depend on the surrounding context. The Tribunal's findings on the particular risk factors present in the conveyancing work Person A was completing were also set out. The Tribunal considered the First Respondent's failure to take more extensive and probing steps to verify the identity and regulatory status of Person A to be a continuation of his lax approach to recognising and investigating when there were grounds for concern.

20.16 The First Respondent had a CV for Person A and had had a recommendation of him from the previous owner of Pride Solicitors. He had also seen that Person A was on the Roll of solicitors through a Law Society website search. The Tribunal found that, in the particular circumstances applying in this case, this was not enough and did not discharge the regulatory obligations on him.

20.17 Notwithstanding the introduction of Person A by another solicitor, it was incumbent on the First Respondent to go further and verify at least some of Person A's employment history. The First Respondent did not take up any written reference. He had told Ms Maskell that he did not know where the First Respondent had worked prior to Pride Solicitors. The Tribunal accepted Ms Maskell's evidence and found her to be a straightforward, clear and helpful witness. She did not appear to the Tribunal to overstate her knowledge or position and was candid when she could not recollect something. Given the degree of autonomy with which Person A would be working, the First Respondent's lack of experience and expertise in conveyancing, and the money involved and potentially at risk, the Tribunal considered that proper governance and sound financial and risk management practices required that the First Respondent take up at least one written reference. The fact that the practising certificate in Person A's name with which the First Respondent was presented looked so obviously amateurish and was not for the then current year supported this conclusion. The Tribunal found proved on the balance of probabilities that the First Respondent had thereby breached Principle 8.

20.18 The Tribunal accepted the submission that the failure to carry out adequate checks on Person A's identity and regulatory status amounted to manifest incompetence and a breach of Principle 6. The Tribunal found proved to the requisite standard that displaying such manifest incompetence in matters with the clear potential for financial loss to be caused, as set out in relation to the previous allegation, amounted to a failure to behave in a way that maintained the trust the public placed in the First Respondent

and the provision of legal services. The alleged breach of Principle 6 was proved on the balance of probabilities.

21. **Allegation 1.7: In 2018 the First Respondent misled insurers in correspondence dated 10 July 2018 in breach of Principles 2, 6 and 8 (it was further alleged as an aggravating feature that the alleged actions were dishonest).**

The Applicant's Case

21.1 Ms Bruce referred the Tribunal to three specific documents from the period leading up to the 10 July 2018 correspondence with which the allegation was primarily concerned. The documents were emails from the solicitor acting for the buyer in one of the intended purchases which formed part of the backdrop to allegations 1.1 to 1.4 (where the First Respondent acted for MT). ST solicitors had asked various questions about the First Respondent's identification of his client. In the report that ST solicitors made to the Applicant about the Firm on 4 July 2018 they stated:

> *"We believe that the firm of Charles Ete failed to carry out any identity checks or money laundering checks to verify that the seller was the person entitled to sell the property. Our client has not received good title and has suffered a loss of 350,000 through the falsity of the statement by Charles Ete that induced our client to purchase the property. The matter has been reported to our insurer and the metropolitan police".*

21.2 The three documents highlighted by Ms Bruce were:

- An email dated 4 July 2018 from ST solicitors to the Firm informing the First Respondent that that the writer had "*now reported this crime to the police and placed our insurers on notice*";

- A further email of 4 July 2018 in which the writer from ST solicitors stated that he had been in touch with a Police Chief Inspector and "*unless I receive satisfactory responses by 4pm today I am reporting you for fraud*"; and

- A further email of the same date in which the writer stated that the information provided by the First Respondent was inadequate, made reference to a fraudulent transaction and stated "*it has been reported to the police, SRA and our insurer*".

21.3 Ms Bruce submitted that when presented with such clear statements a reasonable solicitor would notify their insurer straight away.

21.4 Ms Bruce submitted that the professional indemnity insurance renewal form that the First Respondent had signed on 10 July 2018 was clear on its face about what needed to be disclosed. Section 9 of this form required confirmation that the First Respondent had "made due and careful enquiry" and that he was "not aware of any claims" or "circumstances likely to give rise to claims, in the last 6 years". The First Respondent gave this confirmation in the knowledge that he had been informed six days previously by ST Solicitors that the sale at Morley Crescent in which the First Respondent acted for the purported seller may be fraudulent and that the matter had been reported to the Applicant, ST Solicitors' insurers, and the Police.

21.5 It was noted in the Rule 12 Statement that on 4 July 2018 the First Respondent contacted his bank to seek to recall a payment from the Firm's client account of the sale proceeds of the Morley Crescent sale (paid to Blue Management International Ltd at MT's instruction as set out above). He was unsuccessful in those efforts. Nevertheless, despite these efforts to recall this money, on the day he was told by solicitors acting for the intending purchaser that the matter "*has been reported to the police, SRA and our insurer"* the First Respondent did not notify his insurers of the issues surrounding the MT conveyance until 23 November 2018.

21.6 The Applicant rejected the account provided in interview by the First Respondent that his completion of the renewal form was accurate as there was no letter of claim at the time; that he had acted in good faith; and that he had since informed the insurer of the matter. Ms Bruce submitted "of course he knew" that there were circumstances likely to give rise to claims.

21.7 By failing to notify his insurer of the suspected fraud, it was alleged that the First Respondent failed to act with integrity (Principle 2) as a solicitor acting with integrity would have disclosed any claims or circumstances so that the insurer could take this into account when considering coverage options. His alleged attempts to mislead his insurers were submitted not to exhibit behaviour which would maintain the trust the public placed in him and in the provision of legal services (Principle 6). Such conduct also amounted to a failure to run his business effectively and in accordance with proper governance and sound financial and risk management principles (Principle 8).

Alleged dishonesty

21.8 It was further alleged that the First Respondent's conduct was dishonest according to the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67. The test is:

> *"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. Once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."*

21.9 It was submitted that as an experienced solicitor of 21 years' standing, the First Respondent must have known, or at least suspected, that submitting a proposal form to the insurer denying knowledge of any "claims" or "circumstances likely to give rise to claims" in the last 6 years, was incorrect when he had been notified by ST Solicitors that the sale at Morley Crescent may be fraudulent and that the matter had been reported to the Applicant, ST Solicitors' insurers, and the police. It was submitted that ordinary, decent people would consider this behaviour to be dishonest.

The First Respondent's Case

Submission of no case to answer

21.10 Mr Metzger again submitted on the First Respondent's behalf that there was no evidence called by the Applicant which supported the allegation and accordingly a reasonable Tribunal, properly directed, could not conclude that the allegation was proven. It was submitted that the 'first limb' of the Galbraith test applied.

21.11 It was submitted that the Applicant had failed to show that the First Respondent misled insurers in correspondence dated 10 July 2018 as alleged. It was submitted that the Applicant could not discharge the burden of proof upon it in a case where the Tribunal was being urged to find that the First Applicant had failed to make relevant declarations on the basis that there were "circumstances" that suggested there might be proceedings taken against him.

21.12 The circumstances relied upon by the Applicant involved a matter of interpretation and exercise of judgment as to whether they were "likely to give rise" to a claim. The First Respondent accepted that he had been notified of concerns on the part of ST Solicitors but having completed his client ID checks he was convinced that his client was genuine. The First Respondent was sure that the concerns raised "would come to naught" in Mr Metzger's words. Mr Metzger noted that the Applicant had not been able to point to a single case that has been lodged against the First Respondent in any court, despite it being over two years since his firm was intervened and his licence to practice as a solicitor suspended.

21.13 The First Respondent did not consider there were any circumstances present which could give rise to the likelihood of a claim. The Applicant was submitted to have presented no evidence to disturb or cast doubt on that consistent evidence put forward by the First Respondent. Relying on surrounding circumstances or the exercise of a judgement could not amount to evidence which was capable of discharging the burden or proof on the Applicant. It was submitted that there was no evidence that the First Respondent misled his insurer and that there was accordingly no case to answer by application of the first limb of the Galbraith test.

The Applicant's reply to the submission of no case to answer

21.14 In reply, Ms Bruce again provided a summary of the main points of the Applicant's case and relied upon the paragraphs in Sheikh previously identified.

The Tribunal's Decision on the submission of no case to answer

21.15 The Tribunal did not accept that there was no evidence supporting the allegation provided. As it had been invited to do, the Tribunal applied the first limb of the Galbraith test to the Applicant's case.

21.16 The Tribunal had been referred to documents during the opening of the Applicant's case which appeared on their face to show that in June 2018 the Land Registry had written to solicitors acting for a purchaser (in a transaction where the Firm acted for the purported seller) and requested that the relevant firm seek copies of the evidence of

client ID relied up by the Firm and the First Respondent. This was not the transaction upon which Ms Bruce had focused, but it appeared to the Tribunal to amount to evidence of a potential issue which originating as it did with the Land Registry would be likely to have caused some concern to the First Respondent.

21.17 In any event, the Tribunal considered that the correspondence highlighted by Ms Bruce that the First Respondent received shortly before he completed the insurance renewal form was, on its face, and subject to any explanation that the First Respondent may provide about the surrounding circumstances, fully squared with what an ordinary person would consider as circumstances likely to give rise to a claim.

21.18 The Tribunal found to the requisite standard that the evidence raised questions to be answered for all elements of allegation 1.7 including dishonesty. That some degree of interpretation or judgement was required did not mean that the allegation inevitably failed or no evidence of misleading or the alleged breaches had been presented; it meant that the First Respondent may be able to answer the case that the Tribunal found had been shown.

The First Respondent's substantive case (including on dishonesty)

21.19 The allegation was denied. Mr Metzger submitted that the key task for the Tribunal was to ascertain the actual, subjective, state of the First Respondent's knowledge or belief as to the facts. The objective element of the Ivey test was secondary to this essential task.

21.20 The proper focus of the allegation was what was said to have been misleading, and what did the First Respondent genuinely believe at the time about that. Mr Metzger stated that no evidence had been produced from the First Respondent's insurer about whether they considered they had been misled. Whatever the Applicant may submit about the reasonableness of the First Respondent's belief as to the facts, his conviction that he was not obliged to notify his insurer about this matter on 10 July 2018 when he completed the form was genuinely held as demonstrated in cross-examination. In any event, his insurer subsequently contested the litigation brought against the Firm which indicated that they had no issues with the notification he provided.

21.21 In his evidence the First Respondent reiterated that no letter before action had been received when he completed the form. He stated that solicitors routinely make threats in correspondence and the First Respondent genuinely did not consider that the emails relied upon by the Applicant met the threshold such that reporting to his insurer was necessary or appropriate. When he considered subsequently that the threshold was met, he duly notified his insurer.

21.22 The insurance document was headed "schedule" and Mr Metzger submitted that it was relevant that the firm in question had been the Firm's insurer for many years and that the First Respondent was simply renewing his cover. He also submitted that professional indemnity insurance covers the practice against negligence and did not cover the Firm against an investigation by the Applicant or the Police. Mr Metzger also noted that the insurance form stated at the top of the first page that if the form had not been completed to the satisfaction of the insurer, further information may be requested

and terms altered or withdrawn. To date there was no indicated that the insurance had been withdrawn.

21.23 The insurance document stated that all "material" circumstances should be highlighted and that there was a "duty of fair representation". It was submitted that there was no evidence before the Tribunal to suggest that the First Respondent was wrong in his assessment that the correspondence with ST solicitors did not reach the threshold such that reporting was required.

21.24 Mr Metzger submitted that in order to discharge the burden of proof on it the Applicant needed to prove that the First Respondent had acted in bad faith. Omitting details on the form as a result of a genuinely held, but incorrect, assessment that he was not required to disclose them could not found a finding of dishonesty or acting without integrity. To prove the aggravating allegation of dishonesty the Applicant had to prove to the requisite standard that the First Respondent intended to mislead when he completed the insurance document. It was submitted that the Applicant had failed to discharge that burden.

The Tribunal's Decision

21.25 The documentation to which the Tribunal was referred demonstrated that the First Respondent had been informed by solicitors acting for the purchaser in a transaction in which the First Respondent was acting for the purported seller that the purchaser's solicitors considered the transaction to be fraudulent and had reported it to their insurer, the Applicant and the Police. On the same day, 4 July 2018, that this was communicated to the First Respondent he contacted his bank and sought to recall the money that he had paid, at MT's direction, to an unrelated third party. Whilst the First Respondent's evidence was that threats and hyperbole are routine in correspondence between solicitors, the information conveyed by ST solicitors did prompt him to seek to take action in relation to the payment made to the third party.

21.26 The Tribunal rejected the First Respondent's evidence that he considered that the communications from ST solicitors, extracts from which are set out above, was the typical threat which may be expected in the 'cut and thrust' of manoeuvring for advantage in correspondence. The emails stated plainly that the transaction may be fraudulent, that the intended purchaser had lost £350,000 and had not received good title. The First Respondent was told bluntly that his client identification measures were considered inadequate. On the day of this communication the First Respondent tried three times to recall the payment to the third party (according to his file note at 5.00 pm, 5.15 pm and 5.19 pm). The Tribunal considered that this indicated that the First Respondent was well aware that there were grounds for concern.

21.27 The Tribunal was referred to a file note made by the First Respondent on 3 July 2018 in which he recorded being informed that the purchaser of the Morley Crescent property was unable to obtain access. The Tribunal was also referred to correspondence from the Land Registry in which they sought information about and copies of the identification of MT undertaken by the Firm. The Tribunal noted that on 4 July 2018 the First Respondent wrote to ST solicitors by email:

"Please what exactly are you saying constitute a fraud, as i have no interest in this matter and only acted as a Solicitor. We did due deligence [sic] checks and they came passed".

21.28 The Tribunal considered that the First Respondent sought, in the words he used in oral evidence, "to preserve the status quo" at that point as it was perfectly obvious that there was potentially a very significant problem with the transaction and a very significant issue with his client's identity. From the point of the correspondence with ST solicitors on 4 July 2018 it was very clear and spelled out in plain language that there was the potential for a serious dispute on this matter and the First Respondent's role in it. The Tribunal did not find it remotely credible that the First Respondent could not have appreciated that. As indicated above, his three calls to his bank to seek to recall the payment of the purchase monies away indicated that he had indeed appreciated it.

21.29 The Tribunal accepted that the First Respondent may genuinely have believed that there was no scope for any claim against him or the Firm to be successful. However, the insurance form was clear on its face that it did not seek information about material circumstances relating to claims with reasonable prospects of success, but "claims, or circumstances likely to give rise to claims, in the last 6 years." The First Respondent had been directly told that such circumstances may exist by ST solicitors in the 6 days before he completed the insurance declaration form on 10 July 2018. The Tribunal found that it was inconceivable that the First Respondent was not aware that this was a matter which he was obliged to declare to his insurer on the basis that a claim was likely to arise. The First Respondent's denial of this in evidence was unconvincing and lacked credibility. The Tribunal found that the First Respondent was aware that he should have reported these issues but that he elected not to do so.

21.30 The Firm's insurer would rely on the information provided on the declaration form to make decisions on the cover offered. By reference to the test for conduct lacking integrity set out in Wingate the Tribunal considered that this was a clear case where integrity and the ethical standards of the profession required scrupulous accuracy. By omitting relevant circumstances that the Tribunal had found the First Respondent was aware he should disclose to his insurer, the Tribunal found that he failed to adhere to those minimum ethical standards required of all solicitors. The Tribunal accordingly found proved on the balance of probabilities that the First Respondent's conduct had lacked integrity in breach of Principle 2.

21.31 The Tribunal accepted the submission that public trust would be undermined by a solicitor failing to disclose such material factors to their insurer. The requirement for professional indemnity insurance was a vitally important mechanism for client and public protection. The Tribunal found proved on the balance of probabilities that the First Respondent's conduct had also breached Principle 6. The Tribunal further considered that failing to provide relevant information to the Firm's insurer also amounted to a failure to carry out the First Respondent's role in the business effectively and in accordance with proper governance and sound financial and risk management principles. The Tribunal found proved on the balance of probabilities that the First Respondent's conduct had also breached Principle 8.

The Tribunal's Decision on dishonesty

21.32 The Tribunal accepted the summary of the test for dishonesty provided by the parties. When considering the allegation of dishonesty, the Tribunal applied the test in Ivey. Accordingly, the Tribunal adopted the following approach:

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

- secondly, once that was established, the Tribunal then considered whether this conduct would be thought to have been dishonest by the standards of ordinary decent people.

21.33 As to the state of the First Respondent's knowledge, the Tribunal had found that the First Respondent was well aware that he should have reported these issues to his insurer but that he elected not to do so. He may have believed that no successful claim would result, but he was aware that there was a major issue with the relevant transaction; that the purchaser's solicitor considered the transaction to be fraudulent and considered the client identification steps taken by the First Respondent to have been inadequate. He was aware that he should have reported these issues but elected not to do so. Once the above findings as to his knowledge and belief as to the facts had been made, the Tribunal found on the balance of probabilities that ordinary decent people would regard the First Respondent's conduct as dishonest. He had completed the form untruthfully. The aggravating allegation of dishonesty was accordingly proved to the requisite standard.

22. **Allegation 1.8: In 2018 the First Respondent failed to appoint a COLP and COFA at Pride Solicitors, in breach of Principles 7 and 8 and Rule 8.5(b) and (d) of the SRA Authorisation Rules 2011.**

The Applicant's Case

22.1 Ms Bruce stated that there was broad agreement between the parties that Mr F was the COLP and COFA at Pride Solicitors from June 2014 to 4 September 2018. She submitted that the roles of COLP and COFA were important and that this case served as a reminder of that.

22.2 Ms Bruce stated that the parties agreed that around 8 September 2018 an application for appointment to these roles was made by NM. Ms Bruce stated that the Applicant did not dispute that in December 2018 there was also internal correspondence between the First Respondent and Person A about Person A being appointed to these roles at Pride Solicitors. However, the Applicant's case was that NM's application was never in fact received by the Applicant. It was submitted that it was not open to the First Respondent to leave no person in those roles between September and December 2018.

22.3 Ms Bruce stated that the Applicant was aware that some attempts to appoint a COLP and COFA had been made by the First Respondent, but she described these as inchoate. She submitted that such efforts were not an adequate answer to the allegation. She further submitted that "appointing" a COLP and COFA required more than expressing

a desire for an individual to assume the role. The Applicant may turn down a nominated individual and "appointment" necessarily required that the process be completed.

22.4 Regulated firms are required to appoint a COLP and COFA under Rule 8.5 of the SRA Authorisation Rules 2011. The First Respondent's alleged failure to appoint a COLP and COFA was submitted to amount to a failure to comply with his legal and regulatory obligations (Principle 7) and failure to run his business effectively and in accordance with proper governance and sound financial and risk management principles (Principle 8).

The First Respondent's Case

Submission of no case to answer

22.5 Mr Metzger again submitted on the First Respondent's behalf that there was no evidence called by the Applicant which supported the allegation and accordingly a reasonable Tribunal, properly directed, could not conclude that the allegation was proven. It was submitted that the 'first limb' of the Galbraith test applied.

22.6 It was submitted that the Applicant had failed to produce evidence to assist the Tribunal with what the requirement to "appoint" to these roles meant. It was further submitted that the evidence produced showing who had held the posts of COLP and COFA, and others, at Pride Solicitors was itself confusing and unpersuasive. It was suggested that little could be gleaned from the material put forward by the Applicant when its own witnesses were unable to explain what the "modified on" date shown against every line of the schedule relied upon meant.

22.7 Mr Metzger stated that the case against the First Respondent was that he had failed to appoint a COLP and COFA rather than that he had failed to register the appointment with the Applicant. It was submitted that there was no evidence that the First Respondent failed to appoint a COLP and COFA and that there was accordingly no case to answer by application of the first limb of the Galbraith test.

The Applicant's reply to the submission of no case to answer

22.8 In reply, Ms Bruce again provided a summary of the main points of the Applicant's case and relied upon the paragraphs in Sheikh previously identified.

The Tribunal's decision on the submission of no case to answer

22.9 The Tribunal did not accept that there was no evidence supporting the allegation provided. As it had been invited to do, the Tribunal applied the first limb of the Galbraith test to the Applicant's case.

22.10 The Tribunal accepted that there were aspects of the documentary evidence presented by the Applicant about who had held the positions of COLP and COFA at Pride Solicitors which were unsatisfactory. However, the Tribunal was satisfied that some evidence that there had been a minimum of a three month gap in someone being appointed to these roles at Pride Solicitors (in the form of a screenshot of an authorisation record) had been presented. Notwithstanding the potential issues with this

evidence, the Tribunal found to the requisite standard that it raised a case to be answered for all elements of allegation 1.8.

The First Respondent's substantive case

22.11 The allegation was denied. Mr Metzger submitted that the Applicant had called no evidence to assist the Tribunal with what the requirement to "appoint" to these roles meant. He submitted that there was ambiguity over what was required to comply. The First Respondent had arranged for individuals to be registered for these roles. NM duly applied and the First Respondent's position was that the Applicant had not responded to this application. The First Respondent had subsequently agreed with Person A that he would discharge these roles and his evidence was that he gave the instruction for Person A to contact the Applicant to process the appointment. The First Respondent considered that a COLP and COFA had been appointed and it was submitted to be insufficient for the Applicant to assert after the event, without guidance on the process having been provided, that he should have done more.

22.12 In his Answer the First Respondent stated that any liability was on Pride Solicitors in any event and not on him personally.

22.13 As summarised above, Mr Metzger submitted that no evidence had in fact been presented proving that there was no COLP and COFA at the relevant time. The schedule of firm information for Pride Solicitors which was relied upon by the Applicant was submitted to be confusing and unpersuasive. Mr Metzger highlighted that the "modified on" column which applied to all appointment information included within the schedule was the same date for all entries. It was submitted that it was accordingly not possible to discern reliably that there had been no COLP and COFA at the relevant times as alleged.

<u>The Tribunal's Decision</u>

22.14 The Tribunal considered it was inherently nonsensical for an appointment process not to include the approval of the nominated individual by the relevant regulator. In any event, the relevant rule of the SRA Authorisation Rules 2011 stated:

> *"Rule 8.5 – Compliance officers*
>
> *8.5(b) Subject to Rule 8.5(h), an authorised body must at all times have an individual:*
> *(i) who is the sole practitioner, a manager or an employee of the authorised body;*
> *(ii) who is designated as its COLP;*
> *(iii) who is of sufficient seniority and in a position of sufficient responsibility to fulfil the role; and*
> *(iv)* ***whose designation is approved by the SRA****". (Emphasis added.)*

22.15 There were similar provisions relating to the appointment of a COFA within Rule 8.5(d). It was thus clear from the terms of the relevant rule that authorisation by the Applicant was required and that nomination within a firm of someone was not in itself sufficient to comply. The fact that the First Respondent had taken steps towards

compliance was not disputed by the Applicant. The fact that NM had submitted an application and Person A had agreed to do so and taken steps to that end were relevant to mitigation; they did not provide an answer to the alleged failure to appoint someone between September and December 2018.

22.16 The Tribunal agreed that the schedule provided by the Applicant to demonstrate who had occupied the roles of COLP and COFA at Pride Solicitors had a somewhat perplexing "modified on" column in which the same date was applied to all of the lines within the schedule. However, the First Respondent had not challenged the contents of the schedule including the date shown when Mr F ceased to occupy the roles. The thrust of his case was that he had taken reasonable steps to try and appoint someone to these roles, and also that these steps should be considered "appointment" in themselves. The Tribunal considered that it was more likely than not that Mr F had indeed ceased to be COLP and COFA in September 2018, not least because it appeared to be this event which triggered the efforts for NM and then Person A to assume those roles. The Tribunal accepted that the Applicant had not approved the designation of either NM or Person A. The Tribunal was satisfied that as the owner and Principal of Pride Solicitors the obligation to appoint a COLP and COFA fell on the First Respondent. The Tribunal found the breach of Rule 8.5 (b) and (d) of the SRA Authorisation Rules 2011 proved on the balance of probabilities.

22.17 The Tribunal accepted the submission that the roles of COLP and COFA were important elements of the regulatory framework established for public protection and confidence. By failing to complete the appointment of a COLP and COFA for Pride Solicitors the First Respondent had failed to comply with his regulatory obligations as required by Principle 7. For the reasons summarised above, the Tribunal found the alleged breach of Principle 7 proved on the balance of probabilities. Given the importance of the roles to upholding regulatory standards the Tribunal also accepted that failing to appoint a COLP and COFA between September and December 2018 amounted to a failure to run the firm effectively and in accordance with proper governance and sound financial and risk management principles. The Tribunal found the alleged breach of Principle 8 proved on the balance of probabilities.

23. **Allegation 1.9: In 2018 the First Respondent failed to cooperate fully with the SRA and its intervention agents, in breach of Principles 2 and 7.**

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

23.1 Ms Bruce submitted that whilst the relevant FIO, Mr Payne, was not present to give evidence, the Tribunal could take into account his report and afford it such weight as the Tribunal considered appropriate. Mr Payne had provided a sworn statement exhibiting his report into Pride Solicitors. There were three allegedly misleading statements described in the Rule 12 Statement.

23.2 Misleading statements in relation to a client file relating to a sale on Listerhills Road:

- During a meeting with Mr Payne on 18 December 2018 the First Respondent confirmed that the six matters he had disclosed to Ms Maskell on 12 December 2018 were all conveyancing matters that had been opened at Pride Solicitors since 4 September 2018. The Applicant's case was that the First

Respondent represented that the sale at Listerhill Road (which was not among the six matters disclosed) had not proceeded and therefore no papers were held on file and no papers were produced.

- On 17 January 2019 the Applicant's intervention agent received a report from another firm of solicitors which stated that funds relating to the purchase of the Listerhills Road property had just been paid in to the client account of Pride Solicitors.

- The First Respondent's statement was alleged to be misleading as documentation provided to the Applicant from the other firm of solicitors showed that the transaction had in fact proceeded and that there had been communication involving Pride Solicitors relating to the sale.

23.3 Misleading statements in relation to the location and storage of client files and other practice papers:

- The Applicant's records showed that the head office of Pride Solicitors was in Hounslow. On 12 November 2018 the First Respondent informed Mr Payne by email that the firm would be relocating and on 29 November 2018 he emailed Mr Payne stating that the new address would be in Ilford.

- It was the Applicant's case that the First Respondent's assertion during his meeting with Mr Payne on 18 December 2018 that the client files and other papers were stored at the Hounslow office was misleading.

- When effecting the intervention, the Applicant's intervention agent contacted the landlord of the previous (Hounslow) office address and in a letter to the intervention agent dated 8 January 2019, the landlord stated: "Unit 12 has been vacant since 5 December 2018 and there are no file [sic] or papers remaining on site".

23.4 Misleading statements regarding the First Respondent's possession of an email relating to the Firm's application to nominate a COLP and COFA at Pride Solicitors:

- During the meeting with Mr Payne on 18 December 2018 the First Respondent stated that Person A was Pride Solicitors' new COLP and COFA nominee and that an application had been sent to the Applicant by email by Person A. Mr Payne requested a copy of the application.

- Later the same day (at 8.31 pm) Mr Payne received an email from the First Respondent explaining that he could not locate his copy of the completed form and had contacted Person A to provide a copy which would be forwarded.

- On 21 December 2018 Mr Payne collected files and papers amongst which was a copy of an email sent from the First Respondent to himself at 2.48pm on 18 December 2018. The email included two listed attachments titled 'FA2' stated by the Applicant to be Person A's COLP and COFA nominations.

23.5 It was submitted that by virtue of these misleading statements the First Respondent failed to comply with his legal and regulatory obligations and did not deal with the Applicant in an open and cooperative manner (as required by Principle 7). It was further alleged that the First Respondent also failed to act with integrity (as required by Principle 2) as it was submitted that a solicitor acting with integrity would not make or allow misleading statements to be made to his regulator or his regulator's intervention agent.

The First Respondent's Case

Submission of no case to answer

23.6 Mr Metzger again submitted on the First Respondent's behalf that there was no evidence called by the Applicant which supported the allegation and accordingly a reasonable Tribunal, properly directed, could not conclude that the allegation was proven. It was submitted that the 'first limb' of the Galbraith test applied.

23.7 Mr Metzger submitted that the Applicant's only witness about the degree to which the First Respondent cooperated with the investigation was Ms Maskell. She had stated that he had responded to her enquiries in a reasonable timeframe. Mr Payne had not given evidence and nor had anyone from the intervention agent. The attendance note relied upon by the Applicant had never been shown to the First Respondent for his comments. It was submitted that no weight could be given to such material when the Applicant could have called live evidence to support its case but chose not to do so. It was submitted that to do so would be unfair when the Applicant was entitled to invite the Tribunal to draw an adverse inference were the First Applicant not to tender himself for cross examination.

23.8 It was submitted that there was accordingly no evidence that the First Respondent failed to cooperate with the Applicant or its intervention agent and that there was consequently no case to answer by application of the first limb of the Galbraith test.

The Applicant's reply to the submission of no case to answer

23.9 In reply, Ms Bruce again provided a summary of the main points of the Applicant's case and relied upon the paragraphs in Sheikh previously identified.

The Tribunal's decision on the submission of no case to answer

23.10 The Tribunal did not accept that there was no evidence supporting the allegation provided. As it had been invited to do, the Tribunal applied the first limb of the Galbraith test to the Applicant's case.

23.11 The Tribunal accepted that on the Applicant's case it was clear that there was a significant degree of cooperation proffered by the First Respondent. The weight attached to the documentary evidence supporting this allegation was inevitably reduced by the fact that neither Mr Payne nor anyone from the intervention agent gave live evidence. However, on the face of the documents provided, and even allowing for a reduction in the weight afforded, there did appear to be areas where the statements attributed to the First Respondent were at odds with other information obtained by the

Applicant and adduced in evidence. The threshold for demonstrating a case to answer was low. The Tribunal found that some evidence from which the alleged misconduct could be inferred had been presented. The Tribunal found to the requisite standard that the evidence presented raised a case to be answered for all elements of allegation 1.9.

The First Respondent's substantive case

23.12 The allegation was denied. The allegation was that the First Respondent did not cooperate "fully". The context was submitted to be important. The First Respondent's case was that he was being "bombarded" with requests about what was a very small part of his business and that Pride Solicitors was a newly acquired firm that he was trying to bring closer to his base at the Firm. He cooperated as quickly and fully as he was able to.

23.13 With regards to the statement about matters in progress and the sale at Listerhill Road not proceeding, the First Respondent stated in his Answer that as of 17 January 2019 he:

> *"had nothing to do with the management of Pride Solicitors Ltd, because as at 21st December 2018, I had resigned as a Director of Pride Solicitors and I informed the SRA accordingly of this."*

Accordingly, he submitted that any payments made on 17 January 2019 were made during the intervention and he was not responsible for them. The Applicant's case was based on payments made after the First Respondent had ceased to have any responsibility for Pride Solicitors and accordingly the allegation could not be made out.

23.14 The First Respondent also denied that he had made the other two allegedly misleading statements. He denied stating that files were at the old address in Hounslow and maintained that he provided all the files he had been given by Person A (which were the only files he had). The First Respondent stated that he had not been given the opportunity to comment on the attendance note produced by the intervention agent (which he did not accept as accurate). Pride Solicitors had been run by Mr F for some time, with Person A heavily involved. The First Respondent's evidence was that he was not in close control of the office move and that Person A was most likely to have removed any additional files. Mr Metzger submitted that even if the Tribunal concluded that the First Respondent was muddled and to some extent inaccurate in his statement there were no grounds for concluding that he had deliberately misled the regulator.

23.15 The First Respondent maintained that his comments about not being able to locate the email on 18 December 2018 were accurate. Mr Metzger stated that there was no proof that there were any attachments to the email as alleged. He also stated that the only witness produced to substantiate the allegation of alleged lack of cooperation was Ms Maskell who accepted in her evidence that the First Respondent responded to her requests in a reasonable timeframe. It was submitted that the Applicant had failed to discharge the burden of proof upon it.

The Tribunal's Decision

23.16 Ms Maskell had stated in her evidence that the First Respondent had cooperated with her investigation. Documents to which the Tribunal was referred confirmed that the sale of the Listerhill Road property had not proceeded prior to the Applicant's intervention. The Tribunal accepted the First Respondent's contention that he had not been provided with access to all the relevant papers at the time that he was corresponding with the Applicant about this matter. The burden of proof was on the Applicant. The Tribunal did not consider that this burden had been discharged in relation to the sale of the Listerhill Road property. The position was unclear and the Tribunal was not satisfied to the requisite standard, the balance of probabilities, that the First Respondent's representations about the sale at Listerhill Road had been misleading.

23.17 Similarly, the Tribunal did not consider that the available evidence showed that it was more likely than not that the First Respondent's statement about the location of files was misleading. Given the unchallenged evidence of continued access to the building for Mr F, the involvement of Person A in the move and the untested account from the previous landlord, the Tribunal did not conclude that it was more likely than not that the First Respondent's statement had been misleading. Even had the First Respondent's statement been inaccurate, the Tribunal did not consider that evidence had been presented to conclude that it had been deliberately misleading or that any breach of the Principles was established.

23.18 With regards to the email attachments, alleged by the Applicant to have been a copy of Person A's completed COLP and COFA nomination forms, the Tribunal again did not consider that it had been demonstrated to the requisite standard that the First Respondent had made a misleading statement or that a breach of the Principles followed. Whilst it was clear from the documents before the Tribunal that the First Respondent had sent an email to himself on 18 December 2018 (the day he told Mr Payne that he did not have a copy of Person A's COLP and COFA nominations) which appeared to include two attachments titled 'FA2',the Tribunal was not satisfied, in the absence of any expert evidence on the point, that it was necessarily more likely than not that the listed attachments had in fact been available to the First Respondent. The Tribunal found it as likely that the documents may have been inaccessible having been forwarded and otherwise manipulated before the First Respondent sent the email to himself on 18 December 2018. The allegation was accordingly not proved to the requisite standard.

24. **Allegation 2.1: In 2018 the Second Respondent failed to undertake his role as COFA effectively, and in accordance with proper governance and sound risk management principles, in breach of Principles 8 and 10, and in breach of Rule 1.2(e) of the SARs.**

24.1 The Second Respondent was the Firm's COFA from 23 December 2016 to 3 January 2019, during which time a shortage of at least £1,236,335.64 arose on the client account on the Applicant's case. It was alleged that the Second Respondent failed to take sufficient steps to verify and/or understand the Firm's accounting systems and processes, and ensure compliance with the Firm's regulatory obligations including, but not limited to, viewing the Firm's accounts, client reconciliation statements, client ledgers, client or office account bank statements, and/or cashbook.

24.2 The Second Respondent said in interview with Ms Maskell on 24 January 2019 that he was not aware that the Firm did conveyancing work until he met an unknown solicitor at the Firm who said he was doing a conveyancing matter.

24.3 The Applicant's case in relation to the allegedly improper payments in the SC matter was set out in relation to the First Respondent above in allegations 1.1 and 1.2. Drawing on the Second Respondent's interview with Ms Maskell:

- The First Respondent showed the Second Respondent the ID on the file and the AML search and the First Respondent replied to the Applicant's queries.

- The Second Respondent thought he should make a report to the Applicant, but said that as the matter was already before the Applicant he considered this to be "belated" and so he left it to the Applicant to investigate.

- The Second Respondent reviewed the file with the First Respondent, not focussing on substance but on client ID and AML compliance. The Second Respondent stated he noted the date of birth discrepancy on the AML check for the first time during the interview with Ms Maskell (although he was said to have said later that he had raised it with the First Respondent).

- The Second Respondent did not previously see that the proceeds of sale had been paid to the unrelated third party. He said he would expect that this company should be looked into including who their directors were and why monies were paid there and not to the seller. He did not see the bank statements at the time of the file review, and did not ask the First Respondent where the sale proceeds had been paid. He "thought it was paid to, back to the seller".

- The First Respondent received pre-action correspondence dated 4 September 2018 and a letter of claim dated 18 October 2018 notifying him that he had not acted for the genuine seller.

- The Second Respondent confirmed in interview that the first time he had seen these documents was in the interview with Ms Maskell.

- The Applicant's case was that despite there being an ongoing investigation, the Second Respondent failed to query the payments once he knew that the Applicant was investigating this issue, and assumed that the money had been paid back to the seller. The Second Respondent also failed to review the bank statements.

24.4 For these reasons, the Applicant submitted that the Second Respondent breached Principles 8 and 10 and further breached Rule 1.2(e) of the SARs. Rule 1.2(e) of the SARs requires that a solicitor must "establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules".

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

24.5 In his Answer the Second Respondent stated that after due consideration and with remorse he accepted that he did not undertake his role as COFA effectively which led to the alleged breaches of the Principles. He gave oral evidence and made submissions

during the hearing and again accepted that he had failed to discharge the responsibilities of the role.

24.6 The Second Respondent provided context for this acknowledged failure to have a full grasp on the obligations of the role. The role of COFA was newly established at the time the Second Respondent stated that he did not know what he was getting in to. He did not consider that he had the training, support, and competence for the role at the time and noted that there was no prescribed training or monitoring for COFAs.

24.7 The Second Respondent's evidence was that he relied to a significant extent on the First Respondent as a senior and experienced solicitor and someone he could trust. He expected that others would bring important matters to his attention when necessary. The Second Respondent submitted that whilst he was COFA of the Firm he should not be held responsible for the actions of others. His view was that the conveyancing transactions highlighted by the Applicant did bear the hallmarks of fraud.

24.8 The Second Respondent's evidence was that as a part time employee he went to the Firm's offices once a week. He stated that usually the First Respondent was not present at these times. He stated that he tried to review files when he attended the Firm's office but had never come across the files with which the allegations were concerned. He stated that he had considered resigning as he was struggling to access adequate training materials. He stated that he had complained to the First Respondent who had said that as senior partner he would bring any compliance issues to the Second Respondent's attention. The Second Respondent's evidence was that he had relied upon this, with hindsight, too much and had taken too much for granted and been overwhelmed in the role.

<u>The Tribunal's Decision</u>

24.9 The Second Respondent had acknowledged that he was not an effective COFA and had been worried about this in 2018. He was candid in his evidence about the steps he took, and the things of which he was unaware, and this was to his credit. He acknowledged not spotting the matters raised by the Applicant in relation to the SC matter and the Tribunal noted that conveyancing work was said to amount to around one percent of the Firm's work.

24.10 The Tribunal found that the Second Respondent's admissions were properly made. The evidence that he had not undertaken his role as COFA effectively was clear and compelling. He had thereby failed to protect client money adequately. The Tribunal found the alleged breaches of Principles 8 and 10 proved to the requisite standard. The Tribunal found to the requisite standard that the Second Respondent had failed to establish and maintain proper accounting systems and proper internal controls over those systems to ensure compliance with the SARs and had thereby breached Rule 1.2(e) of the SARs.

Previous Disciplinary Matters

25. There were no previous Tribunal findings in respect of either Respondent.

Mitigation

26. *The First Respondent*

26.1 Whilst it was recognised that case law stated that the normal sanction for dishonesty was strike off, on behalf of the First Respondent Mr Metzger invited the Tribunal to consider the particular and exceptional circumstances of this case and to conclude that was not necessary or appropriate. He submitted that the purpose of sanctions in the Tribunal was not to punish the individual solicitor.

26.2 The First Respondent had health-related caring responsibilities for his son which was a factor which created exceptional pressures and circumstances exacerbating the stress and depression with which the First Respondent had been suffering at the relevant time and since. These responsibilities had necessitated interruptions during the hearing and arrangements had been made for restricted hours on the days of the hearing to assist the First Respondent. Mr Metzger submitted that these factors must have weighed on his mind heavily and had a significant impact.

26.3 The First Respondent had no previous findings against him and had been in practice for over twenty years. The conveyancing work, which had given rise to the allegations against him, accounted for only one percent of the Firm's work. No issues had been raised in respect of the other areas of practice. Mr Metzger submitted that the bulk of the misconduct found proved had been directly related and arose from deception practised upon the First Respondent by a third party. The individuals purporting to be the First Respondent's clients had seemingly committed fraud, whilst at Pride Solicitors Person A had seemingly done likewise.

26.4 The duration of the misconduct found proved was brief and concerned a small number of files. There had been no personal benefit to the First Respondent from the fraud or the misconduct found proved. It was submitted that the First Respondent had initiated processes to recover the funds paid out, but the Applicant's intervention meant he was not able to continue this. The intervention was in January 2019, at which time the First Respondent was also suspended from practice, and he had not worked or earned since then. The First Respondent's financial position was described as dire and supporting documentation was provided to the Tribunal.

26.5 In summary, these factors were submitted to be exceptional such that it would be appropriate for the Tribunal to impose a sanction other than strike off.

27. *The Second Respondent*

27.1 The Second Respondent's comments on the circumstances giving rise to his admitted misconduct, which amounted to mitigation, were set out above. He asked the Tribunal to show leniency in the light of the information he had provided and the admissions he had made.

27.2 As to means, the Second Respondent stated that he had been working as a care assistant both in the UK and Nigeria. His practising certificate had not been suspended but he stated that he wished to have a determination of the allegation he faced before seeking to practise law again.

Sanction

28. The Tribunal referred to its Guidance Note on Sanctions (8th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondents' culpability and the harm caused, together with any aggravating or mitigating factors.

The First Respondent

29. In assessing culpability, the Tribunal found the First Respondent's conduct in respect of which dishonesty had been found was to improve the Firm's position particularly by securing continued indemnity insurance cover and to give himself time to resolve the issues which had arisen on the conveyancing matters. More broadly, at the time the First Respondent was seeking to expand the practice into new areas of work. The Tribunal did not consider that the First Respondent had intended for the compliance measures and systems to be inadequate, but that he had not made any meaningful nor adequate efforts to ensure that they were fit for purpose. His conduct was not motivated primarily by any personal financial gain. The misconduct could not be described as spontaneous as there were multiple findings and the conduct extended over three months in 2018. He was an unwitting player in the apparent fraud but the compliance systems that he had established proved wholly inadequate. The First Respondent had a high degree of control over the circumstances of the misconduct despite being taken in himself by those who perpetrated the fraud. He had conduct of two of the conveyancing matters and was the Principal of both firms. He had sole control of the Firm's bank accounts. The First Respondent was a highly experienced solicitor with over twenty years' experience, albeit his experience of conveyancing was limited. He had not misled his regulator. The Tribunal assessed his culpability as high.

30. The Tribunal then turned to assess the harm caused by the misconduct. There had been a direct and significant impact on those whose identities the First Respondent's purported clients had impersonated and used. In one case witness evidence had been provided from the owner of the relevant property that efforts had been made by the purchaser to have her son evicted from her property. The buyers had lost money when the purchase monies had been paid away. The person whose identity Person A had used had been personally and professionally inconvenienced. Whilst the First Respondent had not been the instigator of these frauds it was his compliance failures which had allowed this harm to materialise. The reputational harm to the profession of a solicitor acting dishonestly when obtaining indemnity insurance, making improper payments and acting in transactions with the hallmarks of fraud was very serious and something which should have been obvious to the First Respondent.

31. The misconduct found proved was aggravated by the fact that the allegations included a finding of dishonest conduct. The other misconduct was repeated (across two transactions). The governance failures were systemic and extended over time. The Tribunal considered that the First Respondent had concealed the true position from his insurer (although he had subsequently notified them of the issues). The First Respondent had blamed others for many of the issues with which the allegations were concerned. He blamed Person A, Mr F and the Applicant. In some cases this was warranted and he was himself duped by Person A and his purported clients, but the First Respondent did not accept responsibility for matters within his control. The fact that

the First Respondent should have known that the conduct complained of was conduct in material breach of his obligations as a solicitor to protect the public and the reputation of the legal profession was a further aggravating factor.

32. In considering mitigating factors, the Tribunal noted that the First Respondent had no prior disciplinary findings against him and had taken steps to seek to recover money paid away to third parties albeit unsuccessfully. He had also arranged for repayment of deposit monies to a buyer in one case. The First Respondent had been the victim of deceptions by his two purported clients and Person A. He had cooperated with the Applicant. The Tribunal did not consider that the First Respondent had demonstrated any insight into the gravity of the allegations or the shortcomings of his actions, and so this could not be a significant mitigating factor. The Tribunal noted the evidence presented about the First Respondent's current financial position.

33. Having found that the Respondent had acted dishonestly and made six findings that he had failed to act with integrity, the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

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

34. The Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 (Admin), and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll. The Tribunal was not persuaded that any exceptional factors were present such that the normal penalty was not appropriate. As stated in Sharma, in considering what amounts to exceptional circumstances, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, or over a lengthy period of time; whether it was a benefit to the solicitor, and whether it had an adverse effect on others. The nature of the dishonesty involved misleading his insurer as part of a renewal process. It was a single episode of limited duration, in that it was one misleading answer on one form. However, it could not be described as a "moment of madness" as the completion and submission of such a form was not a one-off instantaneous action but an action with several constituent parts. Whilst there was no direct financial benefit to the First Respondent, there was some benefit to him and his firm in that it eased the process of renewal of the relevant insurance cover. Such insurance was for the benefit of a firm's clients and the provision of misleading information in a process which required the utmost good faith created the risk that the cover would be vitiated. The multiple findings of conduct lacking integrity showed a pattern of behaviour in which compliance systems received a significant and repeated lack of attention. The First Respondent's culpability was high.

35. The factors raised in mitigation, and the pressures on the First Respondent, may well have been significant but they were not exceptional and did not relate to the dishonesty found proved. As set out in the Sanctions Guidance which referred to comments by Flaux LJ in SRA v James et al [2018] EWHC 3058 (Admin), pressure, stress and depression (even if evidenced which was not the case here) cannot justify dishonesty by a solicitor. The Tribunal considered that the seriousness of the conduct found proved

and the protection of the reputation of the legal profession required that the appropriate sanction was strike off from the Roll.

The Second Respondent

36. In assessing the Second Respondent's culpability, the Tribunal found his conduct was motivated by a wish to find employment and a way into the profession in the UK having completed the Qualified Lawyers' Transfer Test. He knew he was not experienced and intended to 'learn on the job'. His misconduct was not planned but was a result of his then shortcomings and lack of qualification for, and opportunities to discharge, the role. The Tribunal considered that the Second Respondent's control over the circumstances of the misconduct was somewhat limited; he was dependent on the First Respondent bringing matters to his attention and did not have full and free access to the Firm's files. He was in an invidious position with responsibilities as COFA without control over the management of the Firm. The Second Respondent was inexperienced and did not mislead the Applicant. He did, of course, have responsibility for how he responded to this invidious position. The Tribunal assessed his culpability as relatively low.

37. Assessing the harm caused by the misconduct, the Tribunal considered that the Second Respondent's ineffectiveness helped created the environment in which the problems with the transactions which gave rise to most of the allegations arose. He contributed to lackadaisical governance and compliance arrangements which in turn contributed to the harms described above in relation to the First Respondent (although the Second Respondent was considerably more removed from the actions which caused the harm). The Tribunal was not able to determine whether effective discharge of the COFA role would have prevented the specific harm caused, but its absence contributed to the systemic failures.

38. When considering aggravating factors, the Tribunal considered that the failure to perform the duties of COFA effectively was repeated as it extended over time. The Tribunal also considered that the harm from the Second Respondent's actions was foreseeable.

39. In mitigation the Tribunal accepted that the Second Respondent had cooperated with the Applicant and had displayed genuine insight into his conduct, the reasons for it and the potential consequences of it. He had also had a lack of support and training in his role.

40. The Tribunal assessed the appropriate sanction. The Tribunal did not consider that No Order was an adequate sanction. The role of COFA was an important one and the Second Respondent had acknowledged significant shortcomings in his discharge of the role.

41. , Considering the available sanctions in increasing order of gravity, the Tribunal considered that a Reprimand combined with a Restriction Order was the appropriate sanction for the Second Respondent having regard to the seriousness of the misconduct, the protection of the public and the reputation of the profession. The Tribunal considered that various illustrative factors listed in paragraph [26] of the Sanctions Guidance were relevant to the Second Respondent in this case. His culpability had been assessed as low and the Tribunal accepted on the basis of the evidence he gave that the

Second Respondent had shown genuine insight. The Tribunal considered that public concern about the risk of future inadequate discharge of the COFA role, and the importance of that role, could be addressed by way of an indefinite Restriction Order which prevented the Second Respondent from undertaking this role (or the COLP role) without prior approval from the Applicant.

42. Given that this combination of sanctions was considered adequate, the Tribunal did not consider more serious sanctions appropriate and proportionate. The Tribunal determined the Second Respondent should be Reprimanded for the misconduct found proved and a Restriction Order imposed preventing him from acting as a COFA or COLP without the prior approval of the Applicant.

Costs

43. The Applicant's costs were set out in a statement dated 1 March 2021. Ms Bruce applied for these costs of £79,086.15. Ms Bruce stated that there had been no update to the costs schedule to take account of the additional three days which had been required. She submitted that the costs were reasonable in the circumstances of the case.

The First Respondent

44. In reply, Mr Metzger submitted that the Tribunal was entitled to consider the manner in which the case was contested. The First Respondent had sought to protect his professional position and had not sought to obfuscate. The evidence and submissions as to means noted above were relied upon again as relevant to the award of costs.

The Second Respondent

45. The Second Respondent repeated the points summarised above as to his financial means.

The Tribunal's Decision

46. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal noted that no additional costs were sought in respect of the three additional hearing days and that the Capsticks costs were charged on a fixed fee basis. The Tribunal considered that the Capsticks fee of £34,500 plus VAT was reasonable in all of the circumstances taking into account the extent of the documentation and the work necessarily required for the interlocutory and other hearings.

47. The Applicant's forensic investigation costs were £37,326.15 and the Applicant's supervision costs £450. The Tribunal considered these costs to be excessive and that a reduction should be applied to this figure to reflect those matters investigated which ultimately led to allegations pursued before the Tribunal. The Tribunal considered that an overall figure of £30,000 for the Applicant's internal investigation and supervision costs was reasonable. Accordingly, based on the complexity and documentation involved in the case and its experience of comparable cases, the Tribunal considered that the fees reasonably incurred by the Applicant were £71,400.

Apportionment between the Respondents

48. Based on the proportion of the investigation, hearing paperwork and time spent during the proceedings including the final hearing, the Tribunal considered that 90% of the assessed costs should be apportioned to the First Respondent and 10% to the Second Respondent. This equated to costs of £64,260 and £7,140 respectively.

49. The Tribunal had been invited to consider the Respondents' means before making any order for costs.

50. The Tribunal carefully considered the information provided about the First Respondent's financial means. He had provided details of currently limited means. However, the Tribunal did not consider that the information overall indicated that the Respondent was unable to meet the costs figure that the Tribunal had determined was reasonable, taking into account in particular the property he owned. The Tribunal was mindful that the Applicant as a regulator of legal services acting in the public interest was obliged to bring proceedings in relation to serious allegations with the potential to seriously undermine the reputation of the profession. To the extent that they are not recovered from a Respondent, the costs of the Applicant are met by the profession. The Tribunal did not consider that it was appropriate to reduce the costs based on the First Respondent's means. The Tribunal ordered the First Respondent to pay the Applicant's costs of and incidental to this application fixed in the sum of £64,260.

51. The Tribunal also carefully considered the information provided by the Second Respondent about his financial means. He had also provided details of currently limited means. The Tribunal was aware from its previous experience that the Applicant takes a pragmatic approach to the recovery of costs awarded and that payment plans are negotiated taking into account the means of Respondents. The Second Respondent had confirmed that he was working. In all the circumstances the Tribunal did not consider that it was appropriate to reduce the costs based on the Respondent's means. The Tribunal ordered the Second Respondent to pay the Applicant's costs of and incidental to this application fixed in the sum of £7,140.

Statement of Full Order

52. *The First Respondent*

52.1 The Tribunal ORDERED that the First Respondent, CHARLES ETE, 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 £64,260.

53. *The Second Respondent*

53.1 The Tribunal ORDERED that the Second Respondent HENRY MUME, solicitor, be REPRIMANDED and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £7,140.

53.2 The Second Respondent shall be subject to a condition imposed by the Tribunal as follows:

53.2.1 From 3 June 2021 for indefinite period, the Second Respondent may not be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration without prior approval of the SRA.

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

E Nally
Chair