

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12062-2020

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY

Applicant

and

MATTHEW EDWARD FLYNN

Respondent

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Before:

Mr J. Evans (in the chair)

Mr D. Green

Dr P. Iyer

Date of Hearing: 30 June & 1-2 July 2020

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## **Appearances**

Nimi Bruce, barrister of Capsticks LLP 1 St George's Road, London SW19 4DR for the Applicant.

The Respondent represented himself.

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## **JUDGMENT**

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## **Allegations**

1. The Allegations made against the Respondent were as follows:-
  - 1.1 By making out a cheque for the sum of £2,021.80 drawn on the client account of the firm payable to himself, and by concealing the fact of that by completing the cheque stub and accounts slip to show the cheque as being paid to the client PSG Franchise, and then by paying the cheque into his personal bank account, he breached all or alternatively any of Principles 2, 4, 6 and 10 of the SRA Principles 2011 (“the Principles”) and Rule 20.1 of the SRA Accounts Rules 2011 (“SAR 2011”).
  - 1.2 By deliberately misleading his client PSG Franchising in an e-mail dated 21 April 2016, he breached all or alternatively any of Principles 2, 4 and 6 of the Principles.
  - 1.3 By making a misleading entry about his gross basic salary on a BNP Paribas “In Principle Decision” form, he breached all or alternatively any of Principles 2 and 6 of the Principles.
2. Allegations 1.1 to 1.3 inclusive were advanced on the basis that the Respondent’s conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent’s misconduct, but it was not an essential ingredient in proving the Allegations.
3. The case proceeded under the Solicitors (Disciplinary Proceedings) Rules 2019.

## **Preliminary Matter**

### Mr Green’s membership of the Division

4. In the course of the Respondent’s cross-examination of Mr Tinkler, reference was made to previous findings that the Tribunal had made in respect of Mr Tinkler following a hearing that took place in 2010. The Tribunal’s Judgment from that hearing was reviewed and it was noted that one of the solicitor members hearing this case, Mr Green, had also heard the case against Mr Tinkler in 2010.
5. The Tribunal drew this to the attention of the parties and invited submissions. Ms Bruce confirmed that she saw no difficulty with Mr Green continuing to sit on this matter. The Respondent concurred with that view.
6. The Tribunal reviewed the 2010 Judgment carefully and reminded itself of its internal guidance on recusal. Mr Green did not have specific recollection of the case on account of it having been heard almost 10 years ago. All members of the Division of the Tribunal hearing this case were satisfied that Mr Green could continue to sit on this matter. The Tribunal was able to assess Mr Tinkler’s evidence in the same fair way as it would in respect of all other witnesses. The Tribunal noted that there was no objection from either party. Mr Green therefore continued to sit on the matter and the hearing proceeded accordingly.

## **Factual Background**

7. The Respondent was admitted to the Roll of Solicitors on 15 August 2016. At the time of the hearing he held a current practising certificate free from conditions. At the material time the Respondent was working at Tinkler Solicitors (“the Firm”) of 2<sup>nd</sup> Floor, Sproughton House, Sproughton, Ipswich, Suffolk, IP8 3AW as a paralegal, having completed his Training Contract but not yet having been admitted to the Roll. He was employed by the Firm between 2004 and 1 December 2016.
8. On 5 December 2016, SC, a barrister at Smith Bowyer Clarke Solicitors (“Smith Bowyer Clarke”), made a report to the SRA on behalf of Richard Tinkler, a partner and the principal of the Firm. There was further correspondence from Smith Bowyer Clarke, resulting in the commencement of a forensic investigation on 21 April 2017. The Respondent was interviewed on 14 June 2017 (“the interview”). The Forensic Investigation Officer, Ms Garrard, (“the FI Officer”) prepared two reports; the first forensic investigation report which was dated 3 July 2017 (“the first FIR”) and the second forensic investigation report which was dated 27 December 2017 (“the second FIR”).

### Allegation 1.1

9. Following the Respondent’s departure from the firm, Mr Tinkler contacted RS, who was the Head of the Legal Department at PSG, a client of the Firm. RS informed Mr Tinkler that PSG no longer wanted to be represented by the Firm.
10. Prior to this, on 21 November 2016, at 17:12, the Respondent had e-mailed a number of individuals at PSG and had told them that he was going to be leaving the Firm and setting up his own firm. The email contained proposals for how he might continue to act for PSG. PSG had replied to express interest in continuing to be represented by the Respondent.
11. During the course of the subsequent discussions between RS and Mr Tinkler, RS told him that she believed that the Firm was retaining, on client account, a residual balance in respect of earlier matters. On the Applicant’s case, as a result of the exchanges, Mr Tinkler looked into the matter further and established that on 18 August 2015, a client account cheque had been issued. The cheque request slip read as follows:

“PAYMENT  
CLIENT  
PSG [..]  
18/08/15  
BALANCES DUE  
CHEQUE/RECEIPT/REF 014047  
TOTAL £2,021.80  
SIGNATURE Matt.”

12. The cheque stub read, “18/8/15 – PSG [...] (ALL BALANCES) £2,021.80.”
13. The cheque itself was made out to “MR ME. FLYNN, TWO THOUSAND & TWENTY ONE POUNDS & 80p £2,021.80p.”

14. A copy of the Firm's bank statement for August 2015 showed the sum of £2,021.80 leaving client account on 25 August 2015. The Respondent's own bank account was credited on the same day in exactly the same sum.
15. Mr Tinkler told the FI Officer that he had not signed the cheque. He further stated that he was the sole signatory in respect of all of the Firm's bank accounts and that he recognised the handwriting on the cheque and the cheque book stub as being that of the Respondent.
16. On 9 November 2017, the FI Officer emailed the Respondent asking 13 questions in order to obtain information about the cheque. He replied the same day as follows: -
- “Hi Natalie  
Well I was ok until I got this!!! I was the fee-earner, under Mr Tinkler's supervision, on the PSG matter (if this is related to the LA refund claim, which I assume it must be) I can't really comment on this particular cheque as I don't remember it but Mr Tinkler was always in control of payments from the firm & he signed all cheques & signed off the green cheque request forms, I would sometimes fill the cheque narrative in, but I would suggest that you ask him if you require further details.  
Kind regards  
Matthew Flynn”
17. On the same day, the Respondent sent a text message to Mr Tinkler as follows:
- “Mate, wtf are you doing?? All this bullshit to the SRA, you know exactly what you were doing so don't try & fuck me over!!!!”
18. On 24 November 2017, the Respondent emailed the FI Officer as follows:
- “Hi Natalie,  
  
I cannot say who wrote out that cheque, the Handwriting looks similar to mine, but I don't recall having written it out, although I did sometimes write them out if Jeannie Mills was not there. The signature looks like Richard Tinkler's. The cheque books used to be kept in a locked drawer in Jeannie Mills' desk. When she wasn't there Sharon Maple had the key. Richard Tinkler had to sign all cheques and he also signed off the green cheque request slips so a cheque could not have gone out without him having seen it. I no longer bank with the same bank so I have asked them to provide me with a statement as soon as possible and will revert to you as soon as I get it.  
Many thanks”
19. On 4 September 2018, the SRA received notification from the Norfolk and Suffolk Constabulary that, on 21 May 2018, the Respondent had admitted an offence of fraud and accepted a Police caution as follows:
- “On 25/08/2015 at Ipswich in the County of Suffolk committed fraud in that, while occupying a position, namely paralegal, in which you were expected to safeguard, or not to act against, the financial interests of Tinkler solicitors, you

dishonestly abused that position intending thereby to make a gain, namely £2,021.80 for yourself.  
Offence – Fraud by abuse of position – Fraud Act 2006.”

### Allegation 1.2

20. On 21 April 2016, while the Respondent was still employed at the Firm, in response to queries raised by PSG concerning a residual balance on the client account, the Respondent sent an e-mail to TE, the Financial Controller at PSG, copied to RS, in the following terms:

“Hi [TE]

Sorry about that, yes you are correct we still have monies from last year when we were investigating this matter, in the sum of £1140.00. This was on a separate ledger, but I will get it transferred on to this and as such you will not need to send us any further funds until this is used up too.

Kindest regards

Matthew Flynn

Tinkler Solicitors.”

21. The Applicant’s case was that the Respondent had deliberately misled his client in this email as the monies had been paid into his own bank account in August 2015 as detailed above.

### Allegation 1.3

22. During her enquiries, the FI Officer discovered, in a folder entitled, “French Mortgage Application,” containing a BNP Paribas “in Principle Decision” in respect of an application. The form had been completed with the Respondent being detailed as being an applicant. The Respondent’s salary was recorded as being £61,500.00. The FI Officer noted that this differed to the figures set out in the P60 documents previously supplied by the Firm’s accountant. There was no signature or date on the form.

### **Live Witnesses**

23. Jeannie Mills

- 23.1 Ms Mills was the cashier at the Firm. She confirmed that her witness statement was true to the best of her knowledge and belief.

- 23.2 In cross-examination the Respondent asked Ms Mills about the process for cheques being issued. She explained that if she was in work that day, she would fill in the slip, write the cheque and send it out. If it was not one of her working days then people would draw the cheques themselves. Ms Mills denied it was common practice for all the cheque requests to be signed off by Mr Tinkler.

24. Sharon Maple

- 24.1 Ms Maple was the office manager at the Firm. She confirmed that her witness statements were true to the best of her knowledge and belief.

- 24.2 In cross-examination Ms Maple was asked why she had looked into the folder of “Matt’s stuff” then into a miscellaneous sub-folder followed by a further sub folder. Ms Maple explained that she had been looking for outstanding work such as emails from clients. She had found this folder on the computer desktop and was curious. Ms Maple denied having looked in the folder before.
- 24.3 Ms Maple was asked to confirm that the documents relied on in these proceedings were the ones she had found first when looking in the folders. Ms Maple was unable to recall.
- 24.4 Ms Maple told the Tribunal that she could not recall if the BNP Paribas ‘In Principle’ decision form was in pdf format or word format. She denied that she had completed the salary box on that form.
25. Richard Tinkler
- 25.1 Mr Tinkler confirmed that his four witness statements were true to the best of his knowledge and belief.
- 25.2 In cross-examination it was put to Mr Tinkler that his attendance note dated 1 December 2017 could not, as he had stated, be contemporaneous as it related to matters that had only come into his knowledge on 5 December 2017. Mr Tinkler maintained his description of the document as contemporaneous but stated that he may have “added to it” afterwards. The Respondent put to Mr Tinkler that he was lying, something that he denied.
- 25.3 Mr Tinkler was asked why he had not made a report directly to the SRA. He told the Tribunal that he wanted Simon Bowyer Clarke to review matters from an independent and objective perspective. He could not recall whether they had attended the offices but thought they may have attended once. The Respondent asked Mr Tinkler whether it would not have been better to allow Simon Bowyer Clarke to examine the documents in the office instead of sending the documents to them. Mr Tinkler stated that Simon Bowyer Clarke had all the documents they required so there was no need to do so.
- 25.4 The Respondent put to Mr Tinkler that it was his (Mr Tinkler’s) signature on the cheque that was the subject of Allegation 1.1. Mr Tinkler denied this and stated that he had never seen the cheque until it was sent to him by the bank. Mr Tinkler told the Tribunal that he would sign off the reconciliation statements each month.
- 25.5 The Respondent put to Mr Tinkler that in 2010 he had been found by the Tribunal to have misled clients. Mr Tinkler stated that no dishonesty had been found proved and that there had been no deliberate misleading.
- 25.6 The Respondent asked Mr Tinkler if he denied that it had been his idea for the cheque to be written out and for it to go through the Respondent’s bank account. Mr Tinkler denied that it was his signature and stated that he had not been in the office that day.
26. Natalie Garrard
- 26.1 Mrs Garrard confirmed that her two FI reports and her witness statement were true and did not require corrections or alterations.

- 26.2 Mrs Garrard confirmed that she had not had access restricted during the course of her investigation. She further confirmed that she had not been told that Mr Tinkler had authorised the cheque as part of a bonus arrangement with the Respondent.
- 26.3 In cross-examination Mrs Garrard confirmed that the documents she had received had been on a memory stick provided by Ms Maple. The emails were faxed to her as there was some difficulty in forwarding the originals.
27. The Respondent
- 27.1 The Respondent relied on his witness statement and his amended Answer to the Rule 12 statement as his evidence, both of which he confirmed were true.
- 27.2 In cross-examination in relation to Allegation 1.1, Ms Bruce put to the Respondent that in order to receive a Police caution he would have had to admit to the offence to which that caution related. The Respondent agreed that by signing the caution that was what he had done. However, he did not agree with it, was not happy about it and had only signed it to avoid a trial.
- 27.3 Ms Bruce put to the Respondent that, given his status as a solicitor, if he had been innocent, he would have been “screaming from the rooftops”. The Respondent stated that he had done so and he referred to his witness statement and his interview. He did not deny that the cheque had gone through his bank account.
- 27.4 Ms Bruce put to the Respondent that he would have welcomed a trial as an opportunity to clear his name. The Respondent stated that he should have done so in hindsight.
- 27.5 Ms Bruce suggested that the real reason the Respondent had signed the caution was that the evidence was overwhelming and that he was guilty. The Respondent denied this.
- 27.6 The Respondent told the Tribunal that Mr Tinkler, as the principal of the Firm, had suggested he do this in order to pay himself a tax-free bonus. While he now accepted that this was wrong, at the time he had done as instructed and had not acted dishonestly.
- 27.7 The Respondent accepted that he knew that it was not open to a solicitor to take client money without authority and, even if that authority existed, not unless it was for a legitimate purpose. He told the Tribunal that he had been a paralegal at the time and would not do it now.
- 27.8 Ms Bruce put to the Respondent that he did not have to be a solicitor to understand that acting in this way was wrong. The Respondent replied that it depended on the context. At the time he did not think it was dishonest.
- 27.9 Ms Bruce put to the Respondent that even if it was a bonus payment, it was not a defence to dishonesty to say that he was told to do it. The Respondent stated that this would depend on the position he was in and the authority the other person assumed.
- 27.10 Ms Bruce put to the Respondent that he had not explained his position to the FI Officer. The Respondent stated that he had directed her to Mr Tinkler. He denied misleading by omission. The Respondent accepted that he was under investigation and that this had

been the time to “come clean” and that he had not done so. The Respondent accepted Ms Bruce’s suggestion that he had not wanted to tell the truth and he had hoped to put off the evil day when he would have to account for these matters. He denied that the explanation about the bonus was a late invention or untrue.

- 27.11 Ms Bruce put to the Respondent that Mr Tinkler had given evidence that he had nothing to do with the cheque being issued. The Respondent stated that Mr Tinkler had lied in his evidence. He further stated that Mr Tinkler had given selective evidence to the SRA on the memory stick and had done so in order to get the Respondent investigated.
- 27.12 The Respondent confirmed that he had made out the cheque, had drawn it on the client account and had paid it to himself. He accepted that the cheque stub and cheque request slip would be misleading to anyone other than Mr Tinkler. He accepted that this was deliberate. Ms Bruce put to the Respondent that if it was deliberately misleading it must be dishonest. The Respondent stated that it depended who asked him to do it and this had been done on instruction from Mr Tinkler. The Respondent reiterated that he was not a solicitor at the time and told the Tribunal that he therefore did not think that “the higher level” was required of him at that time.
- 27.13 In relation to Allegation 1.2 the Respondent accepted that what he had written in the email to PSG was a lie. He told the Tribunal that he had done so on Mr Tinkler’s instructions. The Respondent agreed with Ms Bruce that a lie was a lie even if he had been told to do it, something which Ms Bruce did not accept in any event.
- 27.14 The Respondent accepted that PSG had been deliberately misled about money being on account but did not believe he had been acting dishonestly at the time.
- 27.15 In relation to Allegation 1.3, the Respondent denied completing the salary box on the form. He agreed that the figure contained in that box was nowhere near his actual salary.
- 27.16 In relation to the witness statements from witnesses relied on by the Respondent, Ms Bruce put to him that they were his words and not those of the witnesses. The Respondent denied this and stated that he had drafted their statements but they had adopted the wording when they signed them after amendments had taken place. The Respondent denied that he had manipulated the documents in his own interests.

28. Gerard Grogan

- 28.1 Mr Grogan confirmed that his witness statement was true to the best of his knowledge and belief.
- 28.2 Mr Grogan told the Tribunal that he had paid approximately £2,000 into what he recalled was the Firm’s bank account. The money had come from the Respondent. Mr Grogan told the Tribunal that the Respondent had told him that he felt it was better if the money was paid by a third party. Mr Grogan did not see any issue with that and the Respondent had not explained matters in any detail.



## **Findings of Fact and Law**

29. The Applicant was required to prove the Allegations on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
30. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of both parties, which are briefly summarised below.
31. **Allegation 1.1**

### Applicant's Submissions

- 31.1 Ms Bruce put her case to the Respondent in full during the course of cross-examination and so the Applicant's case was clear to the Tribunal. She submitted that the Respondent had lacked integrity and invited the Tribunal to consider the way in which the Respondent's defence was put.
- 31.2 Ms Bruce further submitted that the Respondent had acted dishonestly. The Applicant's submissions on this were set out in the Rule 12 statement. At the time the Respondent paid the monies into his personal bank account, it was submitted that he knew that that money did not belong to him and that he therefore had no right to claim it as his own. The Tribunal was also reminded of his acceptance of a Police caution for the offence of fraud by abuse of position in respect of this matter.

### Respondent's Submissions

- 31.3 The Respondent had given evidence in respect of these matters and relied on that evidence together with that of his witnesses in support of his case. The Respondent's closing submissions dealt with all the Allegations. The submissions in relation to Allegations 1.1 and 1.2 are summarised here and therefore not repeated below.
- 31.4 The Respondent reminded the Tribunal that at the material times he had not been admitted as a solicitor.
- 31.5 The Respondent submitted that his account had been consistent throughout. Although his reply to the FI Officer had neither admitted nor denied matters, he had steered her in the direction of Mr Tinkler from the outset.
- 31.6 The Respondent submitted that Ms Mills was inconsistent in that she was adamant that she had not discussed the documents but could not say when she had found them. Ms Maple had been unable to explain how the folder had been found so quickly if nobody had known about it previously.
- 31.7 The Respondent was strongly critical of Mr Tinkler's evidence, which he submitted had been dishonest and evasive. Mr Tinkler had told the Tribunal that he would reconcile the cheques each month but had also stated that he knew nothing about the cheque that was the subject of Allegation 1.1. The Respondent noted that the first time Mr Tinkler

had referred to being out of the office on the day in question was during his oral evidence.

- 31.8 The Respondent submitted that Mr Tinkler had produced an allegedly contemporaneous attendance note which had clearly been created at a later date.
- 31.9 The Respondent told the Tribunal that he admitted that the cheque went through his bank account but submitted that it was all instigated by Mr Tinkler. The Respondent submitted that his state of mind was relevant to dishonesty and again referred to the “higher standard” not applying to him at the time.
- 31.10 He assured the Tribunal that nothing like this would happen again in future.

### The Tribunal’s Findings

- 31.11 The Tribunal recognised that the Respondent had been a paralegal at the material time. However the Code of Conduct applied to him throughout as he was working in a law firm and was therefore required to adhere to the Code of Conduct and the SAR at all times.
- 31.12 The Respondent had admitted the factual elements of Allegation 1.1. He had admitted making the cheque out, drawing in on the client account, paying it in to his bank account and concealing the fact by completing the cheque stub to show PSG as the payee. The Respondent had described the entry as being deliberately misleading, which the Tribunal was satisfied amounted to concealing in this context.
- 31.13 In addition to these admissions, the Tribunal was satisfied that the factual basis was made out on the documentary evidence, which included the cheque, the entries in the bank statements and the subsequent exchanges with PSG. The Tribunal therefore found the factual basis of Allegation 1.1 proved on the balance of probabilities together with the breach of Rule 20.1 of the SAR.

### Principle 2

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

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

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

- 31.16 The Tribunal noted that making improper payments out of client account was a specific example cited in Wingate of lack of integrity.
- 31.17 The Respondent had offered various explanations for his rationale in paying these funds into his own account, all of which involved Mr Tinkler being said to have given his approval. The Respondent had referred to the payment being part of a bonus. This was not put to Mr Tinkler, despite the Respondent being given every opportunity to put his case to Mr Tinkler, including on that specific point. The Tribunal therefore attached very limited weight to the point. In any event the Tribunal considered the explanation to be absurd, far-fetched and not supported by any evidence. The Tribunal rejected this explanation as implausible.
- 31.18 In relation to Mr Tinkler's wider role, the Tribunal noted that it was Mr Tinkler who had instructed Simon Bowyer Clarke to make a report to the SRA. The Tribunal found this to be inconsistent with the Respondent's case that Mr Tinkler had approved the improper payment. The Tribunal rejected the Respondent's evidence that Mr Tinkler had approved this transfer and it accepted Mr Tinkler's evidence on this point. Mr Tinkler had been consistent in his evidence that he had not approved the cheque and the Tribunal did not find his evidence to be unreliable.
- 31.19 The Tribunal was therefore satisfied on the balance of probabilities that the Respondent had lacked integrity.
- 31.20 The Tribunal also found that even if Mr Tinkler had given his authority or instruction for the payment to be made, this would still have involved the Respondent in conduct which lacked integrity. If an unscrupulous training partner made a demand to a paralegal that involved an improper payment from client account, the paralegal should not bow to it. Therefore, while the Tribunal had rejected the Respondent's case on this point, even if the Respondent's case had been accepted, his conduct would still have been highly unethical and displayed a clear lack of integrity.

#### Principles 4 and 10

- 31.21 It followed as a matter of logic that it was not in the client's best interest to make improper payments out of the client account. It was also inconsistent with protecting a client's money and assets to do so. The Tribunal found the breaches of Principles 4 and 10 proved on the balance of probabilities.

#### Principle 6

- 31.22 The duty to protect client monies was paramount and it was for that reason that client monies were considered sacrosanct. This was a fundamental pillar of the trust the public placed in the provision of legal services. In paying client monies in to his personal bank account, that trust was seriously undermined. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

#### Dishonesty

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

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

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

- Firstly the Tribunal established the actual state of the Respondent’s knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.
- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

31.25 The Tribunal considered the Respondent’s state of knowledge at the material times. The Respondent had admitted that he was aware that the funds belonged to PSG. He was aware that he was paying those funds out of the client account without the authority of the client and was obviously aware that he was paying them into his own personal bank account.

31.26 The Respondent knew that he was writing PSG on the cheque stub and he had admitted in oral evidence that he knew that this would mislead someone looking at it, subject to his case in respect of Mr Tinkler, which the Tribunal had rejected.

31.27 The Respondent had told the Tribunal that he did not consider the “higher standard” to apply to him as he had not been admitted. The Tribunal rejected the principle of that submission entirely and also rejected any suggestion that this was what he had thought at the time. He would not have sought to conceal the payment if he had not considered it wrong to be making it. The Respondent would have been more open with the FI Officer in response to her questions had he considered he had acted properly and when repaying the money, he would have done so directly and not through a third party.

31.28 The Tribunal also had regard to the Police caution in respect of this matter. The Tribunal accepted that, regrettably, there were a small number of occasions when people would wrongly accept a Police caution. However the Tribunal completely rejected the Respondent’s evidence that this was such a case. The warning on the caution was explicit and the Respondent had significant legal training. He would not have accepted that caution, with all the potential consequences for his career, simply to avoid a trial.

31.29 The Tribunal found that the Respondent's actions, in light of his state of knowledge, would be considered dishonest by the standards of ordinary, decent people. The conclusion would have been the same even if the Tribunal had accepted the Respondent's evidence about Mr Tinkler's role in the issuing of the cheque, which had not. The Tribunal found the dishonesty element of Allegation 1.1 proved on the balance of probabilities.

## 32. Allegation 1.2

### Applicant's Submissions

32.1 The Applicant's case was that the Respondent had deliberately misled his client as he knew that the Firm did not still have monies on account "from last year when we were investigating the matter" because in August 2015 he had paid away the monies, those being £1,140.00 + £128.78 + £753.02, to himself as set out in Allegation 1.1. The Respondent knew that those monies were not available to be transferred to the client as they had long since been transferred to himself by way of the cheque dated 18 August 2015. The Respondent had accepted a Police caution for misappropriating the monies, albeit the caution post-dated the sending of this email.

32.2 It was submitted that the Respondent had therefore breached Principles 2, 4 and 6 of the Principles. It was further submitted that by writing something in the email to PSG that was untrue, and which the Respondent knew to be untrue, he had acted dishonestly.

### Respondent's Submissions

32.3 The Respondent's submissions in respect of this Allegation are set out above under Allegation 1.1.

### The Tribunal's Findings

32.4 The Tribunal noted that the Respondent had, again, admitted the factual basis of this Allegation in his oral evidence. He had admitted sending the email, which he knew contained untrue information. He had agreed with Ms Bruce's description of the contents of this email as a lie. The Tribunal found that the documentary evidence supported those admissions. The Tribunal found the factual basis of Allegation 1.2 proved on the balance of probabilities.

### Principle 2

32.5 The Tribunal again applied the test in Wingate. The Respondent had, by his own admission and on the Tribunal's finding, told a lie to a client in an email.

32.6 The Respondent had again sought to assign the responsibility for this to Mr Tinkler. The Tribunal rejected the Respondent's case on this for the same reasons as it had done so in respect of Allegation 1.1. Similarly, the Tribunal was at pains to emphasise that even if Mr Tinkler had approved of the email or had instructed the Respondent to send it, this would have been no defence whatsoever. It would always be a serious breach of ethics to deliberately mislead a client.

32.7 This was a clear example of a lack of integrity and the Tribunal found the breach of Principle 2 proved on the balance of probabilities.

Principle 4

32.8 It was an obvious matter of logic that it was not in the best interests of the client to be deliberately misled and so the Tribunal found the breach of Principle 4 proved on the balance of probabilities.

Principle 6

32.9 The Respondent had committed a complete breach of trust to the client by stating something in the email that he knew was untrue. It therefore followed that the trust the public placed in the provision of legal services could only be undermined by such behaviour. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

Dishonesty

32.10 The Tribunal again applied the test in Ivey and assessed the Respondent's state of knowledge at the time he sent the email.

32.11 The Respondent knew that the contents of his email were untrue for the reasons set out above. He was clearly aware that he was emailing a client in response to a specific request from them and on his own admission he had deliberately misled them.

32.12 The Tribunal had rejected the Respondent's evidence about Mr Tinkler's involvement in this email. The Tribunal was entirely satisfied that this would be considered dishonest by the standards of ordinary decent people. The conclusion would have been the same even if the Tribunal had accepted the Respondent's evidence about Mr Tinkler's role in the sending of the email, which it had not.

32.13 The Tribunal found the dishonesty element of Allegation 1.2 proved on the balance of probabilities.

**33. Allegation 1.3**

Applicant's Submissions

33.1 In relation to Allegation 1.3, Ms Bruce sought to rely on a number of other documents that were not part of a pleaded allegation but were, she submitted, relevant to the context of this Allegation. Ms Bruce sought to invite the Tribunal to draw inferences from those documents to support a finding of professional misconduct in relation to the mortgage form.

33.2 There was discussion about the relevance of those documents and the fairness of relying on them, the details of which are set out in the Tribunal's findings. The Applicant's submissions are summarised here to the extent that they rely on evidence other than the additional documents.

- 33.3 Ms Bruce submitted that entering an inflated salary figure on a mortgage form lacked integrity and was dishonest. Ms Bruce invited the Tribunal to consider what innocent reason there could be for completing the document in this way.

#### Respondent's Submissions

- 33.4 The Respondent submitted that the false mortgage application had been fabricated as part of a process to bring the matter of the cheque to light, while undermining the Respondent's credibility. The Allegation made no sense and the Tribunal was reminded that the form was not dated and was not sent. The Respondent submitted that he had not completed that box and there was no evidence that he had done so.

#### The Tribunal's Findings

- 33.5 The Applicant had brought this Allegation in respect of the completion of one box on one form. The Respondent, in his interview with the FI Officer, had not denied completing most of the form and did not deny that the figure in the salary box was inaccurate. This was evident from the Respondent's wage slips and his P60 end of year tax form. However, he strongly denied completing that box and therefore denied the Allegation in its entirety.
- 33.6 The Applicant, in seeking to prove its case, had placed reliance on 14 sets of documents which it had obtained from the Firm. The Applicant had questioned the authenticity of those documents but had not called any expert evidence as to their authenticity. There was no Allegation in relation to the authenticity of those documents. Ms Bruce had submitted that the documents provided the context for the narrow Allegation that had been pleaded.
- 33.7 It was a matter for the Applicant as to how it chose to present its case. However, in the absence of anything more than insinuation, the Tribunal felt it would be unfair to the Respondent to make a finding as to the authenticity of the documents, let alone draw an inference from whatever finding it might make. In this respect the Tribunal agreed with the Respondent's objection to the reliance on these 14 documents. In considering the factual basis of Allegation 1.3, the Tribunal confined itself to documents that were directly relevant to the pleaded Allegation, namely the wage slips, the P60 and the mortgage form itself.
- 33.8 The only issue in dispute was whether it was the Respondent who had completed that box. He had put to Ms Mills that she might have done so, something she had denied. The Tribunal noted that the form had not been signed or dated. It had been completed on the Respondent's computer, which others had access to. It was therefore unclear who had filled in that box. The Tribunal could not be satisfied on the balance of probabilities that it was the Respondent who had done so and therefore Allegation 1.3 was not proved.

#### **Previous Disciplinary Matters**

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

**Mitigation**

35. The Tribunal announced its findings at the end of the second day of the hearing. It then adjourned until the following morning to allow the Respondent time to prepare his submissions and to consult the Guidance Note on Sanction, which was emailed to him by the clerk.
36. The Respondent invited the Tribunal to impose one sanction for both of the matters proved as they were closely related.
37. The Respondent told the Tribunal that he had never denied the factual basis of the Allegations. He had not misled the SRA or the Tribunal. The Respondent accepted that the Tribunal had found him to have acted dishonestly. He submitted that this was an exceptional case and one that did not require him to be struck-off.
38. The Respondent told the Tribunal that he had repaid all the monies and there had been no loss to the client. The matter had not been widely publicised and so the damage to the reputation of the profession was limited. He submitted that taken together, this was a one-off episode. The Respondent submitted that this was not exceptional, but provided the background to what took place.
39. The exceptional circumstances were, the Respondent submitted, the dishonest actions of Mr Tinkler. The Respondent submitted that Mr Tinkler had been the “instigator of the whole affair” and that this had led to the Respondent’s own dishonesty. The Respondent told the Tribunal that he accepted that the mistake was his and he would have to bear the consequences. However at the time he took the actions he felt he had no other option, his employer having told him that it was acceptable. The Respondent had worked for Mr Tinkler for 12 years and had only remained at the Firm for three months after he was admitted to the Roll.
40. The Respondent submitted that it was illogical to argue that a strike-off was necessary, given the length of time the matter had taken to be referred to the Tribunal. These events had taken place almost five years ago and since the matter came to the attention of the SRA in December 2016 there had been no restrictions imposed on his practice. There had also been no complaints or incidents in that time.
41. The Respondent told the Tribunal that should it grant him a second chance it would not have cause to regret it. He would never act in this manner again and would always act with complete integrity, trustworthiness and probity. If the Tribunal imposed a suspension, this would enable the Respondent to continue in this profession that he had worked for so long to join.

**Sanction**

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



43. In assessing the Respondent's culpability, the Tribunal found that his motivation for the misconduct had been his own personal gain, followed by concealment of his own wrongdoing. The misconduct had been planned and represented a serious breach of trust. The Respondent carried these matters out himself and was therefore entirely responsible for his actions. Although he was not admitted to the Roll at the material time, he nevertheless had considerable experience of working in a law firm and was well aware of his obligations. The Respondent had engaged with the SRA, albeit by his own admission, not with complete transparency. The Tribunal found the Respondent's level of culpability to be high.
44. In relation to the harm caused to PSG, this was limited in that the sum involved was relatively small and was restored to it. However, the damage to the reputation of the profession was significant. The Respondent had committed two acts of dishonesty, one of which had led to a Police caution for fraud by abuse of position. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

“34. there is harm to the public every time a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be “trusted to the ends of the earth”.”
45. The misconduct was aggravated by the fact that it was deliberate and calculated. The sending of the misleading email meant that it became a course of conduct involving several steps being taken over a number of months. The Respondent knew that he was in material breach of his obligations.
46. The Tribunal found the misconduct was mitigated to some extent by his early admission to the factual basis of the Allegations. However, it did not find the Respondent to have shown insight as he had continued to seek to blame Mr Tinkler throughout rather than take full responsibility. The Tribunal was surprised by the Respondent's submission as to differing standards of honesty, depending on whether he was admitted or not. The fact that he was a solicitor at the time did not assist him.
47. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent. The misconduct was at the highest level and the only appropriate sanction was a strike-off. The protection of the public and of the reputation of the profession demanded nothing less.
48. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal had listened carefully to the Respondent's mitigation but was unable to identify any exceptional circumstances. This was not a “moment of madness” or a temporary loss of judgment, it was a planned series of dishonest acts committed by the Respondent personally. The Tribunal found there to be nothing that would justify a lesser sanction. The only appropriate and proportionate sanction was that the Respondent be struck off the Roll.

## Costs

### Applicant's Submissions

49. Ms Bruce applied for costs in the sum of £14,345.13.
50. Ms Bruce told the Tribunal that the costs were the same as they would have been had the SRA conducted the advocacy in-house. Ms Bruce submitted that the costs were modest but stated that the costs for the third day should be reduced as the matter had concluded in less than half of that final day.

### Respondent's Submissions

51. The Respondent opposed application for costs on basis that the "vast majority" of the work was in relation to Allegation 1.3, which had not been proved. The Respondent estimated that approximately 85% of the paperwork related to Allegations 1.1 and 1.2. The FI reports also dealt with Allegation 1.3 and therefore the investigative costs should be disallowed entirely.
52. The Respondent also submitted that a Case Management Hearing held earlier in the proceedings could have been avoided if the SRA solicitor had been clearer in his correspondence with the Respondent about how his Answer needed to be structured. The Respondent also referred the Tribunal to his statement of means.

### The Tribunal's Decision

53. The Tribunal considered the cost schedule, the statement of means and the submissions made by both parties.
54. The Tribunal had found two serious Allegations of dishonesty proved and it was therefore right in principle that the Respondent pay at least some of the Applicant's costs.
55. The Tribunal found that the Applicant's costs should be reduced to take account of the fact that Allegation 1.3, which had not been proved, had involved a large amount of paperwork. This had mainly related to documents which, for the reasons set out above, had not assisted the Tribunal. The Tribunal also made the reduction to the daily rate for the third day of the hearing, which had gone short.
56. The appropriate reduction to the costs was one of just over one third taking into account all those factors. The Tribunal therefore assessed the costs at £9,000.
57. The Tribunal considered whether to reduce this figure on account of the Respondent's means. It was clear that he owned assets in the form of residential properties, even though his income was modest. The Tribunal was aware that the Applicant took a pragmatic approach to enforcement and could, for example, obtain a charging order on a property if it felt that to be appropriate. The Tribunal saw no basis to reduce the costs further or to delay enforcement and it duly ordered that the Respondent pay them in the sum assessed.

**Statement of Full Order**

58. The Tribunal Ordered that the Respondent, MATTHEW EDWARD FLYNN, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £9,000.00.

Dated this 27<sup>th</sup> day of July 2020  
On behalf of the Tribunal



J. Evans  
Chair

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**28 JUL 2020**