SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12076-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

ANJAN PATEL Respondent

Before:

Mr G. Sydenham (in the chair)
Mr B. Forde
Dr S. Bown

Date of Hearing: 21 – 24 September 2020

Appearances

Rory Mulchrone, barrister in the employ of Capsticks LLP, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that while in practice as a solicitor at Neumans LLP ("the Firm") and in the course of acting on behalf of Client A in litigation before the High Court ("the Client A Litigation"):

1.1 On or about 20 – 21 July 2016, he concluded a settlement of a costs claim in the Client A Litigation in which Client A had a direct financial interest, without the authority of Client A, and in doing so he breached any or all of Principles 2, 4, 5 and 6 of the SRA Principles 2011 ("the Principles");

1.2 Between 21 July 2016 and 26 September 2016, he failed to notify Client A or cause Client A to be notified that the costs claim referred to in 1.1 above had been settled and in so doing he breached any or all of Principles 2, 4, 5 and 6 of the Principles;

1.3 On or about 12 August 2016 and 27 September 2016, he made misleading statements to solicitors acting on behalf of Client A in relation to the costs claim referred to in 1.1 above, and in so doing he breached any or all of Principles 2 and 6 of the Principles;

1.4. Between June 2016 and September 2016, he acted in circumstances giving rise to a conflict between:

1.4.1 The interests of Client A and the Firm; and in so doing he breached any or all of Principles 2, 4, 5 and 6; and/or

1.4.2 the interests of Client A and his own interests; and in so doing he breached any or all of Principles 2, 4, 5 and 6 of the Principles and Outcome O(3.4) of the SRA Code of Conduct 2011 ("the Code").

2. While in practice as a solicitor and in the course of acting on behalf of Client C in litigation:

2.1 Between 1 April 2017 and 3 July 2017, he failed to comply with reasonable requests from Client C for information as to costs and in so doing he breached any or all of Principles 2, 4, 5 and 6 of the Principles;

2.2 Between 9 August 2017 and 14 August 2017, he held himself out to Client C as being authorised to engage in discussions concerning the Firm's costs, following intervention by the SRA into the Firm and in the knowledge of communications from the SRA to the effect that he was not so authorised, and in so doing he breached any or all of Principles 2, 6 and 7 of the Principles.

3. While in practice as a solicitor and a consultant at Cubism Law ("Cubism") and while acting on behalf of Client F in litigation brought against a bankrupt, on or about 24 May 2018 he sent correspondence to the solicitors acting for a trustee in bankruptcy which improperly:

3.1 Carried an express or implied threat of action against the solicitors acting on behalf of the trustee in bankruptcy in circumstances in which no such threat could properly be made;

3.2 Claimed that the trustee in bankruptcy was improperly receiving payments in relation to his appointment as trustee in bankruptcy in the absence of evidence or proper grounds to support such an assertion;

3.3 Claimed that the trustee in bankruptcy was acting fraudulently or improperly in the absence of evidence or proper grounds to support such an assertion;

3.4 Threatened reputational harm to the trustee in bankruptcy in the absence of proper grounds to make such a threat;

and by reasons of the matters above or any of them breached Principle 6 of the Principles.

4. Between 23 May 2019 and 14 June 2019, in the course of responding to communications sent by an officer of the SRA, improperly made threats against an SRA officer and in so doing breached one or more of Principles 2, 6, and 7 of the Principles.

5. Allegation 1.3 above was advanced on the basis that the Respondent's conduct was dishonest but a finding of dishonesty was not a necessary ingredient in finding Allegation 1.3 proved.

Documents

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

- Notice of Application dated 8 April 2020
- Rule 12 Statement and Exhibit IWB1 dated 8 April 2020
- Respondent's Answer dated 13 July 2020

Factual Background

7. The Respondent was admitted to the Roll in March 1998. Between 1 April 2007 and 3 July 2017, he was a consultant at the Firm, specialising in commercial litigation. He was remunerated in accordance with an arrangement whereby he would receive a percentage of the fees received by the Firm on matters in which he acted. Following the Applicant's intervention into the Firm (for reasons unconnected with the Respondent) the Respondent practised from 10 July 2017 until 21 May 2019 as a consultant and the Head of Commercial Litigation at Cubism. The Respondent held a current unconditional practising certificate.

Witnesses

8. The following witnesses provided statements and gave oral evidence:

- Anjan Patel – Respondent
- John Comerford/Client B – Respondent's Witness

9. The written and oral evidence of the 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. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

10. 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. The Tribunal considered all the evidence before it, written and oral together with the submissions of both parties.

Dishonesty

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

> "When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge and 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."

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

Integrity

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

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … [Professionals] are required to live up to their own

professional standards … Integrity connotes adherence to the ethical standards of one's own profession".

14. **Allegation 1.1 - On or about 20 – 21 July 2016, the Respondent concluded a settlement of a costs claim in the Client A Litigation in which Client A had a direct financial interest, without the authority of Client A, and in doing so he breached any or all of Principles 2, 4, 5 and 6 of the Principles.**

The Applicant's Case

14.1 Client A made a report dated 6 February 2017 to the Applicant about the Respondent's conduct. Client A (together with Client B) entered into a commercial arrangement with a third party, T. Litigation commenced between the parties ("the Client A Litigation"). T was the claimant with Clients A and B as the defendants and counterclaimants in that litigation. The Respondent represented both Client A and Client B in that litigation, assisted by SB.

14.2 The Respondent and SB also worked with Mr H, a former independent financial adviser, who had a working relationship with Client A and who appeared to have acted as a conduit between the Firm and its clients.

14.3 The terms of the Firm's fee arrangement with Client A in that litigation were detailed in a conditional fee agreement dated 20 June 2012. Clause 33 of that agreement provided that the Firm must:

> "(a) always act in your best interests, subject to our duty to the Court;
>
> (b) explain to you the risks and benefits of taking legal action;
>
> (c) give you our best advice about whether to accept any offer of settlement;
>
> (d) give you the best information possible about the likely costs of your claim."

14.4 Clauses 35 and 36 of that agreement provided that the Firm could take forms of security over its disbursements, basic charges and success fee (including a first charge over and/or assignment of the proceeds of the claim, including costs) and that Client A would promptly execute any instrument or document requested by the Firm in order to give effect to or perfect the securities referred to.

14.5 Clause 5 of that agreement provided:

> "If we and your opponent cannot agree the amount of costs your opponent will pay to you, the Court will decide how much you can recover. If the amount agreed or allowed by the Court does not cover all our basic charges, our disbursements and success fee then you pay the difference."

14.6 On 18 June 2013 Clients A and B entered into an agreement with T, which settled the Client A Litigation. T was to pay to Clients A and B a sum representing damages in the total sum of £2.2m. It would also pay their costs in the litigation to be assessed on the standard basis if not agreed (the Costs Claim).

14.7 Client A and Client B (on their own behalf) and the Respondent (on behalf of the Firm) then revised the terms of their agreement as to fees. In summary, pursuant to that further agreement, any sum paid by T to Clients A and B representing their costs in the litigation would be aggregated with the sums representing damages under the 18 June 2013 agreement. After payment of all disbursements, the aggregated sum would be split 65% to the Firm and 35% to Clients A and Client B (with Client A receiving 55% of that share).

14.8 Mr Mulchrone submitted that Client A had a direct financial interest in the Costs Claim as the total sums which he would receive in the litigation were contingent on the outcome of the Costs Claim. Further, the Respondent and the Firm also had a direct financial interest in the Costs Claim, as their remuneration was based on sums billed and received in the matter.

14.9 The Firm started detailed assessment proceedings in respect of the Costs Claim on or around 7 August 2015. On 24 June 2016, T made an offer to settle the Costs Claim in the sum of £2m. In an email dated 1 July 2016 Client A rejected that offer and stated "please note that [Client B] and I want to be involved in the decisions regarding costs at every level". The email was forwarded by SB to the Respondent later that day. Mr Mulchrone submitted that the Respondent could be in no doubt that the offer had been rejected and that Client A was paying close attention to the resolution of the Costs Claim.

14.10 On 5 July 2016, SB sought instructions from Clients A and B to make a counter-offer. Client A responded later that day, summarising his concerns and added "to make it clear we do not want to accept [T's] offer or make any counter offer to them at this time".

14.11 By an email dated 15 July 2016, Client A set out the basis upon which he and Client B would be prepared to settle the outstanding issues, including costs. It was proposed that an offer of £2.2m might be made to T's solicitors to settle the Costs Claim, on the basis that the Firm capped its fees at £1.6m (i.e. below the level which had been incurred). It noted that "If [T] and/or Neumans do not agree our proposed new offer then we will have no alternative but to go to [direct assessment] and accept what we negotiate in the courts" and that "if our proposals are not accepted by Neumans and/or [T's representatives] they will be withdrawn immediately". No response was sent to Client A from the Respondent or from SB.

14.12 Later, on the afternoon of 15 July 2016, the Respondent sent an offer to T's solicitors to settle the Costs Claim in the sum of £2.4m. Client A was not made aware that the offer had been made. T's solicitors made a counter-offer on 19 July 2016. Client A was not made aware that the offer had been made. On 20 July, the Respondent made a further offer to settle the Costs Claim in the sum of £2.33m. T's solicitors accepted that offer on 21 July 2016. The Respondent did not inform Client A that the Respondent had made a further offer or that T had accepted it.

14.13 Mr Mulchrone submitted that such conduct was in breach of the Respondent's obligation to act with integrity. Not only had he made an offer to settle the Costs Claim without instructions from his client, he had done so contrary to the express instructions of his client. It was clear that T's solicitors considered that the offer was made by Client A and not the Respondent. In its acceptance letter T's solicitors stated: "We write to confirm our client's acceptance of your clients' offer to settle the Proceedings in full".

14.14 The Firm's CFA upon which the Respondent acted in this matter specifically provided that the Firm "must" give Client A its best advice about whether to accept any offer of settlement. This was not restricted to offers relating to damages. Mr Mulchrone submitted that Clauses 5 and 36 - 37 of the CFA did not authorise the Respondent to settle Client A's costs claim without Client A's specific authority. Such an interpretation of the CFA was perverse and self-serving. It ignored the other clauses in the CFA and also the expectation that a solicitor would not act contrary to instructions. Such an interpretation was neither realistic nor was it sustainable; it was a later construct contrived to excuse the inexcusable.

14.15 In his response to the EWW letter, the Respondent accepted that Client A had a direct pecuniary interest in the value of the settlement of the Costs Claim. He asserted that Client A had demonstrated "extremely bad judgment" and "greed" in his approach to previous offers and that it was necessary to take "all steps in the costs dispute to protect [Client A and others] from [Client A's] greed and awful judgment". Mr Mulchrone submitted that this was an astonishing assertion. If the Respondent disagreed with Client A's position such that he could not act on Client A's instructions, he ought to have terminated the retainer. The Respondent was not entitled to go behind his clients' backs and settle the claim without authority.

14.16 Alternatively, if those clauses did confer such authority, they did not survive the variation of the CFA on or around 2 August 2013 since, by virtue of that variation, Client A then had a direct financial interest in the value of any costs settlement. In addition, Client A had made it abundantly clear to the Respondent that he wished "to be involved in the decisions regarding costs at every level" and that "we do not want to accept [T's] offer or make any counter offer to them at this time". If the Firm did not agree with the offer, in regard to the capping, Client A wanted to withdraw it.

14.17 The Respondent, it was submitted, was completely aware that he had no authority unilaterally to settle the Costs Claim. However, contrary to the provisions of the CFA and Client A's express instructions, between 15 and 21 July 2016 the Respondent took it upon himself to negotiate and settle the Costs Claim without reference to Client A. As a result of the revised agreement as to fees, Client A had a direct financial interest in the settlement of the Costs Claim. The Respondent therefore concluded a settlement of a costs claim in which his client had a direct financial interest and where he had no authority to conclude that settlement. A solicitor acting with integrity would not have so concluded a costs claim.

14.18 The Respondent therefore breached Principle 2.

14.19 The conduct alleged also amounted to a breach by the Respondent of the requirement to act in his client's best interests. It was plainly not in Client A's best interests (and thus in breach of Principle 4) for the Respondent to act contrary to his express instructions and for his instructions to be ignored. That such conduct failed to provide Client A with a proper standard of service in breach of Principle 5 was clear. Such conduct was liable to undermine the trust the public placed in the Respondent and in the provision of legal services. Members of the public would not expect a solicitor to act in the way that he considered most appropriate contrary to his client's instructions and without seeking any instructions on the settlement of a claim in which the client had a direct financial interest. Thus the Respondent's conduct was in breach of Principles 4, 5 and 6 as alleged.

The Respondent's Case

14.20 The Respondent denied allegation 1.1. He explained that the Client A Litigation demonstrated that both he and the Firm sought to assist Clients A and B in difficult litigation. At the time that the Firm took the case on, the case was extremely weak. The Firm had taken a huge financial risk. The Respondent understood that the CFA's gave the Firm full authority in relation to the issues of costs if the claim was successful, authorising them to negotiate and reach agreement with the other side to the litigation without reverting to the clients. This position, it was submitted, was reflective of the risks the Firm was taking.

14.21 Clause 5 of the CFA provided explicitly that "if we [meaning the firm] and your opponent cannot agree the amount of costs your opponent will pay to you the Court will decide how much you can recover.....". The Respondent submitted that in his view, that meant that if the Firm reached agreement with the other side on costs then that would be the end of the matter.

14.22 The hard work and expense the Firm put into helping the clients was successful; the other side offered to settle. An offer of £3m plus costs to be assessed on the standard basis was made in or around early June 2013. The view of the legal team was that this was an excellent offer, and the clients were strongly advised to accept. The CFA stated that all damages and costs were used to pay counsel/solicitor fees, uplift and disbursements first before the clients received anything. Client A did not accept the offer or the advice given. An agreement was reached between the Firm and Clients A and B orally on 18 June 2013, that any sums recovered in costs would be aggregated to the damages recovered, and that after payment of the QCs, junior counsel, experts, Company C and other disbursements, the clients would receive 35% of the net aggregated total, and the Firm would receive 65% of the net total ("the June 2013 agreement").

14.23 The Respondent submitted that he understood this agreement to supplement the CFA. Under the CFA the Firm still had full control and authority over the negotiations and settlement of costs (under clause 5) and was entitled to settle claims for costs without the authority of or reverting to the clients. In exercise of that authority the Firm continued negotiations with T on the subject of costs. In July 2016 it was agreed that T would pay £2.33m in costs. The Respondent considered that this represented an excellent outcome of the litigation given that the clients seemed destined to lose when the Firm began acting. The Respondent considered that this settlement was in the

clients' best interests, as it guaranteed a substantial 6 figure settlement each (Client A eventually received just under £700,000 and Client B received just over £620,000 as per the June 2013 Agreement), without incurring the significant risk of the clients' eventual recovery being reduced by a substantial amount if they failed to beat the offer. This would not only have been contrary to the clients' interests but also contrary to the interests of the Firm, Counsel, Company C and others.

14.24 The Respondent submitted that throughout the protracted negotiations around the issue of costs Client A had made increasingly unreasonable demands by asking for most of the remaining costs recovery and far more than he was entitled to under the June 2013 Agreement, and in managing things over this period the Respondent tried to ensure everyone was protected as best he could. Between June and August 2016 Client A effectively demanded most of the additional recovered costs should be paid to him alone meaning that Client B, Company C, the remaining QC, two counsel and the Firm (all of whom had waited 3 years to be paid in full contrary to the CFA as they had only received a partial payment) would receive little or nothing for all the hard work they had undertaken in transforming the case and Client A's recovery. The Respondent considered that Client A, who had a 15% share in the recovery was seeking to dictate to everyone else and to hold everyone to ransom unless the Firm agreed to take less than had been agreed in June. Client A, it was submitted, was seeking to hold the Firm to ransom. As a result of the exercise of its powers, the Firm had succeeded in obtaining more for their clients than would otherwise had been the case.

14.25 The Respondent submitted that the Firm had authority to conclude a settlement of the Costs Claim under clause 5 of the CFA. In those circumstances it was denied that he had acted in breach of the Principles as alleged.

The Tribunal's Findings

14.26 The Tribunal noted that the Respondent did not dispute the factual matrix as submitted by theApplicant. He agreed that he had settled the Costs Claim without reference to either Client A or Client B. It was his case that he was entitled to do so pursuant to Clause 5 of the CFA. The Respondent stated in evidence that there was no mention of the clients in Clause 5 being involved in negotiating the settlement of the Costs Claim. It was clear that the CFA referred only to the Firm and the other side. The Respondent stated that it was obvious that the Firm would be required to exercise its power to settle the claim reasonably and in the best interests of its clients.

14.27 The Tribunal found, as had been accepted, that Client A had a direct pecuniary interest in the settlement of the Costs Claim. The Tribunal noted that up until the Respondent settled the claim without the knowledge of his clients, the clients had been kept informed about the progress of the Costs Claim. Further, their instructions had been sought. During cross-examination, the Respondent explained that instructions had been sought as he was trying to work with his clients, whose interests were aligned with the Firm until Client A sought not to be bound by the agreement. The Tribunal noted that Client A had questioned the meaning of Clause 5, and his liability to pay any shortfall should the Firm not recover its full costs. At no point was it explained to Client A that Clause 5 entitled the Firm to settle any costs claim unilaterally. When it was suggested to the Respondent that the reason he had not

advised Client A that Clause 5 entitled the Firm to settle costs without instructions was because no-one at the Firm considered that to be the construction of Clause 5 at the time, the Respondent explained that Clause 5 related to the settlement of the costs claim and not "procedural issues". Mr Mulchrone then asked whether it was the Respondent's case that instructions were required for procedural issues but not settlement. The Tribunal noted that the Respondent did not give a direct answer to that question and instead stated that clients did not usually involve themselves in the settlement of costs under a CFA.

14.28 The Tribunal found that at the time Client A was asking about the meaning of Clause 5, and when the Firm was taking instructions from Client A as regards costs, the Respondent did not believe or consider that Clause 5 empowered the Firm to unilaterally settle any costs claim. The Tribunal determined that had that been the belief, the Respondent would have so informed the client, and would not have sought instructions from him. To the extent that the Respondent's evidence was to the contrary, the Tribunal did not accept that evidence. Further, he would have explained to Client A, when Client A stated that he wanted "to be involved in the decisions regarding costs at every level", that the settlement of the Costs Claim was a matter for the Firm alone.

14.29 The Tribunal considered the proper construction of Clause 5. The Tribunal did not accept the Respondent's construction of Clause 5. There was nothing in the wording of that clause that explicitly or implicitly allowed the Firm to unilaterally settle the Costs Claim. The Tribunal found the Respondent's interpretation to be incredible and contrary to the other clauses in the agreement.

14.30 It was not in a client's best interests to act contrary to his express instructions. Nor was it in a client's best interests for a solicitor to take decisions on his case and act on them without any reference to his client. Client A did not lack capacity, thus the Respondent had no scope to make a best interests decision on his behalf that was contrary to his instructions. It was his duty to act on his client's instructions and not to unilaterally decide to ignore those instructions as he considered that they were not wise. The Tribunal found that in acting as he did, the Respondent's conduct was in breach of Principal 4. In so doing the Respondent had also failed to provide Client A with a proper standard of service in breach of Principle 5. Members of the public expected a solicitor to act on instructions. Where the solicitor considered an alternative approach was better, the public expected the solicitor to advise on the position but ultimately to act as instructed. In failing to do so, the Respondent had failed to maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6.

14.31 The Tribunal found that no solicitor acting with integrity would unilaterally make decisions in relation to a matter in which the client had a direct financial interest, nor would a solicitor so acting act contrary to express instructions. In doing so the Respondent had failed to act in accordance with the standards expected of him by the profession and to adhere to the profession's ethical code in breach of Principle 2.

14.32 Accordingly, the Tribunal found allegation 1.1 proved on the balance of probabilities.

15. **Allegation 1.2 - Between 21 July 2016 and 26 September 2016, he failed to notify Client A or cause Client A to be notified that the costs claim referred to in 1.1 above had been settled and in so doing he breached any or all of Principles 2, 4, 5 and 6 of the Principles.**

The Applicant's Case

15.1 On the evening of 21 July 2016, Mr H sent an email to the Respondent referring to a conversation with the Respondent earlier that evening and setting out the issues which Client A wished to discuss in relation to any potential settlement of the Costs Claim. Mr Mulchrone submitted that it was obvious that at that time, Mr H was unaware that Costs Claim had been settled.

15.2 The following day, the Respondent spent over an hour reviewing that email and drafting a response. The terms of that draft indicated that no settlement had been reached in the Costs Claim. On 26 July 2016, Client A emailed the Firm seeking a response to questions "that need clarification before we [i.e. Client A and Client B] can make a decision as to settlement of our cases". In fact, it appeared that Client B was told later that day (for the first time) that the Costs Claim had settled.

15.3 Client A was sent an acknowledgment email and told that they would get back to him as soon as possible. In an email to Mr H on 29 July 2016, the Respondent stated: "we do not have to waste our time dealing with [Client A's emails] unless we decide to and he pays for it."

15.4 The Respondent (amongst others) worked on a draft response to Client A's email. The draft response did not disclose that the Costs Claim had already settled. On the contrary, it suggested that the matter had not settled and that there were issues to be dealt with at a detailed assessment. The final version was sent to Mr H on 2 August 2016, with the intention that it would then be sent to Client A. In his response to the Respondent later that day Mr H expressed concern:

> "...at some point unless [Client A] settles you are going to have to tell him that you have previously settled, and that will not look good (in my opinion), but if you say now that is what you are going to do, then there will not be any accusations of you having already settled, misleading him etc etc"

15.5 Mr Mulchrone submitted that the response from Mr H put the Respondent on notice of the misleading nature of the email. It was not clear whether that substantive document was ever sent to Client A.

15.6 Later that day, 3 August 2016, GD of B&M wrote to the Respondent confirming that he had been instructed by Client A in relation to the Client A Litigation. GD referred to "the dispute that has arisen between our client and your firm relating to the agreement reached in June 2013" in respect of the Client A Litigation. It included an offer to settle that dispute, acceptance of which "will allow your firm to take full control of the Detailed Assessment procedure".

15.7 A draft response was created. That draft did not indicate that the Costs Claim had settled and gave the impression that it had not. The Respondent sought advice from Counsel on the contents of that draft response on 10 August 2019. His covering email did not disclose that the Costs Claim had settled, although it was apparent that Counsel was aware of that settlement.

15.8 Counsel's response, dated 11 August 2016, attached an amended version of the draft letter, marked in tracked changes. His covering email included the following:

> "I have made two important changes. First, I have told the other side that the claim for costs has been compromised in the sum of £2.33M... In para. 11 I have used language that requires a careful reading to see that this is what is being said. I am very concerned not to put across a false impression not only because there is a risk of any compromise being set aside for non-disclosure/mis-representation if this is not done but also because of the regulatory issues that might arise otherwise. … We have discussed (and you have already set out in your draft) the potential counter-arguments (such as they are) to the almost inevitable allegation from the other side that you acted in breach of the retainer by compromising the costs without obtaining the client's instructions. The other side will struggle to show any loss even if they do establish breach, but you must be wary of the regulatory aspect."

15.9 Mr Mulchrone submitted that this was a clear and proper warning from Counsel to the Respondent in clear and unambiguous terms. The Respondent did not heed that warning as in his letter to B&M the following day, he omitted the wording inserted by Counsel and restored the wording that Counsel had deleted. He did not disclose to B&M that he had settled the Costs Claim and gave the impression that it had not settled.

15.10 Thereafter, the Respondent continued to exchange correspondence with B&M on the Costs Claim. Mr Mulchrone submitted that it was clear from their correspondence that they and their client remained unaware that the Respondent had settled the Costs Claim:-

- B&M's 18 August 2016 letter to the Firm stated: "It must surely be in both parties interests to reach a resolution of this dispute before matters escalate. This will allow your firm to settle the costs issue with [T's representatives]..."

- Their 26 August 2016 letter stated: "If we cannot reach agreement on an appropriate figure, I suggest that you simply proceed with the Detailed Assessment"

- In a letter dated 12 September 2016 they requested "an update on the current position regarding the Detailed Assessment".

15.11 The Respondent's correspondence with them did not disclose that the Costs Claim had settled.

15.12 On 26 September 2016 the Respondent confirmed by letter to B&M, for the first time, that the costs claim had been settled on 21 July 2016.

15.13 In an email dated 27 September 2016, GD asked the Respondent to confirm whether (and, if so, when) Mr H had become aware that the Costs Claim had been settled. In his response the Respondent stated: "I sent [Mr H] a copy of our letter to you of 26 September 2016 which is when [Mr H] became aware that the costs proceedings had been settled. There was no reason to tell (Mr H] prior to this". Mr Mulchrone submitted that as Respondent were aware, Mr H had been aware since at least 2 August 2016 that the Costs Claim had been settled.

15.14 The Respondent was aware that he had not notified Client A of the settlement on 21 July 2016 of the Costs Claim. Moreover, the correspondence which he received from Client A (both directly and through Mr H) and from his representatives indicated that Client A did not know that the Costs Claim had settled. As Mr H noted in his email to the Respondent on 2 August 2016 "at some point you are going to have to tell him that you have previously settled...".

15.15 The Respondent knew that Client A wished "to be involved in the decisions regarding costs at every level". He also knew that he had a direct financial interest in knowing the fact of and the value of the settlement, since (by virtue of the revised agreement reached between the Firm and Client A) the total sums which Client A would receive in the Client A Litigation were contingent on the value of the settlement of the Costs Claim.

15.16 The delay in notifying Client A that the Costs Claim had settled led to a delay in Client A receiving the full proceeds of his claim. While the Firm received sums in settlement of the Costs Claim on 2 August 2016, it could not distribute those sums to Client A before it had notified him that the claim had settled and no interim payment out of those settlement sums was made to him until 12 October 2016.

15.17 The "dispute" between the Firm and Client A on costs compelled Client A to arrange separate representation. B&M then engaged in extensive correspondence with Respondent, which proceeded on the premise that the Costs Claim had not settled.

15.18 Despite all that, between the period 21 July 2016 - 26 September 2016 (some nine weeks), the Respondent failed to notify Client A or cause Client A to be notified that (as he knew) the Costs Claim had already been settled.

15.19 Mr Mulchrone submitted that a solicitor acting with integrity would have notified his client immediately or caused his client to be notified (either directly or through his representatives) that the Costs Claim had settled; and would not have allowed his client to persist for a period of some nine weeks (or at all) in the misapprehension that the Costs Claim had not settled when, to that solicitor's knowledge, it had. In failing to do so, the Respondent's conduct was in breach of Principle 2.

15.20 It was not in Client A's best interests or consistent with providing a proper standard of service for him not to be notified of the outcome of the Costs Claim or for his solicitors to be misled as to the true position. Thus the Respondent had breached Principles 4 and 5.

15.21 Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by solicitors who failed to notify their client or cause their client to be notified that a claim for costs, in which that client had a direct financial interest, had settled, in circumstances where that client was not aware that the claim had settled and where the solicitor knew that it had. Thus the Respondent's conduct was in breach of Principle 6.

The Respondent's Case

15.22 The Respondent submitted that at the time of the settlement of the costs claim it seemed that all that remained to do was to execute the recovery of costs that had been agreed, negotiate reductions and make the relevant payments. By that time, Client A had instructed B&M to advise and represent him so it was not necessary to advise him to seek advice. The Respondent explained that he considered that there had been a fundamental repudiatory breach of the June 2013 agreement by Client A by the demands he was making to receive most of the remaining costs and far more than his entitlement.

15.23 The Respondent was very concerned that although the Firm had the right to negotiate and settle the costs claim (and had done so), Client A would seek to de-rail it, with the consequence that there would be a large own costs liability and adverse cost award at the then approaching SCCO costs hearing, and that everyone (Client A, Client B, counsel, Company C and the Firm) would end up recovering much less or nothing - in circumstances where the Respondent considered that Client A's refusal to accept advice earlier had already led to the "loss" of a £3 million offer and six figures in costs to his own and everyone else's detriment.

15.24 The Respondent explained that the situation was extremely difficult, but he considered that the priority was to safeguard the position for the clients and for everyone else. The Respondent stated that he always intended that Client A would be told about the settlement. He accepted that he had delayed in informing Client A of the costs settlement but had done so in order to safeguard the settlement that he thought the Firm was entitled to make.

15.25 Further, the Respondent believed that if Client A was informed, he would start to make even more unreasonable demands for more than he was entitled to and/or seek to prevent payments to Client B, counsel and Company C. The Respondent did not want to be diverted by Client A's conduct from executing the June 2013 Agreement by negotiating reductions to and paying counsel and Company C's costs (which was in his interests), paying Client B and then paying Client A his entitlement. Eventually Client A was told on or around 26 September 2016 which, it was submitted, was a delay of only a few weeks during which he suffered no prejudice and actually benefitted as the Respondent had managed to negotiate significant reductions to counsel's fees which resulted in Client A receiving a significant sum without incurring the significant risk of receiving six figures less if the matter had proceeded to a lengthy SCCO hearing and did not beat T's offers.

15.26 The Respondent submitted that this was a judgment as to how it was appropriate to proceed made by him in a particularly difficult situation, during a period of intense pressure, when there were a lot of other matters to consider. The Respondent stated

that if his judgment was in error, then it was inadvertent. The Respondent had taken what he considered to be the best steps to protect the clients' interests. In all the circumstances the Respondent denied that on a proper application of the Principles, his conduct involved a breach of Principles 2, 4, 5 or 6.

The Tribunal's Findings

15.27 The Tribunal noted that the Respondent did not dispute that he had not told Client A of the settlement of the Costs Claim until on or around 26 September 2016, the Claim having been compromised on 21 July 2016.

15.28 The Tribunal did not accept that delaying in telling Client A was in his best interests. It was the Respondent's case that he had delayed in telling Client A as it was in the interests of the Firm, Client B and others. The Respondent relied on the evidence of Client B to support his complaints as regards Client A's unreasonable behaviour. In evidence Client B described that when the Firm was instructed they were in a difficult position. They had approached other firms who had not taken on their case. The Respondent had put in a lot of effort and achieved a result that Client B had not thought was possible at the outset. He considered that the Respondent had always acted in his best interests. Client B confirmed that until the costs claim, he and Client A were at one. Whilst he might have had some misgivings, these had not been communicated to the Respondent or the Firm.

15.29 Client B confirmed that when the offer for £3m was rejected he did not want to accept that offer. With hindsight, he considered that he perhaps ought to have accepted that offer. At the time, the rejection of the offer was a joint decision between the Client A and Client B.

15.30 Client B considered that Client A had acted "in a greedy and selfish manner". Client B agreed that the higher the costs recovery, the higher his personal recovery would be following the June agreement. Client B accepted that in theory both he and Client A had wanted to be involved in the decision regarding costs at every level as per the email of 1 July 2016, however, he had left Client A to handle the negotiations. He explained that he had wanted to settle the costs claim, but that he had not communicated that to the Firm.

15.31 Client B confirmed that he was unaware that the costs claim had been settled by the Firm until after the event. He told the Respondent he wanted to settle and was informed by the Respondent that the claim had already been settled. Client B described that he was relieved. The Respondent asked Client B not to inform Client A of the position. Client B agreed not to tell him.

15.32 The Tribunal found that the interests of others did not supersede the interests of Client A, including the interests of Client B. Nor was Client B able to say what constituted acting in a Client's bests interests from a regulatory perspective. The Tribunal accepted that Client B considered that in acting contrary to instructions, and without authority, the Respondent had acted in his best interests. The Tribunal, as detailed above, found that this was not the case. The Tribunal determined that in delaying telling Client A about the settlement of the Costs Claim, the Respondent had failed to act in his best interests in breach of Principle 4. It was not in Client A's best

interests for the Respondent to fail to provide him with information which he ought to have provided. The Tribunal determined that the reasons provided by the Respondent for the delay were, at best, mitigation, and did not provide a defence to the allegation of a breach of the Principles. It followed that by withholding information from Client A, the Respondent had failed to provide him with a proper standard of service in breach of Principle 5.

15.33 In failing to notify Client A that the Costs Claim had settled, in circumstances where the Respondent had unilaterally settled the claim, the Respondent had failed to maintain the trust the public placed in him and in the provision of legal services. Members of the public would not expect a solicitor not to keep them informed about progress on their case, particularly where that progress had a direct financial impact. Thus the Tribunal found that the Respondent's conduct was in breach of Principle 6.

15.34 The Tribunal considered that a solicitor acting with integrity would not delay in notifying his client that a claim had been settled, nor would he allow his client to believe that the claim had not settled when he knew that it had. Further, a solicitor acting with integrity would not ask one client to keep information from another client. In doing so, the Tribunal determined, the Respondent's conduct had fallen well below the ethical standards expected by the profession. The Respondent's conduct, it was determined, lacked integrity in breach of Principle 2.

15.35 Accordingly, the Tribunal found allegation 1.2 proved on the balance of probabilities.

16. **Allegation 1.3 - On or about 12 August 2016 and 27 September 2016, he made misleading statements to solicitors acting on behalf of Client A in relation to the costs claim referred to in 1.1 above, and in so doing he breached any or all of Principles 2 and 6 of the Principles.**

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

16.1 On 12 August 2016 and 27 September 2016, the Respondent sent correspondence containing misleading statements to B&M in circumstances where he knew that the statements made were incorrect.

16.2 In his letter of 12 August 2016, the Respondent made statements to B&M which suggested that the matter was still proceeding to a detailed assessment when he knew that was not the case. The Respondent stated that "to demonstrate how the June 2013 agreement would work, it is necessary to apply for a figure for the likely costs recovery. For the reasons given below, Company C's advice on the likely costs recovery … is the only reliable estimate ..."

16.3 The Respondent had been made aware by Counsel that statements in the letter would be misleading: "… I have told the other side that the claim for costs has been compromised in the sum of £2.33m ... I am very concerned not to put across a false impression not only because there is a risk of any compromise being set aside for non-disclosure/mis-representation if this is not done but also because of the regulatory issues that might arise otherwise. "

16.4 Counsel's suggested wording and amendments did not appear in the version of the letter sent to B&M, instead the Respondent reinstated the wording that Counsel had advised should be removed. The Respondent knew that Counsel had advised that the original wording was potentially misleading, but ignored that advice.

16.5 Following the Respondent informing B&M of the settlement of the Costs Claim, B&M enquired as to when Mr H was aware that this was the position. In his email to B&M of 27 September 2016, the Respondent stated: "I sent him a copy of our letter to you of 26th September 2016 which is when Mr H became aware that the costs proceedings had settled. There was no reason to tell [Mr H] prior to this as we were still negotiating reductions to disbursements …"

16.6 Mr Mulchrone submitted that this was clearly not the case, given the email sent by Mr H's 2 August 2016 email, in which Mr H stated: "at some point unless he settles you are going to have to tell him you have previously settled, and that will not look good (in my opinion), but if you say now that is what you are going to do, then there will not be any accusations of you having already settled, misleading him etc etc."

16.7 Mr Mulchrone submitted that the Respondent knew, by 2 August 2016 at the latest, that Mr H was aware that the Firm had settled the Costs Claim, however he informed B&M that Mr H was not aware until 26 September 2016.

16.8 The Respondent's conduct was in breach of the requirement to behave in a way which maintained the trust placed by the public in him and in the provision of legal services. Public confidence in the Respondent was likely to be undermined by solicitors who made misleading statements to the solicitors acting on behalf of their former client (or at all). Accordingly, the Respondent acted in breach of Principle 6 of the Principles.

16.9 Further, a solicitor acting with integrity would not have sent correspondence containing misleading statements when, as he knew, those statements were misleading. Accordingly, the Respondent acted in breach of Principle 2 of the Principles.

Dishonesty

16.10 Mr Mulchrone submitted that the Respondent sent correspondence to B&M which contained, and which he knew contained, misleading statements. He did so in circumstances where Counsel had specifically identified to him that the wording of the 12 August 2016 letter would be misleading and may have regulatory consequences; and where he knew that his statements about Mr H's knowledge of the settlement in the 27 September 2016 email were misleading.

16.11 Ordinary and decent people would consider that the Respondent's conduct in this regard was dishonest.

The Respondent's Case

16.12 The Respondent explained that as regards the 12 August 2016 letter, he was concerned that if he informed Client A at that point that there had been a settlement (notwithstanding his belief that the Firm was entitled to negotiate and agree it),

Client A would have taken steps that would have de-railed it, and/or diverted the Respondent's time from paying Client B/negotiating reductions to counsel and Company C's fees. This was in the interests of Client A, who would receive more monies following successful negotiation. The Respondent stated that at the time he considered that it was appropriate to safeguard the situation by delaying in the way that he did, including in correspondence with Client A's then solicitors. The Respondent drafted the letter to B&M with that purpose. The Respondent accepted that the letter could have been drafted differently, and was sorry that it had not been. The Respondent explained that in the "exceptionally difficult circumstances, which I have never experienced before in over 25 years in practice, in which I was doing what I thought was in the best interests of the clients and right at the time, I hope that this on a proper application of that principle this does not amount to a breach of Principle 2. I also deny that I acted dishonestly."

16.13 As regards the 27 September 2016 email, the Respondent accepted that: "from the chronology that this was wrong". He explained that he found it "difficult to piece together quite how this happened now". He did not consider the relevance of the issue at the time and thought that perhaps he did not apply his mind to the sequence of events in dictating or reviewing the email or the previous emails before it went out. The Respondent stated that he was focusing on other matters and that he "thought that the question was not relevant or important". The Respondent accepted that this was careless and should not have happened. He accepted that in this regard his conduct was in breach of Principle 6. His conduct was a mistake and was not deliberate. He did not accept that in the circumstances, his conduct was in breach of Principle 2, nor was it dishonest.

The Tribunal's Findings

16.14 The Tribunal found that throughout the letter of 12 August 2016, the Respondent gave the misleading impression that the Costs Claim had not settled, notwithstanding the fact that having settled the claim on 21 July 2016 and he knew that costs were no longer in issue. For example, the Respondent stated: "Further, your client's costs liability increases on a daily basis as he is liable for all the costs incurred in relation to the ...costs assessment and all your client related incidental and consequential matters … which includes dealing with your firm and your client." The Respondent knew that there could be no daily increasing liability for the costs assessment as the Costs Claim had already been settled.

16.15 The statements were made by the Respondent contrary to the advice of Counsel, who, the Tribunal found, had made it clear to the Respondent that to suggest that the Costs Claim was still unsettled would be misleading and have regulatory consequences. The Respondent had not only considered Counsel's advice, but had decided to act against it. He removed the suggested wording inserted by Counsel, and re-instated wording which he had been advised was misleading.

16.16 The Tribunal found that the contemporary correspondence demonstrated that Mr H was aware of the settlement of the Costs Claim by 2 August 2016 at the latest, given the content of his email of that date. The Tribunal did not accept that the Respondent did not recall that Mr H was aware. Indeed, Mr H had also warned the Respondent about Client A potentially making allegations of being misled. The Tribunal found it

incredible that the Respondent was unable to recall that Mr H was aware of the settlement, particularly in circumstances where the Respondent had advised Client B not to inform Client A. The Tribunal found that the Respondent would have been well aware of all those who knew that the claim had been settled before Client A.

16.17 The Tribunal found that in sending correspondence which he knew was misleading and untrue, the Respondent's conduct had fallen well below the standards expected of him both by the profession and members of the public. Solicitors acting with integrity did not send out correspondence which they knew to be misleading, nor did members of the public expect solicitors to do so. The Tribunal was satisfied, on the balance of probabilities, that the Respondent had breached Principles 2 and 6 as alleged.

16.18 The Tribunal found that the Respondent knew that the content of his correspondence to B&M contained misleading statements. The nature of the letter of 12 August 2016 had been directly and expressly addressed by Counsel. The Respondent chose to ignore that advice and to revert to the original version of the letter that contained misleading information. As detailed above, the Tribunal found that he knew, when he sent the email of 27 September, that Mr H was aware of the settlement before 26 September 2016. The Tribunal found that statements made by the Respondent in the correspondence was not just misleading but untrue, and that the Respondent knew that to be the case. The Tribunal considered that ordinary and decent people would consider that it was dishonest for a solicitor to make statements in correspondence which he knew to be untrue.

16.19 Accordingly, the Tribunal found allegation 1.3 proved on the balance of probabilities, including that the Respondent's conduct was dishonest.

17. **Allegation 1.4 - Between June 2016 and September 2016, he acted in circumstances giving rise to a conflict between: (1.4.1) the interests of Client A and the Firm; and in so doing he breached any or all of Principles 2, 4, 5 and 6; and/or (1.4.2) the interests of Client A and his own interests; and in so doing he breached any or all of Principles 2, 4, 5 and 6 of the Principles and Outcome O(3.4) of the Code.**

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

17.1 Mr Mulchrone submitted that in the circumstances, a conflict of interest arose between Client A and the Firm as well as Client A and the Respondent. Client A's email of 5 July 2016 made it abundantly clear that he did not wish to accept T's offer or to make any counter-offer. This would have the effect of delaying any resolution of the Costs Claim. The Firm wished to recover its costs in the matter (which, by this point, had been accruing for some four years) but was unable to do so until the Costs Claim had been resolved. It therefore had an interest in settling the Costs Claim as quickly as possible, contrary to the interests of Client A, who was content to follow the direct assessment procedure notwithstanding the additional time that would take.

17.2 Additionally, Client A's email of 15 July 2016 proposed a settlement of the Costs Claim only on the basis that the Firm capped its fees below the level which it might otherwise be entitled to recover. The Firm had a direct interest in the level of fees which it recovered. Capping the fees was not in the Firm's interests as it reduced the

maximum the Firm could recover, and it did not agree to cap its fees. The Respondent therefore negotiated with T, behind Client A's back, ignoring this clear instruction.

17.3 The Respondent had a direct interest in the level of fees which were recovered and, given that the costs cap was not agreed, it was to be inferred that the Respondent wished to maximise the sums which were recovered. It was in the interests of Client A for the Respondent to follow his instructions or, if he felt unable to do so, to terminate the retainer. However, in the circumstances described, the Respondent and the Firm continued to act for Client A in the Costs Claim and continued to negotiate a settlement with T's solicitors, despite instructions to the contrary, and ignoring instructions that affected the their interests. Accordingly, the Respondent acted in circumstances where there was a conflict between both the interests of Client A and the Firm, and the interests of the Respondent and the Firm.

17.4 Mr Mulchrone submitted that if the Respondent considered that Client A was demonstrating appalling judgement and stubbornly refusing to accept advice, the appropriate action would have been to terminate the retainer as provided for in the CFA.

17.5 Public confidence in the Respondent, solicitors and the provision of legal services was likely to be undermined when solicitors acted where there was a conflict between their interests, the interests of the Firm and the interests of their clients. Accordingly, the Respondent had breached Principle 6 as alleged.

17.6 It was not in the best interests of Client A, or consistent with providing a proper standard of service to Client A, for the Respondent or the Firm to act in the way they did. Acting in Client A's best interests required them to follow their client's instructions or advise their client that a conflict had arisen, that they were unable to represent their client any further in the Costs Claim, and that their client should obtain his own independent legal advice. Accordingly the Respondent and the Firm had failed to act in Client A's best interests of provide him with a proper standard of service in breach of Principles 4 and 5.

17.7 Further, in acting where there was an own client conflict, the Respondent failed to achieve Outcome 3.4 of the Code.

17.8 Solicitors acting with integrity would not have acted in such circumstances. They would not have continued to engage in negotiations with T's representatives or settled the Costs Claim without their client's authority. Having not agreed to cap their costs, the Firm would have advised Client A that a conflict had arisen, and it was no longer able to represent him in the Costs Claim and advised him to obtain his own independent legal advice. The Respondent, were he acting with integrity would have mirrored that advice. He would not have continued to act in circumstances that were contrary to his client's instructions. In continuing to act, the Respondent failed to act with integrity in breach of Principle 2.

The Respondent's Case

17.9 The Respondent explained that he considered that the interests of Client A and Client B, Counsel, Company C as well as the Firm were aligned in relation to the costs negotiation, as each stood to benefit from maximising the recovery. Further, Clause 5 of the CFA authorised the Firm to settle without involving the client. Clause 5 had not been varied by the June 2013 agreement or the Client A's attempt to veto the settlement unless he was paid most of it in breach of what he had agreed in the June 2013. Further, Client A had instructed a costs lawyer and another solicitor, who were advising and representing him. The fact that Client A was seeking to negotiate a cap on the fees the Firm could recover was an ordinary feature of representation of clients and did not give rise to a conflict. This was particularly the case in circumstances where Client A had 2 independent lawyers advising and representing him from summer 2013. The Respondent submitted that in the circumstances he did not consider that there was a conflict. Accordingly, the Respondent denied allegation 1.4.

The Tribunal's Findings

17.10 Outcome 3.4 stated: "You do not act if there is an own interest conflict or a significant risk of an own interest conflict." The requirement of Outcome 3.4 was mandatory; if there was a conflict or a significant risk of a conflict, the Respondent could no longer act.

17.11 During cross-examination, the Respondent stated that if a conflict did exist, it had been created by Client A. Mr Mulchrone replied that the creator of the conflict was irrelevant; in circumstances where an own client conflict existed, the Respondent was under a duty to cease acting. The Respondent's response to that observation was that "It's ridiculous to say that" in circumstances where the only outstanding issue was the settlement of costs, the clients having already been successful in the litigation. The Tribunal found that the Respondent's only focus during the negotiations as regards costs was the maximum settlement. In order to achieve that, the Respondent acted contrary to instructions and ignored the clear and obvious conflict that such actions had created. The Tribunal found that there was a conflict between the Firm and Client A and the Respondent and Client A as alleged, and for the reasons detailed by the Applicant.

17.12 The Tribunal determined that the Respondent had put his interests, and the interests of the Firm before that of his client by ignoring his client's express instructions and settling the claim without his client's knowledge or consent.

17.13 The Tribunal found that in acting where there was a clear and obvious conflict, there had been a breach of Principles 4 and 5 as alleged. It was not in Client A's bests interests nor was it providing him with a proper standard of service to act when there was a conflict between both Respondent and Client A and the Firm and Client A. The Respondent relied on the fact that Client A had already obtained independent legal advice. That was not sufficient for the Respondent to comply with his duty. Outcome 3.4 was mandatory. In continuing to act when there was a conflict, the Respondent failed to achieve Outcome 3.4 as alleged.

17.14 The Tribunal found that in acting when there was a conflict and in putting the needs of the Firm and his own needs above that of the express instructions of his client, the Respondent had failed to behave in a way that would maintain the trust of the public in him and in the provision of legal services. Members of the public expected solicitors to act on their instructions and, when a conflict had arisen to identify that conflict and advise accordingly. They did not expect a solicitor to continue acting regardless of the conflict. Accordingly the Tribunal found that Principle 6 had been breached as alleged.

17.15 The Tribunal determined that a solicitor acting with integrity would not continue to act in the face of such a clear and obvious conflict. Nor would a solicitor of integrity dismiss the requirement to cease acting as ridiculous (which the Tribunal considered was the Respondent's view both at the hearing and at the time of his conduct) simply because the matters had reached an advanced stage. Accordingly, the Tribunal found that Principle 2 had been breached as alleged.

18. **Allegation 2.1- In the course of acting for Client C between 1 April 2017 and 3 July 2017, he failed to comply with reasonable requests from Client C for information as to costs and in so doing he breached any or all of Principles 2, 4, 5 and 6 of the Principles.**

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

18.1 The Firm was initially instructed in October 2013 by Client C and Client D (together Client C) in relation to a civil claim. The Respondent acted for those clients in that matter.

18.2 Time recording information was sent to the clients by email on 3 June 2014, 18 May 2015 and 28 March 2017. The information provided included the name of the fee-earner and a breakdown of the time which they had spent working on the matter, but did not include a narrative or description of the work done against each time entry.

18.3 The March 2017 costs information indicated that total fees at that point were approximately £2.3m. On receipt of that information, Mr J expressed surprise at the level of costs which had been incurred. In an email to the Respondent dated 1 April 2017 he stated that: "at the beginning of this process, we were not informed or given any idea that the billing before service of the Particulars of Claim would reach such an astronomical level". He added: "the information you have provided is not in a format that allows for any meaningful analysis by us, your client, of the legal costs to date".

18.4 In his email, Mr J asked the Respondent to provide timesheets detailing the fee-earner, narrative and time spent for the period since the Firm was instructed on 25 October 2013, and each month thereafter. In response, the Respondent emailed Ms D in the following terms:

> "I want you to read the [Client C] CFA line by line and check whether there is anything about giving them 6 monthly or monthly bills or anything like that, I know It says that we are going to give them the best information about costs but mark-up whether we have to give them monthly bills or time recording or

> whatever and see what it says about that because [Mr J's] requested it but it takes a lot of time to actually do that. It might be good practice but just let's see if there's anything there."

18.5 Ms D's response indicated that the CFA only required the Firm to provide details of disbursements as and when they arose.

18.6 On 24 April 2017, the Respondent sent an email in response to Mr J which stated: "sending you a monthly time recording with the brief narrative of the work is simply going to trigger a monthly debate about costs which we will have to spend more time and costs to deal with which seems a pointless exercise when there is no current liability for those costs". The Respondent offered to provide "quarterly time recording" but only "upon your specific request, on the basis that you will not treat it as a debate regarding those costs (by way of email or phone call) as we will offer a reduction if there is a "win" and you will have the right to apply for an assessment". The email noted that under the system under which the Firm recorded time prior to around 1 November 2016, "the narrative in the attendance note was not recorded in the time recording but separately".

18.7 A telephone call took place between the Respondent, Mr J and another on 4 May 2017. In his email sent the following day, 5 May 2017, Mr J noted that he had still not received the timesheet for April 2017 which he had requested in his 1 April email. He stated:

> "the lack of trust we feel at this stage in [the Firm] and the need to engage costs solicitors to safeguard our position, is a direct result of the lack of transparency about costs in this case"

18.8 A draft response was prepared. SB commented: "one of the factors that might be taken into account against the sols in a sol client assessment is any difficulty the clients had in knowing about and or challenging the fees incurred as the matter progressed. In fact, we might even want to invite David to comment so issues can be addressed before we move on".

18.9 While the travelling draft of that email indicated that the April 2017 timesheet was attached, and that monthly timesheets would be provided thereafter, the documents which the SRA received in this matter did not show that this response was sent to Mr J.

18.10 In his response to the EWW letter, the Respondent explained: "we cannot confirm whether the email was sent to [Mr J]".

18.11 The SRA intervened into the Firm on 3 July 2017.

18.12 Mr Mulchrone submitted that the email of 1 April 2017 requesting details of the costs which the Firm had incurred, and that details of costs which the Firm incurred subsequently were provided on a monthly basis, was a reasonable request.

18.13 In an email to Ms D, the Respondent recognised that the Firm's CFA with Client C obliged the Firm to provide the best information about costs and that doing so "might be good practice". However, rather than provide the information requested, he instructed Ms D to review the agreement "line by line" to see whether it specifically required the Firm to provide the information which the client had requested. Mr Mulchrone submitted that it was to be inferred that the Respondent was seeking a basis upon which he could avoid providing that information.

18.14 In his response to Client C, the Respondent refused to provide monthly timesheets because "there is no current liability". He did not address that those costs would become due if, for example, there was a 'win' under the terms of the agreement.

18.15 The Respondent's response implied that it was not possible to provide details of previous time recording. He did not offer to match the time entries to the attendance notes detailing the work carried out. Moreover, although the Respondent incorporated the suggestion that quarterly timesheets could be provided, they were only to be provided at Client C's specific request (and not automatically as had been sought) and on the condition that the client would not seek to "debate" those costs (as the client would otherwise be entitled to). He did not ultimately provide the information requested.

18.16 It was submitted that a solicitor acting with integrity would have provided the information which his client had reasonably requested. He would not have actively sought to find a basis upon which to refuse to provide it. He would not have sought to impose a condition that his client could not discuss those costs with him. He would not have asserted that the provision of such information was "pointless" when, as both the Respondent must have known (as an experienced solicitor) his client might become liable for those costs and might wish to make decisions in the matter accordingly. Further, Client C had specifically asked for such details on the basis that they would be helpful to him. Accordingly, the Respondent breached Principle 2 of the Principles.

18.17 It was not in the best interests of Client C, or consistent with providing a proper standard of service to Client C, for the Respondent to act in that way. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by solicitors who failed to provide costs information to their clients in the circumstances described. Indeed, in his email dated 5 May 2017, Mr J noted that the lack of trust which Client C felt in the Firm was "a direct result of the lack of transparency about costs in this case". Accordingly, the Respondent breached Principles 4, 5 and 6 of the Principles.

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

18.18 The Respondent explained that when the Firm was instructed, everyone was aware that the litigation would be complex, protracted litigation and case would be very expensive to build and run. The documents in the case were vast, and at times the Firm had between 4 and 6 fee earners working on the case between October 2013 and July 2017.

18.19 The Firm undertook the case with a CFA. Negotiations took place over a number of months. A series of provisions aimed at protecting the clients' recovery of damages and potential exposure to costs (the ring fencing provisions) by capping the fees that would be paid to the Firm if the case was successful. The Respondent explained that he clients were highly sophisticated. By virtue of the ring fencing provisions agreed, the costs recoverable from the clients in the event of success in the claim were capped to ensure that the clients retained a reasonable proportion of their damages regardless of the solicitors' costs, counsel's fees and other disbursements. The effect of the ring fencing provisions was that any fees payable by the clients would almost certainly be capped at a level substantially below the actual levels of fees incurred (i.e. by reference to time worked on the case).

18.20 The case was conducted by the Firm and its staff over a long period of time, with staff working assiduously with great commitment to pursue the claim for the clients, with the Firm and counsel undertaking a huge amount of work at considerable risk in terms of time and resources on an entirely contingent basis (i.e. with risk of never being paid). The Respondent submitted that this commitment was recognised by the clients, and was reflected in an email in March 2017 which stated:

> "I am not for one moment suggesting that [the Firm] has been anything other than professional, assiduous, courteous and "on point" in its handling of this litigation, nor that it has been anything other than financially courageous in investing substantial billable hours in the project on a deferred and totally contingent payment basis."

18.21 The Respondent submitted that at the time of the matters giving rise to the allegation, the system that the Firm operated in relation to the compilation and storage of electronic time recording was one under which attendance notes recording a narrative description of work undertaken were dictated, for later transcription by a legal secretary, and manuscript time sheets were initially hand written and entered into the electronic time recording system with no more than a general description of the work to which they related, such as "preparation". Delays in the transcription of the attendance notes (owing to administrative pressure or other urgent work such as letters, emails, witness statements, etc) and the system of time recording only manuscript time sheets meant that corresponding attendance notes with the a full description of work undertaken were not put into the electronic time recording meaning the client would only see very brief description of work such as "preparation", "attendance", etc in the electronic time recording. The Respondent acknowledged that the system could have been better, and by July 2017 the team moved to a system in which the time recording included narrative descriptions of the work as per the attendance notes.

18.22 The Respondent accepted that the time recordings sent to the clients did not include a narrative description of work undertaken however, given the very regular communication with the clients, the clients were fully aware of the vast amount of different types of work being undertaken by the Firm on their behalf.

18.23 When the client requested more specific information on a month by month basis, the Respondent was concerned about the large amount of additional work and time this would involve in circumstances where he considered that the information would be of

very limited relevance to the clients' position as the client was only liable for costs if they won.

18.24 The Respondent additionally submitted that if there was a successful settlement or judgment, the Firm might well have "taken a view" on its costs (which is usual practice by many solicitors) if it was possible to do so. Further, the ring-fencing provisions (under which the client would pay a capped or ring-fenced amount substantially below the actual cost of the work done) also protected the client. The Respondent submitted that in the costs budget sent to the Firm on 14 May 2014, the client estimated the costs to trial would be approx. £5.4m. This was adopted by the Firm and client as an initial costs estimate by clause 4.2 of the CFA dated 8 September 2014. Accordingly, it was submitted, the client knew the costs would be high but that costs were capped by the ring-fencing provisions. The discussions and proposals made about supplying monthly time recording were solely aimed at finding a practical way of dealing with this that might satisfy the client whilst minimising the additional costs burden that might otherwise arise in already very expensive litigation.

18.25 The Respondent denied that his conduct was in breach of the Principles as alleged. The email that had been drafted in response to Mr J's email was not sent. The Respondent recalled that the Firm had received a defence of over 60 pages in the first half of 2017 drafted by a QC. The Firm had a deadline for undertaking a lot of preparation, a significant review of documents, taking of detailed instructions and preparing detailed instructions for counsel so that a detailed Reply in response could be prepared, particularly as a CCMC was fast approaching.

18.26 In the circumstances, the clients and the Firm prioritised those time-consuming tasks. The Respondent also had holiday booked in June 2016 which had been booked for several months which limited the time available. Further, by late May 2016 the Firm had received a long detailed letter from the SRA stating their intention to intervene due to a case handled by one of the partners many years before and inviting detailed representations. That caused the whole Firm to enter a state of paralysis with the staff having numerous discussions about their options, staff spending time assisting in drafting a response to the SRA and general instability. With the benefit of hindsight the Respondent recognised that it would have been better to provide a fuller response to the requests more promptly, but the response was lengthy and needed a lot of time to prepare as there were numerous issues to consider and the Firm and client had to focus on preparing a detailed Reply under tight time limits and in extremely difficult circumstances. The Respondent stated that he was seeking to protect the client's interests by doings so. The Respondent submitted that if this was a misjudgement, it was inadvertent. Accordingly, the Respondent denied that he had breached the Principles as alleged.

The Tribunal's Findings

18.27 The Tribunal found that the Respondent had failed to provide Client C with the costs information requested. The Tribunal did not consider that the information requested was unreasonable. The Respondent had agreed, in the CFA, to provide Client C with the best information about costs. This mirrored the Respondent's obligation in conduct. Outcome 1.13 of the Code required the Respondent to ensure that his clients received the best possible information, both at the time of engagement and

when appropriate as their matters progresses, about the likely overall costs of their matter.

18.28 During cross-examination, the Respondent explained that Client C wished to cap costs at £30,000 per month and a full description of the work undertaken. The Respondent considered that in imposing a budget, Client C was attempting to impose an obligation on the Firm in circumstances where the costs liability was subject to the ring-fenced provisions. The Respondent explained that "there was no way we could cap costs at £30,000 per month. That would be negligent." The Tribunal found it extraordinary that the Respondent would suggest that the client was not entitled, nor was it reasonable for a client to request, that a monthly cap be applied to costs.

18.29 Given the Respondent's reluctance to provide what the Tribunal considered to be reasonable information regarding costs, it was not surprised that Client C expressed a "lack of trust" and felt the need to "engage costs solicitors to safeguard our position".

18.30 The Tribunal found that it was neither in the best interests of the client, nor was a proper standard of service being provided in circumstances where the Respondent had, in effect refused to provide costs information, or sought to limit discussion arising out of any information provided. Accordingly, the Tribunal found that the Respondent had breached Principles 4 and 5 as alleged. That such conduct failed to maintain the trust placed in the Respondent and in the provision of legal services was apparent from Mr J's email where he expressed a lack of trust due to the Respondent's failure to be transparent. Accordingly, the Tribunal found that the Respondent had breached Principle 6 as alleged.

18.31 The Tribunal found that the Respondent had tried to avoid providing Client C with the requested information. Notwithstanding his knowledge of what was contained in the CFA as regards costs, he asked Ms D to go through the CFA "line by line" to see whether the CFA obliged the Firm to provide the information requested. It was also clear from his email to Ms D that the Respondent considered that "it might be good practice" for the information to be provided monthly, however, he still sought to avoid doing so. The Tribunal found that a solicitor acting with integrity would not have sought to find a way in which he could avoid providing information that had been reasonably requested by his client. Nor would a solicitor acting with integrity seek to prevent the client from questioning information that was provided.

18.32 It was submitted that a solicitor acting with integrity would have provided the information which his client had reasonably requested. He would not have actively sought to find a basis upon which to refuse to provide it, nor would not have sought to impose a condition that his client could not discuss any information provided. In failing to do so, the Tribunal found that the Respondent's conduct was in breach of Principle 2 of the Principles.

18.33 Accordingly, the Tribunal found allegation 2.1 proved on the balance of probabilities.

19. **Allegation 2.2 - Between 9 August 2017 and 14 August 2017, he held himself out to Client C as being authorised to engage in discussions concerning the Firm's costs, following intervention by the SRA into the Firm and in the knowledge of**

communications from the SRA to the effect that he was not so authorised, and in so doing he breached any or all of Principles 2, 6 and 7 of the Principles.

The Applicant's Case

19.1 Following the SRA's intervention into the Firm on 3 July 2017, the Respondent became a consultant at Cubism. At 16.39 on 9 August 2017, the Respondent sent an email to NS in which he made various proposals about how the work in progress which the Firm had accrued in the Client C litigation would be billed.

19.2 The proposals would have the effect of capping the Firm's fees at a maximum of £850,000, with deductions to that figure depending on when the litigation concluded. That maximum costs cap was significantly below the work in progress which the Respondent identified had been incurred in his email to Mr J on 28 March 2017.

19.3 He asked NS to confirm "that this is now agreed on behalf of [the Firm]. Before receiving a response the Respondent emailed Mr J making those proposals. In a reply later that evening, Client C expressed concerns about the offer which the Respondent had made, including that:

(i) the Respondent had sent that offer from a 'Yahoo' email address (rather than an email address associated with the Firm);

(ii) it did not appear to have been sent with the authority of the person who held the majority voting rights in the Firm; and

(iii) any agreement would have to come from the Firm's legal representatives.

19.4 Despite that, the Respondent made a further proposal to Client C by email the following morning, 10 August 2017 which included a similar cap on fees.

19.5 Later that day, the SRA's Intervention Agent (JD of Devonshires Solicitors LLP ("Devonshires")) wrote to the Respondent. He enclosed a copy of the judgment in Dooley v Law Society [2001] All ER (D) 362 (Nov). He noted that the effect of paragraphs 7 - 9 of that judgment was that all costs that were recovered following an intervention automatically vested in the Law Society and that an intervened solicitor was precluded from any dealing with the debts before payment which operated to evade or undermine the statutory scheme.

19.6 The effect of that correspondence was to make it clear that the Respondent was not authorised to engage in discussions with Client C regarding the Firm's costs. Despite that correspondence, the Respondent continued to attempt to negotiate with Client C about costs incurred while Client C was a client of the Firm.

19.7 On 14 August 2017, he emailed Mr J to further progress those discussions, following what Mr J described as a "robust conversation" on 11 August 2017.

19.8 Mr Mulchrone submitted that as an experienced solicitor who had been admitted to the Roll almost 20 years previously, the Respondent must have known (or at least suspected) that he was not authorised to engage in discussions with Client C regarding

the Firm's costs. Despite that, he held himself out to Client C as being so authorised. Additionally, the Respondent was specifically put on notice of the position once he received JD's letter on 10 August 2017. Despite that, he continued to hold himself out to Client C as being so authorised.

19.9 A solicitor acting with integrity, with the knowledge or suspicion of the Respondent, would not have so held himself out in those circumstances. Accordingly, the Respondent breached Principle 2.

19.10 His conduct also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services. Public confidence was likely to be undermined by solicitors who held themselves out as authorised to engage in discussions about their former firm's costs in circumstances where they know or suspect that they are not authorised to do so. Accordingly, the Respondent breached Principle 6.

19.11 The Respondent also failed to comply with his legal and regulatory obligations, and failed to deal with the SRA (his regulator) in open and co-operative manner by continuing to hold himself out as being authorised to engage in discussions regarding the Firm's costs when the SRA's agent had confirmed that he was not so authorised. Accordingly, the Respondent breached Principle 7.

The Respondent's Case

19.12 The letter from Devonshires dated 10 August 2017 relied upon by the SRA said that "all costs that are recovered following an intervention automatically vest in the Law Society." and that "an intervened solicitor is precluded from any dealing with the debts before payment which operates to evade or undermine the scheme." The Respondent understood this to mean that as part of the "scheme" in which intervention took place any of Firm's fees/ billings that were agreed to be paid by clients would vest in the SRA, and that the Firm should not seek to do anything which "evaded or undermined" this part of the scheme.

19.13 The Respondent stated that he was not attempting to "evade or undermine" the scheme, and recognised that fees recovered for the Firm would vest in the SRA and would be paid to the SRA via the Firm's administrators. Further, as far as the Respondent could recall, the client initiated negotiations with the team at his new firm in July 2017 and wanted to agree a cap on the Firm and counsel's costs from October 2013 to June 2017 before considering instructing the team at the new firm. If this was wrong or a misjudgement it was unintentional. In the all the circumstances, the Respondent denied that his conduct was in breach of the Principles as alleged.

The Tribunal's Findings

19.14 The Tribunal noted that the Respondent had continued to seek to negotiate costs after the intervention into the Firm, when intervention agents had been appointed. On 9 August 2017, his authority to do so was questioned by Client C. On 10 August 2017 it was made clear to the Respondent by the intervention agents he was not authorised to engage in discussions with Client C regarding the Firm's costs.

Despite those warnings, the Respondent still sought to negotiate the position on costs in a conversation on 11 August and by email on 14 August.

19.15 The Respondent explained in his evidence that he had been contacted by the client with a view to retaining his services at Cubism. He considered that the costs he sought to agree were a "more than fair assessment of the work-in-progress", and that having undertaken the work prior to the intervention into the Firm, he was 'best placed' to agree a reasonable sum. When it was asserted during cross-examination that it was "quite clear" that the Respondent was not authorised to negotiate on costs, the Respondent replied: "I believed that I was the only person who could do it".

19.16 The Respondent stated in evidence that any costs received would have been passed to the SRA. The Tribunal found that that was irrelevant; the allegation the Respondent faced was not that he had sought to negotiate and obtain and then retain the costs, but that he was not authorised to negotiate the costs at all. The Tribunal found that the letter from Devonshires was clear, and that the Respondent could have been in no doubt that he was not authorised to negotiate on costs.

19.17 The Tribunal found that in seeking to negotiate the costs in circumstances where the Respondent knew that he was prohibited from doing so, the Respondent failed to behave in a way which maintained the trust placed by the public in him and in the provision of legal services. Members of the public would not expect a solicitor to hold himself out as authorised to engage in discussions about costs in circumstances where he knew that he was not so authorised. Accordingly, the Tribunal found that the Respondent's conduct was in breach of Principle 6. Further, by holding himself out as he did, the Respondent had failed to comply with his legal and regulatory obligations in breach of Principle 7.

19.18 The Tribunal found that a solicitor acting with integrity would not hold himself out as being authorised to negotiate on costs when he knew that he was not authorised, even if he was "the only person who could do it". Had he been conducting himself with integrity in the belief that he was the best person to negotiate the costs given his involvement with the case, he would have made those submissions to Devonshires on receipt of the letter of 10 August 2017. The Tribunal found that the Respondent's conduct had fallen well below professional ethical standards in breach of Principle 2.

19.19 Accordingly, the Tribunal found allegation 2.2 proved on the balance of probabilities.

20. **Allegation 3 - While in practice as a solicitor and a consultant at Cubism Law ("Cubism") and while acting on behalf of Client F in litigation brought against a bankrupt, on or about 24 May 2018 he sent correspondence to the solicitors acting for a trustee in bankruptcy which improperly: (3.1) Carried an express or implied threat of action against the solicitors acting on behalf of the trustee in bankruptcy in circumstances in which no such threat could properly be made; (3.2) Claimed that the trustee in bankruptcy was improperly receiving payments in relation to his appointment as trustee in bankruptcy in the absence of evidence or proper grounds to support such an assertion; (3.3) Claimed that the trustee in bankruptcy was acting fraudulently or improperly in the absence of evidence or proper grounds to support such an assertion; (3.4) Threatened reputational harm to the trustee in bankruptcy in the absence of proper grounds to make**

such a threat; and by reasons of the matters above or any of them breached Principle 6 of the Principles.

The Applicant's Case

20.1 Cubism represented Client F, the claimant in litigation. A third party, S, was a defendant in that litigation. Client F was the original owner of property which, at the time of the litigation, was registered in the name of S and in his possession. Client F claimed that S had procured ownership through a conspiracy to defraud and that the transfer had taken place without his knowledge. On 1 February 2018, an interim injunction was made preventing S from (amongst other things) selling the property.

20.2 Subsequently, the Respondent acted for Client F in a claim against S and others for transfer of the ownership of the property to Client F, together with damages. That claim was issued on 8 February 2018.

20.3 On 16 February 2018, a Trustee in Bankruptcy was appointed in respect of S.

20.4 On 13 March 2018, HS of AJ Solicitors wrote to the Respondent. He noted that he acted for the Trustee in Bankruptcy and sought assistance and clarification in relation to the issues raised in his letter. He noted that there were "some fundamental issues on which [he] has had to concentrate when providing advice to the Trustee who of course is under an obligation to collect in the assets of the Bankrupt". He expressed sympathy for Client F's position.

20.5 In his reply of 24 May 2018 (at which point the claim issued on 8 February 2018 had not been heard), the Respondent included the following:

- An assertion that the Trustee was desperate "to make some sort of recovery from the Bankrupt's Estate, brazenly relying upon the Bankrupt's fraudulent misconduct". The Respondent expressed surprise that AJ Solicitors and the Trustee were acting in such a manner and indicated that the Trustee faced "very serious risks" by pursuing such a position. Mr Mulchrone submitted that Respondent had no basis upon which to assert that the Trustee faced such risks arising from his conduct, not least because the 8 February 2018 claim had not yet been determined.

- A request to receive, within 7 days, details of the AJ Solicitors professional indemnity insurance details, including a copy of the policy wording "particularly with regard to exceptions for fraudulent or dishonest conduct" and confirmation that the firm had notified its insurers of the Respondent's client's (unspecified) claim against it for costs and damages. The letter also sought details of the insurance policies held by the Trustee. Mr Mulchrone submitted that that demand implied that the Trustee in Bankruptcy had engaged in fraudulent or dishonest conduct, and that the Respondent's client had a claim against him, without any proper basis.

- An indication that the Trustee had been added as a party to the proceedings (when he had not been so added), that proceedings would be served on him, that significant costs would be incurred in preparing the detailed particulars of claim;

and that indemnity costs would be sought, "given that your client is quite openly attempting to complete the Bankrupt's fraud". Mr Mulchrone submitted that the Respondent had implied fraudulent conduct by the Trustee in Bankruptcy without any proper basis.

- An assertion that "it is almost as though the Trustee is assisting the Bankrupt in perfecting and defending that fraud. This conduct by the Trustee is likely to result in very severe consequences for him" including that the Trustee "will be ordered to pay any losses caused by their misconduct in addition to our client's significant costs" It was submitted that this was an assertion of misconduct was made without any proper basis.

- An assertion that "it will be clear that [the Trustee] has supported a fraudster and the Trustee's reputation will be irrevocably tarnished by this" without any proper basis for making that assertion.

- A suggestion that the Trustee may be "receiving remuneration by other means" which required "urgent confirmation as to the way in which your client is being paid, failing which we will need to make the necessary application to the Court for disclosure". The Respondent, it was submitted, had no basis upon which to make that suggestion. The letter added that, as necessary, matters would be referred to the Trustee's regulatory body.

- A suggestion that "the timing of the Bankruptcy is highly suspicious when considered in relation to the fraud that has been perpetrated" and that the chronology "is highly relevant as to whether [the Trustee] may also have a case to answer" without any basis upon which to make such a suggestion.

20.6 Mr Mulchrone submitted that no evidence to support those matters appeared from the documents issued in the proceedings and there was no basis upon which the Respondent could properly demand the documents and information, or make the suggestions and assertions, referred to in that correspondence.

20.7 The letter was also copied to the Trustee, notwithstanding that he had instructed that AJ Solicitors to act on his behalf. The Respondent's letter post-dated guidance published by the SRA in 2015 entitled "Walking the Line: The Balancing of Duties in Litigation". In that guidance, the SRA warned solicitors that "correspondence with lay opponents in particular must not be misleading or intimidating". The guidance followed a decision of the High Court in which it considered a case involving correspondence in litigation described as "in some circumstances highly aggressive and in others unacceptable in conduct" including, in particular, "ill-founded allegations of criminal conduct". The Court warned that "whilst interminable and heavy-handed correspondence is becoming a perverse feature in some commercial litigation, it is not in any way to be accepted as a norm and parties whose solicitors engage in it should not be surprised if, in a case such as this, they end up paying the costs on an indemnity scale".

20.8 On 25 May 2018, AJ Solicitors replied to the Respondent's 24 May letter. They noted that the paragraphs identified above were "highly inappropriate for a solicitor to raise in correspondence" and asked for them to be withdrawn with an apology. They

also asked the Respondent to confirm that he would no longer write to their client directly. The Respondent did not reply to that letter.

20.9 Mr Mulchrone submitted that public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by solicitors who send correspondence which improperly:

- carried an express or implied threat of action against the solicitors acting on behalf of their client, in circumstances where no such threat could properly be made;
- claimed that their client was improperly receiving payments, in the absence of evidence or proper grounds to support such an assertion;
- claimed that their client was acting fraudulently or improperly, in the absence of evidence or proper grounds to support such an assertion;
- threatened reputational harm to their client in the absence of proper grounds to make such a threat in circumstances where that correspondence was copied to a party who (to that solicitor's knowledge) has instructed representatives to act on his behalf;
- where that party was acting in the exercise of a statutory function; and
- both the High Court and the SRA had recently warned that such conduct was not acceptable.

20.10 Accordingly, the Respondent breached Principle 6 of the Principles.

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

20.11 The Respondent considered that Client F had been defrauded of his property and that the circumstances warranted the pursuit of fearless and speedy litigation in order to protect his client's interests. An application was made for an ex-parte freezing and delivery up injunction in the High Court in early February 2018 requiring the return of the property and freezing of S's assets. The High Court granted the application, and directed that the return of the property to the control and possession of the client's solicitor until trial or settlement. The Respondent considered that the High Court's grant of the ex parte injunction reflected the fact that the case in fraud was strong, as such an injunction would only be granted if there was a strong prima facie case of fraud and a risk of dissipation of assets. At two further injunction hearings in February 2018 two different High Court judges upheld the delivery up orders.

20.12 The Trustee in bankruptcy embarked on correspondence with the Firm in which he raised a number of questions that the Respondent considered expressly or impliedly suggested that the Trustee would not recognise the client's claim to the property despite the judgements of the High Court, and seemed to assert that the cars were part of S's estate which vested in the Trustee. The Respondent also considered that the correspondence seemed to ignore the witness statements/exhibits that had been filed with the High Court and three separate High Court Judges' decisions in which the delivery up injunction was granted, reviewed and maintained. The Trustee also

attended a hearing at the High Court on 19 February 2019 claiming an interest in the proceedings whilst stating they were not a party to the proceedings, which they thought would mean they were not exposed to a risk of an adverse costs order. As the Trustee was effectively standing in S's shoes in any claims to the property and as any claim that S advanced to ownership of the cars was based on his fraud and illegality, so similarly any claim advanced by the Trustee would be relying on S's fraud.

20.13 The Respondent was concerned about the costs implications for Client F, as S had no assets and the Trustee was not formally a party. He was also concerned that any professional indemnity/adverse costs insurance policy for the Trustee, that might offer some protection on costs for Client F, would be invalidated by the reliance of the Trustee on the fraud as such policies contained wide and strict terms about an insured's involvement in fraud or illegality and were often construed widely and used by insurers to evade cover.

20.14 The Respondent acknowledged that the letter was very robust in the way that it advanced the concerns, but it also invited settlement discussions and early Alternative Dispute Resolution/mediation in the interests of minimising costs. It did not occur to the Respondent that it was inappropriate to write in such a robust way: he believed he was complying with his duties to his client to fearlessly protect his client's best interests.

20.15 The Respondent stated that if the tone adopted involved a misjudgement and caused offence it was inadvertent and he apologised.

20.16 In those circumstances the Respondent denied that his conduct in writing the letter in question involved a breach of Principle 6.

The Tribunal's Findings

20.17 The Tribunal noted that the Respondent did not deny that he was the author of the letter or that any of the content had been misquoted. The Tribunal determined that given there was no dispute as to the words written, it needed only to consider whether the content of the letter was such that the Respondent had breached Principle 6 as alleged.

20.18 The Respondent agreed during cross-examination that the letter sent was "more than robust" and that he "should have removed some comments". He accepted that there were passages that he "could have phrased differently" and that many of the complained of comments should not have been made. The Respondent stated that a number of his comments ought to have been withdrawn at the time.

20.19 The Tribunal found that the complained of passages in the letter contained unacceptable allegations and comments that were groundless and had no foundation in fact. The Tribunal considered that public trust in the Respondent and in the provision of legal services would be undermined in circumstances where a solicitor made a number of serious, but groundless allegations in correspondence. Not only was that correspondence sent to other solicitors, but also to their client. The Tribunal found that in making the allegations that he did when he had no foundation for doing so, the Respondent's conduct was is in breach of Principle 6.

20.20 Accordingly, the Tribunal found allegation 3 proved on the balance of probabilities.

21. **Allegation 4 - Between 23 May 2019 and 14 June 2019, in the course of responding to communications sent by an officer of the SRA, improperly made threats against an SRA officer and in so doing breached one or more of Principles 2, 6, and 7 of the Principles.**

The Applicant's Case

21.1 On 7 May 2019, an authorised officer of the Applicant sent an Explanation With Warning ("EWW") letter to the Respondent seeking an explanation in relation to the matters detailed at allegations 1 – 3 above. On receipt of that letter, the Respondent sought to speak with the officer to discuss the matter. They spoke by telephone on 23 May 2019. During the course of that call, the Respondent made the following statements, (or used words to this effect), to the officer:

- "Your career was going up and now you are about to get smashed. If you don't give me a three month extension [to provide his response to the Letter] within 24 hours I will tell the Head of the SRA, the Head of the Law Society, the Lord Chancellor and the Prime Minister".

- "Treat [me] humanely. Otherwise I will make sure your contract is terminated".

- "Let's get one thing straight, I control the outcomes here".

- That if the officer did not withdraw the letter which he had sent to the Respondent's former colleague "you will get sued. I will sue you for misfeasance. I have unlimited resources and talent and I will sue you".

- "I will end the SRA".

21.2 The Respondent also asserted that he would respond to the EWW letter in three months' time because "[the officer] has had two years to investigate". That assertion appeared to be based on the officer's involvement in proceedings concerning the Firm at which the Respondent had worked as a consultant. During that call, the officer explained that he had not been investigating the Respondent for two years and that the investigation into the Firm was separate from the investigation into the Respondent's conduct.

21.3 On 28 May 2019, the officer confirmed to the Respondent that a three-month extension was agreed. His email in response asserted that the officer had lied to him in their 23 May telephone call. In an email to the officer dated 14 June 2019 the Respondent stated:

> "I'm not sure you realise. I know you want to make a name for yourself. Good for you. Lying. Misleading a regulator. A court. That's malicious prosecution. I'm recording my time. I'm billing you personally. You want a fictitious witch hunt? No problem. You're going to pay for it. You lied to me a few weeks back saying you just started to investigate this. I've got you. And now. Systematically. You will come to understand why I'm the best

litigator in the City. This is going to end with you in serious trouble. I'm not [NS]. Level false accusations at me and my previous colleagues? There are serious consequences for you".

21.4 Shortly afterwards the officer explained again that the proceedings in which he had previously been involved were not in relation to the Respondent and that his investigation into his conduct followed afterwards. Later that day, the Respondent replied "another lie. Carry on. You are digging your own grave".

21.5 Mr Mulchrone submitted that the Respondent had received the EWW letter from his regulator in accordance with its published Disciplinary Procedure Rules. The SRA was required to send that letter and the Respondent was required to provide his explanation in response to it. Despite that, in seeking a lengthy extension of time in which to respond, the Respondent made a series of threats against an officer of the SRA. In a subsequent email, the Respondent made further threats against the officer.

21.6 Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by solicitors who responded to formal letters from their regulator by making a series of threats against the authorised officer sending those letters. Accordingly, the Respondent breached Principle 6 of the Principles.

21.7 The conduct alleged also amounted to a breach of the requirement for the Respondent to comply with his legal and regulatory obligations and to deal with his regulators and ombudsmen in an open, timely and co-operative manner. The Respondent did not deal with the SRA's authorised officer in a timely or co-operative manner. Instead, he insisted on a three-month extension of time to provide his response to the EWW and made a series of threats against the authorised officer. Accordingly, the Respondent breached Principle 7 of the Principles.

21.8 A solicitor acting with integrity would not have responded to a formal letter from his regulator by making personal threats against the officer who sent that letter. Accordingly, the Respondent breached Principle 2 of the Principles.

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

21.9 The Respondent explained that the conversation that took place shortly after receipt of the EWW letter from the SRA which the Respondent considered had been written around two years after the SRA started looking at the matter. It contained 33 pages of dense allegations and hundreds of pages of supporting documents and emails generated over 6 years, which clearly took a long time to compose. It required a detailed response in less than 28 days after it was received. The Respondent felt that the allegations were unfair, and that the time scale in which he was required to respond to matters was also unfair.

21.10 The Respondent admitted that he was very frustrated at and reacted badly to the receipt of the EWW letter and what, at the time, he saw as unfairness to him in the way things were being pursued. He had worked hard for Clients A, B, C and F.

21.11 The Respondent explained that he could not recall all of the conversation with the investigator, but admitted that he allowed his frustration at the allegations raised and the short time scale for a reply to get the better of him in the way he expressed himself. With the benefit of hindsight, the Respondent accepted that he should not have said some of the things he did. The Respondent expressed remorse for his behaviour.

21.12 The Respondent was still frustrated and angry about the things being said against him when he sent the emails detailed. With the benefit of hindsight, and in a cooler-headed moment, the Respondent accepted that he should not have expressed himself as he did, and he was sorry that he did so.

21.13 The Respondent admitted that in saying some of the things he did he was in breach of Principle 7. Taking into account the fact that the conversation and emails took place in the "heat of the moment" and that he apologised for that, he hoped that his conduct would not be found to also give rise to a breach of Principles 2 and 6.

The Tribunal's Findings

21.14 The Tribunal found on the facts and evidence that the Respondent's conduct was in breach of Principle 7. The Tribunal found that the Respondent's admission in that regard had been properly made.

21.15 The Tribunal took account of the comments made by the Respondent during the telephone call and his subsequent emails. The Tribunal considered that the tone, content and threatening nature of the Respondent's contact with his regulator was unacceptable and completely inappropriate. The investigator was carrying out his role as he was required to do. The Respondent had, in his communications, tried to intimidate the officer saying that he knew he was a young solicitor trying to make a name for himself and telling him that he was "about to find out how amazing I am. I am genius level talent, ultra talent" and that the officer was about to experience "…elite level litigation. Global elite level litigation. I am the best litigator in the City and I have trained all the QC's".

21.16 The Tribunal found that in communicating with his regulator in the way that he did, the Respondent had failed to maintain the trust the public placed in him and in the provision of legal services. Members of the public would not expect a solicitor to respond to an investigation into his conduct by making threats to an officer or seeking to belittle and intimidate him. Thus the Tribunal found that the Respondent's conduct was in breach of Principle 6 of the Principles.

21.17 The Tribunal agreed that a solicitor acting with integrity would not respond to a letter from his regulator requesting an explanation of his conduct by making personal threats against the officer who, as he was required to do, had sent the letter. In doing so, the Tribunal found, the Respondent's conduct was in breach of Principle 2.

21.18 Accordingly, the Tribunal found allegation 4 proved on the balance of probabilities.

Previous Disciplinary Matters

22. None.

Mitigation

23. The Respondent submitted that he had not derived any personal benefit from the proven matters. He considered that he had, at all times, acted in his clients' bests interests and made sure that they were able to transform their lives. The Firm had been the subject of an intervention, and Cubism had gone into administration. The Tribunal's findings would be a further hammer blow to his income.

Sanction

24. The Tribunal had regard to the Guidance Note on Sanctions (7th Edition – November 2019). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

25. The Tribunal found that the Respondent's motivation (as regards allegation 1) was to ensure payment to the Firm and to himself. He operated on a need to know basis as regards his clients, and considered that it was for him to determine what was in his clients' best interests, irrespective of their instructions. The Tribunal found that the Respondent was at times adversarial with his clients, and that the tone of his communications was deliberately intimidatory, particularly when they did not agree with his position. Save for the telephone call which was the subject of allegation 4, the Tribunal considered that the Respondent's misconduct was planned. As regards Client A, he had acted in breach of the trust placed in him. Further, he had encouraged Client B not to reveal to Client A that the Costs Claim had been settled. The Respondent was a very experienced solicitor and was in direct control of the circumstances. The Tribunal found that he was wholly culpable for his misconduct.

26. He had caused significant harm to Client A, who had had to instruct another firm to represent his interests. He had caused damage to the reputation of the profession by making threats to others, including the Trustee in bankruptcy and his solicitors. The harm that he had caused was entirely foreseeable – there was bound to be damage to the profession's repute when a solicitor acted contrary to his clients instructions and then sought to mislead his client and other professionals.

27. The Tribunal found that the Respondent's conduct had been a complete departure from the standards expected of him by the profession and the public. Further, his conduct was aggravated by his proven dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

> "34. There is harm to the public every time that 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"."

28. His actions were deliberate, calculated and repeated over a lengthy period. He had sought to conceal his wrongdoing by encouraging Client B not to inform Client A of the settlement, and by sending misleading correspondence despite advice he had received from Counsel. The Tribunal found that the Respondent had failed to display any insight, foresight or hindsight as regards his misconduct.

29. The Tribunal considered that it was to the Respondent's credit that he had taken on matters that other solicitors had not been prepared to take and had worked hard for his clients. In mitigation, he had had a previously unblemished career.

30. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand, a fine or restrictions. The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

31. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

32. Mr Mulchrone applied for costs in the sum of £37,490.62. This included the Applicant's internal costs and the Capsticks fixed fee. Taking the fixed fee and dividing by the work done produced a notional hourly rate of £93 per hour + VAT, which, it was submitted was a modest hourly rate.

33. The Respondent submitted that the Applicant had spent 112 hours investigating the matter and preparing the EWW letter. That letter and investigation included a number of matters that were not proceeded with at the Tribunal. The Respondent considered that much of the work required to prepare the Rule 12 Statement had been conducted by the Applicant. Capsticks had used 6 fee earners in the preparation of the case and had duplicated much of the work already undertaken by the SRA. There should be a reduction in the hours claimed by Capsticks.

34. The Tribunal considered that there should be a reduction in the costs. It noted that the Applicant had already received £10,000 in costs from a former Respondent in the proceedings who had been dealt with by the Tribunal on a previous occasion. The Applicant, in its costs schedule detailed that it was seeking 75% of the costs from this Respondent. The Tribunal determined that in the circumstances, a costs order in the sum of £30,000 was reasonable and proportionate. This took account of a reduction

for matters not proceeded with and any duplication in the work undertaken by Capsticks.

Statement of Full Order

35. The Tribunal Ordered that the Respondent, ANJAN DHIRU PATEL, 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 £30,000.00.

Dated this 28th day of October 2020
On behalf of the Tribunal

G Sydenham
Chair