SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12094-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RICHARD CLIVE HALLOWS Respondent

Before:

Mr P. S. L. Housego (in the chair)
Ms T. Cullen
Mr S. Marquez

Date of Hearing: 6 – 8 October 2020

Appearances

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

The Respondent represented himself on 6 October 2020. Thereafter the Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations against made by the Solicitors Regulation Authority ("SRA") were that whilst a Sole Principal of Hallows Associates ("the Firm"), between 2015 and February 2018, he:

1.1 Made improper withdrawals or/and transfers in respect of one or more of the client accounts set out below, in breach of Principles 2, 6, and 10 of the SRA Principles 2011 ("the Principles") and Outcome O(1.2) of the SRA Code of Conduct 2011 ("the 2011 Code") and Rules 1 and 20 of the SRA Accounts Rules 2011 ("the Accounts Rules"):

1.1.1 Client A;

1.1.2 Client G;

1.1.3 Client C;

1.1.4 Client D;

1.1.5 Client E;

1.1.6 Client F.

1.2 Attempted to conceal improper withdrawals from the client account by paying in cheques from a company he was connected to through his wife, and did so knowing that or in the alternative reckless as to whether the cheques would be returned unpaid in breach of his obligations under Principles 2, 6, and 10.

1.3 Misled Client A in that he told Client A that he was holding his funds to order, when he was not, in breach of Principles 2, 4, 5 and 6.

1.4 Misled any or all of the third parties named below in breach of Principles 2 and 6:

1.4.1 Misled Law Firm A by notifying them that he had arranged for a mortgage to be discharged when he had not done so;

1.4.2 Misled Estate Agent A by notifying them that he was holding the full purchase price of £330,000;

1.4.3 Misled the beneficiaries of Client D's estate on the 15 November 2017 in that he told one or more of the beneficiaries that he could not settle the estate because he was waiting for the DWP and/or other third parties to settle their enquires which was not the case;

1.5 Failed to keep accurate books of account, in that he, in breach of Principles 2, 6, and 10 of the Principles and Rules 1 and 29 of the Accounts Rules:

1.5.1 Failed to accurately record or document, payments and/or transfers in respect of one or more of the below clients;

- Client E;
- Client F;
- Client C; and

1.5.2 Failed to do any reconciliations between December 2017 and February 2018.

1.6 Caused a client account shortfall of at least £884,580.41 as at 31 January 2018 which was not replaced in breach of Principles 2, 6, 7 and 10 of the Principles and Rule 7 of the Accounts Rules.

1.7 Between 2014 and 2015:

1.7.1 Caused or allowed Client A to evade service of debt recovery proceedings in breach of Principles 2, 4 and 6 of the Principles and Rules 1 and 20 of the Accounts Rules; and

1.7.2 Communicated to the Claimant's solicitor that he was not instructed to act until service of proceedings had been effected when in fact he was instructed, in breach of Principles 2, 4 and 6 of the Principles.

1.8 In breach of Principles 2, and 6, failed to keep undertakings as below:

1.8.1 An undertaking dated 22 January 2018 given in respect of Client A, breached by the Respondent failing to return Client A's money to Client A by 26 January 2018; and

1.8.2 An undertaking in respect of Client F, to hold monies received on behalf of client F until a bankruptcy petition had been dismissed, breached by transferring amounts for 'fees' to the Firm's office bank account; and

1.8.3 An undertaking in respect of Client B to the property purchaser's solicitors to arrange to discharge a mortgage.

2. In addition, allegations 1.1, 1.2, 1.3, 1.4, 1.7.2, 1.8.1, 1.8.2 and 1.8.3 were advanced on the basis that the conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the allegations.

Documents

3. The Tribunal considered all of the documents filed in the case including:

- Applicant's Rule 12 Statement and Exhibit NB1 dated 22 May 2020.
- Applicant's Schedule of Costs as at substantive hearing dated 29 September 2020.
- Correspondence from the Applicant and the Respondent.

Preliminary Matters

Respondent's Application to Adjourn

4. *Non receipt of documents*

4.1 The Respondent submitted that he had not received any of the documents in the case. He relied on emails sent on 23 and 29 September 2020. In those emails the Respondent explained that he had no knowledge of the hearing. In the 23 September 2020 email the Respondent stated that "whatever the hearing is on 6 October if it effects (sic) me I would like to adjourn the hearing to enable me to consider any papers". In an email dated 25 September 2020 the Respondent stated "I have no knowledge of any hearing and would request an adjournment". In the Respondent's email of 29 September 2020 the Respondent explained that he had previously informed the Applicant, he had been receiving threats from people attending his home address so he rarely stayed there. His mail and clothing was collected for him. He stated: "I have not received for whatever reason any papers relating to any hearing. In the past you have attempted to serve papers at an address I haven't lived at for many years. I have not received any documents and therefore cannot assist with any hearing."

4.2 When asked by the Tribunal about the numerous emails that had been sent to the Respondent including a number of emails that attempted to provide the Respondent with the proceedings papers, the Respondent explained that he had only received a limited number of emails; that emails with large attachments could not be opened, and that he had checked his spam folder and it did not contain emails from the Applicant or the Tribunal. The Tribunal asked the Respondent for the address at which he was residing, as he said that he was not living at his home address, which he said was visited on occasion by his daughter, and looked after by a friend. The Respondent refused to provide the address where he lived, but did provide his telephone number, having previously declined to provide that number to the Applicant.

4.3 Mr Mulchrone submitted that the Applicant had attempted on numerous occasions to serve the Respondent with the proceedings' papers. He detailed a history of attempts, including sending the papers by email, registered delivery and courier (three times), all of which had failed. The Tribunal was referred to its memorandum of 28 August 2020, when it was determined that the Respondent had attempted to evade the proceedings. At that stage, the Applicant had attempted to serve the Respondent with the proceedings' papers by email on 16 separate occasions. It had also attempted to serve him by first class post and recorded delivery. Following that hearing, the Applicant made further attempts to provide the Respondent with the papers, including instructing a courier. None of the additional attempts were successful. The Tribunal on 28 August 2020 deemed that service had been effected on 13 July 2020, with the proceedings' papers deemed served on 14 July 2020. Mr Mulchrone submitted that as the Respondent had deliberately attempted to evade service, his application for an adjournment on the grounds that he had not received the papers should be refused.

The Tribunal's Decision

4.4 The Tribunal considered the chronology outlined and the numerous attempts to serve the Respondent. The Tribunal did not accept that the Respondent was not aware of the proceedings as stated in his 23 September 2020 email. On 29 June 2020, the Tribunal emailed the Respondent informing him that the deadline for the filing of his Answer had expired. The Tribunal had then advised the Respondent that if no Answer was filed, the matter would be listed for a non-compliance hearing. On the same day the Respondent replied stating:

> "I have no idea what you are referring to. I have no papers and no knowledge of any hearing. Can you arrange for any papers to be sent by post as my emails often go to spam. You have my address."

4.5 The Tribunal determined that by 29 June 2020 at the latest, the Respondent was aware of proceedings before the Tribunal. The Tribunal did not accept the Respondent's submission that it was for the Applicant to arrange a convenient time and date to provide the Respondent with the papers. He knew there were proceedings against him, and he knew he was not living at the address he had given to the Applicant, but had not made any effort to co-operate with his regulator, instead making it as hard as he could for them to serve him (for example not collecting documents when the Post Office had left a card inviting him to collect them from the Post Office). His view, that it was for the Applicant to find him and serve him, was not one that accorded with his professional obligations. The Applicant had complied with its obligations and had, in fact, gone far above and beyond to try to provide the Respondent with the documents. The Tribunal further noted that until the hearing, the Respondent had refused to provide the Applicant with a telephone number at which he could be contacted, so that the Applicant did not have an address or telephone number, and had only an email address from which the Respondent corresponded intermittently and which he said was unreliable. The Tribunal did not accept that the email was unreliable, as the Applicant had received no bounce back messages saying the emails were not deliverable.

4.6 The Tribunal noted the decision in GMC v Adeogba [2016] EWCA Civ 162, in which Sir Brian Leveson stated that there was a duty on all "professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and the ultimate resolution of allegations made against them. This is part of the responsibility to which they sign up when being admitted to the profession." The Respondent, the Tribunal found, had failed in that responsibility. The Tribunal agreed that the Respondent had deliberately sought to evade service of the proceedings. The Tribunal refused the Respondent's application to adjourn on the basis that he did not have any documents. The reason he did not have any documents was that he had knowingly and deliberately avoided receiving them.

5. *Ill Health*

5.1 The Respondent submitted that he was not well enough to participate in the proceedings. In his email of 29 June 2020, he detailed medical conditions for which he was receiving treatment. He further explained that as a result of his health, he struggled to deal with any paperwork. In his email of 23 September 2020, the

Respondent stated: "My medication means I struggle to concentrate but I will do my best". The email of 29 September 2020 stated: "I continue to receive treatment for [my medical conditions] and have difficulty concentrating." During the hearing the Respondent submitted that he was unwell. He said that he was unaware until 5 October 2020 that he was required to provide medical evidence. He had contacted his GP who was preparing a letter; that letter was not yet available, but he said it would be available the following day (7 October 2020).

5.2 Mr Mulchrone submitted that the Respondent's application to adjourn on the basis of his health did not comply with the Tribunal's practice and policy note on adjournments which stated:

> "6(c) The claimed medical condition of the Applicant or Respondent unless this is supported by a reasoned opinion of an appropriate medical adviser. A doctor's certificate issued for social security and statutory sick pay purposes only or other certificate merely indicating that the person is unable to attend for work is unlikely to be sufficient."

5.3 As the Respondent had failed to provide any medical evidence, the application to adjourn on the basis of his health should be refused.

The Tribunal's Decision

5.4 The Tribunal noted that no medical evidence had been provided, but that the Respondent's GP was in the process of preparing a letter on the Respondent's behalf. The Tribunal noted that previous communications from the Tribunal had made clear to the Respondent that he must provide medical evidence in order to secure an adjournment on medical grounds. However as medical evidence was promised for the next day, the Tribunal determined that the proceedings should be adjourned to 2.00pm on 7 October 2020 to give the Respondent an opportunity to provide his medical evidence. The Tribunal informed the parties that if medical evidence was not received by that time, the hearing would commence. If medical evidence was received, it would be considered.

5.5 On 7 October 2020, the Respondent emailed the Tribunal and the Applicant in the following terms:

> "… [the Doctor's surgery] explained no appointments were being given out due to covid 29 regulations and unless I had a serious immediate condition they could not see me. That has been the position for the last 5 months. I eventually managed to arrange for a doctor to call me but you don't have a set doctor but one who is available from their availability. I have been suffering with [medical conditions] for over 2 years and received counselling and different medication. I struggle to focus and concentrate and am constantly tired and hyper ventilating. The doctor I spoke to on Monday explained that he could write a short note to confirm but couldn't do a full report with all my notes over the last 2 years unless he saw me, which isn't possible especially in the short time scale I have. He agreed to prepare a letter explaining my condition but a full report could not be available this week I attach copy letter collected today at 11.55am. Can you please consider this and consider my

> request for an adjournment for medical reasons. If you wish to contact my doctors direct as the police have done I will sign any necessary consent form. I have delivered this before the 2pm deadline ordered yesterday. I am obliged for your consideration …"

5.6 The letter from the doctor detailed conditions from which the Respondent suffered and medication which he was taking. It did not state that the Respondent was unable or unfit to attend the proceedings. Such a letter, it was found, contained insufficient information to support the Respondent's application to adjourn on the proceedings on the basis of his health. Accordingly, the Respondent's application to adjourn on the basis of his health was refused.

6. *The existence of other proceedings*

6.1 In his email of 29 September 2020, the Respondent stated:

> "I have been interviewed twice by police regarding matters which relate to my former practise and which no doubt are matters to which these proceedings relate as they told me that in previous interview (sic) and the SRA have (sic) given them a statement. I am on police bail to attend the police station on Monday 5th October 2020. I have a solicitor advising on those matters and he has said that matters before the police should proceed to their conclusion before the SDT hear[s] evidence on those matters as [the] SDT evidence could compromise my defence in [the] police matters."

6.2 The Respondent explained that he was informed by the solicitors representing him at the police station that he was not required to attend on 5 October 2020, and that he was instead required to attend the police station on 26 October 2020. The Respondent provided the email sent to him by his solicitors in that regard. The Respondent submitted that the criminal proceedings were imminent, and that the subject matter of those proceedings were the same as those before the Tribunal.

6.3 Mr Mulchrone referred the Tribunal to its practice/policy note on adjournments which stated:

> "6(a) The existence or possibility of criminal proceedings unless the criminal proceedings relate to the same or substantially the same underlying facts as form the basis of the proceedings before the Tribunal AND there is a genuine risk that the proceedings before the Tribunal may 'muddy the waters of justice' so far as concerns the criminal proceedings. Proceedings which are not imminent will not usually meet this criterion. Civil proceedings are even less likely to do so."

6.4 Mr Mulchrone submitted that the Respondent had been arrested on 4 April 2019. He had been interviewed and thereafter re-bailed. As he had not been charged, the criminal proceedings were not imminent. Thus, the application to adjourn due to criminal proceedings should be refused.

The Tribunal's Decision

6.5 The Tribunal noted that the Respondent was currently subject to police bail. The Tribunal considered that in circumstances where the Respondent had not been charged, criminal proceedings were not imminent. Further, proceedings before the Tribunal were decided on the civil standard of proof. Any findings by the Tribunal would not be sufficient to prove the case to the criminal standard of proof. The Judge would give appropriate directions to the jury if the matters related to the same or substantially the same underlying facts. In all the circumstances, the Tribunal did not consider that hearing the matter would prejudice the Respondent's position in any criminal proceedings, or that it would muddy the waters of justice. The Tribunal noted that there was no request from the solicitors the Respondent said were acting for him for the hearing to be adjourned.

6.6 Following the Tribunal's decision, on 7 October 2020, the Respondent emailed in the following terms:

> "1. The criminal proceedings are imminent. I copied you the police bail notices. 2. They relate to substantially the same underlying facts. 3. And there is a real risk the proceedings before the tribunal may muddy the waters of justice so far as concerns the criminal proceedings. The criminal proceedings cannot be any more imminent! No reasons are given for the application to adjourn on the basis of the imminent criminal proceedings I wish to appeal the decision and put a stay on the tribunal proceeding and in particular hearing any evidence and defer the tribunal until after conclusion of the criminal proceedings."

6.7 For the avoidance of doubt, the Tribunal refused to stay the proceedings on the basis the Respondent considered the proceedings were imminent. The Tribunal repeats its decision above as regards the criminal proceedings. The Tribunal advised the Respondent that any appeal or review of its decisions lay with the Administrative Court. The Respondent did not inform the Tribunal or the Applicant of any application to the Administrative Court as regards the Tribunal's decision not to adjourn the hearing.

6.8 Accordingly, the Respondent's application to adjourn the hearing was refused.

7. *Applicant's application to proceed in the Respondent's absence*

7.1 Mr Mulchrone submitted that Rule 36 provided:

> "If a party fails to attend and is not represented at the hearing and the Tribunal is satisfied that notice of the hearing was served on the party in accordance with these Rules, the Tribunal may hear and determine any application and make findings, hand down sanctions, order the payment of costs and make orders as it considers appropriate notwithstanding that the party failed to attend and is not represented at the hearing."

7.2 The power conferred was discretionary and must be exercised with "the utmost care and caution"; applying the principles laid down in R v Hayward [2001] QB 862, as qualified and explained in R v Jones [2003] 1 A.C. 1 4. While those principles provided a useful starting point, in Adeogba, the Court of Appeal said that it was important to bear in mind that there was a difference between continuing a criminal trial in the absence of the defendant and a decision to continue a disciplinary hearing. The latter decision had also to be guided by the context provided by the main statutory objective of the regulator and, in that regard, the fair, economical, expeditious and efficient disposal of allegations was of very real importance. Fairness fully encompassed fairness to the affected Respondent (a feature of prime importance) but it also involved fairness to the regulator (referred to as the prosecution in Hayward and Jones). In that regard, it was important that the analogy between criminal prosecution and regulatory proceedings was not taken too far. Steps could be taken to enforce attendance by a (criminal) defendant; he could be arrested and brought to court. No such remedy was available to a regulator. There were other differences too. First, the regulator represented the public interest in relation to professional standards. It would run entirely counter to the protection of the public if a Respondent could effectively frustrate the process and challenge a refusal to adjourn when that Respondent had deliberately failed to engage in the process. The consequential cost and delay to other cases was real. Where there was good reason not to proceed, the case should be adjourned; where there was not, however, it was only right that it should proceed.

7.3 Second, there was a burden on Respondents, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That was part of the responsibility to which they had signed up when being admitted to the profession.

7.4 Adeogba went on to discuss the import of the mandatory obligation upon medical professionals to provide a current registered address. While those obligations might perhaps be more onerous than those incumbent upon this Respondent, Adeogba nevertheless suggested that the fact that a Respondent has not updated contact details with their regulator (particularly when he is aware that he is subject to disciplinary investigation) was unlikely to provide a reasonable explanation for failure to participate in the process, sufficient to require a panel to adjourn consideration of a fixed disciplinary hearing.

7.5 The Respondent confirmed in a telephone conversation with Ms Lane of Capsticks at 13:02 on 7 October 2020 that he would not be re-joining the hearing "... as he did not see the point". The Respondent explained that he had made his application and had nothing to add. He also referred to the current state of his health.

7.6 Mr Mulchrone informed the Tribunal that Capsticks attempted re-delivery of the hearing bundle via courier to the Respondent's home address but nobody answered the door. Separately, the bundle sent by first class post on 24 September has been returned on 7 October 2020 marked "refused". Mr Mulchrone submitted that the Respondent had voluntarily absented himself from the proceedings and waived his right to attend and/or be represented. In those circumstances the Tribunal could quite properly exercise its discretion to proceed in his absence.

The Tribunal's Decision

7.7 The Tribunal determined that the Respondent had been properly served with the proceedings and notice of this hearing. Indeed, the Respondent had been deemed served on 14 July 2020. It was clear that he was aware of the hearing date, having participated in the proceedings on 6 October 2020 in order to make his application to adjourn. The Tribunal had regard to the principles in Jones and Adeogba [2016] EWCA Civ 162. The Tribunal considered the comments of Leveson P at paragraph 19 of Adeogba:

> "… It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when the practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed."

7.8 The Tribunal was satisfied that in this instance the Respondent had deliberately chosen not to exercise his right to be present or to give adequate instructions to enable lawyers to represent him (para 15 of Adeogba). He had made it clear to the Applicant (and to the Tribunal) that he did not intend to participate in the proceedings. The Tribunal considered that it was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. The Tribunal determined that in all the circumstances, it was just, in this instance, to proceed with the case, notwithstanding the Respondent's absence. The Tribunal therefore exercised its discretion to proceed in the Respondent's absence.

Factual Background

8. The Respondent was admitted to the Roll of Solicitors in October 1983. He was the sole solicitor and proprietor of the Firm, where he practised in commercial litigation, commercial property and conveyancing. At the relevant time, the Respondent was the Compliance Officer for Legal Practice ("COLP") and the Compliance Officer for Finance and Administration ("COFA").

9. On 12 January 2018, the Applicant received a complaint from Client A, who reported that he had paid £600,000 to the Firm for an investment scheme that did not proceed. He said that he had asked for his money to be returned, but the Firm had failed to return it.

10. Client A provided a copy of an undertaking dated 22 January 2018 in which the Respondent undertook to return his money by 26 January 2018. During a telephone call with the Applicant on 23 January 2018, Client A stated that the money was not repaid. A Forensic Investigation ("FI") Officer employed by the Applicant, spoke to the Respondent on 23 January 2018. The Respondent asserted that Client A's money had not been returned as his (the Respondent's) bank, Santander, was not permitting the payment due to money laundering concerns.

11. The Applicant inspected the Firm on 1 February 2018. An interim report was produced by on 6 February 2018 which raised a number of concerns. Consequently, the Firm was the subject of an intervention on 15 February 2018 as a result of which the Respondent's practising certificate was suspended. An application by the Respondent to have his practising certificate reinstated was granted on 5 July 2018, subject to conditions.

12. The Respondent was the subject of a bankruptcy order on 30 July 2018. His practising certificate was suspended again and has not been re-issued since.

13. The FI Officer made a number of attempts to conduct a further interview with the Respondent. The Respondent declined to be interviewed and cited an ongoing medical condition by way of explanation, but provided no satisfactory evidence of it. The FI Officer therefore produced a final FI Report dated 26 October 2018 in which multiple regulatory concerns were identified.

Witnesses

14. None.

Findings of Fact and Law

15. 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. Given that Respondent's non-attendance and failure to file an Answer, the Tribunal treated all allegations as if they were denied.

Dishonesty

16. 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 knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

17. 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

18. 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".

19. **Allegation 1.1 – Between 2015 and February 2018, the Respondent made improper withdrawals or/and transfers in respect of one or more of the client accounts Clients A, G, C, D and/or E in breach of Principles 2, 6, and 10 of the Principles and Outcome O(1.2) of the 2011 Code and Rules 1 and 20 of the Accounts Rules.**

The Applicant's Case

Client A

19.1 In order to invest in a trading scheme, Client A paid in a total of £600,000.00 into the Firm's client bank account in August 2017. The Respondent reassured Client A in a number of emails sent throughout that August, that his money would be held to his order.

19.2 The Respondent subsequently admitted during an interview with the Applicant on the 2 February 2018 that he paid out the following sums from Client A's ledgers which were unrelated to Client A's matters:

- £404,074.75 to Client G on 23 August 2017. Mr Mulchrone reminded the Tribunal that this sum was paid out following the reassuring emails sent by the Respondent to Client A.
- £10,000.00 to a third party with the reference 'Shawbrook'.
- £8,000.00 in respect of a Tribunal claim (brought against the Respondent).

19.3 Mr Mulchrone submitted that even after the significant transfer made on 23 August 2017 the Respondent continued to tell Client A that he was holding his funds 'to order', as was evidenced from an email sent on the 19 September 2017.

19.4 By 26 September 2017 the Respondent only held a total of £35,620.74 for all of his clients.

Client G

19.5 During the 2 February 2018 interview, the Respondent further admitted that he had made the following payments from Client G's ledger which did not relate to his matter.

- £197,940.00 to his own office bank account;
- £110,000.00 to Mr J;
- £40,499.00 to HMRC.

Client C

19.6 Client C instructed the Firm in relation to the purchase of land and transferred £330,000 into the Firm's client account. Those transfers were made into the client account as follows: £136,500 and £78,500 on the 16 January 2018 with a further £115,000 on 17 January 2018.

19.7 On 17 January 2018 an amount of £80,777.89 was paid from the client bank account without Client C's consent for a matter which was unrelated to Client C. Mr Mulchrone submitted that as a consequence, the client account did not hold sufficient funds to cover the purchase price of the land Client C intended to buy.

Client D

19.8 The Respondent was the executor of Client D's estate. Client D bequeathed her estate to her two adult grandchildren in equal shares. The Firm was instructed in April 2016. The Respondent received a total amount of £147,681.24 into the Firm's client bank account in respect of Client D's estate on 12 July 2016.

19.9 Mr Mulchrone submitted that the Respondent, whilst acting as executor for Client D's estate, between 12 July 2016 and 2 November 2016 transferred £49,228.00 of the estate to the Firm's office bank account, which sum was not required to pay any proper account due to his Firm.

Client E

19.10 The Respondent acted in the probate of Client E. The bulk of the client's estate was a property. The Respondent transferred a total of £25,320.00 for costs from the probate ledger into the Firm's office bank account under the heading '*Costs transfer*', this was done in three payments; two payments of £12,000.00 on 16 and 27 October 2015 and a third payment of £1,320.00 on 6 November 2015. In the estate accounts, the Respondent stated that the Firm's costs were £3,051.80.

19.11 Mr Mulchrone submitted that due to the over transfer of costs, there was a shortfall of £17,119.99 and the ledger did not contain sufficient funds to pay the beneficiaries the sums they were due.

Client F

19.12 The Respondent undertook to hold monies received on behalf of Client F until a bankruptcy petition had been dismissed. The client ledger showed that on 15 April 2016, the Firm received an amount of £194,890.27 from Law Firm A. The Respondent, it was submitted, in transferring amounts to the office account for his 'fees' was in breach of the undertaking. Further, in order to pay amounts due to Client F and his creditors, the Respondent used monies from other clients. In total by 10 June 2016 the Firm had paid out £208,271.16 where only £194,890.27 was available making a difference of £13,380.89.

19.13 Mr Mulchrone submitted that the Respondent failed to act with integrity in that he was aware of the fact that he had a duty to protect his clients' money but deliberately chose to ignore that obligation and to repeatedly withdraw or/and transfer those funds to himself or to other clients' accounts to replace money earlier taken from those clients' accounts. His conduct also amounted to a breach 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 in breach of Principle 6. The public must believe that when they give their money to a solicitor it will be safe and will not be misused or transferred elsewhere without their consent. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by the Respondent's actions. The Respondent had a duty to protect his clients' money but deliberately chose to ignore that obligation and to repeatedly withdraw or and transfer his clients' funds. The Respondent therefore failed to protect his clients' money in breach of Principle 10 and failed to provide services to his clients in a manner which protected their interests, thus failing to achieve Outcome O(1.2) of the 2011 Code.

19.14 Rule 1 of the Accounts Rules required the Respondent to keep client money safe. In using his clients' monies in the way that he did, the Respondent breached Rule 1. Rule 20 of the Accounts Rules required that money only be withdrawn from a client account when it is properly required. The Respondent, in using client monies which were not properly required on behalf of his clients, breached Rule 20.

Dishonesty

19.15 Mr Mulchrone submitted that the Respondent was an experienced solicitor who understood that he was under an obligation to protect his clients' money, an example of this knowledge/understanding is clear from the content of a letter that the Respondent sent to Client A on 19 September 2017 when he reassured him that his money would be held to his order.

19.16 The Respondent deliberately chose to ignore his professional obligations to his clients to protect their funds. The Respondent developed a habit of redistributing funds received from one client to another or using client money to pay his own office fees or other debts to cover up his earlier deliberate misconduct in removing client money improperly, and then tried to disguise it in his accounts by paying in ever larger cheques which he knew would not be honoured. Ordinary, decent people would consider this behaviour dishonest.

The Tribunal's Findings

19.17 The Tribunal examined the bank statements and ledgers in relation to each of the client matters. The Tribunal was satisfied that as regards each of the clients and the particularised transfers/withdrawals, the transactions were improper and in breach of the Accounts Rules as alleged.

19.18 The Tribunal found that the Respondent was operating a system of teeming and lading. Having improperly used Client G's monies, the Respondent repaid those monies by improperly using Client A's monies. The Respondent, it was found, had knowingly and deliberately used his clients' monies contrary to the Accounts Rules and his obligations to his clients. In so doing, the Respondent had failed behave in a way that maintained the trust the public place in him and in the provision of legal services in breach of Principle 6. Members of the public would not expect a solicitor to use client monies in contravention of the Accounts Rules, or for a solicitor to fail to treat client money as sacrosanct. He had failed to protect his clients' money in breach of Principle 10 and failed to provide services to his clients in a manner which protected their interests, thus failing to achieve Outcome O(1.2).

19.19 The Tribunal determined that no solicitor acting with integrity would utilise client monies in this way with a complete disregard and contempt for the rules that protect client monies. That such conduct was in breach of Principle 2 was plain.

19.20 The Tribunal was satisfied that the Respondent's conduct was deliberate, and that he knew that he was not entitled to use client monies in the way that he did. He had assured Client A on 19 September that his monies were safe when he had used £404,074.75 on 23 August 2017 to satisfy the Firm's liabilities to Client G. The Tribunal determined that the Respondent knew that his conduct was improper and that ordinary and decent people would consider that his conduct was dishonest.

19.21 Accordingly, the Tribunal found allegation 1.1 proved on the balance of probabilities including that the Respondent's conduct was dishonest.

20. **Allegation 1.2 – The Respondent attempted to conceal improper withdrawals from the client account by paying in cheques from a company he was connected to through his wife, and did so knowing that or in the alternative reckless as to whether the cheques would be returned unpaid in breach of his obligations under Principles 2, 6, and 10.**

The Applicant's Case

20.1 On 31 January 2018 the Respondent artificially inflated the balance of the client account by paying in a cheque for £426,416.67, which was never going to clear as there were insufficient funds in the corresponding account, which he knew, as he was a director of that company, of which his wife was the only shareholder. The cheque was returned unpaid on 3 February 2018. By virtue of paying in the cheque, and whilst it was awaiting clearance, the client account appeared to have a larger balance than it really had. The actual cleared amount held on the client bank account on 31 January 2018 was only £11,616.30.

20.2 During his interview the Respondent admitted to paying in the cheque and said that he had done so to replace some of the shortfall in the client account. He explained that the cheque was drawn from the account of Company T, which he accepted was wholly owned by his wife. The Respondent was a Director and was the Secretary of the company.

20.3 An examination of the bank statement showed a pattern of cheques for large sums being paid into the client account and then being returned unpaid within a short period of time. The Respondent in his interview said that these were all paid in on his instruction from the account of Company T. The Respondent explained that the increasing value of the cheques paid in was because the shortfall on the client account was increasing over time and therefore more money was needed to replace the missing sums.

20.4 Mr Mulchrone submitted that the Respondent was aware of the duty to protect his clients' money. He had deliberately ignored that obligation and had repeatedly withdrawn and/or transferred those funds. He had then attempted to conceal the improper transactions by paying in cheques which he knew would not clear. In doing so, it was submitted, the Respondent's conduct was in breach of Principle 2.

20.5 The conduct alleged also amounted to a breach of Principle 6. The public must believe that when they give their money to a solicitor it will be safe and will not be misused or transferred elsewhere without their consent. The public also expected solicitors to be open and honest and not to try to cover-up their earlier misconduct. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by the Respondent's actions.

20.6 The Respondent had a duty to protect his clients' money but deliberately chose to ignore that obligation and to repeatedly withdraw or transfer those client funds. He failed to protect his clients' money by paying in cheques which he knew would not clear (or was at least reckless as to whether they would clear), in an attempt to inflate albeit temporarily the balance of his accounts. This process made it less likely that his earlier wrongdoing would be uncovered. In so doing, the Respondent failed to protect client money in breach of Principle 10.

<u>Dishonesty</u>

20.7 The Respondent deliberately chose to ignore his professional obligation to his clients to protect their funds. The Respondent followed a course of conduct of using client funds improperly, then disguising that by redistributing funds received from other clients to cover the resulting and ever increasing shortfall by reason of his transfer of client money for his own purposes, to pay his own office account or other debts (for example to HMRC).

20.8 The Respondent knew that in order to attempt to continue operating without detection he needed a mechanism to cover up the ever depleting balance on the client account. The mechanism chosen by the Respondent was to pay in high value cheques from an account that was connected to his wife and which he knew would not clear. From an accounting perspective this functioned in the short-term so as to make the accounts appear as though the client money paid into it was safe.

20.9 This misconduct was premeditated, prolonged and fairly sophisticated. Mr Mulchrone submitted that ordinary, decent people would consider this behaviour dishonest.

The Tribunal's Findings

20.10 The Tribunal found that the Respondent knew that the cheques from Company T would not be honoured as there were insufficient funds in the Company T account to do so. The Tribunal considered that the payment of cheques from Company T into the Firm's client account was a device used by the Respondent artificially to inflate the balance on the client account (and while only for a short period of time in order to show during those short periods that there appeared to be no shortfall). He did so in order to attempt to conceal the improper payments he had made from the client account. That such conduct failed to protect client money in breach of Principle 10 was clear. Further, in acting as he did, the Respondent 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 attempt to conceal his misconduct by temporarily artificially increasing the balance on the client account.

20.11 The Tribunal found that the Respondent's conduct lacked integrity in breach of Principle 2. A solicitor acting with integrity would not attempt to artificially boost the balance on the client account following the improper use of client monies.

20.12 As detailed above, the Tribunal found that the Respondent knew that the cheques from Company T that were paid into the client account would not be honoured and that the payment of those cheques was the Respondent's chosen mechanism to make the client account appear to hold funds that it did not in fact hold. Ordinary and decent people, it was determined, would consider that such conduct was dishonest.

20.13 Accordingly, the Tribunal found allegation 1.2 proved on the balance of probabilities, including that the Respondent's conduct was dishonest.

21. **Allegation 1.3 – the Respondent misled Client A in that he told Client A that he was holding his funds to order, when he was not, in breach of Principles 2, 4, 5 and 6.**

The Applicant's Case

21.1 Client A paid a total of £600,000 into the Firm's client bank account in August 2017. The Respondent reassured Client A in a number of emails sent throughout that August that his money would be held to his order. In his interview, the Respondent admitted that he paid out £404,074.75 to Client G on the 23 August 2017; £10,000 to a third party with the reference 'Shawbrook'; and £8,000 in respect of a Tribunal claim. The Respondent accepted that the payments were not related to Client A's matters.

21.2 In an email dated 19 September 2017, the Respondent informed Client A that he was holding his funds 'to order'. Mr Mulchrone submitted that this was untrue, given that the Respondent had, on 27 August 2017, transferred a substantial part of those monies from the Client A ledger to Client G, and he knew that had done so.

21.3 Between 15 November and 22 December 2017, Client A requested the return of the £600,000 he had paid into the Firm's client bank account. While knowing that there was a shortfall (because he had transferred money out of Client A's account such that he no longer held £600,000 for Client A) the Respondent gave the following explanations for his inability to transfer the money:

- On 16 November 2017 the Respondent said he was in London and he would be in the office to process the return of the funds the following day;

- On 20 November 2017 the Respondent said the amount had been held on a designated deposit account and that it would take seven days to retrieve. There was nothing in the file or the books of account to show the monies were held on a deposit account;

- On 22 November 2017 the Respondent told Client A that the amount had been held on a designated deposit account and that it would take seven days to retrieve. There was nothing in the file or the books of account to show the monies were held on a deposit account.

21.4 Mr Mulchrone submitted that the Respondent was unable to repay the money to Client A as he had inappropriately transferred Client A's money to other accounts without Client A's consent. In order to conceal those improper transfers, the Respondent lied to Client A.

21.5 In ignoring his obligations as regards client monies and using them in the way that he did, the Respondent had failed to act with integrity in breach of Principle 2. Further, in misleading Client A, the Respondent had failed to act in his best interests in breach of Principle 4 and had failed to provide a proper standard of service in breach of Principle 5. Such conduct, it was submitted, failed to maintain the trust the public placed in the Respondent and in the provision of legal services in breach of Principle 6.

Dishonesty

21.6 Mr Mulchrone submitted that the Respondent, knowing that he had failed to preserve client money, deliberately chose to mislead Client A in an attempt to conceal his earlier misconduct. Ordinary, decent people would consider this behaviour dishonest.

The Tribunal's Findings

21.7 As detailed at allegation 1.1 above, the Tribunal found that the Respondent had improperly used monies belonging to Client A and had, in the knowledge that he did not hold Client A's money on account, assured Client A on 19 September that his monies were safe when he had used £404,074.75 on 23 August 2017 to satisfy the Firm's liabilities to Client G. The Tribunal noted that on 16, 20, 22, 25, 28 and 30 November and 3, 5, 7, 8, 12 and 20 December 2017, the Respondent gave Client A numerous excuses as to why he was unable to return his money, often promising to do so in the immediate future. The financial records of the Firm showed that the Respondent did not hold sufficient funds (in any account) to return Client A's monies following his improper use of the same. That the Respondent had failed to act in his

client's best interests in breach of Principle 4 was plain; it was not in his client's interests to mislead him about the safety of monies that he had improperly utilised. In misleading his client, the Respondent failed to provide him with a proper standard of service in breach of Principle 5.

21.8 Members of the public would not expect a solicitor to mislead his client about the safety of client money on any occasion, let alone the numerous times the Respondent suggested that Client A would soon be in receipt of his monies in circumstances when the Respondent knew that he was unable to provide those monies. Such conduct, the Tribunal found, was in breach of Principle 6. That the Respondent's conduct lacked integrity was evident. Solicitors acting with integrity did not deliberately mislead their clients.

21.9 The Tribunal found that the Respondent had knowingly and repeatedly misled Client A in order to conceal his own misconduct. The Tribunal considered that ordinary and decent people would consider that the Respondent's conduct was dishonest.

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

22. **Allegation 1.4 - the Respondent misled any or all of: (i) Law Firm A (by notifying them that he had arranged for a mortgage to be discharged when he had not done so); (ii) Estate Agent A (by notifying them that he was holding the full purchase price of £330,000); and (iii) the beneficiaries of Client D's estate on the 15 November 2017 (in that he told one or more of the beneficiaries that he could not settle the estate because he was waiting for the DWP and/or other third parties to settle their enquires which was not the case); in breach of Principles 2 and 6.**

The Applicant's Case

Law Firm A

22.1 Client B instructed the Firm to act in the sale of a property for £135,000.00. The sale completed on 6 September 2017. The property was subject to a mortgage. The Respondent failed to redeem the mortgage, he having used part of the redemption moneys for another client's matter, having previously improperly withdrawn some of that client's money from client account. Further, he misled Law Firm A in that he caused them to believe that he had arranged for the mortgage to be discharged when in fact it had not been discharged. There was no payment from the ledger of the monies to discharge the mortgage. The Respondent did not comply with an undertaking to the property purchaser's solicitors to arrange to discharge the mortgage despite the solicitors chasing him to do so.

Estate Agent A

22.2 Client C instructed the Firm in relation to the purchase of land and paid the firm three payments totalling £330,000 between 16 and 17 January 2018.

22.3 The purchase fell through and in January 2018 Client C asked the Respondent to return the £330,000 he had paid into the client account. The Respondent refunded Client C £235,342.50 but failed to repay the sum of £94,657.50, having transferred it to another client.

22.4 On 16 January 2018 the Respondent told Estate Agent A, the estate agent handling the sale, that he was holding the full purchase price of £330,000. This was untrue given that £115,000.00 of the purchase price only cleared the client account on 17 January 2018.

22.5 On 16 January 2018 the Firm in a letter to Estate Agent A stated that the Firm was in funds for the full purchase price and enclosed a cheque for £33,000. This was incorrect as on the 17 January 2018, £80,777.89 was paid from the client bank account.

The beneficiaries of Client D's Estate

22.6 On the 11 August 2016 the Firm told the beneficiaries that he had notified HMRC and/or settled the tax position and that he was liaising with organisations such as the Local Authority and the electric company. There was no evidence of this on the file.

22.7 Mr Mulchrone submitted that it could be inferred that the Respondent did not contact these parties and deliberately gave the beneficiaries misinformation in order to create an excuse for his failure/inability to settle the estate and to delay their requests for settlement. Between 12 July 2016 and 2 November 2016 the Respondent had transferred £49,228.00 of the estate funds to the Firm's office bank account without good reason.

22.8 Mr Mulchrone submitted that in using client monies to benefit the Firm, and thereafter misleading third parties so as to avoid detection, the Respondent had acted without integrity in breach of Principle 2. Such conduct, it was submitted, failed to maintain the trust placed in the Respondent and in the provision of legal services in breach of Principle 6.

Dishonesty

22.9 The Respondent, it was submitted, knowing that he had failed to preserve client money, deliberately chose to mislead third parties in an attempt to conceal his earlier misconduct. Ordinary, decent people would consider this behaviour dishonest.

The Tribunal's Findings

22.10 The Tribunal found that in telling Law Firm A that he had made arrangements to discharge the mortgage when he had not done so, the Respondent had misled Law Firm A as alleged. In telling Estate Agent A that he held the full purchase monies on 16 January when he did not have cleared funds until 17 January, the Respondent had misled Estate Agent A. As regards the beneficiaries of Client D's estate, the Respondent had utilised the estate monies for his own purposes. Thereafter, he told the beneficiaries that he was liaising with various third parties when this was not the case. In doing so, the Respondent misled the beneficiaries as to the true position.

22.11 The Tribunal found that such conduct was in breach of the Principles as alleged. A solicitor acting with integrity did not intentionally mislead his clients or other professionals. In doing so, the Respondent's conduct lacked integrity in breach of Principle 2. Further, members of the public would be extremely concerned to know that the Respondent had misled professional colleagues as regards the redemption of a mortgage and had misled beneficiaries as to the status of their bequest. Such conduct, the Tribunal found, was in breach of Principle 6.

22.12 The Tribunal determined that the Respondent's conduct had been deliberate. He had knowingly and purposefully misled Law Firm A, Estate Agent A and the beneficiaries of Client D's estate. The Tribunal found that ordinary and decent people would find that it was dishonest to do so.

22.13 Accordingly, the Tribunal found allegation 1.4 proved on the balance of probabilities, including that the Respondent's conduct was dishonest.

23. **Allegation 1.5 – the Respondent failed to keep accurate books of account, in that he, in breach of Principles 2, 6, and 10 of the Principles and Rules 1 and 29 of the Accounts Rules: (i) Failed to accurately record or document, payments and/or transfers in respect of one or more of Clients E, F and C; and failed to do any reconciliations between December 2017 and February 2018.**

The Applicant's Case

Client E

23.1 In the matter of Client E, there were various household bills that the Respondent listed as paid from the estate, however, the client matter ledger showed that most of these were not paid.

Client F

23.2 The Respondent sent a completion statement which incorrectly stated that the amount received was £198,890.27 when the correct amount was £194,890.27. The completion statement included an amount paid to Law Firm B for their costs in the amount of £3,259.11, this sum was not recorded on the client matter ledger and was still outstanding. The completion statement also included a sum of £140.00 for telegraphic transfer fees which were also not recorded on the ledger.

Client C

23.3 A payment of £310 to the client was not entered onto the client matter ledger.

Reconciliations

23.4 Between December 2017 and February 2018 the Respondent failed to undertake any reconciliations.

23.5 Mr Mulchrone submitted that the Respondent's failings as regards his clients' accounts was so significant that the FI Officer was unable to rely on the books of

account in order to ascertain the proper financial position. The Respondent, in failing to properly account for client monies had failed to act with integrity in breach of Principle 2. Members of the public expected solicitors to keep accurate records so that client funds are properly accounted for. 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. He had also failed to protect his clients' monies in breach of Principle 10.

23.6 The Respondent had failed to establish and maintain proper accounting systems, and proper internal controls over those systems to ensure compliance with the Accounts Rules pursuant to Rule 1.2(e) and had failed to keep proper accounting records to show accurately the position with regards to the money held for each client and trust pursuant to Rule 1.2(f). In breach of Rule 29 of the Accounts Rules, the Respondent had failed to keep all of his accounting records properly written up so that it showed his dealings with client money received and office money relating to any client, he had also failed to properly record all of his dealings with client money.

23.7 Additionally, he had failed to do reconciliations within a 5 week period for the period between December 2017 and February 2018.

The Tribunal's Findings

23.8 The Tribunal found that the Respondent had not kept his accounts properly written up. There were numerous items that had not been recorded on a number of client ledgers, resulting in the ledgers being inaccurate, not showing the true position as regards client monies and not evidencing his dealings with client monies. Further, he had failed to undertake reconciliations as required. It was clear that such conduct was in breach or Rules 1 and 29 of the Accounts Rules as alleged.

23.9 The Respondent, in not keeping proper books of account, and failing to record his dealings with client monies had failed to protect client monies in breach of Principle 10. He had also failed to maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6; members of the public expected solicitors to keep proper accounts and to protect client monies. The Respondent's failings, it was determined, were so serious that his conduct was also in breach of Principle 2. The Respondent had not made a few accounting errors, but had systematically, intentionally and repeatedly failed in his obligation to maintain proper books of account.

23.10 Accordingly, the Tribunal found allegation 1.5 proved on the balance of probabilities.

24. **Allegation 1.6 – the Respondent caused a client account shortfall of at least £884,580.41 as at 31 January 2018 which was not replaced in breach of Principles 2, 6, 7 and 10 of the Principles and Rule 7 of the Accounts Rules.**

The Applicant's Case

24.1 The Respondent caused a client account shortfall of at least £884,580.41 on 3 January 2018 which was not replaced in breach of Rule 7 of the Accounts Rules. Mr Mulchrone submitted that the shortfall was created as a result of the Respondent's was deliberate and inappropriate use of client money.

24.2 During his interview, the Respondent accepted that there was a significant shortfall in the client bank account. He said that it had been his intention to replace the sums missing when the investments that had been made turned a profit. No replacement of the minimum cash shortage was made.

24.3 The FI Officer considered that: "It was not possible to determine the exact cause of the minimum shortage. However, this report identifies: a. [the Respondent] transferring client monies to his office bank account otherwise than in accordance with the SRA Accounts Rules 2011 b. [the Respondent] paying monies to third parties otherwise than in accordance with the SRA Accounts Rules 2011".

24.4 Mr Mulchrone submitted that the Respondent had failed to act with integrity in that he was aware of the fact that he had a duty to keep his clients' accounts property so that they reflected the true statement of their affairs. He failed to do that in circumstances where it was obvious that it would therefore be difficult to ascertain what had happened to funds which were in the client account. He knew that there was an increasing shortfall but yet continued to either withdraw or transfer funds or to cover up the shortfall by paying in cheques from Company T. Such conduct, it was submitted, failed to maintain the trust the public placed in the Respondent and in the provision of legal services in breach of Principle 6. The public must believe that they can trust solicitors to keep their funds safe and to replace any shortfall – the Respondent failed to do so. In breach of Principle 7, the Respondent failed to report his increasing and persistent shortfall to the SRA. Such conduct clearly failed to protect client money in breach of Principle 10.

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

24.5 The Tribunal found that there was a minimum shortfall as alleged, and, as stated by the Respondent in his interview, that the Respondent was aware that there was a shortfall. That shortfall had been created by the Respondent's improper use of client monies, which had not been replaced by him. Rule 7 of the Accounts Rules required the Respondent to remedy any breach of the Accounts Rules promptly on discovery, including the replacement of any monies improperly withheld or withdrawn from the client account. He had not done so and thus was in breach of Rule 7. In failing to the replace the shortfall, the Respondent had failed to maintain the trust of the public, who would expect a solicitor to replace funds that were missing from the client account, in breach of Principle 6. In creating the shortfall, the Respondent had failed to protect client monies in breach of Principle 10. In failing to report the position to the Applicant, the Respondent had failed to comply with his regulatory obligations in breach of Principle 7.

24.6 The Tribunal found that the shortfall had been knowingly created by the Respondent, who had been using client monies improperly. Such conduct fell far below the standards expected of a solicitor and lacked integrity in breach of Principle 2.

24.7 Accordingly, the Tribunal found allegation 1.6 proved on the balance of probabilities.

25. **Allegation 1.7 - Between 2014 and 2015 the Respondent: (i) caused or allowed Client A to evade service of debt recovery proceedings in breach of Principles 2, 4 and 6 of the Principles and Rules 1 and 20 of the Accounts Rules; and (ii)**

communicated to the Claimant's solicitor that he was not instructed to act until service of proceedings had been effected when in fact he was instructed in breach of Principles 2, 4 and 6 of the Principles.

The Applicant's Case

25.1 The Respondent acted for Mr H on a number of matters including personal and commercial debt with a threat of bankruptcy.

25.2 A claim was lodged against Mr H by Company G. On 6 October 2014 the Claimant's solicitor emailed the Respondent and at the conclusion of the email stated: "Please confirm by return that you are instructed to accept service of legal proceedings". On 8 October 2014 the Respondent wrote to Mr H and attached a copy of his response to Mr K the Claimant's solicitor. The Respondent's letter to Mr H stated "…I have deliberately declined to accept service of proceedings as this will make matters more difficult for them as the will have to take further action to obtain leave to service outside the jurisdiction".

25.3 Mr Mulchrone submitted that there was no attendance note or correspondence on the file to indicate that Mr H had instructed the Respondent to refuse to accept proceedings nor of the Respondent advising Mr H that, that course of action could mean liability for further costs.

25.4 The Respondent's email to the claimant's solicitor on 19 August 2015 stated that the claimant's solicitor should correspond directly with Mr H. It was submitted that this statement was made to further delay service by indicating that the Respondent was not acting on behalf of Mr H. Again, on 19 August 2015, the Respondent stated in a letter to the claimant's solicitor that he was "acting when service is effected". Further emails sent by the Respondent after that date showed that the Respondent was in fact instructed by Mr H and that he further caused or allowed Mr H to seek to evade proper service of the claim against him.

25.5 Emails dated 24 August and 24 September 2015 showed that the Respondent and Mr H continued to correspond about the matter. There was no indication within the papers that Mr H had in fact dispensed with the Respondent's services. Mr H eventually accepted service and the Respondent continued to correspond with him about the matter.

25.6 Mr Mulchrone submitted that the Respondent caused or allowed Mr H to evade service of proceedings by deliberately declining to accept service of proceedings intending thereby to frustrate proceedings and to force the other party to obtain leave to serve outside the jurisdiction. The Respondent was dishonest in stating to the claimant's solicitor that he was only instructed after service had been effected whilst continuing to act for and advise Mr H in relation to the claim.

25.7 Mr Mulchrone submitted that the Respondent failed to act with integrity in that he failed to be open and honest with the Claimant's solicitor. It was clear from the correspondence that went between the Respondent and Mr H that the Respondent was giving Mr H advice and was obtaining instructions from him at the time he maintained that he was not instructed. The email in which he stated that he was not

instructed until service had been effected was therefore untruthful and as a consequence was likely to frustrate legal proceedings.

25.8 Principle 4 required the Respondent to always act in good faith and do his best for each client. The Respondent failed to do his best because he misled the Claimant's solicitor and did so without any evidence of Mr H providing instructions to that effect. There was also no evidence that Mr H had been advised by the Respondent of the potential costs implications of this. Such conduct, it was submitted, failed to maintain the trust the public placed in the Respondent and in the provision of legal services in breach of Principle 6.

Dishonesty

25.9 Mr Mulchrone submitted that the letter dated 8 October 2014 which he stated: "…I have deliberately declined to accept service of proceedings as this will make matters more difficult for them as the will have to take further action to obtain leave to service outside the jurisdiction", demonstrated an intent on the Respondent's part to deliberately frustrate legal proceedings by misleading Mr K (the other party's solicitor). The Respondent went on in this vein and with this intention to confirm in August 2015 that he was not instructed until service had been effected when, it was submitted, the evidence showed that at that point, the Respondent was in regular contact with Mr H and was taking instructions and advising him. Ordinary, decent people would consider this behaviour, in stating he was not instructed when he was, was dishonest.

The Tribunal's Findings

25.10 The Tribunal found that the Respondent was not obliged to accept service of proceedings on behalf of his client. He had informed Mr H that he would not accept service of proceedings on his behalf. Not accepting service did not amount to professional misconduct. The Applicant complained that there was no evidence on the Respondent's file of instructions to that effect from Mr H. The Tribunal noted that there was also no evidence on the file of Mr H instructing the Respondent to accept service of the proceedings.

25.11 The Tribunal considered the correspondence on which the Applicant relied. The Tribunal noted that the Respondent, in his letter of 8 October 2014 to the other side, did not state that he did not represent Mr H; indeed the letter was headed "Our Client [Mr H]". The letter stated: "Please note that we are not authorised to accept service of any proceedings and you will note that our client is out of the jurisdiction in any event."

25.12 Later that day the other side replied stating "…you can accept service on his behalf in this jurisdiction if your client so wishes. If he does not so wish, then he has no argument when it comes to the significant additional cost that will be incurred."

25.13 On 19 August 2015, Mr K served the proceedings on Mr H directly, copying the Respondent into the correspondence. On that date the Respondent emailed Mr K stating (amongst other things): "We are not authorised to accept service". This email was forwarded to the Respondent's client. The Tribunal noted there was no return

email from Mr H objecting to the Respondent's email or instructing him to accept service.

25.14 In a further email of 19 August 2015 to the Respondent Mr K stated:

> "Thank you for your email. If you are not authorised to accept service, and if you do not know [Mr H's address], and are not in correspondence with him (since you are asking us to write to him directly), could you please confirm why you are asking further questions of us? We are more than happy to answer them, if you could clarify why you are asking (given that you are saying you do not act for him)."

25.15 In response the Respondent stated:

> "Please read our earlier email carefully.
>
> 1) We stated we are not authorised to accept service.
> 2) We are acting when service in effected we pointed this out 9 months ago …
> 3) We of course are aware of our client's current address but are not at liberty to disclose.
> 4) Hence the reason for our questions."

25.16 The Respondent did not, as had been submitted, suggest or state that he did not act for Mr H. In response to the email detailed above, Mr K asked the Respondent to confirm (i) whether he acted by was not instructed to accept service and also whether he was able to take instructions from, and relay information to, Mr H. The Respondent confirmed that he acted for Mr H, was not authorised to accept service, and that he would take instructions in the usual way.

25.17 Having regard to the contemporaneous documents, the Tribunal did not find that the Respondent's conduct was in any way improper such that it amounted to professional misconduct. At no stage had the Respondent stated that he was not instructed, simply that he was not instructed to accept service. His responses to questions raised by the other side had been clear as to the remit of his retainer. In the circumstances, the Tribunal found that there was no evidence to support allegation 1.7. Accordingly, allegation 1.7 was dismissed.

26. **Allegations 1.8 – the Respondent in breach of Principles 2, and 6, failed to keep (i) An undertaking dated 22 January 2018 given in respect of Client A, breached by the Respondent failing to return Client A's money to Client A by 26 January 2018; and (ii) An undertaking in respect of Client F, to hold monies received on behalf of client F until a bankruptcy petition had been dismissed, breached by transferring amounts for 'fees' to the Firm's office bank account; and (iii) An undertaking in respect of Client B to the property purchaser's solicitors to arrange to discharge a mortgage.**

The Applicant's Case

Client A

26.1 As detailed above at allegation 1.1, Client A paid in a total of £600,000.00 into the Firm's client bank account in August 2017. The Respondent, in an undertaking dated 22 January 2018, undertook to return Client A's money by 26 January 2018. The Respondent did not comply with that undertaking.

Client F

26.2 The Respondent undertook to hold monies received on behalf of Client F until a bankruptcy petition had been dismissed. On 15 April 2016 the Firm received £194,890.27 from Law Firm A. The Respondent did not comply with the undertaking as he transferred amounts for his 'fees' to his office bank account. The Respondent then used money from other clients' funds to pay the amounts due to Client F and his creditors. In total by 10 June 2016 the Firm had paid out £208,271.16 where only £194,890.27 was available making a difference of £13,380.89.

Client B

26.3 As detailed at allegation 1.4 above, Client B instructed the Firm to act in the sale of a property for £135,000.00. The sale completed on 6 September 2017. The property was subject to a mortgage. The Respondent failed to redeem a mortgage in the amount of £98,567.16. Thereafter the Respondent gave and then breached an undertaking to the property purchaser's solicitors to arrange to discharge the mortgage despite the solicitors chasing him to do so.

26.4 Mr Mulchrone submitted that by acting in breach of undertakings given by the Respondent as a solicitor, the Respondent failed to act with integrity. As a solicitor, the Respondent should have ensured that he complied with the undertakings given or, in the alternative, sought to agree release from or amendment of the undertaking.

26.5 With regards to Allegation 1.8.1, the Respondent should have ensured the safe and timely return of his client's monies in accordance with the undertaking. In the alternative, he should not have given such an undertaking had he known at that time that the funds were not available to return within the timeframe specified in the undertaking. The Respondent failed to do so and breached the undertaking.

26.6 As to Allegation 1.8.2, the Respondent failed to act with integrity in breaching the undertaking and moving client funds to his office account. The Respondent should have delayed any transfer to office account in accordance with the undertaking given.

26.7 In relation to Allegation 1.8.3, the Respondent failed to act with integrity when breaching the undertaking by failing to redeem a mortgage.

26.8 Members of the public were entitled to expect that an undertaking given by a solicitor would be properly kept and complied with. In breaching the undertakings the Respondent acted in a way so as to seriously undermine public trust in the Respondent and in the legal profession as a whole.

Dishonesty

26.9 Mr Mulchrone submitted that in breaching the undertakings, the Respondent's conduct was dishonest in that he failed to advise the recipient of the undertakings that he was unable to keep the undertaking and the reasons for that, and he failed to be open and honest about the circumstances surrounding the breaches of undertakings. Further, the breaches of undertakings were conscious and deliberate and arose due to the Respondent's misuse of client funds. As regards allegation 1.8.2, the Respondent deliberately breached the undertaking by transferring amounts for his fees to his office bank account for his own benefit.

26.10 Mr Mulchrone submitted that ordinary, decent people would consider this behaviour dishonest.

The Tribunal's Findings

26.11 The Tribunal found that the Respondent had given undertakings to Client A, Client F and in the sale of Client B's property. In the case of Client A, the Respondent did not return his monies. As regards Client F, the Respondent had failed to hold the monies on account. He had also failed to redeem the mortgage when he had promised to do so. These were all matters which the Respondent had undertaken to do, and were all matters where the Respondent had failed to comply with that undertaking.

26.12 The Tribunal found that the Respondent's conduct was in breach of the Principles as alleged. Solicitors acting with integrity did not improperly utilise client monies such that they were then unable to comply with undertakings given. Such conduct was a complete departure from the standards expected by the profession, and was a clear breach of Principle 2. In breaching the undertakings the Respondent had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services in breach of Principle 6. Members of the public expected solicitors to comply with undertakings given, and not to breach those undertakings in order to benefit themselves using client monies.

26.13 That such conduct was dishonest was plain. The Respondent knew that he had provided the undertakings and knew the import of compliance. He had knowingly and deliberately failed to comply with them for his own benefit. The Tribunal found that ordinary and decent people would consider that such conduct was dishonest.

26.14 Accordingly, the Tribunal found allegation 1.8 proved on the balance of probabilities, including that the Respondent's conduct was dishonest.

Previous Disciplinary Matters

27. None.

Mitigation

28. None.

Sanction

29. The Tribunal had regard to the Guidance Note on Sanctions (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.

30. The Tribunal found that the Respondent's misconduct was motivated by his desire to use client monies for his own purposes. It was a considered course of conduct that was pre-planned and premeditated, involving teeming and lading with client monies. The Respondent acted in breach of the trust placed in him by his other clients and third parties and used his trusted status as a solicitor to utilise client monies for his own purposes. He was solely and directly in control. It was his sole actions that had caused a significant shortfall on the client account. He was an experienced solicitor who knew that his conduct was in material breach of his obligations to protect the public and the reputation of the profession.

31. He had caused huge damage to the reputation of the profession. His clients had suffered significant harm, with a number of them having to be recompensed by the Compensation Fund. His conduct had been a complete departure from the standards expected of him by the profession and the public The Respondent's conduct was aggravated by his proven and admitted 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"."

32. His actions were premediated, calculated and repeated over a significant period of time. He had sought to conceal his wrongdoing by making excuses as regards the return or client monies and by falsely boosting the client account balance with cheques that he knew would not clear. He had displayed no insight, had not made good the shortfall and had not co-operated with the Applicant during the investigation and the proceedings.

33. The Tribunal found that the only mitigating factor was the Respondent's previously unblemished record.

34. 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 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."

35. 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 multiple findings of dishonesty, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

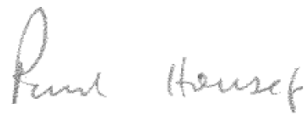
36. Mr Mulchrone made an application for costs in the sum of £63,320.48. This sum included the costs incurred in instructing enquiry agents and couriers. It also included the internal costs incurred by the SRA during its investigation of the Respondent's conduct of £21,920.48. As regards Capsticks costs, the agreed fixed fee taking into account the issues and complexity of the matter was £34,500 + VAT. A total number of just above 313 hours had been spent by Capsticks on the matter, which equated to a notional hourly rate of £110.

37. The Tribunal considered that the costs claimed were reasonable, and did not consider that there were any areas in which the costs should be reduced. The Respondent had not submitted any information as regards his means. Accordingly, the Tribunal awarded costs in the amount claimed.

Statement of Full Order

38. The Tribunal Ordered that the Respondent, RICHARD CLIVE HALLOWS, 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 £63,320.48.

Dated this 22nd day of October 2020
On behalf of the Tribunal



P S L Housego
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
22 OCT 2020