

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12101-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

MARTIN KEITH WATERS
RODNEY WILLIAM NOON

First Respondent
Second Respondent

Before:

Mr J Evans (in the chair)
Ms C Jones
Dr P Iyer

Date of Hearing: 28–29 October 2020

Appearances

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

Steve Roberts, solicitor of Richard Nelson LLP, Castle Court, Cathedral Road, Cardiff, CF11 9LJ, for the First Respondent.

The Second Respondent represented himself.

JUDGMENT

Allegations

1. The allegations against the First Respondent made by the Solicitors Regulation Authority (“SRA”) were that, while in practice as a solicitor at Arrans Solicitors Limited (“the Firm”):
 - 1.1 Between 7 April 2015 and 7 July 2015, he caused or allowed the Second Respondent to act in the matter of Client A in a building construction dispute when he knew that the Second Respondent was suspended from acting as a solicitor pursuant to an order of the Solicitors Disciplinary Tribunal (“SDT”) dated 10 March 2015, and in doing so he thereby breached any or all of Principles 2, 4, 5 and 6 of the SRA Principles 2011 (“the Principles”).
 - 1.2 He caused or allowed a cash shortage of £384,469.57 to exist in the Firm’s books of account as at 23 April 2018 in breach of all or any of Rules 1.2(c), 6 and 20.1 of the SRA Account Rules 2011 (“the Accounts Rules”) and any or all of Principles 2, 4, 6 and 10 of the Principles.
 - 1.3 Between 24 April 2018 and 16 October 2018, he failed to replace promptly and fully the above monies which had been improperly withdrawn from a client account, and thereby was in breach of Principle 7 of the Principles.
 - 1.4 On 22 January 2018, he caused or allowed an improper payment in the sum of £10,000 to be made from the Firm’s client account which resulted in a cash shortage of £10,000 in the Firm’s books of account in breach of any or all of Rules 1.2(c), 6 and 20.1 of the Accounts Rules and any or all of Principles 2, 4, 6 and 10 of the Principles.
 - 1.5 Between 23 January 2018 and 20 January 2019, he failed to replace promptly and fully the above monies which had been improperly withdrawn from a client account, and thereby was in breach of Principle 7 of the Principles.
 - 1.6 In relation to two conveyancing transactions conducted from 4 December 2017 to 26 January 2018, he failed to ensure that the Firm had effective systems to manage risks in compliance with rules made by the SRA and failed to exercise an appropriate degree of supervision and control over the Firm and its employees and thereby was in breach of Principle 8 of the Principles, and did not achieve any or all of Outcomes 7.2 and 7.8 of the SRA Code of Conduct 2011 (“the Code”).
 - 1.7 In relation to the above payment of £10,000 on 22 January 2018, he failed to ensure that the Firm had effective systems and controls to manage risks in compliance with rules made by the SRA and failed to exercise an appropriate degree of supervision and control over the Firm and its employee, Person B, and thereby was in breach of Principle 8 of the Principles and failed to achieve any or all of Outcomes 7.2 and 7.8 of the Code.
 - 1.8 Between 11 January and 27 January 2018, in his capacity as the Compliance Officer for Finance and Administration (“COFA”) at the Firm, he failed to take proper steps to ensure that he, the Firm and the Firm’s employees complied with obligations imposed on them by the Accounts Rules, in that he:

- 1.8.1 did not exercise sufficient control or oversight of Solicitor C to whom the First Respondent had given authority to operate the Firm's client and office accounts; and/or
- 1.8.2 did not record any failure to comply, or report to the SRA any material failure to comply, with the Accounts Rules as soon as reasonably practicable

and in so doing, the First Respondent thereby breached any or all of Rules 8.5(e)(i) and (iii) of the SRA Authorisation Rules 2011.

- 1.9 He failed to provide a full and complete response to a production notice dated 30 May 2018 within the deadline specified in the notice, and/or failed to provide the information requested in a letter dated 1 March 2018 promptly or at all, and was thereby in breach of Principle 7 of the Principles and did not achieve any or all of Outcomes 10.8 and 10.9 of the Code.
2. The allegations against the Second Respondent made by the SRA were that, while in practice as a Solicitor:
- 2.1 Between 7 April 2015 and 7 July 2015, he practised as a solicitor in the matter of Client A in a building construction dispute whilst he (the Second Respondent) was suspended from acting as a solicitor pursuant to an order of the SDT dated 10 March 2015, and in doing so he thereby breached any or all of Principles 2, 5 and 6 of the Principles.
- 2.2 Between 7 April 2015 and 7 July 2015, he failed to inform to his client, Client A, that he had been suspended from practice, and in failing to do so, was thereby in breach of any or all of Principles 2, 4, 5 and 6 of the Principles.
- 2.3 On 11 April 2018, he knowingly provided inaccurate information to the SRA and was thereby in breach of any or all of Principles 2, 6 and 7 of the Principles.
- 2.4 Between 20 September 2018 and 24 January 2019, he failed to inform the SRA that he was employed by Firm B, when he was subject to a condition of practice imposed on him by the SDT on 10 March 2015 requiring him to only work in employment approved by the SRA, and was thereby in breach of any or all of Principles 2, 6 and 7 of the Principles.
3. Allegations 2.2 and 2.3 above were advanced on the basis that the Second Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Second Respondent's misconduct but was not an essential ingredient in proving the allegations.

Documents

4. The Tribunal reviewed all the documents submitted by the parties, which included:
- Notice of Application dated 5 June 2020
 - Rule 12 Statement and Exhibit IWB1 dated 5 June 2020
 - First Respondent's Answer dated 20 July 2020
 - Second Respondent's Answer dated 21 June 2020
 - Applicant's Reply to the Respondents' Answers dated 28 July 2020

- Applicant's Statement of Costs dated 20 October 2020

Preliminary Matters

The Second Respondent's presence for the entirety of the proceedings

5. The Second Respondent applied to be excused from the hearing. He confirmed that he admitted all the allegations he faced. He meant no discourtesy to the Tribunal but did not think that it would be beneficial for him to remain to hear all of the matters, given that the majority of the allegations related to the First Respondent. The Applicant and First Respondent did not object. The Tribunal granted the Second Respondent's application and confirmed that he would be invited to re-join the hearing once findings had been made and sanction was being considered.

Admission of the First Respondent's witness statement out of time

6. Mr Roberts applied for the First Respondent to admit a witness statement out of time. Due to funding issues, the statement could not be prepared any earlier. The statement had been served on the Applicant. There was no prejudice to the Applicant's case in the late submission. His statement was a summary of responses provided to the Applicant both during his interview and in writing.
7. Ms Bruce confirmed that there was no objection to the admission of the statement.
8. The Tribunal considered that the statement would be of assistance and would expedite matters. The Tribunal considered that it was in the interests of justice to allow the statement to be admitted. Accordingly, the application to admit the witness statement of the First Respondent was granted.

Factual Background

9. The First Respondent was admitted to the Roll in May 2002. He was the sole manager and shareholder of the Firm, which commenced trading on 1 July 2013. The First Respondent also acted as the Compliance Officer for Legal Practice ('COLP') and COFA for the Firm throughout the period covered by the allegations.
10. The First Respondent's Practising Certificate for 2018/2019 was subject to the following conditions:
 - he is not a manager or owner of any authorised body, authorised non-SRA firm or legal services body.
 - he may not act as a Compliance Officer for Legal Practice (COLP) or Compliance Officer for Finance and Administration (COFA) for any authorised body or Head of Legal Practice (HOLP) or Head of Finance and Administration (HOFA) in any authorised non-SRA firm.
 - he does not hold or receive client money, or act as a signatory to any client account, or have the power to authorise electronic transfers from any client account. This condition shall not apply to the holding and transfer of client monies held on Arrans Solicitors Limited's client account specified by the SRA.

- he will immediately inform any (i) actual or prospective employer and (ii) any actual or prospective organisation or individual to whom he provides consultancy services, of these conditions and the reasons for their imposition.
11. The First Respondent held a current unconditional practising certificate.
 12. The Second Respondent was admitted to the Roll in July 1985. He undertook work for the Firm on a consultancy basis between 28 June 2013 and 9 October 2018.
 13. On 10 March 2015, the SDT ordered that the Second Respondent be suspended from practice for the period from 7 April to 7 July 2015, and then from 7 July 2015 to be subject to conditions of practice until further order as follows:
 - He may not practise as sole practitioner, partner of a recognised body or member of a limited liability partnership, legal disciplinary practice or alternative business structure
 - He may not hold client money
 - He may only work as a solicitor in employment approved by the SRA.
 14. The Second Respondent signed a contract of employment as a consultant solicitor with Firm B dated 20 September 2018. The Second Respondent held a current Practising Certificate with conditions, imposed by an outcome decision of the SRA dated 20 January 2020, as follows:
 - He is not a manager or owner of any authorised body.
 - Subject to the condition above, he may act as a solicitor, only as an employee where the role has first been approved by the SRA.
 - He may not undertake any form of probate work and is not responsible for any fee earner undertaking such work.
 15. Previous practising certificates held by the Second Respondent had been subject to conditions, imposed by decisions made by the SRA on 22 November 2017 and 4 April 2019.
 16. The conduct in this matter came to the attention of the SRA on 13 December 2017 when a representative of Firm F informed the SRA that in the course of acting in a negligence claim for Client A, a previous client of the Firm and the Second Respondent, they had discovered evidence to show that the Second Respondent had acted as a solicitor whilst suspended from practice between 7 April 2015 and 7 June 2015.
 17. At the material time the Firm employed one other solicitor, Solicitor C. She qualified in February 2017. There were also a number of paralegals including Person B. Person B worked for the Firm in 2014. In December 2017, Person B became a consultant. Person B left the Firm in February 2018.

18. The Firm's client accounts could be operated by either the First Respondent or Solicitor C. In addition to being the sole partner at the Firm, the First Respondent was also a consultant at Firm E. The First Respondent stated that over the material period he normally spent one half of his working week at the Firm and the other half at Firm E. In his absence the only full-time solicitor in attendance at the Firm was Solicitor C.
19. On 1 December 2017, the First Respondent was physically assaulted. He sustained injuries which required hospital treatment and a period of convalescence. He stated that he did not work for the first two weeks, and then came into work on one afternoon in the third week of December. The First Respondent has stated that by January 2018 he would be attending either the Firm or Firm E on a roughly equal basis. He did not put in place formal arrangements for the operation of the Firm if he had been taken ill or was unable to attend the Firm for any reason.
20. On 22 February 2018, a fire started at the offices of the Firm causing some damage and necessitating a relocation. The Firm has now voluntarily closed following SRA involvement.

Witnesses

21. The following witnesses provided statements and gave oral evidence:
 - Mr Waters – the First Respondent
22. The written and oral evidence of the witness 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

23. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family lives 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 all parties.

Dishonesty

24. 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.”

25. When considering dishonesty the Tribunal firstly established the actual state of the Second 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. When considering dishonesty, the Tribunal had regard to the references supplied on the Second Respondent’s behalf.

Integrity

26. 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”.

27. **Allegation 1.1 – Between 7 April 2015 and 7 July 2015, the First Respondent caused or allowed the Second Respondent to act in the matter of Client A in a building construction dispute when he knew that the Second Respondent was suspended from acting as a solicitor pursuant to an order of the SDT dated 10 March 2015, and in doing so he thereby breached any or all of Principles 2, 4, 5 and 6 of the Principles.**

The Applicant’s Case

- 27.1 In November 2014 the Firm began to act for Client A, who instructed the Second Respondent to represent her in a civil claim.
- 27.2 At a disciplinary hearing on 10 March 2015, the SDT ordered that the Second Respondent be suspended from practice from 7 April 2015 for a period of 3 months (i.e. up to and including 7 July 2015).
- 27.3 During the period of suspension, the Second Respondent carried out the following:
- He prepared and filed a Directions Questionnaire on behalf of Client A. Due to some difficulties, the Questionnaire was electronically filed three times, on 20 April, 27 April and 11 May 2015.
 - He corresponded with solicitors for the other party on 2 June 2015, serving a case summary.
 - He prepared instructions to an expert in accordance with a court order.

- He instructed counsel to represent Client A at a case management conference on 3 June 2015.
 - He visited Client A at her home to take instructions in relation to the litigation.
 - On 7 July 2015 he filed an application notice, a draft amended defence, draft order and a court fee with the County Court.
 - On 7 July 2015 he wrote to Client A in respect of the matter and in respect of costs enclosing an invoice for work done.
- 27.4 Save for that described in the letter enclosing an invoice, each of the activities detailed above amounted to the conduct of litigation (as defined by paragraph 4(1) of Schedule 2 of the Legal Services Act 2007) and was therefore a reserved legal activity. The Second Respondent was not entitled to carry out those activities because, at the relevant time, his practising certificate had been suspended.
- 27.5 In his response to an EWW letter sent by the SRA, the Second Respondent admitted that he practised as a solicitor during the period of his suspension.
- 27.6 The final hearing in Client A's case was held on 3 March 2016. Following that hearing, Client A instructed Firm F to bring a claim for negligence against the Firm.
- 27.7 On 13 December 2017, a report was made to the SRA by Firm F identifying a number of instances when the Second Respondent had continued to act for Client A during the period of his suspension.
- 27.8 The First Respondent, in a letter dated 11 July 2019, admitted failing to prevent the Second Respondent practising as a solicitor whilst suspended, but denied a lack of integrity regarding the same. The First Respondent accepted that he was aware of the Second Respondent's suspension and was aware that the Second Respondent was acting for Client A. As the sole manager and shareholder at the Firm (which Client A had instructed), the First Respondent caused or allowed the Second Respondent to act in Client A's matter.
- 27.9 The First Respondent stated that he had taken steps to take over conduct of the Second Respondent's files whilst he was suspended and that the Second Respondent was not being remunerated, that the Second Respondent was not acting on any files in the capacity of a solicitor and that the Second Respondent only provided 'administrative support' of a nature which could have been provided by an unqualified intern or paralegal. The First Respondent stated that he had mistakenly thought that this activity had not been in breach of the terms of the Second Respondent's suspension.
- 27.10 Ms Bruce submitted that he was aware that the Second Respondent had been suspended by the SDT. In allowing him to continue to act on a case, he had caused or allowed the Second Respondent to act in breach of his suspension. As the manager and only shareholder in the Firm, he bore a responsibility to ensure that the Second Respondent did not breach that order.

- 27.11 A solicitor acting with integrity would have established what activities the Second Respondent could and could not properly carry out in such a situation, and put in place systems to ensure that understanding was put into effect. Accordingly, the First Respondent breached Principle 2 of the Principles.
- 27.12 Further, it was not in the best interests of Client A or consistent with providing a proper standard of service to Client A for the First Respondent to cause or allow the Second Respondent to act on her matter in breach of his suspension in breach of Principles 4 and 5 of the Principles.
- 27.13 Additionally, public confidence in the First Respondent, in solicitors and in the provision of legal services was likely to be undermined by him causing or allowing the Second Respondent to act on Client A's matter in breach of his suspension. Accordingly, the First Respondent breached Principle 6 of the Principles.

The First Respondent's Case

- 27.14 The First Respondent admitted allegation 1.1 save that he denied that his conduct was in breach of Principle 2. Mr Roberts submitted that the First Respondent both by virtue of his admissions and in his evidence had accepted that the approach that he took as regards the Second Respondent was incorrect and that his conduct had fallen below expected standards. The First Respondent believed that he was doing the right thing in ensuring that the Second Respondent did not refer to himself as a solicitor but that he continued to undertake work for clients who knew him and of whose matters he was aware.
- 27.15 Mr Roberts submitted that the First Respondent had made a mistake, but it was an honest one. The Tribunal could properly find that the First Respondent's conduct was incompetent and manifestly so, but it was not such that it had crossed the threshold into a breach of Principle 2.

The Tribunal's Findings

- 27.16 The Tribunal noted that the facts alleged by the Applicant were not disputed. The Tribunal found that in causing or allowing the Second Respondent to act when he was suspended, the First Respondent's conduct was in breach of Principles 4, 5 and 6 as alleged. The Tribunal found that the Respondent's admissions in that regard had been properly made.
- 27.17 The Tribunal considered whether the admitted conduct was also in breach of Principle 2 as alleged. In his oral evidence, the First Respondent accepted that he was fully aware of the Second Respondent's suspension which he (the First Respondent) did not consider to be trivial. He explained that he "did not go into it enough as to what [the Second Respondent] could and could not do".
- 27.18 The First Respondent also accepted that the suspension had been put in place, in part, to protect the public and that through his actions and omissions, the First Respondent had failed to ensure public protection. The First Respondent conceded that factually the Second Respondent should not have undertaken the work that he did and that he (the First Respondent) "should have checked properly".

- 27.19 The Tribunal found that a solicitor acting with integrity would, in the circumstances, have ensured that he was fully aware of what work a suspended solicitor could properly undertake. He would then have ensured that any work undertaken did not breach that suspension. The First Respondent failed to take any action to ensure that the SDT's order, which was imposed in part to protect the public, was adhered to, despite full knowledge of the terms of the order. The Tribunal was satisfied on the balance of probabilities that the First Respondent's conduct was in breach of Principle 2.
- 27.20 Accordingly, the Tribunal found allegation 1.1 proved on the balance of probabilities, including that the First Respondent's conduct lacked integrity in breach of Principle 2.
28. **Allegation 1.2 – The First Respondent caused or allowed a cash shortage of £384,469.57 to exist in the Firm's books of account as at 23 April 2018 in breach of all or any of Rules 1.2(c), 6 and 20.1 of the Accounts Rules and any or all of Principles 2, 4, 6 and 10 of the Principles.**

The Applicant's Case

- 28.1 In December 2017, the Firm commenced acting in the sale of Property G purportedly on behalf of the seller, Client H. The sale price was £185,000. The purchase monies were received by the Firm on 19 December 2017, and the matter completed that day. The First Respondent's signature appeared on the Completion Information and Undertakings form and Land Registry form HR4 dated 15 December 2017.
- 28.2 The sale proceeds were paid out on 20 December 2017 via the Clearing House Automated Payment System ('CHAPS') as follows:
- (i) £129,007 to a name similar to that of Client H; and
 - (ii) £55,493 to a name understood to be that of Mr Client H's daughter.
- 28.3 After the payments, £500 was left in the Firm's client account. The original file for the transaction had been removed from the Firm, and the reconstituted file did not contain documentation recording who provided the Firm with the instructions and bank details for the outgoing payments. The CHAPS transmission slips did not record who had authorised the payments. The First Respondent, when asked, could not recall if it had been him, but accepted that if it had been then he had not carried out sufficient checks.
- 28.4 The payment to the name similar to Client H was rejected for an unknown reason. However, some of the money had been paid away and only £56,005.43 was returned to the Firm's client account. On 11 January 2018, two further payments were made from the account:
- (i) £8,000 in the name of Client H's wife via online payment: and
 - (ii) £48,000 in the name of Client H via CHAPS.
- 28.5 The Firm's file did not contain documentation recording who provided the Firm with instructions and bank details for the outgoing payments. Those payments were authorised by Solicitor C at the request of Person B.

- 28.6 Client H and his wife were both deceased by the time of the transaction. Therefore, the monies could not have been paid to them, nor could Client H have provided any instructions. In the circumstances the payments totalling £184,494.57 relating to Property G represented a cash shortage on the Firm's client account.
- 28.7 In December 2017, the Firm commenced acting in the sale of Property I purportedly on behalf of the seller, Client J. The sale price was £200,000. The purchase monies were received by the Firm on 25 January 2018, and the sale completed that day. The monies were paid out on 26 January 2018 via CHAPS as follows
- (i) £84,998 to a National Westminster Bank account in the name of Client J and
 - (ii) £55,000 and £60,000 in two separate amounts to one account held with Santander. Those amounts were detailed as being in the names firstly of [Client J] MIT and secondly that of Client J.
- 28.8 The Firm's file did not contain documentation recording who provided the instructions and bank details for the outgoing payments. Solicitor C authorised the payments.
- 28.9 The payments of £55,000 and £60,000 to the Santander account were rejected and returned to the Firm's client account. The amount received back was £114,956. A further payment was then made on 26 January 2018 of £114,931 in the name of Account Name K to the same Santander account as before. That payment was authorised by Solicitor C.
- 28.10 The Land Registry refused to register the property transfer. Subsequent enquiries indicated that the client identification document held by the Firm (a driving licence in the name of Client J) was forged, and the signatures of Client J on the driving licence and the transfer deed did not match. Ms Bruce submitted that in the circumstances the payments totalling £199,975 relating to Property I represented a cash shortage on the Firm's client account.
- 28.11 Although Solicitor C was able to authorise payments by members of staff under the Firm's governance arrangements, prior to authorising the payments in respect of Property G on 11 January 2019, Solicitor C had not made a CHAPS payment herself or authorised such a payment. She also had no experience of conveyancing matters.
- 28.12 In February 2018, Person B left the Firm. The First Respondent stated that she took a box of files, which included the original files for Property G and Property I with her when she left, and that she had not been authorised by him to do so.
- 28.13 Ms Bruce submitted that as a result of the above, there was a shortfall of £384,469.57 on the Firm's client accounts in breach of all or any of Rules 1.2(c), 6 and 20.1 of the Accounts Rules:
- 28.14 Rule 1.2(c) required:
- “You must comply with the Principles set out in the Handbook, and the outcomes in Chapter 7 of the SRA Code of Conduct in relation to the effective

financial management of the firm, and in particular must [...] (c) use each client's money for that client's matters only."

28.15 Rule 6 required:

"All the principals in a firm must ensure compliance with the rules by the principals themselves and by everyone employed in the firm. This duty also extends to the directors of a recognised body or licensed body which is a company, or to the members of a recognised body or licensed body which is an LLP. It also extends to the COFA of a firm (whether a manager or non-manager)."

28.16 Rule 20.1 required:

"Client money may only be withdrawn from a client account [in certain specified purposes or in specified circumstances]."

28.17 The First Respondent, in a letter to the Applicant dated 11 July 2019, admitted breaching Rules 1.2(c), 6 and 20.1 of the Accounts Rules but denied acting with a lack of integrity regarding the same. In representations made on his behalf dated 28 September 2018 it was stated that this occurred in exceptional circumstances, was unlikely to be repeated and that the conduct represented at worst a mistake with no manifest incompetence.

28.18 Ms Bruce submitted that the First Respondent allowed a cash shortage of £384,469.57 to arise in the Firm's books of account in circumstances where there had been inadequate systems for preventing such activity, and for the training and supervision of the employees involved prior to the First Respondent's absence from the Firm, and after his return.

28.19 A solicitor acting with integrity would have ensured that such systems, training and supervision had been set up rather than failing to control the actions of such employees and ignoring the risks of such activity. Accordingly, the First Respondent breached Principle 2 of the Principles.

28.20 It was not in the best interests of the Firm's clients, and in breach of Principle 4, for the First Respondent to allow a significant cash shortage to arise in the Firm's books of account in the circumstances described. By such conduct, the First Respondent failed to protect client money and assets in breach of Principle 10.

28.21 Public confidence in the First Respondent, in solicitors, and in the provision of legal services is likely to be undermined by such conduct in breach of Principle 6.

28.22 In the matters detailed above, each client's money was not used only for the purpose of each client's matter. Client money was withdrawn from the Firm's client account when none of the circumstances set out in Rule 20.1 of the Accounts Rules applied. As the principal of the Firm and the Firm's COFA, the First Respondent had a duty to ensure compliance with the Accounts Rules both by themselves and by everyone employed in the Firm, but failed to do so. Accordingly, the First Respondent breached rules 1.2(c), 6 and 20.1 of the Accounts Rules.

The First Respondent's Case

- 28.23 The Respondent admitted allegation 1.2 save that he denied that his conduct was in breach of Principle 2. Mr Roberts submitted that shortly before these matters arose, the First Respondent had suffered significant injuries. As a result, he had not been as diligent as he ordinarily would. He accepted that his conduct had fallen short, and thus had made a number of admissions. His conduct was not such that it amounted to a breach of Principle 2.
- 28.24 Mr Roberts referred the Tribunal to Newell-Austin v Solicitors Regulation Authority [2017] EWHC 411 (Admin), in which the Tribunal found that Ms Newell-Austin's conduct lacked integrity. In that matter, the Tribunal found that Ms Newell-Austin had ceded control and acquiesced in the firm's involvement in fraudulent conveyancing transactions. She had failed to properly control members of staff and had turned a blind eye to the obvious risks of her actions. The Tribunal had found that Ms Newell-Austin's conduct had lacked integrity. Further her answers were considered to lack credibility and were found to be self-serving. She had acted in complete disregard of her duty to her clients, and the sacrosanct nature of holding client money. The First Respondent's case was entirely different. He had not turned a blind eye to his obligations and considered at the time that he was doing the right thing for both the Firm and its clients.
- 28.25 Mr Roberts submitted that at the time of his admitted conduct, the First Respondent was not in full control of the Firm due to the exceptional circumstances of the attack. Whilst his conduct might have been incompetent, it was a mistake that did not give rise to a breach of Principle 2.

The Tribunal's Findings

- 28.26 The Tribunal noted that the facts alleged by the Applicant were not disputed. The Tribunal found that in causing or allowing a cash shortage of £384,469.57 to exist in the Firm's books of account the Respondent had breached Rules 1.2(c), 6 and 20.1 of the Accounts Rules and Principles 4, 6 and 10 as alleged. The Tribunal found that the Respondent's admissions in that regard had been properly made.
- 28.27 The Tribunal considered whether the admitted conduct was also in breach of Principle 2 as alleged. The Tribunal noted that in his witness statement, the First Respondent stated that Person B did not have his authority to undertake conveyancing transactions, and had he been at the Firm, any conveyance would have been undertaken by him. He also stated that he knew little or nothing about the underlying matters regarding this allegation. In his evidence the First Respondent was unable to say who he considered at the time had conduct of the matter but that it was only him and the Second Respondent who were experienced in conveyancing matters.
- 28.28 In his oral evidence the First Respondent accepted that he ought to have appointed a senior locum to look after the Firm in his absence and not to have relied on his staffing team which included a newly qualified solicitor and experienced paralegals. He trusted his staffing team and had no reason to question their integrity or honesty at the time.

- 28.29 The First Respondent stated that he had signed documents on a visit to the office as a Director's signature was required. He had not looked at the case at all, and had relied on what he had been told. He did not recall who had given him the documents to sign.
- 28.30 The Tribunal found that as a result of his conduct, the First Respondent had allowed the cash shortage to arise as alleged and admitted. The Tribunal considered that the First Respondent had wholly failed to put any systems in place in his absence to prevent such occurrences. Whilst it was accepted that the First Respondent had been through a very difficult ordeal, that did not absolve him of his regulatory responsibilities. The Tribunal found that a solicitor acting with integrity would not have left his Firm without any proper supervision or without appropriate systems in place as the First Respondent had done.
- 28.31 Accordingly, the Tribunal found allegation 1.2 proved on the balance of probabilities, including that the First Respondent's conduct lacked integrity in breach of Principle 2.
29. **Allegation 1.3 – Between 24 April 2018 and 16 October 2018, the First Respondent failed to replace promptly and fully the monies which had been improperly withdrawn from a client account, and thereby was in breach of Principle 7 of the Principles.**

The Applicant's Case

- 29.1 Between 24 April 2018 and 16 October 2018, the First Respondent failed to replace promptly and fully the shortage detailed at allegation 1.2 above.
- 29.2 Rule 7 of the Accounts Rules provided:
- “7.1 Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account.
- 7.2 In a private practice, the duty to remedy breaches rests not only on the person causing the breach, but also on all the principals in the firm. This duty extends to replacing missing client money from the principals' own resources, even if the money has been misappropriated by an employee or another principal, and whether or not a claim is subsequently made on the firm's insurance or the Compensation Fund.”
- 29.3 The First Respondent, in a letter to the Applicant dated 11 July 2019, admitted this conduct. In representations made on his behalf dated 28 September 2018 it was stated that this occurred in exceptional circumstances, was unlikely to be repeated and that the conduct represented at worst a mistake with no manifest incompetence.
- 29.4 Ms Bruce submitted that the conduct alleged amounted to a breach by the First Respondent of the requirement to behave in a way which complied with his legal and regulatory obligations.

- 29.5 Rule 7 of the Accounts Rules required the First Respondent to replace the shortage which had arisen in the Firm's books of account promptly. The First Respondent failed to do so over a period of some six months. Accordingly, the First Respondent breached Principle 7 of the Principles.

The First Respondent's Case

- 29.6 The First Respondent admitted allegation 1.3

The Tribunal's Findings

- 29.7 The Tribunal found allegation 1.3 proved on the facts and the evidence. The Tribunal found the Respondent's admission was properly made.
30. **Allegation 1.4 – On 22 January 2018, the First Respondent caused or allowed an improper payment in the sum of £10,000 to be made from the Firm's client account which resulted in a cash shortage of £10,000 in the Firm's books of account in breach of any or all of Rules 1.2(c), 6 and 20.1 of the Accounts Rules and any or all of Principles 2, 4, 6 and 10 of the Principles.**

The Applicant's Case

- 30.1 The Firm acted for Client L in connection with a personal injury claim. Person B was the file handler. On the conclusion of the claim, the third-party insurance company had made three payments of:
- £10,000 on 22 January 2018
 - £5,000 on 5 February 2018
 - £2,500 on 14 February 2018
- 30.2 Client L reported that he had received a cheque for £5,000 direct from the insurance company. He also reported that he had received a cheque for £2,500 from the Firm. He denied however receiving £10,000 either from the insurance company or the Firm.
- 30.3 The records showed that, on 25 January 2018, the Firm had received a cheque in the sum of £10,000 from the insurance company which it had banked. On 29 January 2018, the Firm made a BACS transfer of £10,000 to an account in the name of Client L, using account details provided by Person B. Client L stated that the account was not connected to him.
- 30.4 As a result of the above, there was a shortfall of £10,000 on the Firm's client accounts in breach of all or any of Rules 1.2(c), 6 and 20.1 of the Accounts Rules.
- 30.5 On 9 January 2019, the First Respondent reported to the SRA details of the complaint made against him by Client L. In his letter of 11 July 2019, the First Respondent denied any misconduct as he doubted the legitimacy of the complaint by Client L. He stated that if investigations revealed that the funds had indeed been diverted fraudulently, then he would admit the alleged breaches.

- 30.6 Ms Bruce submitted that in allowing a cash shortage of £10,000 to arise in the Firm's books of account in circumstances where there had been inadequate systems for preventing such activity, and for the training and supervision of the employees involved prior to the First Respondent's absence from the Firm, and after his return, the First Respondent had failed to act with integrity. A solicitor acting with integrity would have ensured that such systems, training and supervision had been set up rather than failing to control the actions of such employees and ignoring the risks of such activity.
- 30.7 Further, it was not in the best interests of the Firm's clients for the First Respondent to allow a cash shortage to arise in the Firm's books of account in the circumstances described. In doing so, the First Respondent was in breach of Principle 4. By such conduct, the First Respondent failed to protect client money and assets in breach of Principle 10.
- 30.8 Public confidence in the First Respondent, in solicitors, and in the provision of legal services was likely to be undermined by such conduct in breach of Principle 6.
- 30.9 In addition, the client's money was not used only for the purpose of that client's matter. Client money was withdrawn from the Firm's client account when none of the circumstances set out in Rule 20.1 of the Accounts Rules applied. As the principal of the Firm and the Firm's COFA, the First Respondent had a duty to ensure compliance with the Accounts Rules both by themselves and by everyone employed in the firm, but failed to do so. Accordingly, the First Respondent breached rules 1.2(c), 6 and 20.1 of the Accounts Rules.

The First Respondent's Case

- 30.10 The First Respondent denied allegation 1.4. The First Respondent did not accept that the payment on 22nd January 2018 was made improperly and believed the claims by Client L that he had not received the sum of £10,000 were false.
- 30.11 Client L was known to Person B. The First Respondent believed that they had colluded to make a fraudulent claim. The First Respondent noted that despite raising questions of the authenticity of the claims of Client L to the Applicant, the Applicant had provided no evidence from Client L as to the authenticity of his claim. Further, Client L had instructed other solicitors. No application had been made to the Firm's insurers or to the Compensation Fund. Nor had Client L's solicitors continued to pursue those monies.
- 30.12 Mr Roberts submitted that the Applicant had failed to prove its case. The First Respondent had informed the Applicant that he did not accept that the payment had been made in error, however the Applicant had not provided any witness evidence from Client L. Client L had not reported the matter to the police or to the Firm's insurers. Nor had Client L's new solicitors raised any issue as regards the £10,000. Mr Roberts submitted that had the monies been outstanding, Client L would not have ceased contacting the Firm until the monies were paid. Further, he would have reported the matter as suggested in the 7 December 2019 letter.

The Tribunal's Findings

- 30.13 The Tribunal noted that the evidence upon which the Applicant relied was a letter of 17 August 2018, in which the writer stated that he was acting on behalf of Client L. The letter stated that Client L had not received the £10,000 payment and asked that the Firm look into the matter urgently. The Applicant also relied on a handwritten letter dated 7 December 2018 in response to a letter from the Firm dated 6 September 2018. In that letter Client L stated that the account number that the money was paid to did not relate to him, and that if he did not receive the £10,000 payment within the next 7 days, he would report the matter to the police and the SRA.
- 30.14 The Tribunal noted that no such report had been made. Ms Bruce confirmed that the Applicant had attempted to contact Client L with a view to obtaining a witness statement, however, no statement had been obtained.
- 30.15 The Tribunal considered that the Applicant had failed to provide sufficient evidence to show that Client L had not received the monies, or that the Firm had paid the monies into the incorrect account. No details were provided as regards the account the monies were paid into. Similarly, no details were provided in relation to Client L's account. The Tribunal found that in the circumstances, the Applicant had failed to prove that the Respondent had caused or allowed the improper payment as alleged.
- 30.16 Accordingly, the Tribunal found allegation 1.4 not proved and dismissed that allegation.
31. **Allegation 1.5 – Between 23 January 2018 and 20 January 2019, he failed to replace promptly and fully the above monies which had been improperly withdrawn from a client account, and thereby was in breach of Principle 7 of the Principles.**

The Applicant's Case

- 31.1 The First Respondent failed to replace promptly and fully the above monies. On 21 January 2019 (during the course of the Applicant's investigation) the First Respondent replaced the £10,000 client account shortage in respect of Client L's matter.
- 31.2 Ms Bruce submitted that the conduct alleged amounted to a breach by the First Respondent of the requirement to behave in a way which complies with his legal and regulatory obligations.
- 31.3 In addition, Rule 7 of the Accounts Rules required the First Respondent to replace the shortage which had arisen in the Firm's books of account promptly. The First Respondent failed to do so for almost exactly one year.
- 31.4 Accordingly, the First Respondent breached Principle 7 of the Principles.

The First Respondent's Case

- 31.5 For the reasons detailed at allegation 1.4, the First Respondent denied allegation 1.5.

The Tribunal's Findings

- 31.6 The Tribunal repeated its findings at allegation 1.4 above. Given those findings, the Tribunal found that allegation 1.5 was not proved. Accordingly, allegation 1.5 was dismissed.
32. **Allegation 1.6 - In relation to two conveyancing transactions conducted from 4 December 2017 to 26 January 2018, the First Respondent failed to ensure that the Firm had effective systems to manage risks in compliance with rules made by the SRA and failed to exercise an appropriate degree of supervision and control over the Firm and its employees and thereby was in breach of Principle 8 of the Principles, and did not achieve any or all of Outcomes 7.2 and 7.8 of the Code.**

The Applicant's Case

- 32.1 The Applicant repeated the facts in relation to Properties G and I detailed at allegation 1.2 above. Those matters, it was submitted, demonstrated the First Respondent's failure to ensure that the Firm had effective systems to manage risks in compliance with rules made by the SRA and failed to exercise an appropriate degree of supervision and control over the Firm and its employees.
- 32.2 In the transactions referred to, substantial sums were paid out of the Firm's client account to unknown parties. To the extent that the person who authorised the payments was known, those payments were authorised by Solicitor C. Although she was able to authorise payments by members of staff under the Firm's governance arrangements, prior to authorising the payments in respect of Property G, she had not made a CHAPS payment herself or authorised such a payment. Further, Solicitor C also had no experience of conveyancing matters. The payments led to a shortfall of £384,469.57 on the Firm's client account.
- 32.3 The First Respondent was the Firm's COLP and COFA. He was also the sole manager and shareholder in the Firm. By virtue of his role and seniority he had an obligation to ensure that the Firm had effective systems to manage risks in compliance with rules made by the SRA and to exercise an appropriate degree of supervision and control over the Firm and its employees.
- 32.4 Ms Bruce submitted that the Firm's systems, and the First Respondent's supervision and control of the Firm and its employees, were ineffective and led to the circumstances described. Accordingly, the First Respondent breached Principle 8 of the Principles.
- 32.5 His conduct also amounted to a failure by the First Respondent of the requirement to ensure that there were effective systems and controls in place to achieve and comply with all the relevant rules, principles, outcomes and other requirements upon him and his Firm, and to supervise clients' matters. Accordingly, the First Respondent failed to achieve Outcomes 7.2 and 7.8 of the Code.

The First Respondent's Case

- 32.6 The First Respondent admitted allegation 1.6.

The Tribunal's Findings

- 32.7 The Tribunal found allegation 1.6 proved on the facts and the evidence. The Tribunal found the First Respondent's admission to be properly made.
33. **Allegation 1.7 - In relation to the above payment of £10,000 on 22 January 2018, he failed to ensure that the Firm had effective systems and controls to manage risks in compliance with rules made by the SRA and failed to exercise an appropriate degree of supervision and control over the Firm and its employee, Person B, and thereby was in breach of Principle 8 of the Principles and failed to achieve any or all of Outcomes 7.2 and 7.8 of the Code.**

The Applicant's Case

- 33.1 The Applicant repeated its submissions at allegation 1.4 above. In the circumstances the First Respondent failed to ensure that the Firm had effective systems to manage risks in compliance with rules made by the SRA and failed to exercise an appropriate degree of supervision and control over the firm and its employees.
- 33.2 Ms Bruce submitted that the First Respondent's conduct amounted to a breach of Principle 8, as he had failed to ensure that the Firm had effective systems to manage risks in compliance with rules made by the SRA and failed to exercise an appropriate degree of supervision and control over the firm and its employees.
- 33.3 The sum of £10,000 was paid out of the Firm's client account to an unknown party. That payment had led to a shortfall of £10,000 on the Firm's client account, and had been made by Person B who was a paralegal at the Firm
- 33.4 The First Respondent was the Firm's COLP and COFA. He was also the sole manager and shareholder in the Firm. By virtue of his role and seniority he had an obligation to ensure that the Firm had effective systems to manage risks in compliance with rules made by the SRA and to exercise an appropriate degree of supervision and control over the Firm and its employees. The Firm's systems, and the First Respondent's supervision and control of the Firm and its employees, were ineffective and led to the circumstances described.
- 33.5 His conduct also amounted to a failure by the First Respondent of the requirement to ensure that there were effective systems and controls in place to achieve and comply with all the relevant rules, principles, outcomes and other requirements upon him and his Firm, and to supervise clients' matters.
- 33.6 Accordingly, the First Respondent breached Principle 8 and failed to achieve Outcomes 7.2 and 7.8 of the Code.

The First Respondent's Case

- 33.7 For the reasons detailed at allegation 1.4, the First Respondent denied allegation 1.7.

The Tribunal's Findings

- 33.8 The Tribunal repeated its findings at allegation 1.4 above. Given those findings, the Tribunal found that allegation 1.7 was not proved. Accordingly, allegation 1.7 was dismissed.
34. **Allegation 1.8 - Between 11 January and 27 January 2018, in his capacity as the COFA at the Firm, the First Respondent failed to take proper steps to ensure that he, the Firm and the Firm's employees complied with obligations imposed on them by the Accounts Rules, in that he: (1.8.1) did not exercise sufficient control or oversight of Solicitor C to whom the First Respondent had given authority to operate the Firm's client and office accounts; and/or (1.8.2) did not record any failure to comply, or report to the SRA any material failure to comply, with the Accounts Rules as soon as reasonably practicable; and in so doing, the First Respondent thereby breached any or all of Rules 8.5(e)(i) and (iii) of the SRA Authorisation Rules 2011.**

The Applicant's Case

- 34.1 Ms Bruce relied on the submissions made at allegation 1.2 above. Between 11 January and 27 January 2018, in his capacity as the COFA at the Firm, the First Respondent failed to take all reasonable steps to ensure that he, the Firm and the Firm's employees complied with obligations imposed on them by the Accounts Rules in that he:
- did not exercise sufficient control or oversight of Solicitor C to whom the First Respondent had given authority to operate the Firm's client and office accounts; and/or
 - did not record any failure to comply, or report to the SRA any material failure to comply, with the Accounts Rules as soon as reasonably practicable.
- 34.2 Authorisation Rule 8.5(e)(i) required:
- “The COFA of an authorised body must take all reasonable steps to (A) ensure that the body and its managers or the sole practitioner, and its employees comply with any obligation imposed upon them under the SRA Accounts Rules; (B) record any failure so to comply and make such records available to the SRA on request.”
- 34.3 Authorisation Rule 8.5(e)(iii) required:
- “The COFA of an authorised body must, in the case of a recognised body or recognised sole practice, as soon as reasonably practicable, report to the SRA any material failure so to comply (a failure may be material either taken on its own or as part of a pattern of failure to comply).”
- 34.4 In his letter of 11 July 2019, the First Respondent admitted breaching Rules 8.5(e)(i) and (iii) of the 2011 Authorisation Rules.

The First Respondent's Case

34.5 The First Respondent admitted allegation 1.8.

The Tribunal's Findings

34.6 The Tribunal found allegation 1.8 proved on the facts and the evidence. The Tribunal found the First Respondent's admission to be properly made.

35. **Allegation 1.9 – The First Respondent failed to provide a full and complete response to a production notice dated 30 May 2018 within the deadline specified in the notice, and/or failed to provide the information requested in a letter dated 1 March 2018 promptly or at all, and was thereby in breach of Principle 7 of the Principles and did not achieve any or all of Outcomes 10.8 and 10.9 of the Code.**

The Applicant's Case

35.1 On 1 March 2018, the SRA sent a letter to the First Respondent [IWB1 p7-8] asking him to provide information to the SRA relating to:

- Details of legal work carried out by the Second Respondent during the period of his suspension
- The First Respondent's knowledge of the Second Respondent's suspension and his activities during his suspensions
- Details of the systems in place to prevent the Second Respondent carrying out legal work during his suspension
- Details of the remuneration paid to the Second Respondent during his suspension.

35.2 The period of time for the First Respondent to provide that information was eventually extended at his request until 11 April 2018. The First Respondent provided a response on 11 April 2018.

35.3 On 31 May 2018, the Applicant sent the First Respondent a notice under s44B Solicitors Act 1974 dated 30 May 2018 requiring the production of documents and information as specified in that notice. The notice requested the following documents and information:

- details of all payments to the Second Respondent from the Firm from 7 April 2015 to 31 December 2015, to include the amount paid and any corresponding invoices to show the work being remunerated
- office records or calendar entries (physical or electronic) to show all instances that the Second Respondent attended the Firm's offices between 7 April 2015 and 7 July 2015, if available
- all emails sent to and from the Second Respondent's Firm email address between 7 April 2015 and 7 July 2015.

- 35.4 The period of time for the First Respondent to respond to that Notice was eventually extended at his request until 21 June 2018. The First Respondent failed to provide a full and complete response to the production notice dated 30 May 2018 within the extended deadline.
- 35.5 The First Respondent eventually responded to the Production Notice dated 30 May 2018 on 18 July 2018 stating (a) that he would provide the payment records shortly, (b) that there was no record of the Second Respondent's office attendances and that the Second Respondent was compiling one, and (c) that the First Respondent believed that the provision of emails sent from the Second Respondent's email account (which ended @aaronssolicitors.co.uk) would breach an undertaking given to the High Court (relating to a dispute with a similarly named firm of solicitors) that the Firm and the First Respondent would not use any email address containing the word Aarons in relation to the provision of legal services.
- 35.6 In his letter of 19 March 2019, the First Respondent admitted that he had not provided the full information requested and had on occasion been less than prompt. In representations made on his behalf dated 28 September 2018, it was stated that the First Respondent had given every assistance he could to the SRA.
- 35.7 Ms Bruce submitted that the First Respondent's conduct amounted to a breach by him of the requirement to comply with his legal and regulatory obligations and to deal with his regulators and ombudsmen in an open, timely and co-operative manner in breach of Principle 7. Further, in failing to provide the information requested in the SRA's letter of 1 March 2018, and the notice of 30 May 2018, the First Respondent had failed to achieve Outcomes 10.8 and 10.9 of the Code.

The First Respondent's Case

- 35.8 The First Respondent admitted allegation 1.9.

The Tribunal's Findings

- 35.9 The Tribunal found allegation 1.9 proved on the facts and the evidence. The Tribunal found the First Respondent's admission to be properly made.
36. **Allegation 2.1 – Between 7 April 2015 and 7 July 2015, the Second Respondent practised as a solicitor in the matter of Client A in a building construction dispute whilst he (the Second Respondent) was suspended from acting as a solicitor pursuant to an order of the Solicitors Disciplinary Tribunal dated 10 March 2015, and in doing so he thereby breached any or all of Principles 2, 5 and 6 of the Principles.**

The Applicant's Case

- 36.1 Ms Bruce repeated the facts and submissions detailed at allegation 1.1 above.
- 36.2 The Second Respondent knowingly acted as a solicitor in respect of Client A's case whilst suspended. Not only did he carry out work capable of being covered by the terms of the suspension (being any clerical or other work capable of being carried out by a

solicitor) but he engaged in the conduct of litigation acting as a solicitor: filing documents, corresponding with the other party, taking instructions etc. A solicitor acting with integrity would not have done so in the circumstances. Accordingly, the Second Respondent breached Principle 2 of the Principles.

- 36.3 Further, it was not consistent with providing a proper standard of service to Client A for the Second Respondent to act on her matter in breach of his suspension. Such conduct was in breach of Principle 5 of the Principles.
- 36.4 The Second Respondent's conduct also amounted to a breach by him of the requirement to behave in a way that maintained the trust the public places in him and in the provision of legal services. Public confidence in the Second Respondent, in solicitors and in the provision of legal services was likely to be undermined by him acting on Client A's matter in breach of his suspension in breach of Principle 6.

The Second Respondent's Case

- 36.5 The Second Respondent admitted allegation 2.1.

The Tribunal's Findings

- 36.6 The Tribunal found allegation 2.1 proved on the facts and the evidence. The Tribunal found the Second Respondent's admission to be properly made.
37. **Allegation 2.2 – Between 7 April 2015 and 7 July 2015, he failed to inform to his client, Client A, that he had been suspended from practice, and in failing to do so, was thereby in breach of any or all of Principles 2, 4, 5 and 6 of the Principles.**

The Applicant's Case

- 37.1 Ms Bruce repeated the facts and submissions detailed at allegation 1.1 above. It was submitted that there was no evidence that Client A was informed by the Second Respondent as to his suspended status. In fact there was positive evidence to suggest that Client A was not informed. Client A and her father did not discover that the Second Respondent was suspended until after he had ceased acting for her.
- 37.2 The Second Respondent failed to advise his client as to his suspended status, deliberately preventing her from ensuring that matters were dealt with by other members of the Firm, or choosing alternate representation. A solicitor acting with integrity would have so advised his client, particularly in light of the Second Respondent's decision to continue acting in breach of the suspension order. Accordingly, the Second Respondent breached Principle 2 of the Principles.
- 37.3 Further, it was neither in the best interests of Client A nor consistent with providing a proper standard of service to Client A for the Second Respondent to fail to advise her as to his suspended status, deliberately preventing her from ensuring that matters were dealt with by other members of the Firm or choosing alternative representation. Accordingly, the Second Respondent breached Principles 4 and 5 of the Principles.

- 37.4 His conduct also amounted to a breach by the Second Respondent of the requirement to behave in a way that maintains the trust the public places in him and in the provision of legal services. Public confidence in the Second Respondent, in solicitors and in the provision of legal services is likely to be undermined by the Second Respondent failing to advise his client as to his suspended status, in breach of Principle 6.

Dishonesty

- 37.5 The Second Respondent was an experienced solicitor of over 30 years' standing. He was aware that, during the period 7 April 2015 to 7 July 2015, he was suspended from practising as a solicitor. He knew that the fact of his suspension was material and that to withhold the fact of his suspension from his client was to prevent her from ensuring that matters were dealt with by other members of the firm, or choosing alternate representation. Ordinary, decent people would consider this behaviour dishonest.

The Second Respondent's Case

- 37.6 The Second Respondent admitted allegation 2.2, including that his conduct was dishonest.

The Tribunal's Findings

- 37.7 The Tribunal found allegation 2.2 proved on the facts and the evidence, including that the Second Respondent's conduct had been dishonest. The Tribunal found the Respondent's admission was properly made.
38. **Allegation 2.3 – On 11 April 2018, he knowingly provided inaccurate information to the SRA and was thereby in breach of any or all of Principles 2, 6 and 7 of the Principles.**

The Applicant's Case

- 38.1 Ms Bruce repeated the facts and submissions detailed at allegation 1.1 above. Ms Bruce also relied upon the witness statement provided by Client A's father, and the file of correspondence and paperwork in relation to Client A's case.
- 38.2 In his letter of 11 April 2018, the Second Respondent stated that he carried out purely unpaid clerical or administrative tasks in relation to Client A's case (but including the filing of the directions questionnaire on 20 April 2015) when, in fact, he had carried out reserved legal activities. He further stated that the Firm had instructed counsel to conduct the hearing on 3 June 2015 when, in fact, he had instructed Counsel.
- 38.3 The Second Respondent also stated that he had visited Client A at her home on 5 June 2015 but only to pass on details of the Court timetable when, in fact, he had visited Client A at her home to take instructions in relation to the litigation.
- 38.4 Accordingly, the details provided by the Second Respondent to the Applicant were inaccurate.

- 38.5 Ms Bruce submitted that the Second Respondent provided inaccurate information as to the nature of the activity that he engaged in whilst suspended. A solicitor acting with integrity would have ensured that he provided full and accurate information as to such activity in the circumstances. Accordingly, the Second Respondent breached Principle 2 of the Principles.
- 38.6 Public confidence in the Second Respondent, in solicitors and in the provision of legal services was likely to be undermined by the Second Respondent providing inaccurate information to his regulator. Accordingly, the Second Respondent breached Principle 6 of the Principles.
- 38.7 Further, by providing inaccurate information to the SRA, the Second Respondent failed to comply with his regulatory obligations and deal with his regulatory body in an open, timely and co-operative manner, in breach of Principle 7.

Dishonesty

- 38.8 Ms Bruce submitted that the Second Respondent was aware of the activities he had carried out in relation to Client A's case. However, in his letter to the SRA dated 1 April 2018 he stated that he had carried out purely unpaid clerical or administrative tasks in relation to Client A's case (but including the filing of the directions questionnaire on 20 April 2015).
- 38.9 The Second Respondent was an experienced solicitor of over 30 years' standing. He knew that the activities which he had carried out in relation to Client A's case were not purely clerical; and that to provide knowingly inaccurate information to his regulator, minimising his actions whilst subject to a period of suspension, was to mislead them deliberately on an important subject, namely whether and to what extent he had complied with orders regarding his ability to practice. Ordinary, decent people would again consider this behaviour dishonest. Accordingly, the Second Respondent's conduct was dishonest.

The Second Respondent's Case

- 38.10 The Second Respondent admitted allegation 2.3 including that his conduct was dishonest.

The Tribunal's Findings

- 38.11 The Tribunal found allegation 2.3 proved on the facts and the evidence, including that the Second Respondent's conduct had been dishonest. The Tribunal found the Respondent's admission was properly made.
39. **Allegation 2.4 – Between 20 September 2018 and 24 January 2019, he failed to inform the SRA that he was employed by Firm B, when he was subject to a condition of practice imposed on him by the SDT on 10 March 2015 requiring him to only work in employment approved by the SRA, and was thereby in breach of any or all of Principles 2, 6 and 7 of the Principles.**

The Applicant's Case

- 39.1 Ms Bruce submitted that there was no evidence that the SRA was informed by the Second Respondent as to his new employment or that the SRA had given approval to the Second Respondent as to his new employment.
- 39.2 The Second Respondent failed to inform the SRA of the new employment engaged in by him and failed to obtain approval from the SRA as to his new employment, contrary to the clear terms of the order imposed on him by the SDT as to the requirements upon him following his suspension. A solicitor acting with integrity would have been clear as to the individual requirements upon him and ensured that he complied with them. Accordingly, the Second Respondent breached Principle 2 of the Principles.
- 39.3 Public confidence in the Second Respondent, in solicitors and in the provision of legal services is likely to be undermined by the Second Respondent failing to comply with an order made against by the SDT, in breach of Principle 6.
- 39.4 By failing to provide information to the SRA in accordance with that order, the Second Respondent failed to comply with his regulatory obligations and deal with his regulatory body in an open, timely and co-operative manner, in breach of Principle 7.

The Second Respondent's Case

- 39.5 The Second Respondent admitted allegation 2.4.

The Tribunal's Findings

- 39.6 The Tribunal found allegation 2.4 proved on the facts and the evidence. The Tribunal found the Second Respondent's admission to be properly made.

Previous Disciplinary Matters

40. There were no previous matters before the Tribunal in relation to the First Respondent.
41. There were two previous matters before the Tribunal for the Second Respondent:
- On 10 March 2015 (Case No 11264-2014) the Second Respondent admitted that he had (i) failed to co-operate with investigations by the Office for the Legal Ombudsman; (ii) failed to obtain authorisation as a Recognised Sole Practitioner and/or acted as a sole practitioner in breach of Practising Certificate conditions; and (iii) failed to deliver an Accountant's report for his Firm and a final report of his Firm. The Second Respondent was made subject to the sanction detailed at paragraph 13 above.
 - On 26 January 2012 (Case No 10696-2011) the Tribunal found that the Second Respondent had (i) failed to co-operate with the SRA in the course of an investigation; (ii) transferred or withdrawn money from client account in excess of the amount held on behalf of the particular client; (iii) failed to carry out client account reconciliations at least once every 5 weeks; (iv) failed to remedy breach of the Accounts Rules promptly on discovery; (v) failed to carry out instructions of

clients diligently and promptly and failed to deal with communications relating to client matters; and (vi) had failed to deal in an open prompt or co-operative way with the Legal Complaints Service and/or the SRA. The Second Respondent was made subject to a financial penalty in the sum of £9,000 and was ordered to pay costs in the sum of £13,000.

Mitigation

The First Respondent

42. Mr Roberts submitted that the First Respondent was not motivated to commit misconduct, rather his misconduct occurred in exceptional circumstances. His actions were not planned. Following his attack he had little time to put things in place as regards the management of the Firm. The First Respondent accepted that the measures he had put in place were insufficient. He was a sole practitioner and was in direct control of the circumstances. He had also breached the trust placed in him.
43. He had caused harm to the conveyancing clients who must have suffered distress. Mr Roberts submitted that they were not caused any financial harm. Whilst the First Respondent had not replaced the shortage promptly, he had, by October 2019, replaced the entirety of the shortage on the client account. Once he became aware of the shortage, he ensured that monies that were due to the Firm, and ultimately to him as a sole practitioner, were applied to the client account to reduce the deficit. He also borrowed money from his personal acquaintances to ensure that the monies were fully replaced. Mr Roberts submitted that the harm caused to the reputation of the profession was significant, but was mitigated in circumstances where the First Respondent had not set out to commit misconduct, had been the victim of an attack around the time of the misconduct and had fully rectified the shortage on the client account.
44. There were, it was submitted, very few aggravating features. The First Respondent ought to have known that his conduct was in breach of his obligation to protect the public and the reputation of the profession. The First Respondent's misconduct had impacted upon his clients, but not financially.
45. In mitigation, it was submitted that the First Respondent's misconduct had arisen, in part, from the deception of Person B, whose conduct had been found to be dishonest in other proceedings. He had rectified the shortfall as quickly as he could and at great personal cost. It was a one off and was of brief duration. The First Respondent had demonstrated insight into his conduct. He had admitted all the matters found proved (save for the breaches of Principle 2). He had also made full and frank admissions during his interview, in response to the EWW letter, and in his Answer to the Tribunal.
46. Mr Roberts submitted that the purpose of sanction was (1) punishment, (2) to prevent repetition and (3) to protect the reputation of the profession. The First Respondent, it was submitted had already been punished; he had lost his livelihood with the closure of the Firm, he had suffered financial loss and he had lost his good character. There was no longer any opportunity for the First Respondent to repeat the misconduct. He was subject to conditions on his practice which prevented a repeat of the conduct that occurred by virtue of his role as a sole principal. As regards the reputation of the

profession, whilst his conduct had caused harm, any harm was significantly mitigated by his replacement of the shortage.

47. Mr Roberts submitted that in all the circumstances, restrictions on the First Respondent's practice was the appropriate and proportionate sanction. If the Tribunal considered that this did not adequately reflect the seriousness of the First Respondent's conduct, the Tribunal should impose a suspended suspension. The mitigating circumstances and his lesser culpability due to his misconduct arising from omissions meant that there was no need to remove the First Respondent from the profession.

The Second Respondent

48. The Second Respondent submitted that he did not seek to persuade the Tribunal that exceptional circumstances existed such that the ultimate sanction should not be imposed. He had admitted all the matters he faced, and he did not seek to resile from those admissions. The Second Respondent submitted that his misconduct was the result of a serious error of judgement on his part. Such an error had consequences. Prior to the proceedings, the Second Respondent had indicated to the Applicant that he was prepared to depart from the profession voluntarily.
49. The Second Respondent explained that he had not set out to deliberately flaunt the SDT's order. Rather, he was extremely grateful for the opportunity afforded to him to continue in practice. He was sorry that he had been unable to take advantage of that opportunity. What had started out as the Second Respondent trying to help his colleagues whilst suspended had gone wrong; the Second Respondent had gone too far and had done too much. This had not been motivated by personal gain; the Second Respondent had not earned anything for the work he undertook. On the contrary, given his inability to represent his client, he had paid for Counsel to represent his client using his own funds which he knew would not be reimbursed. The Second Respondent submitted that it remained the case that whilst the profession offered a lot of privileges, those privileges came with responsibilities and consequences for misconduct.
50. As regards allegation 2.4, the Second Respondent submitted that he had not taken a cavalier attitude to the conditions. The Firm was unable to renew its professional indemnity insurance and was faced with having to close in short order. The Second Respondent's files were being transferred, with client consent, to other solicitors. The Second Respondent provided a copy of his practising certificate to the new firm, however the requirement regarding permission from the Applicant for his employment was not endorsed on his practising certificate. The Second Respondent was concerned to ensure that his clients' best interests were protected. He forgot about the need for him to obtain permission. His misconduct in that regard was not deliberate.
51. The Second Respondent apologised to both the Tribunal and to Client A, who, it was accepted, was not aware of his status. Client A was entitled to expect better of the Second Respondent.

Sanction

52. The Tribunal had regard to the Guidance Note on Sanctions (7th Edition). 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.

The First Respondent

53. The Tribunal agreed, in the main, with the submissions made by Mr Roberts. It was determined that the First Respondent's misconduct was the result of omissions rather than positive acts. The Tribunal considered that the First Respondent's culpability was high. It did not accept that as the First Respondent was less culpable due to his misconduct arising as a result of omission. Nor did the Tribunal accept that the entirety of the First Respondent's misconduct arose in the exceptional circumstances of his attack. Allegation 1.1 had arisen over two years before the First Respondent was the victim of an attack. The Tribunal found that the First Respondent had made no effort to ensure that the Second Respondent complied with the terms of his suspension, notwithstanding his knowledge, and acceptance in evidence, that the suspension was imposed, in part, to protect the public. This, it was determined, was a serious failing.
54. Further, the First Respondent had abdicated his regulatory responsibilities. He was the sole principal and COFA of the Firm, yet he allowed the Firm to continue to operate with no proper supervision, and no proper systems in place. The Tribunal found, as had been submitted, that the First Respondent had caused significant harm, both to the clients and to the reputation of the profession. The Tribunal did not accept that the First Respondent's misconduct was a single episode of brief duration. His failings as regards allegation 1.1 had spanned the entirety of the term of suspension. Further, the shortage on client account had arisen in December 2017 and was not rectified in full until October 2019.
55. The Tribunal considered the lesser sanctions of a Reprimand or a financial penalty. The Tribunal found that such sanctions did not adequately reflect the seriousness of the First Respondent's misconduct. The Tribunal also determined that a restriction order alone was not sufficient to protect the public and the reputation of the profession. The cumulative seriousness of the First Respondent's misconduct was such that there was a need to protect both the public and the reputation of the profession from future harm by the First Respondent. The Tribunal determined that a suspension together with restrictions on the First Respondent's practice would provide adequate protection for the public and the reputation of the profession. The Tribunal did not consider that the protection of the public or the reputation of the profession required striking the First Respondent from the roll. The Tribunal determined that suspending the First Respondent from practice for a period of 6 months, together with preventing him from (i) practising on his own account, (ii) undertaking compliance roles, and (iii) holding client money (save with permission from the SRA), was the appropriate and proportionate sanction in all the circumstances.

The Second Respondent

56. The Tribunal did not find that the Second Respondent was financially motivated in the commission of his misconduct. It considered that the Second Respondent's failure to ensure compliance with the suspension order was guided by his loyalty to the Firm and to his clients. The Tribunal considered that the Second Respondent had paid little

regard to what was a serious sanction and had placed his loyalty above his regulatory responsibilities. He had breached the trust placed in him by his client, whom he had not informed of his status. He was an experienced solicitor and was directly in control of the circumstances that gave rise to his misconduct.

57. The Second Respondent's conduct had caused significant harm both to his client and to the reputation of the profession. The Tribunal noted the Second Respondent's apology both to his client and to the profession for the harm caused.

58. The Second 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”.”

59. 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.”

60. The Second Respondent did not submit, and the Tribunal did not find that there were any exceptional circumstances such that the Second Respondent fell within 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 Second Respondent off the Roll of Solicitors.

Costs

61. Ms Bruce provided a table detailing the breakdown of costs. She explained that there was a third person who was being dealt with outside of the Tribunal and costs were also being allocated to that person. The Applicant was seeking 75% of the SRA's investigation costs from the First Respondent and the remainder from the third person. No investigation costs were being sought from the Second Respondent as his conduct was not the subject of the forensic investigation. As regards Capsticks' costs, those were divided equally between the Respondents.

62. The Applicant attributed costs of £31,962.67 to the First Respondent and £21,262.50 to the Second Respondent.

63. The Applicant and Second Respondent had agreed costs in the sum of £6,000. This took account of his limited means.
64. Mr Roberts confirmed that the First Respondent did not oppose the apportionment of costs, however the quantum was not accepted. It was noted that the FI Officer had claimed in excess of £3,000 in the category “other”. There was no explanation as to what “other” referred to. In a detailed schedule it was questionable as to whether the amount claimed was reasonable. The matter was not complex. Many of the facts had been agreed very early on. There had been little factual dispute, and where there had been a dispute as to the facts, the First Respondent had been successful. There had been five different people working on the case which must have included duplication of work. Further, it had been anticipated that there would be three people in attendance at Court when in fact, and properly so, only Ms Bruce had attended for the hearing. In addition, a significant amount of the work had been undertaken by non-admitted staff.
65. Given the First Respondent’s lack of means, it was submitted that any order for costs should not be immediate; enforcement should be subject to leave from the Tribunal.
66. The Tribunal approved the costs agreed by the Second Respondent. It considered that the agreed amount took proper account of the Second Respondent’s limited means.
67. The Tribunal considered with care the submissions made on the First Respondent’s behalf. The Tribunal was not satisfied that the costs in “other” had been reasonably incurred; there was no explanation as to what those costs related to. The Tribunal also considered that there should be a reduction in the legal costs to take account of any duplication of work, the reduced hearing time, and the dismissal of allegations 1.4, 1.5 and 1.7.
68. The Tribunal found that costs in the sum of £25,000 were reasonable and proportionate. The Tribunal then considered then considered the First Respondent’s means and ability to pay. The Tribunal determined that a contribution to costs in the sum of £15,000 was reasonable and proportionate in view of the First Respondent’s limited means. The Tribunal did not consider that it was necessary or appropriate to make the costs order only enforceable with leave of the Tribunal. The Tribunal was aware that the Applicant’s costs recovery department took a realistic and appropriate view to the recovery of costs, and expected that in all the circumstances, it would come to an arrangement with the First Respondent that also took account of his financial position.

Statement of Full Order

69. First Respondent

1. The Tribunal Ordered that the Respondent, MARTIN KEITH WATERS, solicitor, be suspended from practice as a solicitor for the period of 6 months and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.00.
2. Upon the expiry of the fixed term of suspension referred to above, the Respondent shall be subject to conditions for three years imposed by the Tribunal as follows:

2.1 The Respondent may not:

- 2.1.1 Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body; or as a freelance solicitor; or as a solicitor in an unregulated organisation;
- 2.1.2 Be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration;
- 2.1.3 Hold client money save for with the permission of the Solicitors Regulation Authority.

70. Second Respondent

The Tribunal Ordered that the Respondent, RODNEY WILLIAM NOON, 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 £6,000.00.

Dated this 3rd day of November 2020
On behalf of the Tribunal



J Evans
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
03 NOV 2020