

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12105-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

ODETTE GREEN

First Respondent
(unadmitted)

SIMON JOHN BISHOP

Second Respondent
(solicitor)

Before:

Mr A Ghosh (in the chair)

Mr P Jones

Mr P Hurley

Date of Hearing: 10 to 13 November 2020

Appearances

Rebecca Harris, counsel, of QEB Hollis Whiteman, 1-2 Laurence Pountney Hill, London, EC4R 0EU, for the Applicant

Both Respondents represented themselves

JUDGMENT

Allegations

The allegations made by the Applicant against both Respondents were set out in a Rule 12 Statement dated 16 June 2020 (“the Rule 12 Statement”) in respect of applications under Rules 12 and 15 of the Solicitors (Disciplinary Proceedings) Rules 2019. Permission to withdraw three allegations and various alleged breaches of the SRA Principles 2011 (“the Principles”) was granted during the hearing as set out below under Preliminary Matters. The allegations remaining to be determined by the Tribunal were:

The First Respondent

1. That the First Respondent, who is not a solicitor, has been guilty of conduct of such a nature that in the opinion of the Applicant it would be undesirable for her to be involved in a legal practice in that she, while employed as a Conveyancing Manager at Parkinson Wright LLP (“PW”) between 01 February 2014 and 11 October 2016, and while in practice as a Residential Conveyancing Team Manager at Thursfields Legal Limited (“Thursfields”) between 1 January 2017 and 31 August 2018:
 - 1.1 Between 9 September 2016 and 11 October 2016, whilst employed by PW and having opened a file for RK in the purchase of Old Baskerville House (“OBH”), the First Respondent:
 - 1.1.1. Failed to provide a client care letter to Ms RK, or to any other individual involved in the transaction, and in doing so breached all or any of Principles 4 and 5;
 - 1.1.2. Received client instructions from a number of individuals other than Ms RK, without ascertaining exactly who the client was, or first obtaining express authority to receive instructions from other individuals, and in doing so breached all or any of Principles 4 and 5;
 - 1.1.3. Received and acted upon client instructions provided by her husband, the Second Respondent, on behalf of the client, without first obtaining express written authority to do so for the client file, and in doing so breached all or any of Principles 4 and 5;
 - 1.1.4. Allowed her husband, the Second Respondent, who was not an employee of PW, access to the client file, including at their home, and in doing so breached all or any of Principles 4 and 6;
 - 1.1.5. Caused or allowed her husband, the Second Respondent, who was not an employee of PW, and from whom she was taking instructions in his capacity as the client’s personal advisor, to review and/or work on the client file, following which she acted in accordance with the directions issued by the Second Respondent, including reproducing work and communications drafted by the second respondent, and/or sending documents prepared by the second respondent and in doing so breached all or any of Principles 3, 4, 5 and 6;

- 1.1.6. Made no attempt to establish proof of the source of £899,422 which was being proposed by Mr HK for the purchase of the property and, in making no attempt, breached regulations 7 and 8 of the Money Laundering Regulations 2007 (“the 2007 Regulations”) and breached all of any of Principles 3, 6 and 7;
 - 1.1.7. Failed to ensure that there was sufficient information on the file for a colleague and/or fee earner to take over the transaction if required and in doing so breached all or any of Principles 4 and 5;
 - 1.1.8. Did not set out properly the basis for a fee calculation resulting in a later dispute over the same and, in failing to do so, breached all of any or Principles 4 and 5.
- 1.2 Between 19 March 2015 and 30 September 2016, whilst acting for Client C (later Client W) in the purchase of “22-24 New Street” and “24c New Street” the First Respondent:
- 1.2.1. Failed to provide a client care letter to Mr HK as a director of Client C or any other individual involved in the transactions, and in doing so breached all or any of Principles 4 and 5;
 - 1.2.2. Failed to undertake appropriate Client Due Diligence (“CDD”) in respect of any of the prospective purchasers in this transaction and, in failing to do so, breached regulation 7 of the 2007 Regulations and all or any of Principles 3, and 7;
 - 1.2.3. Received and acted upon client instructions provided by her husband, the Second Respondent, on behalf of the client, without first obtaining express written authority to do so for the client file, and in doing so breached all or any of Principles 4 and 5;
 - 1.2.4. Allowed her husband, the Second Respondent, who was not an employee of PW, access to the client file, including at their home, and in doing so breached all or any of Principles 4 and 6;
 - 1.2.5. Caused or allowed her husband, the Second Respondent, who was not an employee of PW, and from whom she was taking instructions in his capacity as the client’s personal advisor, to review and/or work on the client file, following which she acted in accordance with the directions issued by the Second Respondent, including reproducing work and communications drafted by the Second Respondent, and/or sending documents prepared by the Second Respondent and in doing so breached all or any of Principles 3, 4, 5 and 6;
 - 1.2.8. Continued with the transaction despite not having undertaken appropriate CDD and/or properly established the source of the deposit funds and in doing so in doing so breached regulation 11 of the 2007 Regulations and all or any of Principles 6 and 7;
- 1.3 In addition to the occasions referred to in allegations 1.1 and 1.2 above, the First Respondent received and acted upon client instructions provided by her husband, the Second Respondent, on behalf of the client in respect of other transactions, without first

obtaining express written authority to do so for the client file in question, and in doing so breached all or any of Principles 4 and 5;

- 1.4. In addition to the occasions referred to in allegations 1.1 and 1.2 above, the First Respondent allowed her husband, the Second Respondent, who was not an employee of firms by which she was employed, access to other client files, including at their home, and in doing so breached all or any of Principles 4 and 6;
- 1.5. In addition to the occasions referred to in allegations 1.1 and 1.2 above, the First Respondent caused or allowed her husband, the Second Respondent, who was not an employee of the firm by which she was employed, and from whom she was taking instructions in his capacity as the client's personal advisor, to review and/or work on various specified client files following which she acted in accordance with the directions issued by the Second Respondent, including reproducing work and communications drafted by the Second Respondent, and/or sending documents prepared by the Second Respondent and in doing so breached all or any of Principles 3, 4, 5 and 6;
- 1.6. In addition to matters referred to at 1.1.1 and 1.2.1, the First Respondent failed to provide a client care letter in respect of various specified clients and matters and in doing so breached all or any of Principles 4 and 5;
- 1.7. In addition to the matter referred to at 1.2.2 the First Respondent failed to undertake appropriate CDD in respect of various specified clients and in failing to do so breached regulation 7 of the 2007 Regulations and Principle 7.

The Second Respondent

2. The allegations against the Second Respondent were that between 19 March 2015 and 31 August 2018, whilst admitted to the Roll but acting as "personal business advisor" for one or more clients involved in property transactions:
 - 2.1. The Second Respondent provided instructions on behalf of those clients to his wife, the First Respondent, without ensuring that express written authority to do so had been provided to the First Respondent and/or her firm, and in doing so breached Principle 6;
 - 2.2. The Second Respondent accessed the First Respondent's client files when he was not an employee of the firm by which the First Respondent was employed, when there was no written authority in place from his client to permit him to access those files, and/or no permission from the firm to do so, and in doing so breached Principle 6;
 - 2.3. The Second Respondent undertook reviews and/or work on the First Respondent's client files, including preparing and/or drafting documents and communications, and issuing directions to the First Respondent to carry out tasks, when he was not an employee of the firm by which the First Respondent was employed, and when there was no permission from the firm and/or his client to work in a legal capacity, and in respect of Client C/Client W's purchase of 22-24 New Street at a time when he was engaged by the solicitors for the vendors as a consultant, and in doing so breached all or any of Principles 6 and 7;

Documents

3. The Tribunal considered all of the documents in the case which comprised an electronic trial bundle containing:

Applicant

- The originating Rule 12 (and 15) Statement and exhibits
- Statements of costs at issue dated 18 June 2020, and as at the substantive hearing dated 2 November 2020
- A “relevant correspondence” section of 11 pages
- A “late submissions” section of 142 pages including a signed parties’ position statement, application for an order and opening note

Respondent

- The Respondents Joint Answer dated 26 July 2020
- First Respondent’s witness statement dated 20 October 2020 and appendices
- Second Respondent’s witness statement dated 20 October 2020 and appendices
- Witness statement of HB dated 9 November 2020
- Witness statement of IA dated 9 November 2020
- Statement of Means dated 25 October 2020

Preliminary Matters

Application to withdraw allegations

4. The Applicant applied to withdraw three allegations (two against the First Respondent and one against the Second Respondent). The Applicant also applied to withdraw allegations of breaches of Principle 2 (the requirement to act with integrity) in respect of eleven of the allegations. The applications to withdraw were made pursuant to rule 24 of the Solicitors (Disciplinary Proceedings) Rules 2019. The application was formally made at the conclusion of the Applicant’s case so the Tribunal could assess and determine it in light of the evidence presented.
5. Ms Harris stated that following the service of the Rule 12 statement, the First and Second Respondents had provided:
 - Their Joint Answer to the Rule 12 Statement
 - Witness Statements with exhibits
 - Further comments in relation to the facts and allegations in correspondence received on 20 October 2020
6. Having had sight of the material provided by the Respondents, and having reviewed the position very carefully as a result, Ms Harris stated that the Applicant considered that it was no longer proper (and therefore not in the public interest) to pursue a number of the non-admitted allegations and the alleged breaches of Principle 2. This was in light of the fuller factual picture which had emerged, including confirmation that actual authority and client consent for various matters with which the allegations were

concerned existed. Whilst in many cases the Applicant continued to maintain that the alleged misconduct included a serious dereliction of duty, in light of the further information received it was accepted that whilst the practice was in some cases poor, the Respondents did not veer away from their ethical code. The Applicant sought leave from the Tribunal to withdraw eleven allegations of breaches of Principle 2.

7. The Applicant also sought permission to withdraw three allegations in the light of further information which was said to be consistent with the explanation given by the Respondents. In those circumstances Ms Harris stated that the Applicant had taken the view that there was no proper basis on which to pursue the three allegations.
8. The application was supported by both Respondents.
9. The Tribunal was referred to a schedule in which the basis for the application to withdraw was summarised for each allegation of Principle 2 and each allegation the Applicant did not propose to pursue. The Tribunal considered the application to withdraw was consistent with the evidential picture presented and the material available. The Tribunal consented to the withdrawal of the allegations, and considered that the application could and should have been made earlier. The Tribunal considered dismissing the allegations but on balance considered that granting the application to withdraw was sufficient and that the issue of timing could be revisited in the consideration of costs in due course if appropriate.

Parties' position statement as to facts and legal principles

10. The parties provided a detailed (53 page) agreed position statement dated 9 November 2020 (the day before the hearing) ("the Position Statement"). The Position Statement was signed by both Respondents.
11. Both Respondents admitted several previously denied allegations in the Position Statement. The Position Statement highlighted the issues remaining in dispute between the parties. Both Respondents expanded on the context for their admissions and the basis of their denial of the remaining allegations in oral evidence and in their submissions during the hearing.

Factual Background

12. The First Respondent is not admitted to the Roll. At the material time she was employed firstly as a Conveyancing Manager by PW, a regulated firm, and then as a Residential Conveyancing Team Leader by Thursfields, a regulated firm and has never been an admitted individual.
13. The Second Respondent is admitted to the Roll and qualified as a solicitor in 1974. He was employed by and/or was a partner of various law firms including his own until 2005. Thereafter, he was engaged by various law firms under a Consultancy Agreement. He has not held a Practising Certificate since January 2016.
14. The Rule 12 Statement confirmed that the First Respondent was married to the Second Respondent.

15. The Applicant's investigation of this matter began in April 2017, when it received reports relating to the firm PW and transactions carried out in 2016. Enquiries revealed that the fee earner responsible for those transactions was the First Respondent. She had been employed by PW as a Conveyancing Manager at the material time but had resigned from PW on 10 October 2016 and been placed on gardening leave on the morning of 11 October 2016. Thereafter, she had worked at Thursfields, commencing employment on 1 January 2017 and was working there when the Applicant's investigation commenced.
16. Between 13 June 2017 and 17 May 2018, the Applicant's Forensic Investigator, Oliver Baker, undertook an investigation at both PW and Thursfields. Mr Baker's review of the matters/files referred by the Second Respondent to the First Respondent revealed that the Second Respondent referred various clients to the First Respondent's firm, for her to deal with. He would then act on behalf of the client and provide client instructions. Once the transaction was in progress, it was alleged by the Applicant that the Second Respondent would also become involved in the conveyancing process and, in effect, supervise the First Respondent whilst she provided the legal services.
17. The Second Respondent was described as having been a well-regarded property solicitor for many years in the local area. As a result, he had a number of long-standing clients from the property world who had also become personal friends. He had been a business associate of some of his clients including Mr HK and Mr IA (who feature in this case) and had held positions in their companies at various times. In January 2016, the Second Respondent did not renew his practising certificate and moved into the property sphere full-time and took on the role as a personal business advisor to some of his long-standing clients.
18. The Second Respondent had a referral arrangement with PW and then with Thursfields at the time the First Respondent worked for those firms. The referral fees were a very small proportion of the Second Respondent's turnover as an adviser and the referred cases were a very small proportion of the First Respondent's case-load at any time. It was the nature of this working relationship and some of the consequences that allegedly flowed from it, that give rise to the allegations against the Respondents.

Witnesses

19. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:
 - Oliver Baker, Forensic Investigation Officer
 - The First Respondent
 - The Second Respondent

The Relevant Principles

20. The allegations included alleged breaches of Principles 3, 4, 5, 6 and 7:
- Principle 3 requires the regulated individual to ensure their independence is not compromised.
 - Principle 4 requires the regulated individual to act in the best interest of each client.
 - Principle 5 requires the regulated individual to provide a proper standard of service to their clients.
 - Principle 6 requires the regulated individual to behave in a way which maintains the public's trust in them and in the provision of legal services.
 - Principle 7 requires the regulated individual to comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner

Findings of Fact and Law

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

The First Respondent

22. **Allegation 1.1: In September 2016, whilst working at PW, the First Respondent acted for a Ms RK in the purchase of properties at OBH. This was a commercial transaction. This matter had been referred to the First Respondent by the Second Respondent. Initially it appeared as if Mr HK or Client C was the likely purchaser. The Second Respondent was a long-term associate of Ms RK's father, Mr HK, and the Second Respondent was familiar with his various companies. Mr HK was also known to the First Respondent.**

Allegation 1.1.1: The First Respondent failed to provide a client care letter to Ms RK, or to any other individual involved in the transaction, and in doing so breached all or any of Principles 4 and 5.

The Applicant's Case

- 22.1 Whilst a file was opened in the name of Ms RK, there was no evidence of a client care letter on that file, either in hard copy or electronically.
- 22.2 All firms have an obligation to provide information about their services at the point of engagement with the client as per Chapter 1 of the SRA Handbook 2011 (in force at time). It is standard practice in the profession for this to be achieved by way of client

care letter drafted to achieve the Outcomes listed in Chapter 1. If no client care letter is sent, these outcomes relating to the information to which clients are entitled and which they needed in order to make decisions about their case cannot be properly achieved.

- 22.3 It was submitted that by failing to ensure a client care letter was sent to her client, the First Respondent did not act in the best interests of her clients (Principle 4), nor did she provide a proper standard of service to them (Principle 5) .

The First Respondent's Case

- 22.4 The First Respondent accepted that a client care letter may not have been sent. She provided context for the possible omission which included the failure of an incompetent junior member of staff, an “intense” workload which was known to her employer and the fact that the client was a “sophisticated and long-standing user of legal services”.
- 22.5 In the Position Statement and during the hearing, the First Respondent admitted this allegation and the alleged breaches of Principles 4 and 5.

The Tribunal's Decision

- 22.6 Allegation 1.1.1 was admitted including the alleged breaches of Principles 4 and 5. The Tribunal considered the admissions were properly made and the allegations were proved to the requisite standard.
23. **Allegation 1.1.2: The First Respondent received client instructions from a number of individuals other than Ms RK, without ascertaining exactly who the client was, or first obtaining express authority to receive instructions from other individuals, and in doing so breached all or any of Principles 4 and 5.**

Allegation 1.1.3 The First Respondent received and acted upon client instructions provided by her husband, the Second Respondent, on behalf of the client, without first obtaining express written authority to do so for the client file, and in doing so breached all or any of Principles 4 and 5.

The Applicant's Case

- 23.1 The instruction concerned the intended purchase of the OBH property at auction in September 2016. The client file was ultimately in Ms RK's name. However there was communication on the file from Mr HK who it was said was clearly providing instructions on the transaction, assisted by the Second Respondent. Mr HK sought the ability to exchange in Client C's name but to complete in another company's name if necessary. There was said to be no information on the file as to Ms RK's connection with Client C if any. It was said to be unclear from the file who the actual client was in this matter at this stage. When asked about this matter during the formal interview on 12 March 2018 Mr CA, Compliance Officer for Legal Practice of PW, confirmed looking at the file that it was not clear from the firm's point of view who the client was in this matter.

- 23.2 Whilst there was a reference in an email (not to the firm but to a third party) to the fact that the Second Respondent was an authorised agent for the purpose of bidding/purchase, there was no written authority on the client file specifically allowing the First Respondent to take instructions from and/or share confidential client information with the Second Respondent during the conveyancing process.
- 23.3 The Applicant submitted that the fact the First Respondent may have been aware of the relationships between the various individuals and entities given their close association with her husband and having undertaken previous transactions on behalf of those clients, did not discharge her from her professional obligations in relation to this transaction/file in terms of written authorities.
- 23.4 The Applicant accepted on the basis of an email from Mr HK dated 21 August 2020 that actual authority for the First Respondent to deal with the Second Respondent as agent in this matter existed. The First Respondent received and acted upon client instructions from Ms RK's father, Mr HK, and the Second Respondent apparently acting as an agent for her clients, without obtaining and/or ensuring express written authority was in place to take instructions from those individuals. Notwithstanding the fact she thought there was implied permission on the basis of either family connections and/or the Second Respondent's personal relationships with the clients in question it was submitted that the First Respondent had a duty as the fee earner to ensure the correct professional safeguards were in place but failed to do so. The Applicant further submitted that First Respondent's willingness to discuss her cases with a variety of persons without such safeguards revealed a failure on her part to observe her duty of confidentiality.
- 23.5 It was submitted that providing legal services as summarised above was clearly unsatisfactory and not in the best interests of the client (in breach of Principle 4). It was also submitted to reflect a poor standard of service (in breach of Principle 5).

The First Respondent's Case

- 23.6 The First Respondent stated that she did not consider herself to be formally instructed by Ms RK until she had met her. She accepted that she ought to have ensured that the file contained a written authority to enable the Second Respondent to provide instructions but stated by way of context:
- Actual authority from her client for her to deal with the Second Respondent existed;
 - Communications received implied such authority;
 - The longstanding nature of the relationship, business and personal, between both Respondents and the family rendered such written authority obsolete; and
 - Mr HK was completely satisfied with the service provided by the First Respondent.
- 23.7 However, due to the acknowledged lack of formalities on the client file, the First Respondent admitted allegations 1.1.2 and 1.1.3 and the alleged breaches of Principles 4 and 5.

The Tribunal's Decision

23.8 Allegations 1.1.2 and 1.1.3 were admitted including the alleged breaches of Principles 4 and 5. The Tribunal considered the admissions were properly made and the allegations were proved to the requisite standard.

24. **Allegation 1.1.4: The First Respondent allowed her husband, the Second Respondent, who was not an employee of PW, access to the client file, including at their home, and in doing so breached all or any of Principles 4 and 6.**

Allegation 1.1.5: The First Respondent caused or allowed her husband, the Second Respondent, who was not an employee of PW, and from whom she was taking instructions in his capacity as the client's personal advisor, to review and/or work on the client file, following which she acted in accordance with the directions issued by the Second Respondent, including reproducing work and communications drafted by the Second Respondent, and/or sending documents prepared by the Second Respondent and in doing so breached all or any of Principles 3, 4, 5 and 6.

The Applicant's Case

24.1 The Applicant alleged that the Second Respondent had something of a dual role in relation to the transaction to purchase OBH. It was alleged he acted as agent for the client (e.g. by sending formal emails of instruction from his business address) and also as if he were the First Respondent's supervisor (e.g. by placing notes and directions in her client file as if he were working for the firm).

24.2 The Applicant's case was that even though the Second Respondent was an experienced property solicitor, given that he was acting as the client he had no place assisting with the transaction. This meant that he was both solicitor and client in effect, which could give rise to potential conflicts of interest and which, as the fee earner with conduct of the client matter, the First Respondent should not have facilitated.

24.3 The First Respondent allowed her husband unfettered access to client files without express authority to do so from the clients involved and/or the permission of her employers. In doing so it was submitted she failed to observe her duty of confidentiality. The fact she thought there was implied permission on the basis of her personal relationships with the clients in question did not change that. As stated above, the Applicant had accepted by the date of the hearing that actual authority for the Second Respondent to act as agent for Mr HK existed.

24.4 Furthermore, by allowing the Second Respondent to make decisions and carry out work on her files, it was alleged that the First Respondent was not acting independently in breach of Principle 3. She was being influenced by a third party who had a vested interest in the transaction.

24.5 It was alleged that the First Respondent followed the Second Respondent's directions with little application of her own independent judgment and routinely sought professional advice and assistance from her husband. Based on a review of the relevant files in this case it was alleged that the First Respondent did no more than act as a

conduit on occasions. Many of the handwritten notes within this file and others were alleged to be very evidently notes and instructions written in letter form to the First Respondent signed by the Second Respondent, before being executed verbatim. Moreover, there were said to be no drafts by the First Respondent which suggested that this was a two way process. Mr CA, of PW, stated “the thought of somebody...who then didn’t work for us... dealing with it...isn’t something that would have entered my head”. When asked if he had been “surprised” he stated, “shock might be a better word”.

- 24.6 In allowing her husband access to, and influence over, her client files, it was alleged that First Respondent breached Principles 4 and 5 relating to acting in her client’s best interests and providing a proper standard of service respectively. It was also alleged that the trust placed by the public in the First Respondent and in the provision of legal services would be undermined by allowing the Second Respondent to interfere with and involve himself in the conveyancing process without knowledge of the firm whilst he was also acting as agent for the client. It was alleged this amounted to a breach of Principle 6.

The First Respondent’s Case

- 24.7 The First Respondent’s client gave actual authority for the Second Respondent to act as agent, as if he were the client. The client files belonged to the client and they were entitled to call on them at any time. All access was in the presence of the First Respondent.
- 24.8 In terms of working on the files, as an experienced, highly-reputed property solicitor, albeit one that had ceased practising some years before, it was submitted that it was in the interests of the First Respondent’s client for the Second Respondent to assist with the transactions. The First Respondent also stated that that the drafts and letters found in various files in the Second Respondent’s handwriting represented a “joint effort” on the part of both Respondents and that she exercised final judgement as the fee earner with conduct of the matter.
- 24.9 On the basis that there was an absence of written authority on the file the First Respondent admitted a breach of Principle 4 for allegation 1.1.4 and of Principles 4 and 5 for allegation 1.1.5.
- 24.10 On the basis that she always exercised her own independent judgment and made the decisions as fee earner on the client file, she denied that she had allowed her independence to be compromised (Principle 3) in relation to allegation 1.1.5. On the basis that Mr MK had provided actual authority for the Second Respondent to act as his agent and knew of the Second Respondent’s involvement in the transactions, had no issues with the quality of the service with which he was being provided and given the long-standing professional relationships between those involved, it was denied that public trust in the First Respondent or in the provision of legal services would be undermined (Principle 6) in either 1.1.4 or 1.1.5.

The Tribunal's Decision

- 24.11 Allegations 1.1.4 and 1.1.5 were admitted in so far as the alleged breaches of Principles 4 and 5 and were concerned. The Tribunal considered the admissions were properly made and the allegations were proved to the requisite standard.
- 24.12 The alleged breaches of Principle 3 in allegation 1.1.5 and Principle 6 in both allegations 1.1.4 and 1.1.5 were denied. The Tribunal accepted, and it was not disputed by the Applicant, that the client in this matter was satisfied with the service received. No one had in fact lost out as a result of the admitted breaches and the close working with the Second Respondent appeared to have helped the transaction run more smoothly.

Allegation 1.1.4

- 24.13 Given that the First Respondent had actual authority for the Second Respondent to act in the place of her client, albeit this was not appropriately recorded on the file, the Tribunal did not consider that public trust in the First Respondent would be adversely affected by the provision of access to the client file. The degree of informality was unwise, and the absence of a clear record of the authority gave rise to the breaches of the Principles found proved but the Tribunal accepted that the client did indeed have a right to access the file. Despite the Tribunal's misgivings about the informality of the arrangement, in all the circumstances the Tribunal did not find that it had been proved on the balance of probabilities that public trust would be undermined as alleged. The alleged breach of Principle 6 was not proved.

Allegation 1.1.5

- 24.14 The requirement to maintain independence is important, even when it appears that a client is content to dispense with such independence. The degree of involvement of the Second Respondent in the case, as evidenced by detailed instructions (or suggestions on the First Respondent's case), combined with his role as client inevitably created the risk of a conflict. There was no evidence presented of any instance in which the First Respondent had not acted on the suggestion of the Second Respondent. The Tribunal accepted that the First Respondent acted with the best of motives in circumstances where the client was aware of the arrangements and content with the work. However, the arrangement created risk. By the degree of closeness between the work of the First and Second Respondents on the file, and the extent to which the First Respondent allowed the Second Respondent to become involved with the running of the conveyancing matter, the client was denied a fully independent critical eye. The Tribunal found proved on the balance of probabilities that this amounted to a breach of Principle 3.
- 24.15 The arrangement did not in fact go wrong and the client was content with the service. However, the Tribunal considered on balance that the public would be concerned and that public trust in the First Respondent would be undermined by the extent of the Second Respondent's involvement in and direction of the legal work on the transaction. This was exacerbated by the evidence that the firm, the First Respondent's employer, was unaware of the extent of the Second Respondent's involvement. In circumstances where the Tribunal had found a technical lack of independence the Tribunal considered

that public trust in the provision of legal services would be undermined. The Tribunal found the alleged breach of Principle 6 proved on the balance of probabilities.

25. **Allegation 1.1.6: The First Respondent made no attempt to establish proof of the source of £899,422 which was being proposed by Mr HK for the purchase of the property and, in making no attempt, breached regulations 7 and 8 of the 2007 Regulations and breached all of any of Principles 3, 6 and 7.**

Allegation 1.1.7: The First Respondent failed to ensure that there was sufficient information on the file for a colleague and/or fee earner to take over the transaction if required and in doing so breached all or any of Principles 4 and 5.

The Applicant's Case

- 25.1 An email sent to the First Respondent on 5 October 2016 by the Second Respondent, which had the appearance of a formal client instruction, stated that she should:

“...prepare for completion assuming that HK will draw on funds that [H] have made available which exceed 1million”.

This was a change of instructions as Mr HK had initially stated that the purchase would be completed without borrowing.

- 25.2 On 10 October 2016, the First Respondent's assistant sent an email to Mr HK on her behalf attaching the completion statement and a TR1 document for Ms RK to sign “in readiness for completion tomorrow”. The email also requested money in preparation for completion in the sum of £869,422.
- 25.3 There was alleged to have been no work done by the First Respondent to establish and/or obtain proof of the source of funds that Mr HK was proposing “to draw on” for the purchase of this property. The Applicant's case was that by 10 October 2016 the First Respondent knew that an original loan was unlikely to be approved/authorised in time for completion on 11 October 2016 and that she knew therefore there would be no bank funds forthcoming in time for completion on 11 October 2016 (a date to which no flexibility had been attached).
- 25.4 The First Respondent resigned from PW on 10 October 2016 and her evidence was that she was placed on garden leave from around 9.20 a.m. on 11 October 2016.
- 25.5 The First Respondent's position was that had she remained in charge of the transaction it was unlikely that completion would have taken place on 11 October 2016 as she needed to meet Ms RK, obtain her signature on the TR1 and secure funds. The Applicant alleged that the client file suggested a different position. On 11 October 2016, at 9.13 a.m., the First Respondent had sent an email to Client C's accounts department asking “When can we expect funds today?” This email was sent on the morning of proposed completion before the First Respondent was summoned to her meeting and placed on garden leave. It was submitted the email indicated that the First Respondent intended completion to take place on 11 October 2016 and that she knew that the funds were coming directly from Mr HK (or one of his associated entities, Client C). Despite being aware that the bank loan had not yet been approved and that the funds were

apparently coming from elsewhere instead, the emails sent by the First Respondent still did not request proof of the source of those funds. It was alleged this was consistent with earlier correspondence on the file indicating there was no flexibility on the completion date as far as the vendors were concerned.

- 25.6 Once the First Respondent had left the building, other employees of PW had conduct of the file and, without reference to the First Respondent, proceeded to complete the transaction on 11 October 2016. By an email sent at 1.54 p.m. on 11 October 2016, Mr HK informed PW that as “the loan has not progressed quickly enough” he would be buying the property “in cash”. PW’s bank statement and relevant client ledger confirmed that £869,442 was received into client account and transferred almost immediately to the vendor’s solicitor’s account on 11 October 2016. There was said to be no indication on the file, by way of note or otherwise, that the First Respondent intended to take steps to delay completion or that she had a meeting planned with Ms RK and Mr HK on 11 October 2016 in order to complete client due diligence and establish proof of funds. Those left to take over the conduct of this transaction were therefore completely unaware of her plans.
- 25.7 On 11 October 2016, this very significant sum of money passed through the PW client account in connection with the purchase of OBH with no checks having been undertaken whatsoever in relation to the source of those funds. Whilst the Applicant acknowledged that completion was conducted by another employee of PW after the First Respondent had been placed on garden leave, it was alleged that the First Respondent’s failure to undertake any checks despite knowing on 5 October 2016 that the planned loan was unlikely to be available, contributed to breaches of Regulations 7 and 8 of the 2007 Regulations. These provisions of the anti-money laundering regulations relate to the application of customer due diligence measures (Regulation 7) and ongoing monitoring (Regulation 8). It was alleged that a failure to comply with the 2007 Regulation necessarily involved a breach of Principle 7 (complying with legal and regulatory obligations). It was alleged that the lack of information and lack of clear direction on the First Respondent’s client file was not in her client’s interests (in breach of Principle 4) and did not reflect a proper standard of service (in breach of Principle 5).
- 25.8 Given the importance of full compliance with anti-money laundering regulations, it was submitted that by failing to carry out the necessary checks and comply with those regulations the First Respondent failed to behave in a way which maintained public trust in her and the way legal services are provided in breach of Principle 6.
- 25.9 The Applicant also submitted that in relation to Principle 3, the note at paragraph 2.7 of the SRA Handbook makes clear that “independence” means a respondent’s independence and not merely a respondent’s ability to give independent advice. A respondent should therefore avoid situations which might put his/her independence at risk. In relation to this transaction, the Applicant alleged that the First Respondent’s independence was compromised by her reliance on her prior personal knowledge of Mr HK and his businesses and the ongoing involvement of the Second Respondent in breach of Principle 3.

The Respondent's Case

- 25.10 The First Respondent admitted that notwithstanding her intention to meet Ms RK on 11 October 2016, she should have taken steps much earlier to verify the personal funds proposed by Mr HK for the purchase of OBH, and that by failing to do so she breached regulations 7 and 8 of the 2007 Regulations. She admitted she also thereby breached Principle 7. She admitted that the lack of information and direction on the file amounted to a breach of Principles 4 and 5.
- 25.11 She denied the alleged breaches of Principle 3 and Principle 6.
- 25.12 The First Respondent asserted that she could not be held accountable for what happened after she was placed on garden leave. She stated that there were still a number of steps to be undertaken in relation to this transaction and had she remained in charge of the transaction, it was unlikely that completion would have taken place that day. At the point she was placed on garden leave the First Respondent did not consider herself fully instructed to proceed.
- 25.13 The First Respondent stated that she was aware of her obligations under the 2007 Regulations and understood that Mr HK would utilise the further two weeks which would be available to complete the purchase following the service of a Notice to Complete. The First Respondent's evidence was that she was completely confident that the transaction would not have been progressed further without client due diligence being completed. She intended to meet with Ms RK on 11 October 2016 to obtain instructions and provide advice. She stated that she also knew from experience, including having seen bank statements from Client C in July 2016, that Mr HK had sufficient funds from legitimate business activities to finance the purchase. She also stated that the email from Mr HK to the firm in which she stated that the source of funds had changed should have alerted the firm to the need to query the source of the new funds.
- 25.14 In an email to the Applicant of 21 August 2020, Mr HK confirmed the First Respondent's explanation set out in the Joint Answer was "true". He further stated:

"I do recall speaking with the first respondent about my daughter's purchase prior to its completion... I would have expected to attend the first respondent's office (with my daughter) pre-completion in order to sign the necessary documentation and have the transactions explained..."

The First Respondent submitted her independence had not been compromised and in the circumstances her conduct would not undermine public trust in her or the provision of legal services.

The Tribunal's Decision

- 25.15 Allegation 1.1.6 was admitted in so far as the alleged breaches of Regulations 7 and 8 of the 2007 Regulations and Principle 7 were concerned. Allegation 1.1.7 and the alleged breaches of Principles 4 and 5 were also admitted. The Tribunal considered the admissions were properly made and the allegations were proved to the requisite standard.

- 25.16 The alleged breaches of Principle 3 and 6 were denied. The Tribunal did not consider that a breach of Principle 3 had been demonstrated to the requisite standard. This allegation was focused on the completion of the transaction without the source of funds having been checked. In the specific circumstances of this case, the Tribunal considered that the balance of the evidence suggested that the First Respondent would have remedied this before completion but for being placed on garden leave abruptly. Her default in failing to take preparatory steps sooner or to leave more information on the client file were reflected in the breaches found proved, but the Tribunal was not persuaded that these failings amounted to compromising the First Respondent's independence.
- 25.17 The Tribunal did consider that the acknowledged failures which contributed to breaches of anti-money laundering regulations was behaviour which was likely to undermine public trust. Whilst accepting that had she continued to have conduct of the matter she would have resolved the issues, through her lack of preparatory steps and information on the client file, the First Respondent left the firm in an invidious position. The Tribunal found that the alleged breach of Principle 6 was proved to the requisite standard.
26. **Allegation 1.1.8: The First Respondent did not set out properly the basis for a fee calculation resulting in a later dispute over the same and, in failing to do so, breached all of any or Principles 4 and 5.**

The Applicant's Case

- 26.1 In due course, there was a disagreement between Mr HK and PW as to whether Mr HK had already paid a fee to PW for their dealing with a possible lender. Mr HK claimed that the fee paid had included this work but that the monies just had not been made available in time. The Applicant accepted that it seemed Mr HK was right about this, but alleged it was never set out properly by the First Respondent, and there was little on the file in relation to the arrangement of the loan.
- 26.2 Mr HK instructed Thursfields, to where the First Respondent had moved, to take over this transaction. Given the fee arrangement could not be "appreciated from the file" (the only indication that the fee included mortgage work was a very brief entry in a handwritten note from the Second Respondent to the First Respondent) it was alleged that the dispute about fees was inevitable. The First Respondent's failure to set the fee arrangement out clearly was submitted to mean she was not acting in the best interests of her client nor was she providing a proper standard of service. Principles 4 and 5 were thereby breached.

The First Respondent's Case

- 26.3 The First Respondent denied the allegation and the alleged breaches of the Principles in their entirety.
- 26.4 The First Respondent's case was that a fee had been agreed with Mr HK (through his agent the Second Respondent) on 10 October 2016, noting that it included mortgage work with a lender. The agreement was subject to ratification with Ms RK at a meeting to be held the following day.

- 26.5 After the First Respondent had ceased acting, Mr HK e-mailed the firm at 1.54 p.m. on 11 October 2016 advising of a change of instruction, namely that he/Ms RK would complete with cash, but that as the firm's fee included charges for dealing with the mortgage, he did not expect any further fees to be charged when mortgage finance was secured post completion. He authorised the firm to complete only on condition that it accepted that no further fees were due for acting on the mortgage. The firm, accepting that condition, completed with Mr HK's cash less than an hour later. The First Respondent submitted there was thus no proper basis for the firm entering into a dispute with Mr HK. The firm had completed on HK's terms and thus whatever had been agreed with the First Respondent was no longer contractually relevant.

The Tribunal's Decision

- 26.6 The Tribunal accepted the First Respondent's account of the relevant events and that there was no basis for the firm to enter into a dispute with Mr HK. Ms Harris for the Applicant had also accepted this. However, it remained clear that the basis for a fee calculation had not been properly set out and this had at the very least contributed to an avoidable dispute. A handwritten note from the Second Respondent was not an acceptable form of record for the basis of the fee calculation. Whilst the impact was minor in that Mr HK knew the actual position, and the firm had had the option to check with her whilst she was on garden leave, the Tribunal accepted that the failure to properly record the details of the basis for the fee calculation amounted to a failure to act in her client's best interests and to provide a proper standard of service. The Tribunal found the alleged breaches of Principles 4 and 5 proved to the requisite standard.
27. **Allegation 1.2 - In March 2015, the First Respondent acted for Client C (of which Mr HK was the Director) in the purchase of 22-24 New Street and in the associated purchase of 24c New Street which was the property located behind.**

Allegation 1.2.1: The First Respondent failed to provide a client care letter to Mr HK as a director of Client C or any other individual involved in the transactions, and in doing so breached all or any of Principles 4 and 5.

The Applicant's Case

- 27.1 The Applicant's case was simply that there were no client care letters on the file for 2224 New Street or 24c New Street either in hard copy or electronic form. The importance of a client care letter as set out in allegation 1.1.1 was repeated. It was again submitted that a failure to provide a client care letter constituted a failure to act in the client's best interests and to provide a proper standard of service in breach of Principles 4 and 5.

The Respondent's Case

- 27.2 The First Respondent accepted she may not have sent client care letters in this case. The points made in relation to allegation 1.1.1 about the pressure of her workload, the incompetence of a junior member of staff, the fact that she had worked on files for Mr HK for a number of years and that the fact he was a "sophisticated and long-standing user of legal services" were repeated.

- 27.3 The First Respondent admitted the allegation and the alleged breaches of Principles 4 and 5.

The Tribunal's Decision

- 27.4 The allegation and the alleged breaches of Principles 4 and 5 were admitted. The Tribunal considered the admissions were properly made and the allegations were proved to the requisite standard.
28. **Allegation 1.2.2: The First Respondent failed to undertake appropriate CDD in respect of any of the prospective purchasers in this transaction and, in failing to do so, breached regulation 7 of the 2007 Regulations and all or any of Principles 3 and 7.**

The Applicant's Case

- 28.1 The purchase was originally due to be made by Client C. There were no identification documents or verification for Client C on the file for 22-24 New Street. There was Companies House information for Mr HK and Client C on the file for 24c New Street, but its printout date was in 2018 (when the instructions were in March 2015). In July 2016, Mr HK decided that the purchase would be in the name of Client W. Notwithstanding this, there were said to be no CDD checks on either file for Client W.
- 28.2 The Applicant accepted that CDD for client W had been provided previously by Mr HK but this was not sufficient for compliance purposes. The Applicant also accepted the evidence of the First Respondent's prior knowledge of Mr HK and his businesses. However, she was duty bound to undertake appropriate CDD in compliance with the 2007 Regulations and ensure that the relevant and necessary safeguards were in place for this specific transaction. By failing to do so it was submitted that she had breached Regulation 7 of the 2007 Regulations and Principle 7 (for the same reasons as alleged in relation to allegation 1.1.6).
- 28.3 It was further alleged that by apparently relying on her prior knowledge of Mr HK and her husband's association with him, the First Respondent allowed her own independence to be compromised and acted in breach of Principle 3 (for the reasons set out in relation to allegation 1.1.6).

The First Respondent's Case

- 28.4 In the Position Note the First Respondent accepted the factual account provided by the Applicant.
- 28.5 She stated that CDD for Client W had been provided previously by Mr HK. Again the First Respondent stated that Mr HK was a close associate of her husband and was therefore known to her both professionally and socially. In the Joint Answer she pointed out that (notwithstanding the different entities involved) the "person in control" and therefore the "real client" was Mr HK. Mr HK was a director and shareholder of Client C (she had checked this online) and Client W was Mr HK's family trust. She also pointed out that it was plain from the correspondence that the bank also understood this to be the position. Nevertheless, given the absence of appropriate documentation on

this specific file, she admitted the alleged breach of Regulation 7 of the 2007 Regulations and also the alleged breach of Principle 7.

- 28.6 The First Respondent stated that she had undertaken CDD in relation to Mr HK for numerous transactions in the past. She denied that she had compromised her independence in breach of Principle 3 (on the same basis set out in relation to allegation 1.1.6).

The Tribunal's Decision

- 28.7 The alleged breaches of Regulation 7 of the 2007 Regulations and Principle 7 were admitted. The Tribunal considered the admissions were properly made and the alleged breaches were proved to the requisite standard.
- 28.8 With regards to maintaining independence, the Tribunal accepted that the First Respondent knew Mr HK and his circumstances and businesses well and had completed CDD many times before. However, the obligation to ensure appropriate CDD was arranged every time it was required was an important one. The Tribunal considered that taking anything on face value even where a client and their circumstances were known amounted to a failure to exercise complete independence. There were no direct implications for the transaction in this case, but the Tribunal found proved to the requisite standard that the First Respondent's conduct amounted to a breach of Principle 3.
29. **Allegation 1.2.3: The First Respondent received and acted upon client instructions provided by her husband, the Second Respondent, on behalf of the client, without first obtaining express written authority to do so for the client file, and in doing so breached all or any of Principles 4 and 5.**

The Applicant's Case

- 29.1 This allegation mirrored allegation 1.1.3. It was alleged that in this second matter the First Respondent again regarded the Second Respondent as an agent for her client. The Applicant alleged that the First Respondent had already acted on the Second Respondent's instructions before making contact with Mr HK, as she wrote to the vendor's solicitors and confirmed that she had been instructed on Mr HK's behalf before contacting her client. It was alleged that she continued to receive and act on the Second Respondent's instructions without requesting or obtaining written authority to engage with the Second Respondent in relation to this transaction. It was submitted that her failure to do so constituted a breach of Principles 4 and 5 for the reasons set out in relation to allegation 1.1.3.

The Respondent's Case

- 29.2 The First Respondent accepted that she ought to have ensured that the file contained a written authority to enable the Second Respondent to provide instructions. She relied upon the context spelled out in relation to allegation 1.1.3 above. However, due to the acknowledged lack of formalities on the client file, the First Respondent admitted allegation 1.2.3 and the alleged breaches of Principles 4 and 5.

The Tribunal's Decision

29.3 Allegation 1.2.3 was admitted including the alleged breaches of Principles 4 and 5. The Tribunal considered the admission was properly made and found the allegation proved to the requisite standard.

30. **Allegation 1.2.4: The First Respondent allowed her husband, the Second Respondent, who was not an employee of PW, access to the client file, including at their home, and in doing so breached all or any of Principles 4 and 6.**

Allegation 1.2.5: The First Respondent caused or allowed her husband, the Second Respondent, who was not an employee of PW, and from whom she was taking instructions in his capacity as the client's personal advisor, to review and/or work on the client file, following which she acted in accordance with the directions issued by the Second Respondent, including reproducing work and communications drafted by the Second Respondent, and/or sending documents prepared by the Second Respondent and in doing so breached all or any of Principles 3, 4, 5 and 6.

The Applicant's Case

30.1 These allegations mirrored allegations 1.1.4 and 1.1.5. It was alleged to be evident from the file that the Second Respondent had access to it and that having organised the transfer of these matters to the First Respondent at PW, the Second Respondent then proceeded, in effect, to conduct both matters (in relation to which PW were acting for the purchaser) himself; albeit via his wife (the First Respondent) and her assistant Ms KS.

30.2 By way of an example of the matters relied on by the Applicant, on 6 May 2015 the First Respondent sent an email to Mr PB at H enquiring about funding. A draft for this email appeared within a lengthy note handwritten by the Second Respondent and left on the file with directions for the First Respondent to act upon. The same note provided a draft for an email to be sent to Ms DP at the vendor's solicitors. That email, with the seven specific queries outlined by the Second Respondent, was sent by the First Respondent to Ms DP at HCR on 7 May 2015. This same practice, of the Second Respondent's draft being executed by the First Respondent, was alleged to have happened in respect of other mails on the client file.

30.3 It was submitted to be evident from the content of an email dated 2 November 2015 sent by the Second Respondent to Mr HK, that the Second Respondent's role in this transaction (as with others) was far greater than that of simply an agent or even advisor acting on behalf of Mr HK and providing instructions. The Second Respondent involved himself extensively in PW's conduct of the matter and was allowed unfettered access to the files by his wife. The email of 2 November 2015 stated as follows in response to a progress query from Mr HK:

"I reviewed the two files last week whilst on holiday and letters will go out tomorrow when Odette is back at work... in brief there is still a lot of information that has not been provided by the sellers' solicitors on each transaction but as you know we were not pushing these until getting the green light to go from you.

Odette will of course need your confirmation as to the buyer and any associated borrowing if it [sic] to be contemporaneous”.

- 30.4 The above communication was followed by a letter dated 4 November 2015 from the First Respondent to HCR raising thirteen queries. That letter was said to be based directly on a handwritten version of the same drafted by the Second Respondent, to which the Tribunal was referred. A second letter dated 4 November 2015 was sent by the First Respondent to the client Mr HK. It began “I have carried out a file review...” A handwritten file note reveals that this letter was also drafted originally by the Second Respondent, who was alleged to have undertaken the file review. It was then adopted and sent out by the First Respondent.
- 30.5 As in allegation 1.1.4 and 1.1.5, it was alleged that by allowing the Second Respondent to make decisions and do the work on her files, the First Respondent was not acting independently in breach of Principle 3. She was being influenced by a third party who had a vested interest in the transaction.
- 30.6 It was again alleged that the First Respondent followed the Second Respondent’s directions with little application of her own independent judgment. For the reasons set out in relation to allegation 1.1.5, it was alleged that in allowing her husband access to, and influence over, her client files, the First Respondent breached Principles 4 and 5 relating to acting in her client’s best interests and providing a proper standard of service respectively. It was also alleged that the trust placed by the public in the First Respondent and in the provision of legal services would be undermined by allowing the Second Respondent to interfere with and involve himself in the conveyancing process whilst also acting as agent for the client. It was alleged this amounted to a further breach of Principle 6.

The First Respondent’s Case

- 30.7 As with allegations 1.1.4 and 1.1.5, the First Respondent’s case was that the Second Respondent had authority to access the files; the documents with the Second Respondent’s involvement were a “joint effort”; and it was in the client’s interests for the Second Respondent to be involved in the transactions. The points set out in relation to allegation 1.1.4 and 1.15 were repeated.
- 30.8 On the basis that there was an absence of written authority on the file the First Respondent admitted a breach of Principles 4 and 5 for allegations 1.2.4 and 1.2.5.
- 30.9 On the basis that she always exercised her own independent judgment and made the decisions as fee earner on the client file, she denied that she had allowed her independence to be compromised (Principle 3) in relation to allegation 1.2.5. On the basis that Mr MK had provided actual authority for the Second Respondent to act as his agent, and knew of the Second Respondent’s involvement in the transactions, had no issues with the quality of the service with which he was being provided, and given the long-standing professional relationships between those involved, it was denied that public trust in the First Respondent or in the provision of legal services would be undermined (Principle 6) in relation to allegation 1.2.5.

The Tribunal's Decision

- 30.10 Allegations 1.2.4 and 1.2.5 were admitted in so far as the alleged breaches of Principles 4 and 5 and were concerned. The Tribunal considered the admissions were properly made and the allegations were proved to the requisite standard.
- 30.11 The alleged breaches of Principles 3 and 6 in allegation 1.1.5 were denied. The Tribunal again accepted that the client in this matter was satisfied with the service received. For the reasons set out in relation to allegation 1.1.5 the Tribunal considered that the degree of involvement of the Second Respondent in the case combined with his role as client inevitably created the risk of a conflict. Again there was no evidence presented of any instance in which the First Respondent had not acted on the suggestion of the Second Respondent. The client was denied a fully independent critical eye. The Tribunal found proved on the balance of probabilities that this amounted to a breach of Principle 3.
- 30.12 The arrangement did not in fact go wrong and the client was content with the service. However, the Tribunal considered on balance that the public would be concerned and that public trust in the First Respondent would be undermined by the extent of the Second Respondent's involvement in and direction of the legal work on the transaction. Again this was exacerbated by the evidence that the firm, the First Respondent's employer, was unaware of the extent of the Second Respondent's involvement. In circumstances where the Tribunal had found a technical lack of independence the Tribunal considered that public trust in the provision of legal services would be undermined. The Tribunal found the alleged breach of Principle 6 proved on the balance of probabilities.
31. **Allegation 1.2.8: The First Respondent continued with the transaction despite not having undertaken appropriate CDD and/or properly established the source of the deposit funds and in doing so in doing so breached regulation 11 of the 2007 Regulations and all or any of Principles 6 and 7.**

The Applicant's Case

- 31.1 As the dates for exchange and completion approached, efforts were made to ensure that funds were in place for this transaction. The Applicant accepted that the First Respondent had sought to obtain evidence of where the funds for the deposit of £72,500 were coming from before the funds were paid to PW. No such evidence was received prior to transfer however and sums of £25,500, £25,000 and £22,000 were transferred on 19 September 2016. The money was deposited into PW's bank account despite the First Respondent's request for proof in advance.
- 31.2 The First Respondent contended, in the Joint Answer, that given Mr HK was in possession of the firm's bank details already, she was "powerless" to prevent him depositing the money. In light of the information she had provided regarding the efforts she had made to establish the source of those funds before and after they were deposited in the PW account, and Mr HK's apparent indifference to her requests, the Applicant had accepted that contention.

31.3 It was common ground between the parties that the First Respondent continued to make considerable efforts retrospectively to understand and establish the source of the payments. However, the Applicant's case was that the First Respondent should not have continued with the transaction at that time and should have ceased the business relationship with Mr HK.

31.4 Regulation 11 of the 2007 Regulations states:

“Requirement to cease transactions etc

11. (1) Where, in relation to any customer, a relevant person is unable to apply customer due diligence measures in accordance with the provisions of this Part, he –

- a) must not carry out a transaction with or for the customer through a bank account;*
- b) must not establish a business relationship or carry out an occasional transaction with the customer,*
- c) must terminate any existing business relationship with the customer;*
- d) must consider whether he is required to make a disclosure by Part 7 of the Proceeds of Crime Act 2002 or Part 3 of the Terrorist Act 2000.”*

31.5 The First Respondent was anxious to ensure that Mr HK's transactions completed successfully. The Applicant's case was that consequently, instead of withdrawing from the transaction and terminating the business relationship as she was legally required to do once those unestablished funds had been deposited, she continued to try and rectify the position by obtaining appropriate CDD after the event. By going on to complete the purchase for Client W, it was submitted that the First Respondent failed to act in accordance with regulation 11 of the 2007 Regulations. For the same reasons outlined in relation to allegation 1.1.6, it was submitted that she also thereby breached Principles 6 and 7.

The First Respondent's Case

31.6 By the date of the hearing, the First Respondent admitted this allegation including the alleged breaches of the 2007 Regulations and Principles 6 and 7. In her evidence she described the extensive steps she took to try and establish the source of the funds before they were transferred and said that she was ultimately powerless to prevent the transfer being made. She stated that she had thereafter sought to remedy the situation in the best way possible and did what she thought was right in the circumstances. The First Respondent had had sufficient dealings to understand that the risk was very low and knew that she would not be sending out the money until she had seen a bank statement. Her evidence was that she recalled going on to see bank statements before sending out the money.

The Tribunal's Decision

- 31.7 The allegation was admitted including the alleged breaches of Regulation 11 of the 2007 Regulations and Principles 6 and 7. The Tribunal considered the admissions were properly made and the allegations were proved to the requisite standard.
32. **Allegations 1.3, 1.4 and 1.5 - These allegations mirrored those at 1.1.3, 1.1.4, and 1.1.5 and at 1.2.3, 1.2.4 and 1.2.5.**

Allegation 1.3: In addition to the occasions referred to in allegations 1.1 and 1.2 above, the First Respondent received and acted upon client instructions provided by her husband, the Second Respondent, on behalf of the client in respect of other transactions, without first obtaining express written authority to do so for the client file in question, and in doing so breached all or any of Principles 4 and 5.

Allegation 1.4: In addition to the occasions referred to in allegations 1.1 and 1.2 above, the First Respondent allowed her husband, the Second Respondent, who was not an employee of firms by which she was employed, access to other client files, including at their home, and in doing so breached all or any of Principles 4 and 6.

Allegation 1.5: In addition to the occasions referred to in allegations 1.1 and 1.2 above, the First Respondent caused or allowed her husband, the Second Respondent, who was not an employee of the firm by which she was employed, and from whom she was taking instructions in his capacity as the client's personal advisor, to review and/or work on various specified client files following which she acted in accordance with the directions issued by the Second Respondent, including reproducing work and communications drafted by the Second Respondent, and/or sending documents prepared by the Second Respondent and in doing so breached all or any of Principles 3, 4, 5 and 6.

The Applicant's Case

- 32.1 These allegations involved further instances of issues previously highlighted. The allegations related to "many" files from both PW and Thursfields. In the way described in relation to allegations 1.1 and 1.2 it was alleged that the Second Respondent had access to these client files, including away from the firms' offices, and that the First Respondent acted on instructions provided by the Second Respondent without written authority for this being present on the files. This much was admitted by the Second Respondent, with the same explanation, context and mitigation as set out above. For the reasons set out above, the Applicant submitted that this amounted to a breach of Principles 4 and 5.
- 32.2 The First Respondent again denied that she had simply reproduced work as directed by the Second Respondent and again described the work highlighted by the Applicant as "joint efforts". In these additional cases, in respect of which documentation was exhibited to the Rule 12 Statement to which the Tribunal was directed, the Applicant again submitted that breaches of Principles 3 and 6 had occurred.

The First Respondent's Case

- 32.3 The First Respondent admitted allegations 1.3, 1.4 and 1.5 with regards to Principles 4 and 5. The context she described was very similar to that outlined in her response to previous allegations and is not repeated.
- 32.4 For the reasons set out in relation to allegations 1.1.4 and 1.2.4, the First Respondent denied that her husband having access to the client files including at home amounted to a breach of Principle 6.
- 32.5 For the reasons set out in relation to allegations 1.1.5 and 1.2.5 the First Respondent denied that her husband "directed" her as alleged. As set out above, her case was that her legal work was her own and that she always exercised her own discretion on whatever may have been suggested or on the joint efforts produced. She accordingly denied that she had breached Principles 3 and 6 by acting under direction as alleged.

The Tribunal's Decision

- 32.6 Allegations 1.3, 1.4 and 1.5 were admitted in so far as the alleged breaches of Principles 4 and 5 and were concerned. The Tribunal considered the admissions were properly made and the allegations were proved to the requisite standard.
- 32.7 The alleged breaches of Principle 3 in allegation 1.5 and Principle 6 in both allegations 1.4 and 1.5 were denied. As with the corresponding allegations above, the Tribunal accepted, and it was not disputed by the Applicant, that the clients in these matters were satisfied with the service received and that the close working with the Second Respondent appeared to have helped the transactions run smoothly.

Allegation 1.4

- 32.8 For the reasons set out in relation to allegations 1.1.4 and 1.2.4, the Tribunal did not consider that public trust in the First Respondent would be adversely affected by the provision of access to the client file for the Second Respondent. The alleged breach of Principle 6 was not proved.

Allegation 1.5

- 32.9 For the reasons set out in relation to allegations 1.1.5 and 1.2.5, the Tribunal considered that the degree of involvement of the Second Respondent in the various cases, as evidenced by detailed instructions, combined with his role as client inevitably created the risk of a conflict. The degree of closeness between the work of the Respondents on the files denied the clients a fully independent critical eye. The Tribunal found proved on the balance of probabilities that this amounted to a breach of Principle 3.
- 32.10 As with the previous allegations, the Tribunal considered on balance that the public would be concerned and that public trust in the First Respondent would be undermined by the extent of the Second Respondent's involvement in and direction of the legal work on the transaction. The Tribunal found the alleged breach of Principle 6 proved on the balance of probabilities.

33. **Allegation 1.6: In addition to matters referred to at 1.1.1 and 1.2.1, the First Respondent failed to provide a client care letter in respect of various specified clients and matters and in doing so breached all or any of Principles 4 and 5.**

The Applicant's Case

- 33.1 This allegation mirrors those at 1.1.1 and 1.2.1. The Rule 12 Statement included a table containing five further client matters in which the forensic investigator found no client care letters when reviewing the client files. He also found no evidence that the relevant information had been provided to the clients by another method. None of the clients concerned had received formal information including, for example, how their matter would be conducted by the firm, who would have day to day conduct and who else may become involved.
- 33.2 The points set out previously in relation to the importance of client care letters and the information therein were repeated and it was alleged that the failure to provide them in these further cases amounted to a further breach of Principles 4 and 5.

The First Respondent's Case

- 33.3 During the hearing, the First Respondent admitted the alleged breaches of Principles 4 and 5. She stated that the failures related to 7 out of 1,461 client matters and that client care letters were sent in every other instance. In the Joint Answer the First Respondent accepted that she did not think to issue new client care letters to clients in respect of transactions transferring from PW to Thursfields.

The Tribunal's Decision

- 33.4 The allegation was admitted including the alleged breaches of Principles 4 and 5. The Tribunal considered the admissions were properly made and the allegation was proved to the requisite standard.
34. **Allegation 1.7: In addition to the matter referred to at 1.2.2 the First Respondent failed to undertake appropriate CDD in respect of various specified clients and in failing to do so breached regulation 7 of the 2007 Regulations and Principle 7.**

The Applicant's Case

- 34.1 This allegation mirrored 1.2.2. The Rule 12 Statement included a table containing six further client matters in which it was alleged that appropriate client due diligence was not undertaken. The relevant events took place at a time when the 2007 Regulations were in force. In accordance with regulation 7 of the 2007 Regulations, all firms were legally required to undertake CDD which was defined by Regulation 5 as meaning:
- *Identifying the customer and verifying the customer's identity on the basis of documents, data or information obtained from a reliable and independent source;*
 - *Identifying where there is a beneficial owner who is not the customer, and taking adequate measures, on a risk-sensitive basis, to verify his identity so that the*

relevant person is satisfied that he knows who the beneficial owner is, including, in the case of a legal person, trust or similar legal arrangement, measures to understand the ownership and control structure of the person, trust or arrangement; and

- *Obtaining information on the purpose and intended nature of the business relationship.*

34.2 It was alleged that none of the six identified files contained any evidence or indication that the first respondent had undertaken appropriate CDD as required. For the reasons set out in relation to allegation 1.2.2 it was submitted that this amounted to a breach of Principle 7.

The First Respondent's Case

34.3 In the Joint Answer, the First Respondent re-iterated that she had prior knowledge in relation to three of the clients. In relation to the other companies/clients listed in the Rule 12 Statement she explained that she had had numerous prior dealings with all of them. The individuals concerned were long term clients of hers and/or long-standing associates of the Second Respondent. One of the companies was jointly owned by her stepson. She was well versed in all of their business dealings.

34.4 The First Respondent made the same limited admission of a breach of Regulation 7 of the 2007 Regulations and Principle 7 by virtue of the lack of CDD on the six specific client matters identified by the forensic investigator. However, the First Respondent was confident that she carried out appropriate CDD in relation to prior transactions and that this existed on master files for the relevant clients if not on the small number of specific matter files identified by the forensic investigator.

The Tribunal's Decision

34.5 The allegation was admitted including the alleged breaches of Regulation 7 of the 2007 Regulations and Principle 7. The Tribunal considered the admissions were properly made and the allegation was proved to the requisite standard.

The Second Respondent

35. **Allegation 2.1: The Second Respondent provided instructions on behalf of clients to his wife, the First Respondent, without ensuring that express written authority to do so had been provided to the First Respondent and/or her firm, and in doing so breached Principle 6.**

The Applicant's Case

35.1 At the relevant time, the Second Respondent was acting as a "personal business advisor" for clients involved in property transactions. He was admitted to the Roll but had not held a practising certificate since January 2016. This allegation concerned the Second Respondent's involvement in those matters set out above from the perspective of the First Respondent's actions in allegations 1.1.3 and 1.2.3.

- 35.2 In light of the email from Mr HK referred to above, the Applicant accepted that the Second Respondent had authority to provide instructions on behalf of Mr HK and his business entities. In the light of information received in the Joint Answer as to the Second Respondent's professional relationships with other clients the Applicant also accepted that he had authority to provide instructions on behalf of the further clients in respect of whom the allegations were brought.
- 35.3 The Applicant's case was that notwithstanding any actual or implied authority, a solicitor admitted to the Roll, with the Second Respondent's experience, was cognisant of the requirement and the importance of having all the necessary safeguards in place. As a regulated professional, the Second Respondent was required to ensure as far as possible that legal transactions are effected properly and within the rules, whatever his role may be in relation to those transactions. Furthermore, the Applicant submitted that he placed his wife, the First Respondent, in an invidious and compromising position professionally. Being aware of the importance and purpose of the Principles, it was alleged that he caused her to breach those Principles whilst breaching them himself. It was alleged that he did not behave in a way which maintained the trust placed by the public in him and in the provision of legal services.

The Second Respondent's Case

- 35.4 In the Joint Answer, the Second Respondent maintained that he provided instructions as a lay person and was not acting as a solicitor. Both the clients and the First Respondent understood this. He re-iterated that he had actual and implied authority to provide instructions and submitted that as a lay person he was not the one required to ensure written authority existed on the client file.

The Tribunal's Decision

- 35.5 In the Position Statement the Second Respondent had admitted the alleged breach of Principle 6, whilst denying that he placed the First Respondent in an invidious position as alleged.
- 35.6 Notwithstanding this admission, in circumstances where the Applicant acknowledged that actual and implied authority for the Second Respondent to provide instructions in the client matters existed, the Tribunal considered that the obligation to comply with the requirement to evidence this authority fell squarely on the individual with conduct of the client file. The obligation was the First Respondent's and not the Second Respondent's. The First Respondent was an experienced practitioner. Whilst the Second Respondent may ideally have checked this matter himself the Tribunal did not consider that his failure to do so began to approach the threshold required to undermine public trust as alleged. The allegation was not proved to the requisite standard.
36. **Allegation 2.2: The Second Respondent accessed the First Respondent's client files when he was not an employee of the firm by which the First Respondent was employed, when there was no written authority in place from his client to permit him to access those files, and/or no permission from the firm to do so, and in doing so breached Principle 6.**

Allegation 2.3: The Second Respondent undertook reviews and/or work on the First Respondent's client files, including preparing and/or drafting documents and communications, and issuing directions to the First Respondent to carry out tasks, when he was not an employee of the firm by which the First Respondent was employed, and when there was no permission from the firm and/or his client to work in a legal capacity, and in respect of Client C/Client W's purchase of 22-24 New Street at a time when he was engaged by the solicitors for the vendors as a consultant, and in doing so breached all or any of Principles 6 and 7.

The Applicant's Case

- 36.1 These allegations concerned the Second Respondent's involvement in those matters set out above from the perspective of the First Respondent's actions in allegations 1.1.4, 1.2.4 and 1.4.
- 36.2 As set out above, the Applicant alleged that the Second Respondent's involvement in the various legal transactions was greater than as agent of the client providing instructions as a "lay person" and not as a solicitor. It was alleged that he was "directing" the First Respondent on the various client matters and acting as both client and legal adviser. The particulars set out above were repeated.
- 36.3 As with the previous allegations, it was submitted that notwithstanding the actual/implied authority from the relevant clients, as an experienced solicitor admitted to the Roll, the Second Respondent would be cognisant of the requirement and the importance of having all the necessary safeguards in place. As a regulated professional, the Second Respondent was required to ensure as far as possible that legal transactions were effected properly and within the rules, whatever his role may be in relation to those transactions. He was not permitted to involve himself in the transactions in this case to the extent alleged.
- 36.4 For the reasons set out in relation to the allegations concerning the First Respondent's role in the same matters, which were alleged to extend to assisting with and undertaking legal work, it was submitted that the Second Respondent's conduct amounted to a breach of Principles 6 and 7.

The Second Respondent's Case

- 36.5 In the Joint Answer both allegations were denied. In the Position Statement both allegations were admitted. During the hearing, the Second Respondent gave evidence about the context of his actions which corresponded to that set out above in the equivalent allegations concerning the First Respondent.
- 36.6 His position was that as acknowledged agent of the relevant clients, he had a right of access to the legal files in the same way that the client would. It made no practical difference that he viewed a file at home rather than doing so at one of the firms where the First Respondent worked.
- 36.7 With regards to the allegation that he "directed" the First Respondent, involved himself with legal work, and his involvement was akin to a legal supervisor, his position mirrored that of the First Respondent. His evidence was that the notes he wrote were

suggested drafts, often the result of discussions with the First Respondent. He also stated that as the fee earner with conduct of the legal files, the ultimate decision was the First Respondent's.

- 36.8 During the hearing the Second Respondent stated that he reluctantly accepted both allegations.

The Tribunal's Decision

- 36.9 As with the previous allegation, given that the Second Respondent had the various clients' actual authority to act as agent and review the relevant files, the Tribunal considered that the obligation to ensure that there was written authority to reflect this was the First Respondent's as she had conduct of the legal files. The failure of the Second Respondent to check this himself was unfortunate, but did not reach the threshold such that Principle 6 would be breached and public trust would be undermined. Written authority should have been obtained, but the obligation was the First Respondent's. Allegation 2.2 was not proved.
- 36.10 The Tribunal had already found in relation to allegations 1.1.5, 1.2.5 and 1.5 that the Second Respondent had reviewed and worked on various client files in a way that went beyond the actions of a client. The Tribunal had found that his actions, in reviewing files, drafting correspondence and providing advice on the conduct of the transactions amounted to legal work. This work was undertaken without the knowledge of the relevant firms. For reasons which mirrored the findings made against the First Respondent, the Tribunal considered that public trust in the Second Respondent and in the provision of legal services would be undermined by an admitted solicitor, without a practising certificate, undertaking legal work and directing the individual with conduct of the client matter, even where the Second Respondent had actual authority to act as the client. The Tribunal accordingly found that the alleged breach of Principle 6 had been proved to the requisite standard.
- 36.11 Similarly, by undertaking legal work and assisting in the provision of legal services, including giving directions to the First Respondent, when he was not in possession of a current practising certificate and/or not employed by the firm in question, the Tribunal considered that the Second Respondent failed to comply with the arrangements and rules for practice. The Tribunal found proved to the requisite standard that he thereby breached Principle 7.

Previous Disciplinary Matters

37. There were no previous Tribunal findings for the First Respondent.
38. There was one previous Tribunal judgment for the Second Respondent in case 8565/2002. The hearing took place in December 2002. A total fine of £7,500 was imposed for breaches of the practice rules then in force (the Solicitors Practice Rules 1987) relating to acting where there was a conflict between clients in a property transaction and failing to act towards other solicitors with complete frankness consistent with his overriding duty to his client.

Mitigation

39. Much of the mitigation for both Respondents was implicit in their responses to the various allegations. All of the clients involved knew about the Second Respondent's involvement with their transactions and were happy with the service provided and the conduct of both Respondents. There had not been any client complaints in relation to any of the matters raised by the Applicant. Both Respondents stressed that the clients in questions were experienced and regular users of legal services with knowledge about the processes involved.
40. The cases featuring in these allegations were a tiny proportion of the work of both Respondents. The Second Respondent referred work to many other property lawyers on behalf of his own clients and the work referred to the First Respondent made up a very small percentage of her workload.
41. Both Respondents had cooperated with the Applicant and, notwithstanding their defence of various allegations, both spoke about being resolved not to work in such a close way in the future, either with each other or with others.
42. The First Respondent spoke about the anxiety caused initially by being placed on garden leave and subsequently by the proceedings themselves. The proceedings had caused anxiety for both Respondents. It was only when the Rule 12 Statement was produced that it became clear that dishonesty was not alleged, and only shortly before the hearing that it became clear the Applicant did not propose to pursue the allegations that both Respondents had acted without integrity. The First Respondent stated that she had 20 years of successful legal experience and had had partnership prospects despite being unadmitted. She was not currently working in the profession but submitted that restrictions on her ability to do so were not required.

Sanction

43. The Tribunal referred to its Guidance Note on Sanctions (7th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondents' culpability and the harm caused, together with any aggravating or mitigating factors.
44. In assessing culpability, the Tribunal found that the First Respondent's motivation was to do the best for her clients. The Tribunal had made various findings of misconduct and these involved omissions and practices which offended the Principles as indicated. However, the Tribunal did not consider there was any attempt to hide anything improper or any underhand motive or even any lack of diligence; the misconduct was the result of naiveté. The Tribunal considered that the Second Respondent was similarly motivated by a wish to provide an efficient and effective service to his clients. The one finding against him demonstrated he involved himself with the conveyancing matters to an extent which constituted undertaking legal work, but the Tribunal accepted his motive in doing so was to assist his clients and the First Respondent. The conduct was planned by both Respondents, but this did not increase the culpability in this instance in all the circumstances given their motivation. The Respondents had full control of the circumstances of the misconduct. Both were experienced practitioners, the Second Respondent in particular was a very experienced solicitor which increased his

culpability. Neither Respondent had misled their regulator. The Tribunal considered that the culpability of the Respondents was moderately low.

45. The Tribunal considered the risk of some harm being caused by the misconduct was foreseeable. The findings against the First Respondent included breaches of anti-money laundering regulations, albeit minor breaches involving clients of whom she had extensive knowledge. The findings against the Second Respondent included undertaking and assisting with legal work when he was not authorised to do so. When placed in its proper context, the Tribunal considered that the public would be wary about the nature and closeness of the working relationship between the Respondents and that some reputational harm was likely. In the specific circumstances of the client matters raised in the allegations, there had been no harm caused to any clients or others involved in the various transactions. The firms employing the First Respondent had been harmed to some extent by the lack of knowledge of the extent of the Second Respondent's role in the client matters. The harm caused was moderately low.
46. The Tribunal then considered aggravating factors. The conduct was repeated and took place over an extended period of time. The Second Respondent in particular ought to have known that his involvement in the legal subject matter of the various transactions had strayed into undertaking and assisting with legal work when he was not entitled to do so. Given the findings from 2002, which although somewhat historic were not dissimilar as they involved a failure to observe procedural safeguards designed for client protection, the Second Respondent should have been more alert to the risks of the working relationship and the extent of his involvement on the client legal files.
47. The Tribunal also considered mitigating factors. There had been no loss caused by the misconduct. Both Respondents had cooperated with the Applicant's investigation. The First Respondent had an otherwise unblemished disciplinary record. The Tribunal considered that both Respondents had genuine insight about the misconduct and the Tribunal considered their stated intentions about learning from and avoiding any similar experience to be credible. Both Respondents were open and frank in their evidence and submissions and made sensible and warranted admissions where appropriate.
48. The Tribunal assessed the appropriate sanction. The Tribunal did not consider that No Order was an adequate sanction for either Respondent. The findings against the First Respondent were more extensive, and as recorded in the findings as the fee earner with conduct of the client files, the primary obligation in many cases to ensure regulatory compliance was hers. In the Second Respondent's case, his greater experience and the previous findings meant that No Order was not an adequate sanction.
49. Working up from No Order in the Sanctions Guidance, the Tribunal considered that a Reprimand was the appropriate sanction for both Respondents having regard to the seriousness of the misconduct, the protection of the public and the reputation of the profession. The Tribunal considered that various illustrative factors listed in paragraph [26] of the Sanctions Guidance were relevant to both Respondents in this case:
 - *“the respondent's culpability is low.*
 - *there is no identifiable harm caused to any individual.*

- *the risk of any such harm is negligible.*
- *the likelihood of future misconduct of a similar nature or any misconduct is very low.*
- *evidence of genuine insight, assessed by the Tribunal on the basis of facts found proved and the respondent's evidence.*
- *minor breaches of regulation not dealt with under the SRA's own disciplinary jurisdiction"*

50. Given that this sanction was considered adequate, the Tribunal did not consider more serious sanctions appropriate and proportionate. The Tribunal determined the Second Respondent should be Reprimanded for the misconduct found proved.
51. As the First Respondent was not admitted as a solicitor, the Tribunal did not appear to be empowered to Reprimand the First Respondent as a sanction. The Tribunal therefore, determined to direct that the Applicant consider the imposition of a rebuke under its own powers.

Costs

52. The Applicant's schedule of costs was in the sum of £84,066.20. Of this, £42,666.20 related to the investigation of the allegations rather than the proceedings. Ms Harris submitted that notwithstanding the two not proved allegations, all of the allegations were pursued reasonably. She submitted that the allegations which were withdrawn were withdrawn after a fair, reasonable and proper review of the case. She stated that the Respondents did not change their case throughout the proceedings but did provide more information including copy emails and witness statements from clients to substantiate their assertions. Ms Harris stated that the parties had worked together attempting to find agreement, and this was reflected in the Position Statement. The Applicant had complied with all directions made by the Tribunal. Ms Harris submitted that the time spent by the Applicant on the matter was proportionate. She stated that after she and Capsticks were instructed a lot of work had necessarily been undertaken in response to the suggestion from the Respondents that the files relied upon by the Applicant had been 'cherry picked'. Obtaining and reviewing relevant client files had involved a significant amount of work. The Capsticks fixed fee in the case was £34,500 (excluding VAT) which Ms Harris submitted was reasonable. She noted that this fixed fee included her own fees which were £47,010 (inclusive of VAT).
53. In reply, the Second Respondent submitted that both he and the First Respondent had fairly answered Mr Baker's questions during the initial investigation. They had cooperated since. Various admissions had been made. The most serious allegations, which originally included dishonesty, and until the hearing, acting without integrity, had been withdrawn. He submitted that what remained did not need to be referred to the Tribunal. He submitted that the case had changed significantly in the Rule 12 Statement and then again with the withdrawal of the allegation of acting without integrity (and three further allegations in their entirety). Much of the investigation related to matters not pursued. He also submitted that the Applicant's costs since the

proceedings were issued were not proportionate to the matters found proved. The Respondents had incurred legal fees in contesting the matter.

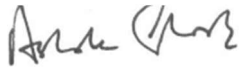
54. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Applicant had had the response of both Respondents to the formal letter in which allegations were first raised by December 2018. The position of the Respondents had not changed since that point. Whilst it was accepted that more detail and supporting documentation was provided subsequently, the Tribunal considered that from this point when the Applicant had the explanation that actual authority existed for the access and work undertaken by the Second Respondent, the Applicant should have reviewed the allegations very much more quickly. The allegations of acting without integrity were rightly withdrawn, but only during the substantive hearing. The Tribunal considered that the allegations which were found proved, considering that various admissions were made in the Position Statement, should not have required a hearing of more than one day.
55. The Tribunal considered that both the original investigation costs and the costs incurred in the proceedings were therefore disproportionate. The original allegations of dishonesty were not included in the Rule 12 Statement. The case ultimately brought for determination was considerably more limited than that which was investigated. A four day hearing where the most serious allegations had rightly been withdrawn and extensive admissions were made was excessive. The Tribunal considered there was significant duplication in the documentation. Given the number of client matters involved, the level of documentation and the fact there were multiple allegations for two Respondents, the Tribunal considered that £20,000 was an appropriate figure for the costs of the Applicant's investigation. Taking the above matters together with the complexity of the case and the extent of the documentation involved into account, the Tribunal considered that proportionate legal fees for a one day hearing, with the limited number of allegations contested, would be £10,000. In all the circumstances the Tribunal determined that the appropriate costs figure to award to the Applicant was £30,000.
56. Both Respondents provided a Statement of Means but neither submitted they would be unable to meet a costs award. The Tribunal ordered the First and Second Respondent to pay on a joint and several basis the Applicant's costs of and incidental to this application fixed in the sum of £30,000.

Statement of Full Order

57. The Tribunal ORDERED that the Applicant consider issuing a rebuke in relation to the First Respondent ODETTE GREEN and it further Ordered that she do pay the costs of and incidental to this application and enquiry, on a joint and several basis with the Second Respondent, fixed in the sum of £30,000.
58. The Tribunal ORDERED that the Second Respondent SIMON JOHN BISHOP, solicitor, be REPRIMANDED and it further Ordered that he do pay the costs of and incidental to this application and enquiry, on a joint and several basis with the First Respondent, fixed in the sum of £30,000.

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Dated this 25th day of February 2021.
On behalf of the Tribunal



A. Ghosh
Chair

JUDGMENT FILED WITH THE LAW SOCIETY

25 FEB 2021