SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12110-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

DAVID ELDEN HOWES Respondent

Before:

Mr B Forde (in the chair)
Ms B Patel
Mr S Marquez

Date of Hearing: 11 November 2020

Appearances

Simon Griffiths, Solicitor employed by the Solicitors Regulation Authority, The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent did not participate and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, David Elden Howes, made by the SRA as amended with the permission of the Tribunal are that, while in practice as the sole equity owner and solicitor at David Howes Solicitors ("the firm"):

1.1 Between 30 July 2019 and 21 February 2020, the Respondent failed have in place valid Professional Indemnity Insurance.

In doing so he acted in breach of:

SRA Indemnity Insurance Rules 2013 (prior to 25 November 2019)	**SRA Indemnity Insurance Rules 2019 (from 25 November 2019)**
Rules 4.1 and 5.1	Rules 2.1 and 4.1
and	
SRA Principles 2011 (prior to 25 November 2019)	**SRA Principles 2019 (from 25 November 2019)**
Principle 6	Principle 2
Principle 4	Principle 7

1.2 Between 15 June 2019 and 13 January 2020, the Respondent continued to practise, including conducting reserved legal activity and holding client money, without valid insurance, when he knew or should have known that no valid insurance was in place.

In doing so he acted in breach of:

SRA Principles 2011 (prior to 25 November 2019)	**SRA Principles 2019 (from 25 November 2019)**
Principle 2	Principle 5
Principle 6	Principle 2
Principle 4	Principle 7

1.3 On 13 November 2019 and 8 January 2020, the Respondent informed third parties that valid PII insurance was in place when he knew or should have known it was not.

In doing so he acted in breach of:

SRA Principles 2011 (prior to 25 November 2019)	**SRA Principles 2019 (from 25 November 2019)**
Principle 2	Principle 5
Principle 6	Principle 2
Principle 4	Principle 7
	Principle 4

1.4 Between January 2019 and 6 February 2020, the Respondent failed to keep any books of accounts.

In doing so he acted in breach of:

SRA Accounts Rules 2011 (prior to 25 November 2019)	**SRA Accounts Rules 2019 (from 25 November 2019)**
Rules: 29.1, 29.2, 29.4, 29.11, 29.12	Rule 8

And

SRA Principles 2011 (prior to 25 November 2019)	**SRA Principles 2019 (from 25 November 2019)**
Principle 6	Principle 2
Principle 4	Principle 7

Dishonesty

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

Documents

2. The Tribunal reviewed all the documents including:

Applicant

- Rule 12 Statement dated 21 July 2020 with exhibit KS1
- Applicant's Schedule of costs as at date of final hearing dated 6 November 2020
- Copy of the judgment in Ivey v Genting Casinos [2017] UKSC 67
- Correspondence sent by the Applicant to the Respondent including email from Simon Griffiths to the Tribunal and the Respondent dated 10 November 2020
- SRA Indemnity Insurance Rules 2019
- SRA Indemnity Insurance Rule 2013

Respondent

- None

Preliminary Issues

Application to proceed in absence

3. For the Applicant, Mr Griffiths submitted that the Respondent was not in attendance. He faced serious allegations including two of lack of integrity and two which were either aggravated or included an allegation of dishonesty. Mr Griffiths applied for the Tribunal to proceed in the absence of the Respondent. Mr Griffiths submitted that the hearing was listed and notice was given in documentation emailed by the Tribunal to the Respondent on 22 July 2020. The email was sent to two email addresses. The Applicant emailed the Respondent on 22 July 2020 and asked if he could confirm

which of these was his preferred email address and he replied on 23 July 2020 confirming the one which he wanted to use. All correspondence from the Tribunal and the Applicant had gone to the Respondent at that email address from that date. Rule 36 of the Solicitors Disciplinary Proceedings Rules ("SDPR") 2019 stated:

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

In addition Rule 44 (1) (b) stated:

> "44.—(1) Any document to be sent to the Tribunal or any other person or served on a party or any other person under these Rules, a practice direction or a direction given under these Rules must be—
> (a) …
> Or
> (b) sent by email to the email address specified by the Tribunal or other person or specified for the proceedings by a party ..."

The Applicant said that the Respondent had specified an email address at which he was happy to receive documents and therefore under Rule 44 (1) (b) and Rule 45 the notice was deemed served on the Respondent on 22 July 2020. The Tribunal could be satisfied that it was reasonable to expect that the Rule 12 Statement and the associated bundle had been received by the Respondent.

4. In addition, Mr Griffiths submitted that in applying Rule 36 the Tribunal must have in mind the checklist of the Court of Appeal in R v Jones [2001] EWCA Crim 108, which was broadly approved by the House of Lords. It said that in exercising the discretion to proceed, fairness to the defence was of prime importance but fairness to the prosecution must also be taken into account. The Judge must have regard to all the circumstances in the case including in particular the nature and circumstances of the defendant's behaviour in absenting themselves from the trial or disrupting it and in particular whether their behaviour was deliberate, voluntary and such as plainly waived their rights to appear. Mr Griffiths submitted that there had been no correspondence from the Respondent since his acknowledgement confirming his preferred email address but his behaviour suggested that he had voluntarily absented himself. He had been sent all the documents required under these directions. He had not responded and not provided any documents and so voluntarily waived his right to represent himself and appear at the hearing. The Tribunal also had to consider whether an adjournment might result in the Respondent attending voluntarily; based on the lack of correspondence it was hard to say, but the Applicant did not suggest that there was any indication that if further time was given, the Respondent would attend voluntarily. In the current situation such an adjournment was likely to be for some time and it was unlikely the Respondent would attend in those circumstances.

5. Mr Griffiths submitted that the Respondent had waived his right to representation by not appointing someone and there was no indication whether he would wish to do so. As a solicitor the Respondent would know how to instruct someone if he so wished. Mr Griffiths conceded that the Respondent would be disadvantaged by not being able to give his account of events if the hearing proceeded in his absence but it was his choice he was not present and under Rule 37 of the SDPR there was a power to order a rehearing if a) the party neither attended in person nor was represented at the hearing of the application; and (b) the Tribunal determined the application in the party's absence. The Respondent would be given the opportunity to explain why he had not appeared at this hearing if he applied for a rehearing.

6. Mr Griffiths submitted the risk of an improper conclusion being reached by reason of the absence of the Respondent was minimal. As to the seriousness of the offence; this was a matter involving dishonesty; allegations which should be heard promptly by the Tribunal as they could, if found proved, attract a very serious sanction and this went to the protection of the public. That also tied into the next point about the general public interest and the particular interests of victims and witnesses that the trial should take place within a reasonable time to the events to which it related. There was a witness of fact (the Applicant's Forensic Investigation Officer ("FIO") who attended at the firm earlier in 2020) if the Tribunal would like to hear from him. The events were relatively near in time but the longer the case went on, there was the effect of delay on the memory of the witness. The Tribunal noted that when the Tribunal office communicated with the Respondent on 22 July 2020 undeliverable notices were received but he did then confirm his preferred email address.

7. The Tribunal had regard to the evidence and the submissions for the Applicant. Mr Griffiths had addressed all relevant aspects of the guidelines to which a Tribunal had to have regard when considering an application to proceed in absence. The Tribunal was satisfied that the Respondent had been properly served with the proceedings and was aware of the date of this hearing, how it was to be conducted and how to access it; the Tribunal office had sent him the details for the virtual hearing by email. The Tribunal considered that he had voluntarily decided to absence himself from the proceedings and that it would be appropriate for the Tribunal to proceed with the substantive hearing in his absence. If for some reason he had been unable to participate he had a remedy under Rule 37 to apply for a rehearing.

8. Mr Griffiths also submitted that as the Respondent had voluntarily absented himself from the hearing the Tribunal was entitled to draw an adverse inference. The Tribunal noted the submission which in cases issued under the SDPR 2019 such as this one, was covered by Rule 33 as follows:

> "Where a respondent fails to—
> (a) send or serve an Answer in accordance with a direction under rule 20(2)(b); or
> (b) give evidence at a substantive hearing or submit themselves to cross-examination;
> and regardless of the service by the respondent of a witness statement in the proceedings, the Tribunal is entitled to take into account the position that the respondent has chosen to adopt and to draw such adverse inferences from the respondent's failure as the Tribunal considers appropriate."

Application to amend the Rule 12 Statement

9. Mr Griffiths submitted that the Applicant had sent an email to the Respondent the previous evening to notify him of its application. The Applicant applied to amend allegation 1.1 regarding the extent to which it alleged the Indemnity Insurance Rules had been breached. Allegation 1.1 remained the same but prior to 25 November 2019 the Applicant wished to allege only that the Respondent breached Rules 4.1 and 5.1 of the SRA Indemnity Insurance Rules 2013 and on and after 25 November that he was in breach of just 2.1 and 4.1 of the SRA Indemnity Insurance Rules 2019 and nothing else. The Applicant said the Respondent was not prejudiced by this as it only reduced the scope of the breach; it did not change the allegation. Also the Respondent had not filed an Answer or made any representations at any stage in relation to this allegation and so had not been put to any expense in dealing with an allegation that the Applicant now sought to minimise.

10. Mr Griffiths also applied to amend a typographical error in the Rule 12 Statement in allegation 1.1 where there was reference to the "SRA Indemnity Rules 2013" whereas it should have read the "SRA Indemnity Insurance Rules 2013". Mr Griffiths could not find any other instance where that mistake had been duplicated in the Rule 12 Statement.

11. Finally Mr Griffiths referred the Tribunal to paragraph 42 of the Rule 12 Statement which dealt with representations by the Applicant as to how allegation 1.4 demonstrated a lack of integrity but in the allegation itself lack of integrity was not pleaded. Mr Griffiths asked the Tribunal to redact and ignore paragraph 42. Mr Griffiths believed the paragraph was included in error.

12. The Tribunal was satisfied that the amendments sought did not in any way prejudice the Respondent and were designed to correct errors in the Rule 12 Statement. The Tribunal therefore gave permission for the amendments sought to be made.

13. Mr Griffiths also submitted that the Respondent had not served an Answer. CEA notices having been served on the Respondent and no notice having been received in response pursuant to Rule 28.7 of the SDPR 2019 the documents submitted could be deemed as evidence pursuant to Rule 28.8 and the Tribunal could treat them as authentic true copy documents and give full weight to the Statements made within them. Mr Griffiths also pointed out that the SRA Indemnity Insurance Rules 2103 and 2019 had now been added to the hearing bundle.

Background

14. The Respondent, who was born in 1947, was a solicitor having been admitted to the Roll on 1 June 1963. The Respondent practised from David Howes Solicitors which was the recognised sole practice of the Respondent. The firm operated from Horley, Surrey. Its main areas of work were Probate, Wills and Conveyancing.

15. The Respondent was the sole solicitor and manager at the firm. He was the Compliance Officer for Legal Practice ("COLP") and Compliance Officer from Finance and Administration ("COFA").

16. The Respondent did not renew his practising certificate from 1 November 2019. The Respondent did not hold a current Practising Certificate.

17. A decision was made to intervene into the practice of the Respondent and to refer his conduct to the Tribunal on 21 February 2020.

Witnesses

18. There were no witnesses.

Findings of Fact and Law

19. The Applicant was required to prove the allegations to the standard applicable in civil proceedings that is on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(The submissions below include those in the documents and those made orally.)

Introductory submissions for the Applicant

20. For the Applicant, Mr Griffiths submitted that the allegations occurred between April 2019 and February 2020. At the time relevant to the allegations the Respondent was approximately 72 years old and had around 46 years post qualification experience as a solicitor. The allegations were serious; two were based on lack of integrity and allegations 1.2 and 1.3 were aggravated by dishonesty. In respect of the latter the Respondent's conduct was dishonest in breach of Principle 4 under the SRA Standards and Regulations which came into effect on 26 November 2019. Each allegation referred to both the old and new Rules so reference would be made to the 2011 and 2109 Principles as appropriate. The allegations referred to valid Professional Indemnity Insurance ("PII") by which was meant as follows: Following the expiry of the firm's PII policy, under the Minimum Terms and Conditions and the Rules the Respondent went through a period where he went into the Extended Indemnity Period ("EIP") and then he went into the Cessation Period ("CP") both were covered in the SRA Indemnity Insurance Rules. At the end of the CP he still had run off cover but he did not have insurance that allowed him to practise as a solicitor.

21. **Allegation 1.1 Between 30 July 2019 and 21 February 2020, the Respondent failed have in place valid Professional Indemnity Insurance.**

In doing so he acted in breach of:

SRA Indemnity Insurance Rules 2013 (prior to 25 November 2019)	**SRA Indemnity Insurance Rules 2019 (from 25 November 2019)**
Rules 4.1 and 5.1	**Rules 2.1 and 4.1**
and	
SRA Principles 2011 (prior to 25 November 2019)	**SRA Principles 2019 (from 25 November 2019)**
Principle 6	**Principle 2**
Principle 4	**Principle 7**

21.1 Mr Griffiths submitted that the Applicant was not notified of renewal of the Respondent's PII after it expired in 2019 and between 8 January 2020 and 31 January 2020, the Applicant made twelve attempts to contact the Respondent to establish that his firm had valid PII in place. These attempts were documented before the Tribunal. The Respondent did not substantively respond to those attempts; the last attempt did receive a response but it did not provide the information that had been requested. As a result Mr Jason Gregory an FIO attended the firm's offices on 6 February 2020 and it was established that the Respondent's PIl policy dated 1 May 2018 had expired on 30 April 2019. The EIP expired on 30 May 2019. Under the 2013 Rules, which requirements did not change with the introduction of the 2019 Rules and which applied at the time the policy expired, as a result of not renewing that policy on 1 May the firm entered the EIP which expired on 30 May 2019 and then entered the CP which expired on 29 July 2019. The firm did not therefore have valid insurance from the expiry of the CP and this continued until the Applicant made a decision to intervene on 21 February 2020.

21.2 Mr Griffiths submitted that the Forensic Investigation ("FI") Report was disclosed to the Respondent on 14 February 2020 by email. No response was received to the email or at all and this was recorded in a Supplemental Report dated 18 February 2020 which was provided to the Panel considering intervention. There had been no substantive response or correspondence from the Respondent on this since the intervention and no Answer to the allegations. The Respondent did provide comments to the FIO during his attendance at the firm which the latter summarised in his FI Report and which Mr Griffiths incorporated into his submissions.

21.3 Regarding allegation 1.1, Mr Griffiths submitted that at all material times the Respondent was the sole principal, the COLP and the COFA of the firm and had been the Principal since 1 May 2001. In relation to the period which ran from 30 July 2019 the end of the CP up until and including 24 November 2019, the relevant requirements were as follows:

Under Rule 4.1 of the 2013 Rules:

> "All firms carrying on a practice during any indemnity period beginning on or after 1 October 2013 must take out and maintain qualifying insurance under these Rules."

Under Rule 5.1 of the 2013 Rules:

> "Each firm carrying on a practice on or after 1 October 2013, and any person who is a principal of such a firm, must ensure that the firm takes out and maintains qualifying insurance at all times."

Having regard to the period including and after 25 November 2019 the relevant 2019 Rules which said much the same thing as the earlier Rules were Rule 2.1:

> "An authorised body carrying on a practice during any indemnity period beginning on or after 25 November 2019 must take out and maintain qualifying insurance under these rules with a participating insurer"

Rule 4.1:

> "Each authorised body, and any principal of such a body, must ensure that the authorised body complies with these rules."

21.4 So Mr Griffiths submitted that in relation to both periods the firm was without valid insurance from 30 July 2019 to 1 February 2020. As a sole practitioner the Respondent breached Rule 4.1 of 2013 Rules and Rule 2.1 of the 2019 Rules and as the sole principal of the firm failed to ensure that the firm had and maintained insurance in accordance with Rule 5.1 of the 2013 Rules and Rule 4.1 of the 2019 Rules.

21.5 Mr Griffiths also submitted that by not having insurance during this period the Respondent failed to act in the interests of each client in breach of Principle 4 of the SRA Principles 2011 and Principle 7 of the 2019 Principles. During the period that the firm continued to practise after 30 July 2019, acting on existing matters and taking on new matters, the firm was not covered by valid insurance. Should a client have needed to make a claim against the firm there was not a valid policy in place against which a claim could be made and so this was not in the best interests of any or all of the firm's clients. Further by not having valid insurance during this period the Respondent behaved in a way that failed to maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6 of the 2011 Principles and failed to behave in a way that upholds the public trust and confidence in the solicitor's profession and in legal services provided by authorised persons in breach of Principle 2 of the 2019 Principles. The public would expect solicitors only to be practising with appropriate and valid insurance. Not an insignificant amount of the trust that members of the public placed in the profession was based on the fact that their professional advisers and their solicitors were insured and a level of protection was given by that. So that trust and confidence would be broken both generally in relation to his practice and regarding specific matters if the public found out that a solicitor was knowingly practising without appropriate and valid insurance.

21.6 The Tribunal had regard to the evidence and the submissions for the Applicant. The facts presented for the Applicant were not disputed by the Respondent in response to CEA notices served by the Applicant. No Answer had been filed and the Respondent had made admissions in discussions with the FIO. The Tribunal found proved on the evidence to the required standard that between 30 July 2019 and 21 February 2020, the Respondent failed have in place valid PII and that by doing so prior to 25 November 2019 he breached Rule 4.1 and Rule 5.1 of the SRA Indemnity Insurance Rules 2013 and on and after that date he was in breach of Rules 2.1 and 4.1 of the SRA Indemnity Insurance Rules 2019. It was important for a solicitor to hold valid PII for the protection of clients and the Tribunal found proved to the required standard that as a consequence of the Respondent's failure in the period before 25 November 2019, he was in breach of Principles 6 and 4 of the SRA Principles 2011 and from and after 25 November 2019 he was in breach of Principles 2 and 7 of the SRA Principles 2019. All aspects of allegation 1.1 were therefore found proved on the evidence to the required standard.

22. **Allegation 1.2 Between 15 June 2019 and 13 January 2020, the Respondent continued to practise, including conducting reserved legal activity and holding client money, without valid insurance, when he knew or should have known that no valid insurance was in place.**

In doing so he acted in breach of:

SRA Principles 2011 (prior to 25 November 2019)	**SRA Principles 2019 (from 25 November 2019)**
Principle 2	**Principle 5**
Principle 6	**Principle 2**
Principle 4	**Principle 7**

22.1 Mr Griffiths submitted that the time period under this allegation started on 15 June 2019 which was the date of the first identified matter in the FI Report and this was during the CP which was entered into on 31 May 2019 and ran until 29 July. Rule 5.2 of the 2013 Rules stated:

> "Each firm that has been unable to obtain a policy of qualifying insurance prior to the expiration of the extended indemnity period, and any person who is a principal of such a firm, must ensure that the firm, and each principal or employee of such firm, undertakes no activities in connection with private legal practice and accepts no instructions in respect of any such activities during the cessation period save to the extent that the activity in connection with private legal practice is undertaken to discharge its obligations within the scope of the firm's existing instructions or is necessary in connection with the discharge of such obligations."

During that period 31 May 2019 to 29 July the only thing the firm should have been doing was closing. However as identified in the FI Report during the CP the firm opened seven new matters

22.2 Upon expiry of the CP, Rule 5.2 (c) of the 2013 Rules required that the firm should be closed. The FI Report stated at paragraph 29 that following the conclusion of the CP, the firm continued to trade (following the numbering of the Report):

> "b. As at 7 February 2020 the firm maintained 10 live files and conducted reserved legal activities.
>
> c. Between 31 July 2019 and 13 January 2020, the firm undertook 10 new matters. Work undertaken by the firm included reserved legal activities. The work on the 10 matters consisted of the following:
>
> i. Will - 1 matter
> ii. Conveyancing - 2 matters
> iii. Bank indemnity - 1 matter
> iv. Lasting power of attorney ('LPA') - 1 matter
> v. Advising on employment settlement agreements - 5 matters"

The FI Report included that on 7 February 2020, the Respondent produced a list of all the files upon which the firm continued to act, the first seven of which were opened during the CP. Numbers 8 through to 17 were opened after the CP had finished. The list was based on handwritten notes taken by the FIO.

22.3 Mr Griffiths submitted that as of 6 February 2020, when the FIO attended the firm, the firm held £98,831.92 in its client account. No representations were received from the Respondent on this point. The Respondent was responsible for renewing the firm's insurance; he knew he did not have valid insurance and admitted that to the FIO as set out in the FI Report as well as that he conducted reserved legal activities without PII. Mr Griffiths also referred to the FIO's attendance note of conversations with the Respondent: "Mr Ha (sic) said he had not renewed PC as he had no insurance". This was in November 2019 so the Respondent was aware throughout that time that he did not have insurance. His practising certificate was not revoked by the Applicant so the Respondent continued to carry over his 2018/2019 certificate through to the period the firm was intervened into in February 2020.

22.4 Mr Griffiths referred to Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles; both stated that solicitors must act with integrity. In the case of Wingate and anor v SRA and SRA v Malins [2018] EWCA Civ 366 the Court of Appeal upheld the previous case law in SRA v Chan and others [2015] EWHC 2659 (Admin) and overturned Mostyn J's decision earlier in Malins. Wingate set out that integrity was a broader concept than honesty, more nebulous and less easy to define. The case stated that integrity:

> "is a useful shorthand to express the higher standards which society expects from professional persons and which the profession expects from their own members. The underlying rationale is that the professionals have a privileged and trusted role in our society. In return, they are required to live up to their own professional standards".

Mr Griffiths submitted that solicitors with integrity who knew that they did not have valid insurance would not continue to practise on those matters on which they were instructed, nor would they seek to take on new matters knowing when to do so would not only put them in breach of the relevant Indemnity Insurance Rules which were part of the Rules which governed their practice but would also expose their clients, existing and new, to the risks associated with not having valid insurance. The Respondent's failure to stop acting on these matters and also his failure by continuing to act on these matters meant that the Respondent was acting without integrity in breach of Principle 2 and 5 of the 2011 and 2019 Principles respectively; this was not how a solicitor with a privileged and trusted role in society behaved.

22.5 Similarly the Applicant alleged for reasons similar to those pleaded in respect of allegation 1.1, that in acting as he did the Respondent failed to act in the best interests of each client in breach of Principles 4 and Principle 7 of the 2011 and 2019 Rules respectively. Mr Griffiths also alleged summarising the relevant Principles that the Respondent failed to uphold the public trust and confidence in himself and the profession breaches of Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles. Valid insurance was required in order to protect clients and acting without

it put clients at risk and practising without it would impact on public trust and confidence in both the individual solicitor and the profession as a whole.

22.6 The Tribunal had regard to the evidence and the submissions for the Applicant. The facts were not disputed. The Tribunal found proved on the evidence to the required standard that between 15 June 2019 and 13 January 2020, the Respondent continued to practise, including conducting reserved legal activities and holding client money, without valid insurance, when he knew or should have known that no valid insurance was in place and that by doing so in the period before 25 November 2019 he breached Principles 2, 6 and 4 of the SRA Principle 2011 and on and after 25 November 2019 he breached Principles 5, 2 and 7 of the SRA Principles 2019 respectively. The breaches of the Principles 2 and 5 regarding the failure to act with integrity arose because the Respondent acted knowing that he had no valid insurance in place and was putting clients at risk and not only did he continue with existing cases but also took on new work. The allegation of dishonesty is dealt with separately below.

23. **Allegation 1.3 On 13 November 2019 and 8 January 2020, the Respondent informed third parties that valid PII insurance was in place when he knew or should have known it was not.**

In doing so he acted in breach of:

SRA Principles 2011 (prior to 25 November 2019)	**SRA Principles 2019 (from 25 November 2019)**
Principle 2	**Principle 5**
Principle 6	**Principle 2**
Principle 4	**Principle 7**
	Principle 4

23.1 For the Applicant, Mr Griffiths submitted the Respondent made two statements that he had valid PII in place at a time when he knew or should have known that it was not in place. From the statements made by the Respondent it was submitted that he knew it was not in place. The allegation related to two separate matters one of which fell within the 2011 SRA Handbook and one within the Standards and Regulations 2019. In the former, the firm was instructed by NG in drafting a Settlement Deed between her and her employers. On 13 November 2019, the Respondent wrote (and signed) a statement on the firm's headed notepaper in which he stated:

> "There is now in force (and was in force at the time I gave the advice referred to above) a policy of insurance or an indemnity providing for members of a profession or professional body covering the risk of claim by my clients in respect of loss arising in consequence of the advice I have given them."

In relation to the second statement, the firm was instructed by PG in relation to an Agreement between him and his employers. On 8 January 2020, the Respondent wrote a letter to the employers (who were to pay the Respondent's fees) inadvertently containing a reminder that it should go on the firm's headed notepaper which contained a statement on the firm's headed notepaper:

> "David Howes Solicitors is covered by a policy of insurance, or an indemnity provided for members of a profession or professional body, which covers the risk of claims by the Employees in respect of any loss arising in consequence of such advice that I have given to the Employee in connection with the terms and effect Agreement."

23.2 Mr Griffiths submitted that there had been no representations from the Respondent on these statements since the issue of proceedings. These were statements that the Respondent had or in the case of the first statement that he had PII at the relevant time. He knew he did not have insurance when he made these statements. He knew he had not renewed the PII policy at the time he made those statements. Mr Griffiths referred the Tribunal to the notes of the FIO where the Respondent confirmed to the FIO:

> "He did not renew his PC because he could not obtain insurance. He did not think about renewing his PC even though he did not have insurance"

Also the date 8 January, when the Respondent made the second statement, was the day the Applicant started chasing the Respondent writing to him as detailed in the FI Report asking about what the position was regarding his insurance policy. Yet no rectifications statements followed the statement made on 8 January. If the Respondent had forgotten, which was not alleged, he had a direct reminder from his regulator that this was something it needed information on. The Respondent would have been aware of the importance of making such a statement both in the context of his practice as a whole but also in relation to these specific matters. These were Employment Tribunal proceedings and it was common for a statement like this to be required to be made by the employee's representative.

23.3 Regarding Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles Mr Griffiths again referred the Tribunal to the test in Wingate; a solicitor of integrity mindful of his trusted role in society would not make statements that he had insurance when he both did not have it and he knew this was the case and knew people were relying on the statements in the context of each of these specific matters.

23.4 Mr Griffiths also submitted that the Respondent failed to act in the best interests of each client having regard to Principle 4 and 7 of the 2011 and 2019 Principles respectively. It was clearly a requirement of these agreements being entered into that the firm had insurance. The Respondent himself informed the FIO that 90% of these type of agreements required this confirmation:

> "When asked about the signed statements that said he was a solicitor with a valid practising certificate and had current insurance, he said:
> …
> ii 90% of settlement agreements require a statement from the solicitor that current insurance is maintained."

Mr Griffiths submitted that the Respondent was aware of the importance of these kind of statements in the context of these agreements; he had acted on them before and they were a regular thing. He failed to act in the client's best interests. He both jeopardised these specific matters by making the incorrect statements as part of the matters and there was the more general point that he was acting on them without valid

insurance creating a slightly paradoxical position that if there had been an issue with the agreements because he had made incorrect statements about his insurance then he did not have valid insurance on which the client could make a claim.

23.5 Mr Griffiths also submitted that the Respondent failed to uphold the public trust and confidence in the profession in breach of Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles as set out already; member of the public would expect solicitors to have valid insurance and this was worsened by the specific nature of these matters where the Respondent was confirming that he had valid insurance when he did not. Entering into these agreements knowing that the statements he was making were incorrect would impact both on the public confidence in the individual solicitor and in the profession and the general position that he was conducting a matter generally without valid insurance.

23.6 The Tribunal had regard to the evidence and the submissions for the Applicant. The facts were not disputed. The Tribunal found proved on the evidence to the required standard that on 13 November 2019 and 8 January 2020, the Respondent informed third parties that valid PII insurance was in place when he knew or should have known it was not. Before 25 November 2019, he thereby breached Principles 2, 6 and 4 of the SRA Principles 2011 and on and after 25 November 2019 he breached Principles 5, 2 and 7 of the SRA Principles 2019 respectively. The allegation of dishonesty is dealt with separately below.

24. **Allegation 1.4 Between January 2019 and 6 February 2020, the Respondent failed to keep any books of accounts.**

In doing so he acted in breach of:

SRA Accounts Rules 2011 (prior to 25 November 2019)	**SRA Accounts Rules 2019 (from 25 November 2019)**
Rules: 29.1, 29.2, 29.4, 29.11, 29.12	**Rule 8**

and

SRA Principles 2011 (prior to 25 November 2019)	**SRA Principles 2019 (from 25 November 2019)**
Principle 6	**Principle 2**
Principle 4	**Principle 7**

24.1 For the Applicant, Mr Griffiths submitted that the FIO stated in the FI Report that when he attended the firm in February 2020:

> "The books of account were not in compliance with the SRA Accounts Rules 2011 or the SRA Accounts Rules 2019 for the reasons set forth below.
>
> a. No client account reconciliations were provided for inspection for any period of time.
> b. The firm did not produce any client ledger accounts.
> c. The client liabilities list produced by the firm was incomplete.

It was noted in the FI Report that the Respondent stated that the books of account had last been updated in January 2019; just over a year before the FIO was in attendance but the Respondent was unable to provide evidence that this was the case.

24.2 As to liabilities to clients, the FI Report stated:

> "The firm did not produce a complete client matter liability list. [The Respondent] stated that the only way to determine the liabilities to each client was to review each file."

Also the client liabilities list that was provided was incomplete because the FIO identified a matter Q and the list did not include money relevant to that matter. As a result of this the FIO upon attendance at the firm was unable to form an opinion about whether the firm could meet its liabilities to its clients.

24.3 For the period to 25 November 2019, the Applicant listed a number of breaches of the SRA Accounts Rules 2011 the requirements of which Mr Griffiths summarised:

- Rule 29.1 required firms to keep accounting records properly written up to show dealings with client money and office money and as identified by the FIO that clearly was not the case.

- Rule 29.2 required client money to be appropriately recorded in both the cash account and also on the client side of the separate client ledger but as identified by the FIO money was not being recorded in this way.

- Rule 29.4 required all dealings with office money to be appropriately recorded in an office cash account with an office side on the appropriate client ledger. Again the FIO identified that this was something he could not ascertain.

- Rule 29.11 and 29.12, covered the requirement to ascertain hard copy statements, accounting records etc. was the requirement every five weeks to then carry out a reconciliation of the client account and as identified by the FIO there were no client account reconciliations. The earliest these were referenced by the Respondent but not evidenced was a clear year before the FIO attended but he could not even identify they existed for that period back in January 2019.

24.4 Mr Griffiths submitted that the Respondent was in breach of Principle 4 of the 2011 Principles and Principle 7 of the 2019 Principles because it was clearly in the interests of each and every client of the firm that the firm was able to ascertain from its records the amount of money that was held on behalf of each client. The FIO confirmed what the Respondent had told him; that the only way to determine the liability to clients was to review each file; it could not be done from the financial documentation that was held by the firm. Further it was in the interests of each client generally that proper accounting procedures were followed to ensure the client account reconciled and all client money that should be held was held and was held on behalf of the relevant client. If a shortfall arose for whatever reason this needed to be identified quickly as client money was at risk. That could not be done if the client account and the firm's accounting records did not allow one to identify where a shortfall might have occurred.

24.5 Mr Griffiths submitted that for similar reasons the Respondent failed to uphold the public trust and confidence in him and in the profession which was a breach of Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles. Regardless of whether the public understood the precise machinations of client account they provide their money to solicitors on the understanding that it would be properly handled and that the systems at the firm for handling client money and indeed its own money would be effective and would be designed to safeguard that money. The trust and confidence placed in both the profession and the individual solicitor was not going to be upheld should the public be aware of the state the firm's accounts were in and the general inability of the firm to ascertain how much was being held and for whom it was being held at any given time.

24.6 The Tribunal had regard to the evidence and the submission for the Applicant. As with all the allegations the facts were not disputed. The Tribunal found proved on the evidence to the required standard that between January 2019 and 6 February 2020, the Respondent failed to keep any books of accounts. Thereby prior to 25 November 2019 he breached Rules: 29.1, 29.2, 29.4, 29.11, and 29.12 of the SRA Accounts Rules 2011 and on and after 25 November 2019 Rule 8 of the SRA Accounts Rules 2019. In so doing he also breached Principles 6 and 4 of the SRA Principles 2011 and Principles 2 and 7 of the SRA Principles 2011 respectively. All aspects of allegation 1.4 were found proved on the evidence to the required standard.

Dishonesty

25. For the Applicant, Mr Griffiths submitted that dishonesty was alleged in respect of allegations 1.2 and 1.3. It was an aggravating factor for allegation 1.2 and it was an aggravating factor for 1.3 until 25 November 2019 and thereafter was alleged as a breach of Principle 4 of the 2019 Principles. Mr Griffiths relied on the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

> "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

25.1 *Dishonesty in respect of allegation 1.2*

25.1.1 Mr Griffiths submitted that the Respondent knew that he did not have valid insurance in place. He knew that he was responsible for arranging the insurance and he knew that it had not been done. This was not an unexpected position for the Respondent to be in; the firm had just gone through the EIP

and the CP and the policy had expired in April 2019. He knew clients would expect him to hold valid PII. He knew that if they had not been specifically advised otherwise then it would be reasonable of them to expect him to have it. He knew that he had not told his clients that he did not have valid PII. The Respondent explained to the FIO on 6 February 2020:

> "Regarding work undertaken without holding Pll: …He did not advise clients he held no Pll."

25.1.2 The Respondent knew that his clients would expect to be told if he did not have valid PII and he knew or could reasonably believe that if he told his clients it was likely they would withdraw their instructions. Despite that the Respondent was not just trying to work down existing matters albeit outside the CP, he was taking on new matters as well and intentionally with-holding the fact but that he did not have valid insurance. Mr Griffiths submitted that the Respondent was implicitly holding himself out as having valid PII by continuing to take on new matters. Acting in such a way was dishonest by the standards of ordinary decent people. The individual in the street if asked would respond that was not an honest way to behave.

25.1.3 The Tribunal had regard to the evidence and the submissions for the Applicant. The Tribunal noted that dishonesty was pleaded on the common law basis in respect of the period before 25 November 2019 in respect of allegation 1.2 but there was no reference in the allegation to a breach of Principle 4 of the SRA Principles 2019 for the period on and after 25 November 2019. The Tribunal could only determine if the Respondent had been dishonest in the period prior to 25 November 2019. The facts of the allegation were not in dispute. Following the test in Ivey the Tribunal considered the Respondent's state of knowledge. He knew that he was not in possession of valid insurance following the end of the CP. He knew that he was undertaking reserved activities and was thereby holding himself out as entitled to practise and continued to act for existing clients and to take on and act for new clients on that basis. The Tribunal considered that ordinary decent people would consider that to be dishonest and the Tribunal found dishonesty proved to the required standard in respect of the Respondent's actions prior to 25 November 2019.

25.2 *Dishonesty in respect of allegation 1.3*

25.2.1 Mr Griffiths submitted that the Respondent's state of knowledge was as follows when he made the statements the subject of the allegation: The Respondent knew he was making a statement that he had valid insurance; he knew he did not have it; he was responsible for arranging it and he knew that he had not done it. Both statements were made after the CP had ended. He knew that the types of agreements he was entering into required a statement that current insurance was maintained and he was used to signing such statements. He knew that such insurance was required for the protection of the employer and employee and he knew that such a statement was going to be relied on by them. Despite all this knowledge the Respondent signed the statements. In signing these statements which declared that he had or had had

insurance when it was both incorrect and he knew it to be so was dishonest by the standards of ordinary decent people.

25.2.2 The Tribunal had regard to the evidence and the submissions for the Applicant. The Tribunal noted that dishonesty was pleaded on the common law basis in respect of the period prior to 25 November 2019 in respect of allegation 1.3 and by reference to a breach of Principle 4 of the SRA Principles 2019 for the period on and after 25 November 2019. Following the test in Ivey the Tribunal considered the Respondent's state of knowledge. The facts of the allegation were not in dispute. He knew that he did not have valid PII when he made the statements the subject of the allegation. He was experienced in such work and knew that the clients relied on him to tell the truth in acting for them. The Tribunal found that ordinary decent people would consider the Respondent's conduct to be dishonest and the Tribunal found dishonesty proved on the evidence to the required standard in respect of the Respondent's statement on 13 November 2019 on the common law basis and found proved that the Respondent's statement on 8 January 2020 constituted a breach of Principle 4 of the 2019 Principles, the requirement to act with honesty.

Previous Disciplinary Matters

26. None

Mitigation

27. None was offered.

Sanction

28. The Tribunal had regard to its Guidance Note on Sanctions (November 2019). All the allegations had been found proved against the Respondent. The Tribunal assessed the seriousness of the Respondent's misconduct. As to culpability the Respondent had acted to avoid his regulatory responsibilities and to avoid their costs. There was an element of planning; he had decided not to pursue an application for insurance (or apply for a practising certificate) when his former broker ceased covering PII. He did not hold attendance notes, emails, or letters, regarding his attempts to obtain Pll. He told the FIO he could not recall which brokers he contacted to obtain insurance after he learned his previous broker no longer handled Pll. The Tribunal considered that the Respondent had acted in breach of a position of trust in making the dishonest statements when acting for client employees; telling them by those statements that he was in possession of valid insurance so that they relied on that assurance in entering into agreements thereby being placed at risk. The Respondent was a sole practitioner and had direct control of and responsibility for the circumstances giving rise to the misconduct. The Respondent was at the upper level of experience having been qualified for 46 years at the time of the misconduct. The Respondent inflicted harm on the reputation of the profession by his conduct. He had departed to a considerable extent from the complete integrity, probity and trustworthiness expected of a solicitor by acting without valid insurance, making dishonest statements and by holding client money in such a fashion that liabilities to clients could not be ascertained. All of this

was reasonably foreseeable as a result of the misconduct. There were aggravating factors; dishonesty had been alleged and found proved. The misconduct had been deliberate, calculated and repeated and continued over a period of time. By his statements he had concealed his wrongdoing from clients. The Respondent ought to have known that his misconduct was in material breach of his obligations to protect the public and the reputation of the legal profession. The Tribunal also considered it to be an aggravating factor that the Respondent continued to take on new clients while without valid insurance. As to mitigating factors, there was no evidence of actual harm to clients although the risk was there. The Respondent had not previously been before the Tribunal and he had shown a degree of co-operation with the FIO's investigation. The Tribunal could not assess what if any insight the Respondent had. As to sanction, the misconduct was clearly far too serious for no order or a reprimand. Dishonesty had been proved and as the Guidance Note set out the most serious misconduct involves dishonesty, whether or not leading to criminal proceedings and criminal penalties. A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances. The Respondent had submitted no general mitigation or personal mitigation although the Tribunal had found a limited number of general mitigating factors. None were such as to reduce the seriousness of what the Respondent had done. The Tribunal could find no exceptional circumstances which might have indicated that a suspension or a high fine would suffice to protect the public and the reputation of the profession. The Tribunal determined that the Respondent should be struck off.

Costs

29. Mr Griffiths applied for costs to be awarded to the Applicant. He referred to the Applicant's costs schedule dated 5 November 2020 totalling £8,243.66 and explained that it needed to be amended. His preparation time had been slightly less than expected and the hearing had only taken about two and a half hours not the anticipated two days. The schedule incorporated the costs of the FIO from the interim schedule dated 21 July 2020 which were set out in a separate statement (totalling £2,538). The final schedule had been sent to the Respondent and the Tribunal by email and uploaded to CaseLines on 6 November 2020 for the Respondent to view. Mr Griffiths submitted that the costs claimed, subject to the reductions mentioned, were reasonable and he was not aware of any disputes raised about them by the Respondent. As to the detail, Mr Griffiths pointed out that the schedule included an estimate of 14 hours for reviewing and preparing for this hearing at £1,820 but he had spent no more than 12 hours at £130 per hour leading to a reduction of £260. Attendance at the hearing estimated for two days had been estimated at 14 hours and included matters to be dealt with after the announcement of the Tribunal's finding, Mr Griffiths suggested a further half an hour making two and a half hours in total that is £325. The result was a reduction of £1,755 comprising a reduction of £260 for time not spent on preparation and £1,495 for time not spent at the hearing. The total now claimed by the Applicant was £6,488.66. Mr Griffiths also submitted in respect of the amount claimed that the Tribunal would be aware that there was a distinction between the amount awarded in an order and the Applicant's approach to enforcement of the order. The Applicant tried to take a reasonable and tailored approach and while Mr Griffiths could not speak for the Applicant's costs recovery team, if the Respondent made representations, they would be taken into account. The team would make contact with the Respondent if an order for costs were made and even though

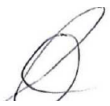
the Respondent had not already made representations and not provided a statement of means to the Tribunal he could provide information to the Applicant.

30. The Tribunal enquired how much of the preparation time had been spent by Mr Griffiths in reviewing and attending to some of the errors in the Rule 12 Statement. Mr Griffiths responded that he had spent just under 13 hours on preparation but had limited the claim to 12 hours. He had had a 20 minute conversation with his line manager the previous day and obtained consent to apply to withdraw parts of the Rule breaches originally detailed in allegation 1.1. He had a similar conversation with the legal adviser who had drafted the Rule 12 Statement to check why the Applicant had pleaded allegation 1.1 as it had. One to one and a half hours would adequately cover the time spent dealing with the amendments. The Tribunal considered that Mr Griffiths had taken a very fair approach to the costs and that the costs claimed were reasonable and proportionate to the work done. The Tribunal would award costs in the reduced amount sought, £6,488.66.

Statement of Full Order

31. The Tribunal Ordered that the Respondent, PETER ELDON HOWES, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,488.66.

Dated this 13th day of January 2021
On behalf of the Tribunal



B. Forde
Chair