SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12112-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

CHIDI UMEZURIKE Respondent

Before:

Mrs J Martineau (in the chair)
Mr R Nicholas
Mr R Slack

Date of Hearing: 24 – 26 November 2020

Appearances

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

The Respondent represented himself.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the Solicitors Regulation Authority ("SRA") were that while he was in practice as a solicitor at and sole principal of CK Law Limited ("the Firm"):

1.1. On or about 24 April 2019, during an interview with an officer of the SRA, he gave the following answers, both or either of which were false and/or misleading:

1.1.1. "no", to the question, "do you, or any manager of the firm, have any judgment debts against them?";

1.1.2. "none", to the question, "has the firm received any financial notices in relation to its debts?"

He therefore:

1.1.3. breached all or any of Principles 2, 6 and 7 of the SRA Principles 2011 ("the Principles");

1.1.4. failed to achieve Outcome 10.6 under the SRA Code of Conduct 2011 ("the Code of Conduct").

1.2. As at 31 August 2019, a cash shortage of at least £20,433.10 existed upon the Firm's client account, which was caused by:

1.2.1. client money, in the form of unpaid professional disbursements, not having been paid or transferred to client account, timeously or at all;

1.2.2. a number of client to office account transfers, which were unjustified and/or improper.

He therefore:

1.2.3. breached all or any of Rules 1.2, 6.1, 7.1, 7.2, 17.1, 17.2, 19.1, 20.1 and 20.6 of the SRA Accounts Rules 2011 ("the Accounts Rules");

1.2.4. breached all or any of Principles 2, 4, 6, 7, 8 and 10;

1.2.5. failed to achieve Outcome 1.1 under the Code of Conduct;

1.2.6. breached Rules 8.5(c) and/or 8.5(e) of the SRA Authorisation Rules 2011 ("the Authorisation Rules").

1.3. On or before 21 September 2019, he caused or allowed up to 14 client to office account transfers which were unjustified and/or improper. To the extent not already covered by allegation 1.2 above, he therefore:

1.3.1. breached all of any of Rules 1.2, 6.1, 7.1, 7.2, 17.2, 17.7, 20.1 and 20.3 of the Accounts Rules;

1.3.2. breached all or any of Principles 2, 4, 6, 7, 8 and 10;

1.3.3. failed to achieve Outcome 1.1 under the Code of Conduct;

1.3.4. breached Rules 8.5(c) and/or 8.5(e) of the Authorisation Rules.

1.4. He failed adequately and/or timeously to comply with a statutory Production Notice served on or about 18 September 2019 and, in so failing:

1.4.1. breached Principles 7 and/or 6;

1.4.2. failed to achieve Outcomes 10.6 and/or 10.9.

1.5. On a date or on dates unknown, he caused or allowed retrospective changes to be made to ledger entries and/or cashbooks which were subsequently passed to the SRA; he therefore:

1.5.1. breached all or any of Principles 2, 6 and 7;

1.5.2. failed to achieve Outcome 10.6 under the Code of Conduct.

2. Dishonesty was expressly alleged in relation to all or any of allegations 1.1, 1.2, 1.3 and 1.5 above but proof of dishonesty was not required in order to establish those allegations or any of their particulars.

3. Further or alternatively, recklessness was expressly alleged in relation to all or any of allegations 1.1 to 1.5 above but proof of recklessness was not required in order to establish those allegations or any of their particulars.

Documents

4. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):

- Rule 12 Statement and Exhibit RTM1 dated 22 July 2020
- Respondent's Answer dated 1 September 2020
- Applicant's Schedule of Costs dated 16 November 2020
- Respondent's means information dated 23 November 2020

Factual Background

5. The Respondent was a solicitor having been admitted to the Roll in September 2005. He was the sole principal and sole equity owner of the Firm. As such, the Respondent was personally responsible for the Firm's compliance with the Accounts Rules and personally obliged to remedy any breaches promptly upon discovery in accordance with Rules 6.1 and 7.2 of the Accounts Rules.

6. The Respondent was also the Firm's Compliance Officer for Finance and Administration ("COFA") and Compliance Officer for Legal Practice ("COLP"). As

such, and without prejudice to his obligations as sole principal, he owed additional duties under rule 8.5 of the Authorisation Rules:

- to take "all reasonable steps to ensure" that the Firm and its managers (i.e. the Respondent himself) complied with "any obligations imposed upon them" under the Accounts Rules;

- to take "all reasonable steps to ensure compliance with" the terms of the Firm's authorisation and statutory obligations (i.e. the Principles and the Code of Conduct, being rules made pursuant to section 31 of the Solicitors Act 1974).

7. The Firm commenced trading on 1 July 2010. Its head office was in Ashford, Kent and it had a branch office in Chatham, Kent. The Firm was a limited company. The Respondent employed two legally qualified fee earners and a bookkeeper but he was the only individual able to operate the Firm's bank accounts. The Firm had two office accounts and its overall overdraft facility was £15,000.00.

8. The Firm's annual renewal form for 2019 stated that:

- its turnover for the accounting period ending 30 July 2018 was £135,727.00;

- the average client account balance in the 12 months to 31 August 2019 was £3,231.99;

- its main work areas were: children – 50%; criminal – 40%; family/matrimonial – 10%.

9. In addition to his role at the Firm, the Respondent worked at least two days a week at a bank, doing what he described as "financial crime".

10. On 24 February 2020, an Adjudication Panel convened by the SRA resolved to Intervene into the Respondent's practice at the Firm (and the Firm itself) on the grounds that there was reason to suspect dishonesty and because the Respondent had failed to comply with rules made by the SRA. The Respondent's practising certificate was automatically suspended in consequence of that Intervention. The Respondent did not hold a current practising certificate.

Witnesses

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

- Jonathan Chambers – Forensic Investigation Manager in the employ of the Applicant
- Helen Maskell – Forensic Investigation Officer in the employ of the Applicant
- Chidi Umezurike – Respondent

12. The written and oral evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the

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

Findings of Fact and Law

13. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral together with the submissions of both parties.

Dishonesty

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

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

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

Integrity

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

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … [Professionals] are required to live up to their own professional standards … Integrity connotes adherence to the ethical standards of one's own profession".

Recklessness

17. The test applied by the Tribunal was that set out in R v G [2003] UKHL 50 where Lord Bingham adopted the following definition:

> "A person acts recklessly…with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur and it is, in the circumstances known to him, unreasonable to take that risk."

18. This was adopted in the context of regulatory proceedings in Brett v SRA [2014] EWHC 2974 (Admin).

19. **Allegation 1.1 - On or about 24 April 2019, during an interview with an officer of the SRA, he gave the following answers, both or either of which were false and/or misleading: "no", to the question, "do you, or any manager of the firm, have any judgment debts against them?"; "none", to the question, "has the firm received any financial notices in relation to its debts?" He therefore: breached all or any of Principles 2, 6 and 7 of the Principles; failed to achieve Outcome 10.6 under the Code of Conduct.**

The Applicant's Submissions

19.1 On 21 November 2017, the SRA received a report from Murdochs Solicitors, acting for a Mrs K, who had previously worked at the Firm as a consultant solicitor. After Mrs K had left the Firm on 28 February 2017, the Respondent contacted her because he was concerned that she had used money received to settle professional disbursements on one client matter, for unrelated client matters.

19.2 Mrs K instructed Murdochs to respond to a financial investigation report prepared by the Respondent. Murdochs were concerned that Mrs K had instructed the Firm to settle counsels' fees and that the Firm's failure to pay them suggested it was in financial difficulty.

19.3 The SRA commenced a 'desk-based' investigation which identified possible client account shortages. However, the Respondent did not provide documentary evidence to the SRA to clarify the position. Accordingly, the SRA's Forensic Investigation Unit was commissioned to inspect the Firm. The inspection was commenced on 24 April 2019 by Jonathan Chambers, Forensic Investigation Manager ("Mr Chambers"). From September 2019, the investigation was conducted by Helen Maskell, Forensic Investigation Officer ("Ms Maskell").

19.4 Ms Maskell produced a forensic investigation report dated 7 January 2020 ("the FI Report"). In broad summary, the FI Report identified the following issues:

- The Firm's books of account were not in compliance with the Accounts Rules. It was not possible to establish the Firm's liabilities to clients because: monies received into office account for professional disbursements were not always paid out or transferred to the client account within 14 days; and the accounts were materially unreliable.

- As at 31 August 2019, there was a minimum client account shortage of £20,433.10. This related to monies received for unpaid professional disbursements being held in office account and improper client to office transfers. This was partially rectified by 19 December 2019.

- 14 improper client to office transfers were identified, posted to four client ledgers. But for 11 of these, the office accounts would have exceeded their overdraft limits.

- Client ledgers and cashbooks showed retrospective changes to historic ledger entries.

- Postings for invoices were made where there was no other record of the invoice, or were overstated, or were incorrectly dated.

- Contrary to the Respondent's position that the books were written up and reconciled in a timely way, his former bookkeeper stated that she had not reconciled the books since the end of March 2019.

- The Respondent was in receipt of correspondence chasing payment for experts' fees in circumstances where the Firm had already received payment from the legal aid agency ("LAA") (and should therefore have paid the expert).

- There were at least three County Court Judgements ("CCJs"), six sets of proceedings issued or reopened and one letter before action sent to the Respondent or the Firm in the 12 months preceding Ms Maskell's first visit to the Firm.

- For the period 1 January 2018 to 2 October 2019, 23 office account payments were returned by the bank unpaid.

- As at 30 September 2019 the Firm owed approximately £129,423.27 and its VAT payments were behind by one quarter.

- Mr Chambers recorded on 24 April 2019 that he was told neither the Firm nor the Respondent had judgment debts or notices in respect of debts. However, documents obtained showed that in the previous six months at least one judgment had been entered against the Respondent, the Firm had received a letter before action and proceedings had been issued in two matters.

- Information requested by the SRA under a statutory Production Notice was not all provided by the deadline. Information provided late relating to the books of account differed from material provided earlier. Information provided relating to the Firm's debts and financial notices was provided piecemeal and did not include all creditors identified by Ms Maskell.

19.5 On or about 24 April 2019 Mr Chambers conducted an initial fact-finding interview with the Respondent. During the course of that interview, Mr Chambers asked the Respondent a number of standard questions, including:

- "Do you, or any manager of the firm, have any judgement debts against them?"

- "Has the firm received any financial notices in relation to its debts?"

19.6 Mr Chambers' notes recorded that the Respondent answered "no" to the first question above and "none" to the second. These answers by the Respondent were false and/or misleading:

- A CCJ had been entered against the Respondent on 20 November 2018 in the sum of £5,295.80.

- In the six months prior to the interview, the Firm had received a letter before action and proceedings had been issued on two further matters

19.7 Mr Mulchrone submitted that in giving answers in interview to an officer of his regulator which were false and/or misleading, the Respondent failed to act with integrity. A solicitor acting with integrity would have taken care to ensure that his answers to questions posed by an officer of his regulator were truthful and accurate. The Respondent failed to do so.

19.8 The Respondent's conduct, it was submitted, was also in breach of Principle 6. Members of the public expected solicitors to take care to ensure that information given by them to the regulator was true and accurate. Without prejudice to the SRA's case on Principle 2, or dishonesty and recklessness, the Respondent's conduct in failing to give true and accurate answers to Mr Chambers was, at best, manifestly incompetent within the meaning of Iqbal v Solicitors Regulation Authority [2012] EWHC 3251 (Admin). As such, the Respondent fell far short of the complete trustworthiness required of a solicitor.

19.9 The Respondent's provision of false and/or misleading information to Mr Chambers was a material failure to cooperate with the regulator and sufficiently serious to disclose a breach of Principle 7.

19.10 Further or alternatively, the conduct alleged constituted a failure to achieve mandatory Outcome (10.6) under the Code of Conduct ("you co-operate fully with the SRA and the Legal Ombudsman at all times").

Dishonesty

19.11 Mr Mulchrone submitted that as the Firm's sole owner, sole principal, COLP and COFA, the Respondent must have been and was aware, at the time he gave them, that his answers to Mr Chambers were false and misleading, i.e. they were lies. Whilst the Applicant did not need to establish a motive to establish dishonesty, the Tribunal could infer that the Respondent had lied to Mr Chambers in order to conceal the fact of the judgment, letter before action and proceedings (or any of those matters) and, as a result, the Firm's poor financial position, and thereby impede the forensic investigation of the Firm. In any event, ordinary, decent people would consider the Respondent's behaviour of lying to Mr Chambers to be dishonest.

The Respondent's Case

19.12 The Respondent denied allegation 1.1. In his Answer the Respondent stated that he recalled being asked whether there were any CCJ's outstanding against the Firm. As he had paid them, he answered "no". During the course of the hearing, the Respondent explained that he thought the questions he was asked related to immigration matters, as it was as a result of issues on immigration files that Mr Chambers had attended the office.

19.13 In evidence the Respondent explained that the conversation he had with Mr Chambers was detailed. Mr Chambers had requested a number of files and had asked numerous questions. He had been open and transparent with Mr Chambers and had informed him of breaches of the Accounts Rules and the difficulties he experienced with the Firm's accounts, including the non-payment of experts' fees. The Respondent explained that he conducted criminal work and was the only fee earner at the Firm that did so. Criminal income accounted for 40% of the Firm's income. This demonstrated how busy he was. As a result of his fee earning work, the management of the Firm was difficult, with much of the management being "done on the go". The Respondent stated that the information as regards CCJ's was in the public domain; he had no reason to lie about matters that the SRA could find out for itself. Further, it would have assisted his position to show Mr Chambers that the CCJ's had been paid; he would not deliberately withhold evidence that would assist him. The Respondent denied that he had been, or had any reason to be dishonest.

19.14 The Respondent submitted that the conversation with Mr Chambers had not been recorded, and that the answers recorded were not, as Mr Chambers agreed in evidence, verbatim. The Respondent submitted that he had been completely transparent with Mr Chambers. Further, his impeccable regulatory history together with his conduct with the regulator made it inherently improbable that his conduct had been dishonest.

The Tribunal's Findings

19.15 The Tribunal noted that the Respondent, in his Answer, had not mentioned that he considered the questions being asked by Mr Chambers related only to immigration matters. In his evidence, Mr Chambers explained that the questions asked were pro-forma questions which were initially asked when the Applicant visited a Firm to conduct a forensic investigation. The Tribunal looked at all the questions with care and noted that they were general in nature, dealing with the personnel employed at the Firm, accounts, banking arrangements, file storage, IT and other general issues relating to the running and management of the Firm. These questions were asked by Mr Chambers prior to any discussion about immigration matters. The Tribunal found that there was nothing in those questions that could have led the Respondent to believe that the questions related to immigration matters only. The Tribunal found the Respondent's assertion that he believed those questions were in respect of the immigration matters only, not to be credible.

19.16 During cross-examination, the Respondent disputed that he had been asked the questions in the way alleged by Mr Mulchrone or that he had answered "no" and "none" to the questions in issue. The Tribunal noted that the Respondent, in his

Answer, had not suggested that the questions had not been asked, or that they had been asked in a different way. Indeed, the Respondent had offered an explanation in his Answer as regards CCJ's, stating that as he had paid them, he did not consider that they had to be disclosed. The Tribunal did not accept the Respondent's assertion that he had not been asked the questions, or that his answers had been different to those recorded by Mr Chambers.

19.17 The Applicant referred to a Judgment debt that was partially outstanding at the time of Mr Chambers' visit. It was the Respondent's case that the debt had been paid in full. The Judgment was for the sum of £5,295.88. The Firm's bank statements showed that the Respondent had paid £5,000 of the total amount, leaving £295.88 outstanding. The solicitors for the claimant confirmed on 12 February 2019 that their client received part payment on 8 February 2019, accordingly, the CCJ remained in place. It was the Respondent's case that the Judgment had been settled in full and that the £5,000 payment was in full and final settlement as he had made a prior payment. The Tribunal noted that the Respondent had provided no evidence showing that the Judgment debt had been fully satisfied. On the contrary, there was evidence that there was still an amount outstanding. The Tribunal found that, in answering "no" to the question: "Do you, or any manager of the firm, have any judgement debts against them?", the Respondent had provided a false and misleading answer.

19.18 The Respondent failed, in his Answer, to address the allegation that he had not disclosed any financial notices to the Firm. During cross-examination, the Respondent stated that he could not recall the answer he gave to the question: "Has the firm received any financial notices in relation to its debts?"

19.19 The documentary evidence showed that on 12 October 2018, the Respondent had received a letter before action in relation to a debt of £6,763.42. On 9 January 2019, proceedings were issued in the sum of £5,844.76, the Respondent having made a part payment. On 11 February 2019, the Respondent made a further payment of £3,410. The Respondent confirmed that he would pay the outstanding amount by 4 March 2019. When that payment was not forthcoming, the Claimant re-instated the proceedings on 15 March 2019. The Respondent was aware that this was the position. The Respondent paid the outstanding amount on 4 April 2019. During cross-examination, the Respondent agreed that this was a financial notice that ought to have been brought to Mr Chambers' attention.

19.20 On 8 March 2019, the Respondent received a letter before action in relation to a debt in the sum of £11,322.25. The Respondent accepted that he was aware of that letter, but that the Claimant was still providing him with services, so the amount of the debt was variable. The Respondent initially did not accept that the letter before action was a financial notice. When Mr Mulchrone asserted "If I was being threatened to be sued for the sum of £11,000 I would consider it a financial notice and so did you", the Respondent replied "Yes, that's exactly why I made subsequent payments".

19.21 On 16 April 2019, 8 days prior to Mr Chambers' visit, the Respondent received a claim form for a debt in the sum of £1,966.01 (including Court fees). In evidence the Respondent confirmed that he recalled receipt of the form and that he had paid it. The documentary evidence demonstrated that the Respondent paid two of the three outstanding invoices to which the claim related on the day of Mr Chambers' visit,

leaving one invoice outstanding. In his evidence, the Respondent stated that he discussed this matter with Mr Chambers. The Tribunal noted that he had not cross-examined Mr Chambers on this issue, nor had he stated in his Answer that he had either brought this to Mr Chambers' attention, or that recording his answer as "none" was incorrect.

19.22 The Tribunal determined that the Respondent had failed to inform Mr Chambers of the financial notices he had received, and of which he was fully aware. The Tribunal found that in answering "none" to the question: "Has the firm received any financial notices in relation to its debts?" the Respondent had provided a false and misleading answer.

19.23 The Tribunal found that, in giving false and misleading answers, the Respondent had failed to act with integrity. Solicitors acting with integrity would seek to ensure that answers given by them during the course of a regulatory investigation were accurate. The Tribunal found that the Respondent was aware of the Judgement debt, the letters and claims for outstanding payments, but failed to disclose them The Tribunal considered that a solicitor acting with integrity would not have conducted himself in that way. Accordingly, the Tribunal was satisfied that the Respondent had failed to act with integrity in breach of Principle 2.

19.24 Members of the public, it was found, would expect the Respondent to provide true and accurate information during the course of a regulatory investigation. In failing to do so, the Respondent had failed to maintain the trust the public placed in him and in the provision of legal services, in breach of Principle 6.

19.25 The Tribunal agreed that the Respondent's provision of false and misleading information to Mr Chambers was such a material breach of his obligation to cooperate with his regulator, that his conduct gave rise to a breach of Principle 7, and a failure to achieve Outcome 10.6.

19.26 The Tribunal found that the Respondent's answers during cross-examination were inconsistent; at the commencement of the hearing, he had not disputed that he gave the answers recorded, and did not cross-examine Mr Chambers as to the accuracy of the recorded answers. Nevertheless, during his evidence in chief and during cross-examination, he asserted that the answers recorded were not the answers he gave. This was despite him having provided an explanation in his Answer as to why he answered "no". The Tribunal found that the Respondent's evidence as regards his knowledge and belief was not credible. The Tribunal found that the Respondent was aware of the Judgment debt and the financial notices detailed above. Indeed, the Respondent had made part payment in relation to one of the notices on the day that Mr Chambers had attended the office. The Tribunal also found that the Respondent did not consider, and indeed there was no reason for him to so consider, that the questions asked related to immigration matters only.

19.27 The Tribunal found that given his knowledge and belief as to the matters at the time, the Respondent had consciously and knowingly lied to Mr Chambers. Ordinary and decent people would consider that it was dishonest to lie during the course of a regulatory investigation. Thus the Tribunal was satisfied, on the balance of probabilities, that the Respondent's conduct had been dishonest.

19.28 Accordingly, the Tribunal found allegation 1.1 proved on the balance of probabilities, including that the Respondent's conduct had been dishonest. Having found dishonesty proved, the Tribunal did not consider recklessness as that had been alleged in the alternative to dishonesty.

20. **Allegation 1.2 - As at 31 August 2019, a cash shortage of at least £20,433.10 existed upon the Firm's client account, which was caused by: client money, in the form of unpaid professional disbursements, not having been paid or transferred to client account, timeously or at all; and a number of client to office account transfers, which were unjustified and/or improper. The Respondent therefore breached all or any of: Rules 1.2, 6.1, 7.1, 7.2, 17.1, 17.2, 19.1, 20.1 and 20.6 of the Accounts Rules; Principles 2, 4, 6, 7, 8 and 10; failed to achieve Outcome 1.1 under the Code of Conduct; breached Rules 8.5(c) and/or 8.5(e) of the Authorisation Rules.**

The Applicant's Case

20.1 Ms Maskell was unable to calculate the Firm's liabilities to its clients as:

- Monies received into office account from the LAA for professional disbursements were not all paid out or transferred to client account within 14 days. The total extent of the unpaid professional disbursements (client money) involved could not be ascertained as matter listings provided did not reflect the office-side position on the client ledgers.

- Client ledgers and cashbooks showed retrospective changes to historic ledger entries, and entries for invoices where there was no other record of the invoice, or amounts for the invoices were overstated, or incorrectly dated.

20.2 However, Ms Maskell was able to calculate a minimum cash shortage as at 31 August 2019 totalling £20,433.10. The minimum cash shortage was caused by:

- Client money, in the form of monies received by the Firm in respect of unpaid professional disbursements, not being timeously paid from the office account or transferred to client account ("Cause 1"). More specifically:

  (a) Monies received from the LAA for the payment of expert's fees totalling £17,292.44 had not been paid to the experts or transferred to the client account ("Cause 1A");

  (b) There were a number of client to office bank account transfers of funds received by the Firm to pay professional disbursements, namely counsel's fees totalling £2,833.80, which had not been paid ("Cause 1B").

- Improper client to office bank account transfers totalling £306.86 ("Cause 2").

20.3 *Cause 1A* – Mr Mulchrone exemplified 24 sets of unpaid experts' fees. The oldest amount outstanding as at 31 August 2019 had been received from the LAA around 523 days previously; the most recent around 33 days previously. The largest amount

outstanding was £2,173.56 (received around 166 days previously). The smallest amount outstanding was £100.32 (received around 278 days previously).

20.4 No office to client bank transfers for the receipts from the LAA were identified on the bank statements. The Firm's office account balances as at 31 August 2019 totalled minus £14,780.86. It followed that money was not held to pay the disbursements or replace the shortage as at 31 August 2019. That client money had therefore been improperly spent by the Respondent in reducing the Firm's debt to its bank or on other office-side purposes.

20.5 *Cause 1B* – Mr Mulchrone exemplified three sets of unpaid counsel's fees. The largest (and most recent) amount outstanding as at 31 August 2019 was £1,200.00, received on 10 May 2019. The smallest amount outstanding was £800.00, received on 2 April 2019. The oldest payment on account had been received on 15 February 2019.

20.6 *Cause 2* - the improper transfers giving rise to Cause 2 of the minimum shortage were:

- a credit balance of £913.80 on the office side of a client ledger, of which, £833.80 related to unpaid counsel's fees and £80.00 represented an additional shortage;
- a debit balance of £226.86 on the client side of a client ledger.

20.7 Ms Maskell reported Cause 1A of the shortage as a minimum shortage because her calculation did not take into account older invoices such as invoices not chased for payment by email to a named fee earner and invoices in respect of which the expert did not reply to Ms Maskell's enquiries. However, the whole shortage figure (all aspects together) was necessarily reported as a minimum because the true liabilities figure could not be ascertained.

20.8 Mr Mulchrone submitted that the conduct alleged constituted a material breach of the following provisions of the Accounts Rules, or any of them:

Rule 1.2 required:

> "you must… (a) keep other people's money separate from money belonging to you or your firm; (b) keep other people's money safely in a bank or building society account identifiable as a client account (except when the rules specifically provide otherwise); (c) use each client's money for that client's matters only; (d) use money held as trustee of a trust for the purposes of that trust only; (e) establish and maintain proper accounting systems, and proper internal controls over those systems, to ensure compliance with the rules; (f) keep proper accounting records to show accurately the position with regard to the money held for each client and trust …";

Rule 6.1 required:

> "All the principals in a firm must ensure compliance with the rules by the principals themselves and by everyone employed in the firm. This duty also

> extends to the directors of a recognised body or licensed body which is a company, or to the members of a recognised body or licensed body which is an LLP. It also extends to the COFA of a firm (whether a manager or non-manager)";

Rule 7.1 required:

> "Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account";

Rule 7.2 required:

> "In a private practice, the duty to remedy breaches rests not only on the person causing the breach, but also on all the principals in the firm. This duty extends to replacing missing client money from the principals' own resources, even if the money has been misappropriated by an employee or another principal, and whether or not a claim is subsequently made on the firm's insurance or the Compensation Fund."

Rule 17.1 required

> "When you receive money paid in full or part settlement of your bill (or other notification of costs) you must follow one of the following five options: … (b) ascertain that the payment comprises only office money and/or out-of-scope money , and/or client money in the form of professional disbursements incurred but not yet paid, and deal with the payment as follows: (i) place the entire sum in an office account at a bank or building society branch (or head office) in England and Wales; and (ii) by the end of the second working day following receipt, either pay any unpaid professional disbursement, or transfer a sum for its settlement to a client account; …"

Rule 17.2 required:

> "If you properly require payment of your fees from money held for a client or trust in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party."

Rule 19.1 required

> "Two special dispensations apply to payments (other than regular payments) from the Legal Aid Agency: … (b) A payment for costs (interim and/or final) may be paid into an office account at a bank or building society branch (or head office) in England and Wales, regardless of whether it consists wholly of office money, or is mixed with client money in the form of: (i) advance payments for fees or disbursements; or (ii) money for unpaid professional disbursements; provided all money for payment of disbursements is transferred to a client account (or the disbursements paid) within 14 days of receipt."

20.9 Rule 20.1 limited the circumstances in which client money may be withdrawn from client account. Mr Mulchrone submitted that none of the circumstances applied to the unpaid counsel's fees comprising Cause 1B of the minimum shortage or to the improper transfers comprising Cause 2 of the minimum shortage.

Rule 20.6 required:

> "Money withdrawn in relation to a particular client or trust from a general client account must not exceed the money held on behalf of that client or trust in all your general client accounts (except as provided in rule 20.7 below)."

20.10 Mr Mulchrone submitted that the requirement to protect client money was a fundamental duty of solicitors and was properly considered a matter of professional ethics. It was well established that a solicitor "who dips into the client account with the intention of putting the money back lacks integrity because a client account is sacrosanct and regardless of the risk of the money not being repaid." Indeed, making improper payments out of client account was expressly cited by the Court of Appeal as an example of conduct lacking integrity in Wingate.

20.11 It was equally unethical to retain client money in office account other than as permitted by the Accounts Rules, particularly in circumstances where that office account was overdrawn. The unpaid professional disbursements should have been paid timeously to their rightful recipients or transferred to client account. They should not have been used to reduce the Firm's indebtedness to its bank or for other office side purposes.

20.12 In Prescott v Solicitors Regulation Authority [2019] EWHC 1739 (Admin), Lane J upheld findings of dishonesty in respect of a solicitor who, having received monies for the purpose of discharging professional disbursements, failed either to pay those disbursements to their appropriate recipients or to transfer the monies to client account. The Tribunal's findings of lack of integrity were not challenged on appeal but were nonetheless endorsed by the High Court as follows: "It was clear that, at the relevant time, monies received for professional disbursements were client monies. Overall, the SDT was entitled to find beyond a reasonable doubt that no solicitor acting with integrity would use client money to support his business in breach of the SRA [sic]".

20.13 The Respondent's conduct created a seriously deficient client account. By receiving money into and taking costs out of a deficient client account the Respondent was not only breaching the Accounts Rules with every transaction but, fundamentally, committing a breach of trust. For instance, if one client was paid out in full then the Respondent was using other clients' money to fulfil that transaction. That was not an acceptable or ethical way to practise when solicitors were custodians and trustees of client money. The Respondent, in conducting himself in the way that he did failed to act with integrity in breach of Principle 2.

20.14 It was plainly not in the best interests of the Respondent's clients, legally aided or otherwise, for client money to be transferred to and/or held in office account, other than as permitted by the Accounts Rules, particularly in circumstances where that

office account was overdrawn. Thus the Respondent's conduct was in breach of Principle 4.

20.15 Members of the public expected solicitors to treat client money in accordance with the Accounts Rules. They did not expect solicitors to retain client money in office account, especially where that account was overdrawn. Without prejudice to the SRA's case on Principle 2, dishonesty and recklessness, the Respondent's treatment of the client money giving rise to the minimum shortage was, at best, manifestly incompetent within the meaning of the Iqbal case. As such, the Respondent fell far short of the complete trustworthiness required of a solicitor in breach of Principle 6.

20.16 In all the circumstances, it was clear that the Respondent's treatment of the client money in question was in material breach of his regulatory obligations, and sufficiently serious to disclose a breach of Principle 7.

20.17 Both the existence and causes of the shortage showed that the Respondent's treatment of client money was neither effective nor demonstrative of sound financial and risk management principles in breach of Principle 8.

20.18 Mr Mulchrone submitted that client money was held on trust for clients and was sacrosanct. The proper protection of client money required that it was dealt with in accordance with the Account Rules. In particular, the proper protection of client money required it to be kept in a client account and separate from a solicitor's own funds (and all the more so from his debts). Client money in the form of unpaid professional disbursements must be timeously paid or transferred to a client account. Compliance with Principle 10 was a continuing, prospective duty. Though breaches of the Accounts Rules must be remedied promptly upon discovery, doing so could not retrospectively erase a failure to comply with Principle 10. It was submitted that the Respondent's failure to protect client money in breach of Principle 10 was aggravated by the fact that the client money was not only improperly held in office account but the office account was overdrawn. The client money held in office account was thus spent in reducing the Firm's liability to its bank.

20.19 Further or in the further alternative, the conduct alleged constituted a failure to achieve Outcome 1.1 under the Code of Conduct which required that clients are treated fairly. Additionally, the Respondent breached his obligations as COFA under rule 8.5(e) of the Authorisation Rules which required him to "(i) take all reasonable steps to: ensure that the body and its managers or the sole practitioner, and its employees comply with any obligations imposed upon them under the SRA Accounts Rules…" He also breached his obligations as COLP under rule 8.5(c) of the Authorisation Rules which required him to "(i) take all reasonable steps to: (A) ensure compliance with the terms and conditions of the authorised body's authorisation except any obligations imposed under the SRA Accounts Rules".

Dishonesty

20.20 Mr Mulchrone submitted that the evidence demonstrated the Firm's financial difficulty and that it was being pressed by creditors. Money was needed to run it and the Respondent was aware that:

- monies the Firm received from the LAA to pay outstanding experts invoices, were paid into office account but he was not paying them;

- monies the Firm received to settle fees due to counsel were not being paid out;

20.21 The Respondent had sole control of the Firm's bank accounts and he alone decided what invoices should be paid. It was clear that the Respondent as sole owner of the Firm stood to benefit by retaining monies to pay professional disbursements in the office account. He was able to use the money to run the Firm, meet critical office expenses and to pay creditors as and when he chose.

20.22 Mr Mulchrone submitted that it was inconceivable that the Respondent as the sole owner and Principal of the Firm, was unaware that experts and counsel were chasing for payment of fees incurred. The documents evidenced that the Respondent was told (sometimes repeatedly) by staff, that experts and counsel were chasing for payment of their fees and that the Firm was in funds to pay them.

20.23 Despite this, as at 31 August 2019, the Respondent had failed to pay the monies owed (and the shortage had not been fully replaced even by December 2019).

20.24 It was submitted that there was no reason for the Respondent to hold money received to pay unpaid professional disbursements in the office account (or to transfer it there), unless either he intended to pay the professional disbursements (which he did not do), or he intended to retain the funds and use them for office side purposes, such as reducing the Firm's indebtedness to its bank. As in Prescott, the evidence pointed overwhelmingly to the latter.

20.25 As the Firm's sole owner, sole principal, COLP and COFA, the Respondent was aware that the main office bank account was overdrawn at material times and frequently near its overdraft limit. It could be inferred that the unpaid professional disbursements were held in and/or transferred to the office account in order to allow the Firm to continue trading within its overdraft limit. Ordinary, decent people would consider that the Respondent's conduct in failing to pay professional disbursements when he was in funds to do so, and/or in failing to transfer those monies to client account, was dishonest.

The Respondent's Case

20.26 The Respondent admitted the factual matrix of allegation 1.2 insofar as it was accepted that a cash shortage of at least £20,433.10 existed upon the Firm's client account, which was caused by client money, in the form of unpaid professional disbursements, not having been paid or transferred to client account, timeously or at all, and a number of client to office account transfers, which were unjustified and/or improper.

20.27 The Respondent further admitted that his conduct had been in breach of the Accounts Rules as alleged, save for Rules 7.1 and 7.2. It was also admitted that the conduct was in breach of the Authorisation Rules. The Respondent denied that his conduct was in breach of the Principles (save Principle 8), that he had failed to achieve

Outcome 1.1 or that his conduct was dishonest. He accepted that his conduct had been reckless.

20.28 In his Answer the Respondent stated there was a shortage but that he had been clearing these and had drastically reduced the shortage before the intervention. Initially, he was ignorant that those monies were classed as client money, but he was fully aware of the need to make the payments, which was his intention at all times.

20.29 In evidence the Respondent explained that he had disclosed the shortage very early on in the investigation and that such a disclosure evidenced that he was not trying to hide anything. He had been completely open, honest and transparent. It was accepted that in these instances, his conduct had been in breach of the Accounts Rules, but that this had occurred a miniscule number of times in comparison to the times when he had conducted matters in accordance with the Accounts Rules. The investigation had disclosed matters of which he was not aware; had he been aware of them, they would have been rectified.

20.30 The Respondent submitted that he had not contested that there was a shortage on the client account or that it had been caused by a failing on his part. The shortage had been caused by his failure to make timely transfers of funds to the client account or to pay invoices. He had reduced the shortage to around £6,000 at the time of the intervention.

20.31 The Respondent submitted that given that the majority of transactions made by him were in accordance with the Accounts Rules, this demonstrated that his conduct as regards the improper transactions was not dishonest. Nor did it disclose a lack of integrity.

The Tribunal's Findings

20.32 The Tribunal found that the Respondent's conduct was in breach of the Accounts Rules (save Rules 7.1 and 7.2 which is considered below), and in breach of the Authorisation Rules. The Tribunal also found that the Respondent had failed to carry out his role in the business effectively in accordance with sound financial and risk management principles in breach of Principle 8. The Tribunal found that the Respondent's admissions in that regard were properly made. In admitting that there was a shortfall caused for the reasons as alleged, the Respondent's conduct was clearly in breach of his obligations as admitted.

20.33 During the course of his cross-examination, the Respondent further admitted that his conduct was in breach of Rules 7.1 and 7.2. It was clear from the documentary evidence that the Respondent was aware of unpaid professional disbursements as he had been sent numerous emails from members of staff informing him that invoices were being chased, and that the Firm had already received payment. This was prior to his being informed by Ms Maskell of the minimum shortage. The Tribunal noted that the Respondent had significantly reduced the shortage over time. The Tribunal considered that this was mitigation only. The reduction of the shortage was not sufficient to comply with the obligation to rectify the shortage promptly on discovery including by the use of personal funds. In the circumstances, the Tribunal found that

the Respondent's conduct was in breach of Rules 7.1 and 7.2. His admission during the course of his cross-examination was properly made.

20.34 The Tribunal noted the comments in Wingate as regards making improper payments from a client account. The Tribunal considered that a solicitor acting with integrity would not retain client monies in the office account and use those monies for the benefit of the Firm. The Respondent had received monies to pay disbursements, and then had failed to do so for significant periods of time. The money was retained, the Tribunal determined, so that the Respondent could continue to pay for office expenses. The Respondent, during cross-examination confirmed that he knew that the monies were not office monies and that he was not entitled to use those monies; the monies had been provided for the payment of disbursements. Notwithstanding that knowledge, the Respondent did not pay the disbursements as he ought to have, instead he used those monies. In so doing, the Respondent had created a shortage on the client account. Such conduct, the Tribunal found, lacked integrity in breach of Principle 2.

20.35 The Tribunal found that in creating a shortage on the client account, the Respondent had failed to act in his clients best interests in breach of Principle 4, and had failed to protect client monies in breach of Principle 10. It was not in the best interests of the Respondent's clients nor were client assets protected in circumstances where client money was being improperly retained in the office account. The Respondent had failed to treat his clients fairly, and thus had failed to achieve Outcome 1.1

20.36 Members of the public did not expect a solicitor to retain client monies in an overdrawn office account in contravention of the Accounts Rules. Nor did members of the public expect a solicitor, as the trusted guardian of client monies, to fail to protect those monies. Accordingly, the Tribunal found that the Respondent's conduct failed to maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6.

20.37 The Tribunal found that the Respondent's dereliction of his duty was so serious that he was in material breach of his regulatory obligations in breach of Principle 7.

20.38 Both the existence and causes of the shortage showed that the Respondent's treatment of client money was neither effective nor demonstrative of sound financial and risk management principles in breach of Principle 8.

20.39 The Tribunal found that the Respondent had knowingly and consciously used monies that he knew he was not entitled to. The documentary evidence showed that he was chased by his fee earners on numerous occasions as regards the non-payment of disbursements when the Firm had already been paid. The Respondent during cross-examination explained that the chasing messages had a common theme – he had not responded. That demonstrated that those emails had been missed. The Tribunal did not consider that this was a credible explanation. The Respondent knew, as was accepted by him, that he was not entitled to use monies paid to the Firm in order to satisfy the cost of disbursements. He had done so, the Tribunal found, due to the lack of monies in the Firm. The decision to use those monies was a deliberate and conscious act by the Respondent. The Respondent had used monies from the LAA for his own purposes, and had also used monies paid by his clients for counsels' fees

for his own purposes. The Tribunal found that ordinary and decent people would consider that it was dishonest to knowingly use monies provided to pay for disbursements to reduce the Firm's indebtedness.

20.40 Accordingly, the Tribunal found allegation 1.2 proved on the balance of probabilities, including that the Respondent's conduct had been dishonest. Having found dishonesty proved, the Tribunal did not consider recklessness as that had been alleged in the alternative to dishonesty.

21. **Allegation 1.3 - On or before 21 September 2019, he caused or allowed up to 14 client to office account transfers which were unjustified and/or improper. To the extent not already covered by allegation 1.2 above, he therefore: (1.3.1) breached all of any of Rules 1.2, 6.1, 7.1, 7.2, 17.2, 17.7, 20.1 and 20.3 of the Accounts Rules; (1.3.2) breached all or any of Principles 2, 4, 6, 7, 8 and 10; (1.3.3) failed to achieve Outcome 1.1 under the Code of Conduct; (1.3.4) breached Rules 8.5(c) and/or 8.5(e) of the Authorisation Rules.**

The Applicant's Case

21.1 Ms Maskell identified 14 improper client to office account transfers which took place between 25 September 2018 and 21 September 2019 and were posted to four client ledgers. It was identified that, but for the improper transfers, the office accounts would have exceeded their overdraft limits. Mr Mulchrone exemplified the following matters:

Improper transfers made on 26 February 2019

21.2 The following round sum transfers were made on 26 February 2019 and were recorded in the cashbook:

- £300.00 posted to the Client T matter
- £100.00 posted to the Client FO matter

21.3 On 26 February 2019, after two direct debits payments totalling £1,487.85 to a business loan provider and a company that provided credit for businesses, the balance on the office bank account was minus £15,459.73. A client to office transfer of £500.00 made on the same date brought the office account balance within its overdraft limit. This deposit included the improper client to office account transfers referred to above.

21.4 Ms Maskell was unable to identify a legitimate reason for these transfers. Mr Mulchrone submitted that it should be inferred that they were made deliberately in order to allow the Firm to continue trading within its overdraft limit.

Improper transfers made on 15 May 2019 (whilst the forensic inspection was ongoing)

21.5 The following round sum transfers were made on 15 May 2019 and were recorded in the cashbook:

- £1,200.00 posted to the Client FO matter;

- £1,000.00 posted to the Client G matter.

21.6 In respect of the Client G matter, £1,000.00 was transferred, which gave rise to an office-side credit of £838.40. Ms Maskell established that only that part of the money transferred was improper.

21.7 On 15 May 2019, after a payment to O2 and a standing order, the balance on the office bank account was minus £13,985.46. Between 15 and 17 May 2019, funds relating to office expenses, were taken from the account. The client to office round sum transfers totalling £2,200.00 meant that, after the direct debits were taken, the closing balance on 17 February 2019 was minus £14,729.62, i.e. just within the office account overdraft limit of £15,000.00. It followed that, but for the transfer of £2,200.00 on 15 May 2019, the office account would have exceeded its overdraft limit.

21.8 Ms Maskell was unable to identify a legitimate reason for these transfers. Mr Mulchrone submitted that it should be inferred that they were made deliberately in order to allow the Firm to continue trading within its overdraft limit.

21.9 The Firm's former bookkeeper, Ms C, told Ms Maskell that, just prior to the forensic inspection, the Respondent had asked her to attend the Firm's office on a Saturday and gave her a number of bills to post relating to client to office transfers which had already been made. That request, it was submitted, supported an inference that the transfers were known to be improper at the time they were made.

21.10 Mr Mulchrone submitted that to the extent not already covered by allegation 1.2 above, the conduct alleged constituted a material breach of the Accounts Rules. In addition to the Rules detailed at allegation 1.2 above:

Rule 17.2 required:

> "If you properly require payment of your fees from money held for a client or trust in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party";

Rule 17.7 required (to the extent that the transfers were in 'round sums')

> "Costs transferred out of a client account in accordance with rule 17.2 and 17.3 must be specific sums relating to the bill or other written notification of costs, and covered by the amount held for the particular client or trust. Round sum withdrawals on account of costs are a breach of the rules";

Rule 20.3 required:

> "Office money may only be withdrawn from a client account when it is: (b) properly required for payment of your costs under rule 17.2 and 17.3" (the money could not be "properly required" for payment of costs absent service of a legitimate invoice compliant with Rule 17.2).

21.11 In making the improper transfers, the Respondent had breached the Accounts Rules as alleged.

21.12 In making improper payments out of client account, the Respondent had failed to act with integrity in breach of Principle 2. It was plainly not in the best interests of the Respondent's clients, legally aided or otherwise, for client money to be transferred to and/or held in office account, other than as permitted by the Accounts Rules, particularly in circumstances where that office account was overdrawn. The Respondent had thus failed to act in his clients' best interests in breach of Principle 4.

21.13 Members of the public expected solicitors to treat client money in accordance with the Accounts Rules. They did not expect solicitors improperly to transfer client money to office account, especially where that account was overdrawn. In the event that transfers were made in error, the public would expect them to be reversed promptly upon discovery. The Respondent's treatment of the client money improperly transferred from client to office account was, at best, manifestly incompetent. As such, the Respondent fell far short of the complete trustworthiness required of a solicitor in breach of Principle 6.

21.14 Mr Mulchrone submitted that in all the circumstances, it was clear that the Respondent's treatment of the client money in question was in material breach of his regulatory obligations in breach of Principle 7. Further, in treating client monies in this way, he had failed to carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8.

21.15 In addition, the Respondent had failed to protect his clients' monies in breach of Principle 10.

21.16 Further the Respondent had failed to treat his clients fairly and thus had failed to achieve Outcome 1.1. He had also breached his obligations under the Authorisation Rules.

Dishonesty

21.17 Ms Maskell identified that 11 of the 14 improper transfers (some for round sum amounts) were made at times when the Firm had insufficient funds to operate within its overdraft limit. As the Respondent had sole control of the Firm's bank accounts, he knew when the Firm was approaching its overdraft limit, and when critical payments needed to be made by the Firm. The Respondent told Ms Maskell that the improper transfers were not made to stop the office bank account exceeding its overdraft limit; however, the evidence showed that the transfers were frequently made when office expenses were due to be paid. Mr Mulchrone submitted that it is inherently improbable that this is a coincidence.

21.18 Further, at the Respondent's request, the Firm's bookkeeper Ms C attended the Firm's office at the weekend (shortly before the forensic inspection visit) and posted a number of bills relating to client to office account transfers which had already been made. The following messages passing between the Respondent and Ms C raised serious concerns about the legitimacy/ propriety of the transfers identified by Ms Maskell as improper:

Respondent: SRA want to see reconciliations
[Ms C] I wouldn't ask you to do anything not legal. Let's just fill the missing gaps and then leave it at that please

…

Respondent: Ensure the invoices are on file

Ms C: it's not just about to [put] bill on file, the fee earners in charge has to explain why they bill.

Respondent: Yes that's not a problem
Why not let's meet and really look at this?
…

But can't we resolve these queries?
Please help me understand
We haven't been fraudulent
We can justify transfers

21.19 The Respondent made a number of excuses in interview for the improper transfers which are not credible in circumstances where (i) there was no evidence on the files of the relevant invoices being prepared or notified to the clients; (ii) Fee earners had no knowledge of the invoices posted to the ledgers; (iii) Invoices included costs for unpaid disbursements which were then posted as debit entries on the office side of the client ledgers, which meant the ledgers incorrectly recorded the disbursements as having been paid out of the office account, when in fact that had not occurred; and (iv) Invoices were posted to client ledgers on dates earlier than their creation.

21.20 Mr Mulchrone submitted that in the absence of any credible explanation or justification for the improper transfers, it should be inferred that the Respondent deliberately caused or allowed them to be made, and that he therefore deliberately caused or allowed that client money to be misused, in order to allow the Firm to continue trading within its overdraft limit, or for other office side purposes. Ordinary, decent people would regard this behaviour as dishonest.

The Respondent's Case

21.21 The Respondent admitted the factual matrix of allegation 1.3 insofar as it was accepted that on or before 21 September 2019, he caused or allowed up to 14 client to office account transfers which were unjustified and/or improper.

21.22 The Respondent further admitted that his conduct had been in breach of the Accounts Rules as alleged, save for Rules 7.1 and 7.2. It was also admitted that the conduct was in breach of the Authorisation Rules. The Respondent denied that his conduct was in breach of the Principles (save Principle 8), that he had failed to achieve Outcome 1.1 or that his conduct was dishonest. He accepted that his conduct had been reckless.

21.23 In his Answer the Respondent admitted that there were some unjustified transfers, which he was unable to account for much later. As a result of cash flow difficulties, he was not able to have a full- time bookkeeper. The Respondent stated that things were chaotic at some points, but, ultimately, he had sole control of the transfers from the bank.

21.24 In evidence the Respondent explained that around the middle of the month, he would chase fee earners to provide invoices and to bill their matters so that the Firm could satisfy its liabilities. He would often receive an email from a fee earner telling him that an invoice had been raised and could be paid. He was not often in the office, and would make the payment from his phone, telling the fee earner to leave the invoice on his desk. The improper payments did not emanate from criminal matters, but from cases on which he was not the fee earner. The Respondent explained that he made the transfers without seeing the invoices. He stated that he ought to have seen the invoices before making the transfers. In failing to do so, he accepted that he had breached the Accounts Rules, the Authorisation Rules and Principle 8.

21.25 The Respondent submitted that there had only been 14 improper transfers for relatively small amounts. Those were 14 of a huge number of perfectly proper transfers. This, it was submitted, demonstrated that there was no pattern of the Respondent improperly using client monies. The misconduct arose as a result of the disorganisation of the accounts rather than being an intentional act. The Respondent believed that he was only making transfers that he was properly entitled to make. Mistakes had been made and thus monies had been transferred mistakenly. Accordingly, it was denied that the conduct had been dishonest, however it was admitted that his conduct was reckless.

The Tribunal's Findings

21.26 The Tribunal found that the Respondent's conduct was in breach of the Accounts Rules (save Rules 7.1 and 7.2 which is considered below), and in breach of the Authorisation Rules. The Tribunal also found that the Respondent had failed to carry out his role in the business effectively in accordance with sound financial and risk management principles in breach of Principle 8. The Tribunal found that the Respondent's admissions in that regard were properly made. During the course of his cross-examination, the Respondent further admitted that his conduct was in breach of Rules 7.1 and 7.2. The Tribunal found that in admitting that he had made the improper transfers as alleged, the Respondent's conduct was clearly in breach of his obligations as admitted. The Tribunal found the Respondent's admissions (including those made during the course of the hearing) to have been properly made.

21.27 The Tribunal noted that, but for 11 of the 14 improper transfers, the office account would have exceeded it overdraft limit. The Respondent was the only person who had access to the accounts. The Tribunal determined that as the sole Principal, the Respondent would have been aware of the balance on the accounts, and when payments were due to be made.

21.28 The Tribunal considered that a solicitor acting with integrity would not make improper transfers from client account so as to ensure that the Firm could meet its own financial obligations. The Respondent had used client monies so as to ensure

that the Firm did not exceed its overdraft. The timing of the transfers evidenced that this was the purpose of the transfers. The Tribunal did not accept that the transfers had occurred at those times as that was when the Respondent had chased fee earners to bill files. Nor was it accepted that these were mistakes made by the Respondent in transferring monies without first having had sight of any invoices. The Tribunal found that in making improper transfers for the benefit of the Firm, the Respondent had acted without integrity in breach of Principle 2.

21.29 In making the improper transfers, the Respondent had failed to act in his clients' best interests in breach of Principle 4, and he had failed to protect client monies in breach of Principle 10. It was not in the best interests of the Respondent's clients nor were client assets protected in circumstances where client money was being improperly transferred to the office account to prop the Firm up. For the same reason, the Tribunal found that the Respondent had failed to treat his clients fairly, and thus had failed to achieve Outcome 1.1

21.30 Members of the public did not expect solicitors to improperly transfer client monies in contravention of the Accounts Rules. Nor did members of the public expect solicitors, as trusted guardians of client monies, to fail to protect those monies. Accordingly, the Tribunal found that the Respondent's conduct failed to maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6.

21.31 The Tribunal found that the Respondent's dereliction of his duty was so serious that he was in material breach of his regulatory obligations in breach of Principle 7.

21.32 The Tribunal found that the Respondent had knowingly and consciously transferred monies from the client account to ensure that the Firm stayed within its overdraft limit. The Tribunal did not consider that the Respondent's explanation as to chasing fee earners and then making transfers without sight of the invoices was credible. The Respondent, it was found, had resorted to making the transfers when there were no other legitimate funds on which he could draw to satisfy the Firm's liabilities. The decision to improperly transfer the monies was a deliberate and conscious act by the Respondent in the knowledge that he was not entitled to transfer the monies when he did. The Tribunal found that ordinary and decent people would consider that it was dishonest to use monies to satisfy the Firm's indebtedness in circumstances where the Respondent knew that he was not entitled to those monies.

21.33 Accordingly, the Tribunal found allegation 1.3 proved on the balance of probabilities, including that the Respondent's conduct had been dishonest. Having found dishonesty proved, the Tribunal did not consider recklessness as that had been alleged in the alternative to dishonesty.

22. **Allegation 1.4 – He failed adequately and/or timeously to comply with a statutory Production Notice served on or about 18 September 2019 and, in so failing: breached Principles 7 and/or 6; and failed to achieve Outcomes 10.6 and/or 10.9.**

The Applicant's Case

22.1 On 18 September 2019, the Respondent was served with a Notice under section 44B of the Solicitors Act 1974, requiring him to produce specified documents and information by 23 September 2019, including the Firm's accounts and a list of creditors/liabilities. The Respondent did not provide all of the documents and information requested by that deadline and made excuses, for example, to the effect that the books were being worked on. Mrs Maskell was obliged to chase the Respondent on several occasions to encourage him to comply with the Notice but he failed to do so satisfactorily and missed several extended deadlines.

22.2 By failing to comply with the Production Notice as described, the Respondent breached Principle 7. Compliance with Principle 7 required a solicitor to give anxious scrutiny to the regulator's requirements and to use best endeavours to provide all of the materials and information requested within the stated deadline. The Respondent failed to do so and that failure was sufficiently serious and culpable to disclose a breach of Principle 7.

22.3 Members of the public expected solicitors to cooperate with the SRA and to comply fully with their statutory obligations in a timely manner. The Respondent's response to the Production Notice was, it was submitted, at best manifestly incompetent. As such, the Respondent fell far short of the complete trustworthiness required of a solicitor in breach of Principle 6.

22.4 In addition the Respondent failed to achieve Outcome 10.6 which required him to cooperate fully with the SRA. He also failed to achieve Outcome 10.9 which required:

> "pursuant to a notice under Outcome 10.8, you: (a) produce for inspection by the SRA documents held by you, or held under your control; (b) provide all information and explanations requested; and (c) comply with all requests from the SRA as to the form in which you produce any documents you hold electronically, and for photocopies of any documents to take away; in connection with your practice or in connection with any trust of which you are, or formerly were, a trustee".

Recklessness

22.5 Mr Mulchrone submitted that the Respondent was reckless as to whether his response to the Production Notice was adequate and/or timely.

The Respondent's Case

22.6 The Respondent denied allegation 1.4. In his Answer he stated that he was not as prompt with the Production Notice, not because of any malicious reason but simply because he had already started an audit of the accounts and case management system to try to locate any issues, so that he could be aware. He had to obtain access to his case management system back from his bookkeeper/accountant who were forensically examining the books.

22.7 In evidence the Respondent explained that he had provided most of the information requested and was doing his best, as a sole practitioner, to comply. He informed Ms Maskell that some of the information requested was saved on the previous case management system so he would not be able to access them immediately. He was no longer using that system and need to obtain records from the provider of which he was no longer a client. He had used his best endeavours to comply with the Section 44B Notice, as well as the numerous additional requests made by Ms Maskell during the course of her investigation.

22.8 The Respondent submitted that during cross-examination, Ms Maskell agreed that he had most of the information in a timely manner, and that he had informed her of the difficulty he was having in obtaining some of the requested documents. He had not tried to avoid providing the information requested, but he had tried to work with Ms Maskell in an open and honest way, keeping her up-to-date with any issues as regards the production of documents. That was evidenced by the email correspondence between Ms Maskell and the Respondent in September and October 2019.

22.9 The Respondent denied that his conduct was reckless.

The Tribunal's Findings

22.10 The Tribunal noted that the Respondent was required to comply with the Section 44B Notice by 23 September 2019. At that time, there were numerous items that had not been provided by the Respondent as was required. The Respondent stated in evidence that he had provided the documents by 6 October 2019, shortly after the deadline, and that Ms Maskell stated that he had provided most of the documents in a timely manner. Ms Maskell's evidence was that, in the fullness of time, the Respondent provided most of the documents.

22.11 The Tribunal also noted that the Respondent had been chased regularly by Ms Maskell for the documents that he was required to provide on numerous occasions from the expiry of the time for compliance with the Section 44B Notice up to 18 October 2019. At the time of writing the FI Report (7 January 2020), the Respondent had still not provided all the documentation that he was statutorily required to provide pursuant to the Section 44B Notice. The Tribunal considered that much of the requested documentation ought to have been in the Respondent's possession.

22.12 The Tribunal found that in failing to comply with the obligation to respond in full to the Section 44B Notice, the Respondent had failed to comply with his legal and regulatory obligations and deal with his regulator in a timely and cooperative manner in breach of Principle 7 as alleged. In failing to comply with the Section 44B Notice, the Respondent had failed to achieve Outcomes 10.6 and 10.9 as alleged.

22.13 Further, members of the public would expect a solicitor to comply with their regulatory obligations, particularly when there was an ongoing investigation into regulatory compliance. In failing to do so, the Respondent had failed to maintain the trust the public placed in him and in the provision of legal services in breach of Principle 6.

22.14 The Tribunal found that the Applicant had failed to detail what risk the Respondent had knowingly undertaken in failing to comply with the Section 44B Notice. The Tribunal considered that the allegation of recklessness was incoherent in that it could not sensibly attach to the allegation. In the circumstances, the Tribunal did not find recklessness proved.

22.15 Accordingly found allegation 1.4 proved on the balance of probabilities, save that it did not find that the Respondent's conduct had also been reckless.

23. **Allegation 1.5 – On a date or on dates unknown, he caused or allowed retrospective changes to be made to ledger entries and/or cashbooks which were subsequently passed to the SRA; he therefore: breached all or any of Principles 2, 6 and 7; and failed to achieve Outcome 10.6 under the Code of Conduct.**

The Applicant's Case

23.1 The Respondent provided Ms Maskell with two client account cashbooks for the period 1 January 2019 to 31 August 2019, on 23 September 2019 and 6 October 2019.

23.2 The cashbooks showed changes to ledger entries posted on five matters between 15 May 2019 and 23 August 2019. Notably the changes related to three of the four matters exemplified by Ms Maskell. The changes impacted the ledger balances. For example, the cashbook produced on 23 September 2019 showed the following client to office bank transfers which related to the 'Family Fixed Fee' ledger:

- £1,000.00 and £37.40 on 15 May 2019;
- £398.00 on 13 June 2019.

23.3 These were removed from the cashbook produced on 6 October 2019 and it was amended to include a client to office transfer of £180.00 on 13 June 2019. In addition, the sum of £398.00 was split across three client ledgers.

23.4 Ms Maskell asked the Respondent in interview why this sum was reapportioned to three ledgers. He replied, "I don't know" and "It's not my file. It's not one of my matters".

23.5 The changes made to the cashbooks removed a client-side debit balance on the Client FO matter. Mr Mulchrone submitted that despite his roles as sole principal, COLP and COFA, at the Firm, the Respondent was unable to provide any clear explanation for the changes and deletions in ledger entries and cashbooks. In all the circumstances, it should be inferred that the same were deliberately made, either by the Respondent, at his direction or with his knowledge or acquiescence.

23.6 Mr Mulchrone submitted that it was a basic matter of professional ethics that solicitors should not make (or permit others to make) retrospective changes to their accounting records, without at least recording that they have done so. This was all the more important in circumstances where the accounting records constituted primary evidence which is material to a regulatory investigation. In doing so, the Respondent had breached Principle 2

23.7 Members of the public expected solicitors to maintain accounting records properly written up to show accurately their dealings with client money. They did not expect solicitors retrospectively to tamper with and amend such records. The Respondent's conduct in causing or allowing the amendments and then providing the same to the SRA was, at best, manifestly incompetent. The Respondent fell far short of the complete trustworthiness required of a solicitor in breach of Principle 6

23.8 In all the circumstances, the Respondent's conduct was in material breach of his regulatory obligations and constituted a failure to deal with the SRA in an open and cooperative manner that was sufficiently serious to constitute a breach of Principle 7. In addition, the Respondent had failed to achieve Outcomes 10.6 and 10.9 of the Code of Conduct which required the Respondent to co-operate fully with the SRA at all times, and to produce for inspectional all documents and provide all information and explanations requested.

Dishonesty

23.9 Mr Mulchrone submitted that not only had the Respondent provided no adequate or credible explanation for the amendments, it was difficult to conceive of any honest reason why a solicitor would make retrospective amendments to cashbooks or ledgers, without at least clearly recording that they had done so. This was all the more important in circumstances where the accounting records constituted primary evidence which was material to a regulatory investigation. The irresistible inference to be drawn from the evidence was that the amendments were made with the intention of misleading the SRA, for example, as to the propriety of the improper transfers identified by Ms Maskell. Ordinary, decent people would consider this to be dishonest.

The Respondent's Case

23.10 The Respondent admitted the factual matrix of allegation 1.5. He denied that the facts gave rise to professional misconduct as alleged. In his Answer the Respondent stated that there were changes based on identified errors, which were corrected. As he had explained, the audit of the books had been commissioned by him long before Ms Maskell attended the Firm. The Respondent was undertaking the audit so that any issues could be identified and so that he could "gain a good clarity with my books".

23.11 In evidence the Respondent explained that he had been candid, honest and transparent. He explained to Ms Maskell that the audit of the accounts had already commenced. He had been in communication with Ms C as he needed assistance with sorting out the accounts and was seeking information from her. The Respondent explained that he was not trying to "cover up" or hide anything. He simply wanted the accounts to be tidy so that they could be looked at. The accountants had agreed to "zero-base" the accounts and go through them transaction by transaction. The retrospective changes made were purely in order to rectify errors. The Respondent denied that his conduct had been dishonest.

23.12 The Respondent submitted that the email exchange with Ms Maskell demonstrated that he was not trying to hide any matters. Indeed, he had provided both the cashbooks upon which the Applicant relied to prove its case. His conduct, transparency and openness were demonstrative of his honesty

The Tribunal's Findings

23.13 The Tribunal noted the Respondent's explanation as regards remedying errors in the accounts. The Tribunal found that if mistakes had been made, there should have been a reversal in the accounts so that there would be a proper audit trail. It was not acceptable to simply remove entries so that there could be no discovery of transfers previously made. Some of the amendments made removed transfers from client to office account with no explanation made, and no evidence that monies transferred out of client account were subsequently transferred back in. Further, a number of the retrospective changes related to monies which the Respondent admitted were improperly transferred from the client account. The Tribunal found that those retrospective changes had been made in order to justify the improper transfers.

23.14 The Tribunal found that a solicitor acting with integrity would not make retrospective changes to the accounts so as to hide the transactions that had been made or to justify transactions that were knowingly and deliberately made. In doing so, the Respondent's conduct lacked integrity in breach of Principle 2. That such conduct failed to maintain the trust the public placed in the Respondent and in the provision of legal services was plain. Members of the public did not expect solicitors to retrospectively amend records so that the true position could not be ascertained. Accordingly, the Respondent breached Principle 6.

23.15 The Respondent, in conducting himself as he did, failed to deal with the SRA in an open and cooperative manner. Accordingly, his conduct was in breach of Principle 7. It followed that the Respondent also failed to achieve Outcomes 10.6 and 10.9 of the Code of Conduct.

23.16 The Tribunal found that the Respondent had knowingly and deliberately made retrospective changes to the accounts (or caused the accounts to be amended) so as to disguise the improper transfers made, including those made to keep the Firm within its overdraft limit. The Tribunal found that ordinary and decent people would consider such conduct to be dishonest.

23.17 Accordingly, the Tribunal found allegation 1.5 proved on the balance of probabilities, including that the Respondent's conduct had been dishonest. Having found dishonesty proved, the Tribunal did not consider recklessness as that had been alleged in the alternative to dishonesty.

Previous Disciplinary Matters

24. None.

Mitigation

25. The Respondent explained that he had limited means. He had purchased his home utilising the help to buy scheme. He was the sole breadwinner, and given his financial commitments, he had limited means to pay costs.

26. The Respondent submitted that there had been no personal enrichment from his misconduct. Whilst he was not earning from the Firm, this did not excuse the mistakes he made. He had admitted the Accounts Rules breaches from the outset, and had notified the Applicant of some of those breached when Mr Chambers and Ms Maskell visited the Firm. The breaches of the Accounts Rules arose in a difficult period for the Respondent, and he had found it difficult to keep on top of his regulatory duties. As a result of the financial performance of the Firm, the Respondent had taken another job working two days a week so as to make ends meet. He was extremely busy, and was trying to run the Firm as well as undertaking his criminal work.

Sanction

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

28. The Tribunal considered that the Respondent's motivation for his misconduct was to keep his Firm trading. His actions were planned. He had transferred monies and retrospectively amended ledgers in order to cover improper transfers made by him. The Respondent was the sole person with access to the accounts, and was solely responsible for the misconduct. He had direct control. He had deliberately misled the regulator when answering questions during the initial visit of Mr Chambers, and had retrospectively amended financial records so as to disguise his improper conduct.

29. The Respondent's conduct had caused significant harm to the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

> "34. There is harm to the public every time that a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

30. The Respondent's conduct was aggravated by his dishonesty. His misconduct was deliberate, calculated and repeated over a period of time. He had attempted to conceal his wrongdoing by retrospectively amending his financial records. The Respondent knew that his conduct was in material breach of his obligation to protect the public and the reputation of the profession. His conduct had had a direct impact on experts and counsel, some of whom had to issue proceedings in order to be paid monies that the Respondent had improperly and dishonestly retained.

31. In mitigation, the Respondent had a previously unblemished career. He had shown limited insight as regards his admission as to the facts, the Accounts Rules breaches and that his conduct had been reckless. His co-operation with the SRA was to a large degree negated by his attempt to mislead officers of the SRA.

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

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

33. The Tribunal did not find any circumstances (and indeed none were submitted) that were sufficient to give rise to exceptional circumstances. The Tribunal determined that in view of the serious nature of the misconduct, in that it involved multiple findings of dishonesty, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

34. Mr Mulchrone applied for costs in the sum of £39,599.08. Those costs incorporated the Applicant's internal investigation costs in the sum of £17,399.08. The fixed fee charged by Capsticks had been reduced from £34,500 to £18,500 following a review of the matter. Whilst hourly rates did not apply, Capsticks costs represented a notional hourly rate of approximately £90 per hour.

35. The Respondent submitted that the hours spent on the case were excessive in circumstances where the facts were admitted, as were a number of the Accounts Rules breaches. He also noted that there had been a number of fee earners working on the case, which, in all the circumstances, was not necessary.

36. The Tribunal considered that the costs claimed by the Applicant were reasonable; the costs were appropriate and proportionate taking into account the nature of the case and the issues to be determined. The Tribunal did not consider that there was any reason to reduce the costs claimed by the Applicant.

37. Following the Tribunal's announcement of its sanction and costs, the Respondent applied for the costs not to be enforced without leave on the basis that he was of limited means. Mr Mulchrone submitted that the application was made out of time, the Tribunal having announced its Order. Further, the Respondent was in employment and was a homeowner.

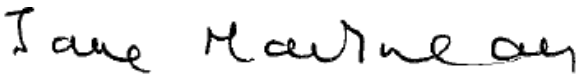
38. The Tribunal considered that notwithstanding the lateness of the application, it was in the interests of justice for it to be considered. The Tribunal had taken account of the Respondent's means when making its original Order. Whilst the Respondent was of limited means, his monthly salary was higher than the average salary and there was

equity in the property he owned. The Tribunal did not consider that the Respondent had demonstrated impecuniosity such that any costs order should not be enforceable without leave. The Tribunal was aware that the Applicant's recovery department would ordinarily enter into an arrangement as to the repayment of costs with a Respondent. In the circumstances, the Tribunal did not consider that it was appropriate to make an order that costs could not be enforced without the leave of the Tribunal.

Statement of Full Order

39. The Tribunal Ordered that the Respondent, CHIDI UMEZURIKE, 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 £39,599.08.

Dated this 18th day of December 2020
On behalf of the Tribunal



J Martineau
Chair