SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12130-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

NATO ZONDAGH Respondent

Before:

Mr J C Chesterton (in the chair)
Ms A Horne
Mrs S Gordon

Date of Hearing: 25-26 January 2021

Appearances

Ms Caoimhe Daly barrister of QEB Hollis Whiteman instructed by Capsticks Solicitors LLP of 1 St George`s Road, London, SW19 4DR, for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent made by the SRA are that, while in practice as a solicitor at Excelsior Solicitors Limited ("the Firm"):

1.1 On or after 11 September 2017 he:

1.1.1 failed to register his client MFC Limited's purchase of a leasehold interest in a property;

1.1.2 failed to make payment of the Stamp Duty Land Tax ("SDLT") payable in respect of that purchase;

1.1.3 misappropriated or otherwise misused sums which his client had paid to the Firm in respect of that transaction; and/or

1.1.4 failed to account to his client for sums they had paid to the Firm in respect of that transaction;

and thereby breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the Principles").

1.2. On or after 24 August 2017 he:

1.2.1 failed to register his client SS's purchase of a property;

1.2.2 failed to make payment of the SDLT payable in respect of that purchase;

1.2.3 represented to his client that he had made payment of the SDLT and/or registered his client's purchase of the property, when he had not;

1.2.4 misappropriated or otherwise misused sums which his client had paid to the Firm in respect of that transaction; and/or

1.2.5 failed to account to his client for sums they had paid to the Firm in respect of that transaction;

and thereby breached any or all of Principles 2, 4, 5, 6 and 10 of the Principles.

1.3 On or after 4 July 2017, he:

1.3.1 misappropriated or otherwise misused sums which his client, MI, had paid to the Firm in respect of a proposed property purchase; and/or

1.3.2 failed to account to his client for the sums they had paid to the Firm in respect of that transaction;

and thereby breached any or all of Principles 2, 4, 5, 6 and 10 of the Principles (to the extent that such conduct occurred before 25 November 2019) and/or any or all of Principles 2, 5 and 7 of the SRA Principles 2019 and paragraphs 3.2 and 4.2 of the SRA

Code of Conduct for Solicitors, RELs and RFLs ("the 2019 Code") (to the extent that such conduct occurred on or after 25 November 2019).

1.4 On or after 19 September 2017, he:

1.4.1 misappropriated or otherwise misused sums which his Firm held in respect of the estate of HM; and/or

1.4.2 failed to account to his client for those monies;

and thereby breached any or all of Principles 2, 4, 5, 6 and 10 of the Principles.

1.5 On and after 8 November 2018, he failed to reply to communications from the Solicitors Regulation Authority, his regulator, which included requests for information and documents and thereby breached Principle 7 of the Principles.

Dishonesty

2. In addition, Allegations 1.1 - 1.4 were advanced on the basis that the Respondent's conduct was dishonest in respect of each or any of them. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the allegations or any of them.

Documents

Applicant

- Application dated 25 September 2020.
- Rule 12 Statement and Exhibits, IWB1:A, B and C, dated 25 September 2020.
- Material relating to service and advert in Law Society Gazette dated 9 November 2020.
- Costs at Issue dated 25 September 2020.
- Schedule of Costs dated 22 January 2020.
- Judgment in R v Iqbal [2012] EWHC 3251 (Admin).

Respondent

- *The Respondent did not engage and lodged no material for the Tribunal's consideration.*

Preliminary Matters

3. The Respondent did not attend the hearing and was not represented. The Respondent had not applied to adjourn or vacate the hearing. It was noted that the Respondent had not filed and served an Answer and had not engaged in the proceedings.

Service of Proceedings

4. The Tribunal was concerned to ensure that the Respondent had been correctly served and was aware of the hearing date. Ms Daly, for the Applicant, submitted that the

Respondent had been correctly served with the proceedings and gave some of the background.

5. The Rule 12 Statement was dated 25 September 2020. This was certified as showing a case to answer on 28 September 2020.

6. By way of an application dated 22 October 2020, the Applicant sought a direction for substituted service pursuant to Rule 46(1) of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR 2019"). The Applicant further applied for a direction that, unless the Respondent provided to the Applicant or its solicitors an address for service by a date specified by the Tribunal, any further documents which the Applicant was required to serve in this matter be deemed served by virtue of them being filed with the Tribunal.

7. It was said that the Applicant had made reasonable efforts to establish the address, place of business or email address of the Respondent. This included an email address that was no longer operational, and three postal addresses, at none of which the Respondent could be contacted. One address was attended by a process server who was informed by the residents that they did not know the Respondent and that they had lived at that address for 5 years.

8. The Applicant had also instructed a tracing agent to try to establish the Respondent's whereabouts. The tracing agents were unable to locate him in the United Kingdom or internationally. The Applicant had submitted that it did not consider that there was any reasonable prospect of being able to effect service on a respondent using the methods set out in Rule 44 of the SDPR 2019.

9. On that occasion the deputy clerk was satisfied that there was no reasonable prospect of the Applicant being able to effect service on the Respondent, and that it was therefore in the interests of justice to grant the Applicant's application for substituted service so as to enable the matter to be dealt with expeditiously and in accordance with the overriding objective.

10. The Applicant was granted permission to place an advert in The Law Society Gazette, notifying the Respondent of the fact of these proceedings, and inviting him to contact the Tribunal to obtain a copy of the Application and the Rule 12 Statement, and a copy of the advert in the prescribed form was published in The Law Society Gazette on 9 November 2020.

11. There was no subsequent contact from the Respondent.

12. At a Case Management Hearing on 23 November 2020, the Tribunal confirmed with the Applicant that it had complied with the direction regarding service, and by virtue of placing the advert in The Law Society Gazette, service upon the Respondent was deemed effective in accordance with the SDPR 2019.

13. On that date the Tribunal directed that the time for filing and serving the Respondent's Answer and the documents upon which he intended to rely had passed, and that the Respondent was required to make an application to the Tribunal to file his Answer and any documents upon which he intended to rely.

14. No application in this regard was made by the Respondent.

The Tribunal's Decision re Service

15. Having carefully considered the circumstances the Tribunal was satisfied that the Respondent had been correctly served with the proceedings under the SDPR 2019.

16. Having established that the Respondent had been properly served, the Tribunal next considered whether the hearing should be adjourned, and if not adjourned, whether the hearing should continue in the Respondent's absence.

Adjournment

17. Ms Daly submitted that there was clear evidence before the Tribunal that the Respondent had been correctly served with the proceedings and notified of the date of the hearing. There had been no engagement from the Respondent and no application from him to adjourn the substantive hearing, and so the Tribunal should decline to adjourn.

The Tribunal's Decision

18. The Tribunal referred to its current Policy/Practice Note on Adjournments which sets out the principles to be applied in consideration of such applications, and Ms Daly's submissions.

19. The Tribunal noted that Rule 23 SDPR sets out, amongst other things, that an application for an adjournment of the hearing must be supported by documentary evidence of the need for the adjournment, and that it should be made in the prescribed form indicating the full reasons as to why an adjournment was being sought e.g. medical reports; and state whether the other party to the proceedings supported or opposed the application for an adjournment. The Tribunal would be reluctant to agree to an adjournment unless the request was supported by both parties or, if it was not, the reasons appeared to the Tribunal to be justifiable because not to grant an adjournment would result in injustice to the person seeking the adjournment.

20. In this case the Tribunal was satisfied that the Respondent had been correctly served with the proceedings and was deemed to be aware of today's hearing. There had been no engagement from the Respondent at any stage and he had made no application to adjourn: there was nothing before the Tribunal to consider on this point. The Tribunal decided not to adjourn the hearing as there was no evidence for it reasonably to do so; in particular, there was no evidence that an adjournment of any length would secure the Respondent's attendance on a subsequent occasion.

Application to proceed in the Respondent's absence

21. Ms Daly next applied for the substantive hearing to proceed in the Respondent's absence and relied upon the decisions in General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 16231 which in turn approved the principles set out in R v Hayward, R v Jones, R v Purvis QB 862 [2001], EWCA Crim 168 [2001] namely that proceeding in the absence of the Respondent was a discretion

which a Tribunal should exercise with the upmost care and caution bearing in mind the following factors:

- The nature and circumstances of the Respondent's behaviour in absenting himself from the hearing;

- Whether an adjournment would resolve the Respondent's absence;

- The likely length of any such adjournment;

- Whether the Respondent had voluntarily absented himself from the proceedings and the disadvantage to the Respondent in not being able to present his case.

22. It was held in Adeogba that in determining whether to continue with regulatory proceedings in the absence of the accused, the following factors should be borne in mind by a disciplinary tribunal:-

- the Tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;

- the fair, economical, expeditious and efficient disposal of allegations was of very real importance;

- it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and

- there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.

23. In Ms Daly's submission the Tribunal had evidence that the Respondent had been correctly served but that he had voluntarily absented himself.

The Tribunal's Decision re proceeding in the Respondent's absence

24. The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution.

25. The Tribunal considered the factors set out in Jones and Adeogba in respect of what should be considered when deciding whether or not to exercise the discretion to proceed in the absence of the Respondent. The Tribunal noted the efforts made by the Applicant to bring the proceedings to the Respondent's attention, and that service upon the Respondent had been deemed effective in accordance with the SDPR 2019. The Tribunal noted that it had the power under Rule 36 SDPR 2019, if satisfied that service had been effected, to hear and determine the application in the Respondent's absence.

26. The Tribunal considered the Respondent had been correctly served and was deemed to be aware of the date of the hearing, and that an adjournment would not resolve his absence. The Respondent had a duty to engage but had not done so, and there was nothing to suggest that he would attend a hearing on a future date. There was no evidence that he had medical issues preventing him from attending, and the Tribunal concluded that the Respondent had voluntarily absented himself.

27. The Tribunal also took into account the serious nature of the allegations which had been made against the Respondent. These involved allegations of dishonesty and related to events in 2017. A significant period of time had elapsed since then, and it was therefore in the public interest that this case should be concluded expeditiously and without further delay.

28. Taking all these matters into account, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence, and the Tribunal decided that it should exercise its power under Rule 36 SDPR to hear and determine the application in the Respondent's absence.

Factual Background

29. The Respondent was born in February 1975. He was admitted to the Roll on 2 January 2007. He was a manager and owner at the Firm and he was the sole director of the Firm from 17 May 2018 to its closure on 31 October 2018 following a winding up order which had been made earlier that day.

30. The Respondent did not hold a current practising certificate; his last practising certificate being for the year 2018/2019, which was held subject to conditions that he was not to be a manager or owner of an authorised body. That practising certificate was revoked on 6 December 2019 as a result of non-renewal.

The Legal Framework

31. Guidance on the website of Her Majesty's Revenue and Customs ("HMRC") provides that Stamp Duty Land Tax ("SDLT") must be paid on the purchase of land or property over a certain price in England. A completed SDLT return and payment of the correct amount of SDLT must be paid to HMRC within 14 days of completion of the transaction. The guidance warns that purchasers may be charged penalties and interest if they do not file the return and make payment within that 14-day timescale.

32. Transfers of freehold and leasehold land in England and Wales must be registered at the Land Registry. If registration is not properly effected, the transfer or lease becomes void as against the legal estate. The legal estate in a transfer reverts to the transferor, who holds the land as bare trustee for the transferee. In the case of a grant of a lease, the lease takes effect as an agreement for lease.

Witnesses

33. There was no live evidence.

Findings of Fact and Law

34. The Applicant was required to prove the allegations beyond reasonable doubt. 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.

Overview of the Applicant's Case and the Background

35. In summary, it was said that the Respondent and his Firm had received client money in respect of four matters and that he had:

- failed to use that money for the purposes for which it was sent to the Firm;
- failed to account to his clients for that money and
- failed to respond to the SRA's requests for information and documents and provided no explanation as to where the money was.

The Firm's Bank Accounts

36. On 17 May 2019, Barclays Bank provided a list of the Firm's bank accounts to the Firm's liquidator, and enclosed copy bank account statements for those accounts. Their covering letter confirmed that the Respondent and Mr JD were the sole signatories on those accounts and had joint signing rights.

37. Capsticks Solicitors (acting on behalf of the SRA) contacted Mr JD to ask him about his role at the Firm and his access to the Firm's bank accounts. In emails dated 10 August 2020 Mr JD stated that he worked under the Respondent's supervision, assisting him with litigation files. He was a salaried director at the Firm from 20 November 2014 until he resigned that position on 11 January 2017. He said that the position was "only a nominal" and that he was not given any decision making function within the company or within the Firm and that the Respondent reserved all board functions to himself.

38. In respect of the operation of the Firm's bank accounts, Mr JD said that he had no authority or access to the Bank accounts until about January 2015. On or about January 2015 he was added to the firm's bank accounts as a signatory, with online banking access, for the sole express purpose of executing (in the Respondent's absence) the Respondent's banking instructions. Mr JD had no authority to sign any cheques or make any payments (either from Office account or Client account) whatsoever unless directed/instructed to do so by the Respondent. In practice however the vast majority of transactions (receipts and payments) were made electronically and could therefore be done remotely by the Respondent, without calling upon Mr JD to execute such transactions on his behalf.

39. Another former solicitor at the Firm, Mr AH, told Capsticks that, as far as he was aware, only the Respondent had exclusive authority over and access to the Client bank account, and that the Respondent was the only person at the Firm who could make bank transfers, effect CHAPS payments and sign cheques without authority from anyone else.

Closure of the Firm

40. On 7 November 2018, the Respondent emailed the SRA to advise that his Firm had closed on 31 October 2018 following a winding up order which had been made earlier that day. In his email, the Respondent stated that the Firm did not have any existing clients or live matters and did not hold any client monies. The Firm's Client account statement for that period confirms that, as at 5 November 2018, it held a balance of £962.59.

41. Following that email, the Respondent was asked by the SRA on numerous occasions to complete the requisite Firm Closure Notification form. He failed to do so, despite those requests ultimately being expressed as requests for information pursuant to Outcomes 10.8 and 10.9 of the Code, and despite being told that a failure to provide that information may in itself lead to disciplinary action.

42. **Allegation 1.1 - Report by K & Co**

The Applicant's Case

42.1 On 24 January 2019, K & Co Solicitors reported to the SRA that they acted for MFC Limited, which had been a client of the Respondent's Firm in 2017. MFC had instructed the Respondent to act on its behalf on the purchase of a lease and had transferred £72,721 to the Firm on 11 September 2017 to complete the purchase. Those monies included the appropriate Land Registry fee (£190) and SDLT payable (£11,895). The lease was completed on 12 September 2017.

42.2 As at 21 January 2019, the lease had not been registered at the Land Registry in the name of MFC Limited, and K & Co stated that the registration fee held by the Firm had not been paid to HMLR and also that the SDLT payable which was held by the Firm had not been paid to HMRC.

42.3 HMLR confirmed to Capsticks (acting on behalf of the SRA) that no applications were made by the Firm in respect of the Property out of which the lease was granted around September 2017 or at all

42.4 K & Co said that the whereabouts of their client's money which had been paid to the Firm was unidentifiable; that they had attempted to contact the Respondent but were unsuccessful; that the Official Receiver had confirmed that the Respondent was not co-operating with their proceedings; and they had no details of the whereabouts of sums previously held in the Firm's Client account. They were therefore unable to establish the position in respect of their client's monies or its file.

42.5 Ms Daly said that in this regard the Respondent's conduct amounted to:

42.5.1 *Breach of Principle 2 of the Principles* - By reason of his conduct, the Respondent had failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. In Wingate v SRA and SRA v Malins [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession.

42.5.2 The Respondent was instructed to act on MFC's behalf in respect of its purchase of a lease. As an experienced solicitor, the Respondent must have known that properly completing that purchase required him to pay the SDLT which was due, and to register the purchase with HMLR. Indeed, it could be inferred that the Respondent did know this, since he asked his client to transfer money to his Firm in respect of the SDLT which was due and the fee which would be due to HMLR in order to register that lease.

42.5.3 Over a year later, the lease had not been registered and the SDLT had not been paid (Allegations 1.1.1 and 1.1.2). HMLR confirmed that no applications have been made by the Firm in respect of the property out of which the lease was granted. MFC's current solicitors were not able to locate the whereabouts of the sums paid to the Firm in respect of SDLT and Land Registry fees, and they had attempted to contact the Respondent but without success. Further, K & Co established that the Respondent had not been co-operating with the Official Receiver.

42.5.4 Ms Daly said that the Respondent had had conduct of this matter, and had access to and authority over the Firm's client bank account. In his email to the SRA dated 7 November 2018, the Respondent stated to the SRA that the Firm did not hold any client monies. He did not report any misuse of the Firm's client account by any third party (as he would be required to under Outcome 10.4 of the Code).

42.5.5 In those circumstances, Ms Daly invited the Tribunal to infer that the Respondent misappropriated or otherwise misused the sums paid to his Firm by MFC in respect of SDLT and/or Land Registry fees (Allegation 1.1.3) and he had, on any view, failed to account to his client for those sums (Allegation 1.1.4).

42.5.6 A solicitor acting with integrity would have taken steps to make payment of the SDLT which was due on his client's purchase of the lease and to register his client's purchase of the property, particularly in circumstances where his client had transferred the funds required to make such payment and effect such registration.

42.5.7 As an experienced solicitor, he would have known that any late payment of SDLT might mean that his client incurred interest and penalties from HMRC, and that any failure to register his client's purchase at HMLR might mean that its interests were not protected.

42.5.8 A solicitor acting with integrity, who was unable to effect payment of the SDLT due or registration of the lease, would have accounted to his client for the sums which they had paid to his Firm for that purpose. The Respondent did neither of those things. He failed to make payment of the SDLT due or effect registration of his client's purchase at HMLR. He did not account to his client for the sums which they had paid to his Firm for those purposes.

42.5.9 The Applicant submitted that, instead, the Respondent misappropriated or otherwise misused the sums paid to his Firm by MFC in respect of SDLT and/or Land Registry fees. He had, on any view, failed to account to his client for those sums. Accordingly, the Respondent breached Principle 2 of the Principles**.**

42.5.10 *Breach of Principles 4 and 5 of the Principles* - It was not in the best interests of MFC, nor consistent with providing a proper standard of service to MFC, for the Respondent to fail to make payment of the SDLT which was due; fail to register his client's interest in the property at HMLR; fail to notify them of that fact; fail to account to them for the sums which they had paid to his Firm in respect of SDLT and/or Land Registry fees; and/or misappropriate or otherwise misuse those sums.

42.5.11 *Breach of Principle 6 of the Principles* - The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by solicitors who act in the manner described and who fail to ensure that their clients' interests are protected.

42.5.12 *Breach of Principle 10 of the Principles* - By failing to register his client's interest in the property; failing to account to his client for sums which they had paid to his Firm in respect of the transaction; and/or by misappropriating or otherwise misusing those sums the Respondent failed to protect his client's money and assets.

The Respondent's Case

42.6 The Respondent had not engaged in the proceedings and did not serve an Answer to the Allegations. The Respondent's position with respect to this allegation was therefore not known.

The Tribunal's Findings

42.7 The Tribunal reminded itself in respect of all the allegations that the Applicant must prove its case on the balance of probabilities; the Respondent was not bound to prove that he did not commit the alleged acts and that great care must be taken to avoid an assumption (without sufficient and cogent evidence) of any deliberate failure or act on the Respondent's part.

42.8 The Tribunal carefully considered the evidence it had heard and observed that its task in determining the allegations was made more difficult in circumstances where the Respondent had not engaged in the proceedings and had presented no evidence in his case.

42.9 The Tribunal approached this, and all the other allegations, on the basis that each was denied by the Respondent and by applying the requisite standard of proof, namely the balance of probabilities.

42.10 However, the Tribunal considered that in circumstances where the Respondent had failed to serve an Answer and had not given evidence at the substantive hearing or submitted himself to cross-examination, then the Tribunal would be entitled under Rule 33 of the SDPR 2019 to draw such adverse inferences from the Respondent's failure as it considered appropriate. The Tribunal also bore in mind the comments of Sir John Thomas in Iqbal v SRA [2012] EWHC 3251 (Admin) that "Ordinarily the public would expect a professional man to give an account of his actions".

42.11 The Tribunal was satisfied that in all the allegations the Respondent was the COLP and COFA of the Firm and had shouldered the heightened responsibilities of those roles.

42.12 The Respondent had been instructed to act on MFC's behalf in respect of its purchase of a lease, and there was banking evidence which showed that MFC had transferred £72,721 to the Respondent's Firm's Client account on 11 September 2017. This money had included the appropriate Land Registry fee of £190 and SDLT of £11,895. The Respondent had confirmed receipt of the money in a financial statement provided to MFC.

42.13 The Tribunal was satisfied that MFC had made full payment to the Respondent of the costs to complete the lease, and had paid this into the Firm's client account on 11 September 2017. The Respondent had received this money for the express purpose of purchasing and registering the lease; paying the Land Registry fee and the SDLT.

42.14 The Tribunal accepted the evidence from K & Co that, following their investigation on behalf of MFC, it had come to light that the lease was not registered at the Land Registry and the SDLT payable had not been paid to HMRC; nor was there any evidence of notification of the lease completion at HMRC.

42.15 K & Co had obtained a copy of the register which did not show MFC's lease as being noted in September 2017, and MFC could not find in their records any tax references for the SDLT being paid, which was a strong indicator that the SDLT was never paid by the Respondent and that MFC's lease had not been registered at the Land Registry.

42.16 The Tribunal noted that on 22 January 2019 a representative of K & Co tried calling the Respondent using a known number of his, but they received no response, and neither did he respond to any messages which were left for him. K & Co also became aware that the Respondent had not co-operated with the Official Receiver of the Firm who had no details of the whereabouts of the Client account monies.

42.17 The Tribunal was satisfied, to the requisite standard, that the Respondent had failed to register his client MFC Limited's purchase of a leasehold interest in the property and that he had failed to make payment of the Stamp Duty Land Tax ("SDLT") payable in respect of that purchase as alleged in allegations 1.1.1 and 1.1.2.

42.18 With respect to the allegation in 1.1.3 the Tribunal noted the position of Mr JD, who worked at the Respondent's Firm and was a signatory on the Firm's bank accounts.

42.19 The Applicant relied upon an e-mail response Mr JD had sent the Applicant on 10 August 2020, in which he set out his duties after he resigned as a salaried director of the Firm in January 2017 and stated that he had had no decision making function

within the Firm and that he had had no authority to sign any cheques or make any payments (either from Office account or Client account) unless directed/instructed to do so by the Respondent.

42.20 The Tribunal was concerned that the Applicant had taken no statement from Mr JD, as one of only two people who had access to the Client account in this period, in which he could have been invited to address his access to the client account, and been given an opportunity to positively deny or refute taking MFC's money: the whereabouts of which remained unknown.

42.21 Notwithstanding the absence of a signed statement, the Tribunal was, however, satisfied that Mr JD had remained 'visible' and had actively co-operated with the Applicant and its investigation whilst the Respondent had disappeared; never engaged with the Applicant; never given an account to anyone as to where MFC's money was, and to all intents and purposes had 'gone to ground'.

42.22 In such circumstances the Tribunal was prepared to infer from all the evidence, including the evidence in relation to the other allegations, as set out below, that this Respondent had misappropriated or otherwise misused sums which his client MFC had paid to the Firm in respect of this transaction.

42.23 The money had not been put to the purpose for which it had been given and its whereabouts remained unknown. On this basis the Tribunal was satisfied that the Respondent had failed to account to his client for sums it had paid to the Firm in respect of this transaction

42.24 Having made these findings the Tribunal proceeded to consider whether on the basis of its factual findings the Respondent had breached any, or all, of Principles 2, 4, 5, 6 and 10 of the Principles.

42.25 The Tribunal noted the test for integrity set out in Wingate v SRA and SRA v Malins [2018] EWCA Civ 366 in this and the other allegations where lack of integrity was alleged.

42.26 The Tribunal was satisfied that, as an experienced solicitor, the Respondent must have known that properly completing that purchase required him to pay the SDLT which was due and to register the purchase with HMLR and yet over a year later, the lease had not been registered and the SDLT had not been paid. The Respondent had conduct of this matter and had access to and authority over the Firm's Client bank account. In his email to the SRA dated 7 November 2018, the Respondent stated to the SRA that the Firm did not hold any client money. If this assertion was correct, MFC's money, paid to him for the purpose of discharging its liability for SDLT and the Land Registry fee, had neither been deployed for that purpose, and nor did it remain in the Client account. The Respondent did not report any misuse of the Firm's Client account by any third party (as he would be required to under Outcome 10.4 of the Code, had that occurred).

42.27 The Tribunal considered that a solicitor acting with integrity would have taken steps to make payment of the SDLT which was due on his client's purchase of the lease, and to register his client's purchase of the property, particularly in circumstances where his client had transferred the funds required to make such payment and effect such

registration, and as experienced solicitor, he would have known that any late payment of SDLT might mean that his client incurred interest and penalties from HMRC and that failure to register his client's purchase at HMLR might mean that its interests were not protected.

42.28 A solicitor acting with integrity who was unable to effect payment of the SDLT due or registration of the lease would have accounted to his client for the sums which they had paid to his Firm for that purpose. The Respondent did neither of those things. He failed to make payment of the SDLT due or effect registration of his client's purchase at HMLR. He did not account to his client for the sums which it had paid to his Firm for that purpose.

42.29 Instead, the Respondent had misappropriated or otherwise misused the sums paid to his Firm by MFC in respect of SDLT and/or Land Registry fees such that they were no longer in the Firm's client account at the date the Firm was wound up.

42.30 In such circumstances the Tribunal considered that the Respondent breached Principle 2 of the Principles**.**

42.31 The Tribunal found that it was not in the best interests of MFC, nor consistent with providing a proper standard of service to MFC, for the Respondent to fail to make payment of the SDLT which was due; fail to register his client's interest in the property at HMLR; fail to notify it of that fact; fail to account to it for the sums which it had paid to his Firm in respect of SDLT and/or Land Registry fees; and/or misappropriate or otherwise misuse those sums.

42.32 The Tribunal found that the Respondent's conduct amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by solicitors acting in the manner described and failing to ensure that their clients' interests are protected.

42.33 By failing to register his client's interest in the property; failing to account to his client for sums which it had paid to his Firm in respect of the transaction; and/or by misappropriating or otherwise misusing those sums, the Tribunal found that the Respondent had failed to protect his client's money and assets.

42.34 The Tribunal found that the Respondent had breached Principles 2, 4, 5, 6 and 10 of the Principles in relation to each of Allegations 1.1.1 to 1.1.4 and that those allegations had been proved in full to the requisite standard of proof, namely on the balance of probabilities.

43. **Allegation 1.2 - Report by SS**

The Applicant's Case

43.1 On 17 June 2019 SS made a report to the SRA in respect of the Respondent's conduct. SS confirmed that the Respondent had acted for him and his partner on the purchase of a property. The purchase price was £1.68 million, which sum, together with other sums

including a Land Registry application fee of £455 and the SDLT payable of £115,350, was transferred to the Respondent's firm.

43.2 SS paid those sums to the Firm on or around 24 August 2017. Completion of the purchase took place on 29 August 2017. The Respondent assured SS that he would progress the registration as he had received the full SDLT payable. On 30 October 2018, SS emailed the Respondent to ask when he could expect to get the full set of property deeds for the property (i.e. when registration had been effected). Later that day, the Respondent replied to say that he "*will arrange for these to be sent to you over the coming week*".

43.3 Similarly, on 7 November 2018, the Respondent emailed SS asking *"can you please send me your address to where I can arrange for the title deeds, etc. to be sent?"* However, despite those assurances, it appeared that no payment of the SDLT due on the purchase was made to HMRC and that no application to register SS's purchase was made to the Land Registry.

43.4 On or around 3 March 2020, SS paid a further £115,350 directly to HMRC, being the SDLT payable on the purchase.

43.5 On 19 March 2020 HMRC issued a penalty notice to SS in respect of the late payment of SDLT (i.e. because the SDLT payable on the purchase had not previously been paid by the Respondent) and requiring payment of a penalty of £200. Although that notice assessed the interest due as a result of late payment as nil, SS continued to receive letters from HMRC requiring the payment of further interest.

43.6 In an email to SS on 29 June 2019, HMLR confirmed that he was not the registered owner of the property, and that there were no pending applications to register a transfer of it. SS understood that no application to register the property in his name could have been made because the SDLT payable on the purchase had not been made.

43.7 HMLR confirmed that no applications for registration were made by the Firm in respect of the title numbers comprising the property. SS has himself made an application to HMLR to register the purchase but, some three years after completion, that registration had not yet been completed because of the coronavirus pandemic. SS was forced to live in rented accommodation with his family as a result of the Respondent's actions, and he was over £115,350 out of pocket. SS stated that he and his family had suffered financially, and had become very worried and anxious.

43.8 The Applicant said that in this regard the Respondent's conduct amounted to:

43.8.1 *Breach of Principle 2* - It was said that the Respondent failed to act with integrity applying the test set out at paragraph 42.5.1 above. The Respondent was instructed to act on SS's behalf in respect of his purchase of a property. As an experienced solicitor, the Respondent must have known that properly completing that purchase required him to pay the SDLT which was due and to register the purchase with HMLR. The Tribunal was invited to infer that the Respondent did know this, since he asked his client to transfer money to his Firm in respect of the SDLT which would become due on the purchase and the fee which would be due to HMLR in order to register that purchase.

43.8.2 Ms Daly said that the Respondent assured his client that he would effect, and had effected, registration at HMLR of the purchase *(Allegation 1.2.3)*. Implicitly, he was also representing that SDLT had been paid, since evidence of such payment was necessary before registration at HMLR. In fact, the Respondent had not paid the SDLT which was due *(Allegation 1.2.1)* and had not effected registration of his client's purchase *(Allegation 1.2.2)*.

43.8.3 SS was required to make a further payment of the SDLT payable to HMRC directly, and described money which he sent to the Firm so that it could make that payment as "missing".

43.8.4 In Ms Daly's submission the Respondent had had conduct of this matter and access to and authority over the Firm's client bank account. In his email to the SRA dated 7 November 2018, the Respondent stated to the SRA that the Firm did not hold any client money. He did not report any misuse of the Firm's Client account by any third party (as he would be required to under Outcome 10.4 of the Code) and in those circumstances, the Tribunal was invited to infer that the Respondent misappropriated or otherwise misused the sums paid to his Firm by SS in respect of SDLT and Land Registry fees *(Allegation 1.2.4*).

43.8.5 It was also said that the Respondent failed to account to his client for those sums *(Allegation 1.2.5)* and a solicitor acting with integrity would have taken steps to make payment of the SDLT which was due on his client's purchase of the lease and to register his client's purchase of the property, particularly in circumstances where his client had transferred the funds required to make such payment and effect such registration.

43.8.6 As an experienced solicitor, he would have known that any late payment of SDLT might mean that his client incurred interest and penalties from HMRC and that any failure to register his client's purchase at HMLR might mean that his interests were not protected.

43.8.7 A solicitor acting with integrity who was unable to effect payment of the SDLT due or registration of the lease would have accounted to his client for the sums which he had paid to his Firm for that purpose. The Respondent did neither of those things. He failed to make payment of the SDLT due or effect registration of his client's purchase at HMLR. He did not account to his client for the sums which he had paid to his Firm for that purpose.

43.8.8 *Breach of Principle 4 and 5 of the Principles* - It was not in the best interests of SS, nor consistent with providing a proper standard of service to SS, for the Respondent to fail to make payment of the SDLT which was due; fail to register SS's interest in the property at HMLR; fail to notify him of that fact; fail to account to him for the sums which he had paid to his Firm in respect of SDLT and/or Land Registry fees; and/or misappropriate or otherwise misuse those funds.

43.8.9 *Breach of Principle 6 of the* Principles - The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal

services. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by solicitors who act in the manner described and who fail to ensure that their clients' interests are protected.

43.8.10 *Breach of Principle 10 of the Principles* - By failing to register his client's interest in the property; failing to account to his client for sums which he had paid to his Firm in respect of the transaction; and/or by misappropriating or otherwise misusing those sums, the Respondent failed to protect his client's money and assets

The Respondent's Case

43.9 The Respondent had not engaged in the proceedings and did not serve an Answer to the allegations. The Respondent's position with respect to this allegation was not known.

The Tribunal's Findings

43.10 The Tribunal was satisfied that the Respondent had accepted SS's instructions to act for him and his partner in the purchase of a property with a purchase price of £1.68 million, and that on or after 24 August 2017 SS paid the Respondent funds to enable the purchase to be made as evidenced by a statement from SS's bank.

43.11 The funds included money for the Respondent to pay a Land Registry fee of £455 and SDLT of £115,350.

43.12 The Respondent sent e-mails to SS assuring him that he would progress the registration as he had received the full SDLT. Despite the assurances given by the Respondent no SDLT was paid to HMRC and no application to register SS's purchase was made to the Land Registry.

43.13 In an e-mail to SS on 29 June 2019, HMLR confirmed that SS was not the registered owner of the property and that there were no pending applications to register a transfer of that property.

43.14 The Tribunal was satisfied that the Respondent had failed to register his client SS's purchase of a property; that he had failed to make payment of the SDLT payable in respect of that purchase, and that he had represented to his client that he had made payment of the SDLT and/or registered his purchase of the property, when he had not *(Allegations 1.2.1; 1.2.2 and 1.2.3).*

43.15 From the available evidence the Tribunal considered that it was reasonable to infer that the Respondent had misappropriated or misused the money *(allegation 1.2.4).* Here, there was evidence that the Respondent had received monies from SS; that he had confirmed the receipt in a financial statement; that the monies had been paid to his Firm for a specific purpose but they had not been applied for that purpose, i.e. to pay HMLR and the SDLT; that the whereabouts of the monies and the Respondent was unknown, and that the Respondent, in one of his last communications with the Applicant on 7 November 2018 had said that the Firm did not hold any client money. On the balance of probabilities it was more likely than not that the Respondent had misappropriated or otherwise misused the monies.

43.16 In the circumstances set out above the Tribunal found as a fact that the Respondent had failed to account to his client for sums he had paid to the Firm in respect of that transaction *(allegation 1.2.5).*

43.17 Having made those findings the Tribunal proceeded to consider whether on the basis of its factual findings the Respondent had breached any, or all, of Principles 2, 4, 5, 6 and 10 of the Principles.

43.18 The Respondent was instructed to act on SS's behalf in respect of his purchase of a property. As an experienced solicitor, the Respondent must have known that properly completing that purchase required him to pay the SDLT which was due and to register the purchase with HMLR, and the Tribunal inferred that the Respondent did know this, since he asked his client to transfer money to his Firm in respect of the SDLT which would become due on the purchase and the fee which would be due to HMLR in order to register that purchase.

43.19 The Respondent assured his client that he would effect, and had effected, registration at HMLR of the purchase. Implicitly, he was also representing that the SDLT had been paid, since evidence of such payment is necessary before registration of the purchase at HMLR. In fact, the Respondent had not paid the SDLT which was due and had not effected registration of his client's purchase.

43.20 The Tribunal found that the Respondent had not acted with integrity, as a solicitor acting with integrity would have taken steps to make payment of the SDLT which was due on his client's purchase, and to register his client's purchase of the property, particularly in circumstances where his client had transferred the funds required to make such payment and effect such registration.

43.21 As an experienced solicitor, the Respondent would have known that any late payment of SDLT might mean that his client incurred interest and penalties from HMRC, and that any failure to register his client's purchase at HMLR might mean that his interests were not protected.

43.22 A solicitor acting with integrity who was unable to effect payment of the SDLT due or registration of the purchase would have accounted to his client for the sums which he had paid to his Firm for that purpose. The Respondent did neither of those things. He failed to make payment of the SDLT due or effect registration of his client's purchase at HMLR. He did not account to his client for the sums which he had paid to his Firm for that purpose.

43.23 A solicitor acting with integrity would not have misappropriated or otherwise misused the sums paid to his Firm by SS in respect of SDLT and/or Land Registry fees or failed to account to his client for those sums.

43.24 The Tribunal found that the Respondent breached Principle 2 of the Principles.

43.25 The Tribunal considered and found that it was not in the best interests of SS, nor consistent with providing a proper standard of service to SS, for the Respondent to fail to make payment of the SDLT which was due; fail to register his client's interest in the property at HMLR; fail to notify him of that fact; fail to account to him for the sums

which he had paid to his Firm in respect of SDLT and/or Land Registry fees; and/or misappropriate or otherwise misuse those funds.

43.26 The Tribunal also found that the Respondent's conduct amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by solicitors who act in the manner described and who fail to ensure that their clients' interests are protected.

43.27 Finally, by failing to register his client's interest in the property; failing to account to his client for sums which he had paid to his Firm in respect of the transaction; and/or by misappropriating or otherwise misusing those sums, the Tribunal found that the Respondent had failed to protect his client's money and assets

43.28 The Tribunal found that the Respondent had breached Principles 2, 4, 5, 6 and 10 of the Principles in relation to each of Allegations 1.2.1 to 1.2.5 and that those allegations had been proved in full to the requisite standard of proof, namely on the balance of probabilities.

44. **Allegation 1.3 - Report by P LLP**

The Applicant's Case

44.1 On 14 October 2019, P LLP reported to the SRA that their client (MI) had instructed the Firm to act on the purchase of an investment property. The Respondent had conduct of the matter. The purchase price for the property was £260,000. On 4 July 2017 MI transferred £20,000 to the Firm, being a 5% deposit (i.e. £13,000) with the remainder to cover the cost of searches

44.2 Exchange of contracts took place on 16 August 2017. The contract records that the deposit was to be held to order of the seller, so that the Firm held the deposit rather than the seller's solicitors. The seller's solicitors confirmed that the deposit was not transferred to them.

44.3 Completion did not take place in accordance with the contract and, on 5 September 2019, P LLP (who by then were instructed by MI) served on the seller a notice rescinding the contract. That rescission was confirmed by the seller on 10 September 2019.

44.4 Special condition 12(c) of the contract provided for the return of the deposit to the buyer's solicitors within 5 working days of rescission of the contract. Accordingly, that deposit money became due to MI on 12 September 2019.

44.5 MI was forced to pursue the deposit monies from the SRA's compensation fund because the deposit was not returned to it by the Firm.

44.6 In his email to the SRA dated 7 November 2018, the Respondent stated to the SRA that the Firm did not hold any client money.

44.7 It was said that the Respondent's conduct amounted to:

44.7.1 *Breach of Principle 2 of the Principles and Principle 5 of the SRA Principles 2019* - By reason of that conduct, the Respondent failed to act with integrity *(test set out above)*. The Respondent held money representing the deposit payable on a property purchase which had not completed. The purchase contract was rescinded and his client became entitled to that money on or around 12 September 2019.

44.7.2 That money has not been returned to MI and, at the point at which the Firm closed, it held no client monies. A solicitor acting with integrity would have contacted his client when his Firm closed and accounted to his client for the money which it held or should have held on its behalf. He would have made alternative arrangements for the money to be held, so that it was available either to the seller (to whose order he was holding it) or to his client in accordance with the contract. The Respondent failed to do so.

44.7.3 The Respondent had conduct of this matter and had access to and authority over the Firm's client bank account. In his email to the SRA dated 7 November 2018, the Respondent confirmed to the SRA that the Firm did not hold any client money. He did report any misuse of the Firm's Client account by any third party (as he would be required to under Outcome 10.4 of the Code, had such occurred).

44.7.4 In those circumstances, the Tribunal was invited by Ms Daly to infer that the Respondent had misappropriated or otherwise misused the sums paid to his Firm by MI in respect of its proposed property purchase *(Allegation 1.3.1)* and that he had failed to account to his client for those sums *(Allegation 1.3.2)* and accordingly, the Respondent had breached Principle 2 of the Principles (to the extent that such conduct occurred before 25 November 2019) and Principle 5 of the SRA Principles 2019 (to the extent that such conduct occurred on or after 25 November 2019).

44.7.5 *Breaches of Principles 4, 5, 6 and 10 of the Principles; Principles 2 and 7 of the SRA Principles 2019; and paragraphs 3.2 and 4.2 of the 2019 Code* - It was not in the best interests of MI, nor consistent with providing a proper, competent or timely standard of service to MI, for the Respondent to fail to account to his client for the sums it had paid to the Firm and/or misappropriate or otherwise misuse those sums, and by failing to account for those sums and/or misappropriating or otherwise misusing those sums, the Respondent failed to protect and/or safeguard his client's money and assets.

44.7.6 The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust and/or confidence placed by the public in him and in the provision of legal services.

44.7.7 The Respondent therefore breached Principles 4, 5, 6 and 10 of the Principles (to the extent that such conduct occurred before 25 November 2019) and/or any or all of Principles 2, 5 and 7 of the SRA Principles 2019 and paragraphs 3.2

and 4.2 of the 2019 Code (to the extent that such conduct occurred on or after 25 November 2019).

The Respondent's Case

44.8 The Respondent had not engaged in the proceedings and did not serve an Answer to the allegations. The Respondent's position with respect to this allegation was not known.

The Tribunal's Findings

44.9 The Tribunal found as a fact that MI had transferred a deposit of £13,000 to the Respondent, as evidenced by the banking records which had been presented to the Tribunal. Under the terms of the contract the Respondent was to hold this sum to the order of the seller. In the event, the property transaction had not completed, entitling MI to the return of the deposit.

44.10 On 31 October 2018, the date when the Respondent wound up the Firm, the Respondent was obliged to notify the seller and his client, MI, of the winding up and obtain their agreement to the deposit monies either being transferred to the seller's solicitors, or to new solicitors instructed by MI. He clearly did neither of those things because, when MI subsequently instructed P LLP in the Respondent's stead, it thought that the deposit monies remained with the Respondent's Firm. The Respondent informed the Applicant in his e-mail of 7 November 2018 that he did not hold any client monies. If that assertion was true, the Respondent must have known that monies which he was required to hold to the seller's order had disappeared, without his having accounted for those monies either to his client or to the seller. The Respondent cannot have legitimately assumed that the monies were no longer in the Firm's Client account because they had been properly deployed for their intended purpose. He had not been instructed to transfer the monies out to the seller, because the transaction had not yet completed. Nor had he been instructed to return them to his client, because the contract had not yet been rescinded. The Respondent must therefore have realised that the deposit monies had been misappropriated. In those circumstances the Respondent was required to alert both the seller and his client to the misappropriation. The fact that he did not do so indicates that it was the Respondent himself, rather than any third party, who misappropriated the monies.

44.11 In such circumstances the Tribunal drew the inevitable inference that the Respondent had misappropriated or otherwise misused sums which his client, MI, had paid to the Firm in respect of a proposed property purchase, and that he had failed to account to his client for the sums it had paid to the Firm in respect of that transaction *(allegations 1.3.1 and 1.3.2)*.

44.12 Having made those findings the Tribunal proceeded to consider whether on the basis of its factual findings the Respondent had breached any, or all, of Principles 2, 4, 5, 6 and 10 of the Principles (to the extent that such conduct occurred before 25 November 2019) and/or any or all of Principles 2, 5 and 7 of the 2019 Code (to the extent that such conduct occurred on or after 25 November 2019).

44.13 The Tribunal considered that the Respondent had failed to act with integrity. The Respondent held money representing the deposit payable on a property purchase which had not yet completed. The purchase contract was subsequently rescinded and his client became entitled to that money on or around 12 September 2019.

44.14 The money which the Respondent had held was not returned to MI. The Tribunal considered that a solicitor acting with integrity would have contacted his client (and the seller, to whose order the deposit monies were held) when his Firm closed in October 2018, and accounted to his client for the monies which he held or should have held. He would have made alternative arrangements for the money to be held, so that it was available either to the seller or his client in accordance with the contract. The Respondent failed to do so.

44.15 The Respondent had confirmed to the SRA that the Firm did not hold any client money in November 2018. A solicitor acting with integrity, on discovering that monies he was holding to the order of another were missing, would have advised both that other and his client that it had been misappropriated. The Respondent failed to do so. The Tribunal had found that the Respondent had misappropriated or otherwise misused the sums paid to his Firm by MI in respect of its proposed property purchase. A solicitor acting with integrity would not have done so.

44.16 The Respondent had also failed to account to his client for the deposit monies and accordingly the Tribunal considered that the Respondent had breached Principle 2 of the Principles (to the extent that such conduct occurred before 25 November 2019) and Principle 5 of the SRA Principles 2019 (to the extent that such conduct occurred on or after 25 November 2019).

44.17 The Tribunal considered that it had not been in the best interests of MI, nor consistent with providing a proper, competent or timely standard of service to MI, for the Respondent to fail to account to his client for the sums it had paid to the Firm and/or misappropriate or otherwise misuse those sums, and by failing to account for those monies, the Respondent failed to protect and/or safeguard his client's money and assets.

44.18 The Tribunal found that the Respondent had breached Principles 2, 4, 5, 6 and 10 of the Principles (to the extent that such conduct occurred before 25 November 2019) and Principles 2, 5 and 7 and paragraphs 3.2 and 4.2 of the 2019 Code (to the extent that such conduct occurred on or after 25 November 2019) in relation to each of Allegations 1.3.1 and 1.3.2 and that those allegations had been proved in full to the requisite standard of proof, namely on the balance of probabilities.

45. **Allegation 1.4 - Report by SM**

The Applicant's Case

45.1 On 27 September 2019, R P & F Solicitors LLP submitted a report to the SRA on behalf of their client, SM. They reported that SM's mother, HM, died on 2 May 2017 and that SM was the sole executor of her estate. Mr AH, a solicitor at the Firm, was instructed by SM on behalf of her estate.

45.2 In letters dated 23 December 2019 and 3 January 2020, Santander confirmed that accounts which it held in HM's name had been closed and the balance of £36,720.83 was transferred to the Firm on 19 September 2017. In an email to SM dated 20 September 2017, Mr AH confirmed that the Firm had received that sum from Santander (this was also confirmed by the Firm's client account ledger for this matter). On 6 November 2018, on closure of the Firm, Mr AH confirmed to SM that he had (subject to SM's agreement) transferred his file to WSM (Solicitors) LLP ("WSM"), where Mr AH was General Legal Counsel.

45.3 On 3 June 2020, Capsticks (acting for the SRA) requested specified information from Mr AH in respect of the matter and he provided his responses on 2 July 2020 and 1 August 2020.

45.4 In a later statement dated 10 August 2020 Mr AH confirmed that:

- he was a self-employed consultant solicitor at the Firm from December 2014 to October 2018, with his own caseload specialising mainly in contentious work, private client work and a limited amount of property work

- he had day-to-day conduct of SM's file, subject to the oversight of the Respondent as the only principal at the Firm;

- he left the Firm in November 2018 consequent upon a winding-up order which was made against it on 31st October 2018, and transferred SM's file to WSM with the clients' authority;

- he expected the client account monies to follow but they were never sent by the Respondent;

- on 13 March 2019 he wrote to the Respondent requesting payment of monies which the Firm held on behalf of clients whose matters had been transferred to WSM. That request included the sum of £31,105.40 in relation to SM's file. He requested that sum because that was the amount which the Firm's client ledger dated 4 December 2018 indicated the Firm held in respect of SM's matter;

- by a further email dated 20 March 2019, Mr AH noted that WSM had not received those monies, and requested confirmation that they would be received that day;

- none of the payments requested was received.

45.5 It was said by Ms Daly that the Respondent's conduct amounted to:

45.5.1 *Breach of Principles Principle 2* **-** The Respondent failed to act with integrity. The Respondent's Firm received money from Santander which it held on behalf of its client, SM. After the Firm closed, that client's file was transferred to WSM solicitors. On 13 March 2019, Mr AH emailed the Respondent requesting that the money held by the Firm in respect of SM's matter be transferred to WSM by 15 March 2019. A further email from Mr AH to the Respondent dated 20 March 2019 stated that WSM had not received payment of that money, and Mr AH has confirmed in his statement that WSM never received that money.

45.5.2 A solicitor acting with integrity would have transferred to WSM promptly upon request the money which his Firm held in the matter.

45.5.3 The Respondent had oversight of the matter, and had access to and authority over the Firm's client bank account. In his email to the SRA dated 7 November 2018, the Respondent confirmed to the SRA that the Firm did not hold any client money, and he did not report any misuse of the Firm's client account by any third party, and in those circumstances the Tribunal was invited to infer that the Respondent had misappropriated or otherwise misused the sums which the Firm held in respect of this matter *(Allegation 1.4.1).* On any view, it was said that he had failed to account for those monies (*Allegation 1.4.2*).

45.5.4 *Breaches of Principles 4, 5, 6 and 10 of the Principles* - It was not in the best interests of SM, nor consistent with providing a proper standard of service to SM, for the Respondent to misappropriate or otherwise misuse sums which his Firm held in respect of the estate of HM and/or to fail to account to SM for those monies.

45.5.5 The conduct alleged also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services.

45.5.6 By acting in that way, the Respondent failed to protect his client's money and assets.

The Respondent's Case

45.6 The Respondent had not engaged in the proceedings and did not serve an Answer to the allegations. The Respondent's position with respect to this allegation was not known.

The Tribunal's Findings

45.7 The Tribunal found as a fact that on or after 19 September 2017 the Firm received money from Santander which it held on behalf of its client, SM. After the Firm closed, that client's file was transferred to WSM solicitors.

45.8 On 13 March 2019, Mr AH emailed the Respondent requesting that the money held by the Firm in respect of the matter be transferred to WSM by 15 March 2019. A further email from Mr AH to the Respondent dated 20 March 2019 confirmed that WSM had not received payment of that money, and Mr AH has confirmed in his statement that WSM never received that money. Prior to the date of transfer of SM's file to WSM there was no legitimate reason for the balance held on the Firm's Client account in respect of SM's matter to have been withdrawn. The Respondent told the SRA on 7 November 2018 that as at 31 October 2018 the Firm held no client monies. The Respondent must therefore have appreciated that the monies relating to SM's matter were missing. Had those monies been misappropriated by someone other than the Respondent, he would have immediately notified both the SRA and SM that the monies were missing. He would also have responded to Mr AH's emails of 13 and 20 March 2019 to that effect. The Respondent did none of those things.

45.9 From the available evidence in this case the Tribunal considered that it was reasonable to infer that the Respondent had misappropriated or otherwise misused sums which his Firm held in respect of the estate of HM *(allegation 1.4.1)* and that he had failed to account to his client for those monies *(allegation 1.4.1).*

45.10 Having made those findings the Tribunal proceeded to consider whether on the basis of its factual findings the Respondent had breached any, or all, of Principles 2, 4, 5, 6 and 10 of the Principles.

45.11 The Tribunal considered that the Respondent had failed to act with integrity. A solicitor acting with integrity would have transferred to WSM promptly upon request the money which his Firm held in the matter. In the event that he was unable to do so, he would have advised both the SRA and his former client that the monies were missing.

45.12 The Respondent had oversight of the matter and had access to and authority over the Firm's client bank account. In his email to the SRA dated 7 November 2018, the Respondent stated to the SRA that the Firm did not hold any client money and the Tribunal had accordingly inferred that the Respondent had misappropriated or otherwise misused the sums which he had held in respect of this matter. A solicitor acting with integrity would not have misappropriated or misused his client's money.

45.13 The Tribunal also found that it was not in the best interests of SM, nor consistent with providing a proper standard of service to SM, for the Respondent to misappropriate or otherwise misuse sums which his Firm held in respect of the estate of HM and/or to fail to account to SM for those monies.

45.14 The Respondent's conduct was found by the Tribunal to be a breach of the requirement to behave in a way which maintains the trust placed by the public in him and in the provision of legal services, and by acting in that way, the Respondent failed to protect his client's money and assets.

45.15 The Tribunal found that the Respondent had breached Principles 2, 4, 5, 6 and 10 of the Principles with respect to each of Allegations 1.4.1 and 1.4.2 and that those allegations had been proved in full to the requisite standard of proof, namely on the balance of probabilities.

46. **Allegation 1.5 - Failure to respond to communications and requests from the SRA**

<u>The Applicant's Case</u>

46.1 On 7 November 2018, the Respondent contacted the SRA by telephone and email and provided notification of the closure and winding up of the Firm with effect from 31 October 2018. In the email the Respondent stated that he had not taken any new instructions since September 2018, the Firm had arranged for all its existing clients to be transferred elsewhere, and as such the Firm had no existing clients/live matters and did not hold client monies.

46.2 The Respondent also stated that he not undertaken any work since 1 November 2018 and was in the process of archiving old client files, and contacting old clients in respect of their files and arranging storage or return as directed.

46.3 The SRA acknowledged the Respondent's email on 8 November 2018 and directed him to guidance on its website in relation to closing down his practice. It asked the Respondent to provide the required information referred to in the guidance which was not contained in his initial email.

46.4 The SRA also asked the Respondent to return a copy of the Firm Closure Notification ("FCN") form as soon as he was able.

46.5 On 21 November 2018 the SRA wrote to the Respondent again, by email, requesting an update on when the Respondent would be submitting the FCN form and providing the required additional information.

46.6 Attempted telephone calls were made to the Respondent on 27 November 2018, 29 November 2018, 18 December 2018 and 2 January 2019. Save for answering the call on 27 November 2018 (in which the Respondent asked if he could call the SRA back in 10-15 minutes and a call to the SRA that day leaving a message for the SRA to call him back) he did not respond to any of the other attempted calls.

46.7 On 7 and 19 January 2019, the SRA sent the Respondent further emails asking him to return the FCN form, but no response was received. The SRA sent a further letter to the Respondent on 18 February 2019 attaching a copy of the FCN and asking him to prioritise the completion and return of the form promptly. The letter also indicated that the SRA had received complaints about the Firm *(including that contained in Allegation 1.1 above)*, set out the details of those complaints and asked him to provide his comments.

46.8 In particular, the Respondent was asked to provide documentary evidence that he had paid the SDLT of £11,895 referred to in K & Co's report, that the lease had been registered with the Land Registry and that the fee of £190 had been paid. He was asked to provide documentary evidence including the client ledger and bank statement confirming the payments. He was also asked to return the FCN form and he was asked to respond by 5 March 2019.

46.9 The Respondent was reminded of his regulatory obligations under Principle 7 of the Principles to deal with the SRA in an open, timely and cooperative manner. Further he was asked to comply with Outcomes 10.6 and 10.8 of the Code in that he should cooperate fully with the SRA at all times in relation to any investigation against him and that he comply promptly with any written notice from the SRA. He was reminded that a failure to reply to the SRA could itself lead to disciplinary action.

46.10 When the Respondent failed to respond, a chaser letter was sent to him dated 29 March 2019 requesting a response by 5 April 2019. However, following this no response was received.

46.11 On 20 May 2019, the SRA emailed the Respondent chasing a response to its letters dated 18 February 2019 and 29 March 2019. The SRA then received an automated response confirming that the email had not been delivered.

46.12 The SRA's records show that from 6 June 2019, the Respondent commenced employment as an associate at S P Solicitors.

46.13 S P Solicitors were contacted by email on 25 June 2019 and on 26 June 2019 they confirmed that they had forwarded the SRA's email to the Respondent and had requested that he contact the SRA. There was further email correspondence on 11 July 2019 requesting that S P Solicitors remind the Respondent to make contact with the SRA. When no response from the Respondent was received, an email was sent directly to him at his work email address on 1 July 2019, requesting that he contact the SRA on receipt. The Respondent has not responded to date.

46.14 A letter and email was also sent to the Respondent at S P Solicitors on 17 July 2019 requesting a formal explanation in relation to the allegations set out in that letter by 1 August 2019. The SRA received no response to that letter.

46.15 On 20 January 2020, the SRA sent by email and post to the Respondent a notice recommending referral to the Tribunal. An automated response confirmed that the email could not be delivered.

46.16 On 3 March 2020, the SRA sent by email and post to the Respondent a notice confirming that his conduct had been referred to the Tribunal. An automated response confirmed that the email could not be delivered.

46.17 It was said that the Respondent's conduct amounted to:

46.17.1 *Breach of Principle 7 of the* Principles - On multiple, repeated, occasions the SRA asked or attempted to ask the Respondent to provide information and documents, and to contact the SRA including:

- a request for information concerning the closure of his firm, together with the FCN, in accordance with the guidance which was sent to him on 8 November 2018;

- a response to the SRA in connection with complaints which had been made to the SRA regarding his Firm, including those referred to at Allegations 1.1 and 1.2 above.

46.17.2 Despite being reminded of his regulatory obligations under Principle 7 of the Principles to deal with the SRA in an open, timely and cooperative manner; of his obligations to achieve Outcomes 10.6 and 10.8 of the Code; and that a failure to reply to the SRA may in itself lead to disciplinary action, the Respondent failed to provide the information requested promptly or at all. As a consequence of the Respondent's failure to reply to communications from his regulator, and to provide the information and documents requested, the SRA was:

- unable to confirm that the Respondent had properly closed his firm.

- unable to establish the location of the money which his Firm should have been holding in respect of the matters set out above and/or the use to which that money was put.

46.17.3 That, in turn, has impacted the SRA's ability to fulfil its statutory function to fully investigate the scope of the concerns raised by the Firm's former clients in those matters.

The Respondent's Case

46.18 The Respondent had not engaged in the proceedings and did not serve an Answer to the allegations. The Respondent's position with respect to this allegation was not known.

The Tribunal's Findings

46.19 The Tribunal found as a fact that after 8 November 2018 the Respondent had failed to reply to communications from the Applicant despite being given multiple opportunities to do so.

46.20 Having made this finding the Tribunal proceeded to consider whether on the basis of its factual finding the Respondent had breached Principle 7 of the Principles.

46.21 Principle 7 requires that a solicitor must deal with the SRA in an open, timely and cooperative manner, and the Tribunal found that the Respondent had breached this Principle by not replying to any communication from the Applicant.

46.23 The Tribunal found that the Respondent had breached Principle 7 of the Principles in relation to Allegation 1.5 and that this allegation had been proved in full to the requisite standard of proof, namely on the balance of probabilities.

47. **Dishonesty: Allegations 1.1 to 1.4**

The Applicant's Case

47.1 Ms Daly relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos (2017] UKSC 67, 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."

47.2 Allegation 1.1

- The Respondent received money from his client, MFC, to make payment of SDLT and HMLR fees due on its purchase and registration of a property. He did not make

payment of the SDLT or effect the registration of the property. The sums which MFC paid to the Respondent for those purposes have not been returned to MFC.

- MFC's solicitors have been unable to locate the whereabouts of those sums and have been unable to contact the Respondent.

- In his email to the SRA dated 7 November 2018, the Respondent stated to the SRA that the Firm did not hold any client money. He did not report any misuse of the Firm's client account by any third party (as he would be required to under Outcome 10.4 of the Code had such occurred).

- In those circumstances, the Tribunal was invited to infer that the Respondent had misappropriated or otherwise misused the sums paid to his Firm by MFC in respect of SDLT and/or Land Registry fees and on any view, failed to account to his client for those sums.

- Ordinary, decent people would consider this behaviour dishonest.

47.3 Allegation 1.2

- The Respondent was instructed by SS to act on his behalf in his purchase of a property. He received money from his client in order to effect payment of the SDLT which would become due on the purchase and the fee which would be due to HMLR in order to register that purchase.

- The Respondent repeatedly represented to his client that he would effect, and had effected, registration of the purchase and that the SDLT due had been paid.

- In fact, despite payment from his client of the sums requested for those purposes and despite those assurances, and as the Respondent knew, the Respondent had not paid the SDLT which was due and did not carry out the registration of his client's purchase.

- SS attempted to recover the sums which he paid to the Firm in respect of SDLT and HMLR payments, but was unable to do so.

- In his email to the SRA dated 7 November 2018 the Respondent stated to the SRA that the Firm did not hold any client money. He did not report any misuse of the Firm's client account by any third party (as he would be required to under Outcome 10.4 of the Code, had such occurred).

- In those circumstances, the Tribunal was invited to infer that the Respondent had misappropriated or otherwise misused the sums paid to his Firm by SS in respect of SDLT and/or Land Registry fees. He had, on any view, failed to account to his client for those sums.

- Ordinary, decent people would consider this behaviour dishonest.

47.4 Allegation 1.3

- The Respondent was instructed by MI in its purchase of a property. He received £13,000 from his client in respect of the deposit payment, which he was required to hold to the seller's order. The contract for sale was rescinded and, accordingly, on or around 12 September 2019, that money became due to MI.

- The Respondent did not return that money to MI, and it was not paid to the seller's solicitors.

- In his email to the SRA dated 7 November 2018, the Respondent stated to the SRA that the Firm did not hold any client money. He did not report any misuse of the Firm's client account by any third party (as he would be required to under Outcome 10.4 of the Code, had such occurred). In those circumstances, the Tribunal was invited to infer that the Respondent had misappropriated or otherwise misused the sums paid to his Firm by MI in respect of the deposit payable on its purchase. He had, on any view, failed to account to his client for those sums.

- Ordinary, decent people would consider this behaviour dishonest.

47.5 Allegation 1.4

- The Respondent's Firm received money from Santander which it held on behalf of its client, SM. When the Firm closed, that client's file was transferred to WSM solicitors. On 3 March 2019, Mr AH emailed the Respondent requesting that the money held by the Firm on behalf of SM be transferred to WSM by 15 March 2019. A further email from Mr AH to the Respondent dated 20 March 2019 confirms that WSM had still not received payment of that money.

- Mr AH confirmed in his statement that those sums were never received.

- In his email to the SRA dated 7 November 2018 the Respondent stated to the SRA that the Firm did not hold any client money. He did not report any misuse of the Firm's client account by any third party (as he would be required to under Outcome 10.4 of the Code, had such occurred). In those circumstances, the Tribunal was invited to infer that the Respondent had misappropriated or otherwise misused sums held by the Firm in respect of SM's matter. On any view, he failed to account to his former client for those sums.

- Ordinary, decent people would consider this behaviour dishonest.

The Respondent's Case

47.6 The Respondent had not engaged in the proceedings and did not serve an Answer to the allegations. The Respondent's position with respect to dishonesty was not known.

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

47.7 Having found the factual matrix in Allegations 1.1 to 1.4 proved to the requisite standard, namely on the balance of probabilities, the Tribunal considered whether the Respondent had acted dishonestly in each of those allegations.

47.8 When considering the allegation of dishonesty, the Tribunal applied the test in <u>Ivey</u>. The test for dishonesty was set out at paragraph [74] of the judgment in that case, and accordingly the Tribunal adopted the following approach:

- First, the Tribunal 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;

- Second, once the actual state of the Respondent's knowledge or belief as to the facts had been established the Tribunal next considered whether the conduct would be thought to have been dishonest by the standards of ordinary decent people.

47.9 The Tribunal considered the Respondent's state of knowledge at the material times, although this exercise was made more difficult in the absence of any input from the Respondent which may have assisted the Tribunal in determining any rationale or context with respect to his state of knowledge.

47.10 The Tribunal considered that it would be reasonable to infer that a solicitor of the Respondent's experience would have known that any money received from a client for a specific purpose should be used for that purpose or returned to the client and accounted for. Equally, the Respondent must have known that the monies held on Client account for each of MI and SM were missing when he advised the SRA on 7 November 2018 that the Firm held no client monies. There was no legitimate basis for those monies to have been removed from the Client account because in the case of MI the transaction to which the monies related had not been completed, and in the case of SM the estate had not been administered. A solicitor who had not been responsible for the misappropriation of client monies, on discovering that it had gone missing, would have reported the fact to both the SRA and his client.

47.11 In all of the allegations money had gone missing whilst in the Respondent's hands, and the Tribunal had found as a fact that the Respondent had misappropriated the monies, and in the case of SS he had mislead his client into believing that he had carried out the tasks for which he had received the money, when he would have known that he had not paid the Land Registry fee nor paid SDLT.

47.12 The Tribunal considered that ordinary decent people would consider a solicitor who had misappropriated client money in the circumstances set out in Allegations 1.1 to 1.4, and had given no account of himself or of the whereabouts of those monies, to be dishonest.

47.13 The Tribunal noted that there were no character references or any other material put forward by the Respondent as evidence of his lack of propensity to be dishonest, and which could have been weighed in the balance before reaching a decision on dishonesty.

47.14 Therefore, in the light of its factual findings and its conclusions in relation to the Respondent's knowledge, the Tribunal was satisfied on the balance of probabilities that the Respondent had been dishonest.

47.15 Dishonesty in relation to allegations 1.1 to 1.4 was proved on the balance of probabilities.

Previous Disciplinary Matters

48. On 19 May 2016 the Respondent made admissions which were accepted by the Tribunal in respect of the following allegations in which there was also a co-Respondent:

> "1.1 During the period June 2011 to November 2014, being managers of Excelsior Solicitors Ltd ("the Firm"), they failed to keep accounting records properly written up to show this Firm's dealings with client and office money and thereby each breached any or all of:
>
> 1.1.1 Failed to comply with their legal and regulatory requirements in breach of Principle 7 of the SRA Code of Conduct 2011 ("SCC 2011");
>
> 1.1.2 Failed to run their business effectively and in accordance with proper governance and sound financial and risk management principles, in breach of Principle 8 of the SCC 2011;
>
> 1.1.3 Rule 32 (1) of the Solicitors Accounts Rules 1998 ("SAR 1998") for the period up to 5 October 2011 and Rule 29.1 of the SRA Accounts Rules 2011 ("SAR 2011") for the period thereafter.
>
> 1.2 As a result of failing to have such accounting records properly written up they:
>
> 1.2.1 Failed to record dealings in client money in a cash account and on the client side of a separate client ledger and thereby each breached Rule 32 (2) SAR 1998 for the period up to 5 October 2011 and Rule 29.2 SAR 2011 for the period thereafter
>
> 1.2.2 Failed to record dealings in office money relating to a client matter in office cash account and on the office side of an appropriate client ledger account and thereby breached Rule 32 (4) SAR 1998 for the period up to 5 October 2011 and Rule 29.4 SAR 2011 for the period thereafter.
>
> 1.3 They retained client monies in the sum of £25,000 in office account between 1 September 2014 and 31 October 2014 and thereby breached Rule 14.1 of the SAR 2011
>
> 1.4 They failed to conduct client account reconciliations from June 2011 until February 2014 and thereby each breached Rule 32 (7) of the SAR 1998 the

period up to 5 October 2011 and Rules 29.12 to 29.14 of the SAR 2011 for the period thereafter.

1.5 They failed to submit accountants reports the accounting periods from 17 May 2010 to 16 May 2011, due to be filed by 16 November 2011, up to 17 May 2014 to 16 May 2015, due to be filed by 16 November 2015 inclusive and thereby each breached Rule 35 of the SAR 1998 for the period up to 5 October 2011 and Rules 1.2 (i) and Rule 32 of the SAR 2011 the period thereafter.

2. The further allegation made against the First Respondent only was that in his capacity as the Firm's Compliance Officer for Finance and Administration ("COFA") and Compliance Officer for Legal Practice ("COLP") he:

2.1 Failed to ensure compliance with the Firm's regulatory obligations in respect of the Accounts Rules and thereby breached rule 8.5 (c) (i) of the SRA Authorisation Rules 2011 and;

2.2 Failed to report the material issue of the breaches of the SAR 2011 and therefore breached rule 8.59 (e)(i) of the SRA Authorisation Rules 2011."

49. On that occasion the Tribunal ordered that the Respondent pay a fine of £12,000.00 and costs of in the sum of £8,800.00. He was also made subject to the following condition:

- To file an accountant's report every six months to commence with the report due for the period ending 31 May 2016 and thereafter every six months for next two years until 19 May 2018 (with liberty to apply).

Mitigation

50. The Respondent put forward no mitigation.

Sanction

51. The Tribunal first had regard to the observation of Sir Thomas Bingham MR (as he then was) in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".

52. The Tribunal referred to its Guidance Note on Sanctions (8th Edition) when considering sanction. The Tribunal was mindful of the three stages it should follow when approaching sanction, namely the seriousness of the misconduct, the purpose for which sanctions are imposed by the Tribunal, and the sanction which appropriately fulfils that purpose in light of the seriousness of the misconduct.

53. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.

54. In assessing culpability, the Tribunal found that it was difficult to determine the Respondent's motivation as the Respondent had not engaged in any part of the Applicant's investigation nor the proceedings before the Tribunal. However, it appeared that the Respondent and his Firm had benefitted in the region of £175,000 to which he had not been entitled and it was therefore not an unreasonable assumption that his motivation had been a financial one.

55. There was no evidence to determine whether the Respondent's actions were planned or spontaneous, however, it was certain that over a period of time he had not followed proper processes, and clear that the Respondent had mislead the Applicant in an effort to cover up his actions. To this end his failure to respond to the Applicant had been a planned course of conduct on the Respondent's part. He had in addition misled his client SS that he had paid Stamp Duty and secured the Land Registry title to his property.

56. The Tribunal had found proved to the requisite standard four separate instances in which client money was unaccounted for. The Respondent pursued a repeated course of conduct in which he had clearly breached the trust his clients had placed in him to carry out responsibly their instructions and protect their interests, for example, by using the funds with which they had entrusted to him to register the purchase of their property and to pay the duty owing, and not to allow them to be placed in situations where they would be subject to potential tax penalties and incomplete ownership of properties they believed they had purchased.

57. The Tribunal considered that the Respondent had had direct control and responsibility for the circumstances giving rise to the misconduct, and noted that he had been the Firm's COLP and COFA and its sole principal with the responsibilities and accountability this entailed.

58. The Respondent had been a solicitor since 2007 and had had enough experience to understand the nature of his conduct and the consequences which flowed from them, particularly as he had also been involved in proceedings at the Tribunal in the recent past.

59. A solicitor of any level of experience would know that taking money from a client to carry out specific instructions, and not returning the money when they failed to carry out those instructions, was wrong.

60. The Tribunal considered that the Respondent had misled his Regulator by failing to co-operate in any way with its investigation. The Respondent's statement to the Applicant in his email dated 7 November 2018, that he did not hold any client money, was a patent untruth; for example, in respect of Allegation 1.3, the Respondent had received £13,000 from his client MI in relation to the purchase, which he was required to hold to the seller's order. As at 7 November 2018 the purchase contract had neither completed nor been rescinded. This money should therefore have remained in the Firm's Client account, and the Respondent could not truthfully have informed the Applicant that there

was no money in the Client account, unless he was aware that the monies he should have been holding to the seller's order had been misappropriated.

61. Overall, the Tribunal assessed the Respondent's culpability as high, taking into account all the factors it had considered.

62. The Tribunal next considered the issue of harm. There was evidence of direct harm to the Respondent's clients. Those clients experienced financial loss and personal stress and worry, as in the case of SS and his family, which could have been easily avoided had the Respondent carried out the basic tasks he had been obliged to fulfil and placed in funds to do, e.g. paying the Land Registry fee and SDLT. By not doing so he had left his clients 'high and dry', and in the case of SS in the invidious position of having to live in rented accommodation, faced with the prospect of raising a further substantial amount to pay the SDLT, and exposed to paying penalties and interest on the unpaid tax.

63. The consequential damage to the reputation of the profession by the Respondent's misconduct was significant, as the public would trust a solicitor to carry out their basic instructions, for which they had been placed in funds; not to mislead their clients into thinking their instructions had been carried out; and not to misappropriate their client's money or otherwise misuse it.

64. The Respondent's conduct was a significant departure from the complete integrity, probity and trustworthiness expected of a solicitor, and the extent of the harm was entirely foreseeable by the Respondent, who would have had a clear knowledge of his actions.

65. The Tribunal assessed the harm caused as high.

66. The Tribunal then considered aggravating factors. The Tribunal, in its findings of fact, had found that the Respondent acted dishonestly, and it was reasonable for the Tribunal to infer that the Respondent's actions had been deliberate, calculated and repeated as it had found proved four allegations of a distinctly similar nature. The extent of the harm was spread across multiple clients, and the sums of money involved and misappropriated by the Respondent had been substantial.

67. The Respondent had sought to conceal his wrongdoing to the extent that he failed to engage fully with the SRA in its investigation, and the Respondent ought to have known or ought reasonably to have known that his conduct was in material breach of his obligations to protect the public and the reputation of the legal profession.

68. The Respondent had a previous disciplinary matter before the Tribunal in which the allegations were proved, and those matters had been similar to the instant case as they had involved a failure on his part to protect client money. The Respondent appeared not to have learned from his previous experience and had gone on to commit even more serious misconduct involving dishonesty.

69. The Tribunal considered there were no apparent mitigating factors. The Respondent had not made good the loss (his clients had had to make applications to the Compensation Fund); had not voluntarily reported the matters to his Regulator; this had

not been a single episode in a hitherto unblemished career; and there was no evidence of any genuine insight; no open or frank admissions had been made and no co-operation with the Regulator. The Tribunal also considered that there was no evidence that the Respondent's misconduct was the result of deception by a third party.

70. In all the circumstances of this case the Tribunal considered the seriousness of the misconduct to be high: this was perhaps an inevitable conclusion given the Tribunal's findings of dishonesty. In addition, the Respondent's conduct had been found to have lacked integrity, and he had failed to uphold public trust in the provision of legal services on multiple occasions, particularly so since the misconduct involved the complete absence of stewardship of clients' money.

71. In the Judgment of the Divisional Court in SRA v Sharma [2010] EWHC 2022 (Admin) it had been held that "save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll….that is the normal and necessary penalty in cases of dishonesty... There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances… In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary… or over a lengthy period of time …whether it was a benefit to the solicitor, and whether it had an adverse effect on others."

72. In SRA v James, MacGregor and Naylor it was said that exceptional circumstances must relate in some way to the dishonesty and that as a matter of principle nothing was to be excluded as being relevant to the evaluation, which could include personal mitigation.

73. In evaluating whether there were exceptional circumstances justifying a lesser sanction in this case the focus of the Tribunal was on the nature and extent of the dishonesty and degree of culpability and then to engage in a balancing exercise as part of that evaluation between those critical questions on the one hand and matters such as the Respondent's personal mitigation and health issues on the other.

74. In this case the Respondent had presented no personal mitigation to which the Tribunal could give any consideration, and there was nothing before the Tribunal to allow it to conclude that the Respondent had not known the difference between true and false; honesty and dishonesty.

75. The Tribunal observed that this had not been a fleeting or momentary lapse of judgment but had been a repeated course of conduct, involving dishonesty and a wall of silence to the Regulator after his last e-mail to the SRA on 7 November 2018.

76. The Tribunal therefore could find no exceptional circumstances within the meaning of Sharma and James in the Respondent's case.

77. The Tribunal considered that to make No Order, or to order a Reprimand, a Fine or Suspension (either fixed term or indefinite) would not be sufficient to mark the seriousness of the conduct in this case for the reasons set out above.

78. The Respondent's misconduct could only be viewed as extremely serious and this fact, together with the need to protect the reputation of the legal profession, required that Strike Off from the Roll was the only appropriate sanction.

Costs

79. The Applicant applied for costs in the sum of £22,200.00 (a fixed fee). Ms Daly submitted that the claimed costs were not excessive but were reasonable and proportionate and commensurate with the seriousness of the case.

80. The central feature of the case had been one of dishonesty and it had been very important for the Applicant to have thoroughly prepared its case and presented it with similar thoroughness. However, as there had been no engagement from the Respondent a four day case had been concluded in one and half days.

81. The Tribunal was satisfied that the costs were appropriate and ordered that the Respondent to pay the costs as claimed.

Statement of Full Order

82. The Tribunal Ordered that the Respondent, NATO ZONDAGH, 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 £22,200.00.

Dated this 15th day of February 2021
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
15 FEB 2021

J C Chesterton
Chair