SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12170-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

RUPINDER KAINTH Respondent

Before:

Mr D Green (in the chair)
Mr P S L Housego
Dr A Richards

Date of Hearing: 28 – 29 June 2021

Appearances

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

The Respondent did not attend and was not represented.

JUDGMENT

Allegations

1. The allegations made against the Respondent by the Solicitors Regulation Authority ("SRA") were that while in practice as a Partner at Wilson & Berry Solicitors ("the Firm"):

1.1 On 11 September 2019 and/or 10 December 2019, in interviews with an SRA Forensic Investigation Officer, she stated that:

1.1.1 she had submitted a proposal form seeking professional indemnity insurance cover for the Firm to the Firm's previous insurers, Company 1;

1.1.2 the Firm had merged with Firm 2;

1.1.3 the Firm's professional indemnity insurance cover was provided under the Firm 2 group of companies;

1.1.4 she had informed Company 1 of that merger;

1.1.5 she had submitted notification of that merger, together with evidence of the same, to the SRA; and/or

1.1.6 she was not linked with any other businesses and was not a director of Firm 2;

in circumstances where one or more of those statements was not correct.
She thereby breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019 ("the 2019 Principles") and Paragraph 7.4(a) of the SRA Code of Conduct for Solicitors 2019 ("the 2019 Code") (to the extent that such conduct occurred on or after 25 November 2019) and Principles 2, 6 and 7 of the SRA Principles 2011 ("the 2011 Principles") to the extent that such conduct occurred prior to 25 November 2019.

1.2 Between 31 October 2019 and 30 January 2020, she:

1.2.1 caused or allowed the Firm to act for clients; and/or

1.2.2 held the Firm out as being permitted to act for clients;

in circumstances where the Firm was not permitted to do so.

She thereby breached any or all of Principles 2, 4 and 5 of the 2019 Principles (to the extent that such conduct occurred on or after 25 November 2019) and Principles 2 and 6 of the 2011 Principles (to the extent that such conduct occurred prior to 25 November 2019).

1.3 In a "New Partner/Fee Earner Questionnaire" form submitted to Company 1 on or around 26 November 2019, she confirmed that she had not ever been subject to investigation by the Law Society in circumstances where that was not correct. She thereby breached any or all of Principles 2, 4 and 5 of the 2019 Principles.

1.4 Between January 2018 and July 2020 she failed to:

1.4.1 provide information and documents sought by the Solicitors Regulation Authority in notices dated 20 May 2019, 24 September 2019, 24 October 2019 and/or 3 July 2020 issued pursuant to s44B of the Solicitors Act 1974;

1.4.2 respond to a mandatory questionnaire sent to the Firm by the SRA;

1.4.3 co-operate in one or more investigations carried out by the Legal Ombudsman ("LeO").

She thereby breached any or all of Principles 2 and 5 of the 2019 Principles and Paragraph 7.4(a) of the 2019 Code (to the extent that such conduct occurred on or after 25 November 2019) Principles 2, 6 and 7 of the 2011 Principles (to the extent that such conduct occurred before 25 November 2019).

2. In addition, allegations 1.1 – 1.2 above (to the extent that such conduct occurred prior to 25 November 2019) are advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the allegations.

Documents

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

- Rule 12 Statement and Exhibit IWB1 dated 17 February 2021
- Respondent's Answer and Exhibits dated 10 April 2021
- Applicant's Schedule of Costs dated 17 June 2021

Preliminary Matters

4. Respondent's application to adjourn

4.1 On Monday 28 June 2021, the Respondent sent an email to the Tribunal and the Applicant stating that she was unwell and thus unable to attend the hearing. The Respondent provided the Tribunal with a copy of a medical certificate which stated that she was unfit to attend work. The certificate did not state that the Respondent was unfit to attend Court. The Respondent apologised for any inconvenience caused and asked that the matter be re-listed.

4.2 Ms Bruce opposed the application to adjourn. The evidence supplied by the Respondent did not comply with the Tribunal's policy, nor did it meet the requirements in caselaw. Ms Bruce referred the Tribunal to Maitland-Hudson v SRA [2019] EWHC 67 (Admin) and GMC v Hyatt [2018] EWCA Civ 2796.

4.3 In summary those cases found that the onus was on the Respondent to provide sufficient evidence in support of her application to adjourn on the basis of her health. The medical evidence was required to document why the Respondent was unable to participate in the proceedings, a reasoned prognosis, and any reasonable adjustments that could be

made to assist her participation. The evidence should result from an independent assessment following a proper examination. The evidence supplied did not comply with these requirements. There was a compelling public interest in hearing the matter.

The Tribunal's Decision

4.4 The Tribunal considered the medical evidence. Paragraph 4c of the Tribunal's Policy/Practice Note on Adjournments stated:

> "The claimed medical condition of the Applicant or Respondent unless this is supported by a reasoned opinion of an appropriate medical adviser. A doctor's certificate issued for social security and statutory sick pay purposes only or other certificate merely indicating that the person is unable to attend for work is unlikely to be sufficient."

4.5 The Respondent had submitted a medical certificate titled 'Statement of Fitness for Work, For social security of Statutory Sick Pay' which stated that she was unfit to attend work. It did not state that she was unfit to attend the proceedings. There was no evidence as regards the Respondent's prognosis, or any reasonable adjustments that could be made to accommodate the Respondent.

4.6 The Tribunal considered that where the Respondent was making an application to adjourn on the basis that she was not fit enough to attend the proceedings, it was the Respondent's responsibility to provide the Tribunal with such evidence as to establish that that was the case. The Tribunal did not consider that a certificate certifying that the Respondent was not fit for work was sufficient medical evidence. There was nothing in the note that enabled the Tribunal to conclude that the sick note was the result of an independent opinion following a proper examination, nor did it detail why the Respondent's illness was such that she was unable to take part in the hearing.

4.7 Given the insufficiency of the medical evidence provided and the public interest in hearing the matter, the Tribunal refused the application to adjourn. The Tribunal caused the refusal of the application to be notified to the Respondent in order to give her an opportunity to make any representations.

5. Application to Proceed in the Respondent's absence

5.1 The Respondent did not contact the Tribunal following its decision to refuse the application to adjourn.

5.2 Ms Bruce applied to proceed in the Respondent's absence. Ms Bruce submitted that there had been a history of non-compliance in this matter. Proceedings were certified by the Tribunal on 18 February 2021, and served on the Respondent on 22 February 2021. The Tribunal issued Standard Directions on 22 February including listing the substantive hearing to commence on 28 June 2021. The Respondent was also directed to file and serve her Answer and all documents on which she intended to rely by 22 March 2021. The Respondent did not comply with that direction and a non-compliance hearing took place on 30 March 2021. On 29 March 2021, the Respondent emailed the Tribunal explaining that communication from the Tribunal had gone to her spam email and requested 14 days in which to file her Answer and

documents. The directions were varied such that the time for service of the Respondent's Answer and documents was extended to 13 April 2021. The Respondent served her Answer and documents on 10 April 2021.

5.3 A Case Management Hearing ("CMH") took place on 10 May 2021. At that hearing the Respondent was directed to provide information as regards the documents appended to her Answer by 11 May 2021, the Respondent having confirmed that she had access to the information requested. The Respondent did not comply with that direction.

5.4 A further CMH took place on 2 June 2021. The Respondent did not attend that hearing. The Applicant confirmed that the Respondent had still not provided the information. Further, she had submitted a witness statement that was not legible. The Tribunal made two Unless Orders relating to the filing and serving of a legible witness statement and the information as regards the documents appended to her Answer. The Respondent did not comply with those Orders.

5.5 Ms Bruce submitted that it was clear from the Respondent's limited engagement and her emails of 28 June 2021, that the Respondent was fully aware of the proceedings, and that service and been effective in accordance with the Tribunal's Rules.

5.6 The Tribunal was referred to R v Jones [2002] UKHL 5 and GMC v Adeogba [2016] EWCA Civ 162. Ms Bruce submitted that the Respondent had voluntarily absented herself from the proceedings. The Tribunal could not be reassured that if the matter did not proceed, the Respondent would attend on any future date. It was in the public interest to proceed with the hearing. The Tribunal would apply anxious scrutiny to all factors. The Respondent was a solicitor and fully aware of her obligations. The Respondent could be in no doubt as to the consequences of her non-compliance. In addition, the Applicant had a number of witnesses who had been warned and were in attendance. In all the circumstances, it was in the public interest for the matter to proceed.

The Tribunal's Decision

5.7 The Tribunal considered Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("the Rules") which stated:

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

5.8 The Tribunal firstly considered whether service had been effected in accordance with Rule 44 and determined that service of the proceedings had been properly effected in accordance with the Rules. The Respondent had engaged intermittently with the proceedings and had emailed the Tribunal confirming that she would not attend the hearing. The Tribunal therefore concluded that the Respondent was aware of the date of the hearing. The Tribunal had regard to the Solicitors Disciplinary Tribunal

Policy/Practice Note on Adjournments and the criteria for exercising the discretion to proceed in absence as set out in Jones and Adeogba.

5.9 The Tribunal noted the history of non-compliance, including the Respondent's failure to attend the CMH on 2 June 2021. It was plain from the Respondent's email of 28 June 2021, that she had deliberately chosen not to exercise her right to be present or to give adequate instructions to enable lawyers to represent her at the hearing. The Tribunal could not be confident that an adjournment would secure the Respondent's attendance in circumstances where the Respondent had failed to comply with previous directions. Public confidence in the regulatory regime required matters to be dealt with expeditiously, appropriately and at reasonable cost. An adjournment of the proceedings would be contrary to those public interests. It was clear that the Respondent did not intend to be legally represented; she had not instructed anyone to represent her in this matter.

5.10 The Tribunal paid significant regard to the comments of Leveson P in Adeogba, namely that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a Respondent. At [19] he stated:

> "… It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when the practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed."

5.11 Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interest of the public also taken into account."

5.12 The Tribunal was cognisant of the fact that the principles identified in Adeogba were affirmed by the Court of Appeal in Hayat. The Tribunal considered that the Respondent would suffer no prejudice if the application were to be heard in her absence, as the Tribunal had the power to order a rehearing under the provisions contained in Rule 37 of the Rules which stated:

> "(1) At any time before the Tribunal's Order is sent to the Society under rule 42(1) or within 14 days after it is sent, a party may apply to the Tribunal for a re-hearing of an application if—
>
> (a) the party neither attended in person nor was represented at the hearing of the application; and
>
> (b) the Tribunal determined the application in the party's absence.
>
> (2) An application for a re-hearing under this rule must be made using the prescribed form accompanied by a Statement setting out the facts upon which the applicant wishes to rely together with any supporting documentation.

(3) If satisfied that it is just to do so, the Tribunal may grant the application upon such terms, including as to costs, as it thinks fit. The re-hearing must be held before a panel comprised of different members from those who determined the original application."

5.13 The Tribunal was satisfied that in this instance the Respondent had chosen voluntarily to absent herself from the hearing. It was in the public interest and in the interests of justice that this case should be heard and determined as promptly as possible. Although the Respondent indicated in her email of 28 June 2021 that she hoped the hearing could be relisted, the Tribunal were not persuaded that the Respondent would attend the proceedings if the case were adjourned given her history of non-compliance with previous directions in this case and the manner of her engagement with the regulatory process to date. In the light of these circumstances, it was just to proceed with the case, notwithstanding the Respondent's absence.

Factual Background

6. The Respondent is a solicitor having been admitted to the Roll in February 2010. At the time of the matters giving rise to the allegations, she was one of two partners in the Firm.

7. The Respondent was the 100% equity partner and had responsibility for the management of the Firm. She was also the Firm's Compliance Officer for Legal Practice ("COLP") and its Compliance Officer for Finance and Administration ("COFA").

8. The Firm's main areas of work were privately funded conveyancing, wills and probate and attorneyship work. The main fee-earner was the Firm's other partner, Ms VS, who was a salaried partner. The Respondent and Ms VS were both also solicitor managers at Firm 2, an incorporated SRA regulated practice, whose head office was based in Milton Keynes.

9. On 21 January 2020, an SRA Investigation Officer produced a report recommending intervention into the practice of the Respondent, and the Firm. On 30 January 2020, the SRA resolved to intervene into the practice of the Respondent on the basis that (i) there was reason to suspect dishonesty on the part of the Respondent in connection with her practice as a solicitor; and (ii) the Respondent had failed to comply with the Principles, the SRA Code of Conduct 2011 and the SRA Professional Indemnity Insurance Rules 2013. The SRA also resolved to intervene into the Firm.

10. As a result of the intervention, the Respondent's practising certificate was suspended. The Respondent did not have a current practising certificate.

11. In May 2018, the SRA commenced a forensic investigation of the Firm, which resulted in a report dated 28 August 2018 ("the First FIR"). That report identified, amongst other matters:

- a failure to disclose relevant information to the SRA and to the Firm's professional indemnity insurers in an insurance proposal form; and

- a failure to co-operate with an investigation by LeO.

12. Between December 2018 and October 2019, the SRA received several reports from LeO regarding the Firm's failure to co-operate with its investigations and comply with its awards. On 6 November 2019, Company 1 reported to the SRA non-payment of the Firm's professional indemnity insurance premium for the insurance year 2018/2019.

13. On 15 August 2019, the SRA commenced a further forensic investigation of the Firm, which resulted in a report dated 18 December 2019 and which was supplemented by a memo dated 14 January 2020 (together "the Second FIR"). That report identified, among other matters:

- that the Firm may not have professional indemnity insurance cover for the insurance year 2019/2020;

- issues relating to a purported merger between the Firm and Firm 2; and

- a failure to co-operate with the SRA's investigation.

14. On 10 February 2020 the SRA commenced a forensic investigation of Firm 2, which resulted in a report dated 22 April 2020 ("the Third FIR"). That report provided additional evidence relating to the issues identified in the Second FIR.

Witnesses

15. The written evidence of the witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all the documents in the case. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

Findings of Fact and Law

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

Dishonesty

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

> "When dishonesty is in question the fact-finding Tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is

> whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

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

Integrity

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

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

20. **Allegation 1.1 – On 11 September 2019 and/or 10 December 2019, in interviews with an SRA Forensic Investigation Officer, she stated that: she had submitted a proposal form seeking professional indemnity insurance cover for the Firm to the Firm's previous insurers, Company 1; the Firm had merged with Firm 2; the Firm's professional indemnity insurance cover was provided under the Firm 2 group of companies; she had informed Company 1 of that merger; she had submitted notification of that merger, together with evidence of the same, to the SRA; and/or she was not linked with any other businesses and was not a director of Firm 2; in circumstances where one or more of those statements was not correct. She thereby breached any or all of Principles 2, 4 and 5 of the 2019 Principles 2019 and Paragraph 7.4(a) of the SRA 2019 Code (to the extent that such conduct occurred on or after 25 November 2019) and Principles 2, 6 and 7 of the 2011 Principles 2011 (to the extent that such conduct occurred prior to 25 November 2019).**

The Applicant's Case

20.1 On 10 December 2019, in a recorded interview with the FIO, the Respondent said the following:

> Respondent: The current position with regards to our current, um, Professional Indemnity Insurance, is prior to joining forces with Kingsley David and the merger, Wilson & Berry were in the process of um, it had looked at the um, proposal form and submitted that to our previous um insurers for them to source adequate cover um… (FIO: And who were they?) Lockton & Pen who were our previous providers…

> … Wilson & Berry's renewal period is September/October, whereas um, Kingsley David's renewal period is April, and consequently as a result of the merger and both Wilson & Berry and Kingsley David being under one group of company. Um, the Professional Indemnity Insurance is now provided under the Kingsley David Group of companies
>
> FIO: And who is the insurer for them?
>
> Respondent: *[mumbling]* Underwriters, um, [Company 1] again, sorry
>
> …
>
> FIO: And did you notify [Company 1] of the merger between the two?)
>
> Respondent: Yes, we've informed them that we have merged and obviously Wilson & Berry is now a part of the [Firm 2] group

20.2 Ms Bruce submitted that no proposal form had been submitted to Company 2 [brokers]. In an email to the SRA dated 13 January 2020, Company 2 confirmed that they had not received an application from the Firm for professional indemnity insurance for the 2019/20 Indemnity Period, either as a firm in its own right, or in connection with another firm. Company 1 had not received any contact from the Firm via Company 2 in 2019 and had confirmed that it did not receive an application from the Firm for professional indemnity insurance for the period 2019/20.

20.3 On 12 December 2019, Company 1 confirmed to the SRA that they had no record of a merger between the Firm and Firm 2. The indemnity insurance policy then in force for Firm 2 did not name the Firm as an insured under that policy.

20.4 On 23 December 2019, Company 1 replied to various questions which the FIO had asked about the Firm. They included the following:

> "Q: It is Mrs Kainth's position that Wilson & Berry Solicitors has been acquired by or merged with [Firm 2] and is therefore covered by the indemnity policy in place for [Firm 2], with [Firm 2] being a successor practice for Wilson & Berry.
>
> Please state whether [Company 1] agrees with this assertion and, if not, why not.
>
> A: We are not aware of this.
>
> Q: Please advise what steps should have been taken by Mrs Kainth to ensure that the insurance policy in place for [Firm 2], also covered Wilson & Berry Solicitors Limited.
>
> A: Mrs Kainth/[Firm 2] should have advised us of this merger, to date this has not been advised or instructions received to this end.

Firm 2

20.5 In a witness statement dated 14 April 2020, SS (the sole equity owner of Firm 2 until 9 August 2019) confirmed the arrangements between the Firm and Firm 2. SS confirmed that the Respondent was to purchase the shares of his firm for the nominal sum of £1 plus 37.5% of all fees recovered from the work in progress. Those arrangements, and other matters relating to the purchase, were detailed in a share purchase agreement which was completed by telephone on 9 August 2019.

20.6 On 12 August 2019, Person 1 emailed the Respondent, confirming that he had notified the bank, insurers, SRA, accountants and auditors of the change in ownership of the firm. The Respondent replied, thanking him for doing so. He sent a further email to the Respondent on the same date asking the Respondent for her authority to register her as a director of the firm. Later that day, she replied "yes, that's fine". The Respondent's interest was registered with effect from 9 August 2019 as a director with ownership of 75% or more of the shares in that firm.

20.7 On the same date, Mr ND emailed the Respondent to congratulate her on acquiring Firm 2.

20.8 On 15 August 2019, Person 1 emailed the Respondent asking her to complete a 'New Partner/Fee Earner Questionnaire' for the purpose of the firm's professional indemnity insurance. She replied "yes, of course".

20.9 In his statement, Person 1 confirmed that, after the sale, the Respondent stated that her intention was for Firm 2 to acquire the Firm. Person 1 prepared a draft acquisition deed. The recitals to that deed recorded an intention by the partners of the Firm to merge the Firm into Firm 2. Person 1 stated that, as far as he was aware, the merger between the firms did not ever take place.

20.10 During an interview on 11 September 2019, the FIO asked the Respondent whether she was linked within any other businesses and, specifically, Firm 2. The Respondent replied that she was not linked with any other businesses; that she was "in talks" with Firm 2; that she was "looking soon to join forces only"; and that she had "been to see [Person 1] and we are looking to go into collaboration".

20.11 Ms Bruce submitted that in fact:

- The Respondent had purchased the shares of Firm 2 on 9 August 2019 and owned over 75% of the shares in that firm;
- Person 1 had (to the Respondent's knowledge) notified the bank, insurers, SRA, accountants and auditors of the change in ownership of the firm; and
- The Respondent had agreed to be registered as a director of Firm 2 and had been so registered from 9 August 2019.

20.12 The FIO specifically raised the Respondent's directorship with the Respondent. The Respondent replied: "I have not come on board as a director" and added: "I will try to get [Person 1] on the phone to see what is happening. He did contact me, and we

discussed the deal, but I did not think that it had gone this far. I have not signed any Heads of Terms of business".

20.13 During a recorded interview with the FIO on 10 December 2019, the Respondent confirmed to the FIO that the Firm had merged with Firm 2 on 30 October 2019 and that "at the end of November an NS1 form was submitted, along with a deed [signed by both the Applicant and Ms VS giving effect to the merger] to um, the SRA".

20.14 During the interview, the Respondent also indicated that notification of the purported merger had been submitted by email to the SRA.

20.15 Form NS1 was the Applicant's "Notice of Succession", used, amongst other matters, to inform the SRA that an authorised body has split or ceded part of its practice to another authorised body, and wishes the SRA to take this into account in determining its periodical fee.

20.16 The SRA had checked its records and confirmed that it had been unable to find receipt of any NS1 form from the Respondent, Wilson & Berry Solicitors or from the Firm. Further, it had been unable to find any email indicating a merger between the two firms.

20.17 In his witness statement dated 14 April 2020, Person 1 confirmed that no merger took place.

20.18 Accordingly, it was submitted, the Respondent made the following statements to the SRA which were not correct:

- In an interview dated 10 December 2019 she stated that she had submitted a proposal form seeking professional indemnity insurance cover for the Firm to the Firm's previous insurers, Company 1. In fact, Company 1 confirmed to the SRA on 29 October 2019 that they had not received any contact from the Firm in any form in 2019 and had not received any application from the Firm for professional indemnity insurance for the period 2019 – 2020.

- In an interview dated 10 December 2019 she stated that the Firm had merged with Firm 2. The Respondent has provided no evidence that the two firms had merged and the Tribunal can infer that they have not. Indeed, the evidence demonstrates that they have not merged:

    - On 12 December 2019 and 23 December 2019, Company 1 confirmed to the SRA that they had no record of a merger between the two firms;

    - Despite the Respondent's assertion that she had submitted a copy of a deed giving effect to the merger to the SRA, the SRA has no record that such a deed had been provided to it. The FIR asked the Respondent to send her a copy of the email sending those documents, and the documents themselves, but she has not done so;

    - Person 1 confirmed that no merger has taken place.

- In an interview with the FIO on 10 December 2019 she stated that, as a result of that merger, the Firm's professional indemnity insurance cover was provided under the Firm 2 group of companies. In fact:

    - no merger had taken place;

    - The indemnity insurance policy then in force for Firm 2 did not name the Firm as an insured under that policy; and

    - Company 1 did not accept that the Firm was covered by the indemnity policy in place for Firm 2.

- In an interview with the FIO on 10 December 2019, that she had informed Company 1 of that merger. In fact, as noted above, on 12 December 2019, Company 1 confirmed to the SRA that they had no record of a merger between the Firm and Firm 2.

- In an interview with the FIO on 10 December 2019 that she had submitted notification of that merger, together with evidence of the same, to the SRA. In fact:

    - no such merger had taken place (and, consequently, there was no evidence of that merger which could have been submitted);

    - The SRA had no record of receiving notification or evidence of a merger.

- In an interview with the FIO on 11 September 2019 that she was not linked with any other businesses and was not a director of Firm 2. In fact, the Respondent was at that time (and as she knew) a director and majority shareholder of that firm.

20.19 Ms Bruce submitted that the Respondent's actions amounted to a failure to act with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code) in breach of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles. In Wingate, it was said that integrity connotes adherence to the ethical standards of one's own profession.

20.20 Any or all of the statements were incorrect for the reasons detailed. The matters giving rise to those statements were within the Respondent's personal knowledge. The Tribunal could thus infer that, at the time she made those statements, the Respondent knew that they were not correct.

20.21 A solicitor acting with integrity would not have made statements to her regulator knowing that they were incorrect or without checking that they were correct.

20.22 Accordingly, the Respondent acted in breach of Principle 5 of the 2019 Principles (in respect of the statements made on or after 25 November 2019) and Principle 2 of the 2011 Principles (in respect of the statements made before 25 November 2019).

20.23 The matters giving rise to the statements made by the Respondent, were within her personal knowledge. Trust in the Respondent and in the provision of legal services was undermined by solicitors who made statements to their regulator which they knew were not correct. Accordingly, the Respondent acted in breach of Principle 2 of the 2019 Principles (in respect of the statements made on or after 25 November 2019) and Principle 6 of the 2011 Principles (in respect of the statements made before 25 November 2019).

20.24 Further, it was self-evident that solicitors who made such statements in response to requests for information from their regulator failed to provide accurate information or to deal with their regulator in an open and co-operative manner. Accordingly, the Respondent acted in breach of Paragraph 7.4(a) of the 2019 Code (in respect of the statements made on or after 25 November 2019) and Principle 7 of the 2011 Principles (in respect of the statements made before 25 November 2019).

Dishonesty and Principle 4 of the 2019 Principles

20.25 The Applicant relied upon the test for dishonesty stated by the Supreme Court in Ivey.

20.26 During the course of interviews with the FIO on 11 September 2019 and 10 December 2019 the Respondent made a number of statements which were not correct. Each of those matters was within the knowledge of the Respondent. Accordingly, the Tribunal could infer that the Responded knew that those statements which she made to an SRA Forensic Investigation Officer investigating her conduct were not correct.

20.27 The Respondent's Firm did not have a qualifying policy of insurance at the time of those statements and no proposal form seeking professional indemnity insurance cover had been submitted. Accordingly, for the reasons outlined above, it was required to close by no later than 29 December 2019. It could be inferred that the Respondent made those statements to the Forensic Investigation Officer in order to disguise the true position and to allow her firm to continue trading. Ordinary, decent people would consider this behaviour dishonest. Accordingly, the Respondent was dishonest and (to the extent that such conduct occurred on or after 25 November 2019) breached Principle 4 of the 2019 Principles.

The Respondent's Case

20.28 The Respondent denied allegation 1.

The Tribunal's Decision

20.29 The Tribunal considered whether the Respondent had made the statements alleged. The Tribunal examined the documentary evidence. It was clear that Company 1 had not received any application from the Firm for insurance for the 2019/20, as was confirmed in the witness statement of the Head of the Solicitors Professional Indemnity facility at Company 1. Accordingly, the Tribunal found that the Respondent's assertion that she had submitted a proposal form seeking professional indemnity insurance cover for the Firm to Company 1 was false.

20.30 As regards the merger, the Applicant criticised the Respondent for failing to provide proof of the merger. The Tribunal considered that it was for the Applicant to prove its case and not for the Respondent to prove to the contrary. The Tribunal considered the witness statement of Person 1. The Tribunal determined that as the sole owner of Firm 2, Person 1 would know the true position as between the Firms and any merger. Person 1 described the talks he had with the Respondent as regards her purchasing Firm 2. The sale of the Firm completed on 9 August 2019. Person 1 informed the Applicant of the change of ownership on 29 August 2019. Throughout August, Person 1 informed all relevant parties of the change of ownership including updating the records at Companies House. Person 1 explained that it was the Respondent's intention that Firm 2 would acquire the Firm. Person 1 drafted an Acquisition Deed, however the Deed was never signed and the acquisition did not take place.

20.31 In her interview, the Respondent stated that Company 1 had been informed of the merger and that the Firm was now a part of the Firm 2 group. Company 1 confirmed that they did not possess any record of a merger between the firms.

20.32 In addition, the Applicant had been unable to find any record of receipt of the Acquisition Deed, notwithstanding the Respondent's assertion that she provided the Deed to the SRA.

20.33 The Tribunal determined that the documentary evidence plainly showed that no merger had in fact taken place. Accordingly, the Respondent's assertion to the contrary was false.

20.34 The Tribunal found that given there had been no merger, the Firm could not be covered by Firm 2's insurance. Additionally, Company 1 confirmed that the insurance in place for Firm 2 did not cover the Firm, as the Firm was not named as insured under the Firm 2 policy, and that, in any event, it had not been informed of any merger between the firms.

20.35 The contemporaneous documentary evidence showed that the Respondent was, at the time of her interview on 11 September 2019, a Director and owner of Firm 2. The sale of Firm 2 to the Respondent had been completed on 9 August 2019, and on 11 August 2019, Person 1 informed the SRA of the sale. On 12 August 2019, the Respondent consented to Person 1 registering her as a Director. The Tribunal determined that when telling the Applicant that she was not linked with any other business and that she had not "come on board as a Director" of Firm 2, the Respondent's assertions were false.

20.36 The Tribunal found that the Respondent had not only made a number of false statements during the course of the investigation, but had knowingly done so, given that all of the matters discussed were within the Respondent's knowledge. The Tribunal found that the Respondent's conduct was in breach of Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles. Members of the public would not expect a solicitor to knowingly make false statements during the course of an investigation by the regulator. In making knowingly making false statements, the Respondent had failed to provide accurate information or to deal with the regulator in an open and co-operative manner in breach of Paragraph 7.4(a) of the 2019 Code and Principle 7 of the 2011 Principles.

20.37 That such conduct was lacking in integrity was plain. Solicitors acting with integrity would not provide false information to their regulator during the course of an investigation into their conduct in circumstances where they knew that the information was incorrect. Accordingly, the Tribunal found that the Respondent's conduct was in breach of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles.

Dishonesty/Principle 4

20.38 The Tribunal found that the Respondent knew that the information she had provided was false. She knew that no application for indemnity insurance had been submitted to Company 1 and that the Firm was not insured under Firm 2's policy. Further, she knew that she was a Director of Firm 2 and that no merger had taken place. The Tribunal determined that ordinary and decent people would consider that knowingly making false statements was dishonest. Accordingly, the Tribunal found the Respondent's conduct had been in breach of Principle 4 of the 2019 Principles and was dishonest as regards the 2011 Principles.

20.39 Accordingly, the Tribunal found allegation 1.1 proved on the balance of probabilities, including that the Respondent's conduct was dishonest.

21. **Allegation 1.2 - Between 31 October 2019 and 30 January 2020, she: caused or allowed the Firm to act for clients; and/or held the Firm out as being permitted to act for clients; in circumstances where the Firm was not permitted to do so. She thereby breached any or all of Principles 2, 4 and 5 of the 2019 Principles (to the extent that such conduct occurred on or after 25 November 2019) and Principles 2 and 6 of the 2011 Principles (to the extent that such conduct occurred prior to 25 November 2019).**

The Applicant's Case

The SRA Indemnity Insurance Rules

21.1 Rule 4.1 of the SRA Indemnity Insurance Rules 2013 ("the 2013 Rules") provided:

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

21.2 From September 2003, "indemnity period" is defined in the Glossary to the SRA Handbook ("the Glossary") as the period of one year starting on 1 October in any calendar year.

21.3 Rule 4.2 of the 2013 Rules sets out when firms must obtain a policy of qualifying insurance and what happens if they are unable to do so. It provided that (amongst other things): a firm must obtain a policy of qualifying insurance prior to the expiry of its existing policy.

21.4 Rule 8 of the 2013 Rules provided that a firm must inform the SRA that it has entered the extended indemnity period ("EIP") and/or the Cessation Period so as soon as reasonably practicable and in no event later than 5 business days after entering the EIP and/or Cessation Period.

21.5 The guidance to Rule 4 expressly provided that disciplinary action would be taken against those who accept new instructions and/or engage in other non-permitted legal activities during the Cessation Period.

21.6 The SRA Indemnity Insurance Rules 2019 ("the 2019 Rules") replaced the 2013 Rules on 25 November 2019. Rule 10.1 of the 2019 Rules provides that:

> "For the purposes of the SA [Solicitors Act 1974] (including without limitation section 10 of that Act), any person who is in breach of any rule or part of any rule under the Solicitors' Indemnity Insurance Rules 2000 to 2010 or SRA Indemnity Insurance Rules 2011 to 2013 will be deemed, for so long as that person remains in breach, not to be complying with these rules."

21.7 Accordingly, to the extent that the Respondent was in breach of the 2013 Rules on or after 25 November 2019, the Respondent was also in breach of the 2019 Rules.

The Firm's Professional Indemnity Insurance

21.8 The Firm's professional indemnity insurance period ran from 1 October to 30 September in each year. The Firm's insurer for the period 1 October 2018–30 September 2019 was Company 1. Its insurance broker was Company 2.

21.9 On 9 July 2019, Company 2 wrote to the Respondent confirming that the Firm's PII policy renewed on 1 October 2019 and attaching a proposal form for completion.

21.10 On 9 September 2019, Company 2 wrote again to the Respondent and Ms VS noting that the Firm's insurance needed to be sorted "urgently". No substantive response was received from either the Respondent or Ms VS.

21.11 On 25 September 2019, Company 2 contacted the Respondent and Ms VS again, confirming that they had not received a completed proposal form for the 2019-2020 policy year. No response to that email was received.

21.12 On 30 September 2019 (i.e. the last day of the Firm's existing insurance policy), Company 2 wrote to the Respondent and Ms VS to confirm:

> "As matters currently stand, having not received a Proposal Form for your Professional Indemnity insurance policy renewing on 1 October 2019, we have been unable to put forward a quotation for your consideration. … with effect from tomorrow you will be entering the extended indemnity period (EIP) … the advice is that you must inform the SRA your firm has entered the EIP and that you are trying to source and secure appropriate insurance cover. If you are unable to source qualifying insurance from a participating insurer by the 30th October, your firm will fall into the Cessation Period (CP). Should you enter the CP, you will have 60 days to wind down your practice under SRA rules."

21.13 Neither the Respondent, nor anyone at the Firm, notified the SRA that the Firm had entered the Extended Policy Period ("EPP").

21.14 On 29 October 2019, Company 1 confirmed to the SRA's Forensic Investigation Officer ("FIO") that "we have had no contact from them [the Firm] in any form (via [Company 2]) in 2019". In his witness statement dated 14 August 2020], PC (Head of the Solicitors Professional facility at Company 1) confirmed that Company 1 had not received an application for professional indemnity insurance from the Firm for the period 2019/20.

21.15 Ms Bruce submitted that the Firm did not obtain a qualifying policy of professional indemnity insurance following the expiry of its existing policy on 30 September 2019. The Respondent told the FIO that the Firm had professional indemnity insurance cover under a policy provided by Company 1 to Firm 2, following a merger of the two firms. However, Company 1 confirmed to the Applicant that they had not been made aware of the merger and that they were not aware that cover was provided to the Firm under Firm 2's insurance. The copy policy provided did not name the Firm as an insured.

21.16 Accordingly, on or around 1 October 2019, the Firm entered the EIP. It was required to inform the SRA that it had entered the EIP, but did not. Having failed to obtain a qualifying policy of insurance within the following 30 days, it entered the Cessation Period on 31 October 2019. During that time, it was authorised only to complete existing instructions and was required to close promptly, and by no later than 29 December 2019.

21.17 During her interview with the FIO on 10 December 2019, the Respondent confirmed that the Firm had taken on 16 new instructions during November 2019 (i.e. during the Cessation Period).

21.18 She added that "with [Firm 2] now [i.e. since the merger on 30 October 2019] we have managed to keep and retain and bring on some more, new work, um whereas we had to turn clients away before. We are now able to, to keep that work… So, we're hoping that that will now um bring more funds into [the Firm], um and increase the fee income and what we've actually done now, we've actually merged the firms together".

21.19 Later in that interview, the Respondent said that "as a result of the recent merger, we have now started receiving more instructions at [the Firm] for more new work. We are trying to um, bring more new work… [the Firm] is obviously still trading as [the Firm] under the [Firm 2] Group of Companies".

21.20 Ms Bruce noted that the Respondent had provided no evidence of any merger to the SRA; and further, had provided no evidence of any merger to Company 1.

21.21 In addition, the Firm's client bank account statements showed that the Firm:

(i) continued to receive and pay out client money in connection with client matters during the period 17 December 2019 to 7 January 2020, including eight receipts totalling £14,541.80 after 30 December 2019; and

(ii) as at 7 January 2020 it held £548,243.96 in its client account.

21.22 Further, on 14 January 2020, the FIO called the Firm's telephone number given for its main office. The call was answered in the Firm's name. A screenshot of the Firm's website taken on 23 January 2020 indicated that the Firm was trading and able to accept instructions.

21.23 Having failed to obtain a policy of qualifying insurance by 30 October 2019, the Firm was required to cease practice promptly and by no later than 29 December 2019. It was not permitted to accept new instructions in that period.

21.24 It was clear from the above, however, that the Firm:

- accepted at least 16 new instructions in that period;
- was actively seeking additional work in that period;
- continued to act for clients in that period, and after 29 December 2019 when it was required to cease practice;
- continued to receive, pay out and hold client money in that period, particularly after 29 December 2019 when it was required to cease practice; and
- presented itself to existing and potential clients, and third parties, as an active firm trading under the Firm's name.

21.25 On 3 July 2020 the SRA sent a notice to the Respondent pursuant to s44B of the Solicitors Act 1974 seeking (i) the name of the firm which was instructed (i.e. Wilson & Berry or Firm 2); (ii) a copy of the relevant client care letter; (iii) details of the work undertaken; and (iv) details of the fees charged and paid, in respect of each of the 16 instructions referred to above:

21.26 The Notice required a response within 14 days of the delivery of that notice. The Respondent failed to reply to that notice.

21.27 The Respondent's actions amounted to a failure to act with integrity. At all material times, the Respondent was a 100% equity partner in the Firm and had responsibility for its management. She was also the Firm's COLP and its COFA. She therefore had responsibility for ensuring that the Firm complied with its regulatory obligations. Those regulatory obligations were specifically drawn to the Respondent's attention by its insurance brokers on 30 September 2019. Despite that, the Respondent caused or allowed the Firm to act in breach of those regulatory obligations.

21.28 A solicitor acting with integrity would have taken steps to ensure that the Firm complied with its regulatory obligations. Accordingly, the Respondent acted in breach of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles.

21.29 Trust in the Respondent and in the provision of legal services was undermined by solicitors who caused or allowed their Firm to act in breach of their regulatory obligations. Accordingly, the Respondent breached Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles.

Dishonesty and Principle 4 of the 2019 Principles

21.30 The Respondent was an experienced solicitor and was the Firm's COLP and COFA. She had responsibility for the management of the Firm and for ensuring that it complied with its regulatory obligations. Those regulatory obligations were specifically drawn to the Respondent's attention by the Firm's insurance brokers on 30 September 2019.

21.31 Accordingly, the Respondent should have understood (and the Tribunal can and should infer that she did so understand) the nature of those obligations. Despite that, the Respondent caused or allowed the Firm to act in breach of those regulatory obligations.

21.32 Ordinary, decent people would consider this behaviour dishonest. Accordingly, the Respondent was dishonest and (to the extent that such conduct occurred on or after 25 November 2019) breached Principle 4 of the 2019 Principles.

The Respondent's Case

21.33 The Respondent denied allegation 1.2.

The Tribunal's Decision

21.34 As detailed at allegation 1.1 above, the Tribunal found that no merger had taken place and that the Firm was not insured under the policy of Firm 2 as asserted by the Respondent. Accordingly, the Firm did not have qualifying insurance and had entered the EIP as alleged. The Respondent failed to inform that Applicant that the Firm had entered the EIP as she was required to do.

21.35 The Tribunal found that the Respondent had taken on new clients during the Cessation Period. The Tribunal noted that the Respondent asserted that new work was not undertaken by the Firm, but was in fact undertaken by Firm 2. In his statement, Person 1 explained that whilst work was undertaken by employees of Firm 2, it was on a consultancy basis for the Firm. The work had not been transferred by the Firm to Firm 2, and bills for the work were in the name of the Firm. In addition, the client account statements of the Firm evidenced that the Firm was still receiving client monies after 30 December 2019, when as a result of its failure to obtain qualifying insurance, the Firm should have ceased trading. The Tribunal determined that the clients were therefore clients of the Firm, and that the Firm had taken on new clients when it was prohibited from doing so. Additionally, the Firm was presenting itself as continuing to trade to existing and potential clients in circumstances when it should have ceased trading.

21.36 The Tribunal determined that in holding the Firm out as trading when it was required to cease trading, and in taking on new clients when that was prohibited, the Respondent had caused and allowed the Firm to act in breach of its regulatory obligations. The Tribunal found that trust in the Respondent and in the provision of legal services was undermined when solicitors acted in breach of regulatory obligations that were designed to protect clients and client monies. Accordingly, the Tribunal found that the Respondent's conduct was in breach of Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles.

21.37 The Tribunal noted that from July 2019, Company 2 contacted the Respondent regarding the renewal of the Firm's insurance. In September 2019, Company 2 reminded the Respondent that the Firm's insurance needed to be resolved as a matter of urgency. On the final day of the Firm's existing policy, the Respondent was again contacted by Company 2 who confirmed that (i) as the Firm was not insured, it would enter the EIP on 1 October 2019; (ii) the Firm was required to inform the SRA that it had entered the EIP; and (iii) if the Firm failed to obtain insurance by 30 October 2019, it was required to wind down its practice under the Rules. By its communication of 30 September 2019, Company 2 expressly and specifically brought the Respondent's attention to her regulatory obligations. The Tribunal found that the Respondent knowingly acted (and caused and allowed the Firm to act) in breach of those regulatory obligations. The Tribunal found that a solicitor acting with integrity would have ensured that the Firm acted in accordance with its regulatory obligations. Members of the profession would not expect a solicitor to knowingly act in breach of their regulatory obligations. Accordingly, the Tribunal found that the Respondent's conduct lacked integrity in breach of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles.

Dishonesty/Principle 4

21.38 The Tribunal considered that as the COLP and COFA of the Firm, the Respondent ought to have been aware of the regulatory obligations and ensured compliance. In any event, the Respondent and the Firm's regulatory obligations had been expressly brought to the Respondent's attention by Company 2. Despite this, the Respondent allowed the Firm to act in breach of those obligations. She had taken on new clients at the Firm and was holding, receiving and paying out client monies when the Firm was not entitled to do so, and when she knew that the Firm was not so entitled to do. The Tribunal determined that ordinary and decent people would consider that it was dishonest for a solicitor to knowingly breach their obligations and duties, particularly when those obligations had been expressly brought to that solicitor's attention. Accordingly, the Tribunal found that the Respondent's conduct was dishonest as regards the 2011 Principles and was in breach of Principle 4 of the 2019 Principles.

22. **Allegation 1.3 – In a 'New Partner/Fee Earner Questionnaire" form submitted to Company 1 on or around 26 November 2019, she confirmed that she had not ever been subject to investigation by the Law Society in circumstances where that was not correct. She thereby breached any or all of Principles 2, 4 and 5 of the 2019 Principles.**

The Applicant's Case

22.1 On 26 November 2019, the Respondent completed a "New Partner/Fee Earner Questionnaire" form in respect of her ownership of Firm 2. It was returned to Company 1 on 28 November 2019. In signing the form, the Respondent declared that she:

- had made full enquiry of all staff and that the particulars and statements in the proposal were true and complete;
- had informed Company 1 of all facts which were likely to influence their assessment or acceptance of the proposal; and

- understood that if she was in any doubt about whether any fact may influence Company 1, that she should disclose it.

22.2 Question 5 of that form asked: "has the new fee earner ever… been subject to disciplinary procedures or investigation by the Law Society or by the OSS, SDT or Legal Services Ombudsman"? The answer was to be given by ticking one of two boxes, 'yes' and 'no'. The Respondent had ticked 'no'.

22.3 In fact, the FIO had written to the Respondent on or around 18 November 2019 in a letter which began "As you will be aware, I am currently investigating Wilson & Berry to establish whether there have been breaches of the SRA Handbook by you. I would like to give you the opportunity to meet with me to discuss matters further by way of a recorded regulatory interview". A handwritten note on that letter recorded that the letter was sent by email. The Applicant had a 'read receipt' confirming that the Respondent had read that email.

22.4 Ms Bruce submitted that on 18 November 2019, a Forensic Investigation Officer of the Applicant had written to the Respondent confirming that she was investigating the Respondent's conduct. The Respondent had received that letter. Despite that, only eight days later, in an application to Company 1 dated 26 November 2019, the Respondent answered "no" when asked if she was subject to investigation. In a declaration at the foot of the form the Respondent confirmed that this statement was true and complete; that she had informed Company 1 of all facts that were likely to influence their assessment or acceptance of the proposal; and that she understood that, if she was in any doubt about whether any fact may influence them, that she should disclose it.

22.5 A solicitor acting with integrity, it was submitted, would not have answered 'no' to that question. In those circumstances, they would have answered 'yes' and provided further details. Accordingly, the Respondent breached Principle 5 of the 2019 Principles.

22.6 Trust in the Respondent and in the provision of legal services was undermined by solicitors who make misleading statements in applications to insurers, and thus the Respondent's conduct was in breach of Principle 2 of the 2019 Principles.

Principle 4 of the 2019 Principles

22.7 In her application to Company 1 dated 26 November 2019, the Respondent answered 'no' when she knew that was not correct. The Tribunal could infer that she did so because she knew or believed that disclosing the fact that her conduct was being investigated by the SRA would make obtaining professional indemnity insurance more difficult or more expensive. Ordinary, decent people would consider this behaviour dishonest. Accordingly, the Respondent's conduct was in breach of Principle 4 of the 2019 Principles.

The Respondent's Case

22.8 The Respondent denied allegation 1.3.

The Tribunal's Decision

22.9 The Tribunal noted that the Respondent had been advised of the investigation into her conduct by way of a letter of 18 November 2019, which the Respondent received. On 26 November 2019, the Respondent, when completing the New Partner/Fee Earner Questionnaire regarding her ownership of Firm 2 answered 'no' when asked whether she was the subject of any investigation (amongst other things). The Respondent stated that the information provided in the questionnaire was true and complete.

22.10 The Tribunal did not accept that the Respondent was unaware of the investigation. The email sending the letter of 18 November 2019 had been confirmed as read. The Tribunal considered that it was inconceivable that having been told 8 days previously about an investigation into her conduct, the Respondent had forgotten about the investigation when completing the questionnaire. That such conduct failed to uphold public trust and lacked integrity in breach of Principles 2 and 5 of the 2019 Principles was plain. Members of the public and the profession did not expect solicitors to provide information that they knew to be inaccurate in a questionnaire, having confirmed that the information provided was true and complete.

Principle 4

22.11 The Tribunal determined that the Respondent knowingly and deliberately provided false information in the questionnaire. Ordinary and decent people would consider that it was dishonest so to do. Accordingly, the Tribunal found that the Respondent's conduct was in breach of Principle 4 as alleged.

22.12 Accordingly, the Tribunal found allegation 1.3 proved on the balance of probabilities, including that the Respondent's conduct was dishonest in breach of Principle 4.

23. **Allegation 1.4 – Between January 2018 and July 2020 she failed to: provide information and documents sought by the Solicitors Regulation Authority in notices dated 20 May 2019, 24 September 2019, 24 October 2019 and/or 3 July 2020 issued pursuant to s44B of the Solicitors Act 1974; respond to a mandatory questionnaire sent to the Firm by the SRA; co-operate in one or more investigations carried out by LeO. She thereby breached any or all of Principles 2 and 5 of the 2019 Principles and Paragraph 7.4(a) of the 2019 Code (to the extent that such conduct occurred on or after 25 November 2019) Principles 2, 6 and 7 of the 2011 Principles (to the extent that such conduct occurred before 25 November 2019).**

The Applicant's Case

23.1 Principle 7 of the 2011 Principles provided, that those regulated by the SRA must "comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner". Paragraph 7.4(a) of the 2019 Code provides that "You respond promptly to the SRA and … provide full and accurate explanations, information and documents in response to any request or requirement".

23.2 On numerous occasions, the Respondent has failed to do so.

Failure to provide information and documents during the SRA's investigation

Notice dated 20 May 2019

23.3 On 20 May 2019, the SRA served on the Firm a notice pursuant to s44B Solicitors Act 1974 ("the Act") requiring details of and relevant documents in connection with its financial position, client complaints, claims made, banking information, insurance proposal form and partner roles.

23.4 The notice required each partner of the Firm (i.e. the Respondent and Ms VS) to provide specified information referred to in the notice in the form of a signed witness statement. The notice required either a single witness statement signed by both individuals, or for each individual to provide their own signed statement. The information and documents were to be provided to the SRA by 3 June 2019.

23.5 Ms VS provided a response to that notice, in the form of a witness statement which only she had signed, on 4 June 2019. Her response indicated that she was not able to provide some of the information requested because she had only been at the Firm for a limited time and that all financial matters were dealt with by the Respondent.

23.6 The Respondent did not respond to that notice either by the stated deadline or at all.

Notice dated 24 September 2019

23.7 On 24 September 2019, the SRA served on the Respondent and the Firm a further notice pursuant to s44B of the Act.

23.8 The notice requested (amongst other matters) a copy of the Firm's insurance certificate for the practice year 2018-2019 and the professional indemnity insurance proposal forms for the practice years 2018-2019 and 2019-2020. The information and documents were to be provided to the SRA by 2 October 2019.

23.9 The Respondent did not respond to that notice either by the stated deadline or at all.

Notice dated 24 October 2019

23.10 On 24 October 2019, the SRA served on the Respondent and the Firm a further notice pursuant to s44B of the Act.

23.11 The notice repeated the SRA's request for the documents requested in the 24 September 2019 notice. It also requested a copy of the Firm's insurance certificate for the practice year 2019-2020. The documents were to be provided to the SRA by 1 November 2019. As noted in connection with Allegation 1.2 above, if the Firm had not obtained a qualifying policy of professional indemnity insurance by 30 October 2019, it would enter the Cessation Period.

23.12 The Respondent did not respond to that notice either by the stated deadline or at all.

Notice dated 3 July 2020

23.13 On 3 July 2020, the SRA served on the Respondent a further notice pursuant to s44B of the Act.

23.14 The notice referred to the Respondent's interview with the FIO on 10 December 2019, in which she asserted that she had received around 16 new instructions in the previous month. It asked the Respondent to provide specified information and documents in respect of those instructions.

23.15 The Respondent confirmed that she had received the Notice via email on 8 July 2020. However, she did not provide the information and documents specified in that notice either by the stated deadline or at all.

Failure to complete and return an SRA questionnaire

23.16 The Money Laundering, Terrorist Financing and Transfer of Funds (information on the Payer) Regulations 2017 (the Regulations) required the SRA, as an AML supervisor, to hold the following information about each of firms it regulates:

- whether the firm offers services subject to the Regulations and details of those services (if applicable);
- details of the firm's money laundering reporting officer and (where applicable) money laundering compliance officer; and
- details of the firm's beneficial owners, officers and managers.

23.17 In his witness statement dated 1 October 2020, Mr RG (an AML Regulatory Manager at the SRA) confirmed that "keeping an accurate register of firms working within scope of the Regulations is a cornerstone of [the SRA's] regulatory regime" as well as being a legal requirement for the SRA.

23.18 Emails sent to the Respondent on 14 December 2017 and 10 January 2018 provided that "new Government anti-money laundering requirements come into force in 2018. One of the new mandatory requirements is that you provide information and seek approval for everyone working at your firm who is in a significant position according to the Government's new regulations" and that "even if your firm does not undertake activities that fall under these new regulations, you must still complete part of the online form and declare that you are not doing this type of work".

23.19 The SRA sent an email, containing a link to the questionnaire, to the Respondent/Firm on 22 January 2018. It required firms to complete the questionnaire by close of play on Friday 2 February 2018.

23.20 Under the heading "Is this compulsory?" was printed the following:

> "Yes, you must respond. The requirement to complete the online form is a mandatory notice under Outcomes 10.8 and 10.9 of the SRA Code of Conduct 2011 and, for relevant persons, Regulation 66 of the money-laundering

regulations. If you are subject to those regulations, failure to comply with the notice is a criminal offence, as well as a breach of our rules".

23.21 On 26 January 2018, 31 January 2018 and 2 February 2018, the SRA sent emails to the Respondent/Firm reminding her that the questionnaire was to be completed by 2 February 2018 and repeating the wording quoted above.

23.22 On 8 February 2018, the SRA sent a further email to the Respondent/Firm, noting that she had not completed the questionnaire. It added that the online form would be kept open until 10am on Monday 12 February "because it is so important that all firms provide this information" and that the Respondent had until then to respond, again repeating the wording quoted above.

23.23 The Respondent did not complete the questionnaire by the revised date or at all. Nor was it completed by anyone else at the Firm.

23.24 Mr RG twice sought to speak with the Respondent by telephone regarding the questionnaire, on 18 and 20 July 2018. The Respondent did not take the SRA's call on either occasion and did not return those calls. Members of the Firm's staff confirmed that they would email and text the Respondent and provided an alternative email address for her.

23.25 On 25 June 2018, the SRA's Director of Legal and Enforcement emailed the Respondent explaining that the SRA's previous correspondence constituted a mandatory notice and confirmed that submission of the information sought in that correspondence was mandatory. It confirmed that failure to comply with the notice was a breach of the SRA's Rules and that, if the Respondent or the Firm was subject to the Regulations, failure to comply with the notice was also a criminal offence. It confirmed that if the completed form was not returned within 5 working days, the matter would be referred to the SRA's Investigation and Supervision Department to consider what enforcement action to take. The SRA did not receive any response to that email.

23.26 On 1 October 2018 the SRA sent a letter to the Respondent by recorded delivery enclosing a paper copy of the questionnaire for her to complete. That letter was signed for as delivered. It reiterated that the Respondent had failed to comply with the mandatory notices identified above and that her firm was one of 43 out of the 10,400 firms regulated by the SRA which had failed to comply.

23.27 It required completion of the form within the following 10 working days. It reiterated that failure to comply with the notice constituted by the letter would be a breach of the SRA's rules and that if the Respondent was subject to the Regulations failure to comply with the notice would also be a criminal offence. It confirmed that if the completed form was not so returned, the SRA would begin its process to take formal regulatory action, including an application to this Tribunal. The Respondent did not reply to that letter.

23.28 Mr RG understood from the Firm's website, and the SRA's own records, that during this period work was being carried out at the Firm which fell within the scope of the Regulations.

LEO complaints

Client A

23.29 On 28 August 2019, Mr JW (an investigator at LeO) wrote to the Respondent in connection with a complaint which had been made by Client A.

23.30 In that letter, Mr JW outlined details of the complaint which had been made and sought the Respondent's comments. He also asked the Respondent to provide specified documents by no later than 11 September 2019.

23.31 In an email dated 16 September 2019, Mr JW noted that he had not received a response to that letter and asked for a response by 20 September 2019.

23.32 In a letter dated 22 October 2019, Mr JW noted that he had still not received a response to his letter or his subsequent email. He noted the Respondent's failure to provide the documents requested was preventing LeO from processing the matter effectively. He reminded the Respondent of her obligation to deal with the Legal Ombudsman in an open, prompt and co-operative way (i.e. Principle 7 of the Principles) and noted that, if he did not receive the documents and information requested by 28 October 2019, he would make a referral to the SRA.

23.33 On 30 October 2019 Mr JW made a referral to the SRA. In his referral, Mr JW noted that he had received no response to his letter dated 22 October 2019.

Client B

23.34 On 5 December 2018, the Legal Ombudsman made a report to the SRA in respect of the Respondent's failure to engage in its investigation of two complaints which had been made to the Ombudsman by Client B, a former client of the Firm.

23.35 In his report, the investigator noted that he had he sought to speak with the Respondent about the complaint, but had been unable to do so. He confirmed that he had also sent emails to the Firm which had been "ignored".

23.36 The investigator also confirmed that he had made a formal request to the Firm for evidence on 15 November 2018, which the Firm was to provide by 26 November 2018, but that he had received no reply by that deadline. A further letter was sent on 28 November 2018, but no response had been received by the date of his report.

23.37 In February 2019, LeO spoke with the SRA in respect of the Respondent's failure to engage in Client B's complaints.

23.38 The investigator's case decision dated 19 December 2018, identified that, in respect of both complaints, the Firm had failed to provide any information or evidence despite repeated requests being made. It recommended that the Firm refund Client B the fees which she had paid (£2,700) together with a further sum of £300 reflecting the distress and inconvenience which she had suffered.

23.39 A letter from the LeO to the Respondent dated 16 January 2019, confirmed that the matter had been passed to an Ombudsman because the Respondent did not agree with the investigator's conclusions. The Ombudsman upheld the investigator's recommendation.

23.40 In a memo to its enforcement team dated 7 March 2019, the investigator noted that the Firm was due to comply with that decision by 8 February 2019 but had failed to do so.

23.41 In the meantime, the SRA had written to the Respondent on 9 January 2019 asking her to confirm when she had complied with the Legal Ombudsman's decision. The Respondent did not respond to that letter. The SRA chased the Respondent for a response to that letter on 15 and 25 February 2019, but received no response.

23.42 As at 22 August 2019, the Firm had not complied with the Legal Ombudsman's decision.

23.43 Ms Bruce submitted that the Respondent's actions amounted to a failure to act with integrity. At all material times, the Respondent was a 100% equity partner in the Firm and had responsibility for its management. She was also the Firm's COLP and COFA. She therefore had responsibility for ensuring that the Firm complied with its regulatory obligations, as well as complying with her own regulatory obligations. Despite that, the Respondent:

- failed to respond to the SRA's notice dated 20 May 2019 by the date specified in that notice or at all;
- failed to respond to the SRA's notice dated 24 September 2019 by the date specified in that notice or at all;
- failed to respond to the SRA's notice dated 24 October 2019 by the dated specified in that notice or at all;
- failed to respond to the SRA's notice dated 3 July 2020;
- failed to return the SRA's questionnaire on money laundering, despite repeated requests to do so;
- failed to provide information requested by the Legal Ombudsman in relation to its investigation of a complaint by Client A;
- failed to provide information requested by the Legal Ombudsman in relation to its investigation of a complaint made by Client B; and
- failed to comply with the ombudsman's decision made in relation to Client B's complaint.

23.44 A solicitor acting with integrity would have responded to requests for information and documents made by her regulator and ombudsman and would not have ignored such repeated requests. She would have taken steps to comply with the ombudsman's decision in relation to Client B's complaint. The Respondent failed to do so.

23.45 Accordingly, the Respondent acted in breach of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles.

23.46 Ms Bruce submitted that it was self-evident that a solicitor who failed to provide information requested by her regulator and ombudsman failed to deal with her regulator and ombudsman in an open, timely and co-operative manner. Accordingly, the Respondent acted in breach of Principle 7 of the 2011 Principles and Paragraph 7.4(a) of the 2019 Code.

23.47 Trust in the Respondent and in the provision of legal services was undermined by solicitors who failed to respond to requests for information and documents made by their regulator and ombudsmen and who fail to comply with an ombudsman's decision. Accordingly, the Respondent acted in breach of Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles.

The Respondent's Case

23.48 The Respondent denied allegation 1.4. The Respondent submitted that she had co-operated with all Third Party investigations, either by providing the information herself, or instructing a colleague or member of staff to do so.

The Tribunal's Decision

23.49 The Tribunal found that the Respondent had failed to respond to the Section 44B Notices dated 20 May 2019, 24 September 2019, 24 October 2019 and 3 July 2020 as alleged. The Tribunal did not accept that the Respondent had sent the information requested or instructed anyone else at the Firm to do so.

23.50 The Tribunal found that the Respondent had not completed and submitted the online SRA questionnaire as alleged, despite numerous requests for her to do so and reminders that the completion of the form was a regulatory requirement.

23.51 The Tribunal found that the Respondent had not co-operated with the LeO investigations regarding Client A or Client B. Further, it was noted that the Respondent had not complied with LeO's decision regarding Client B.

23.52 That such conduct was in breach of Principle 7 of the 2011 Principles and Rule 7.4(a) of the 2019 Code was plain. Further, the trust the public placed in the Respondent and in the provision of legal services was undermined where the Respondent failed to reply to questions posed by her regulator and failed to respond to questions from the Ombudsman. Further, trust in the Respondent was undermined when the Respondent did not comply with the outcome of a LeO investigation. The Tribunal thus found that the Respondent's conduct was in breach of the Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles as alleged.

23.53 The Tribunal considered that solicitors acting with integrity would respond to requests from their regulator and Ombudsman, and would comply with any decision made by the Ombudsman. In failing to do so, the Respondent's conduct lacked integrity in breach of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles.

Previous Disciplinary Matters

24. None.

Mitigation

25. None.

Sanction

26. The Tribunal had regard to the Guidance Note on Sanctions (8th Edition – December 2020). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

27. The Tribunal found that the Respondent was motivated by personal gain. She sought to keep the Firm trading in circumstances where she knew that the Firm was not entitled to trade for her own personal benefit. The Tribunal considered that her actions were planned. She had knowingly acted in breach of her duties and obligations. The Respondent was directly responsible and wholly culpable for her misconduct. The Respondent was an experienced solicitor, who understood the importance of compliance with her legal and regulatory obligations. She had sought to mislead the regulator by providing false information during the course of the investigation into her conduct.

28. The Respondent had caused harm to her clients and to the reputation of the profession as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

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

29. The Respondent's conduct was aggravated by her proven dishonesty, which she knew was in material breach of her obligation to protect the public and maintain public confidence in the reputation of the profession. Her misconduct was deliberate, calculated and repeated. The Respondent and made numerous false statements during her interviews, and had failed to respond to numerous requests from the regulator and the ombudsman for information. The Respondent had continued to accept new instructions when she knew that the Firm was not entitled to do so, and had continued trading when she knew that the failure to obtain insurance meant that she was under an obligation to wind the Firm up. She had sought to conceal her wrongdoing by the making of false statements.

30. In mitigation, the Tribunal noted that the Respondent had no previous disciplinary findings at the Tribunal.

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

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

32. The Tribunal determined that the seriousness of the Respondent's misconduct was at the highest level such that the protection of the public and the reputation of the profession required the Respondent to be removed from the Roll. The Tribunal did not find any circumstances (and indeed none were submitted) that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

33. Ms Bruce applied for costs in the sum of £55,043.40, which comprised Capsticks fixed fee in the sum of £18,500 + VAT, and investigation costs of £32,843.40. Ms Bruce submitted that the fixed fee was reasonable with a nominal hourly rate less than £100 per hour. Even in circumstances where the Tribunal deducted time for the shortness of the hearing and the non-attendance of instructing solicitors at the hearing, the hourly rate would still be less than £100 per hour, which, it was submitted, was inexpensive.

34. As regards the investigations costs, the investigation into the Respondent's conduct was detailed and required the preparation of three separate forensic investigation reports.

35. The Tribunal found that the fixed fee charged was reasonable and proportionate in all the circumstances. Further, the investigation costs had been necessarily incurred. The Tribunal noted that the Respondent had not provided any means information in accordance with the Standard Directions or at all.

36. The Tribunal determined that the costs were reasonable, appropriate and proportionate in the circumstances. It was aware of the Applicant's duties as a public body in the recovery of costs.

37. Accordingly, the Tribunal Ordered that the Respondent pay costs in the amount claimed.

Statement of Full Order

38. The Tribunal Ordered that the Respondent, RUPINDER KAINTH, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £55,043.40.

Dated this 6th day of July 2021
On behalf of the Tribunal

D Green
Chair