# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12173-2021

**BETWEEN:**

SOLICITORS REGULATION AUTHORITY LIMITED Applicant

and

MOHAMMED ARSHAD AMIN Respondent

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Before:

Mr J P Davies (in the chair)
Mr B Forde
Dr P Iyer

Date of Hearing:
13-14 July 2021

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**Appearances**

Alastair Willcox of Solicitors Regulation Authority Limited, The Cube, 199 Wharfside Street, Birmingham, B1 1RN for the Applicant

The Respondent did not appear and was not represented.

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# JUDGMENT

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**Allegations**

1. The Allegations against the Respondent, formerly the sole director at Octagon Solicitors Limited ("the firm"), were that he:

1.1 Allowed a client account shortage in the sum of £27,551.25 to exist as at 31 July 2019 in breach of Rule 20.6 of the SRA Accounts Rules 2011 and in breach of all or alternatively any of Principles 2, 4, 6 and 10 of the SRA Principles 2011.

1.2 Caused or permitted client monies in the sum of £16,000 to be improperly withdrawn from the firm's client account in breach of Rule 20.1(a) of the SRA Accounts Rules 2011 and in breach of all or alternatively any of Principles 2, 4, 6 and 10 of the SRA Principles 2011.

1.3 Failed to reconcile the firm's accounts every five weeks in breach of Rule 29.12 of the SRA Accounts Rules 2011 and in breach of all or alternatively any of Principles 2 and 6 of the SRA Principles 2011 and, to the extent that the alleged misconduct occurred on or after 25 November 2019, breached Rule 8.3 of the SRA Accounts Rules 2019 and all or alternatively any of Principles 2 and 5 of the SRA Principles 2019.

1.4 Failed to co-operate with the SRA's investigation into the firm and into his practice at the firm in breach of all or alternatively any of Principles 2, 4 and 5 of the SRA Principles 2019 and in breach of Rules 7.3 and 7.4(a) of the SRA Code of Conduct for Solicitors 2019.

1.5 Failed to perform an orderly closure of the firm in breach of all or alternatively any of Principles 2 and 5 of the SRA Principles 2019 and in breach of Rule 7.3 of the SRA Code of Conduct for Solicitors 2019.

1.6 Failed to ensure that the firm: provided a proper standard of service to and acted in the best interests of client Ms A in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011 and, to the extent that the alleged misconduct conduct occurred on or after 25 November 2019, breached all or alternatively any of Principles 2, 5 and 7 of the SRA Principles 2019 and Rules 3.2 and 3.4 of the SRA Code of Conduct for Solicitors 2019.

1.7 Failed to ensure that the firm: provided a proper standard of service to and acted in the best interests of client Ms W in breach of all or alternatively any of Principles 2, 4, 5 and 6 of the SRA Principles 2011 and, to the extent that the alleged misconduct occurred on or after 25 November 2019, breached all or alternatively any of Principles 2, 5 and 7 of the SRA Principles 2019 and Rules 3.2 and 3.4 of the SRA Code of Conduct for Solicitors 2019.

2. In addition, Allegations 1.1, 1.2 and 1.4 were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the Allegations.

**Documents**

3. The Tribunal considered all of the documents in the case which were contained in an electronic hearing bundle.

**Preliminary Matters**

Allegation 1.8

4. The Rule 12 statement initially included a further allegation, Allegation 1.8. At a previous Case Management Hearing (CMH) the Applicant had applied to withdraw that Allegation and the Tribunal had granted leave for it so to do. The Applicant had not applied to redact the Rule 12 statement in light of this withdrawal and the chairman of this division of the Tribunal had also sat on the division at that CMH. The Tribunal was satisfied that there was no need for it to recuse itself as the situation was analogous to one in which the Tribunal is told on the morning of a hearing that the Applicant was not proceeding with certain allegations. While it would have been preferable for the Rule 12 statement to have been redacted, this was an expert Tribunal that was perfectly capable of holding a fair hearing in the circumstances.

Application to proceed in absence.

5. The Respondent did not attend the hearing and was not represented. Mr Willcox applied to proceed in the Respondent's absence.

6. Mr Willcox referred the Tribunal to an email sent to the Applicant by the Respondent dated 25 June 2021 in which he had stated the following:

> "I write further to previous correspondence, and in particular your last email to me. I am unable to attend the hearing in July. My elderly mother [reference to medical condition] and requires full time care and I am unable to be away for that length of time. I entirely accept that there have been breaches of the accounts rules at my firm. Whilst I am not content with the actions of my former book keeper, I accept without question that the accounts and all matters relating to the practice were my responsibility alone. I deeply regret the problems that arose and offer my sincere apologies to the profession and to my former clients."

7. Mr Willcox took the Tribunal through the history of the matter and the correspondence between the Applicant and the Respondent. Mr Willcox submitted that the Respondent had notice of the hearing, had received the papers and had voluntarily chosen to absent himself. He invited the Tribunal to proceed in absence in those circumstances.

The Tribunal's Decision

8. The Tribunal considered the representations made by the Applicant. The Respondent was aware of the date of the hearing as he had been served with the proceedings and had replied to correspondence referencing the hearing date. The Tribunal had sent the Respondent the Zoom joining details for the substantive hearing by email on 2 July 2021. The Tribunal was satisfied that Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 (SDPR) was therefore engaged. The Tribunal had regard to

the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

> "In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:
>
> (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
> (ii) …;
> (iii) the likely length of such an adjournment;
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;
> (v) …;
> (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
> (vii) …;
> (viii) …;
> (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
> (x) the effect of delay on the memories of witnesses;
> (xi) …;"

9. In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted 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 that 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".

10. 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 interests of the public also taken into account".

11. The Respondent had provided only the briefest of reasons for not attending. He had not provided any medical evidence in relation to his mother's ill-health and he had not supplied any details or evidence of the care that he was providing to her. The onus was on the Respondent to do so.

12. The Respondent was facing serious allegations and it was in the public interest that these were determined as soon as possible. In the absence of any good reason why the Respondent had not attended, the Tribunal was satisfied that it was in the interests of justice for the matter to proceed in his absence and it duly granted the application.

**Factual Background**

13. The Respondent was admitted to the Roll of Solicitors on 3 November 2003. At the time of the hearing he did not hold a current practising certificate, this having been suspended on 30 September 2020 when an SRA Adjudication Panel resolved to intervene into his practice as a solicitor and into the firm. At the material time the Respondent was the sole director of the firm, the head office address of which was 162 Cannon Street Road, London, E1 2LH. The firm also had a branch office address at 61 Whalley Range, Blackburn, BB1 6EA. It also used the trading name of Central Law Solicitors. The Respondent was the firm's Compliance Officer for Legal Practice ("the COLP"), the firm's Compliance Officer for Finance and Administration ("the COFA"), and the firm's Money Laundering Reporting Officer ("the MLRO").

14. On 31 January 2020, an accountant's report had been prepared by the firm's accountants, Riaz Ahmad & Co Limited. The Forensic Investigation Officer ("the FI Officer") who subsequently commenced an inspection into the firm, noted that the report identified a number of matters including;

- A shortfall on client account of £27,551.25 as at 31 July 2019;
- No evidence of any attempt to remedy the shortfall;
- Numerous client debit balances
- A sum of £16,000 transferred out of the client account to the firm's office account without supporting documentation;
- Client account reconciliations that had not been carried out on a timely basis

15. The FI Officer commenced his inspection on 22 June 2020 and prepared a Forensic Investigation Report dated 12 August 2020.

<u>Allegation 1.1</u>

16. The FI Officer reported that as at 31 July 2019, a shortage existed on the client account in the sum of £27,551.25. The accountant's report dated 31 January 2020 had reported that there was a "significant shortfall". As a result of the lack of accounting information available, the FI Officer was unable to establish whether the firm held sufficient funds in its client bank account to meet its liabilities as at the extraction date of 30 April 2020.

17. The SRA wrote to the Respondent on 7 September 2020 and in relation to the shortage on the client account, the Respondent replied "the shortfall is an accounting issue. I have not personally been enriched by this in any way." The FI Officer asked the Respondent to provide information to allow him to investigate the shortage further, but none was forthcoming.

Allegation 1.2

18. The accountant's report referred to "a sum of £16,000 transferred out of client account without any documentation", which Mr Ahmad had referred to in an email to the Respondent dated 29 January 2020. The Respondent had replied the next day and stated "It has only come to our attention in regards to this amount and an investigation has been opened and will be addressed as a priority to rectify the debit amount in the client account as soon as possible." In his response to the SRA report recommending an intervention, the Respondent provided the following explanation in relation to the £16,000:

> "When I supply the accounts to you, you will see that the £16,000 you refer to was paid to HMRC for VAT. It has not come to me at all."

The Respondent did not provide further documents in relation to this.

Allegation 1.3

19. The accountant's report raised the issue of overdue reconciliations. In his email to them dated 30 January 2020 the Respondent had stated "there has been a backlog in getting the reconciliation carried out but we intend to complete the reconciliation all up to date by end of March 2020."

Allegation 1.4

20. The FI Officer noted that the firm had failed to produce any of the documentation and information requested in the notification letter sent to the Respondent on 12 June 2020. The firm had also failed to produce any of the documentation and information set out in the Notice under section 44B of the Solicitors Act 1974 dated 14 July 2020 ("the Production Notice").

21. On 12 June 2020 the FI Officer had sent the Respondent a letter setting out that a decision had been taken to investigate the firm and what the Respondent needed to do in order to prepare for the inspection. There had then followed a number of exchanges between him and the Respondent between 19 June 2020 - 20 July 2020. At the date of his report the Respondent had failed to produce any of the information set out in the notification letter dated 12 June 2020.

22. The FI Officer had also served the Respondent with a Production Notice pursuant to section 44B of the Solicitors Act 1974. The Production Notice required production of the documents to the FI Officer at the Cannon Street Road office on 22 July at 11:00. The FI Officer received no correspondence from the Respondent between the date of the Notice on 14 July 2020 and the due date for compliance on 22 July 2020. On that date the FI Officer attended the address but reported that "the shutters were down at the address and no one from the firm attended the address between 10.50am and 11.20am. Occupants of neighbouring premises advised Mr Alberino that the firm had relocated to Bethnal Green, London, in around February 2020."

23. On 24 July 2020 the FI Officer extended the deadline for compliance with the Production Notice to 29 July 2020. This was followed by further exchanges between the FI Officer and the Respondent between 23 July 2020-12 August 2020. The Respondent had still failed to produce the information set out in the Production Notice dated 14 July 2020 despite the extended deadline.

Allegation 1.5

24. On 30 July 2020, the Respondent e-mailed the FI Officer to say that:

- The firm was no longer practising;
- He did not have any staff or clients;
- He was planning to leave the profession and had no plans to return;
- His professional indemnity insurance was in run-off;
- All of his offices had been formally closed and the keys returned to the landlords;
- He was attending to all formal matters regarding the orderly closure of the practice;
- He would be sending through the final reconciliation accounts shortly.

25. As at the date of the FI Report, 12 August 2020, the SRA had not received a Closure Notification Form from the Respondent.

26. On 22 July 2020 and 23 July 2020, three different Forensic Investigation Officers from the SRA attended, on separate occasions, either at the firm's head office address or at the branch office address in order to clarify the position concerning the closure of the firm. On each occasion, the FI Officer found that the shutters were down and that there was no one present at the premises.

27. As at 7 September 2020, the date of the Investigation Officer's report recommending intervention, the Respondent had still not submitted a Closure Notification Form. On 15 September 2020, the SRA received a report from Travelers Insurance Company as follows:

> "Dear Sirs The above insured has not paid their run off premium that is owed. Amount due: £23,167.20. Mr Amin informed his broker that he was liquidating the firm and would "take his chances" regarding not paying run-off premium."

Allegation 1.6

28. Ms A instructed the firm in April 2019 to challenge the enforceability of her debts with creditors. The firm had accepted the instructions and advised her that her claim had merit. In its Client Care Letter dated 12 April 2019 the firm informed Ms A that its fees for dealing with her matter would be £2,640 which the firm would collect by way of a standing order "in equal monthly sums" over a 12 month period. 63. The total amount Ms A paid to the firm was £1,760. She stopped making payments to the firm in December 2019 when she was advised to stop, pending the outcome of her complaint. In her report to the SRA dated 16 December 2019, Ms A had stated:

> "I have never received any communications from them about the case, apart from one acknowledgment of payment in July 2019. Despite them saying they will update me once a month. I have no information at all about my case, how

> it is progressing, any reports on what has happened or not happened. I have no contact to talk to as they have never provided me with a representative. I have therefore zero proof of any work being carried out on my behalf."

29. In an e-mail to the SRA dated 23 September 2020, Ms A stated that the only reply she had received from the firm was to her formal complaint letter. Ms A stated that she was advised by a debt adviser that her claim had no merit and that this should have been obvious to the firm at the outset.

30. Ms A filed a further report with the SRA on 2 September 2020. In that report she explained that, on 7 August 2020, she received an e-mail from the firm in which it advised her that it had closed. The e-mail she received from the firm referred to work it had conducted on her behalf. However, Ms A stated in her report to the SRA:

> "They have ignored my attempts at contacting them (via 3 email addresses and telephone) about what happens to my case, such as the details of the SRA agent handling the closure or what happens with my file and the fact that they have taken my fee but not completed the work ... the email seems to insinuate that they think they have completed what they set out to do ... they have not completed what they said I would get for my fee."

Allegation 1.7

31. Ms W instructed the firm in May 2019 to challenge the enforceability of two debts. The firm advised her that the debt was not enforceable and that it could deal with the matter for her. Ms W entered into an arrangement whereby she paid the firm £120 per month over a 12- month period for its costs. Ms W told the SRA that she received very little communication from the firm throughout the 12-month period. She also received an e-mail from the firm on 7 August 2020 to advise her that it had closed. On 2 September 2020, Ms W had received a letter from the bank advising her that it had not received any payments from her for 12 months. The letter also stated that the bank had received no offers or correspondence from those she had instructed. Ms W reported to the SRA that she was concerned that the firm had not undertaken any work on her behalf.

**Findings of Fact and Law**

32. The Applicant was required by Rule 5 of The SDPR to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

33. **Allegations 1.1-1.3**

Applicant's Submissions

33.1 In respect of Allegations 1.1-1.3, Mr Willcox referred the Tribunal to the FI Report, the Intervention Report, the qualified accountant's report and the witness statement of

Mr Ahmad. Mr Willcox submitted that the material contained in these documents demonstrated that the misconduct alleged in respect of each Allegation was proved on the balance of probabilities.

The Tribunal's Findings

*General*

33.2 The Applicant had served two notices pursuant to the Civil Evidence Act 1968 ("CEA Notices") on the Respondent, both dated 24 May 2021. The first CEA Notice related to the exhibits to the Rule 12 statement as well as to the witness statements and exhibits of Mr Ahmad, Ms A and Ms W. The second CEA Notice related to the Rule 12 statement and the documents attached to it. Under Rule 28(6) of the SDPR 2019, the Respondent had 7 days to file any objection to the documents by way of a counter-notice. The Respondent had not served any such counter notice in respect of either of the CEA Notices. The Respondent had therefore not challenged the evidence of any of the witnesses or any of the documents or exhibits before the Tribunal. The Tribunal was therefore entitled to attach full weight to this evidence.

33.3 The Respondent had also not filed an Answer to the Allegations despite numerous directions issued by the Tribunal that he should do so. Following persistent breaches of those directions, the Respondent had been made the subject of an "Unless Order" the effect of which being that he could not serve an Answer without leave of the Tribunal. The Respondent had made no application for leave to serve such a document. He had also not sought to file any witness statement or serve any documentary evidence. The Respondent's only response to the Allegations was contained in the email to the Applicant, the relevant part of which is set out under the preliminary issue of the decision to proceed in absence.

33.4 Rule 33 of the SDPR states as follows:

> "Adverse inferences
> 33. Where a Respondent fails to— (a) send or serve an Answer in accordance with a direction under rule 20(2)(b); or (b) give evidence at a substantive hearing or submit themselves to cross-examination;
> and regardless of the service by the Respondent of a witness statement in the proceedings, the Tribunal is entitled to take into account the position that the Respondent has chosen to adopt and to draw such adverse inferences from the Respondent's failure as the Tribunal considers appropriate."

33.5 The Tribunal was therefore entitled to draw such an inference from the Respondent's failure to properly respond to the Allegations.

33.6 The Tribunal had these matters in mind when considering each of the Allegations facing the Respondent and they are set out here so as to avoid repetition throughout the remainder of this Judgment.

*Allegation 1.1*

33.7 The Tribunal considered the evidence of the FI Report which followed on from the accountant's report prepared by Mr Ahmad. In his witness statement Mr Ahmad stated the following:

> "7. My report confirmed that, for the period 1 August 2018 to 31 July 2019, I identified a shortfall of £27,551.25 as of 31 July 2019. I can confirm that there were a number of client debit balances and no evidence to confirm whether the shortfall had been remedied."

33.8 The Respondent had accepted that there were breaches of the SRA Accounts Rules in his email to the Applicant.

33.9 The Tribunal was satisfied on the balance of probabilities that the Respondent had allowed a client shortage of £27,551.25 to exist as at 31 July 2019 and as such had breached Rule 20.6 of the SRA Accounts Rules.

33.10 *Principle 2*

33.10.1 In all instances where the Tribunal was considering whether the Respondent had lacked integrity, the Tribunal applied the test set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".

33.10.2 Wingate and Evans and Malins had continued a line of authorities that included SRA v Chan [2015] EWHC 2659, Scott v SRA [2016] EWHC 1256 (Admin), Newell-Austin v SRA [2017] EWHC 411 (Admin) and Williams v SRA [2017] EWHC 1478 (Admin).

33.10.3 The client account shortage had persisted for a considerable period of time extending over one year, it had related to several client balances and the shortage as at 31 July 2019 was for a significant sum of money. The Tribunal was satisfied on the balance of probabilities that a solicitor with integrity would not allow such a shortage to occur on the client account. The Respondent's attempt to blame the bookkeeper was not supported by any evidence but even if there was some truth to that criticism it was, as the Respondent himself had acknowledged in his email, his responsibility to ensure that the accounts, and the client account in particular, were kept in good order.

33.10.4 The matter was even more serious given that the Respondent had special responsibilities as the COFA to ensure that the finances of the firm were kept in good order. He had entirely failed in those duties and the Tribunal found the breach of Principle 2 proved on the balance of probabilities.

33.11 *Principles 4 and 10*

33.11.1 It followed as a matter of logic from the Tribunal's findings as set out above that it could not possibly be in the best interests of clients for the client account to be overdrawn as this was money that belonged to them, not the firm. The existence of a shortfall, by definition, meant that client money and assets had not been protected. The Tribunal found the breach of Principle 4 and Principle 10 proved on the balance of probabilities.

33.12 *Principle 6*

33.12.1 It again followed from the Tribunal's findings that the trust the public placed in the Respondent and in the provision of legal services could not be maintained in circumstances where the client account was in debit. A solicitor's stewardship of client funds was fundamental to that trust being preserved. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

*Allegation 1.2*

33.13 The Tribunal again considered the evidence of the reports into the firm's finances and the evidence of Mr Ahmad. In his witness statement he had stated as follows:

> "8. I can confirm that, for the period 01 August 2018 to 31 July 2019, I identified that monies in the sum of £16,000.00 had been transferred from the client account to the office account when there was no supporting evidence to explain the reason for the transfer."

33.14 The Tribunal noted that the Respondent had told the SRA that these funds had been used in order to pay a VAT bill owing to HMRC. The Respondent had been unable to explain how the use of client funds to settle a tax liability owed by the firm could be in compliance with the SRA Accounts Rules. The reason for this was that even if the explanation about the tax bill was correct, that in itself was an admission the monies had been improperly withdrawn. There was no evidence of any bill being raised on a file such that would justify and permit the transfer of these funds into the office account. There was no authority from any client that would have permitted this transfer to take place. In those circumstances the transfer was improper regardless of which overhead may have subsequently been paid using those funds. The Tribunal was satisfied on the balance of probabilities the Respondent had caused and permitted the client monies in the sum of £16,000 to be improperly withdrawn and it found the breach of Rule 20.1(a) of the SRA Accounts Rules 2011 proved.

33.15 *Principle 2*

33.15.1 The Tribunal found that withdrawing client monies from the client account improperly was an obvious example of a solicitor acting without integrity. In this case a significant sum of money had been withdrawn and transferred to office account, according to the Respondent with the clear intention using that client money to settle a debt owed by the firm. The Tribunal had no difficulty in concluding, on the balance of probabilities, that the Respondent had lacked integrity.

33.16 *Principles 4, 6 and 10*

33.16.1 The Tribunal found the breach of each of these Principles proved on the balance of probabilities on the same basis as it had done so in relation to Allegation 1.1.

*Allegation 1.3*

33.17 In his witness statement Mr Ahmad had stated as follows:

> "9. I identified that, for the period 1 August 2018 to 31 July 2019, the client account reconciliations had not been carried out in a timely manner and were up to seven months late. For example, I only received the reconciliation for 31 July 2019 on 29 January 2020, two days before the reporting deadline of 31 January 2020."

33.18 The Tribunal was satisfied on the balance of probabilities, based on Mr Ahmad's witness statement and the FI report the Respondent had failed to reconcile the firm's accounts every five weeks and as such he had breached Rule 29.12 of the SRA Accounts Rules 2011 and Rule 8.3 of the SRA Accounts Rules 2019.

33.19 *Principle 2 (2011 Principles) and Principle 5 (2019 Principles)*

33.19.1 The Tribunal noted that each of these Principles dealt with the question of integrity. The requirement to reconcile the firm's accounts every five weeks was in place precisely to enable somebody in the Respondent's position to quickly identify any difficulties including any shortages in the firm's accounts. The Respondent's failure to carry out these reconciliations had continued over a significant period of time. The reconciliations had not been delayed by a matter of a few days but had simply not been done for several months. The consequence of this was that it was impossible to be certain that the firm could meet its liabilities to its clients at any given time. The Tribunal was satisfied on the balance of probabilities that this represented a lack of integrity on the part of the Respondent and it found the breaches of Principle 2 and Principle 5 proved.

33.20 *Principle 6 (2011 Principles) and Principle 2 (2019 Principles)*

33.20.1 The Tribunal noted that each of these Principles dealt with the question of the trust and confidence that the public would place in the Respondent and the

provision of legal services. It followed from the Tribunal's findings set out above that a persistent failure to reconcile the firm's accounts would diminish that trust and confidence and the Tribunal therefore found the breaches of Principle 6 and Principle 2 proved.

34. **Allegation 1.4**

Applicant's Submissions

34.1 Mr Willcox took the Tribunal to a number of examples whereby the Respondent had not provided documents to the SRA despite promises to do so. He invited the Tribunal to draw the inference that the reason the documents were never provided was because the Respondent never had the intention to do so. Mr Willcox noted that the Respondent had not provided any evidence of ill-health and submitted that he had repeatedly said one thing and done another.

34.2 Mr Willcox relied on the intervention and FI Reports in support of his case in respect of this Allegation.

The Tribunal's Findings

34.3 The Tribunal noted that the intervention report and FI Report recorded that the Respondent had been sent a written request for documents on 12 June 2020. On 19 June 2020 the Respondent had acknowledged the email and made reference to ill-health. He had stated that he would revert when he was well enough. There had been no medical evidence provided of ill-health and in any event the Respondent had not subsequently provided the documentation requested by the SRA.

34.4 The Respondent had also not attended the interview that was arranged for him with the SRA on 22 June 2020 or on the three subsequent dates arranged for him (6 July, 13 July, 17 July).

34.5 On 6 July 2020 the Respondent had asked for a further 7 days to produce the documents. He was given until 13 July 2020. On 13 July the Respondent had again made reference to his health but, again, had not provided medical evidence. The following day he had acknowledged receipt of the Production Notice. On 23 July 2020, a day after the documents had been due under the Production Notice, the Respondent had again raised medical issues, again without evidence, and had stated "I absolutely have no intention of interfering with your investigation and will do all I can to help". The SRA granted a further extension until 29 July 2020. On 30 July 2020 the Respondent had provided a very short email, referred to above under 'Factual Background' relating to Allegation 1.5. In that email he had stated that he would not be disclosing his medical records, which had not been requested anyway. A further request for documents was sent on 3 August 2020 and the FI Officer received no response.

34.6 The Tribunal found that the evidence clearly showed a pattern of non-cooperation. The SRA had emailed the Respondent, attempted to meet him, tried to speak to him by telephone and served Production Notices on him in order to obtain documents that should have been easily at hand. These efforts had all been in vain. The Tribunal again

noted the context of these failures took place was the Respondent's role as COFA and COLP.

34.7 The Tribunal was satisfied on the balance of probabilities that the Respondent had failed to co-operate with the SRA's investigation. The factual basis of Allegations 1.4 as well as the breaches of Rules 7.3 and 7.4(a) were proved on the balance of probabilities.

34.8 *Principle 5*

34.8.1 The Tribunal noted that the failure to cooperate with the SRA occurred on several occasions and persisted over a period of time. The documents that were repeatedly promised were never produced to the SRA. The Respondent's assertion that he had no intention of frustrating the investigation was not borne out by subsequent events.

34.8.2 The Tribunal found that the failure to comply with the production notices was in itself an example of a lack of integrity. The breach was further aggravated by the Respondent's status as COLP and COFA - as the title suggested the Respondent was responsible for compliance. The Tribunal found the breach of Principle 5 proved on the balance of probabilities.

34.9 *Principle 2*

34.9.1 The Tribunal found that for public trust and confidence to be maintained, the public would expect regulated individuals to comply with their regulator. The evidence in this case demonstrated a litany of examples where the Respondent had failed to do so. The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

34.10 *Principle 4*

34.10.1 The test for considering the question of honesty, and whether the Respondent had acted dishonestly, was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ….. 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 knowledgeable 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."

34.10.2 The Tribunal applied the test in Ivey and in doing so, when considering the issue of honesty adopted the following approach:

- Firstly 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.

- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

34.10.3 The Tribunal considered the Respondent's state of knowledge at the time of the investigation. The Respondent had given a series of excuses, ranging from his own ill health, and that of his family, to a suitcase being locked in a safe in Pakistan containing all the client files. The Respondent had provided no evidence in support of any of these explanations for his failure to produce the documents, which he was required to do. This was not a case whereby the Respondent had simply buried his head in the sand and ignored the requests. He had replied to emails and was therefore fully aware of what it was that the SRA required him to produce. The Respondent was also aware that he had given assurances and made promises to produce the documents by certain dates, which had been missed. The Tribunal found the combination of the repeated excuses, the obfuscation and the failure to produce any material drove it to the conclusion on the balance of probabilities that in reality there was no intention on the part of the Respondent to provide the documents that he was required to produce. The Tribunal noted that these documents would have revealed the breaches of the SRA accounts rules which formed the basis of allegations 1.1 to 1.3.

34.10.4 The Tribunal was satisfied on the balance of probabilities that deliberate failure to cooperate with a regulator on the part of a professional person would be considered dishonest by the standards of ordinary decent people. The Tribunal was therefore satisfied on the balance of probabilities that the Respondent had acted without honesty answered the breach of Principle 4.

35. **Allegation 1.5**

Applicant's Submissions

35.1 Mr Willcox relied on the evidence referred to above, including the correspondence with the Respondent's insurers and the failure to submit a Closure Notification Form in support of his case in respect of this Allegation.

The Tribunal's Findings

35.2 The Tribunal noted that the Respondent had emailed the SRA on 30 July 2020 to advise that the firm was no longer practising. The email implied that the firm had already closed and it purported to give assurances as to the Respondent's professional indemnity insurance and the final reconciliation accounts. In reality, neither of those matters has been attended to and no Closure Notification Form had been provided. The

email of 30 July 2020 was not an acceptable substitute for such a form. The Tribunal was particularly troubled by the lack of professional indemnity insurance run off cover and by the Respondent's attitude when he told his broker that he would take his chances in that regard. The Tribunal was satisfied on the balance of probabilities that the Respondent had failed to perform an orderly closure of the firm and therefore found the factual basis of Allegation 1.5 together with the breach of Rule 7.3 proved.

35.3 *Principle 2*

35.3.1 The Tribunal was entirely satisfied on the balance of probabilities that the public trust in the profession would be undermined in circumstances where a solicitor fails to perform an orderly closure of their firm, particularly to the extent of failing to arrange run-off insurance cover. The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

35.4 *Principle 5*

35.4.1 The Tribunal again reminded itself of the Respondent's role as COLP and COFA of the firm. Even if he did not have those roles however, the Respondent had significant responsibilities when it came to winding the firm down and closing it in an appropriate and orderly manner. By failing to discharge those responsibilities the Respondent had put clients at risk and this was a clear lack of integrity on his part. The Tribunal found the breach of Principle 5 proved on the balance of probabilities.

36. **Allegation 1.6**

Applicant's Submissions

36.1 Mr Willcox relied on the evidence of Ms A in support of this Allegation.

The Tribunal's Findings

36.2 The Tribunal referred to the witness statement of Ms A, which contained the following relevant matters:

> "6. On 12 April 2019, I received a client care letter from Octagon. Octagon accepted my instructions and advised me that my claim had merit. The letter stated that: a. The firm would scrutinise each and every demand to establish whether the organisation making the claim against me was legally entitled to do so, whether any demand was valid and could be legally enforced, and also whether the value of their claim could be proven; b. The firm would provide detailed advice once they had received all relevant evidence, documents or files from the debt companies; c. The firm would keep me updated on progress at least once a month from commencement and would let me know about any important developments as and when they occurred."

36.3 This client care letter had been exhibited to the witness statement. After referring to email exchanges in January 2020 and April 2020, Ms A stated the following:

> "15. I did not hear anything further until 7 August 2020, when I received an email from Octagon. The email said that they had sought to engage with my creditors and requested verification of the alleged liability and supporting documents but that none had been provided. The email stated that my creditors' inaction was "highly indicative of the lack of proof altogether of their demand" and that the situation limited the further steps I could take without "risking unnecessary adverse costs." The email also stated that Octagon was "closing for various reasons associated with the pandemic," that they were therefore unable to assist me further and were closing my file of papers. Finally, in respect of my debts, they suggested that I "simply let matters rest" until I get approached by any creditors in the future. Octagon had never warned me of this situation when I first instructed them. They always stated that they would get my debts written off.
>
> 16. I was extremely surprised and upset to read that my debts could not be challenged, and that Octagon were now closing down and could no longer assist me."

36.4 Ms A went on to describe the personal and financial impact that had resulted from the way in which her case had been handled.

36.5 As noted above, this witness statement had not been challenged by the Respondent and the Tribunal accepted its contents. It was clear from reading the witness statement on the exhibit that the Respondent had promised a proactive approach to assisting Ms A. It was equally clear that the Respondent had not delivered on those promises despite receiving fees for the work that he had assured her would be done. The Tribunal was satisfied on the balance of probabilities that the Respondent had failed to ensure that the firm provided a proper standard of service and had failed to act Ms A's best interests. The Tribunal found the factual basis of allegation 1.6 together with the breach of rules 3.2 and 3.4, Principles 4 and 5 of the 2011 Code and Principle 7 of the 2019 Code proved.

36.6 *Principle 2 (2019 Code) and Principle 6 (2011 Code)*

36.6.1 The Tribunal was satisfied that a failure to provide a proper standard of service and therefore a failure to act in the best interests of a client undermined the public trust and confidence in the profession and in legal services provided by the Respondent. Ms A had relied on the firm to provide assistance to her at the time of financial difficulty. The firm had not kept her properly informed and it was only a year later that she had discovered that very little work had been undertaken by the firm, despite paying the agreed fees. The Tribunal found the breach of Principles 2 and 6 proved on the balance of probabilities

36.7 *Principle 5 (2019 Code) and Principle 2 (2011 Code)*

36.7.1 The Tribunal considered that taking money from a client having promised to work on their case and then doing almost no work over several months was appalling behaviour from a solicitor. The client's interests had been seriously jeopardised and the Tribunal had no hesitation in concluding that the

Respondent had lacked integrity in the way he had handled Ms A's case. The Tribunal found that the breach of Principles 5 and 2 proved.

37. **Allegation 1.7**

Applicant's Submissions

37.1 Mr Willcox relied on the evidence of Ms W in support of this Allegation.

The Tribunal's Findings

37.2 The Tribunal referred to the witness statement of Ms A, which contained the following relevant matters:

> "4. On 11 June 2019, I received a client care letter from Octagon. Octagon accepted my instructions and advised me that my claim had positive merit. The letter stated that:
>
> a. The firm would scrutinise each and every demand to establish whether the organisation making the claim against me was legally entitled to do so, that any demand was valid and legally enforceable and also that the value of their claim could be proven;
>
> b. The firm would provide detailed advice once they had received all relevant evidence, documents or files from the debt companies;
>
> c. The firm would keep me updated on the progress at least once a month from commencement and would let me know about any important developments as and when they occurred.
>
> 5. In addition to the client care letter, I received a letter which set out the fee for this work and I attach this as [Exhibit reference]. I agreed to pay a fixed fee of £1,440.00 in equal monthly instalments of £120.00 (to be paid by standing order) over 12 months."

37.3 Those payments were set out in a table in the witness statement. The witness statement continued:

> "7. Despite making these payments, and despite being told in the client care letter that I would receive monthly updates, I received very little communication from the firm throughout the 12-month period. I exhibit to this statement copies of all email correspondence I had with Octagon."

37.4 Ms W explained that she had continued to receive correspondence from her creditors notwithstanding Octagon's involvement.

37.5 Ms W described the financial effect on her of the service she had received from the Respondent as follows:

> "14. I do not feel that Mr Amin acted in my best interests. I feel that the whole situation was misrepresented as to them being able to assist me with my debts. I now have further problems as I was told to stop payments to my creditors. This has meant that I am now in even more debt as the money was wasted and could have gone to continuing to reduce these debts.

37.6 Ms W then set out the impact the situation had on her personally. Ms W continued:

> "16. I trusted Mr Amin, as an experienced solicitor, to provide me with a proper standard of service and to act in my best interests. I paid him for his services, but he failed to deliver on his professional obligations."

37.7 The Tribunal again noted that this witness statement had not been challenged and the Tribunal accepted this evidence.

37.8 As he had done in respect of Ms A, the Respondent had promised proactive steps would be taken to relieve Ms W of at least a significant part of her debt problems. There was no evidence that he had done any of the work he had promised and for which he was being paid by Ms W. The result of this was that Ms W had still been chased by her creditors and was even further out of pocket on account of having paid fees to the firm for work that had not been done.

37.9 The Tribunal was satisfied on the balance of probabilities that the Respondent had failed to provide a proper standard of service to Ms W and had therefore failed to act in her best interests. The Tribunal found the factual basis of allegation 1.7 together with the breach of rules 3.2 and 3.4, Principles 4 and 5 of the 2011 Code and Principle 7 of the 2019 Code proved.

37.10 *Principle 2 (2019 Code), Principle 6 (2011 Code), Principle 5 (2019 Code) and Principle 2 (2011 Code)*

37.10.1 The Tribunal found no significant difference in the Respondent's conduct in his handling of Ms W's case to that found in relation to Ms A. The Tribunal therefore found the breaches of all of the same Principles proved on the balance of probabilities for the reasons set out in relation to Allegation 1.6.

38. **Allegation 2 – Dishonesty**

Applicant's Submissions

38.1 In respect of Allegation 1.1, Mr Willcox had noted that there was a shortage on the client account in the sum of £27,551.25 as at 31 July 2019. There had been repeated requests from the FI Officer for accounting information and despite assurances from the Respondent that he would provide the information, it had not been. Mr Willcox submitted that the irresistible inference to be drawn was that the Respondent wanted to conceal the information from the SRA so that the extent of his wrongdoing could not be discovered. Mr Willcox submitted that such conduct would be considered dishonest by the standards of ordinary decent people.

38.2 In relation to Allegation 1.2, Mr Willcox reminded the Tribunal that the Respondent had told the SRA that he used the £16,000 to make a payment to HMRC for VAT. He told the Investigation Officer that he would supply the firms accounts to her showing this. Again, the documents were not produced. Mr Willcox submitted that the inference to be drawn was that he had no intention of providing them. In any event, the Respondent should not have been using money in the client account to pay the firm's VAT bill. Mr Willcox submitted that as an experienced solicitor, and as the firm's sole director, COLP and COFA, the Respondent would have been well aware of the importance attached to the stewardship of client monies and of complying with the SRA Accounts Rules. Mr Willcox submitted that the Respondent had made the transfer of funds knowing that it was in breach of the rules and that in doing so he had acted dishonestly.

38.3 In relation to Allegation 1.4 Mr Willcox submitted that the Respondent had been given a generous amount of latitude to co-operate, engage and provide information to the SRA and had chosen not to do so. Mr Willcox submitted that the irresistible inference to be drawn, and in circumstances in which the Respondent was clear that he planned to leave the profession and had no intention of returning, was that he never intended to co-operate with the SRA and that his aim was to try to hamper the SRA's enquiries and conceal information from the FI Officer. Mr Willcox submitted that ordinary decent people would consider this behaviour to be dishonest.

The Tribunal's Findings

38.4 The test for dishonesty was that set out in Ivey and referred to above in relation to Principle 4 of Allegation 1.4.

38.5 In relation to Allegation 1.1, the Tribunal considered the Respondent's state of knowledge of the shortfall. The Allegation referred to a shortfall as at 31 July 2019. The Tribunal therefore considered the Respondent's state of knowledge in relation to the shortfall as at that date.

38.6 The Tribunal noted that Mr Ahmad's report was prepared and filed in January 2020. It was subsequent to that report that the Respondent was asked for documentation which he failed to provide. The Respondent was clearly aware as at 31 January 2020 of the shortfall that had existed in July 2019. However the Tribunal could not conclude on the balance of probabilities, having regard to the burden of proof, that he had known about it as at 31 July 2019.

38.7 In those circumstances, having regard to the date specified in the wording of the Allegation, the Tribunal found the allegation of dishonesty not proved in relation to Allegation 1.1.

38.8 In relation to Allegation 1.2, the position was different because the Respondent, on his own admission, had personally made the transfer of £16,000 from client account to office account. He therefore knew that he was making that transfer and he knew that he had no legitimate reason for doing so. There was no bill of costs and no authority from any client to make that transfer. The fact that he referred to a VAT bill that needed to be paid was evidence that he knew that he had made the transfer to meet an overhead and that it was improper. At the time of the alleged VAT payment the office account

had approximately £1,300 in it and so if there was a VAT bill in the region of £16,000 it could not have been met from the funds in office account without the transfer. The Tribunal did not need to make a finding as to whether a VAT payment had been made or not, as it would still not be a legitimate use of client funds for the reasons set out previously. The Tribunal found on the balance of probabilities that the Respondent's conduct in knowingly withdrawing £16,000 from client account improperly would be considered dishonest by the standards of ordinary decent people. The Tribunal therefore found the allegation of dishonesty proved in relation to Allegation 1.2.

38.9 In relation to Allegation 1.4 the Tribunal had already made a finding in relation to the Respondent's lack of honesty when considering Principle 4. The Tribunal applied the same test and made the same finding in relation to the separately pleaded allegation of dishonesty. The allegation of dishonesty was proved on the balance of probabilities in relation to Allegation 1.4 for the reasons previously set out.

**Previous Disciplinary Matters**

39. There was no record of any previous disciplinary findings by the Tribunal.

**Sanction**

40. The Tribunal referred to its Guidance Note on Sanctions 8th Edition (December 2020) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

41. In assessing the Respondent's culpability the Tribunal identified the following factors:

- The Respondent's overall motivation was unclear but there was clearly an element of financial motivation in withdrawal of monies from the client account;
- The Respondent had shown a complete disregard for his clients and had displayed no interest in providing the service that Ms A and Ms W had paid for;
- The Respondent had breached the position of trust that he held in respect of the clients;
- The Respondent had full direct control and responsibility for all matters relating to the firm and therefore for his misconduct as he was the COLP and COFA;
- The Respondent was highly experienced;
- The Respondent had deliberately misled the regulator by reason of not keeping repeated promises to produce documents and through his failure to co-operate.

42. In assessing the level of harm caused the Tribunal identified the following factors;

- The impact on Ms A and Ms W in particular was significant as financial strain had been exacerbated by his failure to deliver the service paid for;
- There was a potential for serious harm caused by the shortfall and misuse of the client account;
- The reputation of the profession was inevitably harmed by all aspects of the Respondent's misconduct;

43. The Tribunal identified the following aggravating factors:

- The matters were aggravated by the Respondent's dishonesty. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

> "34. there is harm to the public every time 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"."

- The Respondent's misconduct had been deliberate, calculated and repeated over a significant period of time;
- There had been concealment of wrongdoing as found in Allegation 1.4;
- The Respondent had sought to blame the bookkeeper for the breaches of the SRA Accounts Rules;
- The Respondent knew that the misconduct was in material breach of his obligations to protect the public and the reputation of the legal profession.

44. The only mitigating factor that the Tribunal could identify was the fact that the Respondent had a previously unblemished career.

45. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Respondent.

46. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off and the Tribunal had regard to Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin). The circumstances in which such a sanction was not imposed were exceptional, described in Sharma as "a small residual category where striking off will be a disproportionate sentence in all the circumstances ...".

47. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis of which question of exceptional circumstances was assessed:

> "First, although it is well-established that what may amount to exceptional circumstances is in no sense prescribed and depends upon the various factors and circumstances of each individual case, it is clear from the decisions in Sharma, Imran and Shaw, that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation is the nature and extent of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty."

48. The Tribunal considered whether the circumstances in this case were exceptional, having regard to James.

49. The Respondent had not advanced any exceptional circumstances in his brief engagement with the Tribunal. The Tribunal considered whether any such circumstances were apparent from the evidence before it and found there were not. The misconduct was at the highest level and in the absence of any exceptional

circumstances, the only appropriate sanction was a strike-off. The protection of the public and of the reputation of the profession demanded nothing less.

**Costs**

Applicant's Submissions

50. Mr Willcox sought costs in the sum of £14,586.20. This reflected a reduction of £1,300 from the cost schedule to take account of the fact that the hearing had not taken 3 days as estimated.

51. In response to a query from the Chair concerning the intervention costs, Mr Willcox explained that it was the intervention panel that had referred the matter to the Tribunal rather than the legal and enforcement team.

52. Mr Willcox told the Tribunal that the Applicant had written to the Respondent on 29 June 2021 inviting any representations on his means but there had been no response.

The Tribunal's Decision

53. The Tribunal reviewed the costs schedule and was satisfied that an appropriate and proportionate sum had been claimed. There had been a number of matters to investigate and the time claimed was reasonable. The Tribunal was satisfied by Mr Willcox's reassurances that there had been no duplication of claim in relation to the intervention costs.

54. The Respondent had provided no evidence of an inability to pay the costs and the Tribunal therefore ordered that he pay £14,586.20 as claimed.

**Statement of Full Order**

55. The Tribunal Ordered that the Respondent, MOHAMMED ARSHAD AMIN, 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 £14,586.20.

Dated this 10th day of August 2021
On behalf of the Tribunal

J P Davies
Chair