SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12210-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

ZAHID KHAN Respondent

Before:

Ms T. Cullen (in the chair)
Mr J. Evans
Mrs L. McMahon-Hathway

Date of Hearing: 27 October 2021

Appearances

Rory Mulchrone, 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

The allegations against the Respondent were set out in a Rule 12 Statement dated 28 May 2021 and were that while in practice at Janson Solicitors, Birmingham ("the Firm"):

1. On dates up to about October 2019, the Respondent misused and/or failed to protect client money. In so doing, the Respondent breached all or any of:

    1.1 Rules 1.2 (a), 1.2(b), 1.2(c) and 20 of the SRA Accounts Rules 2011 ("the SARs");
    1.2 Principles 2, 4, 6, 8 and 10 of the SRA Principles 2011 ("the 2011 Principles").

2. From about 2 October 2019 onwards, the Respondent failed to cooperate fully with the SRA. In so doing, the Respondent breached:

    2.1 Outcome 10.6 of the SRA Code of Conduct 2011 ("the 2011 Code") and Principles 2, 6 and 7 of the Principles up to and including 24 November 2019; or
    2.2 Paragraphs 7.3. and 7.4 of the SRA Code 2019 ("the 2019 Code") and Principles 2 and 5 of the SRA Principles 2019 ("the 2019 Principles") from 25 November 2019 onwards.

3. Dishonesty was alleged with respect to allegation 1, but dishonesty was not an essential ingredient to prove the allegation.

Documents

4. The Tribunal considered all of the documents in the case which included:

    - Application and Rule 12 Statement dated 28 May 2021 with exhibits
    - Application for substituted service dated 20 August 2021 and Tribunal's decision sheet dated 24 August 2021
    - Statements of costs dated 28 May and 20 October 2021
    - A "relevant correspondence" bundle containing:
        - Tracing report dated 18 March 2021
        - Email from the Tribunal to Capsticks dated 4 June 2021
        - Letters from Capsticks to the Respondent dated 12 August, 22 September, 18 October and 24 October 2021 with enclosures
        - Extract from the Law Society Gazette dated 6 September 2021 containing a Notice relating to the Respondent
        - Email from the Tribunal to Capsticks dated 22 September 2021

Preliminary Matters

Application to proceed in the Respondent's absence

5. The Respondent did not attend the hearing.

6. Mr Mulchrone, for the Applicant, invited the Tribunal to proceed in the Respondent's absence. He submitted that in order to do so the Tribunal must be satisfied that the

Respondent had received notice of the substantive hearing and that it was fair in all the circumstances to proceed in his absence.

7. Mr Mulchrone directed the Tribunal to an application made by the Applicant for substituted service on 20 August 2021. This followed the Tribunal and Applicant encountering what he described as insuperable difficulties in seeking to effect service of the Tribunal proceedings paperwork. The email address previously used by the Applicant to correspond with the Respondent was no longer working by the time the Tribunal sought to serve the paperwork in the usual way in early June 2021. A tracing agent had previously been instructed in March 2021 but service by post was also unsuccessful.

8. The Tribunal noted that on 24 August 2021 pursuant to Rule 46(2) of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR") a deputy clerk of the Tribunal directed that it was in the interests of justice for substituted service to be made by way of an advert being placed in The Law Society Gazette. The advert, in the form approved by the deputy clerk, was placed on 6 September 2021. The direction had also stated that unless the Respondent provided an address for service, any further documents the Applicant was required to serve would be deemed served by virtue of them being filed with the Tribunal. No response from the Respondent had been received.

9. The Tribunal was satisfied that the proceedings paperwork including notice of the substantive hearing were deemed to have been served on the Respondent and that by virtue of Rule 36 of the SDPR it had the discretion to hear the case in the Respondent's absence if that was fair in all the circumstances.

10. Mr Mulchrone referred the Tribunal to the cases of R v Jones [2002] UKHL 5 and GMC v Adeogba [2016] EWCA Civ 162 which were relevant to whether the Tribunal should exercise its discretion to proceed in the Respondent's absence. Mr Mulchrone submitted that fairness to the Respondent was paramount, but that fairness to the Applicant and to the public was should also feature in the Tribunal's deliberations and that it would be contrary to the public interest if the Respondent could thwart the regulatory process by non-engagement. He submitted there was a burden on solicitors to engage with their regulator, which included notifying the Applicant of changes of address and engaging with disciplinary investigations and hearings.

11. The Tribunal considered the factors set out in Jones in respect of what should be considered when deciding whether or not to exercise the discretion to proceed in the absence of the Respondent. The Tribunal gave due weight to the judicial comment in Jones that it is only in rare and exceptional cases that the discretion to proceed in a Respondent's absence should be exercised. The Tribunal also had regard to the observations in Adeogba that in determining whether to continue with regulatory proceedings in the absence of the accused, whilst the principles outlined in Jones were the starting point, it was important that the analogy between a criminal prosecution and regulatory proceedings should not be taken too far. In a criminal prosecution, steps could be taken to enforce attendance by a defendant; he or she could be arrested and brought to court. No such remedy was available to a regulator and in determining whether to continue with regulatory proceedings in the absence of the accused and the following factors should be borne in mind by a disciplinary tribunal:

(i) the tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;

(ii) the fair, economical, expeditious and efficient disposal of allegations was of very real importance;

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

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

12. The Respondent had not asked for an adjournment or engaged with the proceedings at all. Despite having every opportunity to engage, the Tribunal did not consider that there was any indication that the Respondent would participate in a hearing at a later date. The Tribunal determined that the Respondent had voluntarily absented himself from the hearing and there was no good reason not to proceed. The allegations were of serious misconduct and the Tribunal was satisfied that in all the circumstances it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence.

Factual Background

13. The Respondent was admitted to the Roll of Solicitors on 15 December 2006. The Firm was incorporated on 26 June 2009. At all material times the Respondent was trading in the name of the Firm. The Firm was a general law practice, but predominately undertook immigration and residential conveyancing work. The Respondent was the Firm's sole owner, Compliance Officer for Legal Practice ("COLP"), Compliance Officer for Finance and Administration ("COFA") and Money Laundering Reporting Officer ("MLRP"). The Firm was closed by way of the Applicant's intervention on 29 October 2019.

Witnesses

14. There was no live evidence during the hearing. The written evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read or consider that evidence.

Findings of Fact and Law

15. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the civil standard (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 his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

16. **Allegation 1: On dates up to about October 2019, the Respondent misused and/or failed to protect client money. In so doing, the Respondent breached all or any of:**

1.1 Rules 1.2 (a), 1.2(b), 1.2(c) and 20 of the SARs;
1.2 Principles 2, 4, 6, 8 and 10 of the 2011 Principles.

The relevant SARs and 2011 Principles:

16.1 Rule 1.2 of the SARs:

"You must comply with the 2011 Principles set out in the Handbook, and the outcomes in Chapter 7 of the SRA Code of Conduct in relation to the effective financial management of the firm, and in particular must:

(a) keep other people's money separate from money belonging to you or your firm;
(b) keep other people's money safely in a bank or building society account identifiable as a client account (except when the rules specifically provide otherwise);
(c) use each client's money for that client's matter only".

16.2 Rule 20 of the SARs:

"Client money may only be withdrawn from a client account when it is:

(a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held);
(b) properly required for a payment in the execution of a particular trust, including the purchase of an investment (other than money) in accordance with the trustee's powers;
(c) properly required for payment of a disbursement on behalf of the client or trust;
(d) properly required in full or partial reimbursement of money spent by you on behalf of the client or trust;
(e) transferred to another client account;
(f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing;
(g) transferred to an account other than a client account (such as an account outside England and Wales), or retained in cash, by a trustee in the proper performance of his or her duties;
(h) a refund to you of an advance no longer required to fund a payment on behalf of a client or trust (see rule 14.2(b));
(i) money which has been paid into the account in breach of the rules (for example, money paid into the wrong separate designated client account) - see rule 20.5 below;

(j) money not covered by (a) to (i) above, where you comply with the conditions set out in rule 20.2; or

(k) money not covered by (a) to (i) above, withdrawn from the account on the written authorisation of the SRA. The SRA may impose a condition that you pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received."

16.3 The 2011 Principles:

Principle 2: *You must act with integrity;*

Principle 4: *You must act in the best interests of each client;*

Principle 6: *You must behave in a way that maintains the trust the public places in you and in the provision of legal services;*

Principle 8: *You must run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles.*

The Applicant's Case

16.4 The Respondent was an experienced solicitor. He was the Firm's sole owner, COLP, COFA and MLRO. It was submitted that the Respondent was therefore well aware of his professional obligations, including the absolute obligation to protect client money and assets, and, as sole owner, was ultimately responsible for the protection of client money entrusted to the Firm.

16.5 In September 2019 the Applicant received a report which raised concerns about the Respondent and the Firm's compliance with the SARs. The following month, an inspection was conducted by Jason Gregory, a Forensic Investigation Officer ("the FIO"). The FIO identified irregularities within the Firm's bank statements, such as client money being kept in an office account, and the Respondent making payments into the client account from his own funds to rectify a shortage on the client account. The Applicant's case was that there was a shortage on the client account of at least £594,717.

16.6 During the FIO's inspection the Respondent did not produce accounting records. The Rule 12 Statement included details of accounts for the Firm based at two banks which included accounts not disclosed to the FIO by the Respondent. In an email from his representative dated 11 October 2019 to the FIO, the Respondent made the following statements:

- The Firm had no money in client account. There was a shortfall on the client account;
- The Respondent had extreme financial difficulties;
- The Respondent did not have the ability to replace the shortfall and accepted intervention into the Firm by the Applicant would follow;

- He had borrowed £25,000 from a party in London in relation to which he had experienced "ongoing blackmail" and threats to his safety and that of his family;

- Concerns existed about the Respondent's health and wellbeing.

16.7 Following the Applicant's intervention and the closure of the Firm in October 2019, former clients made claims to the Compensation Fund (a fund run by the Applicant and funded by the profession). Extensive details of the claims made by former clients, the underlying transactions giving rise to the shortfalls and the basis on which payments were made by the Compensation Fund, were included in the Rule 12 Statement. Mr Mulchrone outlined a claim by one client in some detail by way of example during the hearing. In summary, the cumulative result was that by the date of the Rule 12 Statement, the Compensation Fund has made payments totalling £594,717.

16.8 In making their assessment of the claims, the Compensation Fund Investigators gathered relevant documents, including the clients' own bank statements and documents, and the bank statements provided by the Respondent and by the banks. The Investigators were said not to have been assisted by the absence of client files and the absence of the client ledgers. Nevertheless, the Investigators established that client monies had been paid to the Firm, had not been used for the purposes intended and were not retained in the Firm's accounts at the date of intervention, and awarded grants.

16.9 The Applicant's case was that as evidenced by the claims to the Compensation Fund, clients of the Firm paid money to the Firm in anticipation of property purchases. The money was client money, being used to purchase the properties concerned. It was neither the Firm's nor the Respondent's money. The money ought to have been kept in a client account and used for that client's matter only. The money should have been withdrawn from the client account only when properly required. These were described as fundamental and uncontroversial requirements which went to the heart of the solicitor-client relationship, the conveyancing system and the trust that the public places in solicitors. Nevertheless, it was submitted to be clear from the Compensation Fund claims that:

- client money was held in the office account; and
- client money of at least £594,717 was misused or lost by the Respondent.

16.10 In addition to the Firm's bank accounts, the Respondent further held an account in his own name and transferred client monies into that account. The entries on the statement for that account from 1 March 2019 to 1 October 2019 referred to the details of properties. However, the statement also revealed transfers to and from "IG.COM" and "IG MARKETS CLIENT". The numerous payments were particularised in the Rule 12 Statement. In summary, the Respondent's account held a deficit of £11.50 on 1 October 2019. Whilst it was not known what funds, if any, were held by IG.COM at that time, it was noted that over the period of the bank's statement/s held by the Applicant (i.e. March to October 2019) £380,000.00 was paid to IG.COM and only £350,000.00 was returned.

16.11 The identity of IG.COM and IG MARKETS CLIENT were not known in the absence of an explanation from the Respondent. The Applicant provided the following information based on internet research:

- IG.COM is the internet domain for an online trading provider, IG, which enables users to trade and spread bet on financial markets;

- IG Markets provides CFD (contracts for difference – a contract between a buyer and a seller based on changes in the value of an asset over time), share dealing and stocks and shares ISA accounts;

- IG is a trading name of IG Markets. IG Markets is regulated by the Financial Conduct Authority;

- Information on IG.COM's website provided the following warning:

  "Spread bets and CFDs are complex instruments and come with a high risk of losing money rapidly due to leverage. 71% of retail investor accounts lose money when trading spread bets and CFDs with this provider…"

16.12 The Respondent, by his own admission, ran into financial difficulty. He accepted that there were shortages on the client account. The admitted deficiency in the client account was submitted to strongly support the inference that the Respondent had misused client money because of financial pressures he may have been facing. The Applicant's case was that as a minimum and in any event, the payments from the Compensation Fund demonstrated that the Respondent failed to protect his clients' money across a number of matters.

Alleged breaches of the SARs

16.13 It was submitted that the purposes of the SARs was to keep client money safe. The clients had advanced their money to the Firm for property purchases (either as deposits or the full capital sum). The money was held or received for a client and was submitted to fall within the definition of client money. It was not office money belonging to the Respondent or to the Firm.

16.14 It was submitted that on the basis of the conduct summarised above, the Respondent had breached the following provisions of the SARs:

- Rule 1.2 which provides that a solicitor must:

  - 1.2(a) – keep other people's money separate from money belonging to him or to the Firm;
  - 1.2(b) – keep other people's money safely in a bank or building society account identifiable as a client account;
  - 1.2(c) – use each client's money for that client's matters only.

- Rule 20.1(a) which provides that client money may only be withdrawn from a client account when it is properly required for a payment to or on behalf of the client.

Alleged breaches of the 2011 Principles

16.15 In allegedly misusing or failing to protect client money, it was submitted that the Respondent acted in breach of Principle 10, the obligation to protect client money and

assets. It was submitted that the Respondent also acted without integrity, in breach of Principle 2. The Applicant relied upon the test for integrity set out in Wingate v SRA [2018] EWCA Civ 366, in which it was said that integrity connotes adherence to the ethical standards of one's own profession. It was also submitted that the Respondent failed to act in the best interests of his clients, in breach of Principle 4, and behaved in a way that failed to maintain the trust the public placed in him and in the provision of legal services, in breach of Principle 6.

Dishonesty alleged

16.16 The Applicant relied on the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67:

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

16.17 It was submitted that taking or using someone else's money without their knowledge or agreement was an example of dishonesty, even if the solicitor did not intend to permanently deprive the other person of their money (relying on Bultitude v Law Society [2004] EWCA Civ 1853). It was submitted that this applied where it appeared that the Respondent was using one client's money for another client's matter and the Respondent was using client money for financial trading.

16.18 The Applicant submitted that in the circumstances of this case:

- The Respondent was an experienced solicitor and the Firm's owner, COLP, COFA and MLRO. As such, he was fully aware of the fundamental duty to protect client money;

- As the sole owner, the Respondent had sole and ultimate control of his clients' money. Client money was not paid into the client accounts. There were also identifiable shortages on the client account. Clients had lost over £500,000 by the date of the Rule 12 Statement;

- The Respondent informed the Applicant that he was in financial difficulties and there were shortages on the client account. He had accepted that there was misconduct on his part;

- The evidence from the bank statements suggested that the Respondent was routinely using one client's money on another client's matter. Again, it was submitted that he would have been fully aware as an experienced solicitor, COLP and COFA that this was improper;

- The evidence from the bank statements also suggested that the Respondent was transferring client money to his own account for onward transmission to IG.COM;

- Despite the opportunity to do so, he had not provided any explanation to the Applicant as to what has happened to the client money;

- The Applicant had not been able to determine the whereabouts of the clients' money. Nevertheless, it was submitted that the obvious inference was that the Respondent knowingly misused his clients' money in order to secure the ongoing operation of his business or to secure another benefit for himself.

16.19 It was submitted that ordinary decent people would consider the Respondent's conduct to be dishonest.

16.20 Mr Mulchrone referred the Tribunal to its Practice Direction 5, which was based on comments made in Iqbal v SRA [2012] EWHC 3251 (Admin) that "ordinarily the public would expect a professional man to give an account of his actions". The practice direction confirms that the Tribunal may take into account, and draw an inference from, a respondent's failure to give evidence and submit to cross-examination. Mr Mulchrone noted that in this case the Respondent had not submitted any Answer to the allegations.

The Respondent's Case

16.21 The Respondent had not provided any response to the allegations or engaged with the proceedings in any way.

16.22 The Tribunal had been referred by Mr Mulchrone to documents sent on the Respondent's behalf in which he appeared to accept that a shortfall on the client account existed and that he was unable to replace money. References were made to financial difficulties and other pressures.

16.23 However, the Respondent's detailed position on the totality of the allegations and the specific breaches alleged was not known. The Tribunal approached the allegations on that basis that they were denied.

The Tribunal's Decision

16.24 As noted directly above, no response to the allegations had been received from the Respondent. The correspondence sent on the Respondent's behalf, in which it was accepted that a client account shortfall which could not be remedied had arisen, went some way to an acceptance of some of the underlying factual matrix alleged by the Applicant. However, the Respondent was not obliged to prove anything, and the burden of proof was on the Applicant.

16.25 The payments made to former clients of the Firm by the Compensation Fund were not in themselves determinative of the questions before the Tribunal. They were, however, evidenced by extensive documentation to which the Tribunal was referred and were based on an assessment that over £590,000 of client money had been received by the Firm and had not been applied to the relevant client transactions or retained within the Firm's client or office accounts. The Tribunal considered that the documents relating

to the Compensation Fund payments and the basis on which they were made were compelling.

16.26 The documents to which the Tribunal was referred supported the contention made by the Applicant that money from various clients was used to make payments relating to other clients, and also that client funds were transferred out of the Firm into an account held in the Respondent's own name.

16.27 The Respondent had not provided an Answer to the allegations, engaged with the proceedings or given evidence and submitted to cross-examination. The Tribunal accepted the submission based on Iqbal and Practice Direction 5 that a solicitor would ordinarily be expected to give an account of his actions. Unevidenced references to financial, health and other pressures on the Respondent were present in the material before the Tribunal. However, the Tribunal considered that no explanation for the complete failure to engage or explain his actions had been provided. The evidence of the FIO was that the Respondent had failed to provide the account information, client files and client ledgers requested and required for his investigation. The Tribunal considered this was consistent with a failure to explain his actions which extended from the beginning of the Applicant's investigation to the substantive hearing. The Tribunal determined that it was appropriate to draw a negative inference from the Respondent's failure to engage and explain his actions.

16.28 In any event, the Tribunal considered that the weight of documentary evidence produced by the Applicant was overwhelming. The Respondent had transferred client money into an account which was in his own name (it was accordingly not a client or office account). This represented a clear failure to keep other people's money separate from money belonging to him or to the Firm; a failure to keep other people's money safely in a bank or building society account identifiable as a client account and a failure to use each client's money for that client's matters only. The Tribunal found that the alleged breaches of Rules 1.2(a), 1.2(b) and 1.2(c) of the SARs were accordingly proved to the requisite standard.

16.29 The payment of client money into an account bearing his own name was not a payment properly required for a payment to or on behalf of the client. None of the other conditions set out in Rule 20.1 of the SARs, which may have provided a legitimate basis for the withdrawal of client money from the Firm's client account, were met. The Tribunal thus found that the alleged breach of Rule 20.1(a) of the SARs was proved to the requisite standard.

16.30 As set out above, the Tribunal found on the balance of probabilities that a client account shortfall necessitating payments of over £590,000 to former clients of the Firm by the Compensation Fund had been proved by the Applicant. Money from one client was used in connection with transactions of other clients and client money was also paid into an account in the Respondent's name. The Tribunal accepted that the irresistible inference was that the money was paid out by the Compensation Fund reflected the fact it had been misused and/or lost by the Respondent. The Tribunal accepted that such conduct was a stark failure to act with integrity as required by Principle 2. Scrupulous protection of client money was a cornerstone of legal practice and the Respondent's clear failures in this regard were a failure to adhere to the ethical standards of the profession as required by the relevant test set out in Wingate. At [101] in Wingate

various examples of conduct lacking integrity were set out. These included subordinating the interests of clients to the solicitors' own financial interests and making improper payments out of the client account. Both were present in this case. The alleged breach of Principle 2 was proved to the requisite standard.

16.31 For the reasons set out above, the Tribunal also found to the requisite standard that Principles 4, 6, 8 and 10 had also thereby been breached. Use of one client's money for a transaction relating to another client, or payment of the money into an account in the Respondent's name, could not be in the best interests of that client (in breach of Principle 4). The Tribunal accepted that the trust placed in the Respondent and the provision of legal services would inevitably be undermined by such conduct. The breach of Principle 6 was proved to the requisite standard. Client money had been placed at risk, and improper transfers including to the Respondent's own account had been made. The Tribunal found proved to the requisite standard that this amounted to a failure to carry out the Respondent's role in the Firm effectively and in accordance with proper governance and sound financial and risk management principles in breach of Principle 8. The payments and shortfall described above also amounted to a clear failure to protect client money. The breach of Principle 10 was proved to the requisite standard

The Tribunal's decision concerning dishonesty

16.32 When considering the allegation of dishonesty, the Tribunal applied the test in Ivey set out at [74] of the judgment in that case, and accordingly the Tribunal 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 this conduct would be thought to have been dishonest by the standards of ordinary decent people.

16.33 The Tribunal had found that the Respondent had used money received from various clients for transactions of different clients. The Tribunal had found that the Respondent had paid client money into an account in his own name and had misused and/or lost in excess of £590,000 of client money. The Tribunal had been referred to correspondence sent on the Respondent's behalf in which it was accepted that there was a client shortfall that the Respondent was unable to remedy. The Tribunal accepted that the bank statements to which it was referred showed on the balance of probabilities that the Respondent transferred client money to his own account for onward transmission to an online financial trading and spread betting platform. The Respondent had not sought to provide an explanation or defence of his conduct. The Tribunal found that as an experienced solicitor, responsible for compliance matters at the Firm, the Respondent was aware that the conduct and transfers were improper and placed the client funds at substantial risk.

16.34 Applying the second stage of the Ivey test, the Tribunal had no doubt that ordinary decent people would regard such conduct as dishonest. The allegation of dishonesty was proved to the requisite standard.

17. **Allegation 2: From about 2 October 2019 onwards, the Respondent failed to cooperate fully with the Applicant. In so doing, the Respondent breached:**

2.1 Outcome 10.6 of the Code and Principles 2, 6 and 7 of the 2011 Principles up to and including 24 November 2019; or

2.2 Paragraphs 7.3. and 7.4 of the 2019 Code and Principles 2 and 5 of the 2019 Principles from 25 November 2019 onwards.

The relevant professional obligations

The 2011 Code and 2011 Principles

17.1 *Outcome 10.6 provides that a solicitor must cooperate fully with the Applicant at all times.*

17.2 *Principle 7 requires that solicitors must comply with their legal and regulatory obligations and deal with their regulators and ombudsmen in an open, timely and co-operative manner. Principles 2 and 6 were set out under allegation 1.*

The 2019 Code and 2019 Principles

17.3 *From 25 November 2019, the 2019 Code and 2019 Principles applied. The obligations are materially the same, namely that a solicitor:*

- *Paragraph 7.3: cooperates with the Applicant and other bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services; and*

- *Paragraph 7.4: responds promptly to the Applicant and (a) provides full and accurate explanations, information and documents in respect to any request or requirement; and (b) ensures that relevant information is available for inspection by the Applicant.*

17.4 *Principle 2 requires that a solicitor must act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. Principle 5 requires that they must act with integrity.*

The Applicant's Case

17.5 By letter dated 2 October 2019, the Respondent was required to provide bank statements and accounting records as part of the FIO's investigation. The Respondent met with the FIO on the same day and did not produce any of the items listed. The Respondent stated:

- Books of account and chequebooks were with his bookkeeper who was out of town until 8 October 2019. He would provide these on his return;

- Bank statements were available electronically, but they were not produced;

- He was unwilling to sign an authority permitting the Applicant to obtain statements from the Firm's banks;

- He would produce bank statements at the Firm's offices at 14:00 on 3 October 2019 or else a letter of authority for the Applicant to obtain them.

17.6 The Respondent also advised the FIO that the Firm had three accounts. Following the meeting, the FIO emailed the Respondent summarising the meeting and confirmed he would return the following day to collect the bank statements.

17.7 On 3 October 2019, at 12:09, the Respondent called the FIO and advised that his father was very ill. He said that he had not obtained the bank statements but agreed to provide an authority to obtain them. He did not know when he would be able to provide this.

17.8 At 13:38 on 3 October 2019, the FIO attended the Firm's offices and found a sign on the door stating that the Firm was closed until 15:00. The Respondent did not return at 15:00. The Respondent telephoned the FIO and stated:

- He had put the sign on the Firm's door anticipating that he would return by 15:00;

- He was willing to comply with the Applicant's requests and provide the statements by 11:00 on 4 October 2019 (the following day);

- He would not provide an authority for the Respondent to obtain the bank statements directly.

17.9 The FIO sent the Respondent an email summarising the call and confirming that he would attend the Firm's offices at 11:00 on 4 October 2019. The Respondent agreed to produce the bank records then.

17.10 On 4 October 2019, at 11:00, the FIO attended the Firm's offices. The Respondent was in attendance and stated:

- There were no bank statements available for review;

- The Firm held no funds in the client bank account;

- There was £2,000 to £3,000 in the Firm's office bank account;

- He would not comply the requests to produce documents without a court order. He had obtained legal advice and was told "Do not give them any rope to hang you with";

- He would not sign a letter of authority for the Applicant to obtain the records;

- He decided the previous week to close the Firm and had notified the Applicant accordingly. He anticipated closing the Firm on 11 October 2019 and had a job lined up abroad.

17.11 On 7 October 2019, the Respondent spoke with the FIO and stated:

- He had changed legal advisers and would be "fully cooperative";
- He still planned to meet his bookkeeper on 8 October 2019;
- He was obtaining bank statements which he would send to his new legal advisor to forward to the FIO;
- He had planned to close the Firm on 11 October 2019 but this might be delayed until 18 October 2019. He agreed to provide more details after speaking with his new legal adviser.

17.12 A formal Section 44B Notice was hand delivered to the Firm on the same day. The notice required the Respondent to produce several documents including books of account, details of bank accounts held by the Firm supported with statements and the current certificate of insurance. On the following day, the Respondent sent the FIO two emails attaching PDFs of the Firm's bank statements for the accounts that the FIO had been advised were held by the Firm. The FIO emailed the Respondent that he would be attending the Firm's office the next day in accordance with an attached production notice. The Respondent did not respond.

17.13 On 9 October 2019, the FIO attended the Firm's office and found a sign on the door dated 9 October 2019 stating that the Firm was closed. The FIO contacted the Respondent by telephone who confirmed he was at the bank obtaining the requested statements, he had not received the Section 44B Notice and he would only give his legal representative's details if he received a written request. At 18:37 on the same day, the FIO emailed a letter to the Respondent regarding his failure to comply with the Applicant's requests. This letter included a further copy of the Section 44B notice and requested that the requested material be provided by 17:00 on 10 October 2019.

17.14 On 11 October 2019, the FIO received an email from a solicitor instructed by the Respondent stating that:

- The Respondent had previously been advised by a different solicitor, who was not a regulatory solicitor, and who provided him with very poor advice, namely not to cooperate with the Applicant in the provision of information;
- The solicitor had considerable concerns over the Respondent's health, wellbeing and personal circumstances;
- Despite the Respondent's misconduct and its consequences, the provision to the Applicant of information relating to the Respondent's vulnerability would enable the Applicant to "*move towards the inevitable conclusion in a sensitive way in the knowledge that [the Applicant] will not receive any deliberate obstruction from the Respondent.*"

17.15 The Applicant intervened into the Firm on 29 October 2019. On 30 October 2019, the Respondent provided a response to the Production Notice which the FIO considered to be incomplete. On 15, 20, 22, 27 and 28 November 2019, the FIO made further attempts

to contact the Respondent. No response was received. The letter of 20 November 2019 requested contact information, outstanding bank statements and other information and required the Respondent to confirm whether he would attend a regulatory interview with the FIO on 10 December 2019. This letter was returned to the Applicant as undeliverable. The reason recorded was "*the recipient refused to accept it*".

17.16 On 17 December 2019, the Respondent's representative emailed the FIO, stating: "*I have been trying to make contact with Mr Khan… Having failed in my attempts to make contact with him by telephone or by post… I have been informed that Mr Khan may well have left the country although I do not know if that is for the short or long term.*" The representative also considered that the Respondent may have been receiving medical treatment and having mental health issues at the time of the intervention. The Respondent did not engage subsequently with the Applicant.

Breaches of the Codes and Principles (2011 and 2019)

17.17 It was submitted that there was a consistent failure by the Respondent to cooperate fully with the Applicant's investigation, both prior to and after the intervention into the Firm. The FIO's investigation was to establish the risk to clients, including the whereabouts of client funds, and the Applicant's case was that the Respondent's conduct had frustrated this exercise.

17.18 It was submitted that the Respondent did not comply with his regulatory obligations or deal with the Applicant in an open, timely and cooperative manner, contrary to Principle 7 of the 2011 Principles and Paragraphs 7.3 and 7.4 of the 2019 Code of Conduct 2019.

17.19 It was submitted that the Respondent also:

- acted without integrity, in breach of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles;

- behaved in a way that failed to maintain the trust the public placed in him and in the provision of legal services, in breach of Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles 2019.

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

17.20 As above, the Respondent had not provided any response to the allegation. The Tribunal approached the allegation on the basis that it was denied.

<u>The Tribunal's Decision</u>

17.21 The documentary evidence that the FIO had made repeated efforts to obtain bank statements and accounting records without success was overwhelming. The FIO's account of his conversations with the Respondent, in which documents were promised and then not provided, were not challenged. The FIO's account was that his investigation was frustrated and hampered by the Respondent's lack of cooperation and failure to supply the requested information and documents. As set out above in relation to allegation 1, the Tribunal had drawn an adverse inference from the Respondent's failure to engage and give any account or defence of his actions. The Tribunal accepted

that the chronology as set out in the summary of the Applicant's case above, and as corroborated by the documents to which the Tribunal was referred, was accurate.

17.22 The course of non-cooperative conduct described by the Applicant, which began with the letter of 2 October 2019 with which the FIO began his investigation, had continued until the substantive hearing. It had involved a failure to respond adequately to requests contained in correspondence, made during telephone conversations, made in person and contained within a formal section 44B notice. The information which the Respondent had supplied had been incomplete and misleading (he had failed to disclose the existence of the personal account in his name into which client money was transferred when disclosing details of the Firm's accounts).

17.23 The Tribunal considered that the conduct outlined by the Applicant, and found proved by the Tribunal, amounted to a clear failure to comply with his regulatory obligations and deal with the Applicant in an open, timely and cooperative manner. The conduct extended over a period during which both the 2011 and 2019 Codes applied (the former up to 24 November 2019 and the latter from 25 November 2019 onwards). The Tribunal found the alleged breaches of Principle 7 of the 2011 Principles and Paragraphs 7.3 and 7.4 of the 2019 Code proved to the requisite standard. The Tribunal also found proved to the requisite standard that the Respondent had failed to achieve Outcome 10.6 of the 2011 Code (full cooperation with the Applicant).

17.24 The Applicant regulated in the public interest and in this case the FIO's investigation sought, amongst other things, to identify whether there was a shortfall on the client account and whether client money was protected and used for the purposes for which it was supplied. As stated under allegation 1, the protection of client funds was a cornerstone of legal practice and the Respondent's clear failures to cooperate with an investigation by his regulator into this issue was conduct falling below that expected and required of all solicitors. Applying the test set out in Wingate, the Tribunal considered that such conduct, which delayed and hampered the investigation, failed to meet the basic ethical requirements of the profession. The Tribunal found the Respondent's conduct had lacked integrity and Tribunal found the alleged breaches of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles proved to the requisite standard.

17.25 The Tribunal also accepted that public trust in the Respondent and in the provision of legal services would be undermined by this failure to cooperate with the Applicant. The public would rightly expect all solicitors to comply with requests for information from the Applicant. This expectation would only be heightened where matters pertaining to the location and protection of client monies were concerned. The Tribunal found the alleged breaches of Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles proved to the requisite standard.

Previous Disciplinary Matters

18. There were no previous Tribunal findings.

Mitigation

19. The Respondent had not taken the opportunity to engage with the proceedings and outline any mitigating factors. The documents before the Tribunal included unevidenced references to personal, health and financial pressures being acute around the time of the misconduct. The Respondent had an otherwise unblemished disciplinary record since his admission to the Roll of Solicitors in 2006.

Sanction

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

21. In assessing culpability, the Tribunal found that the motivation for the Respondent's conduct found proved was a misguided attempt to deal with and respond to the financial difficulties faced by the Firm. His conduct was planned; there were several accounts involved and multiple transfers between accounts made in order to meet immediate obligations and also involving onward transmission to his personal account. The conduct was sustained and could not be described as spontaneous. He was an experienced solicitor, having run his own practice since 2009 and having been admitted to the Roll in 2006. The Tribunal found that the Respondent was fully responsible for his actions, with a high degree of culpability.

22. The Tribunal then turned to assess the harm caused by the misconduct. The comments made by former clients in their claims to the Compensation Fund revealed the extent of the direct impact. In some cases the delay caused to planned house purchases meant that clients had had to pay additional rent in the interim and were caused very substantial inconvenience and avoidable anxiety. The impact of delays in themselves was significant as were the lost opportunities of transactions which did not proceed. These former clients trusted the Respondent as a solicitor and the breach of this trust through the misuse of client money had a devastating effect on the reputation of the profession and public trust in it. The system of conveyancing relied upon solicitors being trusted to hold deposits and to protect client money scrupulously. The reputational harm to the profession of a solicitor failing to protect and misusing client money was something which would have been obvious to the Respondent.

23. The misconduct found proved was aggravated by the fact that the allegations included dishonest conduct. The transactions were residential in nature and the Tribunal considered that such clients would be somewhat more vulnerable than a commercially knowledgeable commercial client. The conduct was repeated and extended over time. The fact that the Respondent would have known that dishonestly misusing client funds was conduct in material breach of his obligations as a solicitor to protect the public and the reputation of the legal profession was a significant aggravating factor.

24. The Tribunal noted that the Respondent had no prior disciplinary findings against him. Whilst he had not participated in the proceedings, the documents before the Tribunal revealed that he had acknowledged the client shortfall and his inability to remedy it to the Applicant. The Tribunal had found that the Respondent had failed to cooperate fully

with the Applicant; these acknowledgments did, however, represent some limited degree of cooperation.

25. The Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 (Admin), and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the Roll of Solicitors. The Tribunal was not persuaded that any exceptional factors were present such that the normal penalty was not appropriate. As stated in Sharma, in considering what amounts to exceptional circumstances, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, or over a lengthy period of time; whether it was a benefit to the solicitor, and whether it had an adverse effect on others. The nature of the dishonesty involved failing to protect and misusing client funds including paying client money to a personal account. The conduct related to several clients, and involved multiple transactions over several months. It was not momentary, benefitted the Respondent personally and had an impact on others.

26. Having found that the Respondent had acted dishonestly, the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

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

The Tribunal determined that the findings against the Respondent, including dishonesty, required that the appropriate sanction was strike off from the Roll.

Costs

27. The Applicant's costs were set out in a statement dated 20 October 2021. Mr Mulchrone applied for these costs of £37,869.10. Of this figure, £15,669.10 related to the Applicant's own investigation and the remainder to Capsticks' fixed fee (and VAT). Mr Mulchrone noted that the hearing had taken only one day, rather than the anticipated two, and that the fixed fee payable by the Applicant would be unaffected by this. Whilst it was based on a fixed fee, the hours spent on the matter translated to a notional hourly rate of £130 per hour which Mr Mulchrone submitted was reasonable.

28. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal carefully reviewed the schedule of costs. Fees for attendance at the hearing for the advocate and a supporting lawyer were included for both days. Given that the anticipated second day had not been required, the Tribunal considered that it was appropriate to deduct 12 hours (6 hours each for the advocate and supporting lawyer) from the total time incurred. The Tribunal also considered that the section of the costs schedule relating to "Investigation and Preparation of Rule 12 and documents for issue" should also be reduced. 71 hours were included for the various tasks involved and this included 35 hours of partner time and 29 hours of 'case handler' time. This followed the previous section of the costs schedule in which 17 hours was spent on the "Review of case papers and case planning". The Tribunal considered that these activities inevitably involved a degree of repetition and overlap and that it was appropriate to deduct 6 hours from the time indicated. This

amounted to a deduction of 18 hours. The Tribunal noted that the £130 hourly rate mentioned by Mr Mulchrone was notional and that the fixed fee was payable by the Applicant regardless of the shorter than anticipated duration of the hearing. Based on its careful review of the schedule of costs claimed, the complexity and documentation involved in the case and its experience of comparable cases, the Tribunal considered that the appropriate reduction to the costs claimed was £2,400 (inclusive of the effect on VAT).

29. The Respondent had not provided any Statement of Means. Whilst there were comments in the documents before the Tribunal about financial difficulties, he had not provided any evidenced information to inform the Tribunal's decision. In line with its Standard Directions, of which the Respondent had received a copy, the Tribunal consequently proceeded without regard to the Respondent's means. The Tribunal ordered the Respondent to pay the Applicant's costs of and incidental to this application fixed in the sum of £35,469.10.

Statement of Full Order

30. The Tribunal ORDERED that the Respondent, ZAHID KHAN, 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 £35,469.10.

Dated this 12th day of November 2021
On behalf of the Tribunal

T. Cullen
Chair