The Respondent appealed the Tribunal's decision dated 25 January 2022 to the High Court (Administrative Court). The appeal was heard by Mrs Justice Foster DBE on 20 & 21 July 2022 and Judgment was handed down on 3 February 2023. The appeal was dismissed. Raj Rajan Mariaddan v SRA Ltd [2023] EWHC 207 (Admin)

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12218-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

RAJ RAJAN MARIADDAN Respondent

Before:

Mr J P Davies (in the chair)
Mr R Nicholas
Mr P Hurley

Date of Hearing:
18 – 21 October 2021 and 25 January 2022

Appearances

Michael Collis, barrister in the employ of Capsticks LLP, 1 St George's Street, Wimbledon, London SW19 4DR for the Applicant.

Andrew Butler QC of Tanfield Chambers, 2-5 Warwick Court, London WC1R 5DJ for the Respondent.

JUDGMENT

Allegations

1. The allegations made against the Respondent by the Solicitors Regulation Authority ("SRA") were that while in practice at John Street Solicitors LLP ("the Firm") he:

1.1 Between around 21 August 2019 and 12 December 2019 caused or allowed misleading information to be provided to Firm A, a law firm, to the effect that:

1.1.1 he did not have a bank account in his name;

1.1.2 his only income was disability living allowance, and / or he had not earned any income for at least two years or words to that effect;

1.1.3 he was semi-retired and/or had been unemployed since 2015;

Insofar as such conduct took place before 25 November 2019, acted in breach of any or all of Principles 2 and 6 of the SRA Principles 2011 ("the 2011 Principles"), and insofar as such conduct took place on or after 25 November 2019, acted in breach of any or all of Principles 2, 4 and 5 of the SRA Principles 2019 ("the 2019 Principles").

1.2 On an application for a Professional Indemnity Renewal dated 20 August 2020, he caused or allowed misleading information to be provided to Company B, an insurance broker, in that he indicated on the Professional Indemnity Renewal Form that:

1.2.1 the Firm was not subject to an investigation by the SRA, in circumstances when both he and the Firm were subject to an investigation; and/or

1.2.2 he had not been made subject to conditions on his Practising Certificate, in circumstances when he had held conditional Practising Certificates; and/or

1.2.3 he had not been the subject of a costs or penalty order before the Solicitors Disciplinary Tribunal, in circumstances where he had;

and in so doing he breached Principles 2, 4 and 5 of the 2019 Principles.

1.3 From on or about 29 November 2020, he failed to have in place valid Professional Indemnity Insurance, and in doing so breached any or all of Rules 2.1 and 4.1 of the SRA Indemnity Insurance Rules 2019 and Principles 2 and 7 of the 2019 Principles.

1.4 From on or about 29 November 2020, he continued to practise, including holding client money, without valid insurance, when he knew or should have known that no valid insurance was in place, and in doing so acted in breach of any or all of Rules 2.4, and 4.2 of the SRA Indemnity Insurance Rules 2019, and Principles 2, 5 and 7 of the 2019 Principles.

2. Allegations 1.1 and 1.2 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 was not an essential ingredient in proving the allegations.

Executive Summary

Allegation 1.1 - Proved
Summary: The Respondent dishonestly provided misleading information to Firm A

Allegation 1.2 – Proved
Summary: The Respondent dishonestly provided misleading information to Company B in a Professional Indemnity Renewal Form

Allegation 1.3 – Proved
Summary: The Respondent failed to have valid Professional Indemnity Insurance in place

Allegation 1.4 –Proved
Summary: The Respondent continued to practise without valid insurance

Sanction - Struck Off.

Documents

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

- Rule 12 Statement and Exhibit HVL1 dated 25 June 2021
- Respondent's Answer and Exhibits dated 12 July 2021
- Respondent's Supplementary Answer dated 25 July 2021
- Applicant's Schedule of Costs dated 11 October 2021
- Respondent's Schedule of Costs dated 14 October 2021

Preliminary Matters

4. The Respondent applied for leave to make an application to dismiss allegations 1.1.2 and 1.1.3 for lack of specificity and inadequate pleading. Mr Butler QC submitted that the application could be made by way of a submission of no case to answer at the close of the prosecution case. If the application was made now and determined in the Respondent's favour, it would save time as regards the Applicant's opening and the matters to be dealt with in evidence.

5. Mr Collis submitted that the Applicant was neutral as regards whether the application should be made at the commencement of the proceedings or at the close of the Applicant's case. Mr Collis suggested that it might be of assistance to the Respondent to hear the Applicant's opening as it might affect how the application was put.

6. The Tribunal noted that whilst the Respondent had informed the Applicant that it intended to make an application to dismiss, the Respondent had not informed the Tribunal of the intention to make such an application. Mr Butler QC stated that the application could be made at the close of the Applicant's case. The Tribunal considered that it would be more appropriate for the application to be made at that stage.

Factual Background

7. The Respondent was admitted to the Roll in November 1995. He was until April 2019 a sole practitioner, practising under the name of John Street Solicitors. In April 2019, the Respondent joined with Mr Saltifi and started the new practice John Street Solicitors LLP based in London, NW10. The Respondent and Mr Saltifi were equal partners in the Firm. The Firm was a Limited Liability Partnership and was a recognised body. The Firm's fee income was derived from three areas: Immigration (55%), Litigation (40%) and Conveyancing (5%). The Forensic Investigation Report stated that the Respondent and Mr Saltifi were assisted by three unadmitted members of staff.

8. The Respondent's practising certificate was suspended following the Adjudication Panel's decision to intervene into the Firm on 29 January 2021. The Respondent made an application for his practising certificate to be reinstated. On 24 June 2021, the Respondent was granted a conditional practising certificate with conditions preventing the Respondent:
   (i) from being a manager or owner of an authorised body;

   (ii) from being the COLP or COFA; and

   (iii) from holding or receiving client money or being a signatory or having the power to authorise transfers from an office or client account.

9. The Respondent was also only able to be employed as a solicitor where that role had been approved by the Applicant.

10. The conduct in this matter came to the attention of the SRA on 8 June 2020 when Mr Saltifi of the Firm informed the SRA of various concerns he had in relation to the conduct of the Respondent. Those concerns did not form the subject of any allegation in these proceedings.

11. The investigation commenced on 28 July 2020 and the Forensic Investigating Officer was Katie Brookes ("the FIO") and Mike Shields was the Forensic Investigation Manager ("FIM"). The FIO produced a forensic investigation report dated 22 December 2020.

Witnesses

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

    - Katie Brookes – Forensic Investigation Officer
    - Michael Shields – Forensic Investigation Manager
    - Rajan Mariaddan – Respondent

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

Findings of Fact and Law

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

Dishonesty

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

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

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

Integrity

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

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

18. **Allegation 1.1 - Between around 21 August 2019 and 12 December 2019 caused or allowed misleading information to be provided to Firm A, a law firm, to the effect that: (1.1.1) he did not have a bank account in his name; (1.1.2) his only income was disability living allowance, and / or he had not earned any income for at least two years or words to that effect; (1.1.3) he was semi-retired and/or had been unemployed since 2015. Insofar as such conduct took place before 25 November 2019, acted in breach of any or all of Principles 2 and 6 of the 2011 Principles, and insofar as such conduct took place on or after 25 November 2019, acted in breach of any or all of Principles 2, 4 and 5 of the 2019 Principles.**

The Applicant's Case

18.1 During the investigation the FIO reviewed a file held by the Firm entitled "the Legal Aid File". The file related to an outstanding debt owed to the Legal Aid Agency ("the LAA") by the Respondent's previous Firm, John Street Solicitors. Firm A represented the LAA. The Respondent had requested to pay the debt off in instalments. Correspondence was sent by the Respondent, often in the third person, and carried his reference

18.2 In a letter dated 13 August 2019 from the Respondent to Firm A, the Respondent acknowledged service of a claim. The letter was written by the Respondent in the third person and described his own position. The Respondent stated: "he is semi-retired on medical advice. He receives about £500 per months living allowance. He receives no other regular income".

18.3 On 19 August 2019, Firm A wrote to the Respondent stating "we note Mr Mariaddan's financial and health situation. Please can he complete the enclosed Income and expenditure details and return it to us" ("the Income and Expenditure Form").

18.4 On 21 August 2019, the Respondent responded to Firm A stating: "[the Respondent] since his health suffering has become dependent on the Disability Living Allowance of £500pcm [2015]. This receipt is deposited into his wife's account, who is his current voluntary carer… [the Respondent] receives no other income as he stated before. [the Respondent] is a director in the new firm until such time as the new firm is satisfactorily running". The Respondent stated: "your questionnaire is attached as best completed" and "the 2 relevant bank accounts are attached which supports his statement".

18.5 Enclosed with the letter of 21 August 2019, was an email from his wife's personal email address to his email address, which bore the subject "your government allowance" and attached screenshots of a Halifax bank account showing the following receipts labelled "DWP PIP":

- £581.40 on 29 January 2019,
- £581.40 26 February 2019,
- £581.40 on 26 March 2019,
- £588.89 on 23 April 2019,
- £595.40 on 21 May 2019,
- £595.40 on 18 June 2019,
- £595.40 on 16 July 2019.

18.6 The Respondent also enclosed a Barclays bank statement for the period 22 July 2019 to 21 August 2019 for an account labelled "Mr Raj Rajan Mariaddan TR", which showed an available balance of -£35.61. Mr Collis submitted that the account showed payments coming into the account in excess of £7,000.

18.7 The Respondent enclosed a completed Income and Expenditure Form signed and dated on 21 August 2019 in which the Respondent made the following statements:

- In the box labelled "I am employed as:" the Respondent wrote "semi-retired"; and in the box labelled "I am a pensioner", he crossed out the word "pensioner" and wrote in manuscript "semi-retired";

- In the box labelled "my employer is" he left the box blank, and in response to "I have been unemployed for" he wrote "4 years" and in manuscript he added "since 2015";

- under the heading "bank account and savings", above the statement "I have a bank account" he crossed out the "a" and wrote "no" so the sentence read "I have no bank account";

- under the heading "income" he stated his usual take home pay was £0 [HVL1, p.559]; and

- he stated his income was £500.00 per month – stating "see attached" (a reference to the email described above regarding his disability living allowance payments).

18.8 The form contained a declaration, as follows: "I declare that the details I have given above are true to the best of my knowledge". The Respondent signed underneath the declaration and dated the form 21 August 2019.

18.9 In a further letter to Firm A dated 21 September 2019, the Respondent stated he had "not earned any income for at least Two 2 years [see previous office account] but he remains a director for name sake only and is due to retire as soon as possible, based on health reasons, as he has been advised, that if he continues in full time employment, as before, if he suffers another episode, it may be fatal". The Respondent also stated that the "DLA receipts are banked into his wife's account, as she is his registered carer".

18.10 On 2 October 2019 Firm A wrote to the Respondent stating "John Street Solicitors LLP was incorporated on 14 January 2019 with you and Mr Saltifi as members. This would indicate that your medical problems of 2014/15 had been resolved and that you have been earning an income from the company. If, as you say, you are now no longer able to carry on your practice, we will need an up to date medical report to confirm that".

18.11 On 4 December 2019 Firm A stated they would "consider reasonable proposals for instalment payments but only if you provide adequate evidence of your income and expenditure as previously requested". Firm A sent the Respondent a further Income and Expenditure form for completion. The Respondent forwarded this further letter dated 4 December 2019 to the FIO, attaching a partially completed income and expenditure form. On 7 October 2020, the FIO asked the Respondent to send a completed copy of the form. The Respondent responded on the same date, but did not send a copy of the completed form.

18.12 On 12 December 2019 the Respondent wrote to Firm A in which he stated the Income and Expenditure form was signed and dated 21 August 2019, and "nothing much has changed since, except the DLA have reduced the £500/-pcm to £359.34 pcm". He attached a screenshot of a bank statement showing receipt of a payment on 3 December 2019 described as "DWP PIP" for £359.34. The Respondent continued "Mr Mariaddan continues to remain semi-retired and as last shown and has not earned anything from

the current firm". The Respondent stated, "Mr Mariaddan has no personal bank accounts, but he shares one account with his wife – … who is his carer".

Allegation 1.1.1

18.13 Mr Collis submitted that the Respondent's assertion that he did not hold a bank account was inaccurate and therefore misleading.

18.14 The Respondent supplied a copy of a Barclays bank account statement which gave the Respondent's full name at the top of the page. Furthermore, as part of the Respondent's report against Mr Saltifi to the SRA, he included a bank statement of an account with HSBC showing funds being sent to him from Mr Saltifi. The bank statement was in the Respondent's name and was addressed to his personal address. It showed an opening balance of £1,908.37 as at 24 August 2019, and a closing balance of £5,029.61 as at 23 September 2019.

18.15 During his interview with the FIO, the Respondent stated that he also had a Santander bank account, held jointly with his ex-wife: "I have only this bank account. I have one further account which is shared or held at Santander again, it's with my ex-wife".

18.16 The FIO asked the Respondent to confirm why he had said told Firm A that he had no bank account. He explained: "But this account here, it wasn't activated with anything… …This account was very much a dormant account, wasn't being active and therefore, I said, it's not something I actively use, except maybe for groceries or Saturday's shopping". The FI asked him to confirm that the account existed, and that he did have a bank account:

"FIM: But the account exists though, doesn't it?

Respondent: Sorry?

FIM: The account in your name – it's an account that exists. You do have a bank account.

Respondent: I have a bank account.

FIM: So why have you said 'I have no bank account'?

Respondent: I, I don't use it.
FIM: But you've still got it though, haven't you?

Respondent: Yeah, it is in my name."

18.17 The Respondent stated: "I should have said that I have a bank account in my name, but I don't handle it. That's how I should have phrased it". The Respondent was asked to confirm whether he considered stating he had no bank account when he did have a bank account was dishonest. The Respondent responded: "Well, not dishonest. I wouldn't go so far as to say that I am dishonest about anything about all this. But maybe I should have clarified and explained better, the way I put it, to the other side. It wouldn't have

made much difference". The Respondent stated "you know I have the Santander. Even that is handled by my ex-wife. I don't have to lie about it".

Allegation 1.1.2

18.18 Mr Collis submitted that the Respondent's statement that his only income was disability living allowance, and that he had not earned any income for at least 2 years was inaccurate and misleading. The Respondent's accountant confirmed to the FIO that for the tax year ending 30 April 2019, the Respondent had taken drawings for the year of £7,322.00.

18.19 Furthermore, in interview, the FIO showed the Respondent a ledger labelled "draw-rr-Drawings Raj Rajan", which showed drawings from the LLP from the period of 29 August 2019 to 29 April 2020 in the sum of £39,064.61. Mr Collis submitted that in fairness to the Respondent, it was appropriate to consider the drawings taken by him up to 12 December 2019, which amounted to £27,758.66. Of that amount, there were some monies that appeared not to go directly to the Respondent. Taking those sums into account, it was submitted that £20,000 went directly to the Respondent from 1 May – 4 December 2019.

18.20 Additionally, in a four week period between July and August 2019, the Respondent received in excess of £7,000 into the Barclays account. The final payment into that account was received on 20 August 2019, the day before the Respondent completed the Income and Expenditure form in which he asserted that his only income was Disability Living Allowance.

18.21 In interview, the Respondent was asked by the FIO "by declaring a zero income, on your income and expenditure form, would you say you're misleading?". The Respondent replied "No" and "well I may be drawing this but I maybe drawing it to pay for bills". When asked what he paid out from his drawings, the Respondent explained: "I pay the home mortgage. I pay the car hire purchase… I pay for petrol… I pay for my son who is final year at University. I pay for my daughter, who is also in University. I pay their pocket allowances. I pay for repairs and renovations and things like that".

Allegation 1.1.3

18.22 Mr Collis submitted that the Respondent had made a number of statements regarding his employment status.

18.23 On the Income and Expenditure form dated 21 August 2019, the Respondent stated that he was semi-retired and that he had been unemployed for four years since 2015. On the undated Income and Expenditure form, the Respondent stated that he was working part-time and that he had been unemployed for four years. In his letter to Firm A dated 12 December 2019, the Respondent stated that he was semi-retired.

18.24 Mr Collis submitted that in circumstances where the Respondent was a partner in a new entity registered in April 2019, those assertions were misleading.

18.25 The Respondent confirmed in interview that at the time of completing the Income and Expenditure Form he was working at the Firm:

> "Respondent: I am trying to tell the truth about what is in my income…
>
> FIO: Mmmh.
>
> Respondent: … what I have. They ask, they send me a form and then they ask me 'What is your situation?' As I wrote to them I said, 'Look, I have got, I have suffered a health issue and I have, I have been receiving this benefit and, in addition to that, I am working, but I'm not earning income from it and…
>
> FIM: It doesn't say – sorry to interrupt. It says, 'I have been unemployed for four years.'
>
> Respondent: Yes.
>
> FIM: But you've just said that you've been working.
>
> Respondent: Yeah, I am working but…
>
> FIM: So…
>
> Respondent: Unemployed means erm I am not earning, that's how I put it.
>
> FIM: No, unemployed means that you don't have any, any employment, surely?
>
> Respondent: Ok, then it's wrong, the phrase then. But I do go to the office."

18.26 The Tribunal was directed to the PII renewal form dated 20 August 2020 in which it was confirmed that the Respondent devoted all of his work time and attention to the business of the Firm.

18.27 Mr Collis submitted that as the Respondent was working at the Firm, he was not semi-retired. His statements in the correspondence and Income and Expenditure Form that he was semi-retired were therefore inaccurate and misleading.

18.28 Having completed the Income and Expenditure Form with inaccurate information, the Respondent signed a declaration that: "the details I have given above are true to the best of my knowledge and belief". Mr Collis submitted that in the circumstances, the declaration was misleading and the Respondent knew that the Form did not truthfully reflect his income, the position with his bank accounts or his employment.

18.29 As regards the provision of the Income and Expenditure Form on 21 August 2019 and in subsequent correspondence, the Respondent provided misleading information to Firm A. In doing so he failed to act with integrity in breach of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles.

18.30 The public would expect that a solicitor would provide an honest and accurate account of their financial situation and employment information in correspondence sent to their counterparty in litigation. In failing to do so, the Respondent's conduct was in breach of Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles.

Dishonesty/Principle 4 of the 2019 Principles

18.31 At the time that the Respondent completed and returned the Income and Expenditure Form to Firm A, and subsequently, he was aware that he was working at the Firm and was in receipt of drawings as a partner at the Firm. He was also aware that he held bank accounts. The Respondent knew that Firm A were corresponding with him in relation to the outstanding debt owed to the LAA, and were trying to identify a reduced settlement fee. Mr Collis submitted that the Respondent's intention was to create a deliberately false impression of his financial circumstances by concealing the true position regarding (i) his bank accounts, (ii) his income and (iii) the extent to which he was working. In providing false information, the obvious inference was that the Respondent did so to reduce his liability to the LAA, or to cause the LAA to agree to reducing the debt to a smaller amount. In those circumstances, he was dishonest by the standards of ordinary decent people.

The Respondent's Case

18.32 Mr Butler QC noted that there were three statements complained of:

- the statement that the Respondent did not hold a bank account;
- a statement that the only income the Respondent had was DLA and that he had earned no money income for at least 2 years; and
- a statement that the Respondent had been semi-retired and/or unemployed since 2015.

18.33 Mr Butler QC submitted that whilst the Applicant had been precise about the content and provenance of the First Statement that was not the case for the Second and Third Statements. Indeed, the Second Statement involved two different statements, and the Third Statement (containing as it does the phrase "and/or") apparently involved one or other of two statements – or possibly both. Given that dishonesty was alleged in respect of these matters, the pleading of the case was extremely unsatisfactory.

18.34 The Tribunal was referred to the decision of Lord Millett in Three Rivers DC v Bank of England (No 3) (HL(E)) [2003] 2 AC. At paragraph 186 Lord Millett stated:

> "… an allegation of fraud or dishonesty must be sufficiently particularised, and that particulars of facts which are consistent with honesty are not sufficient. This is only partly a matter of pleading. It is also a matter of substance. As I have said, the defendant is entitled to know the case he has to meet. But since dishonesty is usually a matter of inference from primary facts, this involves knowing not only that he is alleged to have acted dishonestly, but also the primary facts which will be relied upon at trial to justify the inference. At trial the court will not normally allow proof of primary facts which have not been

pleaded, and will not do so in a case of fraud. It is not open to the court to infer dishonesty from facts which have not been pleaded, or from facts which have been pleaded but are consistent with honesty. There must be some fact which tilts the balance and justifies an inference of dishonesty, and this fact must be both pleaded and proved."

18.35 In Malins v SRA [2017] EWHC 835 (Admin) as referred to in Williams v SRA [2017] EWHC 1478, Mostyn J stated: "It is elementary, and supported by abundant authority, that if you are accused of dishonesty, then that must be spelt out against you with pitiless clarity". Applying Williams, the Tribunal should not entertain allegations of dishonesty which are put with the lack of precision present in allegations 1.1.2 and 1.1.3. The failure could not be corrected by putting the allegation precisely in cross-examination; allegations of this kind must be clearly pleaded, as well as put.

18.36 The statements were made by the Respondent in the context of correspondence with Firm A in relation to litigation about monies said to be owed by the Respondent to the LAA. On 13 August 2019, when acknowledging service of the claim, the Respondent informed Firm A that he was semi-retired and received £500 pcm in DLA, but no other regular income. Firm A wrote to R on 19 August 2019 asking him to complete an income and expenditure questionnaire. That questionnaire, which the Respondent sent back on 21 August 2019, was the provenance of the First Statement.

The First Statement

18.37 In answer to the question about bank accounts and savings, the Respondent stated: "I have no bank account" with a tick box to the left. The Respondent had crossed out the word "a" and replaced it with "no". He ticked the box and underneath completed a further statement ("The account is in credit by £") he wrote the figure 0.

18.38 It was the Applicant's case that this answer was misleading and dishonest. The first and most fundamental point on which the Respondent relied to show that this was not a dishonest or misleading statement was that it was sent under cover of a letter of 21 August 2019, to which was also attached a page from the Respondent's bank statement. This, it was suggested, should make it fairly obvious that the Respondent had no intention to conceal the existence of the bank account; indeed it was profoundly surprising, in the circumstances, that the Respondent was being accused of dishonesty in this respect.

18.39 Mr Butler QC submitted that the Respondent was clearly just muddled, rather than misleading or dishonest. Had it been the Respondent's intention to conceal the existence of the bank account, he would be likely simply to have left the box unticked. Instead, he ticked the box; he then replaced the word "a" with the word "no"; but he also entered the digit 0 in the box to show the balance of the account (an odd thing to do if there were indeed no account). A reasonable reader confronted with this even in the absence of the accompanying bank statement would be likely to conclude, not that there was no bank account, but that the answer was muddled and ambiguous and required clarification.

18.40 The Respondent's explanation for this rather muddled answer was that the account was transferred to his ex-wife as his registered carer. If and to the extent that it was correct

that the Respondent had no control over the bank account (despite it being in his name) it was understandable that he gave the answer he did. Further, it was submitted, the questionnaire itself could perhaps have been clearer, for example by asking whether there existed a bank account in the Respondent's name and (if there was) seeking confirmation that he controlled it.

18.41 It was also of note that in the covering letter of 21 August 2019, the Respondent explained that the attached questionnaire was "as best completed", thus articulating a belief on the Respondent's part that the questions, as applied to his particular circumstances, were in some cases not susceptible to full and satisfactory answers. The Respondent expressly invited Firm A to ask him any further questions it might have, but Firm A did not ask any further questions at that stage.

18.42 The allegations in respect of the First Statement, it was submitted, should be dismissed.

The Second Statement

18.43 Mr Butler QC submitted that the framing of the SRA's allegation in respect of the Second Statement (i) actually contained two statements and (ii) did not identify with precision the provenance of either statement. It was unsatisfactory for the Respondent to have to trawl through the correspondence seeking to identify precisely which statement or statements were being said to be misleading and/or dishonest.

18.44 It was therefore perhaps unsurprising, in the circumstances, that the Respondent had failed to focus on a particular statement in his evidence, apparently believing that this allegation also related to statements made in the questionnaire. Mr Butler QC submitted that this was unlikely given that, (for example), there was no mention in the questionnaire of the two-year period; that statement was made in a letter of 21 September 2019.

18.45 Mr Butler QC submitted that the result of trawling through the correspondence to identify which statements the SRA could be relying on this in respect disclosed the following:

- on 13 August 2019 the Respondent wrote that he "receives about £500 per months living allowance. He receives no other regular income" (Mr Butler QC's emphasis added);

- on 21 August 2019, the Respondent wrote that he "has become dependent on the [DLA] of £500 pcm (2015) … Raj Mariaddan receives no other income as he stated before". The words "as he stated before" could be taken to pick up on the reference to regular income, in the letter of 13 August;

- the questionnaire which accompanied this letter asked about "usual take home pay" (Mr Butler QC's emphasis added), which R answered by saying "£0" (X/559);

- on 21 September 2019, the Respondent wrote that he "has not earned any income for at least two 2 years [see previous office account]";

- on 4 December 2019, at Firm A's request, the Respondent sent a further income and expenditure form which again stated that his usual take home pay was "£0" and his "DLA currently" was £350. The form was unsigned on this occasion;

- on 12 December 2019, the Respondent wrote that "nothing much has changed since [sc.21 August 2019], except that the DLA have reduced the £500/-pcm to £359.34pcm".

18.46 Mr Butler QC submitted that when focussing on that part of the allegation relating to his only income being DLA, it could be seen that the Respondent never actually said in terms that "his only income was disability living allowance". He volunteered information about "regular income" and was asked about "usual take home pay". He was never specifically asked about drawings.

18.47 In order to make good its allegation of dishonesty, the SRA relied on a statement from Mr R, who was described as "Mr Mariaddan's accountant" to the effect that the Respondent's drawings for the year ended 30 April 2019 were £7,322. Like much of the rest of the SRA's evidence, this was put forward as hearsay evidence. The submissions as regards the adequacy of the notice are detailed in the Respondent's case under allegations 1.3 and 1.4 below.

18.48 Mr Butler QC submitted that the evidence of Mr R was also, strictly speaking, expert evidence. But, contrary to Rule 30 SDPR, no permission had been given to adduce it. In any event, Mr R's evidence referred to a period going back as far as 1 May 2018. The statements relied on by the SRA were made in September – December 2019. The mere fact that one has taken (on any view, modest) drawings in the period 1 May 2018 to 30 April 2019 certainly did not make it dishonest or misleading to state that one was receiving no regular income in August 2019.

18.49 It was noted that in no case, when declaring his income, was the Respondent asked to focus on a particular period. The questionnaire referred to "usual take home pay", not (for example) "Income received from any source over the last 12 month period". It was true that, in September 2019, the Respondent volunteered the information that he had not received any income over a period of two years; in his mind this was correct, because such modest sums as he had drawn had immediately gone out to meet expenses.

18.50 The SRA also relied on a Nominal Ledger which purported to show that the Respondent had taken drawings totalling £39,064.61 in the period between 1 May 2019 and 29 April 2020. Mr Butler QC submitted that this was also hearsay evidence and repeated the submissions as regards hearsay evidence detailed at allegations 1.3 and 1.4 below. As regards the ledger, Mr Butler QC observed that:

- the Respondent took no drawings at all between 1 May 2019 and 29 August 2019. This tended to support the statement in the letter of 21 August 2019 that he had no regular income.

- between 1 May 2019 and 4 October 2019, he drew only £2,500.

- the Respondent explained that any income was used to service his debts and the liabilities of the Firm.

- On any view the drawings did not amount to income in the sense of disposable income, which was what the enquiries made by Firm A were intended to establish.

18.51 Mr Butler QC submitted that taken at its highest, this allegation could only sensibly focus on the statement in the letter of 21 September 2019 that the Respondent had earned no income for two years. The evidence disclosed that the Respondent had no regular take home pay (which had been the focus of the enquiries made of him), and only very meagre drawings which were immediately applied to office expenses. It was not dishonest or misleading in those circumstances for the Respondent to state that he had not earned any income.

The Third Statement

18.52 The inherent dissatisfaction in presenting an allegation of dishonesty on the basis of two statements linked by the conjunction "and/or" had already been observed. Taken literally, the allegation meant that the SRA was relying on one statement, or the other, or possibly both. Further, the Rule 12 Statement failed to identify with precision where the statements were to be found.

18.53 As to the allegation relating to the Respondent's assertion that he was semi-retired, the Rule 12 Statement stated: "As the Respondent was working at the Firm, he was not semi-retired". This it was submitted, was a complete non-sequitur, and as such a wholly extraordinary basis for an allegation of dishonesty. Leaving aside the scope for uncertainty over what the concept of being semi-retired actually meant, turning up for work certainly did not prevent one from holding that status. On the contrary, semi-retirement required turning up for work, at least occasionally. Had the allegation been, perhaps, that the Respondent was working at the firm full-time, it might have provided a basis for the contention that the Respondent was not semi-retired. But that was not how the allegation was put.

18.54 As to the allegation that the Respondent had been unemployed since 2015, Mr Butler QC submitted that the Respondent's statement "could have been more happily worded". It was not, literally, untrue; as a self-employed sole practitioner, the Respondent had actually never been employed, at least in the conventional sense. The Respondent was not drawing a semantic distinction between being employed and being self-employed – if he were, he would not have needed to refer to the four year period. He was clearly tracing his decline in work due to his medical episodes of 2015, since which time it was entirely accurate to say that he had been running his practice down.

18.55 Further, the fact that the Respondent described himself (in the very next answer) as semi-retired itself conflicted with the notion that he was literally unemployed and had been for four years. The putting forward of conflicting statements adjacent to one another was further compelling evidence that the Respondent did not intend to mislead.

18.56 Mr Butler QC submitted that the Tribunal should note the context in which the statements were made. The Respondent was not acting as a solicitor representing a client, but as a defendant in hostile litigation. Whilst that did not excuse dishonesty, it might justify a different and less exacting standard of accuracy than might be expected in other contexts. It should be borne in mind, too, that the Respondent was under no obligation to provide the information requested at all and could (if he had wanted to be

obstructive) have declined to do so. That he volunteered it as he did was generally to his credit.

18.57 Mr Butler QC submitted that for the reasons stated, allegation 1.1 should be dismissed.

The Tribunal's Findings

The First Statement

18.58 The Tribunal noted that there were a number of bank statements in the Respondent's name:

- Barclays Account – the office account for the former sole practice which the Respondent disclosed to Firm A attached to the questionnaire.

- HSBC Account – account in the Respondent's sole name

- Santander Account – joint account with his wife

18.59 As regards the HSBC account, the Respondent admitted in his interview that this was his account. He stated that it was dormant and was not something he actively used, except for groceries. When asked why he had not disclosed the account, given that the income and expenditure form asked for the balance on any account, even if it was overdrawn, the Respondent replied "… I have no answer to that". The Respondent went on to explain that the account was managed by his ex-wife.

18.60 The Tribunal also noted that the Respondent stated in his interview that if he were to be asked if he had an account, he would provide the account number.

18.61 In his oral evidence, when asked why he had not disclosed the HSBC account, the Respondent explained that the account was not under his control and he had no permission from his wife to disclose it. The Respondent further explained that the account was in his sole name, that the statements were sent to his ex-wife, and that his ex-wife lived with him. The Respondent confirmed that the statements came to his address and that when the statements arrived, he would give them to his ex-wife.

18.62 The Tribunal noted from the HSBC statement that there were payments into the account from the Firm. The Tribunal also noted that it was not the Respondent's evidence that he was not aware of the account, or that he had forgotten about its existence. Indeed, and as stated by him in his interview, it was the Respondent's position that if he was asked about bank accounts, he would have provided the details for the HSBC account.

18.63 The Tribunal rejected Mr Butler QC's submission that the concept of a bank account was not clear. In his submissions, Mr Butler QC queried whether if one had an account that one did not control, did one have a bank account. The Tribunal considered that the answer to that question was plainly yes.

18.64 The Tribunal determined that the Respondent knowingly and deliberately failed to disclose the existence of the HSBC account, as it would show that he was receiving monies from the Firm that he had not disclosed in the questionnaire.

The Second Statement

18.65 The allegation against him as regards the Second Statement was that he caused or allowed misleading information to be provided to the effect that his only income was DLA and/or he had not earned any income for two years. The Tribunal determined that the Applicant's case as to what was said by the Respondent to mislead Firm A was clear. The Tribunal found that in all the circumstances, the Applicant's case on dishonesty was clear.

18.66 Mr Butler QC criticised the Applicant for adducing evidence from Mr R and the ledger. The Tribunal did not consider that the evidence of Mr R was tantamount to expert evidence thus requiring an application under the SDPR for it to be admitted into evidence. The Tribunal noted that there was no application either before or during the course of the proceedings to exclude the evidence. The Tribunal found that the evidence had been properly admitted, and that it was entitled to consider that evidence when making its determinations.

18.67 The Respondent had sought to draw a distinction between income and regular income. The Tribunal noted that the questionnaire referred to "other income". It did not ask about "other regular income". Throughout his evidence, the Respondent referred to not having a regular income. He was unable, despite a number of invitations, to show the Tribunal where in the documentation he had been asked by Firm A to provide details of his regular income.

18.68 Mr Butler QC submitted that the Respondent had never actually said that his only income was DLA. The Tribunal found that in saying in the letter to Firm A of 21 August 2019 that he had become dependent on DLA and that he received no other income, the Respondent had said, in terms, that DLA was his only income.

18.69 The Respondent explained that the drawings he received from the Firm were used to pay for his mortgage, car hire purchase, petrol, to support his children during their further education, repairs and renovations. When it was suggested that those monies were income that he should have declared, the Respondent stated "The money is coming in and someone else is managing it for me. So, if they ask me of course, I may have, I should have said, give a long explanation, but I didn't want to go through that".

18.70 In his oral evidence, the Respondent stated that the monies drawn from the Firm were not income as it was used to pay debts and liabilities. He explained that if he drew £2,000 he would prioritise what needed to be paid including the mortgage, bills, petrol and money to support his children. He did not consider the monies drawn as income; income was money held in savings. His drawings were used to pay his debts and thus his income was £0.

18.71 When asked why he had not disclosed the HSBC account to Firm A (which was the account into which payments were made by the Firm), the Respondent explained that it was irrelevant as those monies were being used to pay debts. The Respondent stated that Mr Collis was focussing on the money that came in but not the money being paid out, and that was the problem.

18.72 The ledger showed that the Respondent had received £15,000 in drawings between 29 August and 20 November 2019. This included the £2,500 payment seen on the HSBC statement. Further, the evidence of Mr R was that the Respondent had received £7,322 in drawings from 1 May 2018 – 30 April 2019. Whilst the statements relied on by the Applicant were made in September – December 2019, the receipt of those monies was relevant in circumstances where the Respondent stated that he had earned no income for two years.

18.73 The Tribunal did not find the Respondent's evidence that he considered that drawings were not income to be credible. The Respondent's explanation was that as he had to pay bills, the monies he received were not income. The Tribunal found that explanation to be extraordinary. Further, in his evidence, the Respondent stated that the £6,000 income that he did declare related to the drawings that he had taken. That evidence was wholly inconsistent with the view expressed that he did not consider drawings to be income.

18.74 The Tribunal found that the evidence of Mr R, the ledger and the HSBC bank statement demonstrated that the Respondent had been in receipt of more than DLA, and had earned monies within the two year period prior to the submission of the questionnaire.

18.75 The Tribunal found that in stating that he had no income (other than DLA) and that he had not earned any income for at least two years, the Respondent had provided misleading information to Firm A.

<u>The Third Statement</u>

18.76 The Tribunal did not accept that in saying that he was semi-retired and also saying that he worked at the Firm, the Respondent had been misleading. The Tribunal agreed with the submissions of Mr Butler QC in that being semi-retired did not mean that the Respondent was not working at all. Accordingly, the Tribunal dismissed that part of allegation 1.1.3 which alleged that in saying that he was semi-retired, the Respondent had provided misleading information to Firm A.

18.77 The Tribunal found that the Respondent was not, as he asserted unemployed. As a self-employed practitioner, he was exactly that – namely self-employed. The Tribunal did not accept the Respondent's evidence that he considered that as he was not working full time, he was unemployed. Further, the Tribunal did not accept that because he had provided inconsistent and conflicting statements, this evidenced that he did not intend to mislead.

18.78 The Tribunal determined that the Respondent had stated that he was unemployed as this supported the assertion that he had no income. The Tribunal found that in stating that he was unemployed when he was not, the Respondent had provided misleading information to Firm A.

18.79 The Tribunal considered that members of the public would not expect a solicitor to provide misleading information to a firm. In doing so, the Respondent had failed to uphold the trust placed in him and in the profession in breach of Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles.

18.80 A solicitor acting with integrity would have ensured that the answers he provided were true and accurate, notwithstanding that he was not obliged to provide any answers. A solicitor acting with integrity would not have sought to mislead a firm that was trying to establish what means were available to satisfy a claim. In doing so, the Respondent had failed to act with integrity in breach of Principle 2 of the 2011 Principles and Principle 5 of the 2019 Principles.

Dishonesty/Principle 4

18.81 The Tribunal determined that the Respondent had deliberately sought to create a misleading impression of the accounts in his name, his income and his employment status. He had failed to disclose the HSBC account which showed drawings that he was receiving, as well as failing to disclose those drawings. He had also stated that he was unemployed so as to support his position that he had no income other than DLA. The Tribunal found that ordinary and decent people would consider that the Respondent's conduct was dishonest. The Tribunal found that the Respondent had been dishonest and had breached Principle 4 of the 2019 Principles.

18.82 Accordingly, the Tribunal found allegation 1.1 proved, save that it did not find that in saying that he was semi-retired, the Respondent had breached the Principles or had been dishonest as alleged.

19. **Allegation 1.2 – On an application for a Professional Indemnity Renewal dated 20 August 2020, he caused or allowed misleading information to be provided to Company B, an insurance broker, in that he indicated on the Professional Indemnity Renewal Form that: (1.2.1) the Firm was not subject to an investigation by the SRA, in circumstances when both he and the Firm were subject to an investigation; and/or (1.2.2) he had not been made subject to conditions on his Practising Certificate, in circumstances when he had held conditional Practising Certificates; and/or (1.2.3) he had not been the subject of a costs or penalty order before the Solicitors Disciplinary Tribunal, in circumstances where he had; and in so doing he breached Principles 2, 4 and 5 of the 2019 Principles.**

The Applicant's Case

19.1 On 12 November 2020, the FIO received a copy of the Firm's Professional Indemnity Insurance Proposal form ("the Proposal Form") from the Firm's insurance broker, Company B. The Proposal Form was signed by the Respondent on 20 August 2020 and included the following declaration: "we declare that to the best of our knowledge and belief, the particulars and statements given in this application are accurate and complete" and "we declare that we have disclosed accurately every material circumstance which is known or ought to be known by Principals, senior management, or those responsible for arranging insurance, following a reasonable search". The declaration further stated: "we accept that if we are in any doubt about whether a circumstance is material it should be disclosed".

19.2 Question 4a on the Proposal Form asked:

> "Has the Firm or any prior Practice or any present or former Principals, Partners, Members, Directors, Consultants and employees thereof: a) been or is the subject of an investigation that has been upheld, or any investigation or any Intervention by any regulatory department of the Solicitors Regulation Authority, the Legal Ombudsman Service or any other recognised body?".

19.3 The Respondent had answered "no":

19.4 The Respondent was put on notice of an investigation into the Firm by his receipt of a letter from the SRA on 14 July 2020. Letters were sent to the Respondent, his wife, and Mr Saltifi, which notified him that an investigation would commence on 28 July 2020. When submitting the Proposal Form, the Respondent was aware that an investigation into the Firm had commenced on 28 July 2020. It followed that the Respondent could be in no doubt whatsoever at the point he signed the Proposal Form on 20 August 2020 that the Firm was under investigation by the SRA.

19.5 The Respondent was asked in interview by the FIO to explain why he had not disclosed the SRA's ongoing investigation to his broker. The Respondent stated in an email dated 12 November 2020:

> "Our firm's PII is insured by the same broker every year for about the last ten 10 [sic] years. The renewal forms are filled out annually by my trusted assistant … but signed by me…I did enquire, if I need to disclose an investigation in 2005 but I was advised in the last 5 years – 6 years etc that was of interests [sic] and the claims history for the purposes of insurance".

19.6 Moreover, when asked about his response at 4a, the Respondent did not seek to deny that he was aware of the investigation but stated that he had told Company B that he was under investigation, a claim that was subsequently disputed by Company B.

19.7 Mr Collis noted that the Proposal Form does not stipulate that matters of a certain age need not be disclosed.

19.8 Furthermore, the Respondent had also been subject to disciplinary outcomes by the SRA, as confirmed in the witness statement of Jonathan Atherton (Investigation Officer):

- On 8 July 2008, the Respondent was ordered to discharge in full outstanding counsel fees, and was severely reprimanded.

- On 25 July 2013, the Respondent was given a written rebuke.

19.9 Question 4f on the Proposal Form asked:

> "Has the Firm or any prior Practice or any present or former Principals, Partners, Members, Directors, Consultants and employees thereof: f) **ever** been refused a Practising Certificate or granted a Conditional Practising Certificate or been the subject of a costs or penalty order or reprimand by the Solicitors Disciplinary Tribunal?" [**Mr Collis' emphasis**].

19.10 The Respondent had answered "no":

19.11 The Respondent's practising certificate had previously been made subject to conditions by the SRA:

- On 27 April 2006, for the practising year 2005/2006, the Respondent's practising certificate was made subject to the following conditions: "he shall deliver half yearly Accountant's Reports to the Law Society, such Reports to be delivered within 2 months of the end of the period to which they relate"; and "any Cease to Hold Accountant's Report required under the Solicitors' Accounts Rules is to be delivered";

- On 4 January 2007, for the practising year 2006/2007, the above conditions were repeated; and

- On 14 July 2008, for the practising year 2007/2008, the Respondent's practising certificate was made subject to the following condition: "Mr Mariaddan attends a course which is accredited by the Solicitors Regulation Authority on the Solicitors' Code of Conduct 2007 within 6 months of the date of this decision and provides confirmation of his attendance (in the form of a certificate or letter of attendance from the course provider) at such a course within 7 months of notification of this decision".

19.12 Mr Collis submitted that the inference was that the Respondent was aware when signing the Proposal Form that he had held conditional practising certificates from 2006 to 2008.

19.13 The Respondent had previously been the subject of a costs or penalty order by the Solicitors Disciplinary Tribunal on two previous occasions:

- In 2007, he had appeared before the Tribunal and had been fined £19,000.00 and ordered to pay costs of £16,500.00. The Tribunal's judgment is dated 15 March 2007.

- In 2009, he had appeared before the Tribunal and had been fined £8,000.00 and ordered to pay costs of £4,500.00. The Tribunal's judgment is dated 10 March 2009.

19.14 The inference was that the Respondent was aware when signing the Proposal Form that he had been the subject of a costs order on two occasions by the Solicitors Disciplinary Tribunal.

19.15 Mr Collis submitted that the Respondent had been granted conditional practising certificates from 2006 to 2008, had been subject to regulatory outcomes by the SRA, and decisions by the Tribunal, however he failed to disclose this information to Company B on completion of the Proposal Form which he signed.

19.16 The provision of inaccurate information to Company B did not exhibit behaviour which upheld public trust and confidence in the solicitors' profession and in legal services provided by authorised persons. The Respondent had failed to maintain the trust the

public placed in the Respondent and confidence in the solicitor's profession. Such conduct was in breach of Principle 2 of the 2019 Principles.

19.17 In failing to notify Company B of his regulatory history (including the ongoing SRA investigation, his conditional Practising Certificates, and previous appearances before the Tribunal), the Respondent failed to act with integrity. A solicitor acting with integrity would have disclosed the SRA investigation, the fact that he had previously had conditional Practising Certificates, and the fact that he had previously appeared before the Tribunal on two occasions, to their insurance broker when asked to do so, so the broker could take this into account when considering coverage options, and that these circumstances could be declared to potential insurers. In failing to do so, the Respondent's conduct lacked integrity in breach of Principle 5.

Dishonesty

19.18 As an experienced solicitor, the Respondent knew that submitting a proposal form to a broker in circumstances in which he stated he had not and was not subject to an investigation by his regulator, in which he stated he had not had a conditional Practising Certificate in the past, and in which he stated he had not previously been the subject of a costs order by the Solicitors Disciplinary Tribunal, in circumstances in which all of those statements were inaccurate, was misleading. As an experienced solicitor, he knew that the broker and/or insurer would require accurate information regarding the Respondent's regulatory history. The inference was that the Respondent provided inaccurate information to avoid paying a higher insurance premium. The Respondent signed a declaration attesting to the truth of the statements made. Ordinary and decent people would consider this behaviour dishonest. In signing the declaration on the Proposal Form to the effect that the particulars and statements given in the proposal was true and complete, the Respondent acted dishonestly by the ordinary standards of reasonable and honest people. Reasonable and honest people would have understood, in the Respondent's circumstances, that the questions regarding regulatory history to have required the answer "yes". Had there been any doubt about the importance of any of those matters to the insurer, the reasonable and honest person would have answered the question "yes" and provided information and sought further clarification if required. It was inconceivable that the Respondent had forgotten any of the circumstances. Knowingly including blatantly misleading information in an insurance form would be regarded as dishonest by the standards of ordinary decent people.

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

19.19 The Respondent denied allegation 1.2. He explained that he had informed Mr C of Company B of the investigation. His office manager had completed the Proposal Form and he had not checked it thoroughly. There was no benefit to him in not disclosing his history on the Form. The only difference knowing his history would have made would have been to slightly increase the premiums he had to pay for his insurance. He had understood at the time that he did not need to disclose any matters that were over six years old and thus did not think that he was required to disclose his previous appearances at the Tribunal or the previous conditions he had on his Practising Certificate.

19.20 Mr Butler QC submitted that the answers provided appeared to be inaccurate. Nevertheless, the existence of those inaccuracies fell so far short of establishing even a prima facie case of dishonesty that it was surprising that such an allegation was made. There was no basis for contending that dishonesty was any likelier than carelessness as the cause of the answers – and, unless there was something in the facts which made dishonesty the more likely explanation, it should not have been alleged, still less found proven. It was the Respondent's evidence that he did not complete the proposal form and did not familiarise himself with the answers provided in the form. Even if it could be said that in failing to check the form, the Respondent caused misleading information to be provided to Company B, such conduct was careless. It could not be said that having failed to check the form, the Respondent's conduct was dishonest. It could only be dishonest if he knew what answers had been given and knew that they were false.

19.21 In the Rule 12 Statement, the Applicant stated its case on dishonesty in the terms detailed in the Applicant's case above. Mr Butler QC submitted that there was nothing in the way that the Applicant put its case that tipped the balance. It ought to have been pleaded that the Respondent knew that the answers provided in the proposal form were misleading. The case was not put in that way because such an allegation was not put to the Respondent during his interview and had only partially been put to him in correspondence.

19.22 In the email to the Respondent of 12 November 2020, the FIO asked him to "state the reasoning for your answer to question 4a". The Respondent explained that the form was completed by his office manager, and that if it was suggested that he dishonestly misled the insurer, such a suggestion would be wrong. It was stated that the Respondent made enquiries as to whether he was required to disclose an investigation in 2005, but was advised that he did not. That was "perhaps the reason it stated 'no' in the form to 4a but the broker are (sic) fully aware of the firm's accurate history."

19.23 The FIO then reminded the Respondent of the ongoing investigation. The Respondent explained that he informed Mr C of the investigation numerous times and Mr C was fully aware. Mr Butler QC submitted that that was the full extent of the Applicant's investigation into the signing of the Proposal Form. At no stage before the proceedings was the Respondent questioned about the answer on the Proposal Form to question 4f.

19.24 Given that there were possible explanations for the incorrect answers, the failing to ask the Respondent about the answers was a serious omission. The Applicant had assumed that the Respondent's conduct was dishonest without troubling itself to ask him about it.

19.25 Mr Butler QC submitted that all the indications were that the Respondent had not acted dishonestly. All the answers on the form were a blanket no. This was consistent with the Proposal Form being completed in a slapdash way. A variety of answers would be more suggestive of dishonesty, as it would suggest that thought had been given to the answers provided.

19.26 The Applicant, it was submitted, was required to show that the Respondent himself had actual knowledge of the inaccuracy of the answers; the mere fact that he has signed the Proposal Form came nowhere near to establishing this and was (again) equally consistent with carelessness. It was the Respondent's evidence that the office manager

completed the Proposal Form. There was little evidence to assist the Tribunal with the question of whether the Respondent knew what it said. Mr Butler QC acknowledged that the Respondent stated that he did ask whether he was required to disclose an investigation that took place in 2005. That suggested that the Respondent had at least looked at question 4(a). He was told that he did not; furthermore, and significantly, he was told it was the last 5-6 years which was the period of interest to insurers.

19.27 The Respondent also explained in his e-mail of 13 November 2020 that he was not required to disclose investigations which were not concluded. On a careful reading of question 4(a), that belief might be wrong, but given the convoluted wording of the question it was certainly understandable, and so formed absolutely no basis for an allegation of dishonesty.

19.28 It was the Applicant's case that Mr C did not deny being aware of the investigation. This misrepresented what Mr C stated. Analysis of the communication showed that what was disputed was how Mr C responded to the Respondent. Mr C did not deny knowledge of the investigation, he denied that he advised the Respondent to wait and see what the outcome of the investigation was. Mr Butler QC submitted that by Mr C not denying that he was aware of the investigation, it should be inferred by implication that he was, and that this was the only fair reading of the communications. The Applicant, it was submitted, could have called Mr C to give evidence to confirm his knowledge at the time, but it had failed to do so.

19.29 The evidence from the Applicant's witnesses did not assist. Ms Brookes stated that Mr C was unaware of the investigation until she told him about it, but there was no direct evidence from Mr C that he had not been informed of the investigation by the Respondent. On the contrary, and as detailed above, whilst he denied stating that they should await the outcome of the investigation, at no point did he state that he was not aware of the investigation. Notably, Ms Brookes had failed to recognise any weaknesses in the evidence she relied upon. Mr Shields had tended to take the answers provided by the Respondent in his interview in isolation, without looking at the context. In evidence, Mr Shields stated that he considered the Respondent to be dishonest. He took a biased view of the case and then considered the facts that supported that view.

19.30 In its letter to the Respondent of 8 February 2021, Company B acknowledged that it could see from its file that there was an ongoing investigation by the SRA. Whilst that letter was not unequivocal about when that information became known, it was consistent with the Respondent's case that Mr C was aware of the investigation. The Tribunal, it was submitted, should also keep in mind that it was the Respondent that made a report to the SRA.

19.31 It was important to remember that the answers were being given, not directly to the insurers, but to the Firm's brokers. The allegation was that Respondent's intention was to mislead them. Company B had been brokers to the Firm and/or its predecessor for a period of eight years. It was to be expected that they were fully aware of relevant matters in the Respondent's history; there was no suggestion that the Respondent had provided misleading information in previous years (as there surely would have been, had that been the case). Furthermore, it was clear from a response from Company B to a complaint made by the Respondent in early 2021 that it was fully aware of the SRA investigation. If it was already aware of that, there would be no point in the Respondent

seeking to mislead it; so, again, the proper inference to be drawn from this was that this proposal was carelessly, rather than dishonestly, completed.

19.32 Mr Butler QC reminded the Tribunal that in his oral evidence, the Respondent explained that there would have been no benefit to him in trying to conceal his regulatory history. All that it would have done would have been to save some money on the insurance premiums but it would have meant that he did not have valid insurance.

19.33 Mr Butler QC submitted that whilst the Respondent might have been careless or reckless in signing the Proposal Form without checking it had been accurately completed, in circumstances where Company B was fully aware of his regulatory history and aware of the investigation, his conduct fell far short of being dishonest or lacking in integrity.

The Tribunal's Findings

19.34 The Tribunal found, and it was not disputed, that the answers complained of on the Proposal Form were incorrect. Accordingly, the Tribunal found that the answers were misleading. The Tribunal then considered whether the Respondent had caused or allowed misleading information to be provided and if so, whether he was in breach of the Principles as alleged.

19.35 The Tribunal noted that the Respondent provided a number of explanations as to why the answer to Questions 4(a) and 4(f) on the Proposal Form were incorrect.

19.36 In an email to the FIO dated 12 November 2020, the Respondent stated:

> "I recall the application forms changing every year and request (sic) for information also vary. I did enquire, if I need to disclose an investigation in 2005 but I was advised it was the last 5 years - 6 years etc that was of interests (sic) and the claims history for the purposes of insurance. This was perhaps the reason, it stated 'no' in the form to 4a but the broker are (sic) fully aware of the firm's accurate history."

19.37 During his examination in chief, the Respondent explained that the advice referred to was from the FIO. The Tribunal did not accept that evidence. It was clear that the conversation the Respondent had with the FIO was as a result of her enquiry as to why the Respondent had not disclosed the investigation in the Proposal Form. That conversation, the Tribunal found, could only have taken place once the Proposal Form had been completed and submitted. Accordingly, the FIO could not have advised the Respondent prior to completion that he was not required to disclose matters that had occurred outside of the 5 – 6 year period.

19.38 Further, it was stated that as this was a new entity, he did not consider that his previous regulatory history was relevant, and there was no regulatory history for the Firm. When asked by the Tribunal whether he was aware of the investigation, the Respondent considered that the SRA were not undertaking an investigation, but had been invited by him to assist in the dissolution of the partnership. The Respondent was taken to the letter of 14 July 2020, which informed him of the investigation. It was clear from that

letter that the investigation related to the Firm and not the Respondent's former sole practice.

19.39 Notwithstanding his oral evidence that he did not consider that there was any investigation, the Respondent also stated that he did not believe that the investigation needed to be disclosed as it was not an investigation resulting from a client complaint, but was an internal dispute that had been referred by the Respondent to the SRA. The Tribunal did not find this to be a credible explanation. There was nothing on the form that suggested that the only investigations that needed to be disclosed were matters involving client complaints.

19.40 The Respondent explained that he had not completed the Proposal Form himself, but had delegated that task to the office manager. When the form was presented for signature, he asked the office manager whether there was anything he needed to know. The office manager did not raise any issues. The Respondent glanced through the form but did not read any of the responses in detail. He signed the form, trusting that his office manager had completed it accurately. When asked whether the office manager was aware of the investigation, the Respondent replied that he was not. It had also been the Respondent's evidence that he knew that the questions on the forms were changeable in that sometimes they asked for any previous matters, and at other times they asked for previous matters within a defined period.

19.41 It was the Respondent's case that he had told Mr C of Company B about the investigation. He had a long-established relationship with Mr C, and spoke with him on a regular basis. The Respondent produced an email that he sent to Mr C dated 15 June 2020, in which he informed Mr C that the partnership was not working and that he had reported the issues both to Mr C and the SRA. The Tribunal noted that this email pre-dated the investigation into the Firm. Further, the Respondent had not produced any of the 10 emails he asserted he possessed in which he fully appraised Mr C of any SRA involvement. Additionally, the Tribunal noted that the Respondent, in his email to the FIO of 13 November 2020, stated that he had informed Mr C of an investigation into Mr Saltifi numerous times. That email did not state that he had informed Mr C/Company B of any investigation into the Firm.

19.42 The Tribunal found that the Respondent, in signing and submitting the Proposal Form, had caused and allowed misleading information to be provided to Company B. The Tribunal considered that members of the public would expect a solicitor to ensure that the information provided for the renewal of a firm's insurance, was true and accurate. In failing to do so, the Respondent had failed to behave in a way that upheld public trust and confidence in the profession and in legal services in breach of Principle 2.

19.43 The Tribunal found that in circumstances where (i) the Respondent had previously been sanctioned for failing to disclose information, (ii) he was aware that the questions on the form were changeable, and (iii) he knew that his office manager was not aware of the investigation of his regulatory history, the Respondent had failed to act with integrity in failing to ensure that the answers on the Proposal Form were accurate. A solicitor acting with integrity would not have disclosed his regulatory history and the investigation into the Firm. In failing to do so, the Respondent had failed to act with integrity in breach of Principle 5.

19.44 The Tribunal did not find the Respondent's evidence as to his knowledge of the investigation credible. As detailed above, his oral evidence had been inconsistent and contradictory. The Respondent knew that there was a current investigation into the Firm which he did not inform his office manager about. He also knew that the Proposal Form would contain questions relating to his regulatory history. The Respondent also knew that the questions on the Form were changeable as to whether all previous matters needed to be disclosed or only matters of a certain age. As detailed above, the Tribunal found the Respondent's evidence as to the advice he received from the FIO to be untrue. The Tribunal found that the Respondent either read the Proposal Form and deliberately did not amend it, or did not read the Proposal Form so as to turn a blind eye to answers he knew would be incorrect as he knew that his office manager was not in possession of all the relevant information needed to ensure that the answers were true and accurate. The Tribunal found that ordinary and decent members of the public would consider that it was dishonest for a solicitor to attest to the truth of information contained in a proposal form in circumstances where the solicitor knew that the information was incorrect. The Tribunal thus found that the Respondent's conduct was in breach of Principle 4 as alleged.

19.45 Accordingly, the Tribunal found allegation 1.2 proved on the balance of probabilities.

20. **Allegation 1.3 - From on or about 29 November 2020, he failed to have in place valid Professional Indemnity Insurance, and in doing so breached any or all of Rules 2.1 and 4.1 of the SRA Indemnity Insurance Rules 2019 and Principles 2 and 7 of the 2019 Principles.**

Allegation 1.4 - From on or about 29 November 2020, he continued to practise, including holding client money, without valid insurance, when he knew or should have known that no valid insurance was in place, and in doing so acted in breach of any or all of Rules 2.4, and 4.2 of the SRA Indemnity Insurance Rules 2019, and Principles 2, 5 and 7 of the 2019 Principles.

The Applicant's Case

Allegation 1.3

20.1 As a consequence of the Firm electing to pay its indemnity insurance premiums monthly, and the Respondent having provided inaccurate information on the Proposal Form, both the Respondent and Mr Saltifi were required to sign a Personal Guarantee and a No Claims declaration in order to secure insurance cover for 2020/2021.

20.2 On 7 December 2020 Company B wrote to the Respondent stating that the insurer had confirmed that no personal guarantee had been received, and as such "the renewal terms for the 20/21 policy are officially withdrawn".

20.3 On 8 December 2020 Company B notified the Respondent and Mr Saltifi that the Firm's insurance policy was in run-off. Company B stated: "…your proposal form did not include the fact that the SRA were undertaking an investigation against JSS".

20.4 On 14 December 2020 Company B wrote to the Respondent and Mr Saltifi notifying them that the insurance offer was withdrawn:

> "In view of non-receipt of the personal guarantee and NCD I'm afraid there is no changing Axis' now-made decision. I must therefore confirm that you have not enjoyed any PI cover since the expiry of your 2019 policy and therefore you should, from a regulatory standpoint, not be practising. You were given a deadline to sign and return the personal guarantee; this deadline was missed and the implications were very clear. At all stages I highlighted the importance of receiving this information (multiple times) and yet you continued not to comply or continued not to respond due to the internal on-goings within the practice. My email to you on the 5th October clearly highlighted; We are now passed the 30 days EIP so you are in the cessation period. You are therefore now in breach of SRA regulations.
>
> Over the last three months I have continued to chase for the various outstanding subjectivity information, from the original EBR, which was sent to you on the 12th September but returned on 5th October, to the Covid information and the financial/personal guarantee. At no point have you been forthcoming with this information, be it because of the on goings within the practice or general disagreements, but it has led to the decision now made by your insurer.
>
> To confirm, Axis have withdrawn their terms. This policy is therefore put into run off with effect from the 1st September 2020, I am confirming if the 30 day EIP will have bearing on this date and will let you know as soon as I hear from Axis. Any premium already paid will go towards your run-off policy and effectively be deducted from total figure.
>
> I must stress you should speak to the SRA with regard to the current position of your insurance".

20.5 Mr Collis submitted that as a result of the insurance being withdrawn, the Firm:

- was without insurance cover from 31 August 2020;
- entered the extended policy period on 1 September 2020;
- entered the cessation period on 1 October 2020; and
- should have closed no later than 29 November 2020.

20.6 On 15 December 2020 Company B sent a further email to the Respondent, copied to the FIO, in which it stated that the Firm's insurance had been withdrawn and that the Respondent should "speak to the SRA with regard to the current position of your insurance". The Respondent responded to Company B's email on the same date, noting the comments and stating that he remained "extremely unhappy".

20.7 As at the date of the FI report (22 December 2020) the SRA had received no formal notice from the Firm that it had closed. The Respondent emailed an Investigation Officer of the SRA on 5 January 2021, stating that the Firm had "5-8" live files and was holding £17,689.40 in its client account.

20.8 Rule 2.1 of the SRA Indemnity Insurance Rules 2019 stated: "An authorised body carrying on a practice during any indemnity period beginning on or after 25 November 2019 must take out and maintain qualifying insurance under these rules

with a participating insurer". The Respondent did not hold qualifying insurance, and therefore breached this Rule.

20.9 Rule 4.1 of the SRA Indemnity Insurance Rules 2019 stated: "Each authorised body, and any principal of such a body, must ensure that the authorised body complies with these rules." The Respondent was responsible for ensuring the Firm held PII.

20.10 In failing to have in place valid Professional Indemnity Insurance, the Respondent breached the SRA Indemnity Insurance Rules 2019:

20.11 Further, the public would expect solicitors to practise with appropriate and valid insurance. The public expected that solicitors were insured which gave them a degree of protection. By not holding valid insurance, the Respondent behaved in a way which failed to uphold the public trust and confidence in the profession, and therefore the Respondent breached Principle 2 of the 2019 Principles.

20.12 The Respondent's failure to ensure the Firm held valid PII meant that should a client have needed to make a claim against the Firm, there was not a valid policy in place against which a claim could have been made. This was not in the best interests of any or all of the Firm's clients. By not holding valid insurance, the Respondent behaved in a way which failed to act in the best interests of his clients, and therefore the Respondent breached Principle 7 of the 2019 Principles.

Allegation 1.4

20.13 The Respondent emailed an Investigation Officer of the SRA on 5 January 2021, stating that the Firm had "5-8" live files and was holding £17,689.40 in its client account. The Respondent stated: "I took my active case files and left the old premises". The Investigation Officer noted that as at the date of the Notice, the Firm's website was still active and provided the Respondent's contact details, suggesting that the Respondent was still practising and offering his services to the public.

20.14 In continuing to practise and continuing to hold client money, despite not holding valid insurance, the Respondent breached the following of the SRA Indemnity Insurance Rules 2019:

20.15 Rule 2.4 of the SRA Indemnity Insurance Rules 2019 provided: "If the authorised body has been unable to comply with either rule 2.2 or rule 2.3, the authorised body must cease practice promptly, and by no later than the expiry of the cessation period, unless the authorised body obtains a policy of qualifying insurance during or prior to the expiry of the cessation period that provides cover incepting on and with effect from the expiry of the policy period and covers all activities in connection with private legal practice carried out by the authorised body including, without limitation, any carried out in breach of rule 4.2".

20.16 This made clear that the Respondent should have ceased practice promptly. The Respondent failed to do so, and therefore breached Rule 2.4 of the SRA Indemnity Insurance Rules 2019.

20.17 Rule 4.2 of the SRA Indemnity Insurance Rules 2019 provided: "Each authorised body that has been unable to obtain a policy of qualifying insurance prior to the expiration of the extended policy period, and any principal of such a body, must ensure that the authorised body, and each principal or employee of the body, undertakes no activities in connection with private legal practice and accepts no instructions in respect of any such activities during the cessation period save to the extent that the activity is necessary in connection with the discharge of its obligations within the scope of the authorised body's existing instructions".

20.18 This made clear that the Respondent (as Principal) had ultimate responsibility for ensuring that the Firm did not undertake activities in connection with private legal practice and accepted no instructions. The Respondent failed to do so, and therefore breached Rule 4.2 of the SRA Indemnity Insurance Rules 2019.

20.19 Further, the general public would expect that if a solicitor became aware they no longer held valid PII, they would not continue to practise. By failing to cease practising upon being notified the Firm did not hold PII, the Respondent behaved in a way which failed to uphold the public trust and confidence in the profession, and therefore the Respondent breached Principle 2 of the 2019 Principles.

20.20 Mr Collis submitted that it was not in clients' best interests for their solicitor to be uninsured, as it meant that if clients needed to make a claim, there is no insurance policy on which to do so. The Respondent therefore breached Principle 7 of the 2019 Principles.

20.21 Additionally, solicitors with integrity who knew that they did not have valid insurance would not continue to practise on those matters on which they were instructed, nor would they seek to take on new matters knowing that doing so would not only put them in breach of the relevant Indemnity Insurance Rules, but would also expose their clients, existing and new, to the risks associated with not having valid insurance. The Respondent's failure to stop acting on these matters and also his failure by continuing to act on these matters meant that the Respondent was acting without integrity in breach of Principle 5 of the 2019.

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

20.22 Mr Butler QC submitted that allegations 1.3 and 1.4 were fundamentally flawed as they were based on the wholly inadequate evidence underlying the insurance position.

20.23 The Rule 12 Statement detailed that the Respondent and Mr Saltifi were required to sign Personal Guarantees and No Claims Declarations in order to obtain insurance cover for 2020/21. However, the only evidence of this was the FIO's statement. Most notably, it was submitted, the communication pursuant to which those conditions were allegedly imposed was not in evidence.

20.24 The Applicant also asserted that on 7 December 2020, Mr C of Company B wrote to the Respondent and Mr Salfiti conveying a message from the insurer that, as no PG had been received, renewal terms had been withdrawn, and that this was confirmed on 15 December 2020.

20.25 Mr Butler QC submitted that it followed that the evidence supporting Allegations 1.3 and 1.4 was unsatisfactory in at least two respects:

- there was no evidence, other than the FIO's statement that the insurance taken out and paid for by the Respondent was properly made subject to the conditions of the provision of NCDs/PGs;

- there was no evidence, other than the communications from Mr C of Company B, that the insurance company withdrew cover.

20.26 Not only was the Applicant relying on hearsay evidence, but it was relying on multiple hearsay evidence:

- in relation to the contention that Axis had placed conditions on cover, this was reported by the author of the Rule 12 Statement, who was reporting a statement made by the FIO, who was herself reporting a statement of unknown provenance;

- in relation to the contention that the insurance company had withdrawn cover for non-compliance with those conditions, the author of the Rule 12 Statement was reporting a statement by Mr C, who was reporting a statement made (presumably) by an unnamed person at the insurance company.

20.27 Notwithstanding the position as regards the insurance, the Applicant, it was submitted, had in any event failed to provide any cogent evidence to show that the Respondent was practising without insurance. Unless this Tribunal could be satisfied both that the insurance company was (a) entitled to withdraw cover and (b) validly did so, it could not possibly find either of the allegations proven.

20.28 Mr Butler QC submitted that the Applicant's letter to the Respondent dated 12 July 2021, in which it gave notice that it intended to rely on the documents exhibited to the Rule 12 Statement, under the Civil Evidence Acts 1995 and 1968, was insufficient. Even if such an approach were satisfactory in any type of proceeding, it was certainly not satisfactory in proceedings as important to a Respondent as proceedings in this Tribunal. The Applicant, it was submitted, ought to have been much more assiduous in pointing out the hearsay on which it intended to rely.

20.29 The Notice was not compliant with CPR Part 33.2, because it does not identify the hearsay evidence. Nor did it give the reason why the witness was not being called at trial as required by CPR Part 33.2(3)(a) and (c) respectively. The CEA Notice was therefore defective. Whilst it was accepted that this did not affect the admissibility of the evidence, it did affect the weight that should be given to the evidence.

20.30 Mr Butler QC submitted that it was wholly extraordinary that PII cover could be retrospectively withdrawn. The insurance company would need to have firm grounds before it could proceed in that way. The Applicant had failed to provide any reliable evidence to show that the insurance company had the power to proceed in that manner or that it had in fact done so. Given the ease with which the Applicant could have provided the evidence to show that the insurance had in fact been withdrawn, the Tribunal, it was submitted, could not be satisfied that the insurance had been withdrawn as alleged. It would have been easy for the Applicant to call evidence from someone

at the insurance company to explain the position but the Applicant had failed to do so. Accordingly, it would be wholly unsatisfactory to find an allegation of not having insurance, and practising without insurance, proven, in circumstances where the evidence of the underlying insurance position was so thin. Indeed, it was submitted, such a finding would be unsafe and unsustainable.

20.31 Even if it were to be assumed that cover was withdrawn with effect from 1 September 2020, that would not, without more, amount to a breach of the relevant rules. Allegation 1.3 alleged breaches of Rules 2.1 and 4.1 of the SRA Indemnity Insurance Rules 2019. However, there was no evidence that either the Respondent or the Firm were carrying on a practice. "Practice", in Rules 2.1 and 2.4 of the SRA Indemnity Insurance Rules was defined in the SRA Glossary as "the whole or such part of the private legal practice of an authorised body as is carried on from one or more offices in England and Wales" (with "practise" to be construed accordingly); and "private legal practice" meant:

> "the provision of services in private practice as a solicitor or REL in an authorised body including, without limitation:
>
> (a) providing such services in England, Wales or anywhere in the world in a recognised sole practice, a recognised body or a licensed body (in respect of an activity regulated by the SRA in accordance with the terms of the body's licence);
>
> (b) the provision of such services as a secondee of the insured firm;
>
> (c) any insured acting as a personal representative, trustee, attorney, notary, insolvency practitioner or in any other role in conjunction with a practice;
>
> (d) the provision of such services by any employee; and
>
> (e) the provision of such services pro bono; but does not include:
>
> (f) discharging the functions of any of the following offices or appointments:
>
> (i) judicial office;
>
> (ii) Under Sheriffs;
>
> (iii) members and clerks of such tribunals, committees, panels and boards as the Council may from time to time designate but including those subject to the Tribunals and Inquiries Act 1992, the Competition Commission, Legal Services Commission Review Panels, Legal Aid Agency Review Panels and Parole Boards;
>
> (iv) Justices' Clerks; or

(v) Superintendent Registrars and Deputy Superintendent Registrars of Births, Marriages and Deaths and Registrars of Local Crematoria"

20.32 No attempt was made in the Rule 12 Statement to show how the Respondent (or the Firm, under his supervision) came within this definition at a time when no insurance was in place. There is no evidence at all that the Respondent, or the Firm, were providing services.

20.33 Similarly, in relation to Allegation 1.4, no attempt was made to show that the Respondent (either in his own capacity or as principal of the Firm) failed to "cease practice promptly" for the purposes of Rule 2.4, or "undertook…activities" within the meaning of Rule 4.2.

20.34 Given that there was no breach of the SRA Indemnity Insurance Rules, there could be no breach of the Principles. Accordingly, allegations 1.3 and 1.4 should be dismissed.

The Tribunal's Findings

20.35 Mr Butler QC had referred the Tribunal to the CPR. The Tribunal was not governed by the CPR but by its own Rules. Further, the Respondent had not, on any previous occasion, objected to the hearsay evidence despite being previously represented and there having been two previous interlocutory hearings.

20.36 The Respondent had submitted that there was no evidence that the insurance had been revoked as alleged, and that the only evidence in support of that assertion was the hearsay evidence of Mr C, the FIO and the author of the Rule 12 Statement. The Respondent had provided as part of his evidence, a copy of the run-off insurance for the Firm. The Tribunal found that this was determinative of the position as regards the insurance. The Firm could not be in possession of run-off insurance in circumstances where it still held valid PII insurance.

20.37 It was not for the Tribunal to decide whether the insurance company could validly and unilaterally convert the PII insurance to run-off insurance. It was the Respondent's case that he might have a claim against the insurance company for doing so. The Tribunal considered that until such a claim was made and had succeeded, the position was that the insurance company had revoked the insurance, and the Firm had been placed into run-off effective from 1 September 2020 as detailed in the run-off insurance certificate adduced by the Respondent.

20.38 Mr Butler QC questioned why Mr Saltifi had not also appeared at the Tribunal. That was not a matter for the Tribunal to consider. The Applicant had informed the Tribunal that an investigation into Mr Saltifi had been conducted and closed. The Tribunal noted, in any event, that it was the Respondent's case that Mr Saltifi had transferred his matters to another firm.

20.39 The Respondent had directed the Tribunal to the insurance premiums that were still being collected from his account. The Tribunal determined that whilst monies were being taken from the Respondent's account for insurance, there was no evidence that this was for PII insurance as opposed to monies for the run-off insurance. The email to

the Respondent from Company B had made it clear that the premiums that had been paid before the revocation of the PII insurance would be attributed to the payments due for the run-off insurance.

20.40 The Tribunal found that the Respondent knew that the Firm was no longer insured. That this was the case was clear from the correspondence between Company B and the Respondent. It was also plain that the Respondent did not agree with the action taken. However, and as detailed above, disagreeing with the insurance companies' position did not mean alter the decision taken by them.

20.41 Accordingly, the Tribunal found that the factual position was that the Firm did not have PII insurance in place.

20.42 That the Respondent was still practising pursuant to the definition referred to by Mr Butler QC above, was evident on the Respondent's own evidence. The Respondent referred numerous times to "working" prior to the Applicant's intervention in January and thereafter having "no job". The Respondent also referred to having 5-8 live files and holding money in the client account.

20.43 Accordingly, the Tribunal found that the Respondent had breached Rules 2.1, 2.4, 4.1 and 4.2 as alleged. In failing to hold valid PII insurance whilst still practising, the Respondent had failed to behave in a way that upheld public trust and confidence in the profession. Members of the public would expect a solicitor who knew that they did not hold valid insurance, to cease practising in accordance with regulatory obligations. In failing to do so, the Respondent breached Principle 2. Failing to hold valid insurance was contrary to the best interests of his clients, who, had the case arisen, would have no insurance policy against which to make any claim. Accordingly, the Tribunal found that the Respondent had failed to act in the best interests of his clients in breach of Principle 7.

20.44 As detailed above, the Tribunal found that whilst the Respondent did not agree with the decision made by the insurance company, the Respondent knew that he did not hold PII insurance. A solicitor acting with integrity would not continue to act for their clients knowing that there was no insurance in place. In doing so the Respondent failed to act with integrity in breach of Principle 5.

20.45 Accordingly, the Tribunal found allegations 1.3 and 1.4 proved on the balance of probabilities.

Previous Disciplinary Matters

21. On 1 February 2007, the Respondent admitted that he had been guilty of conduct unbefitting a solicitor. He had breached the Solicitors Accounts Rules 1998. The Tribunal additionally found that the Respondent had made representations to solicitors that were misleading and/or inaccurate. The Respondent was ordered to pay a fine in the sum of £19,000 and costs in the sum of £16,500. (Case No. 9475-2006).

22. On 11 December 2008, the Respondent admitted that he had breached the terms of Rule 8 of the Solicitors Practice Rules 1990 by entering into a prohibited arrangement for the payment of a success fee with a client. He also admitted that he had failed and/or

delayed in replying to correspondence from the SRA. The Respondent was ordered to pay a fine in the sum of £8,000 and costs in the sum of £4,500. (Case No. 9980-2008).

Mitigation

23. Mr Butler QC submitted that whilst the Respondent had previously appeared at the Tribunal, there had been no finding in those matters that his conduct was dishonest. The Respondent, whilst not having an unblemished record, was a long-standing solicitor, who was entitled to a generous consideration as regards sanction.

24. The case was unusual in that there had been no complaint from any client. Nor had any other firm or the Respondent's insurance company made any complaint.

25. Given the nature of the allegations, it was submitted that this was a case where a sanction less than striking the Respondent off the Roll was warranted. There was no risk to the public as the Respondent was not currently practising and was unlikely to practise in future given his health.

Sanction

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

27. The Tribunal found that the Respondent's culpability for his misconduct was high. He was motivated by his desire to obtain insurance for the Firm and to avoid repaying the debt it was said that he owed to the LAA. The Tribunal found that the Respondent's actions were planned and deliberate. He was solely and directly responsible for the circumstances giving rise to the misconduct. He was an experienced solicitor who had appeared at the Tribunal on two previous occasions, one of which related to the provision of inaccurate and/or misleading information.

28. His conduct had caused harm to the reputation of the profession. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin stated:

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

29. The Respondent's conduct was aggravated by his proven dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession. The Tribunal considered that his conduct was deliberate and calculated. He had sought to place the blame for the inaccuracies on the insurance renewal form on his office manager. The Tribunal noted the Respondent's previous matters. Given the mainly dissimilar nature of those matters, the Tribunal did not consider that the Respondent should be given a more severe sanction as a result of those previous matters.

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

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

31. The Tribunal did not find any circumstances that were enough to bring the Respondent in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal did not find that the lack of any client complaint was such an unusual circumstance that it was exceptional such that striking the Respondent from the Roll amounted to a disproportionate and inappropriate sanction. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike the Respondent off the Roll of Solicitors.

Costs

32. Mr Collis applied for costs in the sum of £30,947.64. Those costs included the costs of the investigation in the sum of £8,747.64. The investigation costs as claimed represented a 40% discount on the actual investigation costs to account for matters that had been investigated but were not pursued before the Tribunal.

33. The remainder of the costs were comprised of the fixed fee charged by Capsticks to the SRA in the sum of £18,500 + VAT. The fixed fee was the level that was considered to be appropriate for the issues in the case, taking account of the hearing length and the documentary evidence. Mr Collis submitted that there were in excess of 700 pages exhibited to the Rule 12 Statement. The Respondent had relied on an additional 200 pages which he exhibited in support of his defence.

34. Mr Collis submitted that the notional hourly rate equated to £74.81. Given the nature and issues in the case, the costs claimed were reasonable and proportionate. Mr Collis referred to the costs claimed by the Respondent in the sum of £78,002.00. The level of costs claimed by the Respondent further demonstrated the reasonableness of the Applicant's costs claim.

35. As to payment, Mr Collis submitted that any costs awarded by the Tribunal would be the maximum amount that the Respondent was due to pay. The costs recovery department of the SRA would negotiate with the Respondent as to how much he could pay and how often. It was not always the case that the amount ordered would be the amount recovered.

36. Mr Butler QC submitted that the Respondent was of limited means, receiving Disability Living Allowance of approximately £500 per month. Those monies were paid to his carer. The Respondent's personal financial statement showed that he had a significant level of borrowing which exceeded the costs claimed in this matter. Accordingly, it

could be inferred that the borrowing did not relate solely to his defence in these proceedings. As regards his capital, he was the joint owner of his property that still had a significant mortgage as well as mortgage arrears.

37. As regards the quantum, the costs claimed were predicated on a five-day hearing, when the hearing had in fact taken four days. The fact that the SRA were obliged to pay the full fixed fee claimed was not a matter for the Respondent; if there was to be a reduction due to the reduced hearing time, the Respondent should receive the benefit of that. Additionally, the costs schedule detailed a number of fee earners that had worked on the case for a total of 109 hours, with no clear delineation of the roles they had undertaken. Generally, it was accepted that the costs claimed were not exorbitant.

38. The Tribunal considered that a reduction in the hours claimed for preparation and for the hearing time was appropriate. The Tribunal noted that even if the preparation hours were reduced by 47 hours to take account of the shortened hearing time and possible duplication of work, the notional hourly rate claimed would be £92.50, which was a reasonable rate.

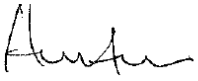
39. The Tribunal noted that Mr Butler QC did not suggest that the quantum claimed was excessive. The Tribunal considered that the costs claimed by the Applicant, even allowing for a reduction in the time charged, were reasonable and proportionate taking account of the issues to be determined, the documentary evidence and the hearing time. Accordingly, the Tribunal did not make any reduction in the costs claimed.

40. The Tribunal then considered whether it was appropriate to reduce the costs taking into account the Respondent's means. The Tribunal were aware that the Respondent had a limited income, being dependent on state benefits. It was noted that the Respondent was the joint owner of a property. The Respondent's share of the equity exceeded the amount of costs claimed. The Tribunal considered that in circumstances where the Applicant had submitted that an accommodation could be made as regards costs with the Respondent, it was appropriate to order the Respondent to pay the costs as claimed.

Statement of Full Order

41. The Tribunal Ordered that the Respondent, RAJ RAJAN MARIADDAN, 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 £30,947.64.

Dated this 21st day of February 2022
On behalf of the Tribunal



J P Davies
Chair