SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 12231-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD — Applicant

and

TAPFUMANEI NYAWANZA — Respondent

Before:

Mr A. Ghosh (in the chair)
Ms A Horne
Mrs L McMahon-Hathway

Date of Hearing: 23 and 24 November 2021

Appearances

Robin Horton, solicitor in the employ of the Solicitors Regulation Authority Limited of The Cube, 199 Wharfside Street, Birmingham B1 1RN for the Applicant.

Mohammad Afzal, solicitor of HMA Law Solicitors, 5 Tenby Street, Birmingham, B1 3EL for the Respondent.

JUDGMENT

Allegations

The allegations made against the Respondent by the Solicitors Regulation Authority ("SRA") were that:

1. Allegation 1

   In September 2014, a client (GR) instructed the Respondent on an application. The Respondent did not comply with directions made in 2015. As a result of the Respondent's non-compliance, the application was struck out in October 2015. After the striking out, the Respondent drafted letters confirming the action was proceeding, not having noticed that the claim was struck out. The Respondent therefore drafted letters which turned out to be misleading.

   In doing so, the Respondent breached the following of the SRA Principles 2011 ("the Principles"): Principle 2; Principle 6.

   He also failed to achieve the following outcomes of the SRA Code of Conduct 2011 ("the Code"): Outcome 1.2; Outcome 1.5.

2. Allegation 2

   GR instructed the Respondent to act on an application. The Respondent did not carry out those instructions properly. The Respondent failed to comply with directions, which meant the application was struck out, and did not work on the case from February 2016 to 30 January 2018.

   In doing so, the Respondent breached the following of the Principles: Principle 2; Principle 4; Principle 5; Principle 6.

   He also failed to achieve the following outcomes of the Code: Outcome 1.2; Outcome 1.5; Outcome 5.3.

3. Allegation 3

   In 2014 and 2015, at the Respondent's request, GR paid money to the Respondent's landlord rather than to the Respondent. The amount GR paid to the landlord was over £3,000.

   As a result, the Respondent breached rule 14.1 of the SRA Accounts Rules 2011 ("the Accounts Rules").

   The Respondent has also breached the following Principles: Principle 4; Principle 6; Principle 10.

4. In addition, allegations 1 and 2 were advanced on the basis that the Respondent's conduct was manifestly incompetent. This was an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the allegations.

Documents

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

- Rule 12 Statement and Exhibit RH1 dated 23 July 2021
- Respondent's Answer and Exhibits dated 31 August 2021
- Applicant's Schedule of Costs dated 16 November 2021

Factual Background

6. The Respondent was admitted to the Roll in March 2009. He held a current unconditional practising certificate. In 2010 he started work at Genesis Law Associates Limited ("the Firm"). From 2 October 2013 to 31 December 2019, he was a director of the Firm. From 19 November 2014 he was the sole director, as well as COLP and COFA. Since 1 June 2020 he had been an associate at Axiom Stone Limited.

7. The conduct in this matter came to the attention of the SRA on 26 September 2018 when the Respondent's client, GR, made a formal complaint to the SRA.

8. On 29 September 2014, the Home Office sent a letter to GR, stating that she had cheated on her English language test by using a substitute to sit it for her, and it was going to terminate her student visa. Her sponsor withdrew sponsorship as a result. The decision meant that GR had no right to remain in the United Kingdom. According to the Home Office, if GR wanted to challenge the decision, she had to do so from outside the UK.

9. GR denied that she had used a substitute and sought to challenge the decision. GR approached the Respondent to act for her in her appeal against the decision. She was introduced to him by RS, who was a friend of her uncle. RS was the Respondent's landlord.

10. GR met the Respondent, with her uncle and RS. In October 2014, GR instructed the Respondent with a view to challenging the Home Office decision. On 8 October 2014, the Respondent sent a client care letter to GR which stated (amongst other things):

> "I advised you that I would make representations to the Home Office on your behalf then lodge an appeal and request an in-country right of appeal. This is per case-law which confirms if you have made a human rights application, you will be entitled to an in-country right of appeal…we have agreed that I will keep you informed regularly of progress in your case in writing, especially if I decide I need to do something which I have not discussed with you".

11. The Respondent stated that the fees were to be fixed (until a decision from the Upper Tribunal Immigration and Asylum Chamber (the UT)) at £850 plus disbursements.

12. The Respondent took two approaches, namely:

- making representations to the Home Office to try to trigger an in-country right of appeal; and

- lodging an appeal with the First Tier Tribunal, Immigration and Asylum Chamber (the FTT).

13. On the same day, the Respondent wrote to UK Visas and Immigration, denying that GR had used a substitute, and stating that (i) GR was not given a fair hearing; (ii) the Respondent's submissions should be treated as a Human Rights Act application; and (iii) GR should be granted an in-country right of appeal. The Respondent requested that the Home Office reconsider its decision of 29 September 2014.

14. On 9 October 2014, the Respondent sent a notice of appeal to the FTT. On 27 November 2014, the FTT ruled that GR had no valid right of appeal while she was in the United Kingdom.

15. On 11 December 2014, the FTT confirmed that GR's appeal was invalid as there was no right of appeal. An appeal of the FTT's decision was by way of judicial review to the UT.

16. On 20 January 2015, the Home Office wrote to the Respondent, stating that GR had no legal basis for being in the UK, maintaining its decision of 29 September 2014, and asking for details of GR's return to her home country.

17. On 11 March 2015, the Respondent lodged an appeal by way of judicial review to the UT against the Home Office decision. The Respondent sent a copy of the application to GR, stating that it had been filed with the UT, and asking for further fees.

18. On 12 March 2015, although the Respondent had already lodged the application for judicial review, the Respondent sent a letter before action to the UK Border Agency, under the pre-action protocol for judicial review. The letter stated that GR wanted to issue a judicial review against the Border Agency's decisions, and enclosed the application and grounds for review. The Home Office replied on 13 March 2015 maintaining its decision and stating that "the Pre-Action Protocol is now considered to be concluded".

19. On 25 March 2015, the Respondent filed a copy of the judicial review application with the UT. The Court confirmed its issue on 31 March 2015 and on 7 April 2015 the Respondent served the application on the Home Office.

20. As the Respondent did not update GR, on 22 April 2015 she sent a text message to RS asking about the latest situation.

21. On 29 April 2015, the Government Legal Department ("GLD") wrote to the Respondent, acknowledging the bundle of judicial review papers and dealing with the acknowledgment of service at the UT.

22. On 27 May 2015, the GLD filed an application notice at the UT, asking for more time to file an acknowledgement of service "to consider [GR's] human rights claim".

23. On 10 June 2015, the Home Office wrote to say that it had refused GR's application for leave to remain, and in so doing had turned down her human rights claim. The Home Office said that GR "can only appeal this decision after [she] has left the United Kingdom".

24. On 11 June 2015, the GLD wrote to the UT, stating that the Home Office was not going to take any further steps, pending "decisions of the Court of Appeal".

25. On 12 June 2015, the UT made an Order that staying the proceedings pending the decision of the Court of Appeal in the cases of Mehmood and Ali, or the Home Office making a decision on GR's representations on human rights grounds.

26. The Order required that within 14 days of the first of those events, GR was to notify the UT and the Home Office if she intended to pursue her case (and to amend it if necessary).

27. As GR had not heard anything from the Respondent, from June to September 2015, GR sent text messages to RS to ask about progress.

28. On 1 October 2015, after the Court of Appeal ruling in the cases of Mehmood and Ali, the UT made directions in relation to GR's case. The directions stated, specifically, that "your case has been reviewed following the decision of the Court of Appeal in Sheraz Mehmood & Shahbaz Ali v SSHD [2015] EWCA Civ 744". The directions stated that:

- if GR thought her claim had merit, GR had to file, within 7 days of the date the Order was sent (i.e. by 8 October 2015), amended grounds, with the application fee, to the UT;

- if she did not do that, her claim would be automatically struck out.

29. This in part contradicted the order of 12 June 2015, which gave a different deadline for GR to pursue her case. However, as the Respondent did not file any amended grounds, the difference between the deadlines was not relevant. As the Respondent did not file any amended grounds for GR, her claim was struck out automatically.

30. On 9 November 2015, GR visited the Respondent's office to discuss her case. It was at this meeting, for the first time, that the Respondent told GR about the notice for directions. The Respondent advised GR not to file amended grounds. He did not mention the UT's strike-out of the case, but said that all of the applicants in such cases were getting this letter from the Court and that GR need not do anything about it.

31. On 29 January 2016, GR asked the Respondent for "the copies of the application which you submitted as per the directions of the upper tribunal … [my landlord] requires this information…he needs further evidence in writing to comply with his requirements."

32. On 3 February 2016 in response to this request, the Respondent drafted for GR a note which stated:

> "This is to confirm that the above-named is our client.
>
> We lodged a Judicial Review on her behalf on 31 March 2015. Following the outcome in the lead case of Sheraz Mehmood & Shahbaz Ali v SSHD [2015] EWCA civ 744 the Upper Tribunal has indicated that it will write to individual claimants.
>
> We now wait [sic] correspondence from the Upper Tribunal in that regard."

33. Mr Horton submitted that the UT had already made directions on 1 October 2015 and sent them to the Respondent, so the Respondent was not awaiting anything from the UT.

34. There were no records on GR's file from 3 February 2016 until 29 January 2018. GR telephoned the Respondent on 13 and 14 November 2017. The Respondent told GR he had no update and everything was in hand.

35. In January 2018, after the Ashan case was decided, GR visited the Respondent's offices. On 29 January 2018, the Respondent drafted a general note "to whom it may concern" which stated:

> "This is to confirm that the above-named is our client.
>
> We lodged a Judicial Review on her behalf on 31 March 2015. Following the outcome in the lead case of Ahsan v Home Secretary [2017] EWCA Civ 2009 the Court of Appeal has indicated that persons in our client's position should have been granted an in-country right of appeal.
>
> We are now in the process of writing to the Upper Tribunal in this regard."

36. The Respondent told GR that her case was pending in court and he would write for an update, for which he would charge GR £350.

37. On 30 January 2018, the Respondent wrote to GLD, asking for it to re-issue its previous decision, this time with a right of appeal. On the same date he also wrote to the UT requesting directions. Mr Horton submitted that doing so suggested that the Respondent had not noticed that the claim had been automatically struck out, despite his receipt of the earlier Orders to that effect.

38. On 13 February 2018, HM Courts & Tribunal Service wrote to the Respondent, stating that GR's case was closed. In order to reinstate it, GR needed to make a formal application, which would cost £255.

39. On 19 April 2018, GR attended the Respondent's offices. The Respondent showed her the 13 February 2018 letter, which was the first time that GR found out that her case was closed (having been struck out). GR paid the Respondent £255 as the fee to have her case reinstated.

40. On 16 May 2018, the Respondent drafted an application to reinstate GR's case. It was not clear whether the Respondent had filed the application. The Respondent admitted that he could not be certain that he made the payment of the appropriate fee.

41. The Respondent did not give GR any information regarding progress. On 16 August 2018 GR therefore telephoned the UT. The UT informed her that it had not received an application for reinstatement of her case or payment of the required fee.

42. On 23 August 2018, GR queried the position with the Respondent and he told her that he had paid the application fee, but later said that he could not be certain that he had made a payment along with the application.

43. GR made a formal complaint to the Respondent but did not receive any response.

44. On 26 September 2018, GR complained to the SRA. She stated that:

- after the judicial review was turned down on 1 October 2015, GR made several visits to the Respondent's office, and the Respondent assured GR that everything was in hand;

- the Respondent advised GR not to amend her grounds despite the 7 day deadline for doing so, and even though he had already missed that deadline;

- on 3 February 2016, the Respondent told GR about the Mehmood and Ali case, and that the Court would write to individual claimants, when the Court had already written to him about her case;

- in January 2018, at a meeting, the Respondent told GR that her case was "pending in Court", even though it had been struck out;

- the Respondent advised GR that she was not entitled to a human rights application in order to get an in-country hearing;

- the Respondent had been unclear on his fees and costs;

- the Respondent was slow in updating GR – for example he had received a letter on 13 February 2018 and did not mention it to GR until two months later;

- when GR checked with the Court on 16 August 2018, the Court told her that it was waiting for a reply to its letter of 19 February 2018. GR had paid the Respondent the £255 issue fee in February 2018, and although the Respondent had drafted an application in May 2018, it appears he had not filed it.

Witnesses

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

<u>Applicant's Witnesses</u>

- Ms GR – Respondent's former client

- Mr BP – Former client's uncle

Respondent's Witness

- Tapfumanei Nyawanza – Respondent

46. 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

47. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal gave due weight to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Tribunal considered all the evidence before it, written and oral together with the submissions of both parties.

Integrity

48. The test for integrity was that set out by the Court of Appeal 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".

49. **Allegation 1: In September 2014, a client (GR) instructed the Respondent on an application. The Respondent did not comply with directions made in 2015. As a result of the Respondent's non-compliance, the application was struck out in October 2015. After the striking out, the Respondent drafted letters confirming the action was proceeding, not having noticed that the claim was struck out. The Respondent therefore drafted letters which turned out to be misleading. In doing so, the Respondent breached Principles 2 and 6 of the Principles and failed to achieve Outcomes 1.2 and 1.5 of the Code.**

The Applicant's Case

49.1 Mr Horton submitted that the Respondent allowed GR's case to be struck out by not complying with directions made in 2015. However, subsequent to it being struck out, the Respondent advised GR that there was nothing to be concerned about, and provided her with letters saying that the action was continuing. Mr Horton submitted that the

Respondent had made a mistake, in that he had misread the court Order, notwithstanding that the Order was in clear terms.

49.2 Mr Horton submitted that in drafting letters that did not reflect the true position, the Respondent did not provide a service that protected GR's interests, or act competently. Had he realised the actual position the Respondent would have acted to protect GR's interests and he would not have incompetently allowed the action to be struck out, or would have applied for reinstatement, and would not have told third parties that the action was still continuing when it was not. This was therefore a failure to achieve outcomes 1.2 and 1.5.

49.3 Mr Horton submitted that the Respondent had created letters for GR to use for her benefit, which wrongly stated that the proceedings were still existing, when they had already been struck out. In so doing, the Respondent's conduct was sufficiently negligent as to be a failure to act with integrity in breach of Principle 2, and also amounted to a failure to behave in a way that maintained the trust the public placed in him and in the provision of legal services, in breach of Principle 6.

The Respondent's Case

49.4 The Respondent admitted allegation 1.

The Tribunal's Findings

49.5 The Tribunal found allegation 1 proved on the facts and the evidence, save that it did not find that the Respondent's conduct was in breach of Principle 2 as alleged, notwithstanding the Respondent's apparent admission. The Tribunal found the Respondent's admissions to have been properly made, save the admission as to the breach of Principle 2 and lack of integrity.

49.6 It was the Applicant's case that the Respondent had made a mistake, not that he had knowingly written misleading letters. In Wingate, when considering integrity, Jackson LJ had observed "Obviously, neither courts nor professional tribunals must set unrealistically high standards…The duty of integrity does not require professional people to be paragons of virtue". The Tribunal considered that, whilst the Respondent's mistake was culpable and serious enough to amount to professional misconduct, it did not amount to a lack of integrity. Accordingly, the Tribunal did not find that the Respondent's conduct amounted to a breach of Principle 2.

50. **Allegation 2 - GR instructed the Respondent to act on an application. The Respondent did not carry out those instructions properly. The Respondent failed to comply with directions, which meant the application was struck out, and did not work on the case from February 2016 to 30 January 2018. In doing so, the Respondent breached Principles 2, 4, 5 and 6 of the Principles and failed to achieve Outcomes 1.2, 1.5 and 5.3 of the Code.**

The Applicant's Case

50.1 Mr Horton submitted that the Respondent should have progressed GR's application, and should have complied with the directions, or should at least have taken some action

in regard to the directions. He had been instructed since 2014 yet he allowed the case to lie fallow (and struck out) for nearly 3 years.

50.2 In allowing his client's claim to be struck out due to his inaction, the Respondent failed to act in his client's best interests in breach of Principle 4, and also failed to provide a proper standard of service in breach of Principle 5.

50.3 The Respondent's conduct amounted to a breach of the requirement to behave in a way which maintained the trust placed by the public in him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by the Respondent failing to progress matters and allowing GR's claims to lapse, which put her at risk of deportation. The Respondent therefore breached Principle 6.

50.4 By allowing the action to be struck out, the Respondent did not provide a service that protected GR's interests, or act competently. Had he realised the position the Respondent would have acted to protect GR's interests and he would not have incompetently allowed the action to be struck out, or would have applied for reinstatement. The Respondent thus failed to achieve outcomes 1.2 and 1.5. Further, the Respondent failed to comply with a Court Order and thus failed to achieve outcome 5.3.

The Respondent's Case

50.5 The Respondent admitted allegation 2.

The Tribunal's Findings

50.6 The Tribunal found allegation 2 proved on the facts and the evidence, save that it did not find that the Respondent's conduct was in breach of Principle 2. The Tribunal found the Respondent's admission (save as to the breach of Principle 2) to have been properly made.

50.7 For the reasons detailed at allegation 1 above, the Tribunal did not find that the Respondent's failings, whilst culpable, amounted to a breach of Principle 2.

Manifest Incompetence

The Applicant's Case

50.8 Mr Horton submitted that with regard to allegations 1 and 2, the Respondent's conduct was manifestly incompetent in that, despite a Court Order in plain English, the Respondent did not comply with the Court's directions, so allowing the claim to be struck out. The Respondent went further and advised GR that there was nothing that he needed to do, and he drafted letters which assumed that the Court Order had no effect. He did not check the Court Orders to see whether there were any directions, or, if he did, he did not notice or understand the clear direction to file amended grounds in order to avoid the matter being struck out. A competent solicitor would have not allowed the case to be struck out, and, even if he did make a one-off mistake, he would

have checked the file before writing the letters requested by RS to make sure that they were not incorrect or misleading.

50.9 The Respondent then took no action for a long period of time. No competent solicitor would have so acted. Competent conduct in this circumstance would have involved, at the very least, submitting fresh grounds to the Court within the time limit, or writing to the Court to say that the existing grounds did not need amending.

50.10 Allowing a claim to be struck out in such a manner, and continuing as if the claim were still ongoing without checking the position, even to the extent of asking the Court to make Orders when the claim had been struck, involved such a failure to show the care and attention to be expected of a reasonably competent solicitor that it demonstrated a failure to comply with the integrity expected of solicitors, and undermined the trust and confidence the public has in him and the profession. By reason of such manifest incompetence, the Respondent breached Principles 2 and 6.

The Respondent's Case

50.11 The Respondent denied that his conduct had been manifestly incompetent. He accepted that he had not taken the action that he ought to have, and that it was wrong not to do what was expected. The Respondent did not accept that such conduct amounted to manifest incompetence.

50.12 Mr Afzal submitted that the Applicant's case on manifest incompetence was not clear, particularly in circumstances where negligence could be inadvertent. The case against the Respondent (and admitted) was that he had failed to take appropriate action in accordance with court Orders, and, not having realised that the case had been struck out, had drafted letters saying that the action was proceeding. Mr Afzal submitted that such conduct did not amount to manifest incompetence.

The Tribunal's Findings

50.13 When asked by the Tribunal what the distinction was between manifest incompetence and negligence, Mr Horton explained that manifest incompetence was negligence that was so serious that it amounted to a breach of the Code, and that continuous negligence amounted to manifest incompetence. Further, the effect of the negligence had to be taken into account, as well as the ease with which the appropriate action could have been undertaken in the first place.

50.14 In considering whether the Respondent's conduct was manifestly incompetent, the Tribunal considered the comments of Sir John Thomas in Iqbal v SRA [2012] EWHC 3251 (Admin) at paragraph 23:

> "It seems to me that trustworthiness also extends to those standards which the public are entitled to expect of a solicitor, including competence. If a solicitor exhibits manifest incompetence, as, in my judgment, the Appellant did, then it is impossible to see how the public can have confidence in a person who has exhibited such incompetence. It is difficult to see how a profession such as the medical profession would countenance retaining as a doctor someone who had showed himself to be incompetent. It seems to me that the same must be true of

the solicitors' profession. If in a course of conduct a person manifests incompetence as, in my judgment, the Appellant did, then he is not fit to be a solicitor. The only appropriate remedy is to remove him from the roll. It must be recalled that being a solicitor is not a right, but a privilege. The public is entitled not only to solicitors who behave with honesty and integrity, but solicitors in whom they can impose trust by reason of competence."

50.15 The Tribunal found, and the Respondent admitted, a number of failings on his part in the conduct of GR's matter. Whilst those failings were serious, such that they amounted to professional misconduct, the Tribunal did not find that the failings were sufficiently serious to mean that the Respondent was not competent to be a solicitor and should be struck off the roll. Accordingly, the Tribunal did not find that the Respondent's conduct amounted to manifest incompetence.

51. **Allegation 3: In 2014 and 2015, at the Respondent's request, GR paid money to the Respondent's landlord rather than to the Respondent. The amount GR paid to the landlord was over £3,000. As a result, the Respondent breached Rule 14.1 of the Accounts Rules. The Respondent also breached Principles 4, 6 and 10 of the Principles.**

The Applicant's Case

51.1 Mr Horton submitted that at the initial meeting, the Respondent asked GR not to pay costs to him, but to RS. GR stated that the Respondent "did not explain to me, why these payments were to be paid to [RS]. However, [RS] did say to me that these payments was (sic) adjusted in his rent." No receipts were given to GR for the payments she made to RS.

51.2 The client care letter dated 8 October 2014 stated that the agreed fixed fee of £850 covered all work up to a decision from the Tribunal, and that this fee excluded disbursements and the £100 consultation fee.

51.3 Mr Horton submitted that GR made the following payments to RS:

- October 2014: £500 (cash)
- 7 October 2014: £550 (bank transfer)
- 22 December 2014: £650 (bank transfer)
- 3 February 2015: £1,400 (bank transfer)
- February 2015: £450 (cash)

51.4 The payments made by GR to RS totalled £3,550.00.

51.5 There were a number of text messages between GR and RS confirming some of the payments she made to him. GR's banks statements also detailed the bank transfers from GR to RS.

51.6 The Respondent's ledger recorded receipt of the following payments from GR:

- 11 January 2015 (£100)
- 31 January 2015 (£150)

- 1 February 2015 (£150)
- 18 February 2015 (£350)
- 31 March 2015 (£350)

51.7 The payments received by the Firm from GR totalled £1,100.00.

51.8 In her oral evidence, GR explained that she had paid monies to RS to fund the judicial review application. At the time she was a student, and so had to borrow the monies from friends and relatives. When questioned as to why she did not make a complaint about the monies paid to RS in her initial detailed complaint to the SRA, GR explained that she was not aware at that time that there was anything untoward in being asked to make payments of legal fees to someone other than the solicitor's firm. She only detailed the payments when she had been asked about monies paid. During their initial meeting, when the Respondent told her to pay monies to RS, she had asked the Respondent why she needed to do this, but he did not give her any explanation. Thereafter, she paid the monies to RS when requested, as that was what she had been told to do. The payments were made in instalments of her choosing, according to how much she could afford.

51.9 GR explained that the letter of 11 May 2015, which detailed the likely costs of the judicial review, represented the monies that she had already paid to RS. GR denied that her evidence with regard to payments to RS at the Respondent's request was a later fabrication.

51.10 In his oral evidence, BS explained that he knew RS from the Temple, and approached him regarding GR's situation. RS introduced GR and BS to the Respondent. At their meeting with the Respondent, the Respondent told GR to pay monies to RS. The Respondent did not explain why monies should be paid to RS. BS did not recall any conversation about the amounts that should be paid to RS.

51.11 Mr Horton submitted that it was trite law that client money was sacrosanct, and should be kept in a client account. Instead, the Respondent asked GR to pay money, that should have been on account of costs, to a third party (his landlord), which meant that those monies were not afforded the protection of the client account.

51.12 In allowing GR to make payments to RS on account of costs, the Respondent had put GR's monies at risk. Accordingly, he had failed to act in her best interests in breach of Principle 4.

51.13 Such conduct, it was submitted, also amounted to a breach by the Respondent of the requirement to behave in a way which maintained the trust placed by the public in him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by solicitors not keeping client money protected. The Respondent therefore breached Principle 6.

51.14 Rule 14.1 of the Accounts Rules required solicitors to pay client money into the client account without delay. The Respondent did not do so. He asked GR to pay money due to him on account of his costs to a third party. Such conduct was in breach of Rule 14.1.

The Respondent's Case

51.15 The Respondent denied allegation 3. In his Answer the Respondent explained that RS was not his landlord; the landlord was a limited company (operated by RS), as detailed in the tenancy agreement between the Firm and the landlord.

51.16 The rent for the premises was paid by the Firm. The rent paid was variable depending on the office space the Firm needed from time to time. The rent was paid by direct transfer, although there were occasions when small additional cash payments were made.

51.17 The Respondent stated that he did not know why payments had been made by GR to RS. The Respondent denied that he had asked GR to make payments directly to RS, and said that any payment made by her to RS did not relate to payments for the rental of the Firm's premises. Further, it was noted that the payments were made to RS's personal bank account, and not to the account to which rental payments were made by the Firm.

51.18 In evidence the Respondent explained that the Firm's base rent was £2,000 per calendar month. There was a flexible arrangement such that, if the Firm recruited more members of staff and more office space was needed, this was provided by the landlord at additional cost. When the additional space was no longer needed, the cost would be reduced. When it was put to the Respondent that the witnesses had no reason to lie about what was said at the meeting, the Respondent explained that he did not accuse anyone of being untruthful. He noted that GR had made no complaint about monies paid to RS in her initial detailed complaint to the SRA. He had accepted and admitted that his conduct was not of the requisite standard with regard to allegations 1 and 2, and had apologised for that. He had not asked her to pay any monies directly to RS, and no monies had been paid by her for the rental of the Firm's premises under his direction. The Respondent did not dispute that GR had paid monies to RS, however he did not know what those payments related to. While the text messages from RS to the client suggested that the monies related to the Respondent's legal costs and would be paid onto the Respondent, this had not happened.

51.19 The Respondent denied that he had requested that payment be made to RS. He did not wish to speculate as to why those payments were made, or why GR stated that he had asked her to make payments to RS.

The Tribunal's Findings

51.20 Mr Horton had submitted that to decide allegation 3, the Tribunal needed to resolve the conflict of evidence as between the Respondent and GR.

51.21 The Tribunal noted that the Respondent did not dispute that GR had made payments to RS, but stated that he had no involvement with those payments, and had no knowledge of them or what they were for. GR's evidence was that the Respondent had told her to make payments to RS at their initial meeting. GR explained that she was paying the monies to RS to fund her case, as was evidenced by the text messages between GR and RS. It was also her evidence that RS stated (at some later point) that the monies were to offset the Firm's rent.

51.22 The Applicant had provided no evidence that any of the payments made by GR to RS were paid on to the Respondent. Nor was there any evidence that those monies were used to offset any rent owed by the Respondent. Further, the Applicant had provided no evidence to show that the Respondent had issued any bills to GR in excess of the monies that she had paid directly to the Firm.

51.23 The Tribunal found that the Applicant had therefore failed to discharge the burden of showing, on the balance of probabilities, that the monies GR had paid to RS were paid at the Respondent's direction, and were client monies that should have been paid directly to the Firm. Whilst GR clearly understood and believed that the monies she was paying to RS were required by the Respondent to fund her legal action, and that the Respondent would be the recipient of them, either directly or by way of an offset against his Firm's rent, there was no evidence demonstrating that the Respondent knew about or directed those payments. Accordingly, the Tribunal found allegation 3 not proved.

Previous Disciplinary Matters

52. None.

Mitigation

53. Mr Afzal submitted that the Respondent accepted culpability for his misconduct. He had not sought to blame anyone else and had been entirely candid with the SRA. It was accepted that GR had suffered harm as a result of his misconduct, however, when viewed in context, the harm was not extensive. Whilst the proceedings were struck out, GR was able to reinstitute those proceedings, and her claim eventually succeeded (she having instructed another firm). Mr Afzal submitted that in the circumstances, the striking out of the claim did not make any real difference to GR's position. Whilst there had been harm caused, GR's position had been resolved.

54. It was further accepted that there had been harm caused by the misleading letters. Mr Afzal submitted that the letters were written in order to benefit GR, and had not been used in Court proceedings so there had been no misleading of any Court.

55. Mr Afzal submitted that there were no aggravating features. In mitigation, it was submitted that the Respondent's conduct was a one-off. He was an experienced and conscientious immigration lawyer. He had displayed genuine insight into his misconduct throughout the investigation and the proceedings. He apologised for his shortcomings and had made full and frank admissions at the earliest opportunity.

Sanction

56. The Tribunal had regard to the Guidance Note on Sanctions (8th Edition). 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.

57. The Tribunal determined that the Respondent was not motivated to commit misconduct, his misconduct arose out of the mistakes he made in the conduct of GR's case. The Respondent failed to keep his client appraised of the progress and merits of her case. His initial error in failing to pay due regard to the Orders was compounded by the further action (in writing the misleading letters) and inaction (failing to ensure compliance with Court Orders). Had the Respondent reviewed the file as he ought, his errors would not have been compounded. In particular, had he reviewed his file and seen the Orders which should have been on it, he would have taken action to salvage GR's claim, and would not have written the letters which were in fact misleading. This was a serious failing. The Respondent was an experienced and specialist immigration solicitor, and the service he provided fell well below the standard which GR (and third parties relying on the misleading letters) were entitled to expect.

58. The Respondent's actions had caused harm to his client. GR's evidence was that her immigration status was unsettled for a prolonged period as a result of his misconduct. He had provided her with a poor service, and had caused her very significant stress.

59. The Tribunal considered that the Respondent's misconduct was aggravated as his incompetence was repeated and continued over a period of time. The Tribunal considered that GR was vulnerable given her precarious immigration status. The Respondent delayed in informing GR about the letter from the Court which stated that her claim had been struck out. The Tribunal also noted that the Respondent had taken no active steps to refund any monies he had received from GR, notwithstanding his acknowledgement of the poor service he provided. In particular he had not refunded the Court fee for reinstating her struck out claim, notwithstanding that this had never been paid over to the Court.

60. The Tribunal did not accept the submission that the Respondent's misconduct was a one-off. As detailed, he made a number of errors, and the misconduct continued over a period of time. The Tribunal however noted that the Respondent had made admissions to all the matters that were found proved, and had cooperated with the Applicant throughout the investigation and proceedings.

61. When considering the appropriate sanction, the Tribunal considered the references submitted on the Respondent's behalf. The Tribunal determined that sanctions of no order or a reprimand did not reflect the seriousness of the Respondent's misconduct. The Tribunal determined that a financial penalty was appropriate, having regard to the Respondent's culpability and harm caused. The Tribunal considered that the Respondent's conduct fell within its Indicative Fine Band Level 3. The Tribunal determined that a fine in the sum of £12,500 accurately reflected the seriousness of the Respondent's misconduct.

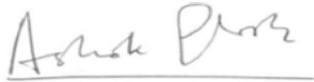
Costs

62. The parties agreed costs in the sum of £3,000. The Tribunal considered that the agreed costs were appropriate and proportionate, and ordered that the Respondent pay costs in the agreed amount.

Statement of Full Order

63. The Tribunal Ordered that the Respondent, TAPFUMANEI NYAWANZA solicitor, do pay a fine of £12,500.00, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the agreed sum of £3,000.00.

Dated this 12th day of January 2022
On behalf of the Tribunal



JUDGMENT FILED WITH THE LAW SOCIETY
12 JAN 2022

A Ghosh
Chair