SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12242-2021

BETWEEN:

JOSEPH OBUKOWHO OMORERE Appellant

and

SOLICITORS REGULATION AUTHORITY LTD Respondent

Before:

Ms A E Banks (in the chair)
Mr G Sydenham
Dr P Iyer

Date of Hearing: 8 December 2021

Appearances

The Appellant represented himself.

Michael Collis, barrister of Capsticks LLP, 1 St George's Road, London SW19 4DR for the Respondent.

JUDGMENT ON AN APPLICATION TO REVIEW AN ORDER UNDER S44E OF THE SOLICITORS ACT 1974

Background

1. The Appellant appealed against a decision of an Adjudication Panel dated 23 July 2021 to uphold the decision of the Adjudicator dated 26 April 2021 that he should be rebuked and should pay costs in the sum of £300.

2. The Appellant was admitted to the Roll of solicitors on 1 August 2002.

26 April 2021 Decision ("the April Decision")

3. The background to the April decision was set out in the 'Notice Recommending Written Rebuke' ("the recommendation") dated 4 March 2021 and related to civil litigation brought by the Appellant against Person A, Firm B and Firm C and specifically an order that the Appellant pay Firm C's costs in the sum of £3,100 within 14 days of 29 January 2019. The Appellant did not pay this sum within 14 days and that gave rise to an investigation by the Respondent.

4. The background to the litigation was that in September 2017, the Appellant had represented Person A in a civil claim against Firm B. Person A was successful and Firm B had been ordered to pay her £10,000, (incorrectly stated to be £1,000 in the Order) plus interest and her costs of £4,323. Firm B paid the money owed under this Order, to Firm C, who had originally represented her in the claim. Firm C then transferred the money to Person A. Person A did not pay the Appellant the total amount of fees that had been agreed between them.

5. As a result, the Appellant brought proceedings against Person A, Firm B and Firm C in an attempt to recover his fees. On 5 December 2018, this case was heard at Basildon County Court by Deputy District Judge Andrews. DDJ Andrews made an Order against Person A that she pay the Respondent £2,983, including costs. However, he dismissed the claim against Firm B and Firm C. The Appellant was ordered to pay Firm C its costs of £3,000 by 19 December 2018.

6. On 17 December 2018, the Appellant filed an Appellant's Notice in respect of the 5 December 2018 Costs Order against him. The Appellant requested a stay on the Order until the appeal had been determined. On 17 October 2019, His Honour Judge Lochrane granted leave to appeal the costs assessment. The appeal was resolved on 29 January 2020 by District Judge Hodges at Chelmsford County Court, with the Appellant being ordered to pay Firm C £3,100 costs within 14 days. This order was dated 29 January 2020 and sealed on 5 February 2020.

7. On 17 February 2020, the Appellant filed an Appellant's Notice seeking permission to appeal the 29 January 2020 Costs Order. The Notice sought to vary the Order. The Appellant requested a stay on the 29 January 2020 Order until the appeal was determined.

8. On 14 September 2020, in a letter to Firm C, the Appellant asserted that the outcome of this appeal was still outstanding and claimed that no enforcement action could be taken against him until its resolution.

9. On 9 October 2020, Firm C confirmed to the SRA that £2,600 was still owed from the 29 January 2020 Costs Order, plus a further £243 for a Charging Order.

10. In representations to the SRA dated 8 March 2021, the Appellant said that he had paid £1,650 towards the 29 January 2020 Costs Order. On 1 May 2021 the Appellant submitted an application for suspension of a warrant and/or variation of an order.

11. The recommendation set out the investigator's reasons for recommending a rebuke as follows:

> "*20 Mr Omorere is a solicitor. He is on the Roll, holds a practicing certificate and was employed in a recognised body to undertake reserved legal activity.*
>
> *Mr Omorere has failed to comply with a requirement imposed by or made under the Solicitors Act 1974, the Administration of Justice Act 1985 or, in relation to a solicitor, there has been professional misconduct.*
>
> *21 The rules made under the Solicitors Act 1974 include:*
>
> *(a) the Principles*
> *(b) the Code of Conduct for Solicitors, RELs and RFLs*
> *(c) the Code of Conduct for Firms*
> *(d) the Accounts Rules*
> *(e) the SRA Principles 2011*
> *(f) the SRA Code of Conduct 2011*
> *(g) the SRA Accounts Rules 2011.*
>
> *Allegation 1*
>
> *22 That by pursuing litigation that you knew, or should have known, was without merit and had no prospect of success you have: breached principle 1 of the SRA Principles 2011*
>
> *Why the conduct breaches the Standards and Regulations*
>
> *23 Principle 1 requires those involved in the provision of legal services to uphold the rule of law and the proper administration of justice. The administration of justice happens in the courtroom and the time of the court is a valuable commodity. We expect members of the profession to understand this and to treat the court and its time with respect.*
>
> *24 Failure to recognise this results in the wasting of time that could be spent on more important matters. Pursuing matters that are without merit and have no prospect of success therefore undermines the administration of justice.*
>
> *Why the evidence proves the conduct*
>
> *25 The judgement, of 5 December 2018, clearly states that there is no basis for the case against [Firm C] and BMPS. Despite this, Mr Omorere continued*

with the litigation and lodged an appeal. At this appeal, it was once again confirmed that there was no basis for the claim against [Firm C] and BMPS.
Allegation 2

26 That by failing to comply with the Costs Order, dated 29 January 2020, you have: failed to achieve outcome 5.3 of the SRA Code of Conduct 2011

Why the conduct breaches the Standards and Regulations

27 Outcome 5.3 instruct solicitors that they must comply with court orders that place obligations on them. The Costs Order, dated 29th of January 2020, requires Mr Omorere to pay the costs to [Firm C] within 14 days. Mr Omorere had still not paid the costs to [Firm C] by October 2020. This is clearly a breach of the order of the court.

Why the evidence proves the conduct

28 The Costs Order within the bundle is clear as to the amount owed and the time scales for payment. Pepperell's correspondence with the Investigation Officer in October 2020 states that the balance is still outstanding. [Firm C] also goes on to say that it is taking enforcement action to obtain the outstanding money.

Why our decision-making framework indicates that a written rebuke is an appropriate outcome to the matter

29 If the authorised decision-maker finds that, on the balance of probabilities, the allegation(s) proven, they may give Mr Omorere a written rebuke if our decision-making framework indicates that a written rebuke is an appropriate sanction.

30 We have considered the Enforcement Strategy when reaching our recommended decision. The authorised decision-maker is not bound by our recommendation and may impose a different outcome if they consider it appropriate to do so.

31 We recommend a written rebuke because:

(a) Mr Omorere's actions have been prolonged and deliberate.
(b) At all times, he was in full control of the course of the litigation. He had no client instructions to consider.
(c) He shows no insight into his actions and is therefore at risk of repeating such behaviour. (d) He has shown a fundamental disregard for the rule of law and the authority of the court."

12. On 26 April 2021 the Adjudicator found that by failing to comply with the costs order dated 29 January 2020, the Appellant had failed to achieve outcome 5.3 of the SRA Code of Conduct 2011(Allegation 2). The adjudicator rebuked the Appellant and ordered the publication of this. She also ordered him to pay costs of £300. The

Adjudicator found Allegation 1 not proved. The Adjudicator's findings and reasons in relation to Allegation 2 were set out as follows:

> "*6.10 Outcome 5.3 places a duty on solicitors to comply with court orders.*
>
> *6.11 On 29 January 2020, following dismissal of his appeal, Mr Omorere was again ordered to pay costs of £3, 100 within 14 days, by 12 February 2020.*
>
> *6.12 I note that Mr Omorere has provided a copy of an appeal application dated 17 February 2020. I note this was made outside of the 14 day time frame to pay the costs. I also note there is no court letter confirming receipt or acknowledgment his appeal is being heard. I also note that Mr Omorere states he has made four payments totalling £1,650 to [Firm C] towards the costs awarded to it. [Firm C] states that as of 9 October 2020 Mr Omorere owes it £2,843. There is no consensus regarding the amount that remains to be paid but it is clear there is still costs to be paid. Mr Omorere says allegation 1.2.2 must fail as he has begun payments. I do not agree with this because although Mr Omorere has paid some of the money he has not paid all of it, which he had to do by 12 February 2020.*
>
> *6.13 Without any up to date information about his appeal, and the fact the appeal form is dated outside of the 14 day timeframe to pay the costs and that Mr Omorere has begun to make payments leads me to conclude that any chance of a successful appeal is unlikely, and the order made against him on 29 January 2020 stands. Therefore, Mr Omorere needed to pay £3,100 by 12 February 2020. This date has passed, and this sum has not been paid in full. Mr Omorere has failed to comply with the court order. It is now 14 months since the order was made and [Firm C] has not been paid its costs in full. Furthermore, [Firm C] successfully obtained a charging order against Mr Omorere.*
>
> *6.14 I acknowledge that Mr Omorere states that no enforcement action can be taken if an appeal has been lodged and [Firm C] disputes this stance. They have referred to the civil procedure rule 52.16 which states that an appeal shall not operate as a stay of execution of any order or decision of the court. This can also be implied that Mr Omorere accepts the position because he has started paying off the costs incrementally. If his position were correct, and the order is stayed pending appeal, he would not have to make any payments. However, the fact remains, there is no evidence his appeal is being heard and he has begun to make payments towards the order made against him. Therefore, given his previous robust position to the order, the fact he is making payments strengthens [Firm C's] argument that the order is not stayed. Full compliance with the order has passed and money remains to be paid. Therefore, I find a failure to achieve Outcome 5.3.*
>
> *Rebuke*
>
> *6.15 I have carefully considered the SRA Enforcement Strategy, the facts and circumstances of this case and the findings. Having done so, I have decided*

that it is proportionate to issue Mr Omorere with a rebuke for the following reasons:

- *Some public sanction is required to maintain standards and to acknowledge there has been a breach of legal requirements. It is not acceptable for a solicitor to fail to comply with a court order especially given this order was personal to Mr Omorere.*
- *Mr Omorere has started to make payments, so he is taking some remedial action, but the matter has persisted longer than is reasonable given the date of the order.*
- *There is no lasting significant harm to consumers or third parties, provided that [Firm C] eventually receives all of its costs.*

6.16 It would not be proportionate nor in the public interest to impose a lower level sanction, such as a letter with a warning, for the following reasons:

- *The breach was not minor or moderate, a court order is mandatory. It is unacceptable for an officer of the court to fail to comply with an order made against them.*
- *Mr Omorere showed no insight regarding his actions. He continues to dispute any poor judgment on his behalf. There is therefore a potential, albeit relatively low, risk of repetition.*
- *Mr Omorere is an experienced litigator. He is knowledgeable as to court rules and procedure and this aggravates the offence*."

23 July 2021 Decision ("the July Decision")

13. The Adjudicational Panel reviewed the April decision on 23 July 2021 and published the 'Decision of Adjudication Panel' on 30 July 2021 in which the Adjudication Panel set out its reasons for dismissing the review as follows:

"*The Court Order of 29 January 2020*

5.3 In his application for a review of the adjudicator's decision, Mr Omorere stated that there was no costs order of 29 January 2020 and the adjudicator mistakenly referred to the order of 5 February 2020. This is not correct. District Judge Hodges made a costs order against Mr Omorere in the sum of £3,100 on 29 January 2020. The 29 January 2020 order was sealed by the court on 5 February 2020, and that date was affixed to the order of 29 January 2020. Thus, District Judge Hodges made a costs order on 29 January 2020 which was perfected on 5 February 2020. The adjudicator had not made a mistake. Mr Omorere asks the Court to stay execution of the order

5.4 On 17 February 2020, Mr Omorere did not, as he states, appeal the costs order made on 29 January 2020 and perfected on 5 February 2020. He applied for permission to appeal that order, which is not the same thing. However, we make no determination whether it was necessary to ask for permission to appeal the order of a District Judge. It does not much matter.

5.5 In that application, Mr Omorere asked the court for a stay of the order (see section 4 of his application). As far as we can tell from the documents before us, the court has not granted him either permission to appeal (if required) or a stay of the order. Neither has it granted or dismissed his appeal.

5.6 But there is a further part of the application for (permission to) appeal that is important. Mr Omorere has not asked the appeal court to set aside the order of 29 January 2020/5 February 2020. He has asked for the amount he must pay under that order to be varied (see section 6 of his application for permission). Mr Omorere therefore admits he owes money to Firm C but does not accept it is £3,100.

5.7 Thus, to date and when the matter was before the adjudicator, Mr Omorere admits he is a judgment debtor but does not accept the amount he has been ordered to pay. He has challenged that amount, but the challenge is outstanding. He has, as the adjudicator found, paid some of this debt over time but not all of it, and he failed to pay the debt within the time ordered by the Court.

An automatic stay?

5.8 Mr Omorere's submission that there is an automatic stay on the enforceability of the costs order because the appeal is outstanding is incorrect.

5.9 CPR 52.16 is clear about this. It says "Unless (a) the appeal court or the lower court orders otherwise or (b) the appeal is from the immigration and Asylum Chamber of the Upper tribunal, an appeal shall not operate as a stay of any order of the lower court." (Underlining added).

5.10 This has been the position in the English and Welsh courts for many years and any reasonably competent litigation practitioner should know it. That is why an appellant must specifically ask the court for a stay when completing the written application to appeal at section 4 (see above). Mr Omorere is incorrect to assert that CPR 52.16 only applies to immigration matters.

New information since the adjudicator's decision

5.11 In his review, Mr Omorere has supplied a copy of a court form called an N245 dated 1 May 2021. This is an application by him to the court for permission to vary or suspend a warrant of execution of a judgement debt. Part of the form invites an offer to pay, including any offer to pay by instalments. Such forms are filed where a judgment debtor cannot afford to pay. The court will send the application to the judgment creditor who can either accept or reject the offer to pay. The adjudicator would not have seen this because it did not exist when she made her decision. In his N245, Mr Omorere offered to pay £100 per month to discharge the judgment debt.

5.12 This new information, on its own, would not have had a material influence on the matter because it does not prove that the costs order of 29 January/5 February 2020 was complied with in the time ordered by the court. It is simply an application to the court with no accompanying evidence to show the offer was accepted. It is also not sealed by the court. If anything, this document reinforces the correctness of the adjudicator's decision because it proves that the costs order was not complied with when it should have been.

5.13 Mr Omorere also asserts that the form N245 together with an agreement he says he reached with [Firm C] that he would pay by instalments means that the costs order has been complied with. We could find no evidence of [Firm C] purportedly agreeing this or coming to some agreement whereby the court order of January/February 2020 had been complied with. Any agreement made before 29 January 2020 is irrelevant because it could not have been about the costs order made on that day. Even if there were such evidence, parties to a court order cannot vary it by themselves; only a court can vary its own order and there is no evidence of that. For these reasons, this has no material influence on the matter, either.

Miscellaneous points raised on review

5.14 Mr Omorere makes other points on review, which we shall deal with now.

5.15 He says he stopped a charging order being put onto his matrimonial home. This is immaterial to the fact that the costs order has not been complied with because it does not prove either the order was complied with or need not have been complied with.

5.16 He alleges that a [Person X] of [Firm C] had breached his human right to privacy and the GDPR. This is irrelevant to the issue before us.
5.17 He further alleges that [Person X]"had used unprofessional conduct to gain a tactical advantage over him". This serious allegation does not prove that the judgment debt of January/February 2020 was not complied with.

5.18 Mr Omorere says that he reached an agreement with [Person X]to pay £500 as a goodwill gesture and because this was accepted by her and encashed it proved that an agreement had been made to settle the judgment debt. This does not prove that the costs order in question was complied with. It proves that Mr Omorere offered to pay £500 towards paying the debt several months after he ought to have done. The only evidence we have seen of a payment of £500 is a letter from Mr Omorere dated 14 September 2020, in which he tenders payment of £500 as an "initial payment" that is "towards the appealed costs order". Significantly, Mr Omorere then said, "While my appeal remains pending I will make necessary payments and should I be successful we will be able to resolve the difference between us." We consider the tender of £500 to be a late payment on account of a judgment debt whose amount Mr Omorere was challenging. It was not a payment on account of an agreed sum.

5.19 Mr Omorere has also produced some fresh documents that are described in paragraph 3.25. None of these are of assistance to us, and none of them disprove the allegation that the costs order made on 29 January 2020 was not complied with."

Appellant's Submissions

14. The Appellant had made lengthy representations to the SRA during the course of the investigation and internal decision-making process, all of which were before the Tribunal. The Appellant's grounds were helpfully and accurately summarised by the Respondent in its response to the appeal as follows:

> "(i) There was no 29 January 2020 Order;
> (ii) Insufficient evidence of non-compliance with any Order;
> (iii) The 17 February 2020 Appellant's Notice placed a stay on the effect of the 29 January 2020 Order;
> (iv) Article 6 breach; and
> (v) Lack of SRA jurisdiction"

15. In addition to developing the points above in oral submissions, the Appellant made additional points in his Skeleton Argument, which he also developed before the Tribunal.

16. The Appellant submitted that the Respondent had relied on the wrong Code of Conduct when considering the matter, in that it had relied on the 2011 Code rather than the 2019 Code. The Appellant submitted that the equivalent paragraph in the 2019 Code, paragraph 2.5, referred to contempt of Court and was therefore materially different to Outcome 5.3 of the 2011 Code, which did not.

17. The Appellant told the Tribunal that there was no evidence of a failure to pay and that he had now paid the sum in its entirety – indeed he had paid £50 extra by mistake. The Appellant reiterated his argument that upon lodging an appeal with a request for a stay, the sum was not enforceable until that appeal was resolved. The Appellant submitted that the Adjudicator and the Adjudication Panel had made an error of law in concluding otherwise. The Appellant told the Tribunal that he had remained in contact with the Court and had been engaged in the proceedings and submitted that this demonstrated that he had not been failing to comply with Court orders.

18. The Appellant also argued that he was involved in the civil proceedings as a private individual and not a solicitor, hence disputing the Respondent's jurisdiction in relation to this matter.

Respondent's Submissions

19. In relation to point taken about the existence of a 29 January 2020 Order, Mr Collis relied on paragraph 5.3 of the July decision and submitted that the Civil Procedure Rules made clear that the Order took effect on the day it was made.

20. Mr Collis submitted that the meaning of Outcome 5.3 (2011 Code) and Paragraph 2.5 (2019 Code) was the same and that the fact of the wrong Code being relied upon did not undermine the decision. He relied on El Diwany v SRA [2021] EWHC 275 (Admin) in support of his submissions, where it was held that no prejudice arose as the substance of the pleaded allegation was substantially the same as the allegation that ought to have been pleaded.

21. Mr Collis submitted that the Respondent had jurisdiction to impose a rebuke even if the Appellant had been acting in a purely private capacity. In any event, however, it was not accepted that the Appellant had been acting in such a capacity as the civil proceedings related to fees for work undertaken in his capacity as a solicitor.

22. Mr Collis accepted that the Appellant had ticked the box on the appeal form that requested a stay, but noted that no stay had been ordered by the Court.

23. The Tribunal sought clarification of the Respondent's position by asking Mr Collis as to the basis on which it had been concluded that the Appellant's conduct amounted to professional misconduct, rather than simply a mistake. Mr Collis told the Tribunal that the Respondent's case was that this was not merely a mistake. Mr Collis submitted that there remained outstanding issues with payment of the sum ordered. There had been a delay in payment of more than 18 months for a sum that was due within 14 days. The variation of the order that was eventually granted was not dealt with until August 2021. Mr Collis told the Tribunal that if it had simply been a question of the Appellant missing the date by a matter of days, it may be that this would have been viewed differently by the Respondent.

24. In relation to the Article 6 argument raised by the Appellant, which was based on the Adjudication Panel's sight of the investigator's recommendation, Mr Collis submitted that the Appellant had not provided any authority in support of this submission. The Adjudication Panel was independent from the investigator and the recommendation itself accepted that the decision lay with the Adjudicator, who was not bound by the recommendation.

The Tribunal's Decision

25. The correct approach to an appeal under section 44E was set out in SRA v SDT (Arslan) [2016] EWHC 2862 (Admin) as follows:

> "38. I turn to the nature of the Tribunal's task in conducting a review under section 43(3) and an appeal under section 44E. It is not in dispute that the Tribunal was correct to hold that, in both cases, the proper approach was to proceed by way of a review and not a re-hearing. As for what such a review involves, the Tribunal accepted submissions made to it by Ms Emmerson that its function was analogous to that of a court dealing with an appeal from another court or from a tribunal and that it should apply by analogy the standard of review applicable to such appeals which is set out in rule 52.11 of the Civil Procedure Rules. Rule 52.11 makes it clear that a court or tribunal conducting a review should not generally receive new evidence that was not before the original decision-maker, although it may do so if justice requires it; and it should interfere with a decision under review only if satisfied that the

> decision was wrong or that the decision was unjust because of a serious procedural or other irregularity in the proceedings.
>
> 39. It follows that the Tribunal should not embark on an exercise of finding the relevant facts afresh. On matters of fact the proper starting point for the Tribunal in this case was the findings made by the adjudicator and the evidence before the adjudicator. The Tribunal had to consider whether, on that evidence, the adjudicator was justified in making the factual findings that he did."

26. The Tribunal adopted this approach in this case. It therefore did not re-examine the decisions taken in the course of the civil proceedings and it did not need to carry out a detailed analysis of the Adjudicator's findings. The Tribunal was also not simply asking itself whether it would have imposed a rebuke based on the Adjudicator's findings, but whether the Adjudicator, and subsequently the Adjudication Panel, had reached decisions that were wrong or were unjust because of a serious procedural or other irregularity.

27. The Tribunal considered each of the Appellant's grounds and noted carefully the written and oral submissions of both parties.

28. The Tribunal did not accept that the Respondent had no jurisdiction in relation to a solicitor's private life. The Tribunal regularly dealt with, for example, cases involving criminal convictions arising from offences committed by a solicitor in the context of his/her personal life. That was a non-issue in this case, however, as the Appellant was acting to recover fees for professional work done as part of his practice. A solicitor could not simply declare themselves to no longer be acting as such. The Tribunal was satisfied that the Appellant had been acting in his capacity as a solicitor, but even if he had not, it made no difference to the Respondent's jurisdiction to consider issues of professional misconduct.

29. The Tribunal rejected the Appellant's submissions that there had been a breach of his Article 6 rights. The Appellant had been given opportunities to make representations to the Adjudication Panel, which he had done at length, as part of his right to seek a review of the Adjudicator's decision.

30. In relation to the erroneous reference to the 2011 Code instead of the 2019 Code, the Tribunal did not consider this a sufficient basis to interfere with the Adjudication Panel's decision. Although the 2019 Code also referenced contempt of Court at paragraph 2.5, it was plainly not relating solely to cases involving contempt of Court – it merely included them. There was no suggestion that the Adjudicator or the Adjudication Panel had considered that the Appellant was in contempt of Court. Had they done so it was highly likely that a more severe penalty than a rebuke would have been contemplated. The Appellant had not been prejudiced by the reference to the 2011 Code and the Tribunal did not consider it would have made any difference to the decisions.

31. The Tribunal noted that the Order was dated 29 January 2020 and the CPR confirmed that it took effect on that date, notwithstanding that it was sealed on 5 February 2020. The Tribunal therefore rejected any suggestion that there was no order of 29 January 2020.

32. It followed from that conclusion, that the Appellant had been required to pay the sum ordered within 14 days. The facts were clear that he had not done so. The Tribunal noted that he had lodged an appeal and had sought a stay, albeit this was lodged after the deadline for compliance with the Order. The Court had not granted a stay and so the fact was that the sum remained payable and, by now, was overdue. The Adjudication Panel had therefore been right to find that the Appellant had failed to comply with the Order. The Tribunal noted that the Appellant had subsequently withdrawn his appeal against the Order and had paid the sum in full, albeit late. The Appellant's actions in doing so were consistent with the facts and were inconsistent with submissions that the Order had not been made or that there was insufficient evidence of non-compliance.

33. The Tribunal considered whether the Adjudicator and Adjudication Panel had given adequate consideration to the question of whether the Appellant's failings amounted to professional misconduct. The Tribunal was clear that all failures to comply with Court orders were serious matters. Solicitors were officers of the Court and non-compliance with a Court order was not something that could be overlooked. The Tribunal did, however, consider that the context of the non-compliance was relevant in determining whether the failure was professional negligence or whether it crossed the line into professional misconduct. In this case, the Appellant had lodged an appeal and applied for a stay. Although he was out of time by a small number of days under the CPR, the Tribunal noted that the Order was sealed on 5 February 2020 and in that context it was not grossly out of time. The Appellant had been wrong to assume that, by lodging the appeal and applying for the stay, he did not need to comply with the Order. The Appellant did, albeit late, make payments, having applied for a variation of the Order to enable him to pay by instalments in May 2021. This information was not available at the time of the April decision, but was before the Adjudication Panel at the time of the July decision. The variation was dealt with in August 2021, no doubt some of the delay being attributable to the challenges faced by the Court caused by the Covid-19 pandemic.

34. The reasons given by the Adjudication Panel considered the factual background to the matter in detail and were accurately recorded, as noted above. The Tribunal noted that the Adjudication Panel had regard to the SRA Enforcement Strategy and the relevant Rules and Regulations when considering this matter. The Adjudication Panel had given detailed reasons for its factual findings and for upholding the Adjudicator's decision. What the Adjudication Panel had not done was give sufficient reasons as to why it upheld the Adjudicator's decision that the failure to comply with the Order amounted to professional misconduct in this instance, rather than, for example, poor judgment, incompetence or negligence falling short of professional misconduct.

35. The investigator had made brief reference to professional misconduct in his recommendation, though at that stage two allegations were being made against the Appellant. One of those allegations was found not proved by the Adjudicator. The Adjudicator did not explain why the failure to comply with the Order amounted to

professional misconduct, though she did set out some aggravating factors which made the failure more serious.

36. The Tribunal considered that where a finding of professional misconduct is made, it was necessary to set out in clear terms why that was the case. Any finding of professional misconduct is a serious matter for that individual and fairness dictates that where such a finding is made, the basis for it is clear in order that it can be understood and, if appropriate, challenged. In this case the Respondent had not adequately set out why it was that, in circumstances where the Appellant had lodged an appeal, applied for a stay, continued to engage with the Court, sought and obtained a variation and arranged to make payments, he was guilty of professional misconduct.

37 The Tribunal found, on the balance of probabilities, that the Adjudication Panel had made a serious procedural error by not giving adequate consideration to the basis of the Adjudicator's finding of professional misconduct and by not giving sufficient reasons or explanations of any consideration that might have been given to this important question.

38. The Tribunal therefore allowed the appeal and revoked the decision of the Adjudication Panel to uphold the decision of the Adjudicator.

Costs

39. There were no applications for costs and so no order was made in respect of costs.

Statement of Full Order

40. The Tribunal ALLOWS the appeal under section 44E of the Solicitors Act 1974 of the Applicant and REVOKES the decision of the Adjudication Panel of the Solicitors Regulation Authority dated 30 July 2021 to uphold the decision of the Adjudicator dated 26 April 2021 and it further makes NO ORDER for costs.

Dated this 20TH day of January 2022
On behalf of the Tribunal

A E Banks
Chair