SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12248-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

RAJINDER KUMAR PURI Respondent

Before:

Mr W Ellerton (in the chair)
Mr J Evans
Mr P Hurley

Date of Hearing: 6 – 7 December 2021

Appearances

Victoria Sheppard-Jones, counsel, of Capsticks LLP, 1 St George's Road, London, SW19 4DR, for the Applicant.

Jonathan Goodwin, solicitor, of Jonathan Goodwin Solicitor Advocate Limited, 69 Ridgeswood Drive, Pensby, Wirral, CH61 8RF, for the Respondent.

JUDGMENT

Allegations

1. The allegations against the Respondent, made by the SRA were that, while in practice as a solicitor for Rothery Inesons Solicitors ("the Firm") and whilst in the position of COLP and COFA:

1.1 Between 1 October 2018 to 26 February 2021 the Respondent failed to have appropriate insurance in place while continuing to practice, and thereby breached any or all of Rules 4.1 and 5.1 of the SRA Indemnity Insurance Rules 2013 and/or Principles 4, 6, 7 and 8 the SRA Principles 2011 (to the extent that such conduct occurred before 25 November 2019) and/or 10.1 the SRA Indemnity Insurance Rules 2019 and/or Principles 2 and 7 of the SRA Principles 2019 (to the extent that such conduct occurred on or after 25 November 2019).

1.2 Between 1 October 2018 to 26 February 2021 the Respondent continued to practise, including holding client money, without appropriate insurance when he knew or ought to have known that no appropriate insurance was in place, and thereby breached any or all of Rules 4.2(c) and 5.2 of the SRA Indemnity Insurance Rules 2013 and/or Principles 2, 4 and 6 of the SRA 2011 Principles (to the extent that such conduct occurred before 25 November 2019) and/or Rule 10.1 of the Insurance Indemnity Rules 2019 and/or Principles 2, 4, 5 and 7 of the 2019 Principles (to the extent that such conduct occurred on or after 25 November 2019).

1.3 On or around 1 April 2021, the Respondent provided falsified bank account statements to the SRA, in breach of section 44BC(1)(a) and / or section 44BC(3)(a) of the Solicitors Act 1974 and/or in breach of any or all of Principles of 4 and 5 of the 2019 Principles.

2. In addition, Allegations 1.2 and 1.3 above (to the extent that such conduct occurred prior to 25 November 2019) are advanced on the basis that the Respondent's conduct was dishonest in respect of each or any of them. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegations or any of them.

Documents

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

- Applicant's Rule 12 Statement dated 10 September 2021 and Exhibit HVL1.
- Respondent's Answer to the Rule 12 Statement dated 25 October 2021.
- Applicant's Reply to the Respondent's Answer dated 8 November 2021.
- Medical Report of Dr AJW dated 22 November 2021.
- Applicant's Statement of Costs dated 30 November 2021.

Preliminary Matters

4. Application to admit a witness statement out of time

Respondent's Application

4.1 Mr Goodwin sought leave from the Tribunal to rely upon the Respondent's witness statement dated, filed at the Tribunal and served on the Applicant on 3 December 2021. He apologised for the lateness of the same and contended that the delay was caused by the Respondent's ill health. Mr Goodwin submitted that the witness statement essentially amounted to mitigation advanced on behalf of the Respondent given the full admissions made to the allegations.

Applicant's Position

4.2 Miss Sheppard-Jones opposed the application primarily on the basis that it went far beyond mitigation and contained therein were serious allegations levelled against the Applicant. She was not in a position to address and/or rebut those allegations as the statement had been served at 4.30pm on the last working day before the substantive hearing was due to commence.

4.3 Miss Sheppard-Jones made plain that the allegations of bad faith on the part of the Applicant made by the Respondent were vehemently denied. She submitted that the content of the witness statement and exhibits appended thereto were an attempt by the Respondent to establish exceptional circumstances so as to avoid being struck off the Roll of Solicitors. His failure to file and serve the same in accordance with the Standard Directions (namely that witness statements be filed and served by 25 October 2021) prevented the Applicant from responding to and obtaining evidence to answer the allegation of dishonesty made by the Respondent

Respondent's Reply

4.4 Mr Goodwin confirmed that the purpose of the witness statement was to support the submissions he intended to make in relation to exceptional circumstances arising out of the Respondent's last appearance before the Tribunal. Mr Goodwin stated that he would "limit [his] submissions to that and won't go so far as to allege dishonesty".

4.5 Mr Goodwin asserted that the Respondent "was not a witness and therefore not bound by the Standard Directions. He [could not] be compelled to give evidence and therefore [could not] be compelled to give a witness statement" by the Tribunal. Mr Goodwin stated that the Solicitors (Disciplinary Proceedings) Rules 2019 was silent in respect of statements to be provided by Respondent's which, he submitted, made good his point.

4.6 The lateness of the witness statement was due to the fact that the Respondent had been "busy dealing with other matters, financial matters, the sale of his home, Lloyds calling in the mortgage [on his offices], recovering money from the Legal Aid Board and dealing with other competing matters". Mr Goodwin submitted that in those circumstances the admissions made by the Respondent and his attendance at the substantive hearing was "to his credit".

The Tribunal's Decision

4.7 The Tribunal carefully considered the application and the submissions made. In so doing it determined that the witness statement went far beyond mitigation as alluded to by Mr Goodwin. It made serious allegations against the Applicant namely that (a) it was dishonest in previous proceedings against the Respondent in 2019 ("SDT1"), (b) he had been under covert surveillance by the Applicant on a train and (c) the Applicant were responsible for Lloyds Bank calling in the mortgage on his office premises.

4.8 The Tribunal determined that making such serious allegations the day before a substantive hearing was due to commence amounted to an ambush which was plainly unfair to the Applicant. The Tribunal rejected the reasons advanced on behalf of the Respondent. Mr Goodwin had been instructed throughout the Applicant's investigation and the Tribunal proceedings, the delay was not justified.

4.9 The Tribunal rejected the assertion that the Respondent was not bound by the Standard Directions. Whilst it was entirely a matter for a Respondent whether or not they elected to give evidence, if they chose to do so they were clearly a witness in the proceedings and fairness required them to serve their witness evidence as directed by the Tribunal

4.10 For all of the reasons set out above the Tribunal REFUSED the application

5. Application for the Respondent to give evidence in relation to costs

Respondent's Application

5.1 Mr Goodwin acknowledged that the Respondent had not filed or served a Statement of Means by 9 November 2021 in accordance with Standard Direction 7. He submitted that part of the witness statement filed (but not admitted by the Tribunal in evidence) addressed his financial position. Mr Goodwin therefore sought leave from the Tribunal for the Respondent to give oral evidence with regards to his financial position in relation to costs.

Applicant's Position

5.2 Miss Sheppard-Jones opposed the application. She submitted that Standard Direction 7 gave a stark warning to Respondents as to the effect of non-compliance namely;

> "…Any failure to comply with this requirement may result in the Tribunal drawing such inference as it considers appropriate, and the Tribunal will be entitled to determine the sanction and/or costs without regard to the Respondent's means. A failure to comply may also cause the consideration of the Respondent's means to be adjourned by the Tribunal to a later date which may result in an increase in costs…"

5.3 Miss Sheppard-Jones stated that no good reason had been advanced on the Respondent's behalf for his non-compliance and as such the application should be refused.

The Tribunal's Decision

5.4 The Tribunal carefully considered the application and the submissions made. Ordinarily the manner in which a Respondent's means were interrogated was by the filing of a Statement of Means and submissions made in that regard. That was the default position. Standard Direction 7 set out, in no uncertain terms, the consequences of a failure to file a Statement of Means. Mr Goodwin had not provided any good reason as to why the Respondent had failed to file a Statement of Means.

5.5 There was no reason to depart from the standard procedure promulgated in Standard Direction 7. The application was therefore REFUSED.

Factual Background

6. The Respondent was admitted to the Roll in October 2007. He held a practising certificate free from conditions for 2020-2021 which was suspended on 19 April 2021 following a decision of the Applicant's Adjudication Panel.

7. At all material times the Firm was the recognised practice of the Respondent. The Firm commenced trading on 13 April 2013. The Respondent held the roles of Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration (COFA) for the Firm.

8. The Respondent had not submitted an annual declaration or declared any turnover to the Applicant in respect of the Firm since 2017. The areas of practice undertaken by the Firm appeared to be wills (75%) and powers of attorney (25%).

9. Rothery Inesons Solicitors Limited ("RISL") was a company limited by shares and incorporated on 9 February 2017. RISL was authorised by the Applicant as a recognised body on 25 February 2017 upon application by the Respondent for a change of legal entity from a recognised sole practice to a limited company. Since 1 May 2018 the Respondent held the positions of sole director and sole shareholder in RISL as well as COLP and COFA.

10. During the course of the Applicant's investigation, the Respondent disclosed his intention to transfer the business to the limited company in November 2017 but that did not occur. As of 15 November 2019, the Respondent declared to the Applicant that RISL was trading with an estimated turnover of £210,000.00.

Witnesses

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

12. For the avoidance of doubt the Tribunal did not receive any oral evidence and its findings were predicated on the written evidence filed in conjunction with the oral submissions of the advocates.

Findings of Fact and Law

13. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

14. **Allegation 1.1 - Failure to have appropriate insurance**

The Applicant's Case

14.1 Miss Sheppard-Jones reminded the Tribunal of the relevant insurance framework upon which Allegation 1.1 was predicated as set out below.

14.2 The SRA Indemnity Insurance Rules (2013 and 2019) required firms that are authorised by the Applicant to take out and maintain professional indemnity insurance ("Pll"), including run off cover. The rules applied to authorised bodies and their principals. The insurance obtained must provide adequate and appropriate cover in respect of current or past practice. Any insurance obtained must comply with the minimum terms and conditions as set out by the Applicant. It was the responsibility of each authorised body, and any principal of such a body to ensure that the authorised body complies with these rules.

14.3 The SRA Indemnity Insurance Rules 2013 applied in respect of any indemnity period from 1 October 2013 to 24 November 2019. The SRA Indemnity Insurance Rules 2019 applied to any indemnity period beginning on or after 25 November 2019.

14.4 Both the 2013 and 2019 SRA Indemnity Insurance Rules stipulate that an authorised body must obtain a qualifying policy of insurance prior to the expiry of the policy period failing which it must be obtained during the extended policy period. A qualifying policy of insurance is one which complies with the minimum terms and conditions as set out by the Applicant.

14.5 The Indemnity Insurance Rules set out what must occur during the extended policy period and cessation period when no policy of qualifying insurance has been obtained. Where an authorised body has been unable and/or chosen not to obtain a policy of qualifying insurance during the extended policy period that authorised body must cease practice promptly and must do so no later than the expiry of the cessation period unless a policy of qualifying insurance has been obtained in the interim.

14.6 The extended policy period was the period commencing at the end of the policy period and ending on the date which is the earlier to occur of:

(a) the date, if any, on which the firm obtains a policy of qualifying insurance incepting on with effect from the day immediately following the expiration of the policy period;

(b) the date which is 30 days after the end of the policy period; or

(c) the date on which the insured firm's practice ceases.

14.7 The cessation period was the period commencing on the expiry of the extended policy period where, during the extended policy period the relevant authorised body has not ceased practice or obtained a policy of qualifying insurance incepting with effect on and from the day immediately following expiration of the policy period and ending on the date which is the earlier to occur of:

(a) the date, if any, on which the authorised body obtains a policy of qualifying insurance incepting with effect on and from the day immediately following expiration of the policy period;

(b) the date which is 90 days after the commencement of the extended policy period; or

(c) the date on which the insured firm's practice ceases.

14.8 The Rules require any firm that does not obtain Pll by the end of the cessation period to cease practising. Furthermore, any firm which has entered the extended policy period must notify the Applicant, and further notify in the event that they do not secure suitable Pll and enter the cessation period.

14.9 Run off cover amounts to professional indemnity insurance which covers the historic liabilities of a business after it ceases to trade or is sold on without the liabilities. It comes into existence upon expiration of the cessation period. It applied to claims relating to work carried out during a qualified period of insurance (i.e. it does not cover claims which relate to work during the run-off period itself). It ensured that clients can be compensated for claims following a firm's closure and providing financial security for claims made post closure such that individuals are not personally liable for any claims made. The Applicant required that run off cover be obtained once an authorised body has ceased to operate. The minimum terms and conditions provided by the SRA Indemnity Insurance Rules specify that any run off must:

(a) Indemnify each insured in accordance with clauses 1.1 to 1.8/1.1 to 1.4 (depending on applicable rules);

(b) Provide a minimum level of insurance cover in accordance with clauses 2.1 and 2.3;

(c) Be subject to the exclusions and conditions of the insurance applicable in accordance with the minimum terms and conditions ("MTC"); and

(d) Extend the period of insurance for an additional six years (ending on the sixth anniversary of the date upon which, but for this requirement it would have

> ended, and for the avoidance of doubt, including the extended policy period and cessation period) save that in respect of run off cover provided under clause 5.3(c)/5.4(c) (depending on application rules), such run off cover shall not operate to indemnify any regulated insured for civil liability arising from acts or omissions of such insurance occurring after expiration of the cessation period.

14.10 On 5 January 2021, a Forensic Investigation Officer ("FIO") employed by the Applicant sent the Respondent a notification of investigation letter. Appended to that letter was a list of documentation that the Respondent was required to disclose to the FIO which included the Firm's (a) current certificate of insurance and (b) the last indemnity insurance proposal form.

14.11 At the first investigation interview on 13 January 2021, the Respondent told the FIO that the Firm held PII and that he was not in default with regards payment of the premium in that regard. On 15 January 2021 the Respondent emailed the FIO a copy of the PII certificate which was (a) dated 14 November 2018, (b) issued in the name of the Firm, (c) covered the period from 1 October 2018 to 30 September 2024, (d) had a limit of £2,000.00.00 with a standard excess of £5,000.00 per claim and (e) attracted a premium of £87,360.00.

14.12 On 22 January 2021 a Production Notice ("PN1") was served by the Applicant on the Respondent [Production Notices require solicitors to disclose documents requested by the Applicant in fulfilment of its regulatory function]. PN1 required the Respondent to provide a schedule and details of all new client matters taken on by the Firm from 1 October 2020 until 28 January 2021.

14.13 On 26 January 2021 a further Production Notice ("PN2") was served by the Applicant on the Respondent. PN2 required the Respondent to provide certain documents pertaining to the Firm's PII from 2018 until 2020.

14.14 On 29 January 2021 the Respondent disclosed six client files to the Applicant in accordance with PN1. Those files were reviewed by the FIO and broadly revealed that the Respondent continued to work on behalf of clients when the Firm ought to have closed.

14.15 On 1 February 2021 the FIO enquired of the Respondent whether the PII certificate (that he disclosed on 15 January 2021) represented the only insurance held by the Firm. The Respondent replied in the following terms:

> "… in terms of the certificate of insurance, I can confirm this is the only certificate of insurance we have in place. However, I am in the process of looking into this issue and I am trying to ascertain from the insurance brokers exactly what insurance cover is in place and what effects this has. I am seeking clarification from my insurers regarding the position…"

14.16 As no new policy was in force, the Firm had entered the extended indemnity period on 1 October 2018. As the Firm failed to secure further PII thereafter, it had entered into the cessation period (which lasted until 29 December 2018) during which it was prohibited from accepting instructions from clients.

14.17 It was during the cessation period, on 14 November 2018, that the Firm was issued with an insurance certificate for the six year period from 1 October 2018 until 30 September 2021. That certificate represented "run off cover" as opposed to qualifying PII. The cessation period ended on 29 December 2018. As the Firm had not obtained qualifying PII by that date, it was required to close.

FIO's interviews with the Respondent

14.18 On 8 February 2021 the Respondent was interviewed in the presence of his legal representative Jonathan Goodwin. During the course of the interview the Respondent stated that the insurance obtained was to cover the Firm and not the limited company. In relation to the insurance certificate provided, the Respondent stated:

> "…I have been trying to deal, make enquiries regarding the insurance position and I'm, not sure um exactly what the position is because its slightly confusing to me but I'm still looking into that but when I obtained the insurance I, well as you know, there was an ongoing investigation. I, I've been trying to find out what exactly what we are covered for and I'm still in the process of trying to work that out, but my understanding was that, we were covered but then after you contacted us, I've spoken to the brokers and I suspect that this policy maybe a run-up policy for, insurance and I didn't realise at the time … after you've contacted me and I've spoken to the brokers again, it would appear though this, that they could've sold me a run off cover…"

14.19 On 9 February 2021, the FIO submitted information disclosure requests to the insurance broker and the insurance company in relation to the PII certificate provided by the Respondent. An email dated 14 November 2018 (from the company to the broker) with the subject matter cited as "Rothery Inesons Runoff endorsement – Policy documents", stated

> "please find the Runoff policy documents for Rothery Inesons Solicitors"

Schedules of client matters

14.20 On 10 February 2021 the Respondent, in response to PN1 and PN2, produced two schedules of new client matters taken on by the Firm since 31 October 2018 and 1 October 2020. Those schedules demonstrated that the Respondent accepted client instructions and client money after the expiration of the PII policy and beyond the cessation period which ended on 29 December 2018.

14.21 From those schedules the FIO identified that:

- During the extended indemnity period (1 to 31 October 2018), the Firm accepted instructions for 27 client matters including wills, lasting powers of attorney, settlement agreements, contract and divorce.

- During the cessation period (31 October to 29 December 2018), the Firm accepted instructions for 31 client matters which included probate, wills, lasting powers of attorney, divorce and family arrangements. During that period, the Firm was

authorised only to complete existing instructions and was required to close promptly, and by no later than 29 December 2018.

- After the cessation period ended on 29 December 2018, the Firm ought to have ceased practice yet it accepted a further 297 client instructions.

- The Firm's bank statements for the period 1 October to 31 December 2020 showed that it continued to receive and pay out client money for some time after the Firm ought to have ceased practice.

Respondent's explanation

14.22 In a letter dated 10 February 2021 to the FIO the Respondent stated:

> "…You will note that the only type of work I have undertaken on *(sic)* since 1st October is mainly Wills and Powers of Attorney. I understand this work is classed as unreserved activities. You will see since 1st October we have taken on 63 new matters of which there are two probate advice only, 11 files for application for Lasting Power of Attorney and the rest are for New Wills.
>
> I have not taken on any other natter type. You will note that I was away from work for the whole of November having contracted Covid. Therefore there were hardly any files opened in November 2020.
>
> In addition, you will note that there were 20 files opened on new Wills on the 2nd December. The files opened on 2nd December were open for administrative purposes only …"

14.23 On 16 February 2021 the FIO conducted a second interview with the Respondent in the presence of his legal representative Jonathan Goodwin. During the course of that interview the Respondent accepted that he had obtained run off cover in 2018 (as opposed to PII) and asserted:

> "…I wasn't fully aware at the time but yes, I accept that after having looked into the position and after speaking to the brokers, yes…"

Breaches

Indemnity Insurance Rules 2013

14.24 Rules 4.1 and 5.1 required the Respondent to take out and maintain qualifying insurance. Rule 5.1 placed responsibility for ensuring that such cover is in place on the Firm and any principal of the Firm.

14.25 Miss Sheppard-Jones submitted that the Respondent did not ensure that appropriate insurance was in place. The cover in place (i.e. run off cover) was that which would be appropriate for a Firm that had ceased to practice. The Respondent therefore acted in breach of the SRA Indemnity Insurance Rules 2013.

Indemnity Insurance Rules 2019

14.26 Rule 10.1 deemed the Respondent, as the person who was in breach of any rule or part of any rule under the Solicitors' Insurance Rules 2000 to 2010 or SRA Indemnity Rules 2011 to 2013, for the period that he remained in breach, not to be complying with the rules. The 2019 Indemnity Insurance Rules came into effect as of 25 November 2018.

14.27 Miss Sheppard-Jones submitted that the Respondent at no stage between the expiration of the Pll on 30 September 2018 and his Firm Closure Notification in February 2021 obtained Pll other than the runoff insurance. The Respondent therefore continued to be in breach of the Indemnity Insurance Rules by failing to ensure that appropriate qualifying insurance had been obtained by the Firm while it continued to practice. The Respondent acted in breach of the 2019 Indemnity Insurance Rules.

2011 Principles

14.28 Principle 4 required the Respondent to act in the best interest of each client. Miss Sheppard-Jones submitted that it was not in the best interests of the Respondent's clients for them to conduct business with him when he did not have the appropriate insurance in place. Were claims to arise from the work undertaken when no appropriate insurance was in place the Respondent's clients are left exposed and vulnerable should a necessity to issue a claim arise.

14.29 Principle 6 required the Respondent to behave in a way that maintained public trust in him and in the provision of legal services. Miss Sheppard-Jones submitted that by operating the Firm absent appropriate insurance undermined the trust the public placed in the Respondent and in the profession.

14.30 Principle 7 required the Respondent to comply with his legal and regulatory obligations. Solicitors are required by their regulator (the Applicant) to have appropriate qualifying indemnity insurance in place whilst practising. Miss Sheppard-Jones submitted that in failing to have the appropriate insurance in place the Respondent failed to comply with the regulatory obligations within which he was required to operate.

14.31 Principle 8 required the Respondent to run his Firm or carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles. Miss Sheppard-Jones submitted that the clients who instructed the Respondent once the PII expired were unlikely to have had the benefit of insurance cover in the event that they issued a claim in relation to the work undertaken by him which left him, the Solicitors Compensation Fund and the clients exposed to risk contrary to Principle 8.

2019 Principles

14.32 Principle 2 required the Respondent to act in a way that upheld public trust and confidence in the profession and legal services provided by authorised persons. For the reasons set out above at paragraph 14.29. Miss Sheppard-Jones submitted that the Respondent breached Principle 2.

14.33 Principle 7 required the Respondent to act in the best interests of each client. For the reasons set out above at paragraph 14.28. Miss Sheppard-Jones submitted that the Respondent breached Principle 7.

The Respondent's Position

14.34 The Respondent admitted the factual matrix of Allegation 1.1, the Rule breaches and the Principles breaches alleged.

The Tribunal's Findings

14.35 The Tribunal firstly considered whether the admissions were properly made by the Respondent. Given the fact that the Respondent was, and remained, ably represented throughout the Applicant's investigation and the Tribunal proceedings the Tribunal determined that the admissions were properly made and accepted the same.

14.36 The Tribunal therefore found on the evidence before it and the Respondent's admissions, Allegation 1.1 proved in its entirety on a balance of probabilities.

15. **Allegation 1.2 Practising without appropriate insurance**

The Applicant's Case

15.1 On 8 February 2021 the Respondent was interviewed in the presence of his legal representative Jonathan Goodwin. During the course of the interview the Respondent asserted:

> "… when I was dealing with the insurance we were in various discussions with the SRA and other companies regarding a possible merger. The insurance company asked me if I wanted to obtain run-off cover or if I wanted to obtain cover for the going forward *(sic)*. I thought we were getting cover for the firm going forward and I sent emails to the brokers saying … can I have quotes for both. They provided me with a quote for the run-off cover and this quote I assumed was for going forward, and I went with this quote thinking that we were covered by insurance …
>
> … I got the, the policy through and an invoice. I paid the invoice, so I paid a very high amount … I paid that but when the policy through *(sic)* it was for a six year policy. I didn't actually appreciate what it was for and then I continued, under the apprehension that I had insurance cover … I did have a doubt in my mind as to it, it's a six year policy but I didn't do anything about it …
>
> … I suspected that there was something wrong with the six year date. I was expecting to, be doing a renewal application and it *(sic)* yeah, but I didn't question it. I just looked at it, thought that doesn't look right to me [and] put it to one side…
>
> … I suspect I, I thought there was something not right but I didn't know what it was and I didn't question it. I didn't look into it and that *(sic)* when I should have checked it…"

15.2 Thereafter the Respondent acknowledged that he had never previously obtained a six year policy. The Respondent further asserted that when he received the invoice for £102,000.00 which referred to run-off cover he:

> "… contacted the broker and said I don't want run-off cover, the reason why I don't want run off cover is because we are going to continue. I then got the policy documents through with an invoice fir £87,000.00. I paid £57,000.00 sorry £55,000.00 straightaway because I'd sold my, my car and my wife's car and then, they, they gave me a bit of breathing space so I could pay the other £82,000.00 and something … I wouldn't have paid it if I'd known that I didn't have to pay…"

15.3 When the Respondent previously discussed the Firm's PII position with the Applicant he, via email dated 9 August 2018, conveyed that the status of discussions regarding the transfer of his practice at that time was:

> "… strictly on the basis that initially all 3 firms indicated they would take my firm but I would have to pay run-off cover on the insurers and I would need to make staff redundant … [and that he was] seeking run-off cover from my insurers…"

15.4 The Firm had not submitted an annual declaration since 2017. RISL submitted declarations in 2017, 2018 and 2019.

15.5 In the declaration dated 15 November 2019, on behalf of RISL, the Respondent confirmed he held indemnity insurance for the period 1 October 2019 to 30 September 2020. Under the "Further Details" section, the Respondent wrote:

> "…I have not received my professional indemnity insurance certificate with my policy number on. The premium has been paid. I have been advised that we are on cover but the policy has not been received…"

15.6 Miss Sheppard-Jones submitted that the Respondent knew or ought to have known that the Firm did not hold appropriate insurance given the communications and negotiations between him, his broker and his insurance company alluded to above.

Breaches

SRA Indemnity Insurance Rules 2011

15.7 Rule 4.2(c) required a firm, that had been unable to obtain a policy of qualifying insurance prior to the expiry of the extended indemnity period, to cease practice promptly and by no later than the expiration of the cessation period.

15.8 Rule 5.2 placed responsibility for ensuring compliance in that regard to on the principal of a firm.

15.9 Miss Sheppard-Jones submitted that the Firm continued to practice for some time after the qualifying Pll had expired with the Respondent's knowledge and involvement in clear breach of the Rule 4.2(c) and 5.2.

SRA Indemnity Insurance Rules 2019

15.10 Rule 10.1 deemed the Respondent, as the person who was in breach of any rule or part of any rule under the Solicitors' Insurance Rules 2000 to 2010 or SRA Indemnity Rules 2011 to 2013, for the period that he remained in breach, not to be complying with the rules. The 2019 Indemnity Insurance Rules came into effect as of 25 November 2018. Miss Sheppard-Jones submitted that the Respondent, at no stage between the expiration of the Pll on 30 September 2018 and his Firm Closure Notification in February 2021, obtained Pll other than the run off insurance. The Respondent therefore continued to be in breach of the Indemnity Insurance Rules by failing to ensure that appropriate insurance had been obtained by the Firm whilst he continued to practice.

2011 Principles

15.11 Principle 2 required the Respondent to act with integrity. Miss Sheppard-Jones submitted that a solicitor acting with integrity would have ensured that they had the appropriate cover in place such that clients were not exposed to risk and limited recourse should matters go wrong. In continuing to act without qualifying insurance, the Respondent prioritised his own interests in generating an income above those of the clients he acted for. The Respondent therefore breached Principle 2.

15.12 Principle 4 required the Respondent to act in the best interests of his clients. Miss Sheppard-Jones submitted that it was not in the best interests of the Respondent's clients to conduct business with him when he did not have the appropriate insurance in place. Were claims to arise from the work undertaken when no appropriate insurance was in place the Respondent's client would be left exposed and vulnerable should a necessity to issue a claim arise.

15.13 Principle 6 required the Respondent to behave in a way that maintained public trust in him and in the provision of legal services. Miss Sheppard-Jones submitted that in operating the Firm without having insurance in place undermined the trust the public placed in him and in the profession.

2019 Principles

15.14 Miss Sheppard-Jones submitted that the Respondent's failures were in breach of Principles 2 (public trust), 4 (best interest of the client), 5 (integrity) and 7 (compliance with legal and regulatory obligations) for the reasons set out above at paragraphs 15.11 - 15.13.

16. **Allegation 2 - Aggravating feature of dishonesty**

16.1 Miss Sheppard-Jones relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, namely:

> "… 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 reasonable or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is

whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

16.2 Miss Sheppard-Jones submitted that the Respondent continued to practice from October 2018 to February 2021 in the knowledge that there was no qualifying Pll in place. The correspondence and representations made by the Respondent made clear that he was aware that run off policy was in place. The Respondent continued to practice thereby putting his own interests before those of his clients who were left exposed and at risk should any claims arise as a result of work completed during this period. Miss Sheppard-Jones submitted that the amendments to the policy occurred at his request and not through any misunderstanding or misapprehension on his part.

16.3 Miss Sheppard-Jones contended that the Respondent was an experienced solicitor with knowledge of the insurance framework. Ordinary, decent people would consider his conduct to have been dishonest.

The Respondent's Position

16.4 The Respondent admitted the factual matrix of Allegation 1.2, the Rule breaches and the Principles breaches alleged.

16.5 The Respondent further admitted the aggravating feature of dishonesty set out in Allegation 2.

The Tribunal's Findings

16.6 The Tribunal firstly considered whether the admissions were properly made by the Respondent. Given the fact that the Respondent was, and remained, ably represented throughout the Applicant's investigation and the Tribunal proceedings the Tribunal determined that the admissions were properly made and accepted the same.

16.7 The Tribunal therefore found on the evidence before it and the Respondent's admissions, Allegations 1.2 and 2 proved in their entirely on a balance of probabilities.

17. **Allegation 1.3 - Falsification and submission of account statements to the Applicant**

The Applicant's Case

17.1 On 30 March 2021 a third Production Notice ("PN3") was issued to the Respondent which required him to provide, by 12 noon on 1 April 2021, bank statements from 30 December 2020 to the date of the 30 March 2021 for two Lloyds Bank Accounts:

17.2 On 1 April 2021 the Respondent complied with that request and supplied the Applicant's Investigation Officer, ("IO") with six Lloyds Bank Accounts bank statements all of which appeared in a different format for example, (a) Account 1 did not contain a Lloyds Bank Account header, Account 2 did contain a Lloyds Bank

Account header and (c) Account 1 statements also contained a disclaimer which read "The data shown on your statement was correct at the time of printing. Please remember, this isn't an official bank copy"

17.3 The IO sought written authority from the Respondent to obtain statement copies from Lloyds Bank in relation to account 1 and 2. This request to provide written authority was made on three occasions. It was abundantly clear in the correspondence that the purpose of the authority was "to verify the bank statements provided by [the Respondent] on 1 April 2021". The Respondent did not provide the requested authority.

17.4 The Applicant also made an enquiry with Lloyds Bank. Mr E, an employee of Lloyds Banking Group, reviewed the relevant bank statements and raised concerns in relation to the March statement for Account 1. In a witness statement dated 8 April 2021 provided by Mr E to the Applicant for the purpose of Tribunal proceedings, he stated:

> "the transactions and account balances shown in the document provided to the SRA do not match those in the bank's records. It would therefore appear that the document provided to the SRA has been falsified"

17.5 The IO also compared the Account 1 screenshots provided by Lloyds Bank with the statements provided by the Respondent and noted that:

- On 3 March 2021 both statements showed a transfer of £3 to the Respondent's Account 2. In the bank statement provided by the Respondent that left a balance of £18,582.30 in the account. In the bank statement provided by Lloyds Bank the £3 withdrawal left a balance of £156,775.18 in the account.

- The bank statements provided by Lloyds Bank showed five payments totalling £138,192.88 out of Account 1 that were not recorded on the statements provided by the Respondent.

- The statements provided by Lloyds Bank and those provided by the Respondent both showed a closing balance on 29 March 2021 of £15,024.67.

17.6 A further review of the bank statements was undertaken following the intervention carried out on 21 April 2021. A spreadsheet containing the statements (received by the intervention project officer from Lloyds bank) for Account 1 for the period 4 May 2020 to 4 May 2021 was compiled which highlighted further inconsistencies between the statements obtained from Lloyds bank and those provided by the Respondent namely:

- During the period 18 January to 25 January 2021, two transactions of £500.71 did not appear on the statements provided by the Respondent. On 18 January 2021 a credit of £500.71 was recorded then subsequently transferred to Account 2 on 25 January 2021. Consequently, the Lloyds Bank Statement and the statements provided by the Respondent were not aligned between 18 January 2021 and 25 January 2021

- During the period 1 February 2021 to 29 March 2021, nine transactions were identified which did not appear on the statements provided by the Respondent. Those transactions consisted of two receipts totalling £192,852.20 and eight debits

totalling £114,859.32. Consequently, the Lloyds Bank Statement and the statements provided by the Respondent were not aligned between 1 February 2021 and 29 March 2021. All three client account statements provided by the Respondent contained balance discrepancies and omitted transactions.

17.7 Miss Sheppard-Jones therefore submitted that it was plain from the analysis of the bank statements that the Respondent provided falsified accounts to the Applicant.

Breaches of the Solicitors Act 1974

17.8 Section 44BC (1)(a) of the Solicitors Act 1974 (as amended) makes it a criminal offence to:

> "falsify, conceal, destroy or otherwise dispose of a document which the person knows or suspects is or would be relevant to the investigation." Section 44BC(3)(a) of the Solicitors Act 1974 also makes it a criminal offence "in purported compliance with a requirement imposed on the person under section 448,44BA or 44BB- (a) to provide information which the person knows to be false or misleading in any way".

17.9 Miss Sheppard-Jones contended that even though criminal proceedings had not been instigated against the Respondent, he had falsified the bank records provided to the IO.

2019 Principles

17.10 Principle 4 required the Respondent to act honestly. Miss Sheppard-Jones relied upon the Ivey test and submitted that in response to PN3, the Respondent amended bank statements, provided them to the Applicant to give the impression that certain activity had not occurred in order to create a false impression and mislead the Applicant. Miss Sheppard-Jones submitted that ordinary, decent people would consider such behaviour to be dishonest.

17.11 Principle 5 required the Respondent to act with integrity. Miss Sheppard-Jones submitted that acting with integrity required the Respondent to provide bank statements that reflected what activity in fact had occurred in the bank account. The Respondent failed to do so contrary to Principle 5.

18. **Allegation 2 - Aggravating feature of dishonesty**

18.1 Miss Sheppard-Jones relied upon the test promulgated in Ivey, as set out in paragraph 16.1 above, and the submissions made in relation to breach of Principle 4, as set out in paragraphs 17.2 - 17.7 above.

The Respondent's Position

18.2 The Respondent admitted the factual matrix of Allegation 1.3, the Rule breaches and the Principles breaches alleged.

18.3 The Respondent further admitted the aggravating feature of dishonesty set out in Allegation 2.

The Tribunal's Findings

18.4 The Tribunal firstly considered whether the admissions were properly made by the Respondent. Given the fact that the Respondent was, and remained, ably represented throughout the Applicant's investigation and the Tribunal proceedings the Tribunal determined that the admissions were properly made and accepted the same.

18.5 The Tribunal therefore found, on the evidence before it and the Respondent's admissions, Allegations 1.3 and 2 proved in their entirely on a balance of probabilities.

Previous Disciplinary Matters

19. There was one previous finding against the Respondent. On 21 November 2019, the Tribunal had ordered that the Respondent pay a fine of £7,501.00, such penalty to be forfeit to Her Majesty the Queen. The Tribunal made no order as to costs.

20. The Allegations found proved against the Respondent were:

> "1.1 In or around June 2016, having been appointed by the Court of Protection as property and affairs Deputy for Client BN:
>
> 1.1.1 he raised one or more invoices for purported professional fees and VAT thereon, totalling up to £33,000.00, in circumstances where such fees:
>
> (i) had not been properly incurred in the sums billed; and/or
> (ii) were manifestly excessive;
>
> 1.1.2 he improperly transferred those monies to office account;
>
> 1.1.3 he used them to pay staff salaries or for other office side purposes;
>
> 1.1.4 he failed promptly to return the monies improperly taken;
>
> and he therefore:
>
> 1.1.5 breached all or any of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011;
>
> 1.1.6 failed to achieve Outcome 5.3 of the SRA Code of Conduct 2011;
>
> 1.1.7 breached all or any of Rules 6, 7, 8.1(c) and 8.2 of the SRA Accounts Rules 2011.
>
> 1.2 In or around September 2017, while acting in the estate of FH:

1.2.1 he raised one or more invoices for purported professional fees and VAT thereon, totalling up to £31,200.00, in circumstances where such fees:

(i) had not been properly incurred in the sums billed; and/or
(ii) were manifestly excessive;

1.2.2 he improperly transferred those monies to office account;

1.2.3 he used them to pay staff salaries or for other office side purposes;

1.2.4 he failed promptly to return the monies improperly taken;

and he therefore breached all or any of:

1.2.5 Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011;

1.2.6 Rules 6 and 7 of the SRA Accounts Rules 2011."

Mitigation

Respondent's Submissions

21. Mr Goodwin reminded the Tribunal that the Respondent made full admissions to all allegations including dishonesty in his Answer to the Rule 12 Statement dated 5 October 2021 which was to his credit. His explanation and mitigation was set out fully in his Answer to the Rule 12 Statement and Mr Goodwin directed the Tribunal to pay particular regard to the following passages contained therein:

"…

§4 The Solicitors Disciplinary Tribunal in October/November 2019 dismissed many of the allegations against me following an application by my solicitor advocate of a *(sic)* no case to answer. I believe that in the 2 years prior to that the *(sic)* hearing I was in a living hell…

§6 I do not believe my mental health has recovered from the previous proceedings.

§7 The practical effect of the current proceedings has been worse in the sense my firm has been intervened. However, the SRA staff and officials this time have not harassed or treated me in the same manner.

§8 In fact the SRA officials during these proceedings have spoken to me in *(sic)* professional manner and with respect unlike the manner the SRA treated me the first time. The current proceedings whilst have had a devastating effect has not affected my mental health as much as the first proceedings…"

Allegation 1.1 (failure to have appropriate insurance)

22. Mr Goodwin submitted that in 2017 (a) the Firm was under threat of intervention, (b) the Respondent was exploring a potential merger to prevent that, (c) the merger "fell apart" upon disclosure of the SDT1 allegations, (d) the Respondent could not dispose of the Firm, (e) the Respondent "had already started the process for arranging run-off cover in the hope that the merger would come to fruition, (f) the Respondent told his broker that the merger had fallen through and that he now needed indemnity insurance, (g) the Respondent trusted the broker's advice regarding a new style of insurance with a premium of £87,000.00 for the initial year and (h) the Respondent only realised that he had been "miss *(sic)* sold run off cover in 2019".

23. Mr Goodwin further directed the Tribunal to the following passages within the Respondent's Answer:

> "...
>
> §31 When I found out [about the run off cover] it was just prior to the tribunal hearing. I wanted to concentrate on getting through the tribunal hearing to defend myself against the allegations that had been raised against me…
>
> §34 Whilst I should have realised I had paid for run-off cover in 2018, I confess I did not fully appreciate what this meant. The broker did not explain it to me. I had paid circa £87,000.00. I believed I was doing the right thing. I believed at the time that this was what I needed to do. I would not have parted with so much money had I have known the cover was incorrect and would have resulted in the closure of my practice…
>
> §36 I do appreciate that the SRA have provided copies of emails between the broker and the insurance company but they are not emails with me. I was not party to those discussions and I was not aware of those discussions…
>
> §39 It should be mentioned that my annual premium would have been around £25,000.00. Looking back I believe the reason I was confused and mistaken was because at the time I was heavily involved in defending myself against the SRA allegations [SDT1 Proceedings], and which consumed me at the time, to the neglect *(sic)* all other aspects of my life including my health, my marriage and my family…"

Allegation 1.2 (Continued to practice without appropriate insurance)

24. Mr Goodwin submitted that given the lateness of which the Respondent realised that he had run off cover in place as opposed to indemnity insurance, it was too late for him to rectify the same.

Allegation 1.3 (Provision of falsified bank statements to the Applicant)

25. Mr Goodwin acknowledged the seriousness of the admitted misconduct but invited the Tribunal to pay particular regard to the following passages of the Respondent's Answer:

> "…
>
> §53 I am accused of providing falsified bank statements to the SRA. It is with regret that I did this. My conduct was serious, discrete and isolated. I genuinely believe that my state of panic and moment of madness flowed from, and was caused as a consequence of the continuing adverse impact the first set of SDT proceedings had upon me and my mental health…
>
> §56 It is correct to say that I had by and large stopped performing legal work and I was dealing with the administrative task and burden of closing the firm. The majority of my work was dealing with complaints that had been raised to the firm and the legal ombudsman and negligence claims…"

Exceptional Circumstances

26. Mr Goodwin submitted that the Respondent was aware of the Tribunal's likely approach to sanction, given the admissions made in respect of dishonesty allegations, and that he advanced the above by way of explanation as opposed to excuse.

27. Mr Goodwin contended that there were tragic and unhappy circumstances underlying the matters found proved such that the Tribunal could find exceptional circumstances so as not to strike the Respondent from the Roll. He relied upon Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) in which Mr Justice Coulson held:

> "§13 It seems to me, therefore, that looking at the authorities in the round, that the following impartial points of principle can be identified: (a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll, see Bolton and Salisbury, That is the normal and necessary penalty in cases of dishonesty, see Bultitude. (b) There will be a small residual category where striking off will the a disproportionate sentence in all the circumstances, see Salisbury, (c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, such as Burrowes, or other a lengthy period of time, such as Bultitude; whether it was a benefit to the solicitor (Burrowes), and whether it had an adverse effect on others…"

28. Mr Goodwin sought to persuade the Tribunal that exceptional circumstances existed on the present facts and as such, an indefinite period of suspension, as opposed to an Order striking the Respondent from the Roll, should be imposed for the following reasons:

28.1 *SDT1 Proceedings*

28.1.1 On 2 May 2018 a Forensic Investigation Officer employed by the Applicant identified that the Respondent had raised Bills of Costs in a manner contrary to the Solicitors Accounts Rules and alleged that he had done so dishonestly. The

Respondent accepted that he had erroneously raised Bills but denied dishonest intent. Formal allegations were raised by the Applicant and certified as showing a case to answer by the Tribunal.

28.1.2 Further allegations ensued and were joined to the SDT1 Proceedings broadly relating to fabrication of attendance notes with dishonest intent and providing misleading advice to a client. The Respondent denied those allegations.

28.1.3 The substantive hearing of SDT1, at which the Respondent faced 13 allegations, was held in October and November of 2019. Mr Goodwin submitted that SDT1 "collapsed in a dramatic fashion in that submissions of no case to answer in respect of Allegations 1.6 – 1.13 along with the aggravating features of dishonesty, recklessness and manifest incompetence" were not resisted by the Applicant and consequently the Tribunal dismissed them. Submissions of no case to answer in respect of Allegations 1.3, 1.4 and 1.5 were resisted by the Applicant but were acceded to by the Tribunal who ultimately dismissed them. All that remained were allegations 1.1 and 1.2 which the Respondent had admitted from the outset and in respect of which he was sanctioned to a financial penalty.

28.1.4 Mr Goodwin submitted that having to defend himself vociferously and successfully in respect of a large number of serious allegations over a number of years had a detrimental impact on the Respondent's health as well as a financial impact on the Firm. Mr Goodwin submitted that the Applicant's pursuance of ill-founded allegations in SDT1 was "inappropriate and unfair" and that they represented "allegations that should not have been brought". Mr Goodwin contended that the SDT1 Proceedings and its outcome amounted to exceptional circumstances.

28.2 *Respondent's ill health*

28.2.1 During the course of the investigations and the SDT1 Proceedings, the Respondent's mental health suffered. Mr Goodwin relied upon the medical report provided in that regard from Dr which essentially concluded that the SDT1 proceedings "triggered the underlying conduct [set out in the] admitted allegations".

Applicant's Reply (on matters of law)

29. *Sharma*

29.1 Relevant considerations when determining whether exceptional circumstances existed included the nature, scope, extent, length of time or isolated instance of dishonesty.

29.2 Miss Sheppard-Jones reminded the Tribunal that the Respondent had admitted two instances of dishonesty neither of which, she submitted, could be considered to be discrete and/or isolated. The first was the Respondent's failure to have in place the appropriate indemnity insurance in order for the Firm to provide legal services from October 2018 until February 2021. The second was the Respondent's falsification of bank statements on 1 April 2021 which required him to have manipulated and created

them prior to making a conscious decision to submit them to his regulator during the course of the investigation. Miss Sheppard-Jones submitted that was a planned, calculated and deliberate course of conduct embarked upon by the Respondent with the intention to deceive.

29.3 It was also relevant for the Tribunal to consider whether the Respondent benefitted from his dishonest misconduct. Miss Sheppard-Jones submitted that the benefits to the Respondent were twofold in that (a) despite not having PII in place he was able to continue practising for 16 months when he should not have been and (b) there was a potential benefit of misleading the Applicant into believing that he was not practising if it had accepted the falsified bank statements at face value.

30. *SRA v James, MacGregor and Naylor [2018] EWHC 3058 (Admin)*

30.1 Miss Sheppard-Jones relied upon the above as authority for the proposition that adverse mental health in and of itself did not amount to exceptional circumstances such that a lesser sanction that a striking off order should be imposed.

30.2 She further submitted that in respect of the medical evidence relied upon by the Respondent was inadequate in any event as it made plain that (a) the Respondent has never received treatment for mental health issues, (b) Dr W did not have access to the Respondent's medical records when undertaking his assessment/compiling his report and (c) Dr W's conclusion was that it was "plausible that [the Respondent] would have not been in sufficient command of his circumstances that he would have been able to scrutinise his situation as assiduously as he would have been expected to."

Sanction

31. The Tribunal referred to its Guidance Note on Sanctions (Eighth Edition) when considering sanction and paid particular regard to:

> "…
>
> §53 The principal focus in determining whether exceptional circumstances exist is on the nature and extent of the dishonesty and the degree of culpability…
>
> §54 As a matter of principle nothing is excluded as being relevant to the evaluation, which could therefore include personal mitigation. In each case the Tribunal must when evaluating whether there are exceptional circumstances justifying a lesser sanction, focus on the critical questions of the nature and extent of the dishonesty and degree of culpability and engage in a balancing exercise as part of that evaluation between those critical questions on the one hand and matters such as personal mitigations, health issues and working conditions on the other…
>
> §55 Where dishonesty has been found mental health issues, specifically stress and depression suffered by a solicitor as a consequence of work conditions or other matters are unlikely without more to amount to exceptional circumstances…"

32. With regards to the admitted allegations found proved the Tribunal determined that the Respondent was entirely culpable. The potential harm to clients in practising without PII was significant. The harm to the profession in so doing and in deliberately attempting to mislead the Applicant during the course of its investigation was severe. All of the potential and direct harm was eminently foreseeable. The Respondent's misconduct was aggravated by the fact that (a) it included two distinct matters of dishonesty, (b) the dishonesty was deliberate, calculated and repeated both with regards to the PII and the efforts made to falsify bank statements and submit them to the Applicant, (c) the misconduct continued over a protracted period of time, (d) the Respondent ought reasonably to have known that it was incumbent on him to have in place PII and not to falsify documents for submission during the course of an investigation by his regulator; both of which amounted to a material breach of his obligations to protect the public and the reputation of the profession and (e) the Respondent had previously appeared before the Tribunal and was sanctioned in 2019.

33. The Tribunal proceeded to consider the submissions made by Mr Goodwin that, notwithstanding the seriousness of the matters found proved, exceptional circumstances existed such that a lesser sanction of indefinite suspension as opposed to an order striking the Respondent from the Roll was justified. The Tribunal considered each submission in turn and determined that:

34. With regards to the SDT1 Proceedings, the admitted allegations found proved were serious in that they amounted to mismanagement of client monies such that Principle 2 (lack of integrity) was engaged. The sanction imposed was beyond the remit of the Applicant's internal powers and therefore the overarching public interest was served by the allegations being referred to and adjudicated upon by the Tribunal. The Tribunal acknowledged that the majority of the allegations were dismissed at the conclusion of the Applicant's case following Mr Goodwin's submissions of no case to answer. Those submissions were predicated on the inherently weak and tenuous nature of the witness evidence. The unreliability of the witness evidence would not have come to light were it not for the matter progressing to a substantive hearing; it was not evident on the face of the papers. The hearing process therefore served access to open justice in that witness evidence was properly challenged under cross examination and found to be unreliable which led to the allegations being dismissed. That did not amount to bad faith or erroneous judgment on the part of the Applicant in bringing those matters before the Tribunal.

35. The Tribunal therefore rejected the contention that the SDT1 Proceedings and outcome thereof amounted to exceptional circumstances.

36. With regards to the medical evidence relied upon by the Respondent, the Tribunal paid significant regard to the fact that (a) it was not independent, (b) Dr W did not have the benefit of the Respondent's medical records, (c) Dr W relied predominantly on that which the Respondent relayed to him during the course of his assessment, (d) the Respondent had never received medical treatment for any mental health condition and (e) Dr W did not suggest or opine that at the material time the Respondent's mental health was so impaired that he could not distinguish between right and wrong. The Tribunal paid strict adherence to the principle promulgated in SRA v James, MacGregor and Naylor [2018] namely:

> "§103 Inevitably, an assessment of the nature and extent of the dishonesty and the degree of culpability will involve an examination of what Ms Morris QC termed the "mind set" of the respondent, including whether the respondent is suffering from mental health issues and the workplace environment, as part of the overall balancing exercise. However, where the SDT has concluded that, notwithstanding any mental health issues or work or workplace related pressures, the respondent's misconduct was dishonest, the weight to be attached to those mental health and working environment issues in assessing the appropriate sanction will inevitably be less than is to be attached to other aspects of the dishonesty found, such as the length of time for which it was perpetrated, whether it was repeated and the harm which it caused, all of which must be of more significance. Certainly, it is difficult to see how in a case of dishonesty, as opposed to some lesser professional misconduct, the fact that the respondent suffered from stress and depression (whether alone or in combination with extreme pressure from the working environment) could without more amount to exceptional circumstances …"

37. The Tribunal therefore rejected the contention that the Respondent's mental health at the material time amounted to exceptional circumstances.

38. Weighing all of those factors in the balance and given the Tribunal's determination that the Respondent's misconduct was at the highest level, the protection of the public and the protection of the reputation of the legal profession required the imposition of an order striking the Respondent from the Roll of solicitors.

Costs

Applicant's Application

39. Miss Sheppard-Jones applied for the Applicant's costs in the sum of £31,430.80. The amount comprised of the costs incurred during the course of the forensic investigation (£9,230.80) and the fixed fee payable to Capsticks LLP (£18,500.00 plus VAT). Miss Sheppard-Jones submitted that the costs incurred/time spent was reasonable, proportionate, absent any duplication of time and represented a nominal hourly rate of £100.00.

Respondent's Position

40. Mr Goodwin accepted that costs were payable in principle but disputed the quantum in respect of Capsticks LLP's costs given that (a) five fee earners worked on the case therefore duplication of time was inevitable, (b) the nominal hourly rate did not assist as no hourly rates were given for each fee earner, (c) there was no breakdown of costs itemising time spent in respect of each task undertaken, (d) the costs claimed were not justified and (e) the costs claimed were not reasonable.

41. With regards to the financial position, Mr Goodwin stated that the Respondent (a) had no income, (b) was in receipt of Universal Credit, (c) had been deprived of his ability to work, (d) possessed two private properties jointly with his wife which held some equity (£300,000.00 and £25,000.00, (e) possessed the Firm's office which was in

negative equity and (f) faced the costs of the intervention into his practice which was estimated at £1,000,000.00.

42. Mr Goodwin therefore contended that, in light of the fact that the Respondent received no income and that his assets were vulnerable, there should either be no order for costs, a significant reduction in the costs claimed and/or that any order should not be enforced without leave of the Tribunal.

The Tribunal's Decision

43. The Tribunal carefully considered the application and the submissions made. The Tribunal determined that the costs of the forensic investigation were reasonable and proportionate therefore should be awarded in full. The Tribunal proceeded to consider the costs of Capsticks LLP and in so doing found that the time spent was reasonable and proportionate for a case of this magnitude and gravamen. The Tribunal did not consider it appropriate to reduce the quantum in respect of duplication but did so with regards to VAT and the disbursement of instructing external counsel to settle the Rule 12 Statement.

44. The Tribunal rejected the contention that there should be no order for costs. The allegations admitted and found proved were of the highest severity, comprised of dishonesty and lack of integrity, were properly brought and required a two day hearing for legal argument with regards to exceptional circumstances.

45. The Tribunal declined to direct that costs should not be enforced without leave of the Tribunal. The Tribunal's function was to ascertain whether an order should be made and if so in what amount. Enforcement was a matter for the Applicant whom the Tribunal relied upon to approach sensibly.

46. The Tribunal therefore granted the application for costs in the sum of £28,000.00 for the reasons set out in paragraphs 43 and 44 above.

Statement of Full Order

47. The Tribunal Ordered that the Respondent, RAVI KUMAR PURI, 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 £28,000.00.

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

W Ellerton
Chair