SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12257-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

MICHAEL VAUGHAN Respondent

Before:

Mr R Nicholas (in the chair)
Mr G Sydenham
Mrs L McMahon-Hathway

Date of Hearing:
10 and 11 January 2022

Appearances

Michael Collis, Counsel, of Capsticks LLP, 1 Saint George's Road, London SW19 4DR for the Applicant

Geoffrey Williams QC, Counsel, of Farrar's Buildings, Temple, London EC4Y 7BD for the Respondent

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JUDGMENT

Allegations

1. The allegations made against the Respondent were that whilst in practice as a solicitor for Kingswell Berney Limited ("the Firm") between 2012 and 2013:

1.1 He provided banking facilities through a client account, in that he allowed payments into, and transfers and withdrawals from, a client account that were not in respect of instructions relating to an underlying transaction or to a service forming part of his normal regulated activities, contrary to Rule 14.5 of the Solicitors Accounts Rules ("the SARs") and Principle 6 of the SRA Principles 2011 ("the Principles").

1.2 He became involved in dubious financial arrangements, and in so doing breached Principles 2 and 6 of the Principles.

2. Additionally, it was alleged that in relation to Allegation 1.2, the Respondent acted recklessly.

3. In relation to Allegation 1.2, in the alternative to the alleged breaches of Principle 2 and alleged recklessness, it was alleged that the Respondent acted with manifest incompetence.

Executive Summary

4. The Tribunal found Allegations 1.1 and 1.2 proved in full including the allegation of recklessness attaching to Allegation 1.2. The Tribunal found that providing banking facilities through a client account, and becoming involved in financial arrangements despite clear warning signs they may be dubious (even where the arrangements were not in fact fraudulent), was very serious misconduct which offended a cornerstone of legal practice.

Sanction

5. Due to various mitigating factors present, the Tribunal determined a fine of £15,000 was the appropriate sanction. Following an assessment of the Respondent's means, and his particular circumstances, the Tribunal reduced the fine to be applied to £3,000.

Documents

6. The Tribunal considered all of the documents in the case, which were contained within an agreed electronic hearing bundle.

Factual Background

7. The Tribunal was told that the Firm was a high-street firm with a mix of work including: property (residential) (41%); wills, trust and tax planning (20%); personal injury (11%); probate and administration (11%); family/matrimonial (9%); with the remainder made up of litigation, landlord and tenant, and commercial property.

8. At the time of the relevant events, and at the date of the hearing, the Respondent was the Firm's Compliance Officer for Legal Practice, Compliance Officer for Finance and Administration, and Money-Laundering Reporting Officer. The Respondent was admitted to the Roll of Solicitors on 5 April 1975. He held a current practising certificate.

9. Despite the events relating to 2012/13, the issue only came to the Applicant's attention following a referral by the Legal Ombudsman on 7 February 2018. This arose out of a complaint made by a former client, AB.

Witnesses

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

Findings of Fact and Law

11. 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 (the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

12. **Allegation 1.1: The Respondent provided banking facilities through a client account, in that he allowed payments into, and transfers and withdrawals from, a client account that were not in respect of instructions relating to an underlying transaction or to a service forming part of his normal regulated activities, contrary to Rule 14.5 of the SARs and Principle 6 of the Principles.**

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

Background and the initial structure of the deal

12.1 The Respondent had an existing client, IM, a financial adviser. In 2012, IM instructed the Firm in respect of various corporate loans which he was arranging for his own clients. The background to these loans was a property development project valued at over £1billion. The deal was explained to the Respondent at the outset in an undated document to which the Tribunal was referred. The property development business had access to large credit facilities. One or more of these facilities was secured by what was essentially a guarantee provided by an insurance company.

12.2 The property development business agreed to use its credit facilities, and the insurance backed security, to provide loans to some of IM's clients. It was agreed that the loans would be provided through IM's previously dormant company, LCH. Whilst

it was said in the Rule 5 Statement to be unclear why, the loans from LCH to IM's various clients were intended to be made via a Cypriot company (Company I).

12.3 The property development business would charge LCH a flat fee of 5% of the loan monies raised, plus an annual interest rate of 4%. In order to fund this 5% fee required upfront, LCH/IM sought 5% "deposits" from his clients. Interest on the loans to LCH/IM's clients would then be charged at 5%. It was said, in the undated document, that IM would consequently typically have a margin of 1%.

12.4 The undated document went on to explain what the Firm's role would be. It referred to a similar, historic, model which had fallen through in which the 5% upfront deposits were to be paid without any specific undertaking as to how this would be used. The intention of the revised model was to put more certainty into the deployment of the funds. The document stated:

> *"It was decided that the best route was to have IM's clients deposit their funds in a solicitors [sic] client account to be held pending purchase of the insurance guarantee, the purpose for which the funds were intended. The solicitor would be responsible ONLY for insuring [sic] that the funds are used for the purchase of the requisite guarantee and would be liable under his professional indemnity insurance only to the extent he is negligent in performing this function."*

12.5 As to why the Firm was instructed in this matter the document stated:

> *"Very simply you have acted for IM in the past, he felt more comfortable dealing with you rather than through [the property development business's] lawyers and you had already had contact with a number of IM's clients; and quite frankly the custodial role you are performing is hardly taxing."*

12.6 The Firm's file also contained an undated "Outline of Proposed Loan Scheme". The details were different but, in essence, the document also described a scheme whereby 5% deposits were held in escrow by the Firm pending the purchase of a right in the insurance guarantee.

12.7 Thus, as explained in writing to the Respondent at the outset, the purpose of the escrow arrangements was to give some protection to the 5% advance fees made by IM's clients in expectation of receiving a corporate loan, until such time as those advance fees were used to secure participation in the insurance bond.

The structure of the deal as subsequently explained

12.8 IM duly introduced several borrowers to the Firm. The borrowers were required to provide deposits, which were paid into an account operated by the Firm.

12.9 However, rather than use the deposits to directly purchase participation in the insurance guarantee, IM used them to invest in a trading programme. It was said to be somewhat unclear from the papers available to the Applicant but that it seemed IM would only be invited to join the programme if he raised £1 million. The £1 million

would then be transferred, via the trader's solicitors (Locke Lord), by whom it was to be held on trust pursuant to a trust deed.

12.10 Accordingly, on the new version of the scheme, the escrow arrangements were not to protect funds pending purchase of participating rights in an insurance bond, but rather to hold the cash of each borrower until a total of £1million had been raised, for the purpose of gaining access to a trading programme. Two explanations were given for this apparent departure from the original plan:

- The investment was intended to generate enough funds to be able to purchase participating rights in the insurance bond and thereby access the loans.

- The Respondent explained to the Applicant by telephone that IM expected to generate "10x returns" as a result of this investment.

12.11 IM later said that he provided oral explanations to borrowers that he would invest their funds into a trading programme. He said that the Respondent attended at least some of the meetings when this explanation was provided. The Firm had no written evidence or attendance notes of these explanations being provided to borrowers.

The Respondent's initial work

12.12 The Respondent informed the Applicant that he spoke informally to a corporate lawyer who told him that there was no problem with carrying out such work provided that he did not provide investment advice. The Respondent had no note of the advice given and said he did not recall who gave him this advice, that the advice was given "in passing" and was not formal advice.

12.13 IM provided the Respondent with some draft trust deeds and instructed him to advise as to whether they were suitable. The trust deeds were described as generic documents containing very little detail. They provided that the trustees had absolute discretion to invest trust property as they saw fit. The Respondent advised that the documents were suitable "as trust deeds", but no more. The Respondent informed the Applicant that he gave this advice verbally and did not keep any attendance notes. It was said that it seemed the Respondent either was not asked to, or did not, provide any more detailed advice as to the role of the trust deed in the context of the scheme as a whole.

12.14 The Respondent opened a high-interest client account rather than an escrow account. At the investigatory interview, the Respondent was said to appear not to know that there was such a thing as an escrow account.

The Respondent's preparation of the escrow agreements

12.15 The Respondent drafted the escrow agreements, on the oral instructions of IM. The agreements were described as brief, unclear as to the details of the transaction, and as containing several ambiguities and inconsistencies. The various agreements were said to have the following features in common:

- They referred, at the outset, to the Firm, as solicitors, being representatives of the Supreme Court of England and Wales and to certain principles in relation to the

giving of solicitor's undertakings. It was said not to be clear what the purpose of these comments were, although it was noted that they appeared to have been intended to lend a veneer of respectability to the transaction.

- The "purpose of escrow agreement" was described as follows:

  "This is the System managed by the Manager whereunder the Agent will arrange that the Borrower is entitled to borrow up to such amount (set out separately in the instruction or acceptance letter) being a multiple of the amount of their Deposit Funds to be drawn down by the Borrowers in accordance with the Draw Down Schedule. The loan will be used for such project as the Principal or the Manager has approved."

- Some, but not all, of the escrow agreements extended this description as follows:

  "The Deposit Funds will be used by the Principal either to deposit with a prime bank in the Principal's name enabling a trader to trade the funds, or to purchase a prime bank guarantee or other equal prime security against which the trader will trade the funds."

- "Principal" was not defined in any of the escrow agreements. It was further said not to be clear what was meant by the references to "prime bank", "trader", "prime bank guarantee" or "other equal prime security against which the trader will trade the funds." The funds were not deposited with a prime bank in the Principal's name, but remitted to the Locke Lord client account and/or to be held on trust by trustees. Further, the aim was not to trade *or* purchase a guarantee, but to invest in order to generate sufficient funds to purchase a guarantee, with a view to accessing large scale loans.

12.16 Paragraphs 3 and 4 of the escrow agreement provided:

"ESCROW

3.1 We shall hold the Deposit Funds in the Account, together with any other deposit funds from other borrowers or investors until such time as

3.1.1 the Deposit Funds become Cleared Funds
3.1.2 the account has reached a minimum of £1,000,000
3.1.3 the Principal has produced to us evidence acceptable to us that the Deposit Funds are secured in the Principal's account, so that no loss of the Deposit Funds shall occur, save in the event of the collapse of the clearing bank providing the Account.

3.2 When such security is provided to us we shall advise you by email and you will authorise us by email to release the Deposit Funds.

3.2 [sic] Whilst the Deposit Funds remain in the Account, you may request us to refund them to you. We will not refund them to any other person. We are aware that you have a separate agreement with the Principal, and advise you that such withdrawal will or may put you in breach of that agreement.

3.3 The funds will stay in our account for a period of one (1) year unless the Manager will instruct us to wire them in a time less than a year.

AUTHORITIES FROM YOU

4.1 The Borrower authorises the Solicitors to act on the email to remit the Deposit Funds to the Principal. Until such time as the Funds are so remitted, the Funds shall remain in the Account.

4.2 The Borrower confirms that it/he has authorised the Principal to use the Deposit Funds in a trading programme."

12.17 Finally, the Borrower was to pay the Firm £2,000 plus VAT of "expenses", plus a further fee of 1% of the Loans or £4,000 (whichever was the higher) on first drawdown of the loans.

Payments from borrowers made to the Firm

12.18 Between June 2012 and July 2013, the Firm received £710,867.89.

12.19 The Firm sent £578,000 of these funds to be invested as part of the trading programme. In the event, the trading programme was not successful, and funds were not returned to borrowers.

12.20 The programme was run by Jonathan Denton, then of Locke Lord. It subsequently transpired that the programme may have been fraudulent. Jonathan Denton was struck off by the SDT in 2018 for his dishonest participation in it. The Applicant made no allegation that the Respondent knew of or participated in that potential fraud.

Individual matters

12.21 The allegations related to six escrow matters in which the Firm acted. The Rule 12 Statement included considerable detail which is summarised in outline below.

Company EH

12.22 This company sought to borrow €8m to help finance a recycling plant in Hungary. The loan from LCH was to be made to the company via Company I (the Cypriot company).

12.23 Amongst the terms and conditions dated 12 September 2012 provided to Company EH by Company I was the following:

"5.2 Borrower shall deliver to Lender's appointed Escrow Solicitor account subject to Escrow Agreement, the Escrow Deposit in the amount of €150,000 [later amended to €100,000] ... The Escrow Deposit will remain in Escrow Solicitor's bank for a period of twelve (12) months, if the Loan Facility will be delivered as agreed per the terms herein or to be recalled in case of Lender's failure to deliver the Loan Facility per the terms agreed herein ..."; and

"Annex B

4(b). A loan security deposit of 5% of the loan value or being in this case €100,000 will be required to enable the procurement of an insurance guarantee to support the funding of the loan from LCH. This will be retained until final payment of the loan and then set off against the balance due."

12.24 The Applicant's case was that the sum referred to in Annex B (to be used to purchase an insurance guarantee) appeared to be the same as that referred to in clause 5.2 (to be held on escrow for a period of one year). It was submitted to be unclear how these apparently conflicting provisions could be reconciled. They were further submitted not to be easily reconcilable with the terms of the escrow agreement drafted by the Respondent, or with a system involving trading the funds to generate a profit.

12.25 By letter dated 12 October 2012, Company I confirmed its commitment to make the €8m payment to Company EH. Amongst other things, the letter stated:

"Borrower will wire the Solicitor's Escrow Account the Escrow Amount of €100,000 and to remain in the Escrow Account for a period of 12 months. The Solicitor will wire back in full the Escrow Amount to the Borrower after this time period."

This was again said on the face of it to be inconsistent with using the funds to trade in order to generate a profit. These documents were all provided to the Firm and were on its files. It was submitted that given their relevance to work the Respondent was carrying out he either knew or ought to have known of their contents.

12.26 EH entered into an escrow agreement with the Firm on or about 16 October 2012. The deposit was €100,000. EH subsequently sought the return of its deposit funds. On 3 September 2013, the Respondent explained that he was unable to comply with the request, and explained the whereabouts of the funds as follows:

"Profits are earned as originally outlined and are being collated each month in the trading groups accounts. As you are aware the investment capital is securely segregated under a locked account in the UK for a 12 month period from the start of the trade."

12.27 On or around 23 September 2013, IM wrote to EH about the whereabouts of the funds:

"[The Firm] were to hold these funds in escrow until sufficient funds were available when aggregated with other client funds to be deployed into a small trade trust. The purpose of this trust was to generate profits over the life of the trade sufficient to enable the manager to acquire EH a participation in an insurance guarantee and to protect EH's deposit monies".

12.28 The Applicant's case was that, based on the available documents, this was the first time that reference was made to the need to generate sufficient profits to purchase participation in an insurance bond. According to the written explanation previously

provided to the Firm, the advance deposits would be used to directly purchase participation rights in the insurance bond.

12.29 EH complained further to the Firm. The Respondent did not deal with the complaint himself and forwarded it to IM. IM responded, stating amongst other things that, as discussed at the Firm's offices, EH had been given two options:

> "*send the [€150,000] directly to a nominated solicitor's client account to enable you to acquire a participation in an insurance guarantee immediately*"; or,
>
> "*send funds directly to [the Firm's] client account in order to participate in a sophisticated transaction that would earn sufficient profits to purchase your participation in the insurance guarantee at the end of the programme. Throughout the programme, your funds were to be held safely in a lawyer's account thereby protecting your capital investment.*"

IM stated that EM decided during the meeting to go for the second option. He also stated that the capital protection programme began in mid-February of 2013 and that the funds were committed for 12 months. He further stated:

> *"In order to activate the capital protection programme, it was necessary for [the Firm] to remit your funds to another law firm ... At this stage, [the Firm's] responsibility under the agreement you signed with them ceased."*

12.30 It was noted by the Applicant that the escrow agreement referred to the funds being held in the Firm's client account for 12 months rather than their being committed to the "capital protection programme" for that period. There was no reference in either the escrow agreement or the trust deed to a "capital protection programme". It was suggested that the reference to a "capital protection programme" seemingly conflicted with the fact that the trust deed permitted the trustees to invest funds at their absolute discretion. The Applicant was said to be unaware of any legal instrument purporting to protect the funds of the borrowers, and there was none on the Firm's file.

12.31 It was submitted to be unclear why the Firm's obligations under the escrow agreement would cease upon it transferring the funds to the account of a third party. There were no termination provisions in the escrow agreement which so provided. The Respondent nevertheless permitted this explanation to be given by a third party on his behalf, without comment.

12.32 In reply, EH stated they had not entered into any agreement to participate in a sophisticated transaction as set above nor had they authorised any transfer of the deposit to a third party. To this, IM responded (copying in the Respondent):

> "*1. Your acceptance of the option 1(b) was by specific performance i.e. you paid the money over to [the Firm's] client account, for what other reason would you have done that?*
>
> *…*
>
> *5. You have a signed agreement with [the Firm] that they will hold the funds, but, within the agreement you have authorised [the Firm] to remit the funds to*

the principal for the purpose of a deposit in a trading programme. You were advised when the funds were remitted".

12.33 It was submitted that as both options required sending funds to a solicitor's client account the mere sending of funds could not have indicated agreement to anything. Moreover, the sending of funds would be an unusually informal way to indicate agreement of a corporate finance transaction. Point 5 was also submitted to be incorrect: the authorisation given in the escrow agreement was that the Firm was permitted to accept email authorisation. In any event, such authorisations were only given in the event that the condition that the escrow account had reached a minimum of £1,000,000 was met (which it was common ground it had not). Again, the Respondent nevertheless allowed these explanations to be provided on his behalf.

12.34 The Respondent wrote to EH's solicitors on 10 December 2013. It was submitted that the comments appeared to have been drafted by IM, and then copied and pasted into the Respondent's letter without further editing. As such, references in the second person appeared to be to the Firm rather than the recipient of the letter. Having stated that he had taken further instructions from IM, the Respondent's letter stated that the purpose of the escrow was to receive client deposits which were then transferred to the trading entity, the profits from which were to be used to acquire the guarantee supporting the loan. It was said that the insurance could not be purchased until the end of the trade, i.e. Feb 2014. The letter went on:

> *"Clause 3.2 states that once the principal has provided evidence that the Deposit Funds are secured in the Principal's Account, the client will authorise you to release these funds. The evidence was provided when a copy of the trust deed was sent to you, you sought authorisation from the client and funds were remitted to the trader's lawyer's account.*
>
> *...*
>
> *Clause 3.3 covers the payment to the trader's lawyer. Once those funds have been wired in accordance with the agent's instructions, you will not retain funds in your client account."*

12.35 The letter repeated that EH had been given two options, and stated that the deposit was to be held by the Firm for a year "unless it was released to the trader". Client authority to transfer the deposit to the trader was said to be included within clauses 4.1 and 4.2 of the escrow agreement (set out above in paragraph [12.16]). The comments from IM, pasted into the Respondent's letter to EH's solicitors included the observation that:

> *"Your client was represented as a sophisticated international trader able to understand the terms of the agreement."*

12.36 It was submitted by the Applicant that this letter contained various inaccuracies and misrepresentations. It was noted that the response appeared to have been largely drafted by IM, that the Respondent had not even edited IM's responses for grammar. It was submitted that the Respondent had facilitated the giving of responses which misrepresented the terms of the escrow agreement that the Respondent had drafted. It was further submitted that this suggested that the Respondent had played a passive

role and was not particularly engaged with the terms of the deal in which he was involved.

12.37 The Respondent wrote to the Firm's insurer on 24 February 2016. He described the underlying transaction as being "*simply that we agreed to provide an escrow account where we keep the investments until we reach £1,000,000 and were invited to join the scheme*". He stressed that the Firm never advised on the investment, that IM had explained the limited involvement of the Firm in a meeting with EH and that the Firm's involvement ceased as soon as the funds were passed to Locke Lord. The Respondent stated:

> *"IM is a financial adviser and former banker known to us for a number of years who brought us in to the deal as (to be honest, we charged less than half of a London or Bristol firm)."*

12.38 The Respondent also sent a further letter to EH on 24 February 2016 which again stressed the Firm's sole responsibility was to receive funds on behalf of EH until certain conditions were met or instructed by EH to release the funds to the "small trades trust". It was stressed that the Firm advised neither EH nor Company I more broadly "*on the generality of the transaction, its underlying documentation, the veracity of the parties involved or the legality of what was being proposed."* It was submitted by the Applicant that the Respondent's description of Company I as the "agent" of EH, when it was the lender and could not be an agent, and his description elsewhere of Company I as the agent of the property development business, indicated "*either that the transaction made no sense, or that the Respondent did not understand it.*"

Individual AB

12.39 The Respondent stated that AB had an agent, a financial adviser. AB entered into an escrow agreement with the Firm on or about 30 October 2012. This was a slightly shortened version of the escrow agreement in which there was no reference to the deposit funds being utilised either to purchase an insurance guarantee or to be used as part of a trading programme.

12.40 Clauses 3 and 4 of the escrow agreement provided that:

> *"ESCROW*
>
> *3.1 Whilst the Deposit Funds remain in the Account, you may request us to refund them to you. We will not refund them to any other person. We are aware that you have a separate agreement with the Manager, and advise that such withdrawal will or may put you in breach of that agreement.*
>
> *3.2 We/the Manager/Principal will return to you in full 'The Deposit Funds' on 'The Repayment Date'*
>
> *AUTHORITIES FROM YOU*

4.1 The Borrower authorises the Solicitors to act on the email to remit the Deposit Funds to the Manager/Principal. Until such time as the Funds are so remitted, the Funds shall remain in the Account".

12.41 There was no other reference in this version of the escrow agreement to "the email" mentioned at clause 4.1 and this reference was described as opaque. AB deposited £50,000 into the Firm's client account on 30 October 2012. The sum was paid out to Lock Lorde on the same day, notwithstanding the absence of anything on the face of the escrow agreement to suggest that the funds would be so used. It was submitted that given this quick turnaround, it was unclear why the funds should have been paid into the Firm's escrow account at all. At the investigatory interview, the Respondent had explained that its purpose was to maintain confidentiality so that AB could not approach the investment team directly and avoid paying commission.

12.42 A 'term sheet' dated 10 January 2013 stated that AB was seeking £2m for property development. The term sheet stated that a deposit of £100,000 would be made to the Firm "*to enable the procurement of an insurance guarantee to support the funding of the loan from LCH*". It was also stated that the deposit would be repaid in line with the terms of the escrow agreement.

12.43 £25,000 of the loan deposit from AB was credited to LCH. A letter dated 26 February 2013 from LCH to AB stated:

"We have pleasure in advising that we have placed the Insurance Guarantee on order for Loan Part 1 per your loan offer Term Sheet dated 10 January 2013 for the purposes of Loan Part 1."

It was submitted that was consistent with using the deposit to directly purchase participation in the insurance bond rather than with using the deposit to first trade in a trading programme in order to generate a profit.

12.44 On or about 5 April 2013, AB entered into a second escrow agreement with the Firm. This time the agreement gave the fuller description of the purpose of the escrow agreement and included full versions of clauses 3 and 4. AB paid the further deposit funds of £78,500 on 16 July 2013.

12.45 AB later complained to the Firm about the non-return of his funds. On 19 May 2017 another partner of the Firm responded to AB stating:

- AB was introduced to a scheme by his agent in which he would invest in a trust run by Locke Lord;
- Once this trust reached a certain level of investment the money would be returned to AB and would generate sufficient funds to enable AB to access a development loan;
- "As a consequence" AB paid an initial £50,000 to the Firm in October 2012, to be paid as an initial investment on his behalf into the Lock Lord scheme. Subsequently a second tranche was also paid to Locke Lord "in accordance

with the Escrow Agreement and your instructions to Lock Lord [sic] on 20 March 2013".

- The Firm had acted in accordance with instructions received from AB or his agent.

Individual SG

12.46 The Respondent stated SG had the same financial adviser agent as AB. In the investigatory interview, the Respondent also explained that another individual "sponsored" the £150,000 that SG was required to raise by way of a deposit.

12.47 On 19 September 2012, SG's financial adviser agent wrote to the Respondent confirming instructions from their client (the "sponsor") to transfer the deposit of £150,000 to escrow. The letter stated that the funds would be transferred to the Firm's client account under the name of two sponsors, to be held to the order of the sponsors until the executed escrow agreement was received.

12.48 On or around 20 September, the Firm entered into an escrow agreement with the two sponsors (this was the shortened form of the escrow agreement). The fee for this agreement was £6,000 plus VAT and it was said to be unclear why the fee was three times higher than the other agreements.

12.49 There was no reference in the escrow agreement to paying the deposit funds to third party investors to be used as an investment. There was again no explanation of what "the email" was and "Principal" was not defined or identified.

12.50 On 19 October 2012, IM emailed the Respondent saying that he had received the invitation to trade the previous day. On 24 October 2012, the Firm remitted £100,000 to Locke Lord. SG's financial adviser agent charged a fee of £44,000 which the two sponsors authorised to be deducted from the £150,000 deposit. There was no such consent from SG, who was the party to the agreement. On 26 October 2012, the Firm remitted the agent's fee to her.

12.51 The Respondent stated to the Applicant that the legal work he carried out in this matter was to make amendments to the standard escrow agreement, and advising about its effect.

Company R, Company DM, and Individual AD

12.52 The Rule 12 Statement stated that the Applicant had less information in relation to these borrowers but stated that the factual backgrounds seemed materially similar.

12.53 The Firm entered into an escrow agreement with Company DM on or about 15 May 2012. The Principal was "TBA". The Firm remitted £15,500 to Locke Lord on 24 October 2012. In the investigatory interview, the Respondent said:

> *"this was simple work I was just holding money and doing AML checks … [Company DM] was not my client … I was just holding money".*

It was submitted by the Applicant that either all the borrowers were clients, or none of them were. The fact that the Respondent considered some of them to be his clients and not others was submitted to demonstrate that he had not properly thought through the scheme or his role in it.

12.54 Company R entered into an escrow agreement with the Firm on or around October 2012. In the "Purpose of Escrow Account" section, all references to "Manager" were changed to "Agent", defined in turn as Company I Financing Group Ltd. Principal was "TBA". According to the Forensic Investigation Report, the Firm's ledger recorded an opening credit balance of £30,550 and on 24 October 2012 the Firm transferred £28,500 to their client account and then onwards on the same day to Locke Lord with the reference "TRUSTEES PAYMENT". It was submitted that this again called into question the need for an escrow agreement operated by a solicitor.

12.55 AD paid £306,000 into the Firm's client account on 11 July 2013. On 8 November 2013, these funds (less the Firm's fee of £2,000) were transferred to Locke Lord. AD then asked for these funds to be returned, which they were.

Company S

12.56 The Company S matter was said not to have involved an escrow agreement. In a letter to Company S dated 23 July 2013, the Respondent wrote:

> *"Our work here is limited to the receipt of the required 'deposit' funds representing the agreed payment of 5% (five percent) of the loan to be made by LCH to you ... [The Firm] have received a copy of the letter dated 18 July 2013 to yourselves from […] Legal setting out the work they have already performed in respect of this transaction. This is to be relied upon in respect of this transaction and no further work will be performed in those respects by [the Firm]. [The Firm] is irrevocably instructed to receive the 'deposit' monies, inform LCH that it is holding cleared funds, receive a letter from the main lender to LCH confirming that it has transferred an interest equivalent to the 'deposit' monies received to yourselves and then transfer the 'deposit' monies to the benefit of LCH for them to remit to their main lender ... "*

12.57 On 29 July 2013, Company S transferred £30,000 to the Firm. On 31 July 2013:

- IM wrote to the Respondent requesting the £30,000 be paid to LCH's account following the transfer of interest in the Insurance Guarantee (from the main property development business lender) and the obligation on LCH to settle with the main lender for Company S's interest in the policy.

- The Firm duly remitted the funds from the Firm's client account to LCH.

- The Respondent wrote to Company S stating: "*We confirm that we have received directly from the Main Lender to LCH confirmation of the transfer of an interest amounting to £30,000 (Thirty thousand pounds sterling) in the insurance guarantee underlying this loan scheme subject to transfer of the 'deposit' monies help on your behalf to LCH. We further confirm that the 'deposit' monies have*

been transferred to the instructions of LCH and that out role in this transaction is now complete.".

12.58 It was submitted to be unclear why the funds needed to pass through the Firm's client account, where they were held for a period of only approximately 48 hours. The events of 31 July 2013 were submitted to be consistent with using the deposit to directly purchase participation in the insurance bond rather than in a trading programme in order to generate a profit.

Lack of instructions

12.59 The Applicant's case was that in none of the above matters were there any instructions on file authorising the Respondent to remit the funds to a third party for the purposes of investment.

12.60 Some of these borrowers subsequently complained that the Firm had released their funds, without instructions, to Locke Lord. The Respondent's explanations had been:

- The instructions were received from the borrower's agents (it was submitted that it was not always clear who the "agents" were, if any, and what those "agents" were authorised by the borrowers to do on their behalf).

- The relevant authority was in clause 4 of the escrow agreement. It was submitted that clause 4 only appeared to be authority to accept instructions by way of email, and in circumstances where the conditions in clause 3 were made out (the Applicant contended they were not).

12.61 It was submitted that confusion over whether borrowers authorised the transfers further demonstrated the general lack of clarity or inconsistencies in the scheme, and the Respondent's failure to adequately clarify matters.

Breach of Rule 14.5 of the SARs

12.62 Rule 14.5 stated:

> "*You must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities*".

12.63 It was alleged that the escrow work was not connected with an underlying transaction on which the Respondent was involved or the ordinary course of his provision of legal services. There was said to be no clear explanation of why an escrow was needed nor why it needed to be provided by a solicitor. It had been explained to the Respondent at the outset that the Firm's only role was to give the protection provided by the escrow service and that a previous iteration of the transaction had not required a solicitor to fulfil this role.

12.64 The Respondent did not involve himself in any of what he referred to as "investment advice", which the Applicant submitted appeared to have meant anything relating to the deal other than the escrow service he provided. The limited advice that the Respondent gave IM, for example on the trust deed, was said to be high level and generic. It was further noted that the escrow agreement purported to exclude the Firm's liability for any losses arising out of the escrow account, and in any event to cap liability at the value of the deposit funds. In an ordinary solicitor-client relationship, such limitations would be impermissible.

12.65 The Applicant's case was that during the investigatory interview, the Respondent gave conflicting responses and was unsure as to whether in each case the client was IM (or his companies), or the borrowers. It was submitted that this lack of clarity about who the client was further indicated that there was no underlying transaction on which the Respondent was instructed. The Respondent emphasised that he was instructed only as escrow agent and stated during interview that the only purpose of his holdings funds on escrow was to provide reassurance to borrowers that their deposits were safe.

12.66 The Firm invoiced LCH with the narrative "*To professional charges in relation to acting for you in connection with advising various clients **of yours** as to the escrow agreements including [EH]*" (emphasis added). When the Respondent was called upon to explain the details of the transaction, he passed responsibility for describing any substantive details to IM.

12.67 The arrangements summarised above were alleged to be a mechanism whereby the Firm's client account was used for large payments in and out where there was no underlying legal transaction or service forming part of the Firm's normal regulated activities. The Respondent had recognised there were no legal services provided. The Applicant submitted that Respondent's conduct in allowing this arrangement amounted to a breach of Rule 14.5 of the SARs.

Breach of Principle 6

12.68 It was alleged that the Respondent had breached the requirement to behave in a way which maintained the trust placed by the public in him and in the provision of legal services. Members of the public expected solicitors to diligently comply with Rule 14.5, given the significant risks (in particular the risk of money laundering, and use of solicitors' accounts to lend a veneer of credibility to illegal or illegitimate transactions) associated with high value transactions passing through a solicitor's bank account. There were submitted to be strong, and well known, reasons why solicitors were not permitted to provide banking facilities through their client accounts. The Applicant relied on paragraph [39] of Fuglers and others v SRA [2014] EWHC 179 (Admin):

> *"If a solicitor is providing banking activities which are not linked to an underlying transaction, he is engaged in carrying out or facilitating day to day commercial trading in the same way as a banker. This is objectionable because solicitors are qualified and regulated in relation to their activities as solicitors, and are held out by the profession as being regulated in relation to such activities. They are not qualified to act as bankers and are not regulated*

as bankers. If a solicitor could operate a banking facility for clients which was divorced from any legal work being undertaken for them, he would in effect be trading on the trust and reputation which he acquired through his status as a solicitor in circumstances where such trust would not be justified by the regulatory regimen".

12.69 Warning Notices issued by the Applicant were said to further highlight the inherent and recognised risks in solicitors using client accounts to provide banking facilities, including the risk that criminals will target solicitors' client accounts to lend credibility to fraudulent schemes or to launder the proceeds of their criminal activity. It was submitted that the public would expect that a solicitor would act in compliance with the Warning Notices and that by not declining to receive and transfer funds into and out of client account in the way described above the Respondent had acted in breach of Principle 6.

The Respondent's Case

12.70 The Respondent admitted breaches of Rule 14.5 of the SARs where money was paid in and out of the Firm's client account quickly. He also admitted that his conduct had breached Principle 6.

The Tribunal's Decision

12.71 The Tribunal considered that the admissions were properly made. The Respondent's role in the various transaction did not begin to approach the provision of legal services and there was no underlying transaction in respect of which he was advising. Neither did the work represent a service forming part of the Firm's normal regulated activities. The documents drafted by the Respondent and the account he had provided during the investigation confirmed this. The Tribunal found the alleged breaches of Rule 14.5 of the SARs and Principle 6 of the Principles proved to the requisite standard.

13. **Allegation 1.2: The Respondent became involved in dubious financial arrangements, and in so doing breached Principles 2 and 6 of the Principles.**

The Applicant's Case

13.1 The Applicant's Warning Card on fraudulent financial arrangements, which was in force at the material time, stated:

"Avoid dubious financial arrangements

You must ensure that you do not become involved in dubious financial arrangements or investment schemes. Failure to observe our warnings could lead to disciplinary action, criminal prosecution or both.

Schemes are formulated by fraudsters to prey upon the wealthy, greedy, or vulnerable. They often sound 'too good to be true' and almost always are.

Warning signs

- *The promise of unrealistically high returns*
- *Deals forming part of larger deals involving millions, or billions, of pounds, dollars or other currencies*
- *Any advance fee payable to secure future lending or to buy into an 'investment' process*
- *Trading in apparent banking instruments such as Promissory Notes or Standby Letters of Credit to provide returns for non-banking investors*
- *Confusing and complex transactions involving misleading descriptions or ill- defined terminology, such as "grand master collateral commitment"*
- *Vague reference to humanitarian or charitable aims*
- *The need for secrecy to protect the scheme, particularly to prevent proper checks*
- *Use of faxed or easily forged documents often from offshore companies or from financial institutions abroad.*

Why involve you?

The fraudster wants to be associated with the legitimacy and respectability which, as a person or firm regulated by the SRA, you provide by

- *Endorsing the arrangements by acting as the fraudster's legal adviser or banker*
- *Providing correspondence to the fraudster's company or third parties 'securing' the transaction with an undertaking from you*
- *Opening bank accounts, awaiting receipt of funds or using your client account*
- *Referring to your insurance or to the Compensation Fund*

If you do not understand the documents or a transaction in which you are involved, you must ask questions to satisfy yourself that it is proper for you to act. Why have you been approached? Do you have any expertise in this area of law? If you are not wholly satisfied as to the propriety of the transaction, you must refuse to act."

13.2 It was not alleged that the scheme as a whole was necessarily fraudulent. It was, however, alleged to be "dubious". By reference to the Warning Card:

- There was a promise of "10x percent return" within one year which represented an "unrealistically high return". The Respondent had explained to the Applicant that this was his understanding of the returns on the investments.

- The scheme involved the payment of advance fees correlating with the warning against advance fees payable to secure future lending or to buy into an 'investment' process.

- The deals formed part of a larger deal involving over £1billion.

- The deals included references to what the Applicant described as vague instruments such as "insurance guarantee", "capital protection scheme", and "small claims trust" alleged to amount to "misleading descriptions or ill-defined terminology".

- There was a claimed need for confidentiality and therefore a further warning sign in that there was a "need for secrecy to protect the scheme".

13.3 The Applicant further alleged:

- The deal in practice was different in material respects from the deal as written.

- There were significant departures even from the allegedly orally agreed plan. For example, that funds were remitted to Locke Lord despite the threshold of £1million never having been reached.

- There were said to inconsistencies in the deal. For example, if the strategy was to raise funds within a short period, it was unclear why they were invested in a "capital protection scheme" (or how that was compatible with a trust deed giving trustees absolute discretion as to how to invest the funds).

- It was unclear what the role of the various parties was, whether they were lender or the borrower's agent.

- The schemes involved substantial loans being made through a number of different companies whose necessity in the lending chain was not, or not adequately, explained.

- The escrow agreement the Respondent was instructed to draft did not clearly match the investment scheme as the Respondent understood it and contained several internal inconsistencies.

- There was no apparent need for an escrow arrangement at all, let alone an escrow arrangement provided by a law firm.

- This highly complex deal was conducted via an ordinary high street firm with no prior experience or apparent expertise in transactions of this nature, on the basis that the Firm was half the price of London or Bristol solicitors and that IM was "more comfortable" with the Firm having used it previously.

13.4 The Applicant's case was that the Respondent ought not to have acted at all because of the Rule 14.5 issue. Alternatively, he ought to have undertaken further and better enquiries to resolve these issues and to satisfy himself that this was a legitimate scheme (and refused to act if not so satisfied).

Breach of Principle 2

13.5 It was alleged that the Respondent had knowledge the suspicious features of the transaction summarised above and must have known they indicated a potentially

unlawful or illegitimate transaction as there were multiple suspicious issues several of which closely followed the Applicant's Warning Card.

13.6 It was alleged it was the duty of a solicitor in such circumstances to make further enquiries to satisfy themselves that the transaction was legitimate before agreeing to act. On the Respondent's own case, he did not do so, regarding that as being "advice on investment" which he treated as being outside the scope of his retainer.

13.7 It was alleged that the Respondent either knew the above issues were indicative of a potentially unlawful or illegitimate transaction, or deliberately shut his eyes to that possibility. Either was submitted to demonstrate a lack of integrity in breach of Principle 2. The Applicant referred the Tribunal to Bryan v Law Society [2009] 1 WLR 163 (paragraphs [172]-[174]) and SRA v Dar [2019] EWHC 2831 (Admin) at (paragraphs [49]-[52]).

Principle 6

13.8 It was alleged that the public would be alarmed by a solicitor who was willing to act in a scheme with so many questionable features without undertaking any further enquiries. Firms without the expertise and experience to act in such schemes were at risk of failing to ask the right questions or making the right decision about whether it was appropriate to act. It was submitted to be insufficient to purport to act only on one small area of a transaction (the escrow) and to ignore all other parts of the transaction despite its many alleged inconsistencies and dubious features. The risk of harm to the public in such cases was submitted to be significant, whether through the risk of money laundering, terrorist finance, or the potential loss of large sums of money. It was alleged that in becoming involved in such a scheme, the Respondent breached Principle 6.

Allegation 2: Recklessness

13.9 The Applicant relied on the test for recklessness set out R v G [2003] UKHL 50:

> *"A person acts recklessly with respect to (i) a circumstances when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that will occur and it is, in the circumstances known to him, unreasonable to take the risk".*

13.10 For reasons already summarised above, it was alleged that the Respondent must have been aware of the risk that this transaction was unlawful or illegitimate. It was submitted to be unreasonable in principle for a solicitor to act in a transaction that he was aware may be unlawful or illegitimate, without making further enquiries to satisfy himself as to its legitimacy.

Allegation 3: Manifest incompetence.

13.11 In the alternative to the alleged lack of integrity and recklessness, the Applicant alleged that the Respondent was manifestly incompetent. This was on the basis that he allegedly allowed himself to become involved in an extremely complicated transaction in an area in which he had no relevant experience. The Respondent

nevertheless thought it was sufficient to speak, informally, to a barrister about the matter prior to acting.

13.12 The drafting of the escrow agreement was alleged to contain several substantial flaws and not to reflect the transaction as it appeared to have been explained to the Respondent. It was submitted to be apparent from the Respondent's subsequent explanations that if he was not deliberately shutting his eyes to the truth or being reckless, then at the very least he had no real understanding of how the transaction worked, the role of the respective parties, or who was authorised to give him instructions and about what.

13.13 The Respondent remitted funds to Locke Lord when the conditions in the escrow agreement he himself had drafted had allegedly not been met. When clients subsequently complained, he deferred entirely to the explanations of IM, even though those explanations did not match the work the Respondent had himself done. There were also no written attendance notes.

Adverse inferences

13.14 Mr Collis invited the Tribunal to draw an adverse inference from the Respondent's decision not to give oral evidence. Notwithstanding the time which had passed he could have given evidence about his understanding and his decision to enter into the various agreements. Mr Collis submitted that the Tribunal was entitled to take this into account.

The Respondent's Case

13.15 The breach of Principle 6 was admitted. The remaining alleged breaches, of Principle 2, acting recklessly and of manifest incompetence, were denied.

13.16 The Respondent's Answer, and Mr Williams' submissions during the hearing, focused on the contested allegations. The Respondent had been a solicitor for 46 years, was 70 years old, and held an unconditional practising certificate. He was a partner in a two partner High Street firm which was described as stable but not thriving. The Respondent undertook non-contentious work.

13.17 The relevant events took place 9 years prior to the Tribunal hearing. The Legal Ombudsman referred the matter to the Applicant, and it had taken a year for the Applicant's investigation to begin. Mr Williams stated that no investors had complained about the Respondent to the Applicant. One investor, AB, had complained to the Legal Ombudsman.

13.18 In 2015 the Firm had upgraded its computer system and many documents were lost. The Firm also stored emails for 12 months after which they were deleted. These factors meant there was limited contemporaneous material available to assist the Respondent. Mr Williams submitted that it would not be proper for the Tribunal to conclude either that the material did not exist in the first place or that it would have been adverse to the Respondent. The Applicant was required to prove its case and the Tribunal must exercise caution where documents did not exist (something said to hardly be surprising in the circumstances).

13.19 Three sets of representations had been submitted on the Respondent's behalf: during the investigation; in response to the Applicant's notice recommending referral of the proceedings to the Tribunal; and the Answer within the Tribunal's proceedings. All were consistent and Respondent had cooperated with the Applicant throughout.

13.20 The Respondent would not be giving oral evidence, on Mr Williams' advice. His memory of the relevant events had faded and Mr Williams stated that he did not propose to prolong the hearing. He accepted that the Tribunal may draw an adverse inference from a Respondent's failure to give oral evidence and submit to cross-examination but submitted the Tribunal was not obliged to do so.

13.21 Mr Williams reminded the Tribunal that it was not alleged that the scheme was fraudulent or that the Respondent had acted dishonestly. The Respondent was of impeccable character and there was nothing to his detriment in the 9 years since the relevant events.

13.22 The initial instructions came from IM, a former bank manager. He was an accountant and financial adviser. Mr Williams stated that nothing was known to the detriment of IM either before or after the relevant events. He was described as an honourable introducer.

13.23 The Respondent's case was that when he made payments out of the Firm's client account, he did so either on instruction from the client or from a duly authorised agent. He had previously had copy documentation confirming this. Mr Williams stated that it was not alleged that the Respondent did not have instructions to make the payments to Locke Lord (described as a highly prestigious US firm). The misappropriation of money had been carried out by Jonathan Denton (a former partner of Locke Lord who had since been struck off the Roll of Solicitors by the Tribunal). In proceedings before the Tribunal, Locke Lord had agreed to pay a fine of £500,000 for their failure to prevent an apparent fraud.

13.24 Mr Williams submitted that it was significant that two of the individuals focused upon in the allegations had instructed the Firm to recover their money. The Firm duly did recover their money in full. None of the parties involved had taken any action against the Respondent or the Firm. Mr Williams further stated that the Respondent was not aware of any loss having been caused to anyone. It was submitted that this overview showed where the culpability lied in this matter.

The genesis of the transaction

13.25 The background to the transaction was described as IM's ambitious but legitimate property development scheme in London. The investors, who would take loans, were legitimate and their funds were legitimate. The Respondent carried out appropriate anti-money laundering and identity checks and the results were on his files.

13.26 The Respondent drafted the escrow agreements. The Respondent accepted that there were certain 'red flags' of a potentially dubious scheme including the rate of return and the use of 'buzzwords'. Whilst the scheme may have had these signs of being potentially dubious it was not in fact dubious (until the actions of a rogue solicitor in a prestigious law firm, who had since been struck off). The fact that a deed of trust,

under which the money the Respondent paid out would be held, had been prepared by Locke Lord provided further comfort to the Respondent.

Company EH

13.27 This company was a large waste disposal company based in Hungary. The Respondent had met the Chief Executive and obtained a copy of his passport for identification purposes.

13.28 Mr Williams stated that almost all of the events with which the allegations were concerned took place in October 2012. On 24 October 2012 the Respondent had sent the funds from EH to Locke Lord. This payment was said to have been made on instructions. The Respondent's case was that his client's lawyer gave the instruction for the payment of the EH deposit monies to be made to Locke Lord. Mr Williams submitted that when a solicitor was given such an instruction he was obliged to follow it if continuing to act.

13.29 The Respondent's case was also that by this time the trader used by Mr Denton had reduced the threshold for involvement in the trading programme from £1m to £500,000.

13.30 EH made no suggestion of any claim or complaint against the Respondent.

Individual AB

13.31 AB was a property investor who provided instructions relating to two investments in October 2012. The Respondent took copies of various identification documents which were on his file.

13.32 Mr Williams stated that on AB's instructions the Respondent sent £50,000 (the first investment/deposit) to Locke Lord where the funds were misappropriated. The second investment of £78,500 which had been transferred by the Respondent on instructions in March 2013 was returned to AB as Locke Lord had closed the trading scheme by then.

13.33 The other partner in the Firm wrote to AB in May 2017 stating that the £50,000 appeared to have been stolen and that the Firm would make a claim to recover this sum. The Firm duly made this claim and recovered AB's money.

13.34 AB made no formal complaint to the Applicant about the Respondent (although it transpired that he had, unknown to the Respondent, raised matters informally). He did complain to the Legal Ombudsman who concluded that "*I cannot blame the firm for the loss of funds*".

Individual SG

13.35 SG was represented by an agent. Again, the Firm's file confirmed that the Respondent had made appropriate anti-money laundering and identity checks on all of the individuals involved in the transaction.

13.36 The funds were misappropriated in the same way described above. Again, the client (SG) instructed the Firm to act in the recovery of their money. And, again, the Firm was successful in recovering the money in full.

Company R, Company DM, and Individual AD

13.37 The allegation as set out in the Rule 12 Statement stated that "*as far as the Applicant is aware the factual backgrounds to these matters seem materially similar*". Mr Williams invited the Tribunal to exercise great care in relation to these three clients given the paucity of the evidence available and relied on. If documents were not available, he submitted that no adverse inference should be drawn against the Respondent.

13.38 R had a bank as its agent. The totality of the Applicant's evidence in relation to R was summarised in paragraph [68] of the Rule 12 Statement. The paragraph did no more than note definitions in the escrow agreement and state that a transfer to Locke Lord had been made. Again, no complaint or claim about the Firm or the Respondent was made by this investor.

13.39 The totality of the Applicant's evidence in relation to AD was summarised in paragraph [69] of the Rule 12 Statement. AD's funds were paid to Locke Lord by the Firm in November 2013. AD requested repayment of the funds and they were returned to him.

13.40 The totality of the Applicant's evidence in relation to DM was summarised in paragraph [67] of the Rule 12 Statement. The escrow agreement was completed in May 2012 and the payment of DM's £15,500 deposit to Locke Lord was made by the Firm on the instruction of DM's agent (a bank) in October 2012. The Respondent had carried out the appropriate identification checks and there was said to be no evidence that anyone involved was not legitimate. Again, there was no complaint or claim made by DM about the Respondent or the Firm.

Company S

13.41 This matter was described as an outlier by Mr Williams. There had been no escrow agreement and the funds had been paid to another firm (not Locke Lord).

13.42 The Applicant's case in relation to S was set out in paragraph [73] of the Rule 12 Statement and amounted to the funds only being held in the Firm's account for 48 hours and this being unnecessary. The Respondent's admission to the breach of Principle 6 had been made on the basis this was admitted.

Principle 2 (integrity) and recklessness

13.43 It was not alleged that the scheme as a whole was fraudulent or that anyone was complicit with Mr Denton. The Respondent had released the funds on the instruction of clients or their agents and Mr Williams stated there was no evidence or allegation to the contrary.

13.44 It was alleged that the transfers were contrary to the escrow agreements. However, the trader had lowered the threshold for admission into the trading programme such that this condition was in fact met. The funds were released under a trust deed under the terms of this Locke Lord document. It was accepted that the trust deed gave the trustees a wide discretion. Mr Williams submitted this was unremarkable and was what trust deeds did. What happened in fact once the money was transferred was the exact opposite of what the trust deed had provided.

13.45 The Tribunal's assessment of the Respondent's conduct required an objective assessment. AB directly attributed his loss to Mr Denton and it was submitted that he would not have instructed the Firm to recover his money if he had any qualms about it or the Respondent. The same was true of SG. None of the other clients made complaints about the Firm or made any claim on the Compensation Fund. Accordingly, it was proper to assume that all parties recovered their money.

13.46 The Respondent accepted that there was a 2009 Warning Notice in force at the time of the relevant events but did not recall having seen it. It was less detailed than the revised Warning Notice which was subsequently issued by the Applicant (after the relevant events).

13.47 The case of Fuglers relied upon by the Applicant was from 2014, two years after the relevant events. Mr Williams observed that the Respondent was not a clairvoyant. The Tribunal case of Wilson-Smith preceded the relevant events by nine years and was a decision reached when Tribunal judgments were not as widely circulated.

13.48 There was submitted to have been no evidence put before the Tribunal that the Respondent was aware of any risk in these transactions. This was despite his lengthy investigatory interview. It was submitted that it would be wrong to infer such awareness given the surrounding circumstances and the Respondent's cooperation with the Applicant.

Manifest incompetence

13.49 Mr Williams said that the dictionary definition of manifest was something easily seen or perceived. He submitted that this conclusion would be too harsh on the Respondent. Mr Williams asked what more comfort the Respondent could have had. He made payment on instruction, to a prestigious firm, for money to be held in that firm's client account pursuant to a trust deed drafted by that firm.

13.50 But for the actions of an individual who had since been struck off, Mr Williams submitted that these proceedings against the Respondent would never have been brought. There was no evidence that the scheme itself was fraudulent, although it was admittedly ambitious.

13.51 Mr Williams submitted that the Respondent's culpability was properly reflected in the admission of a breach of Principle 6.

The Tribunal's Decision

13.52 The Tribunal considered that the admission to the breach of Principle 6 was properly made. The Respondent had acknowledged that the promised rate of return and the use of 'buzzwords' were warning signs of a potentially dubious scheme (although it was stressed that the scheme was in fact legitimate). The Tribunal found the alleged breach of Principle 6 proved to the requisite standard.

13.53 The Tribunal had been invited by the Applicant to draw adverse inferences from the Respondent's decision not to give oral evidence and submit to cross-examination. Rule 33 of the Solicitors (Disciplinary Proceedings) Rules 2019 permitted such an inference to be drawn if the Tribunal considered this to be appropriate.

13.54 Nine years had passed since most of the relevant events. The Firm's IT system had been replaced in the meantime and there was limited contemporaneous documentation available. The Tribunal considered that some concern the Respondent may be unable to give a fair account of his previous actions was understandable. His decision not to give evidence was consistent with advice received from leading counsel. Whilst the Tribunal would expect, as emphasised in case-law, for a professional person to give an account of their actions before a professional Tribunal, in the particular circumstances of this case the Tribunal did not consider that it was appropriate for any adverse inference to be drawn.

13.55 The Tribunal did not consider that Mr Williams' submission that the scheme was not in fact fraudulent fully met the case against the Respondent. The presence of warning signs that the arrangements may potentially be fraudulent (even if it turned out not to be) were plainly relevant to an assessment of whether the Respondent's actions were sufficient given the professional duties and obligations on him. It had been acknowledged on the Respondent's behalf that there were at least two indicators of potential fraud as confirmed above (the promised rate of return and the use of 'buzzwords'). The Tribunal considered the promised rate of return of was quite extraordinary and to be something which by itself required additional scrutiny and caution to be exercised.

13.56 The Tribunal found there were other such signs: the larger deal behind the investments/loans offered to the individual clients; the deposit required to secure the future loan; the degree to which confidentiality was emphasised; and, not least, the absence of any clear reason why the Firm needed to be involved at all. The warning signs were numerous and stark. The presence of warning signs did not, of course, mean that the scheme was inevitably fraudulent or that the Respondent could not ultimately act. They meant that the Respondent was on notice that he needed to satisfy himself that it was appropriate to do so in view of the potential for risk to the substantial client funds involved and the other risks highlighted by the Applicant.

13.57 The escrow agreement drafted by the Respondent, and varied slightly between clients, made prominent reference in all cases to the Firm's status as solicitors and to their ability to "*give a legally binding undertaking which can be relied upon in court*". Neither the Respondent nor the Firm more generally had experience in this type of work in the ordinary course of his provision of legal services; indeed, as set out above, the escrow work was not connected with any underlying transaction on which

the Respondent advised. The Tribunal considered that a further clear warning sign, as reflected in the Applicant's Warning Card, was an apparent wish for those behind the scheme to be *"associated with the legitimacy and respectability which, as a person or firm regulated by the SRA, you provide…"*

13.58 The Respondent's Answer had stated that the Applicant's Warning Card relied upon post-dated the relevant events. Having been referred to a copy of a version of the Warning Card from 2009 the Tribunal was satisfied that this was not accurate. The text set out in the Rule 12 Statement and relied upon by the Applicant was present in the 2009 version of the Warning Card, notwithstanding the fact there was a later and more detailed version. It had been said on the Respondent's behalf that he did not recall seeing the Warning Card on fraudulent financial arrangements issued in 2009. The Tribunal considered that if he, and the Firm, were prepared to accept instructions on such matters outside their usual course of business then it was incumbent upon him as a competent professional to inform himself about such directly relevant regulatory matters. Even had he not seen the Warning Card, the Tribunal considered that some of the warning signs were so blatant: the 10x rate of return, the use of jargon and the lack of any need for a solicitor to be involved at all, that they would have put any competent solicitor on notice that caution needed to be exercised and proper enquiries needed to be made.

13.59 The Applicant had alleged that by focusing solely on the escrow agreement, and treating other matters as "investment advice" beyond his narrow remit, the Respondent failed to make adequate enquiries to satisfy himself about the legitimacy of the scheme. It was not contended on the Respondent's behalf that he did make such wider enquiries into the scheme or its arrangements. The Respondent's case was that there was sufficient comfort provided by:

- the (admittedly informal) advice he had received that it was acceptable to act provided he did not provide investment advice;
- the fact that the money (in all cases but Company S) was paid out to a prestigious law firm under a trust deed drafted by that firm;
- the fact that in every case, on the Respondent's case, the money was paid following instructions from the client or their agent;
- the fact that all of the identification and anti-money laundering checks were unproblematic.

13.60 The Tribunal was told during the hearing that the trader who was due to invest the deposits forwarded for that purpose had reduced the threshold for participation from £1million to £500,000. This was the first time this had been asserted; the Applicant's case was put by Mr Collis, in the way it was set out in the Rule 12 Statement, on the basis of an apparent threshold of £1million. Based upon the lower threshold it was submitted on the Respondent's behalf that the conditions in the escrow agreements for the release of the funds (in accordance with client or their agent's instructions) were met. The fact this had not been mentioned previously undermined the credibility of the account, but the Tribunal did not consider that it had material before it to make a finding of fact that the threshold had not been reduced. Furthermore, the lack of

complaints by the Respondent's clients to the Applicant (save the informal communication from AB) indicated that it was more likely than not that the Respondent had instructions with which the clients were content for the payments to be made.

13.61 Whilst the points set out in the above two paragraphs mitigated in the Respondent's favour to a significant degree, the Tribunal did not consider that they adequately answered the allegation. Given the clear warning signs set out above, and other factors of concern such as the seemingly unnecessary routing of loan monies through a Cypriot company, the Tribunal found that the Respondent did not take the prudent and necessary steps to make more enquiries about the scheme. As a solicitor, and regulated firm, the Respondent and the Firm provided legitimacy to a deal in circumstances where no meaningful legal work was undertaken. The Respondent informed the Firm's insurer that "*The underlying transaction was simply that we agreed to provide an escrow account where we keep the investments until we reach £1,000,000*". These were not the actions of someone looking after client monies. Those providing the funds were plainly the Respondent's clients; his apparent ambiguity on this in the investigatory interview underscored the Respondent's lack of focus and cautious scrutiny into his instructions.

13.62 The Tribunal had regard to the test for conduct lacking integrity set out in Wingate. In paragraph [100] it was stated that integrity connoted adherence to the ethical standards of one's own profession and that this involved more than mere honesty. It was not alleged, and the Tribunal had seen nothing which began to suggest, that the Respondent had acted dishonesty or had any involvement with anything which was in fact fraudulent. Paragraph [101] set out a non-exhaustive list of examples of conduct lacking integrity. One example given was:

> *"Allowing the firm to become involved in conveyancing transactions which bear the hallmarks mortgage fraud".*

13.63 The Tribunal considered this example was highly pertinent to the Respondent's case. That the arrangements were not fraudulent did not affect his obligation to act with integrity given the hallmarks of potentially dubious or fraudulent arrangements. The Tribunal considered that in the context set out above, given in particular the lack of any need for the involvement of a solicitor in the scheme, the Respondent did not do what a solicitor acting with integrity was obliged to do. His culpability went beyond the admitted breach of Principle 6. By failing to make further enquiries in order to ensure client monies were safeguarded and it was proper for him to act, in the light of the numerous concerning warning signs, the Respondent had failed to adhere to the ethical standards and requirements of the profession. The fact that there were six transactions and this was not a one-off failing further reinforced this failing. The Tribunal found to the requisite standard that the Respondent's conduct in this matter had lacked integrity in breach of Principle 2.

13.64 The test for acting recklessly was set out in R v G:

> *"A person acts recklessly…with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a*

risk that it will occur and it is, in the circumstances known to him, unreasonable to take that risk."

This test was adopted in the context of regulatory proceedings in Brett v SRA [2014] EWHC 2974 (Admin).

13.65 The Tribunal had found as set out above that as an experienced solicitor the Respondent must have been aware of certain potential risks involved in acting in relation to this scheme. It was completely outside his professional experience and that of the Firm. There were various stark warning signs including the 10x rate of return, the use of jargon and the lack of any need for a solicitor to be involved at all. The Respondent had seen sufficient risk to take advice on his ability to act, however informal the advice was. The Tribunal found to the requisite standard that being aware of the potential risks and potentially dubious features of the scheme it was reckless for him to act and pay away client money without further making further enquiries about the legitimacy of the scheme and his involvement in it.

13.66 The allegations of acting without integrity and recklessly having been found proved the Tribunal did not go on to consider the allegations pleaded in the alternative that the Respondent's conduct was manifestly incompetent.

Previous Disciplinary Matters

14. In April 1996, in Case Number 7063/1996, the Respondent was fined £1,000 for breaching Rules 7 and 8 of the Solicitors' Accounts Rules 1991 by withdrawing client money from client account for the benefit of other clients. This was found to constitute conduct unbefitting a solicitor.

Mitigation

15. Mr Williams noted that many points in the Respondent's favour were set out in his defence of the contested allegations and these are not repeated.

16. The Respondent had been a solicitor for 46 years and was wholly contrite for the part he had played in the matter. His complete insight was demonstrated by the impeccable behaviour in the subsequent nine years. The Respondent was described as an honest and honourable solicitor who served his local community which was not over-endowed with solicitors' firms. The Tribunal had found that Principle 2 had been breached; Mr Williams invited the Tribunal to limit this finding to the specific events in question. The Respondent's career showed he was a man of fundamental integrity.

17. Mr Williams stated that it was unusual for the Tribunal to hear a case of this age where dishonesty was not alleged. The allegations all related to a short time period from nine years ago when it was submitted that the professional climate was very different and there was less awareness of the risks of such transactions and investments. This delay was said to have been aggravated by delay on the part of the Applicant, something which had weighed heavily on the Respondent since the investigation began three years ago.

18. Had a rogue solicitor not acted as he did it was submitted that the proceedings would not have happened. The Respondent had trusted those at Locke Lord, with good reason it was submitted. Nothing was known against IM or any of the other parties. The scheme itself was not fraudulent and it was not alleged that the Respondent had any idea that a fraud was taking place. The funds paid by the Respondent were not tainted in any way and he had completed appropriate anti-money laundering and identity checks. The Respondent had taken informal advice on his ability to act and had been reassured that it was acceptable provided he did not give investment advice.

19. It was submitted that the Respondent's impeccable conduct in the nine years since the relevant events demonstrated that he did not represent any risk to the public or the reputation of the profession. No-one made any formal complaint about the Respondent and the Legal Ombudsman concluded that the Firm could not be blamed for the loss which occurred. In any event, there was no ultimate loss. Two clients instructed the Respondent to recover their funds which he had done successfully. No claims had been made against the Compensation Fund or against the Firm.

20. The Respondent had cooperated with the Applicant and made early admissions. He had not set out to breach any rules or Principles. He accepted that he should not have got involved.

21. It was submitted that the previous findings were extremely dated and as set out in the judgment the event arose from "muddle and error" with no moral turpitude. The Tribunal was accordingly lenient. Whilst there was no such thing as a spent Tribunal finding, Mr Williams invited the Tribunal not to take this previous finding from 25 years ago into account for sanction purposes.

22. The primary purpose of sanction was not to punish but to maintain the reputation of the profession. Mr Williams asked the Tribunal to consider if the Respondent posed a risk to this reputation and submitted he did not. By reference to the Tribunal's Guidance Note on Sanctions, Mr Williams noted that the Tribunal's approach would be to work up from no order. He invited the Tribunal to consider a reprimand but submitted that in any event a financial penalty would be adequate. It was submitted there was no need for the Respondent's practise to be interrupted, something which would bring about the collapse of the Firm with obvious impact on staff and clients.

23. The Respondent had supplied a statement of financial means. Mr Williams referred the Tribunal to Tinkler v SRA [2012] EWHC 3645 (Admin) in which questions arose as to whether a £40,000 fine was a disproportionate sanction. It was submitted on the solicitor's behalf that the Tribunal had not taken ability into account when setting the fine, that it was disproportionate, and would have taken a decade to pay off in instalments. In paragraph [35] Wyn Williams J had stated:

> *"I deal, first, with whether or not SDT should have taken account of the First Appellant's ability to pay a fine. In my judgment there is no doubt that this was a material factor."*

In the following paragraph he stated this principle had been established for a considerable period of time.

24. Fines imposed by the Tribunal are payable to HM Treasury. The Treasury is often prepared to enter into agreement for payment to be made in instalments. In paragraph [37] of Tinkler it was said that this was not a reason to say the Tribunal need not take account of ability to pay when assessing the amount of an appropriate fine. In paragraph [38] it was said:

> *"It was not reasonable or proportionate for SDT to fix a fine at such a level that it was obvious that the First Appellant would, realistically, need many years to make payment."*

The fine was halved to £20,000.

25. Mr Williams took the Tribunal through the statement of financial means. There were no property assets as the Respondent had conveyed his share in the family home to his wife some years ago, for personal reasons which were described by Mr Williams but are not recorded in this judgment. The statement indicated that the Respondent proposed to pay any sum owed at the rate of £200 per month. It was said that any disproportionate sum would inevitably force the Respondent into bankruptcy, which would have effects on others. Mr Williams submitted that the Tribunal would not be failing in its duty if it took a lenient approach taking into account the Respondent's means.

Sanction

26. The Tribunal referred to its Guidance Note on Sanctions (9th Edition – December 2021) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.

27. In assessing culpability, the Tribunal found that the Respondent's motivation was to take advantage of an opportunity to generate business and fees for the Firm from a new area of work which was not complex. The Tribunal did not consider the misconduct could be described as planned. It was more apt to say the Respondent had drifted into it without knowledge and expertise of this type of work and was influenced by someone he trusted who introduced the work to him and upon whom he relied far too much. Whilst there was some breach of trust in paying client monies away without having made the further enquiries that the Tribunal considered were necessary, the failing was characterised more as a failure to carry out his obligations diligently rather than a breach of trust. The Respondent had control over the relevant circumstances and the Tribunal had found he should have done substantially more. The Respondent was an experienced solicitor at the time of the misconduct. Whilst he was not experienced in these areas of law, he was COLP and COFA and so had an obligation to inform himself about and be alert to signs indicating the potential for fraud and to respond appropriately. The Respondent had not misled the regulator. The Tribunal assessed his culpability as high.

28. The Tribunal considered the harm caused by the misconduct was entirely foreseeable. Whilst it seemed that the client money had been recovered in full, the fact that it had required proceedings to recover it in some cases involved harm in terms of delay, inconvenience, potentially some costs and distress. The harm to the reputation of the

profession caused by an experienced solicitor failing to take necessary steps to ensure client money was safeguarded against possible fraud was significant. Assets had been put at risk. The harm was not intended but was significant.

29. The Tribunal then considered aggravating factors. The Tribunal considered that the previous findings from 25 years ago were sufficiently old, and the Tribunal in 1996 had applied a lenient sanction in the absence of any moral turpitude, that they should be disregarded and not treated as an aggravating factor. The conduct had been deliberate and had been repeated. The Tribunal considered that the misconduct found proved, including using the client account as a bank account, was conduct the Respondent ought reasonably to have known was in material breach of his obligations to protect the public and the reputation of the legal profession.

30. The Tribunal also considered mitigating factors. The Respondent had made efforts to recover the money (and had done so successfully where so instructed). He had taken some advice before acting, albeit informally, and had paid the client money out to a prestigious law firm under a deed drafted by that firm. The misconduct had occurred over a relatively brief duration and had not been repeated subsequently. There were no issues arising from the nine years since these events. The Respondent had displayed insight into the shortcomings of his actions and had made significant admissions at an early stage.

31. The Tribunal assessed the misconduct as very serious. The Tribunal had found that the Respondent's actions had lacked integrity. The misconduct had involved using the Firm's client account as a banking facility and failing to take appropriate steps when confronted with warning signs of a dubious and potentially fraudulent scheme. Client money, and scrupulousness with regards to the client account, were sacrosanct and a cornerstone of legal practice. Notwithstanding the mitigating factors, and the fact that the Tribunal did not consider there was any risk to the public or of any repetition, the seriousness of the conduct was such that neither No Order nor a Reprimand was sufficient to reflect the seriousness of the conduct or to protect the reputation of the legal profession.

32. The Tribunal considered that a fine was the appropriate sanction. Having made this determination, the Tribunal did not go on to consider suspension or strike off from the Roll. The misconduct was very serious and this seriousness together with the protection of the reputation of the profession required that a substantial fine be imposed. The Tribunal considered that in all of the circumstances, including the mitigation summarised above, a fine of £15,000 (at the top of Level 3 in the indicative bands contained within the Guidance Note on Sanctions) was appropriate.

33. The Respondent had put forward a signed statement of means as described above. The Tribunal accepted that it was obliged to take Respondent's means into account and had regard to Tinkler to which it had been referred. Based on the statement of means the proposed payment figure of £200 per month looked realistic and as though a higher figure would not be. The Tribunal was also required to have regard to the Respondent's means when assessing costs. The Tribunal accepted that it should not order the Respondent to pay more than he could realistically pay, whether by way of a fine or costs or both combined. The assessment of what could realistically be paid was

not something which the Tribunal should simply leave to others, whether the Treasury or the Applicant.

34. The Respondent was 70 at the date of the hearing. An 80% reduction to both the fine and the assessed costs would result in a repayment period of 3.8 years at the proposed rate of repayment. In view of the statement of means, the Tribunal determined that in all the circumstances this was an appropriate reduction which resulted in a proportionate fine and costs award. The Tribunal applied an 80% reduction due to means to the fine of £15,000 and determined that a fine of £3,000 should be imposed on the Respondent.

Costs

35. The Applicant's schedule of costs dated 6 January 2022 was in the sum of £42,854.90. The Forensic Investigator's costs were £17,879.95, which was based on 197.7 hours of work. Capsticks had been instructed on a fixed-fee basis. The fixed fee (excluding VAT) was £18,500. The time incurred by Capsticks, including the anticipated hearing time, was 196.4 hours. Mr Collis stated that, adjusting for the fact that the hearing had taken two rather than the anticipated five days and so his attendance was required on only two days, this equated to a notional hourly rate of £101.98. Excluding the costs of external counsel, which were met from the fixed fee, the notional hourly rate was £70.29. He submitted that there was nothing unreasonable included in the schedule and that the level of costs was reasonable overall.

36. Mr Collis submitted that an order for costs made by the Tribunal was made in principle. Such an order did not mean that the Respondent inevitably had to pay that amount as the Applicant made a determination based on the Respondent's finances as to the level and rate of payment. He described any order made by the Tribunal as a maximum.

37. In reply, Mr Williams submitted that, notwithstanding the Applicant's stated intent to take a realistic approach to recovering costs awarded, the Tribunal had a duty to conduct a proportionality exercise when deciding what costs to award. He submitted the Tribunal should not made an order for more than the Tribunal considered the Respondent could pay.

38. Mr Williams submitted that the almost 200 hundred hours incurred by the Forensic Investigator was disproportionate. Five uninterrupted 40 hour weeks on this one matter was excessive. He also noted that five fee-earners were listed on the Capsticks schedule and suggested this may surprise and concern the Tribunal. He made various specific comments on the Applicant's schedule of costs:

- In section B1 ("review of case papers and case planning") time was included for "preparing case plan" and "internal case discussions". Mr Williams submitted that these "solicitor and own client costs" should not be reimbursed. He also submitted that 13.6 hours for the case handler seemed excessive.

- In section B2 ("investigation and preparation of Rule 12 and documents for issue") Mr Williams noted that external counsel drafted the Rule 12 Statement.

Where the Applicant had elected to instruct external counsel, and spent 70 hours checking his work, the costs of time included for "further review of papers on instruction and gathering further information"; "Instructing Counsel to draft Rule 12 Statement"; "Case conference with Counsel and Client"; "Reviewing, amending and preparation of Rule 12 Statement, exhibit bundle, costs at issue and general preparation for issuing proceedings"; and "Internal communications with legal team" should not be reimbursed.

- In section B3 ("directions, considering answer and case management") under the subheading "communications", 22 hours were included for the case handlers communications with the Tribunal, his client, the Respondent and within Capsticks' legal team. Mr Williams submitted this seemed excessive.

- In section B4 ("post-CMH and preparation for substantive hearing") it was submitted that the time included for "instructing in-house counsel to present the substantive hearing" and "case discussion with client" should not be recovered from the Respondent.

- In section B5 "SDT hearing 10 to 14 January 2022 (estimated)" it was submitted that the fact the case handler may have prepared and attended for a day was not a matter for the Respondent when there was also time included for the advocate and a legal assistant.

39. Mr Williams submitted that the total hours incurred, almost 200, seemed very high and he invited the Tribunal to assess the costs with proportionality in mind. He submitted that it was open to the Tribunal to say that it considered that a fine of *x* and costs of *y* were appropriate but that given the Respondent's means, and his age, a reduction would be made. This would avoid any risk that the wrong signal may be sent to the public or the profession. Mr Williams invited the Tribunal to consider making an order that the costs award not be enforced without leave of the Tribunal and stated that the Respondent would be happy to file financial statements at any interval required.

40. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal considered that the Forensic Investigation costs were excessive. There had been a substantial amount of work necessarily and proportionately required, but almost 200 hours, or five weeks, of dedicated work was excessive. The inclusion of 22 hours for "other" on a schedule which already had 22 hours for "attendance at Firm", 65.5 for "info review" and 52.2 for "report preparation" appeared high. The Tribunal determined that the £17,831.80 claimed should be reduced to £14,000.

41. The Tribunal carefully reviewed the Applicant's schedule of costs. The Tribunal accepted that some of the entries highlighted by Mr Williams were high or were activities which should not be recovered from the Respondent. The cumulative total of these hours from sections B1 to B5 of the schedule was 58 hours (30 of which related to only two days being required for the substantive hearing and not the anticipated five). This amounted to around a quarter of the hours included on the Applicant's schedule.

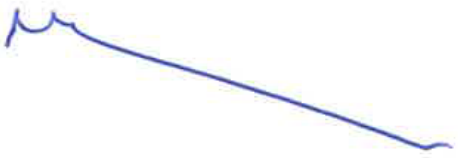
42. The fixed-fee arrangement meant these activities and this time did not translate directly into additional fees. There were early admissions made and the contested breaches did not involve substantial disputed facts, and neither was the case legally complex. In all the circumstances, based on its review of the schedule of costs claimed, the complexity and documentation involved in the case and its experience of comparable cases, the Tribunal considered that the fixed fee should be reduced to £14,000 (to which VAT of £2,800 should be added) which reflected reasonable and proportionate costs. Coupled with the assessed investigations costs, the Tribunal determined that the fees reasonably incurred by the Applicant were £30,800.

43. The Tribunal had carefully reviewed the Respondent's statement of means as described above. The Tribunal accepted that it should not order the Respondent to pay more than he could realistically pay in a costs award, although the ability to pay instalments over an extended period was a relevant factor. As indicated above, an 80% reduction to both the fine and the assessed costs would result in a repayment period of 3.8 years at the proposed rate of repayment. For the reasons set out above in relation to the level of the fine imposed, the Tribunal considered that this reduction should also be applied to the costs which would otherwise be awarded. The Tribunal applied the 80% reduction due to means to the assessed costs of £30,800 and determined that the Respondent should pay the Applicant's costs in the sum of £6,160.

Statement of Full Order

44. The Tribunal ORDERED that the Respondent, Michael Vaughan, solicitor, do pay a fine of £3,000, such penalty to be forfeit to Her Majesty the Queen, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £6,160.

Dated this 2nd day of February 2022
On behalf of the Tribunal



R Nicholas
Chair