SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 — Case No. 12267-2021

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. — Applicant

and

QUNMBER BIN ESHAN — Respondent

Before:

Mr J P Davies (in the chair)
Ms A E Banks
Mr R Slack

Date of Hearing: 26 January 2022

Appearances

Louise Culleton, Counsel, of Capsticks LLP, 1 St George's Rd, London SW19 4DR for the Applicant

The Respondent did not attend and was not represented

JUDGMENT

Allegations

1. It was alleged that whilst in practice as a Solicitor:

1.1 On or after 21 June 2018, having entered into a retainer agreement ('the Agreement') with Client A, the Respondent failed to abide by the terms of the Agreement and in doing so he thereby breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the 2011 Principles").

1.2 Between 9 April 2019 and 22 October 2019, the Respondent failed to cooperate with an investigation by the Legal Ombudsman in relation to Client A's complaint against him and in doing so he breached any or all of Principles 2, 6 and 7 and failed to achieve Outcome 10.6 of the SRA Code of Conduct 2011 ("the 2011 Code").

1.3 Between 22 November 2019 and 23 April 2021, the Respondent failed to cooperate with an investigation by the Applicant in relation to Client A's complaint against him and in doing so he thereby:

1.3.1 insofar as such conduct took place between 6 October 2011 and 24 November 2019, he acted in breach of any or all of 2011 Principles 2, 6 and 7 and failed to achieve Outcome 10.6 of the 2011 Code;

1.3.2 insofar as such conduct took place on or after 25 November 2019, he acted in breach of any or all of Principles 2 and 5 of the SRA Principles 2019 ("the 2019 Principles") and paragraphs 7.3 and 7.4 of the SRA Code of Conduct 2019 ("the 2019 Code").

2. Allegation 1.1 was advanced on the basis that the Respondent's conduct was dishonest.

Executive Summary

3. The Tribunal found all allegations proved in full including the aggravating allegation of dishonesty attaching to Allegation 1.1. The Tribunal found that Respondent had received a payment of £10,000 from his client, had failed to provide the services required under the retainer, had evaded contact with this client and had failed to return the client money as promised. He had failed to engage with the Legal Ombudsman, the Applicant and the Tribunal thereafter. The Tribunal's reasoning is set out below and can be accessed as follows:

- The Tribunal's Decision on Allegation 1.1
- The Tribunal's Decision on the aggravating allegation of dishonesty
- The Tribunal's Decision on Allegation 1.2
- The Tribunal's Decision on Allegation 1.3

Sanction

4. Given the finding of dishonesty and the multiple findings of conduct lacking integrity, the Tribunal determined that the Respondent should be struck off the Roll of Solicitors. The Tribunal's reasoning on sanction is set out below and can be accessed as follows:

- <u>The Tribunal's Decision on sanction</u>

Documents

5. The Tribunal considered all the documents in the case which were included in two electronic bundles supplied by the Applicant: a "proceeding in absence" bundle and a "hearing bundle".

Preliminary Matters

Application to proceed in the Respondent's absence

6. The Respondent was not present when the hearing was due to begin, and no communication had been received by the Tribunal from him at any stage.

7. Ms Culleton, for the Applicant, invited the Tribunal to proceed with the hearing in the Respondent's absence. She submitted that proper service of the case documentation and notice of the hearing as required by Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR") had been effected and that it was fair in all the circumstances to proceed.

8. As to service, Ms Culleton stated that there had been no contact from the Respondent. He had not provided an Answer or engaged with a previous Case Management Hearing. She stated that the allegations concerned a failure to engage and cooperate with the Legal Ombudsman and the Applicant. A tracing company had been instructed who had confirmed the Respondent's residential address and two email addresses. The only communication received from the Respondent (sent from a different email address than those identified by the tracing agent) was an email sent on 6 December 2019 to the Applicant's Investigation Officer.

9. The Tribunal had served the proceedings paperwork on the Respondent by email (to one of the addresses identified by the tracing agent) on 28 October 2021. This email address was also the one included by the Respondent on his "my SRA" account. Ms Culleton stated that no 'delivery failure' notification had ever been received from this email address.

10. Ms Culleton referred the Tribunal to a signed certificate of service confirming that on 4 December 2021 a process server had served various documents on the Respondent by leaving them at the address in Manchester which had been confirmed by the tracing agent (and which the Respondent had also included on his "my SRA" account). Amongst the papers served was a letter confirming the substantive hearing dates, the Rule 12 Statement and exhibits and the Standard Directions issued by the Tribunal which also confirmed the hearing dates.

11. Following the Case Management Hearing of 16 December 2021, which the Respondent did not attend, a further letter containing details of the substantive hearing dates, and a copy of the Tribunal's memorandum, was sent to the Respondent by email, first class post and special delivery post. The letter was signed for on 15 January 2022. The Tribunal was referred to an email delivery confirmation which appeared to show that the email to the Respondent had been conveyed to the three known email addresses.

12. A further letter, again containing details of how to join the remote substantive hearing on 26 January 2020, was sent to the Respondent on 24 January 2022 by email, first class post and special delivery post. Confirmation of email delivery to the three known email addresses was again provided. The letter had not been delivered and the reason given was "the recipient is no longer at that address". Ms Culleton invited the Tribunal to find that service had been effective.

13. Ms Culleton stated that the Respondent had had notice of the hearing and that the Tribunal had the discretion to proceed with the hearing in his absence pursuant to Rule 36 of the SDPR. She submitted that whilst the Tribunal must exercise the utmost caution when hearing a case in the absence of a Respondent, this was a case with a long history of non-compliance and engagement. Ms Culleton referred the Tribunal to the case of R v Jones [2002] UKHL 5. She submitted that the Respondent was aware of the time, date and nature of the hearing and had voluntarily absented himself. She further submitted that there was no indication that the Respondent would attend a future hearing and that fairness to the regulator, which had made every effort to contact the Respondent, was also a relevant factor for the Tribunal to consider. There was a public interest in the proceedings being concluded expeditiously and the four witnesses who were available to be questioned by the Tribunal would be inconvenienced by delay. Ms Culleton confirmed that Civil Evidence Act notices had been served on the Respondent and that there had been no reply. She submitted that in all the circumstances it was fair for the hearing to proceed.

14. The Tribunal was satisfied that notice of the hearing had been served on the Respondent and that accordingly it had the discretion to hear the case in the Respondent's absence if that was fair in all the circumstances.

15. The Tribunal considered the factors set out in Jones as to what should be considered when deciding whether or not to exercise the discretion to proceed in the absence of the Respondent. The Tribunal gave due weight to the judicial comment in Jones that it is only in rare and exceptional cases that the discretion to proceed in a Respondent's absence should be exercised. The Tribunal also had regard to the observations in GMC v Adeogba [2016] EWCA Civ 162 that in determining whether to continue with regulatory proceedings in the absence of the accused, the following factors should be borne in mind by a disciplinary tribunal:

    (i) the tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;

    (ii) the fair, economical, expeditious and efficient disposal of allegations was of very real importance;

    (iii) it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and

    (iv) there was a burden on all professionals subject to a regulatory regime to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they signed up when being admitted to the profession.

16. The Respondent had not asked for an adjournment or engaged with the proceedings at all. The Tribunal did not consider that there were any grounds to conclude that the Respondent would participate in a hearing at a later date. In all the circumstances the Tribunal determined that the Respondent had voluntarily absented himself from the hearing and there was no good reason not to proceed. The four witnesses who had made themselves available for questioning would be inconvenienced by a delay. The allegations were of serious misconduct and the Tribunal was satisfied that in all the circumstances it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence.

Factual Background

17. The Respondent was admitted to the Roll of Solicitors in February 2007. He was the sole director of Cavendish Family Office Mayfair Limited, a non-SRA regulated firm (which was incorporated on 4 January 2018 and dissolved on 11 June 2019).

18. At the relevant time the Respondent was also a consultant for Lewis & Co. Solicitors ("Lewis & Co'), an SRA regulated firm and held a practising certificate free from conditions.

19. At the date of the hearing the Respondent did not hold a practising certificate entitling him to practise as a solicitor and was not employed by a firm regulated by the Applicant. The Rule 12 Statement stated that his practising certificate expired on 31 October 2019.

Witnesses

20. 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 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

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

22. **Allegation 1.1: On or after 21 June 2018, having entered into the Agreement with Client A, the Respondent failed to abide by the terms of the Agreement and in doing so he thereby breached any or all of Principles 2, 4, 5, 6 and 10 of the 2011 Principles.**

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

22.1 Client A was introduced to the Respondent through a former work colleague. Client A wished to secure permanent UK residency for her parents. On 21 June 2018, Client A met the Respondent outside his office in Mayfair. The Respondent said that he and a colleague were very experienced at obtaining permanent residency status in the UK.

22.2 The parties corresponded via email later that day and the Respondent set out the terms of the Agreement. The Respondent stated that "a team of consultants' would be instructed to assist with the application for visas for Client A's parents to join her in the UK as "EEA family members". The total fees were stated to be £20,000, of which an initial deposit of £10,000 was required "today" to enable a consultant who was currently in Spain to "get matters moving whilst he is on the ground".

22.3 In a further email sent on the same day, the Respondent stated that:

> *"In the unlikely event that the application is unsuccessful, you will receive a full refund on the basis that you have provided full instructions in order to allow our consultants to prepare the application".*

22.4 On the same day (21 June 2018), Client A provided signed confirmation of her agreement to the retainer and paid the sum of £10,000 to the Respondent's account. Thereafter, she made numerous attempts to contact the Respondent by telephone. The Respondent was described as difficult to get hold of and did not provide her with information about her parents' application.

22.5 On 19 July 2018, the Respondent told Client A that a man called "Imran" was handling her case and he provided a telephone number for him. On the same day, Client A spoke to Imran and he informed Client A that he did not work with the Respondent. Client A remained in contact with Imran throughout August 2018. He had said he would attempt to contact the Respondent, but this was said to have been unsuccessful.

22.6 On 18 September 2018, Client A attended the Respondent's offices in Mayfair but was informed that he was not present. The following day, the Respondent emailed and texted Client A, stating:

> *"I understand you came to my office yesterday. Please note that you need to speak to Imran with regards to your family case. I am away from London now but will return next week if you require a meeting."*

22.7 On 19 September 2018, Client A responded, setting out in writing her complaint that despite the Respondent's claim that Imran was working on Client A's case, and £10,000 having been sent to the Respondent for work ostensibly being undertaken by Imran, Imran had denied any connection with the Respondent and had stated that he had not received any money. Client A asked for an explanation and described the service she had received as "beyond unprofessional." She received no response.

22.8 Whilst denying that he was instructed on her case, Imran offered to help and provided telephone advice to Client A. Following this advice, on 20 September 2018, Client A made a payment of £7,000 to an individual whom she travelled to Spain to meet on two

occasions. She signed documents, written in Spanish, that she was led to believe would assist her parents' application. It was said that Imran became uncontactable thereafter.

22.9 Client A's evidence was that throughout September and October 2018 she attempted to speak to and meet with the Respondent without any success. On 30 November 2018 she sought to contact the Respondent by text stating that Imran had disappeared and asking the Respondent to follow up with him on her parents' application. Again she received no response.

22.10 On 22 January 2019, Client A's parents were informed by the Spanish consulate in Beijing that the process explained by Imran was incorrect and the Spanish documents obtained by Client A were irrelevant. It was submitted that the Tribunal could infer that Client A's application was unsuccessful.

22.11 On 26 January 2019, Client A emailed the Respondent and asked him to advise about the next steps for the application. She noted there had been no progress and both the Respondent and Imran had not been in touch. On the same day she sent a further text message to the Respondent which stated:

> *"since you have taken my money, no service had been provided. Plz at least revert to me if not I will report you to the police".*

22.12 Client A did not receive any response to the above messages and did not hear from either the Respondent or Imran subsequently. She reported the matter to Action Fraud on 21 February 2019. On 16 April 2019 she was told that the report was still in progress and by the date of her witness statement, 25 October 2021, Client A stated that she had not received any further update.

22.13 The Applicant's case was that the Respondent did not fulfil the terms of the Agreement with Client A, as he did not assist Client A in providing visas for her parents to join her in the UK as EEA family members; a "team of consultants" were not instructed to assist with the Application; the Respondent did not act as a point of contact for Client A and did not make a full refund of the fee to Client A when no visas were obtained.

22.14 In response to a question from the Tribunal, Ms Culleton stated that she was unaware of any Police investigation into the matters set out above and that no claim had been made against the Applicant's compensation fund as the Respondent's firm was unregulated.

Breaches of the 2011 Principles

22.15 It was submitted that by failing to keep Client A informed about the progress of the visa application and/or failing to return the retained fee as agreed, the Respondent's actions amounted to a failure to act with integrity in breach of Principle 2 of the 2011 Principles. The Applicant relied on Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366 in which it was said that integrity connotes adherence to the ethical standards of one's own profession. It was submitted that a solicitor acting with integrity would update their client on the progress of the client's case and abide by the terms of an agreement with the client. It was alleged that the Respondent failed to respond to Client A on numerous occasions and did not update Client A on progress. As the

instructed solicitor on the case, the Respondent should have known that the application had not been successful.

22.16 By failing to update Client A following her instruction and payment, or to offer advice once the Application had been unsuccessful, and/or failing to return the money, it was submitted that the Respondent failed to act in the best interests of Client A and thereby breached Principle 4 of the 2011 Principles. The conduct outlined above was also submitted to amount to a failure to provide a proper standard of service to Client A, in breach of Principle 5 of the 2011 Principles.

22.17 The conduct alleged was also submitted to amount to failure to behave in a way which maintained the trust placed by the public in the Respondent and in the provision of legal services in breach of Principle 6. Members of the public placed a high degree of trust in solicitors when they deposited money under an agreement for services. Public confidence in the Respondent, in solicitors, and in the provision of legal services was likely to be undermined by the conduct outlined above.

Dishonesty Alleged

22.18 The Applicant relied on the test for dishonesty set out in Ivey v Genting Casinos [2017] UKSC 67:

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

22.19 It was submitted that it could be inferred that the Respondent knew or believed that his conduct was dishonest as:

- Following receipt of the retained fee, it became difficult for Client A to contact him;

- During the contact the Respondent did have with Client A, he failed to provide any updates or details about her application or what work had been or would be carried out by him or others;

- He did not provide full details or any further information concerning his alleged consultant "Imran" and the Respondent did not act as the point of contact to resolve the issues Client A was experiencing with Imran and her application;

- He failed to respond to the complaint raised by Client A;

- He stopped engaging with Client A; and

- He failed to refund the fee when Client A's parents did not secure visas and the application was unsuccessful.

22.20 It was submitted that ordinary, decent people would consider such behaviour to be dishonest. It was further submitted that the Tribunal could safely infer that the Respondent obtained Client A's money dishonestly on the basis he took no steps to liaise with Client A after she raised concerns and provided no evidence of any work carried out.

Adverse inferences

22.21 Ms Culleton invited the Tribunal to draw an adverse inference from the Respondent's failure to engage with the proceedings and his failure to give oral evidence.

The Respondent's Case

22.22 The Respondent had not provided any response to the allegations or engaged with the proceedings in any way. As the Respondent's position was not known, the Tribunal approached the allegations on that basis that they were denied.

The Tribunal's Decision

22.23 The Tribunal had been invited to draw an adverse inference from the Respondent's failure to engage with the proceedings. Rule 33 of the Solicitors (Disciplinary Proceedings) Rules 2019 permitted such an inference to be drawn if the Tribunal considered this was appropriate.

22.24 The totality of the Respondent's engagement with the Applicant, the Legal Ombudsman and the Tribunal was one email of 6 December 2019 in which he told the Applicant's Investigator, Mr Craggs, that he was on sick leave and would endeavour to respond to the queries made as soon as possible. The process server instructed by the Applicant in June 2020 had informed Mr Craggs that a 'read receipt' had been received from an email they had sent to the Respondent. The Applicant had made extensive efforts to engage with the Respondent and the Tribunal was satisfied that he was aware of the allegations and had chosen not to provide any answer or to participate. As stated in Iqbal v SRA [2012] EWHC 3251 (Admin) "ordinarily the public would expect a professional man to give an account of his actions". The Tribunal considered that the Respondent's complete failure to engage should weigh against him.

22.25 The Respondent had not contested the validity of any of the documentation which was before the Tribunal. He had been served with a Civil Evidence Act notice informing him of the obligation to do if he sought to challenge the authenticity of any of the material contained within the Applicant's exhibit to the Rule 12 Statement. The Tribunal had been taken to copies of the documents to which reference is made above in the summary of the Applicant's case.

22.26 The Tribunal carefully scrutinised the two witness statements prepared by Client A. They presented a coherent, consistent and detailed account. Client A's statement was supported by numerous copy WhatsApp exchanges with the Respondent and Imran, call logs and various emails (to and from the Respondent, to Imran, to and from the

Office of the Immigration Services Commissioner and with the Legal Ombudsman and the Applicant). The overwhelming likelihood was that the account she provided was accurate; it was credible, supported by documentary evidence and was not challenged by the Respondent.

22.27 The Tribunal accepted Client A's evidence. The Tribunal accepted her evidence as to the terms of the retainer, the payment of an initial £10,000 (and subsequent £7,000), the Respondent (and later Imran) being very difficult to contact, the visa application being unsuccessful, the documents obtained in Spain being unsuitable for her purposes and the Respondent, contrary to his promise and the terms of the retainer, making no refund when the visa was not obtained.

22.28 The Tribunal found the allegation that the Respondent had failed to fulfil the terms of the retainer proved to the requisite standard. He had failed to take meaningful steps to obtain the family visa, to coordinate the "team of consultants" he had said would complete the work, or to make the full refund he had stated would be made in the event the application was unsuccessful.

22.29 By reference to the test for conduct lacking integrity set out in Wingate, the Tribunal found without hesitation that the conduct found proved amounted to a flagrant failure to meet the minimal ethical standards of the profession. Taking payment in the way described above, failing to provide meaningful assistance in relation to the visa application and reneging on the promise to refund the money was a complete departure from the terms of the retainer and the probity required from all solicitors. The breach of Principle 2 of the 2011 Principles was proved to the requisite standard.

22.30 Client A had placed her trust in a solicitor and had been badly let down. The Tribunal accepted the submission that public trust in the Respondent and in the provision of legal services would inevitably be undermined by such conduct. The breach of Principle 6 of the 2011 Principles was proved to the requisite standard.

22.31 Given the above findings, the Tribunal also considered that the Respondent had failed to act in Client A's best interests and had failed to provide a proper standard of service to her. The Tribunal accordingly found the alleged breaches of Principles 4 and 5 of the 2011 Principles proved to the requisite standard. The Tribunal also found that by failing to return Client A's money as promised the Respondent had failed to protect her money. The alleged breach of Principle 10 of the 2011 Principles was accordingly proved to the requisite standard.

The allegation of dishonesty

22.32 When considering the allegation of dishonesty, the Tribunal applied the test in Ivey. The Tribunal adopted the following approach:

- firstly the Tribunal established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held;

- secondly, once that was established, the Tribunal then considered whether this conduct would be thought to have been dishonest by the standards of ordinary decent people.

22.33 The Tribunal had found that the Respondent received £10,000 from Client A and failed to act in accordance with the retainer. He did not provide the support and coordination for the visa application, became evasive after the initial fee had been received and did not return the fee as promised when the application was unsuccessful (neither did he explain this failure). The Respondent was plainly aware that the money had been received and of the terms of the retainer. The Tribunal accepted that his evasiveness after the £10,000 had been received supported the contention that he was aware his conduct was unacceptable and inconsistent with what had been agreed. Moving on to the second element of the Ivey test, the Tribunal found to the requisite standard that ordinary decent people would regard such conduct as dishonest.

23. **Allegation 1.2: Between 9 April 2019 and 22 October 2019, the Respondent failed to cooperate with an investigation by the Legal Ombudsman in relation to Client A's complaint against him and in doing so he breached any or all of Principles 2, 6 and 7 of the 2011 Principles and failed to achieve Outcome 10.6 of the 2011 Code.**

The Applicant's Case

23.1 In or around March 2019, the Legal Ombudsman received a complaint from Client A. On 26 March 2019, the Ombudsman wrote to the Respondent (care of Lewis & Co Solicitors) stating that Client A had informed the Ombudsman that her complaint made to the Respondent on 19 September 2018 had received no reply. The Ombudsman sought a copy of the complaint from the Respondent and his response to it within fourteen days.

23.2 On 28 March 2019, Lewis & Co acknowledged receipt of the Ombudsman's letter and advised that Client A was not a client of Lewis & Co and that the Respondent was a consultant for the firm. They advised the Ombudsman to redirect their query to the Respondent's "Cavendish Family Office" address in Mayfair. The Ombudsman duly did so on 1 April 2019 and the Respondent failed to respond.

23.3 On 16 April 2019, the Ombudsman sent a further letter to the Cavendish Family Office address asking for the requested information within 7 days. The Respondent again failed to respond.

23.4 On 24 April 2019, the Ombudsman wrote to the Respondent at the same address to advise that the case would be progressing to the assessment stage and that he would be contacted in due course when the case was allocated to an investigator, at which stage the Respondent could provide comments. The Respondent did not acknowledge receipt and failed to reply to any of the earlier correspondence.

23.5 On 4 October 2019, an investigator at the Ombudsman confirmed to the Respondent that the complaint fell within their jurisdiction and invited him to confirm immediately if he disagreed with this. The Respondent failed to respond to this letter.

23.6 On 15 October 2019, the investigator wrote to the Respondent noting that they had not heard from him and clarifying that the complaint to be investigated was that he "failed to provide any service after receiving payment of £10,000". The letter requested various items from the Respondent by no later than 22 October 2019 including a copy of the firm's ledger and proof of any work done following the receipts of the £10,000 payment. The Respondent failed to respond to the Ombudsman. The case was then referred to the Applicant.

23.7 The Applicant submitted that the Tribunal could infer that the Respondent would have received the correspondence from the Legal Ombudsman on the basis that the address used was:

- where Client A first met the Respondent;
- included at the bottom of his email correspondence with her;
- included on Companies House records; and
- provided by Lewis & Co Solicitors in their letter of 28 March 2019.

Breaches of the 2011 Principles

23.8 The Respondent had a duty to cooperate with the Legal Ombudsman and the Applicant's case was that the chronology set out above displayed a failure to do so in breach of Principle 7 of the 2011 Principles.

23.9 It was alleged that there could have been no reasonable doubt that the Respondent was required to provide the Legal Ombudsman with Client A's file. It was submitted that in failing to do so, and/or respond at all, he acted without integrity pursuant to the test from Wingate summarised above in breach of Principle 2 of the 2011 Principles 2011.

23.10 It was further submitted that by failing to cooperate with the Legal Ombudsman and provide the requested information the Respondent did not act in Client A's best interests and his behaviour undermined the trust the public placed in him as a solicitor and in the provision of legal services, in breach of Principle 6 of the 2011 Principles.

23.11 Outcome 10.6 of the 2011 Code required the Respondent to "co-operate fully with the SRA and the Legal Ombudsman at all times including in relation to any investigation about a claim for redress against you". It was submitted that chronology set out above demonstrated that he had failed to achieve this Outcome.

The Respondent's Case

23.12 As indicated above, in the absence of any response or engagement from the Respondent the Tribunal approached all allegations on that basis they were denied.

The Tribunal's Decision

23.13 The Tribunal was satisfied on the balance of probabilities that the correspondence sent by the Legal Ombudsman had reached the Respondent. The Tribunal had been referred to copies of the correspondence included in the Applicant's summary case above. For the reasons set out in [23.7] above the Tribunal found that the Respondent had received the correspondence from the Legal Ombudsman.

23.14 The summary of the correspondence provided an extensive and clear catalogue of non-cooperation. The Respondent had been given multiple opportunities to engage and explain his actions and had failed to do so to any extent whatsoever.

23.15 The duty on the Respondent to cooperate with the Legal Ombudsman was clear from the unambiguous wording of Principle 7 of the 2011 Principles which stated all solicitors must:

> *"comply with your legal and regulatory obligations and deal with your regulators and ombudsman in an open, timely and co- operative manner".*

23.16 The Respondent's failure to cooperate was equally unambiguous from the chronology and copy documents set out above. He had not even acknowledged any of the correspondence from the Legal Ombudsman, much less cooperated. The Tribunal found the breach of Principle 7 of the 2011 Principles proved to the requisite standard.

23.17 The same factual findings demonstrated the Respondent's failure to achieve Outcome 10.6 of the 2011 Code which also required him to co-operate fully with the Legal Ombudsman at all times. The Tribunal found the alleged failure to achieve this Outcome proved to the requisite standard.

23.18 The Tribunal accepted that acting with integrity, adhering to the ethical standards of the profession in the language of Wingate, required full cooperation with the Legal Ombudsman. The Legal Ombudsman was a central part of the apparatus of public protection and the obligation to cooperate to maintain public confidence in the profession and to ensure complaints from affected individuals could be assessed was a basic ethical requirement applicable to all solicitors. The Respondent had comprehensively departed from this basic ethical requirement by failing to engage in any way with the investigation into Client A's complaint. The Tribunal found the alleged breach of Principle 2 of the 2011 Principles proved to the requisite standard.

23.19 The Tribunal considered that public trust and confidence in the delivery of legal services and in the Respondent would be undermined by his clear failure to cooperate with the Legal Ombudsman. The Tribunal found the alleged breach of Principle 6 of the 2011 Principles proved to the requisite standard.

24. **Allegation 1.3: Between 22 November 2019 and 23 April 2021, the Respondent failed to cooperate with an investigation by the Applicant in relation to Client A's complaint against him and in doing so he thereby:**

1.3.1 insofar as such conduct took place between 6 October 2011 and 24 November 2019, he acted in breach of any or all of 2011 Principles 2, 6 and 7 and failed to achieve Outcome 10.6 of the 2011 Code;

1.3.2 insofar as such conduct took place on or after 25 November 2019, he acted in breach of any or all of Principles 2 and 5 of the 2019 Principles and paragraphs 7.3 and 7.4 of the 2019 Code.

The Applicant's Case

24.1 The Applicant's Investigation Officer, Michael Craggs, initially attempted to contact the Respondent on 13 November 2019, by email at the address provided by the Respondent on his "mySRA" account. The email set out a series of questions about the Respondent's relationship with Client A and requested a response by 22 November 2019. The Respondent failed to acknowledge or respond to this email.

24.2 Mr Craggs sent a further email on 23 November 2019 to which the Respondent also failed to respond.

24.3 On 27 November 2019, Mr Craggs emailed Lewis & Co, which he understood to be the Respondent's employer, asking for help contacting him. Two email addresses for the Respondent (one of which Mr Craggs already had) were supplied in reply on the same day. Later that day Mr Craggs sent his message to the new address he had received. No response was received.

24.4 On 6 December 2019, Mr Craggs sent a further email to the same email address stressing the importance of an urgent response and the obligations under Chapter 7 of the 2019 Code. Later that day the Respondent replied and stated

> *"… I have today had sight of your emails. I am away on sick leave and shall endeavour to respond as soon as possible."*

This was said to be the only communication received by the Applicant from the Respondent (and to show that the Respondent was aware of the Applicant's investigation).

24.5 On 13 and 19 December 2019, Mr Craggs once again attempted to contact the Respondent on the same email address and reminded him of his regulatory obligations. No response was received.

24.6 On 3 January 2020, Mr Craggs attempted to contact the Respondent by telephone, using the mobile and landline numbers provided on the Respondent's email signature. The Respondent did not answer the mobile telephone and he did not respond to the voicemail which was left for him. On calling the landline, a lady answered who advised that the Respondent had moved out of the address at least four months previously.

24.7 On 8 January 2020, Mr Craggs emailed Lewis & Co and asked them to encourage the Respondent to engage. He was advised in reply that his email had been forwarded to the two email addresses held by that firm for the Respondent. He was also advised that the Respondent's Lewis & Co email address would be suspended in the near future and that he would no longer be consulting for the firm.

24.8 Efforts were made to serve a formal Production Notice on the Respondent on 30 January 2020 requiring the Respondent to provide the Applicant with all information and documentation relating to Client A's case and all correspondence with the Legal Ombudsman. The copy sent to the Respondent's home address was returned to sender as no one was present to sign for it. The copy sent to the Respondent's business address

was signed for on reception but later returned as "Refused". No response was received to the copies sent to the Respondent's two email addresses.

24.9 On 20 February 2020 further efforts were made to serve the formal Production Notice which were again unsuccessful.

24.10 Process servers were instructed to trace the Respondent. On 4 June 2020 they attempted to contact the Respondent via email with the subject "Solicitors Regulation Authority" and received a read receipt date on that date. They stated that they were unable to confirm whether the Respondent was living at the residential address held by the Applicant but had confirmed with a relative that the Respondent would receive any correspondence delivered to him at that address.

24.11 On 15 June 2020 Mr Craggs sent a further copy of the Production Notice by recorded and first-class delivery to the residential and business addresses held and to the two email addresses.

24.12 On 18 June 2020 Mr Craggs received confirmation that someone named "Ehsan" had signed for the Production Notice at the residential address. However, no response was received from the Respondent.

24.13 On 30 June 2020 and 7 July 2020 Mr Craggs emailed the Respondent at both email addresses reminding him of his regulatory obligations. He sent a further letter by second class post on 4 August 2020 making the same points. Mr Craggs received no response from the Respondent.

24.14 A tracing agent's report from May 2021 indicated that the Respondent's current address was the residential one to which correspondence had been sent as set out above.

Breaches of the Principles

24.15 It was submitted that the Applicant had made concerted efforts to engage the Respondent and that he had consistently failed to acknowledge and cooperate with his regulator.

24.16 It was submitted that by failing to cooperate with the Applicant and provide the requested information, the Respondent acted without integrity. For conduct prior to 25 November 2019 Principle 2 of the 2011 Principles applied and for conduct after that date Principle 5 of the 2019 Principles applied.

24.17 It was submitted that the conduct alleged also amounted to a failure to behave in a way that maintained the trust placed by the public in the Respondent and in the provision of legal services. It was submitted that the public would expect a solicitor to co-operate with an investigation by their regulator. For conduct prior to 25 November 2019 Principle 6 of the 2011 Principles applied and for conduct after that date Principle 2 of the 2019 Principles applied.

24.18 It was submitted that the Tribunal could infer from the chronology outlined above that the Respondent was aware of the Applicant's attempts to contact him. He had a duty to co-operate in an open and timely manner with his regulator and was alleged to have

failed to do so. For conduct prior to 25 November 2019 he was submitted to have breached Principle 7 of the 2011 Principles and failed to achieve Outcome 10.6 of the 2011 Code. For conduct after that date, he was submitted to have breached paragraphs 7.3 and 7.4 of the 2019 Code which imposed an equivalent obligation to cooperate.

The Respondent's Case

24.19 As indicated above, the Tribunal approached the allegations on that basis they were denied.

The Tribunal's Decision

24.20 The Tribunal had been referred to copies of the documents referred to above. The Tribunal carefully reviewed Mr Craggs' witness statement in which he described in some detail his efforts to engage the Respondent. The account provided by Mr Craggs was corroborated by the copy documents; it had been provided to the Respondent in the exhibits to the Rule 12 Statement and had not been challenged by him. The Tribunal accepted Mr Craggs' evidence and the chronology and correspondence as summarised above in the Applicants' case.

24.21 Mr Craggs had gone to considerable lengths to encourage the Respondent to engage including sending correspondence and documents to various addresses and repeatedly extending deadlines for responses. The Tribunal found that there had been a clear failure to cooperate with the Applicant.

24.22 The subject matter of the investigation was a serious complaint from a client and the obligation for the Respondent to cooperate was very clear. The same reasoning set out above in relation to the failure to cooperate with the Legal Ombudsman applied to the failure to cooperate with the Applicant's investigation. For the same reasons, integrity and public trust in the profession and the Respondent required cooperation with the regulator.

24.23 The relevant conduct spanned a period before and after 25 November 2019 when the applicable Principles and Code changed. The obligations imposed, to cooperate, to act with integrity and in a manner which would uphold public trust and confidence remained the same. The Tribunal accordingly found the alleged breaches of Principles 2, 6 and 7 of the 2011 Principles and Principles 2 and 5 of the 2019 Principles proved to the requisite standard.

24.24 As set out above, Outcome 10.6 of the 2011 Code and paragraphs 7.3 and 7.4 of the 2019 Code imposed an obligation on the Respondent to cooperate with the Applicant. In light of the findings set out above, the Tribunal found proved to the requisite standard that the Respondent had failed to meet these obligations.

Previous Disciplinary Matters

25. There were no previous Tribunal findings.

Mitigation

26. The Respondent had not taken the opportunity to engage with the proceedings and outline any mitigating factors. The Respondent had an otherwise unblemished disciplinary record since his admission to the Roll of Solicitors in 2007.

Sanction

27. The Tribunal referred to its Guidance Note on Sanctions (9th Edition) 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.

28. In assessing culpability, the Tribunal found that the motivation for the Respondent's conduct was financial gain. His conduct was planned; there were several exchanges with Client A and a clear explanation of the work which would be undertaken and the terms of the retainer prior to the initial £10,000 being received. He subsequently evaded attempts to contact him and did not act in accordance with the retainer; such conduct could not be described as spontaneous. The Respondent was an experienced solicitor, having been admitted to the Roll in 2007. He completely failed to engage with the regulator. The Tribunal found that the Respondent was fully responsible for his actions, with a high degree of culpability.

29. The Tribunal then turned to assess the harm caused by the misconduct. Client A had been caused a direct financial loss of at least £10,000. She had also incurred the costs of a fruitless trip to Spain. She also suffered considerable inconvenience and distress as a result of the Respondent's conduct. The Respondent had seemingly misappropriated at least £10,000 and provided a thoroughly inadequate service which was not in accordance with the retainer. The Tribunal found the Respondent's conduct to have been disgraceful and likely to have a profoundly negative effect on the reputation of the profession and public trust in it. Such reputational harm was something which would have been obvious to the Respondent.

30. The misconduct found proved was aggravated by the fact that the allegations included dishonest conduct. The dishonest conduct had included a failure to repay £10,000 contrary to an express agreement to do so. The conduct was related to just one client matter, but the subsequent failure to cooperate was repeated and extended over a long period. The Tribunal considered that the conduct was aggravated by Client A being a lay client who was not experienced in the matters on which she had instructed the Respondent and by the fact that he had made promises prior to the receipt of the initial £10,000 payment which he subsequently failed to keep. The fact that the Respondent would have known that his was conduct in material breach of his obligations as a solicitor to protect the public and the reputation of the legal profession was a significant aggravating factor.

31. The Tribunal noted that the Respondent had no prior disciplinary findings against him.

32. The Tribunal had regard to the case of SRA v Sharma [2010] EWHC 2022 (Admin), and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck of the Roll of Solicitors. The Tribunal

was not persuaded that any exceptional factors were present such that the normal penalty was not appropriate. As stated in Sharma, in considering what amounts to exceptional circumstances, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary, or over a lengthy period of time; whether it was a benefit to the solicitor, and whether it had an adverse effect on others. The nature of the dishonesty involved entering into a retainer, pursuant to which he received £10,000 and then failing to deliver the services or make the refund required by the terms of the retainer. The conduct involved several preparatory acts and whilst the receipt of the client funds was momentary the subsequent evasion of the client's attempts at contact and the failure to explain or repay the money extended over several months. It was not momentary, it benefitted the Respondent personally, and had a significant adverse impact on others.

33. Having found that the Respondent had acted dishonestly, the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the observation of Sir Thomas Bingham MR in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> *"to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".*

The Tribunal determined that the findings against the Respondent, including dishonesty, required that the appropriate sanction was strike off from the Roll.

Costs

34. Ms Culleton applied for the Applicant's costs in the sum of £24,469.66 as set out in the schedule dated 19 January 2022. Capsticks Solicitors had been instructed on a fixed-fee basis and accordingly the fact that the hearing had taken less than one day rather than the anticipated three did not have any impact on the sum payable by the Applicant. The fixed fee included payments made to the tracing agent. It had an impact on the notional hourly rate which based on a half-day hearing equated to £138 per hour. Costs of £243 for service of documents on the Respondent had not been included in the schedule. Ms Culleton submitted that the overall fee was reasonable and that the notional hourly rate demonstrated this.

35. Ms Culleton submitted that the case concerned serious allegations, involved comprehensive statements from four witnesses and had required a substantial amount of investigation and evidence gathering. The case could not be prepared on the basis that the Respondent would not defend the allegations and his lack of engagement had created additional costs. Dishonesty had been found proved and the Respondent had benefitted from the £10,000 payment. She submitted that in these circumstances there was no reason why the profession should bear the costs of the proceedings.

36. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all of the evidence. The Tribunal carefully reviewed the schedule of costs. Given that the hearing had concluded in half a day rather than the anticipated three days, the Tribunal considered that it was appropriate to deduct 20 hours (12 hours for the two full days Ms Culleton was not required to attend and 8 hours for the supporting solicitor who was not required for the remainder of the first day or the second day as

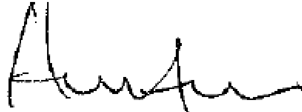
anticipated) from the total time incurred. This amounted to a little over 10% of the total time included on the schedule of costs. The Tribunal noted that the £138 hourly rate mentioned by Ms Culleton was notional and that the fixed fee was payable by the Applicant regardless of the shorter than anticipated duration of the hearing. However, based on its careful 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 a reduction was appropriate and that the appropriate and proportionate level of costs was £21,500 (inclusive of VAT).

37. The Respondent had not provided any Statement of Means or other evidenced information to inform the Tribunal's decision. In line with its Standard Directions, of which the Respondent had received a copy, the Tribunal consequently proceeded without regard to the Respondent's means. The Tribunal ordered the Respondent to pay the Applicant's costs of and incidental to this application fixed in the sum of £21,500.

Statement of Full Order

38. The Tribunal ORDERED that the Respondent, QUNMBER BIN EHSAN, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £21,500.

Dated this 22nd day of February 2022
On behalf of the Tribunal



J P Davies
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
22 FEB 2022