The Tribunal's decision dated 9 August 2023 is subject to appeal to the High Court (Administrative Court) by the Respondent. The Order remains in force pending the High Court's decision on the appeal.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12313-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

KIRSTEN VON WEDEL Respondent

Before:

Mr E Nally (in the chair)
Mr P Lewis
Ms E Keen (17,19, 24, 26 January 2023 and 16 March 2023)
Dr S Bown (12 April 2023, 10 July 2023 and 31 July 2023)

Dates of Hearing:
17, 19, 24, 26 January 2023, 16 March 2023,
12 April 2023,
10 July 2023 and 31 July 2023.

Appearances

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

The Respondent represented herself.

JUDGMENT

Allegations

1. The allegations against Ms Von Wedel were that while in practice as the sole practitioner and owner of K Law ("the Firm"):

Conveyancing allegations

1.1 Between March and June 2020, whilst in the course of acting for RP in the sale of his property, BH, the Respondent failed, within a reasonable time period, to comply with an undertaking to redeem the mortgage on BH upon completion, and in doing so breached any or all of Principles 2, 5 and 7 of the SRA Principles and any or all of paragraphs 1.3 and 3.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs.

PROVED.

1.2 Between December 2018 and January 2021, whilst in the course of acting for Dr and Mrs Bran in the purchase of property, WR, the Respondent failed upon completion of the purchase:

1.2.1 to pay Stamp Duty Land Tax ("SDLT") due in respect of that property
1.2.2 to register the clients' interest in the property with the Land Registry

and in doing so breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 and failed to achieve any or all of Outcomes 1.2 and 1.5 of the SRA Code of Conduct 2011, in so far as the conduct predated 25 November 2019,

and

any or all of Principles 2, 5 and 7 of the SRA Principles and paragraph 3.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs, so far as the conduct occurred on or after 25 November 2019.

PROVED.

False Representations

1.3 On or around 21 April 2020, whilst in the course of acting for RP, the Respondent represented to RP that the mortgage on BH had been redeemed, when it had not been and the Respondent knew or ought to have known that was the case, and in doing so breached any or all of Principles 2, 4 and 5 of the SRA Principles.

PROVED.

1.4 On or around 11 December 2019, the Respondent represented to HPLP solicitors that she had made payment of SDLT to HMRC, in respect of the purchase of WR, when she had not, and she knew or ought to have known that was the case, and in doing so she breached any or all of Principles 2, 4 and 5 of the SRA Principles.

PROVED.

Offensive Communications

1.5 Between 22 April 2020 and 6 May 2020, whilst handling the matter of RP, the Respondent engaged in offensive and threatening communications with RP and in doing so breached any or all of Principles 2 and 5 of the SRA Principles.

PROVED.

Accounts Rule Breaches

1.6 Between October 2018 and June 2020, caused one or more improper transfers to be made from the client account in the following matters:

1.6.1 the matter of RP;
1.6.2 the matter of Dr and Mrs Bran;

and thereby breached Rule 20.1 of the SRA Accounts Rule 2011 and any or all of Principles 2, 4, 6 and 10 of the SRA Principles 2011, so far as the conduct predated 25 November 2019,

and,

Rule 5.1 of the SRA Accounts Rules and any or all of Principles 2, 4, 5 and 7 of the SRA Principles so far as the conduct occurred on or after 25 November 2019.

PROVED.

1.7 Between October 2019 and May 2020, caused client to office transfers purportedly for costs, without any documentation to support the same, resulting in a shortage on the client account of £182,005.00, and in doing so breached; any or all of Rules 17.2, 17.4, and 17.7 of the SRA Accounts Rules 2011, and any or all of Principles 2, 6, 8 and 10 of the SRA Principles 2011, so far as the conduct predated 25 November 2019,

and,

Rule 4.3 of the SRA Accounts Rules and any or all of Principles 2, 4 and 5 of the SRA Principles, so far as the conduct occurred on or after 25 November 2019.

PROVED.

Failure to co-operate with the SRA

1.8 During the SRA's investigation into the conduct alleged, the Respondent failed to comply in full with a Production Notice dated 1 June 2020, served pursuant to section 44B of the Solicitors Act 1974, and thereby breached any or all of paragraphs 7.3 and 7.4 of the Code of Conduct for Solicitors, RELs and RFLs and any or all of Principles 2 and 5 of the SRA Principles.

PROVED.

Dishonesty and Recklessness

2. In addition, Allegations 1.6 and 1.7, so far as the conduct predated 25 November 2019, was advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the Allegations.

   PROVED.

3. In the alternative, Allegations 1.6 and 1.7, were advanced on the basis that the Respondent's conduct was reckless. Recklessness was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the allegations.

   NO DETERMINATION REQUIRED.

Executive Summary

4. Ms Von Wedel acted for RP and Dr and Mrs Bran in separate conveyancing transactions.

5. In the case of RP, Ms Von Wedel failed to redeem his mortgage within a reasonable timeframe, thereby breaching an undertaking to do so. Ms Von Wedel had received the monies for the redemption to take place and sent those monies to a bank account held outside the jurisdiction, representing an improper transfer from the client account. The mortgage was eventually redeemed approximately three months after completion, from a foreign bank account. Ms Von Wedel sent RP offensive and threatening emails when he tried to obtain answers as to what was happening with his case. In the meantime, she falsely represented to him that the mortgage had been redeemed.

6. In the case of Dr and Mrs Bran, Ms Von Wedel failed to pay the due SDLT or register the property with HM Land Registry. Again, she made false representations about this. The SDLT was never paid by Ms Von Wedel despite being given the funds to do so. Those funds were moved out of client account and not returned. The SRA Compensation Fund had to make the payment instead.

7. Ms Von Wedel caused a shortfall on the client account of £182,005 and also failed to co-operate with a Production Notice served on her by the SRA.

8. Ms Von Wedel denied all the Allegations, save for a partial admission to Allegation 1.8. The basis of her denial is set out in the summary of her evidence, set out below. In essence she denied breaching the undertaking, denied that the representations were false or knowingly false and denied any wrongdoing in relation to the client account. Ms Von Wedel accepted sending the emails to RP but denied they amounted to professional misconduct.

9. The hearing took place with reasonable adjustments in place on account of Ms Von Wedel's health.

10. The Tribunal found all the Allegations proved in full.

Sanction

11. Ms Von Wedel was struck off the Roll and ordered to pay £49,001.00 in costs.

Documents

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

Preliminary Matters

13. Application for anonymity of RP and MK

13.1 Ms Sheppard-Jones applied for RP and MK, and addresses connected to RP, to be anonymised in the hearing and in the written judgment. The basis of this application in respect of RP was that he was a client who had not provided a witness statement to the SRA. He was therefore not a witness in the proceedings. The SRA had made contact with him and he had not consented to his details being provided in open session. Ms Sheppard-Jones noted that Lu v SRA [2022] EWHC 1729 (Admin) did not suggest that no anonymisation should occur, rather that careful thought was required.

13.2 In relation to MK, he was irrelevant to context of the matter. In an interview with SRA, Ms Von Wedel had referred to his matter in relation to the transfers that were the subject of Allegation 1.6. MK was also not a witness and was entitled to confidentiality as a client.

13.3 Ms Von Wedel did not oppose this application.

The Tribunal's Decision

13.4 The starting point was the principle of open justice, as emphasised in Lu.

13.5 The question for the Tribunal was whether anonymising RP and MK infringed on this principle such that the public would not be able to follow the Tribunal's reasoning or the proceedings. Neither MK nor RP were witnesses but both of them had been clients of Ms Von Wedel. In those circumstances they had a reasonable expectation of privacy, which RP in particular had made plain he did not waive.

13.6 The Tribunal did not consider that its decision would be in any way impaired by anonymising these individuals given that their role in the matter was not in dispute. The Tribunal therefore directed that they continue to remain anonymised during the hearing and in this Judgment.

14. Application to sit in private for parts of the hearing

14.1 At the commencement of Day 2, Ms Von Wedel made an application for those parts of the hearing that would touch on aspects of her personal circumstances to be heard in private. The Tribunal sat in private to hear that application.

14.2 REDACTED

Respondent's Submissions

14.3 REDACTED

14.4 REDACTED

Applicant's Submissions

14.5 REDACTED

The Tribunal's Decision

14.6 The Tribunal reminded itself that the starting point was the principle of open justice and it again had regard to Lu. The relevant sections of Rule 35 of the SDPR 2019 stated:

> "Public or private hearings 35.—
> (1) Subject to paragraphs (2), (4), (5) and (6), every hearing of the Tribunal must take place in public.
>
> (2) Any person who claims to be affected by an application may apply to the Tribunal for the hearing of the application to be conducted in private on the grounds of— (a) exceptional hardship; or (b) exceptional prejudice to a party, a witness or any person affected by the hearing.
>
> …
>
> (5) The Tribunal may, before or during a hearing, direct without an application from any party that the hearing or part of it be held in private if— (a) the Tribunal is satisfied that it would have granted an application under paragraph (2) had one been made; or (b) the Tribunal considers that a hearing in public would prejudice the interests of justice."

14.7 REDACTED

14.8 REDACTED

14.9 REDACTED

14.10 REDACTED

14.11 In summary, the Tribunal had balanced Ms Von Wedel's Article 6 and Article 8 rights with the principle of open justice. It was satisfied that it was in the interests of justice to sit in private for limited periods of time when certain topics were the subject of evidence or submissions. Those topics would need to be flagged by the parties when they arose. The remainder of the hearing would take place in public.

14.12 On 10 July 2023 Ms Von Wedel applied to sit in private. The Tribunal moved into private session, but it immediately became apparent that the matters that Ms Von Wedel wished to deal with in private did not relate to the topics that were the subject of the Tribunal's earlier direction above. The Tribunal therefore reverted to sitting in public. There were no further applications to sit in private. During the course of her oral evidence, Ms Von Wedel indicated that there were matters that she did not feel she could discuss in public, but she did not make any application to sit in private.

15. The recusal and replacement of the Lay Member

15.1 The substantive hearing of this matter commenced on 17 January 2023. The Tribunal sat for three days, on 17, 19 and 24 January, during which time the substantive hearing proceeded remotely and the SRA closed its case. In accordance with previous directions, the hearing was listed on Tuesdays and Thursdays to accommodate reasonable adjustments made to assist Ms Von Wedel.

15.2 Ms Von Wedel was unable to attend the hearing on 26 or 31 January due to ill health. The matter was therefore adjourned part-heard on 31 January 2023. It was listed for a Case Management Hearing to review the position with regard to Ms Von Wedel's health on 16 March 2023. The panel that sat on the substantive hearing to that point and on the Case Management Hearing on 16 March 2023 comprised Mr Nally and Mr Lewis, who are both Solicitor Members, and Ms Keen, who is a Lay Member.

The 16 March 2023 Case Management Hearing

15.3 The purpose of the hearing on 16 March 2023 was to review the position in relation to Ms Von Wedel's health and, based on that, to decide on the appropriate way forward in terms of the management of the case. There was no discussion at the hearing of the substantive case, save where it related to listing arrangements. There was no analysis of the evidence or of the merits of the parties' respective cases. The panel convened shortly before the hearing commenced in order to review the material placed before it since the previous adjournment, in relation to medical evidence. At the time of these preliminary discussions, it appeared to the panel that there was a difference between the parties in their preferred approach for the management of the case going forward.

15.4 During the course of those preliminary discussions, Ms Keen made the following remark:

> "well I am not sure how to put this, but I don't trust a word she [the Respondent] says".

15.5 This comment was made solely in the context of the medical evidence and related submissions. As noted above, the panel was not discussing the evidence in relation to the substantive hearing at this time.

15.6 The panel discussed the implications of the remark before the hearing commenced, in the course of a period of retirement during the hearing and after the hearing concluded. The panel was satisfied that it could proceed with the Case Management Hearing at that point, particularly in circumstances where, having heard from the parties, there was in fact no disagreement about the next steps in the management of the case and where

liberty to apply was granted to both parties. The panel agreed to reflect on matters following the conclusion of the Case Management Hearing and whether the remark raised a concern about apparent bias that might affect the resumption of the substantive hearing. The panel held further discussions on the matter and the conclusion of those discussions was that Ms Keen recused herself with immediate effect on 22 March 2023.

15.7 The Tribunal then wrote to the parties the same day to advise them of these developments. The Tribunal acknowledged the inconvenience and concern that would be caused by this development. However, the integrity of the proceedings and the absolute requirement for a fair hearing was the Tribunal's priority and it was therefore important to be transparent with the parties.

15.8 The Tribunal informed the parties that it would be listing the matter for a further Case Management Hearing, duly listed on 12 April 2023, in order that the parties could make submissions as to whether the hearing should proceed with a replacement Lay Member, whether the hearing should start again with an entirely fresh panel or for the parties to make any other submissions or proposals they may have. It was explained to the parties that if the case was to proceed onward with a replacement Lay Member sitting alongside the two existing Solicitor Members, the Tribunal would organise a transcript of the hearing to date, which would also be supplied to the parties, and the Lay Member would also listen to the full audio recording of the substantive hearing to date.

15.9 The Tribunal appointed a replacement Lay Member, Dr Bown, for the purposes of ensuring it was quorate at the Case Management Hearing. The Tribunal made clear in its email of 22 March 2023 to the parties that this in no way indicated that any view had been taken about the management of the case going forward.

The 12 April 2023 Case Management Hearing

Applicant's Submissions

15.10 Ms Sheppard-Jones submitted that the hearing should continue with a substitute Lay Member taking over from Ms Keen. The situation was clearly not ideal, but balancing all relevant factors, this was the course of action that best served the interests of justice.

15.11 Ms Sheppard-Jones noted that there was nothing in the SDPR or in guidance issued by the Tribunal that dealt with a scenario in which a panel became inquorate. However, Rule 6 of the SDPR permitted the Tribunal to regulate its own procedures. Ms Sheppard-Jones referred the Tribunal to R (Hill) v Institute of Chartered Accountants [2013] EWCA Civ 555 in which it was held that regulatory Tribunals had discretion to adopt procedures they deem appropriate provided that they are fair. Ms Sheppard-Jones also referred to R (Michalak) v General Medical Council [2011] EWHC 2307 (Admin) in which fairness in this context included the ability to make submissions and the ultimate decision being in the interests of justice.

15.12 There were two options at this stage. One was to resume the part-heard substantive hearing with a replacement Lay Member and the other was to abort the hearing and start afresh with an entirely new panel. Ms Sheppard-Jones referred to guidance from the Medical Practitioners Tribunal Service, which did address the factors to consider when

faced with a situation in which one of the panels, for whatever reason, was unable to continue. Ms Sheppard-Jones went through the factors as follows:

- What stage had proceedings reached? In this case the SRA had closed its case, having called six witnesses to give live evidence. This included two lay witnesses, one of whom had given evidence from the USA.

- The extent of delays likely to be caused by each option. Ms Sheppard-Jones submitted that there would be a longer delay if the Tribunal started afresh. At the time of the last Case Management Hearing it had been estimated that 2-3 days would be required to conclude matters. In view of the revised reasonable adjustments, which included sitting one day a week for no more than four hours, that would require 10-12 days and so the matter could take around three months to be heard. If the hearing proceeded with a substitute Lay Member then the likelihood was 3-4 days would be required and so could take around one month.

- The nature and complexity of the Allegations and the facts in the case. The Allegations were wide-ranging and serious and included dishonesty. There was therefore a public interest in having them resolved as expeditiously as possible. The case was not particularly complex, and so the new Lay Member would be able to follow the case so far with transcripts.

15.13 Ms Sheppard-Jones further observed that the two Solicitor Members had not felt the need to recuse themselves. Ms Sheppard-Jones referred to Porter v Magill [2002] AC 357 and the tests that applied, namely how matters would be viewed by the fair-minded observer. Ms Sheppard-Jones submitted that the panel had been entirely transparent about the comment and had taken the appropriate action. Ms Keen had recused herself, the parties had been informed of the position and the matter had been listed so that submissions could be made. The comment itself had been made in relation to case management issues rather than the substantive case. In those circumstances, Ms Sheppard-Jones submitted it would be disproportionate and unnecessary for the entire panel to recuse itself.

15.14 The Chair clarified that in the event that the matter did proceed with a substitute Lay Member, that member would also have the benefit of listening to the audio recordings of the substantive hearing to date.

Respondent's Submissions

15.15 Ms Von Wedel confirmed that the clarification above in relation to the audio recording addressed the one query that she had planned to raise. Ms Von Wedel told the Tribunal that she was neutral on the best way forward.

15.16 Ms Von Wedel was asked by Mr Lewis whether she had any concerns about the fairness of the proceedings if the hearing continued in the manner proposed by Ms Sheppard-Jones. Ms Von Wedel stated that she did not.

15.17 Ms Von Wedel was further asked by Mr Lewis if she understood that she had the right to object to the proposed course of action and that the Tribunal would listen carefully to all objections. Ms Von Wedel stated that she did understand.

15.18 Ms Von Wedel was asked by Dr Bown whether she felt any sense of pressure of time in the context of her medical situation. Ms Von Wedel replied that after three years it was in everyone's interests to conclude matters. Ms Von Wedel was unable to predict how her health might develop during the remainder of the proceedings, but stated that this conundrum did not drive her to choose one option over the other, as reasonable adjustments had been made to cover either eventuality.

The Tribunal's Decision

15.19 The relevant rules under the SDPR were as follows:

> "The overriding objective
>
> 4.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases justly and at proportionate cost.
>
> (2) The Tribunal will seek to give effect to the overriding objective when it—
> (a) exercises any power under these Rules; or
> (b) interprets any rule or practice direction.
>
> (3) Dealing with a case justly and at proportionate cost includes, so far as is practicable—
> (a) ensuring that the parties are on an equal footing;
> (b) ensuring that the case is dealt with efficiently and expeditiously;
> (c) saving expense;
> (d) dealing with the case in ways which are proportionate to the nature, importance and complexity of the issues.
>
> (4) The parties are required to help the Tribunal to further the overriding objective set out above."
>
> "6.—(1) Subject to the provisions of the 1974 Act, these Rules and any other enactment, the Tribunal may regulate its own procedure."

15.20 The following passages from Hill were relevant to the Tribunal's consideration of this matter:

> "13 Thirdly I agree with Stanley Burnton LJ in Virdi v Law Society C [2010] 1 WLR 2840, paras 28-31, that when one is dealing with byelaws and regulations of professional disciplinary bodies one cannot expect every contingency to be foreseen and provided for. The right question to ask of any procedure adopted should therefore be not whether it is permitted but whether it is prohibited. If one asks that question in this case after rejecting any application of the expressio unius principle, the answer is that the procedure adopted is not prohibited. It must, of course, still be fair and that D to my mind is the critical issue in this appeal."
>
> "23 But is it still a breach of the rules of natural justice, if a defendant or his duly authorised advocate agrees that a member of a tribunal can be absent for a part of the hearing but read a transcript of the evidence given in his absence and,

> having read it, return, continue the hearing and contribute to the decision? For my part I see no reason to think that that is a breach of the rules of natural justice. Of course, the agreement must (see para 31 below) be voluntary, informed and unequivocal but, if it is, there is something peculiarly unattractive in a litigant agreeing to this course, continuing to participate in the hearing and then, on finding that the decision is adverse, alleging that the decision has been reached in breach of the rules of natural justice and must therefore be treated as a nullity and quashed."

15.21 The following passage from Michalak was also relevant:

> "18. However, in some cases it is concluded that, having regard to the nature of the case and the evidence that has been given, the potential for injustice is relatively slight and that the advantages for the administration of justice in general countervail such slight disadvantage that has been perceived. The general advantages of course lie in the fact that it is then unnecessary for the hearing to be duplicated with all the additional cost, use of resources and anxiety to one or both parties of having to go through yet again a full hearing, when that is not strictly necessary because other measures can be taken."

15.22 The starting point for the Tribunal in considering this matter was the fairness of the proceedings. The convenience or inconvenience of a particular course of action was secondary to that consideration. Only if the proceedings could be fair would a particular course of action be entertained.

15.23 The Tribunal recognised that the situation it was dealing with here did not match the circumstances outlined in [23] of Hill in that Ms Keen had not absented herself with a view to returning later in the case – the relevance of the passage related to Ms Von Wedel's view and how that impacted on the appropriateness of taking particular course of action. In this case Ms Von Wedel took a neutral stance. However, she had been unequivocal that she understood her right to object and that she did not have any concerns about the fairness of the proceedings if the Tribunal adopted the stance urged on it by Ms Sheppard-Jones. Further, the Tribunal had established that Ms Von Wedel's position was not influenced by her medical condition.

15.24 The Tribunal noted the stage matters were at. The SRA had called all of its evidence. This had included six witnesses who had been cross-examined by Ms Von Wedel. It was undoubtedly the case that starting the case again would require those witnesses to be recalled to give their evidence again. Ms Von Wedel would be required to prepare her cross-examination for a second time. There would inevitably be delay in dealing with the matter as the ground covered in the first three days of the hearing would have to be repeated. Ms Von Wedel did not invite the Tribunal to take this course and Ms Sheppard-Jones expressly invited the Tribunal not to take this course.

15.25 The Tribunal recognised the time and effort that both parties had put into the case so far and, in particular, the stress that was likely to be caused to Ms Von Wedel by further significant delays. In circumstances where she was in ill-health, this did not seem to the Tribunal to advance the interests of justice. Ms Von Wedel had noted that it was in everyone's interests for the matter to be concluded.

15.26 The remaining members of the panel, Mr Nally and Mr Lewis, had already considered whether they ought to recuse themselves by reference to the test in Porter v Magill and concluded that they did not. The fair-minded observer would note that the comment made by Ms Keen had resulted in discussion among the panel, those discussions resulting in Ms Keen recusing herself. The parties had been told of the circumstances of the recusal, including the comment made that gave rise to it. It was highly unusual for the contents of discussions that took place in retirement to be disclosed to the parties. The Tribunal had taken this step, in the particular circumstances of this case, due to its recognition of the duty to be completely transparent in the context of a recusal of a member on a matter relating to apparent bias mid-way through a contested hearing. The panel had ensured that the parties had sufficient time in the lead-up to the Case Management Hearing to reflect on this development and reach a considered position. The matter had then been listed so that both parties could make submissions in open Court. Mr Nally and Mr Lewis had satisfied themselves that the fair-minded observer would not consider it necessary or proportionate for either to recuse themselves in those circumstances.

15.27 The final point was that any substitute Lay Member would have ample opportunity to not only read into the case papers but also to read and listen to the substantive hearing to date.

15.28 Taking into account all the factors set out above and having the fairness of the proceedings in the forefront of its mind at all times, the Tribunal was satisfied that the fairest and most appropriate course in this case was to proceed with the substantive hearing and to appoint a substitute Lay Member to replace Ms Keen for the remainder of the case. The Tribunal would organise an official transcript of the substantive hearing to date. This would be circulated to the parties to assist them in their preparation for the resumed hearing.

15.29 Dr Bown was duly appointed as the Lay Member to sit on the remainder of the case.

Factual Background

16. Ms Von Wedel was a solicitor, having been admitted to the Roll on 1 June 2000. She last held a practising certificate in 2019/2020, which was subject to conditions. She had not applied to renew her practising certificate for 2020/2021.

17. K Law ("the Firm") was Ms Von Wedel's sole practice. She was the Sole Principal, Compliance Officer for Legal Practice ("COLP"), Compliance Officer for Finance and Administration ("COFA"), Money Laundering Reporting Officer ("MLRO") and Money Laundering Compliance Officer ("MLCO") for the Firm. Ms Von Wedel was also the sole signatory to the Firm's banking facilities, which included online banking. The Firm closed on 26 June 2020, as a result of the SRA's intervention.

Allegations 1.1, 1.3 and 1.5

18. Ms Von Wedel acted for RP in the sale of his property, BH. The solicitors acting for the purchasers of the property were SB Law. On 21 January 2020, Ms Von Wedel and SB Law signed the "Completion information and undertakings (3rd edition)" form, which provides a "WARNING" on page 1 that:

> "Replies to questions 3.2, 5.2 and 5.3 are solicitor's undertakings."

19. Paragraph 5.2 states:

> "Do you undertake to redeem or discharge the mortgages and charges listed in 5.1 on completion and to send to us Form DS1, DS3, the receipted charge(s) or confirmation that notice of release or discharge in electronic form has been given to HM Land Registry as and when you received them?"

20. To which the "Yes" box had been ticked.

21. Paragraph 5.1 listed "Santander 11.04.2008" as the mortgage on the property that Ms Von Wedel undertook to redeem on or before completion of the sale. The sale completed on 16 March 2020. RP's corresponding purchase of SV was handled by Ms Dlay of KF solicitors, due to the fact that Ms Von Wedel's firm was not on the lender's, namely Santander's, approved panel. In respect of the sale of BH, the purchaser's solicitors, SB Law, transferred £346,251.90 in two instalments to Ms Von Wedel's client account.

22. On 30 March 2020, Ms Von Wedel transferred £169,217.94 to KF solicitors in order to complete RP's purchase of SV. A balance of £177,033.15 should have remained in the Firm's client account. The SRA's case was that, in accordance with the undertaking given to SP Law, Ms Von Wedel ought to have utilised these monies to redeem RP's mortgage on BH. On 6 April 2020, RP noticed a mortgage payment of £600 had been debited from his bank account to Santander, the mortgage lender on BH. RP contacted Santander and was advised that the payment related to the mortgage on BH, which had not been redeemed.

23. On 15 April 2020, Ms Dlay of KF solicitors, was advised by RP's mortgage broker that the mortgage with Santander on BH had not been redeemed.

24. On 17 April 2020, RP emailed Ms Von Wedel advising her that he had spoken with Santander who had advised him that the mortgage on BH remained outstanding. RP requested that the matter be resolved, otherwise he would have "no other option other to contact the SRA and Legal Ombudsman if these simple questions are not answered by return."

25. On 18 April 2020, Ms Von Wedel replied by email, stating that the matter was in hand and that RP was "not at risk, at all, and I wish you could just relax." On 20 April 2020, RP emailed Ms Von Wedel enquiring as to the status of the redemption issue. In the email, RP stated:

> "Santander have confirmed they have not received the money and you have offered us no proof that you have sent it. We raised this with you soma (sic) time ago and have not had a Satisfactory (sic) response."

26. On 21 April 2020, Ms Von Wedel replied to RP 's email and stated:

> "1. Post completion redemption investigations I understand are proceeding as per our advice last week and are currently waiting receipt of a transcript from the bank.
>
> 2. For the avoidance of doubt, and as I confirmed in an email to you on the day the enquiry started (I will forward separately) the redemption figure from the completion statement less the early redemption penalty was transferred to Santander by me on 18 March 2020 in full and final discharge of your mortgage on [BH] following completion on your sale.
>
> 3. HSBC confirmed by phone that the payment details (confirmation of which you provided last week) were correct (transcript awaited, as you know it is that which I could not print as we would normally and which I, then you repeatedly requested).
>
> 4. I anticipate authorising a new transfer based on complete replies tomorrow or Thursday."

27. The bank statements obtained by the FIO did not show any such transfer or attempted transfer from the HSBC client account on that date or any date up to 21 April 2020.

28. On 22 April 2020, after she became aware that RP had reported the concerns regarding his mortgage to the police, Ms Von Wedel emailed RP. That email included the following:

> "Clock's ticking when I make it tick, I am never short of ideas to protect MY business and I suggest to try not to upset your lawyer in this, and in fact pipe down and step back."
>
> "Low. Right down there. Scummybammy.."
>
> "If I hear one screeming little frekking mim from you or your little Learner downstairs,
>
> OTHER THAN A WRITTEN APOLOGY for mistaking a Law Firm and it's acceptable conduct levels for a chlostromy fascility for wart hogs, I WILL. MAKE YOU. SIT THROUGH A LAW DEGREE for 4 years (I did mine in 2, why. "10 Goaler in Law" rememba..
>
> Now toodle off."

29. On 28 April 2020, RP emailed Ms Von Wedel again and requested, "once again that you release the funds you are holding of ours to redeem our mortgage on [BH], you require nothing further from us we have been requesting this for about 3 weeks now, and the mortgage should have been redeemed 6 weeks ago."

30. Ms Von Wedel replied by email later that day. Part of that response included the following:

> "Since completing your sale on 16 March you ceased to have ownership and therefore authority to direct the funds which have since then belonged to the lenders…
>
> What percentage of what purchase price did you contribute and what please was the source of funds. Please provide evidence we can forward to HSBC Fraud Check who asked. Sorry."

31. RP emailed Ms Von Wedel again on 28 April 2020, saying that "this email makes no sense to me I am afraid." RP requested contact details for a contact at HSBC and advised Ms Von Wedel that he would be seeking the assistance of the SRA.

32. On 28 April 2020 at 21.29, Ms Von Wedel emailed RP, in response to his email which stated that he would be contacting the SRA again for their assistance. In her email, Ms Von Wedel wrote:

> "I spent quite a few hours today beginning to gage and also quantify the potential impact you might have had in thoughtlessly raging through the last three weeks, against solid advice, thereby causing recoverable damage, or negligently resulting therefrom for considerable future lengths of times to justify a claim for losses, libel and slander based on nothing but your own made up truths."

33. RP replied to that email stating:

> "It is inappropriate to send potentially stress inducing email at this time of night and yet again unprofessional. Please contact us during normal business hours."

34. On 29 April 2020, Ms Von Wedel replied to RP. That email included the following passages:

> "While you have now played, and are very shorty running out of all of your jokers in this case (mostly because you have refused to listen and understand what I have said, and so you confirmed), in matters not concerning your loss, my pursuit of YOU for mine has only just begun and I hope you had not thought I would simply stand your hits….
>
> "…I would see another lawyer if not now, with what's to come. And get legal insurance if you don't have…."
>
> "Re you believing you are having to pay off two mortgages at the moment. Huuh??
>
> If you insist, but no, you don't and are nots, Who said that?"
>
> Spastick. Seriously, I am not qualified to deal with this much deeeh as I had to recently. And seriously, as long as I can enjoy a full day tomorrow without being

> constantly being tweeted to from downstairs AND you and then downstalirs, and again you, you again, the them, ect, I migh even have time to shut the case by the evening. I am busy being back. You are not the only client. And as that, the smallest one. I have never seen such a drama I cant wait to see it pass.It's like me playing polo. I did say!"

35. Ms Dlay also enquired with Ms Von Wedel on a number of occasions between 17 April and 28 April 2020, as to whether the mortgage on BH had been redeemed. By email dated 28 April 2020, Ms Von Wedel advised Ms Dlay that:

> "I confirm that I hold [RP's] funds including the original redemption amount. I confirm I redeemed the mortgage on 18 March 2020 and that that transfer was returned to the client account during our investigations only." (sic).

36. On 6 May 2020, following a further enquiry by RP as to whether Ms Von Wedel had redeemed the mortgage, Ms Von Wedel emailed the client, the subject header of which was, "COURT PROCEEDINGS/TORT K Law -v- [RP]". In the body of the email, Ms Von Wedel included a heading:

> "High Court Proceedings to Claim against You & Seek Damages for aggravated and continued Acts of Libel, Slander and Defamation"

and included the following text:

> "It was with deepest hurt and utmost regret to have learned and obtained sufficient evidence of your untruthful, dishonest, made-up, evil remarks leaving absolutely no other alternative but to protect my firm against such a purposeful mean destructive nasty deranged raging persistent brand new enemy of K Law solicitors.
>
> The urgency of the matter dictates this email ahead of imminently serving upon you the Pre Action Letter formalising this email and the Firm's vehement intent to Issue High Court proceedings against you in Tort successfully seeking damages from you for your pure acts of unsubstantiated hatred. This email puts you on notice to immediately cease these acts…..We may also notify Companies House with a view to removal of all directorships you may hold for being wholly unsuitable in character."

37. The Interim Forensic Investigation by the SRA commenced on 1 June 2020, and on that date Ms Von Wedel advised the FIO that she had made the payment to redeem the mortgage from her French bank account; but that the payment had got lost within the system. Ms Von Wedel provided no documentary evidence in respect of this assertion.

38. RP provided the FIO with a redemption statement from Santander dated 2 June 2020 which showed that the mortgage on BH had not been redeemed. On 12 June 2020, Ms Von Wedel emailed RP, copying in the FIO, asking for a redemption statement from Santander and the IBAN number so that she could have "another go at redemption this afternoon".

39. Later that day, RP responded and provided a contemporaneous redemption statement, which by that stage enclosed a redemption figure of £175,998.32. On 18 June 2020, Ms Von Wedel emailed RP asking for the BIC/Swift Code, which RP provided by email the same day.

40. On 22 June 2020, Ms Von Wedel redeemed the mortgage with Santander. The payment was made from her personal bank account.

Allegations 1.2 and 1.4

41. In October 2018, Ms Von Wedel was instructed by Dr and Mrs Bran in the purchase of property WR. The completion statement for the purchase showed that the SDLT due on the purchase was £129,750.00.

42. Between October and November 2018, the client transferred a total of £547,003.80 to the Firm's client account across seven transactions. Ms Von Wedel had specifically asked that the monies be transferred to the Firm's client account. On 6 December 2018, a mortgage advance in the sum of £1,402,500.00 was received into the Firm's office account and transferred into the client account.

43. The purchase completed on 7 December 2018. On 10 December 2018, Ms Von Wedel emailed the clients asking for their national insurance numbers for "HMRC and their SDLT requirements". These were provided by Mrs Bran on 2 January 2019 and by Dr Bran on 3 January 2019.

44. Following the purchase, Ms Von Wedel was assisting the clients in respect of a dispute with the sellers of WR. By November 2019, little progress had been made, and so the client instructed Mr Eaton of HPLP to progress matters. When Mr Eaton conducted his due diligence on the property, it came to light that the clients' title had not been registered with the Land Registry. On 20 November 2019, Mr Eaton wrote to Ms Von Wedel and raised the outstanding issue of non-registration of the clients' title. He requested the client file and asked Ms Von Wedel to confirm whether she had paid SDLT.

45. Ms Von Wedel replied by letter dated 11 December 2019, and stated that:

> "The SDLT1, which, because the clients submitted their relevant NI number a day too late (which would have penalised anyway) was subject to tax planning and the SDLT5, thus the registration were to result in the success of this in the near future…
>
> I have submitted the relevant documents now to obtain the SDLT5 for you for registration and will forward this as soon as received in the next few days. SDLT paid in full."

46. On 17 April 2020, Mrs Bran called HMRC to enquire as to whether SDLT had been paid on the property. HMRC advised that nothing had been filed in the clients' name at the address of WR and HMRC had no record of the clients purchasing anything.

47. As a result of Mrs Bran's telephone conversation with HMRC, Mr Eaton wrote to Ms Von Wedel on 21 April 2020 asking for proof that SDLT had been paid or, if the tax had not been paid, for Ms Von Wedel to transfer £129,750.00 to HPLP's client account, and that she would be "liable for any penalties and or interest if payment has not been made."

48. Ms Von Wedel replied by email dated 1 May 2020 and stated that she had only just returned to the office having been in hospital. She advised that she would reply to his letter "as soon as I am able". On 18 May 2020, she sent a further email to Mr Eaton and said she required more time to respond, of "up to 4 weeks", which would "also enable meaningful response from our SDLT vehicle to respond on that issue in particular." Mr Eaton did not receive a further response from Ms Von Wedel.

49. On 6 June 2020, the client made a complaint to the SRA. As at that date, the property title showed that the property still had not been registered in the clients' names. As at the date of intervention, on 26 June 2020, the balance on the Firm's client account was nil and the SDLT had not been paid.

50. On 20 July 2020, the clients applied to the SRA's Compensation Fund and on 3 September 2020, a decision maker agreed that Ms Von Wedel had failed to account to the clients for the sum of £135,000.00, made up in unpaid SDLT, Land Registry Fees and miscellaneous funds. A payment in that sum was accordingly made to HPLP who completed registration and payment of SDLT.

Allegation 1.6.1

Matter of RP

51. In relation to the RP matter, during the course of the Interim forensic investigation, the FIO identified a minimum shortage of £177,033.15 on the Firm's client account, which was held with HSBC. The bank statements for the client account showed that it received the following funds from SB Law for the purchase of BH:

- 10 February 2020: £36,740.00
- 16 March 2020: £346,251.09.

52. On 30 March 2020, the bank statements showed that £169,217.94 was transferred to KF solicitors. That should have left £177,033.15 in the client bank account for RP's matter, to be used to redeem the mortgage on BH. Ms Von Wedel failed to produce a client account ledger for the matter of RP, to show the movement of monies on the account. However, as at 3 June 2020, the client bank account showed a nil balance and the client deposit account showed a balance of £311.51, despite the fact that the mortgage still had not been redeemed on BH.

53. RP confirmed that he did not provide authorisation for his funds to be held outside of the Firm's client account.

Allegation 1.6.2

54. In relation to the matter of Dr and Mrs Bran the FIO identified a further shortage on the client account. The clients had transferred various sums to the Firm's client account in relation to their purchase of WR, which included £129,750.00 for SDLT, £4,800.00 for a Coutts arrangement fee and £540.00 for Land Registry fees. The SDLT was due to have been paid on the purchase of WR in December 2018. It had not been paid as at June 2020, but the Firm's client account and client deposit accounts both had a nil balance as at 21 June 2020. Therefore, there was a shortage on the client account in the sum of at least £135,090.00.

55. Dr and Mrs Bran stated that they did not authorise their monies to be held outside of the client account and that there was no arrangement regards an SDLT "vehicle".

56. On 1 June 2020, Ms Von Wedel advised the FIO that she had deposited client money into a French bank account and provided a redacted screenshot of what appeared to be an account holding a total figure of £217,891.59.

57. In interview with the FIO on 16 November 2020, Ms Von Wedel advised that she had begun to use a third bank account, facilitated by Deutsche Bank. She said that account held liabilities to clients, which had included RP, in order to redeem his mortgage and the SDLT for Dr and Mrs Bran.

58. Ms Von Wedel confirmed to the FIO in interview that she used client funds in her HSBC client account to satisfy other matters, in order to reduce the HSBC account down to zero. She then utilised money held outside of the jurisdiction to satisfy client liabilities. Ms Von Wedel told the SRA that her intention was always to give back the clients the monies to which they had been entitled in the HSBC client account.

Allegation 1.7

59. During the course of the forensic investigation, the FIO reviewed the Firm's bank statements and identified that between October 2019 and May 2020, 41 transfers in round sums had been transferred from the client account to the office account in the total sum of £182,005.00.

60. Ms Von Wedel told the intervention agents that she had not done any billing since October 2019. The Firm's office bank account overdraft facility was £15,000.00. The FIO identified that when some of the transfers were made, the overdraft was close to the limit. Furthermore, the FIO identified that the money transferred to the office account was then utilised for what appeared to be personal payments and professional indemnity costs. The intervention agents were unable to find any bills or supporting documentation in relation to the transfers. As a result of the absence of any documentation to support the transfers, there was a shortage on the client account of £182,005.00.

Allegation 1.8

61. On 1 June 2020, Ms Von Wedel was served with a Production Notice ("PN"), pursuant to section 44B of the Solicitors Act 1974. The PN required Ms Von Wedel to provide

information in respect of a French bank account for which Ms Von Wedel had previously provided a screenshot; to identify the circumstances in respect of the undertaking provided to RP regards the mortgage redemption on BH; and to provide client bank account statements for two HSBC accounts between 21 May 2020 and 1 June 2020. The PN required Ms Von Wedel to provide this information by 3 June 2020.

62. Ms Von Wedel's representative requested an extension of time to the 8 June 2020, to comply with the PN. On 8 June 2020 Ms Von Wedel informed the FIO that she was now representing herself. She set out her account of the issue with the mortgage redemption on BH. In relation to the French Bank account and provision of bank statements, Ms Von Wedel advised that she would reply by 4pm that day. In respect of the French bank account, she failed to do so.

63. Ms Von Wedel failed to provide any information regarding the French bank account by the date of her interview with the FIO on 16 November 2020. During the interview she stated that she would provide information regarding the account after the interview but failed to do so.

Witnesses

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

65. <u>Sarah Taylor (FIO)</u>

65.1 Ms Taylor confirmed that her witness statement was true to the best of her knowledge and belief. Ms Taylor further confirmed that since the making of her statement, no further information had been received from Ms Von Wedel in relation to the French bank account or any bank accounts outside the jurisdiction.

65.2 In cross-examination, Ms Von Wedel asked a number of questions concerning the process of the investigation. Ms Von Wedel asked Ms Taylor if she was aware of a conversation that had taken place between Ms Von Wedel and the SRA in March 2020 in which Ms Von Wedel had discussed her banking arrangements with the SRA. Ms Taylor could not recall being aware of this. Ms Von Wedel asked Ms Taylor if she could see any transfers to offshore bank accounts in the bank statements. Ms Taylor could not see any such transfers and told the Tribunal that she had relied on what Ms Von Wedel had told her about that.

65.3 Ms Von Wedel did not put to Ms Taylor that her conclusions were wrong.

66. Karrie Ann Bran (Mrs Bran)

66.1 Mrs Bran confirmed that the contents of her witness statement were true to the best of her knowledge and belief.

66.2 Ms Von Wedel asked Mrs Bran why she had not agreed to a round table meeting in late 2019. Mrs Bran told the Tribunal that she had been advised to avoid stressful situations and that her husband, Dr Bran, was dealing with matters.

66.3 In response to a question from the Tribunal, Mrs Bran stated that there had been no discussion of paying less SDLT or no SDLT than would ordinarily be due.

67. Gregor Bran (Dr Bran)

67.1 Dr Bran confirmed that the contents of his witness statement were true to the best of his knowledge and belief.

67.2 Ms Von Wedel asked Dr Bran about the proposed round table meeting. Dr Bran told the Tribunal that this had been offered once, but that there was no amicable framework on which to attend such a meeting.

67.3 Dr Bran told the Tribunal that he could not recall any discussions about reducing the SDLT liability.

68. Sarinder Malhi (Intervention Project Officer)

68.1 Mrs Malhi confirmed that the contents of her witness statement were true to the best of her knowledge and belief. Mrs Malhi answered a number of questions about the chronology of the intervention and the practical steps taken. She told the Tribunal that she had no involvement in the matters relating to the SRA Compensation Fund.

69. Harjit Dlay (RP's solicitor acting on the purchase)

69.1 Ms Dlay confirmed that the contents of her witness statement were true to the best of her knowledge and belief.

69.2 Ms Von Wedel asked a number of questions about the detail of RP's transaction. Ms Dlay told the Tribunal that RP's mortgage broker informed her that RP's mortgage had not been redeemed. Ms Dlay had advised RP to contact Ms Von Wedel on basis that she had acted in the sale and had the redemption funds. It was on that basis she had drawn down funds for the purchase. Ms Dlay was concerned as her firm had given an implied undertaking to the lender that there was no other mortgage and on that basis had drawn down the funds.

69.3 Ms Von Wedel put to Ms Dlay that she had made an assumption that the mortgage had been redeemed. Ms Dlay confirmed that she had done so, and stated that she was entitled to rely on that given that Ms Von Wedel was a solicitor who had given a completion statement to RP. Ms Dlay denied that she was negligent in making this assumption in those circumstances.

69.4 Ms Dlay told the Tribunal that she would not have advised RP to cancel the direct debit on his mortgage as he was concerned this would have negatively impacted his credit rating.

70. Mark Eaton (solicitor acting for Dr and Mrs Bran)

70.1 Mr Eaton confirmed that the contents of his witness statement were true to the best of his knowledge and belief.

70.2 Ms Von Wedel asked a number of questions relating to the delivery of the files to Mr Eaton, which did not go to the Allegations she faced.

70.3 Mr Eaton confirmed that Mrs Bran was capable of giving instructions.

71. The Respondent

71.1 Ms Von Wedel adopted her Answer as her evidence in chief. She was then cross-examined by Ms Sheppard-Jones.

Allegation 1.1

71.2 Ms Von Wedel confirmed that she had ticked and signed the undertaking to redeem the mortgage. She agreed that completion had taken place on 17 March 2020 and that the mortgage was redeemed on 22 June 2020. Ms Von Wedel told the Tribunal that she had tried to redeem the mortgage on 18 March 2020 from a French bank account. Ms Sheppard-Jones put to her that she had not provided any evidence of that attempted redemption to the SRA. Ms Von Wedel confirmed that this was correct. When pressed, Ms Von Wedel told the Tribunal that she was not prepared to speak about this matter in public.

71.3 Ms Von Wedel told the Tribunal that the redemption was not possible on 17 March 2020 as the funds had come in after the cut-off time and the redemption details had not been provided by RP.

71.4 Ms Sheppard-Jones took Ms Von Wedel through bank statements, which showed that funds had been available in the client account to redeem on 16 March 2020 but that, on 17 March 2020, £200,000 had been paid out for a separate client along with a payment of £110,000 to the client deposit account, leaving a nil balance. Ms Von Wedel agreed this was correct. Ms Von Wedel further agreed that there was no evidence of any transfers to foreign bank accounts and no attempt to redeem from the HSBC account.

71.5 Ms Sheppard-Jones asked where, in those circumstances, RP's monies had gone. Ms Von Wedel refused to answer this question, but told the Tribunal that at all times, including now, there were funds available to meet all her liabilities as they fell due. Ms Von Wedel later said that the funds were held in a foreign bank account at the time.

71.6 In relation to the French bank account, Ms Von Wedel agreed that all she had provided by way of evidence was a heavily redacted copy of a screenshot showing some dates and figures. This related to a date in May 2020. Ms Von Wedel told the Tribunal that

she had been unable to get one for March 2020 as she had been in hospital and was not set up for electronic access.

71.7 Ms Von Wedel then told the Tribunal that the mortgage was to have been redeemed from the HSBC account following a transfer from the French account. Ms Sheppard-Jones put to her that this was the first time such an explanation had been offered, something Ms Von Wedel appeared to deny.

71.8 Ms Sheppard-Jones put to Ms Von Wedel that she had lied when she had told Ms Dlay that the monies had been returned to the client account. Ms Von Wedel denied it was a lie as there was a "pot of funds" from which all liabilities could have been satisfied.

71.9 Ms Sheppard-Jones put to Ms Von Wedel that her explanation that she had been awaiting IBAN, SWIFT and BIC codes was flawed in that she would have had this information in March 2020. Ms Von Wedel agreed that she would have been provided the information, but she wanted it on "headed paper" before attempting the redemption for a second time. RP had delayed in providing this.

71.10 Ms Von Wedel told the Tribunal that she agreed with the lender and Ms Dlay that the undertaking could be altered. Ms Sheppard-Jones put to her that there was no evidence of any such agreement. Ms Von Wedel told the Tribunal that the absence of any penalties for late redemption was evidence in itself.

71.11 Ms Von Wedel denied lacking integrity or failing to act in RP's best interests.

Allegation 1.3

71.12 Ms Von Wedel denied that the following passage in her email to RP dated 21 April 2020 was a "dishonest attempt to pull the wool" over his eyes:

> "2. For the avoidance of doubt, and as I confirmed in an email to you on the day the enquiry started (I will forward separately) the redemption figure from the completion statement less the early redemption penalty was transferred to Santander by me on 18 March 2020 in full and final discharge of your mortgage on [property address] following completion of your sale."

71.13 Ms Von Wedel told the Tribunal that it was only subsequently that she had become aware that the mortgage had not redeemed on 18 March.

Allegation 1.5

71.14 In relation to the nature of her communications with RP, Ms Von Wedel accepted that he was her client and was paying a fee for her services, albeit a reduced one.

71.15 Ms Von Wedel told the Tribunal that she was very upset at the time she sent the messages and she apologised for any offence caused. She denied that they were threatening. In relation to her use of the word "spastick", Ms Von Wedel again apologised for any offence she had caused. However, when it was put to her that the term was offensive and inappropriate, Ms Von Wedel went on to say that "in the context, it was perfect".

Allegation 1.2

71.16 Ms Sheppard-Jones reminded Ms Von Wedel of the Brans' evidence that they had no knowledge of any type of vehicle that was to be used to reduce their SDLT liability, contrary to Ms Von Wedel's pleaded case. Ms Sheppard-Jones put to Ms Von Wedel that she had not challenged this in cross-examination. Ms Von Wedel told the Tribunal that she had not wished to breach their confidentiality. Ms Von Wedel agreed that there was no documentation to support her case and she had relied on the Brans' goodwill. She told the Tribunal that they had changed their mind about the SDLT scheme and she "didn't cater for that".

71.17 Ms Sheppard-Jones put to Ms Von Wedel that she was "providing excuses" to justify non-payment of the SDLT. Ms Von Wedel denied this.

Allegation 1.4

71.18 Ms Sheppard-Jones took Ms Von Wedel to the email to Mr Eaton dated 11 December 2019 in which she had written:

> "I have submitted the relevant documents now to obtain the SDLT5 for you for registration and will forward this as soon as received in the next few days. SDLT paid full."

71.19 Ms Sheppard-Jones put to Ms Von Wedel that this was a lie. Ms Von Wedel sought to draw a distinction between "client-facing matters" and "administrative matters" and stated that she had been trying to get her client's instructions. Ms Sheppard-Jones again put that it was not true as she had written to Mr Eaton that SDLT had been paid in full when this was not the case. Ms Von Wedel agreed that it had not been paid "in the traditional sense", in that the money had been earmarked for payment but had not been paid to HMRC. Ms Von Wedel argued that she had limited access to her files. Ms Sheppard-Jones put to her that she had the opportunity to access them through the intervention agents. Ms Von Wedel told the Tribunal that she had not understood that she needed to ask for material that was not on the data stick that she had asked for, and received, 12 months later.

71.20 Ms Sheppard-Jones put to Ms Von Wedel that the monies to pay the SDLT had not been held in any of the bank accounts at the time the FIR was prepared. Ms Von Wedel repeated her earlier answers that all liabilities could have been paid, but refused to go into further detail and refused to answer any questions about her bankruptcy or whether there were funds held offshore.

Allegation 1.6

71.21 Ms Von Wedel agreed that the use of the monies was not within the Solicitors Accounts Rules but strongly denied any dishonesty. The remainder of Ms Von Wedel's answers in relation to this Allegation largely refused to engage with the questions.

Allegation 1.7

71.22 Ms Von Wedel told the Tribunal that she had handwritten notes and an A4 calendar which represented her cash book for each year. When the firm was intervened into, these items had been taken. Ms Von Wedel told the Tribunal that without this material "none of this makes sense".

71.23 Ms Sheppard-Jones put to Ms Von Wedel that she had indicated in her meeting with Ms Malhi that she had done no billing since October 2019. Ms Von Wedel explained that she had done some billing on recurring monthly matters but no costings of files and that the 41 transfers must have related to those recurring matters. When pressed, Ms Von Wedel repeated her evidence about material having gone missing following intervention.

71.24 Ms Von Wedel told the Tribunal that the round-sum transfers did not amount to a breach of the Solicitors Account Rules as the figures could naturally end up as round-sum once VAT was added, depending on the amounts.

71.25 Ms Sheppard-Jones put to Ms Von Wedel that there was no documentation in relation to the 41 transfers and the reason they were made was to prop up the Firm and that in doing so she had acted dishonestly. Ms Von Wedel denied this.

Allegation 1.8

71.26 Ms Von Wedel admitted that she had failed to provide the information requested in the Production Notice. Ms Von Wedel refused to provide reasons for this failure. Towards the end of her evidence she appeared to suggest she had provided some of it previously in 2016, but she refused to give further details or to answer further questions on the point.

Findings of Fact and Law

72. 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 Ms Von Wedel's rights to a fair trial and to respect for her private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

73. The Applicant's submissions are summarised below. Ms Von Wedel chose not to make any closing submissions and relied on her written Answer and her oral evidence.

74. **Allegation 1.1**

Applicant's Submissions

74.1 Ms Sheppard-Jones submitted that in failing to redeem the mortgage within a reasonable time, Ms Von Wedel had breached paragraphs 1.3 and 3.2 of the Code. It was the SRA's case that Ms Von Wedel was aware that she had not redeemed the

mortgage in a timely manner and that by failing to redeem the mortgage she had lacked integrity. Ms Von Wedel had been in receipt of the funds to discharge the mortgage and yet, for a period of three months, she had failed to discharge the mortgage. Ms Sheppard-Jones relied on the test in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366. Ms Sheppard-Jones invited the Tribunal to reject the reasons provided by Ms Von Wedel as not amounting to a reasonable excuse.

74.2 Ms Sheppard-Jones further submitted that Ms Von Wedel had failed to act in RP's best interest and had accordingly breached Principle 7 of the Principles, as well as undermining public confidence in the profession and in legal services provided by authorised persons, in breach of Principle 2 of the Principles.

The Tribunal's Findings

74.3 The Tribunal began by defining "reasonable time period". The Tribunal noted that the undertaking given was contained on an industry-standard form. The purpose was to ensure that the mortgage was redeemed in order to meet HM Land Registry registration deadlines. Amongst other factors, this protected the buyer as the buyer needed to register within the priority period conferred by pre-completion searches, which was generally six weeks. The mortgage had to be redeemed straight away so that the required paperwork could be done to complete the registration with HM Land Registry. After the search priority period of about six weeks there was a risk to the buyer that they would be in breach of their obligations to the lender to give their mortgage priority. The Tribunal would therefore expect the mortgage to be redeemed within, at most, a short number of days after completion of the sale.

74.4 The Tribunal noted that the mortgage in this case was not redeemed until almost three months after completion. The Tribunal was satisfied on the balance of probabilities that this was well outside what could be considered a reasonable time period. The redemption, when it did occur, was in an unorthodox method, coming as it did from a foreign bank account for no obvious reason.

74.5 The Tribunal found that Ms Von Wedel had given varied reasons for the mortgage not being redeemed sooner. She had suggested that there was an agreement to vary the undertaking. This was not supported by any documentary evidence. It was also inconsistent with her evidence that she had tried, unsuccessfully, to redeem the mortgage on 18 March 2020, the day after completion, which was also unsupported by any documents. The Tribunal found Ms Von Wedel's unpersuasive as they did not accord with the documentary evidence or the objective facts. The Tribunal found that the mortgage was not redeemed in a reasonable time period and that, as a result, Ms Von Wedel had failed to comply with her undertaking.

74.6 The Tribunal found the factual basis of Allegation 1.1 proved on the balance of probabilities.

Principle 7

74.7 It was clearly not in RP's interests for the undertaking not to be complied with, as it resulted in his mortgage not being redeemed on a property he no longer owned. This had resulted in interest continuing to accrue on the outstanding loan and also to a further

mortgage payment being taken from him. Ms Von Wedel reimbursed him for that, but at the same time blamed him for not cancelling his Direct Debit, rather than taking responsibility herself. The Tribunal found the breach of Principle 7 proved on the balance of probabilities.

Principle 2

74.8 The public trust and confidence in solicitors was completely undermined when a solicitor failed to comply with an undertaking. Undertakings were matters to be treated with the utmost seriousness and compliance with them was non-negotiable. The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

Principle 5

74.9 In considering the question of integrity, the Tribunal applied the test set out in Wingate. At [100] Jackson LJ had stated:

> "Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse".

74.10 The Tribunal noted that although Ms Von Wedel had referred to being in hospital for a number of weeks around the material time, which was not disputed, there was no evidence that this had caused the failure to redeem the mortgage and thus comply with her undertaking. It appeared that she had remained active in the handling of her cases as was clear from her evidence that she had attempted the redemption, from her evidence that she had moved the monies to her French bank account and from the volume of correspondence between herself and RP during this time. There was therefore no clear link between the hospitalisation and any inability to redeem the mortgage and one was not seriously argued.

74.11 This was a central part of the transaction and the impact of Ms Von Wedel's failure to redeem the mortgage was obvious on the client, the lender and the other side. At the time, instead of admitting to a serious mistake, Ms Von Wedel had offered a series of contradictory excuses and denials and had engaged in confrontational correspondence with RP, which is detailed in Allegation 1.5. The monies earmarked for redemption had been moved out of the client account and out of the jurisdiction, for reasons that Ms Von Wedel had chosen not to explain despite being offered the chance to sit in private if she could satisfy SDPR Rule 35. This amounted to a clear failure to adhere to a moral code and to a lack of integrity on the part of Ms Von Wedel. Taking all the facts and the context into account, the Tribunal found the breach of Principle 5 proved on the balance of probabilities.

75. **Allegation 1.2**

Applicant's Submissions

75.1 Ms Sheppard-Jones invited the Tribunal to reject the suggestion that Ms Von Wedel was holding the SDLT monies as part of a SDLT "vehicle" and she relied on the Brans' evidence before the Tribunal. Ms Sheppard-Jones submitted that by failing to arrange payment of the SDLT and by failing to register the title of the property with HM Land Registry in the clients' name, Ms Von Wedel had breached the pleaded Outcomes and paragraphs of the respective Codes and had lacked integrity. Further, it was submitted that Ms Von Wedel had failed to act in the best interests of the clients, had not provided them with a proper standard of service, had failed to protect their money and their assets, and had undermined confidence in her and in the profession, thereby breaching the pleaded Principles.

The Tribunal's Findings

75.2 The Tribunal considered the question of whether Ms Von Wedel paid the SDLT. The evidence was quite clear that it was never paid and there was no other way that it could be deemed paid, as suggested by Ms Von Wedel. Earmarking monies with which SDLT could be paid was self-evidently not the same as paying it. If registration was attempted without accounting for SDLT then the registration would be rejected by HM Land Registry and so this was a time-sensitive obligation. The Tribunal had heard oral evidence from the Brans, who had denied any knowledge of a 'vehicle' to avoid or reduce the amount of SDLT. The Tribunal found that evidence credible on the basis that it accorded with the documentary evidence.

75.3 Ms Von Wedel's evidence, on the other hand, was contradicted by Dr and Mrs Bran and was entirely unsupported by any documentary evidence. Ms Von Wedel sought to blame the Brans by suggesting that they had embarked on an avoidance scheme, then changed their mind and then not been truthful about it in their evidence. There was simply no corroboration of this theory, which was therefore totally implausible. Further, the suggestion that Ms Von Wedel had 'earmarked' the monies for this purpose was disproved by the fact that the SDLT was eventually paid out of the SRA Compensation Fund.

75.4 An inevitable consequence of not accounting for SDLT was that the registration did not go ahead. Again, the Tribunal had heard evidence from the Brans about this and it accepted that evidence as truthful and accurate.

Principles 2 (2011 Code) and 5 (2019 Code)

75.5 These Principles each dealt with the requirement to act with integrity. The Wingate test applied in both instances. The Tribunal found that the requirement to pay SDLT and register the property was a core part of the transaction and a failure to carry this out lacked integrity, particularly where it was deliberate, as was the case here. The Tribunal found these Principles to have been breached on the balance of probabilities.

Principles 6 (2011 Code) and 2 (2019 Code)

75.6 These Principles both essentially addressed the trust the public placed in Ms Von Wedel and the provision of legal services. The Tribunal found that a fundamental failure of the nature described above was an inevitable breach of these Principles. This was particularly so in circumstances where Ms Von Wedel had sought to blame the clients for her own failures, which was not edifying. The Tribunal found this proved on the balance of probabilities.

Principles 4 and 5 and Outcome 1.5 (2011 Code) and 7 (2019 Code) and paragraph 3.2 (2019 Code)

75.7 These Principles addressed proper standards of service and acting in clients' best interest.

75.8 The Tribunal found the breaches of these Principles, Outcome and paragraph proved on the balance of probabilities for the reasons set out above.

Principle 10 and Outcome 1.2 (2011 Code)

75.9 The requirement to protect client money and assets was breached in its entirety. The monies paid over for SDLT were not utilised for that purpose and even when the SDLT was paid, this came from the SRA Compensation Fund. The Brans' legal title to their property asset was not protected either as the registration did not take place. The Tribunal found Principle 10 and Outcome 1.2 to have been breached on the balance of probabilities.

76. **Allegation 1.3**

Applicant's Submissions

76.1 Ms Sheppard-Jones submitted that in making a statement to RP that his mortgage had been redeemed when she knew it had not been, Ms Von Wedel had acted dishonestly. Ms Sheppard-Jones relied on the test in Ivey v Genting Casinos [2017] UKSC 67.

76.2 In relation to Ms Von Wedel's state of knowledge, Ms Sheppard-Jones submitted that as the sole principal of the Firm, and only person with authorisation to make transfers out of the Firm's accounts, Ms Von Wedel knew what payments were being made out of the accounts. There were sufficient funds in the client account to redeem the mortgage and no redemption took place. Ms Von Wedel would have known this.

76.3 Ms Sheppard-Jones submitted that Ms Von Wedel's explanations to RP that she had redeemed the mortgage in March 2020 through HSBC and her references to foreign banking were inconsistent. The statement to RP on 21 April 2020 that the payment had been made was false and Ms Sheppard-Jones submitted that Ms Von Wedel knew it was false. This submission was based on the absence of evidence to support the contention a payment was made, the various different accounts provided by Ms Von Wedel and the fact that redemption did not occur until June 2020. Ms Sheppard-Jones submitted that ordinary, decent people would consider this behaviour dishonest and as such it amounted to a breach of Principle 4.

76.4 Ms Sheppard-Jones further submitted that the conduct lacked integrity and undermined public trust in the profession in breach of Principles 5 and 2 respectively.

The Tribunal's Findings

76.5 The Tribunal considered the representations that Ms Von Wedel had made to RP before the mortgage was redeemed.

76.6 On 21 April 2020 Ms Von Wedel had stated to RP:

> "For the avoidance of doubt, and as I confirmed in an email to you on the day the enquiry started (I will forward separately) the redemption figure from the completion statement less the early redemption penalty was transferred to Santander by me on 18 March 2020 in full and final discharge of your mortgage on [BH] following completion of your sale."

76.7 This was unequivocal and indeed began with the words "For the avoidance of doubt" so as to eliminate any possibility for misunderstanding. It went on to say that on 18 March 2020 the redemption figure had been transferred to Santander "in full and final discharge of your mortgage". There was no room for misinterpretation and the clear reading of that email, by reasonable person, would have led to the conclusion that the mortgage had been redeemed more than a month earlier. This was entirely untrue as the mortgage was not redeemed until June, some two months after this email was sent to RP.

76.8 The next question for the Tribunal was whether Ms Von Wedel knew the representation was untrue. In her evidence to the Tribunal, Ms Von Wedel had stated that she was trying to unravel various problems that had occurred with the redemption. It followed, therefore, that at the time she sent the email in such unequivocal and clear terms, she knew it was untrue. Ms Von Wedel's stated belief that she thought the redemption had occurred on 18 March was completely at odds with her subsequent admission that the monies had been sent abroad. This was not, therefore, some administrative oversight, on the part of Ms Von Wedel – she had been moving the monies deliberately and carefully through other jurisdictions.

76.9 The Tribunal was therefore satisfied on the balance of probabilities that made the representation to RP that the mortgage had been redeemed in circumstances when it had not been redeemed and, at the time of making the representation, Ms Von Wedel knew this. The factual basis of Allegation 1.3 was therefore proved.

Principle 4

76.10 The test for considering the question of dishonesty was that set out in Ivey at [74] as follows:

> "the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: ….. 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 knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder 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."

76.11 The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:

- Firstly, the Tribunal established the actual state of Ms Von Wedel'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 that conduct was honest or dishonest by the standards of ordinary decent people.

76.12 The Tribunal had found, as set out above, that Ms Von Wedel knew that her representation to RP on 21 April 2020 was untrue as she knew that she had not redeemed the mortgage. Ms Von Wedel wrote the email herself and would have fully understood the content and tone would give RP the unequivocal impression that his mortgage had been redeemed when she knew this not to be the case. The Tribunal had no difficulty in finding that lying to a client would be considered dishonest by the standards of ordinary decent people. The Tribunal found the breach of Principle 4 proved on the balance of probabilities.

Principles 2 and 5

76.13 The Tribunal found that telling a lie to a client was self-evidently a lack of integrity and obviously undermined the trust the public placed in Ms Von Wedel and the provision of legal services. Ms Von Wedel had intended to deceive, and had deceived, RP and so the breaches of Principles 2 and 5 were proved on the balance of probabilities for the reasons set out above.

77. **Allegation 1.4**

Applicant's Submissions

77.1 Ms Sheppard-Jones submitted that Ms Von Wedel had been dishonest in that she knew that the SDLT had not been paid by 11 December 2019 because she was the only person in the Firm with authorisation to make transfers from the Firm's accounts but had nevertheless told Mr Eaton that it had been paid in full.

77.2 Ms Sheppard-Jones submitted that Ms Von Wedel knew that HPLP was acting for the Brans based on the correspondence received, but in any event if she had been in doubt she could have checked this with her clients.

77.3 Ms Sheppard-Jones submitted that Ms Von Wedel's admission to the FIO contradicted what she had told Mr Eaton. She invited the Tribunal is invited to infer from this that the SDLT had not been paid as at December 2019 and that Ms Von Wedel knew this. Ms Sheppard-Jones submitted that ordinary decent people would consider Ms Von Wedel's actions to be dishonest, in breach of Principle 4

77.4 Ms Sheppard-Jones further submitted that the conduct lacked integrity and undermined public trust in the profession in breach of Principles 5 and 2 respectively.

The Tribunal's Findings

77.5 Ms Von Wedel accepted making this representation to HPLP in her Schedule of Admissions. This was clearly corroborated by the evidence of the letter dated 11 December 2019 to HPLP.

77.6 The representation was plainly false as Ms Von Wedel had not paid the SDLT, as set out in the Tribunal's findings in relation to Allegation 1.2. The Tribunal considered the question of whether Ms Von Wedel knew the representation was false. The Tribunal had rejected Ms Von Wedel's evidence where she had sought to draw a distinction between paying in the 'traditional sense' and earmarking the monies that would be required to pay it. The Tribunal found that Ms Von Wedel could not have believed such an implausible explanation herself. The representation gave the unequivocal impression that the SDLT had been paid in full, when in reality, as Ms Von Wedel knew perfectly well, it had not been paid at all.

77.7 The Tribunal found the factual basis of Allegation 1.4 proved on the balance of probabilities.

Principle 4

77.8 The Tribunal again applied the Ivey test when considering the allegation of dishonesty. The Tribunal had already found that Ms Von Wedel knew her representation to HPLP was false as it did not reflect the truth of the situation. The question asked by HPLP had been "Confirm that stamp duty in respect of their purchase of the property has been paid." Ms Von Wedel knew precisely the question that was being asked as there could be no ambiguity about it. Ms Von Wedel personally drafted the reply in which she stated that the SDLT had been paid in full. The SDLT could only have been paid by Ms Von Wedel and so she would have known that she had not paid it, despite having the funds to do so, at least initially. The Tribunal found that Ms Von Wedel had knowingly and deliberately lied to HPLP. This would clearly be considered dishonest by the standards of ordinary decent people. The Tribunal found the breach of Principle 4 proved on the balance of probabilities.

Principles 2 and 5

77.9 The Tribunal found the breaches of these Principles proved on the balance of probabilities as a matter of logical conclusion, following the findings set out above.

78. **Allegation 1.5**

Applicant's Submissions

78.1 Ms Sheppard-Jones submitted that regardless of how difficult Ms Von Wedel found RP to deal with, her language was completely inappropriate within a professional context. Ms Sheppard-Jones referred to the SRA Warning Notice entitled 'Offensive Communications' first published 24 August 2017 and updated 25 November 2019, which stated that:

> "We expect you to behave in a way that demonstrates integrity and maintains the trust the public places in you and in the provision of legal services. In the context of letters, emails, texts or social media, this means ensuring that the communications you send to others or post online do not contain statements which are derogatory, harassing, hurtful, puerile, plainly inappropriate or perceived to be threatening, causing the recipient alarm and distress."

78.2 Ms Sheppard-Jones submitted that the language used by Ms Von Wedel fell squarely within this Warning Notice and that Ms Von Wedel had lacked integrity. She further submitted that such conduct undermined the trust that the public has in the legal profession. The public expected solicitors to conduct themselves professionally in the course of their business, and trust would be undermined by a solicitor sending communications that were deeply offensive and threatening. In this instance, RP had been caused distress over a period of weeks.

78.3 Ms Sheppard-Jones submitted that Ms Von Wedel had breached Principles 2 and 5 of the Principles.

The Tribunal's Findings

78.4 The Tribunal found that the whole tenor and language used by Ms Von Wedel to RP was offensive and totally inappropriate for a solicitor to use to a client. The use of the word "spastick" in particular was an utter disgrace. This was compounded by Ms Von Wedel's oral evidence to the Tribunal about the use of the word which amounted to a badly worded, half-hearted apology followed by an assertion that "in the context it was perfect". This demonstrated a spectacular lack of insight. The emails were mocking and demeaning both in tone and language. The Tribunal had no hesitation in finding that they were highly offensive.

78.5 The Tribunal further found that they were threatening. Phrases such as "Clock's ticking"; "If I hear one screeming little frekking mim from you…"; "…my pursuit of YOU for mine has only just begun…" were clear examples of threatening language. This was in the context of baseless threats of High Court legal proceedings and claims for damages against RP if he did not stop asking difficult questions of Ms Von Wedel. The clear intention of these emails was to shut down RP's enquiries, which were entirely justified. Even if RP had been difficult, as asserted by Ms Von Wedel but not established on the evidence before the Tribunal, this would have been no justification whatsoever. The Tribunal was satisfied that the emails were threatening as well as offensive.

78.6 The Tribunal found the factual basis of Allegation 1.5 proved on the balance of probabilities.

Principles 2 and 5

78.7 The Tribunal found that the trust the public placed in the profession was severely undermined by a solicitor sending threatening and offensive emails to a client. It also demonstrated a fundamental lack of integrity. The Tribunal found the breaches of Principles 2 and 5 proved on the balance of probabilities.

79. **Allegation 1.6**

Applicant's Submissions

79.1 Ms Sheppard-Jones submitted that in respect of the matters of RP and of the Brans, Ms Von Wedel had received monies into the client account, which ought to have been utilised to satisfy the mortgage redemption and SDLT respectively. Neither RP nor Dr or Mrs Bran had provided authorisation for their monies to be transferred from the client account for any other purposes

79.2 Ms Sheppard-Jones submitted that the Tribunal could safely conclude that the client monies were transferred out of the client account, in circumstances that was not permitted by the Accounts Rules and Ms Von Wedel thereby breached Rules 20.1 of the SRA Accounts Rules 2011 and 5.1 of the SRA Accounts Rules. Ms Sheppard-Jones submitted that this lacked integrity. Ms Von Wedel had failed to provide any details of her foreign accounts. The mortgage was not redeemed for three months and the SDLT had to be paid from the SRA Compensation Fund. Ms Sheppard-Jones further submitted that Ms Von Wedel had put clients' money and assets at risk and had not been acting in the best interest of her clients. This undermined public confidence in the profession.

79.3 Ms Sheppard-Jones further submitted that Ms Von Wedel's actions were dishonest. She referred to Bultitude v Law Society [2004] EWCA Civ 1853, where it was held that an intention to permanently deprive was not an essential element in proving dishonesty in relation to the transfer of client monies out of the client account, though in these instances the monies had been permanently deprived. In these matters, Ms Von Wedel had depleted the client account and utilised client money for other purposes over a period of time. The result was that the clients had been caused distress and expense. This would be considered dishonest by the standards of ordinary, decent people.

The Tribunal's Findings

79.4 The Tribunal considered the transfers in respect of the RP matter first. On Ms Von Wedel's own evidence, the redemption funds had been held outside the client account and outside the jurisdiction. There was no justification or authorisation to explain this movement of funds. Ms Von Wedel had chosen not to give details about why this had occurred, despite being asked if she wished to apply to sit in private during her cross-examination. There was no documentary evidence that even hinted at a reason to transfer the monies in this way that was within the rules. The Tribunal found the transfers from the RP client account to be improper on the balance of probabilities.

79.5 Turning to the transfers in respect of the Bran matter, again the monies that should have been used to pay the SDLT were held outside the jurisdiction. All invitations to Ms Von Wedel to provide a justification for this had been rebuffed. As with the RP transfer, the Tribunal saw no documentation that could justify the moving of these monies. The Tribunal found the transfers from the Brans' client account to be improper on the balance of probabilities.

79.6 The Tribunal found the breaches of Rule 20.1 (2011 Rules) and 5.1 (2019 Rules), together with the breach of Principle 10 (2011 Code) proved on the balance of probabilities.

Principle 2 (2011 Code) and Principle 5 (2019 Code)

79.7 In moving the funds out of client account in the way she did, Ms Von Wedel put the funds beyond the protection afforded by the Rules. The Tribunal reminded itself that client monies were sacrosanct and the handling of them was, rightly, subject to stringent requirements. Ms Von Wedel had disregarded all of those and in doing so had exposed RP and the Brans to a massive level of risk. This was reflected in the need for the SRA Compensation Fund to pay the SDLT on the Bran transaction. In Wingate, one of the specific examples at [101] of a lack of integrity was given as "Making improper payments out of the client account". The Tribunal found the allegation of lack of integrity proved on the balance of probabilities.

Principle 6 (2011 Code) and Principle 2 (2019 Code)

79.8 The Tribunal found that the breaches of these Principles were proved as a matter of logic based on the findings set out above.

Principle 4 (2011 Code) and Principle 7 (2019 Code)

79.9 It was self-evidently not in RP or the Brans' interests for their money to be moved out of the client account and so the breaches of these Principles were proved on the balance of probabilities.

Dishonesty (Principle 4 of 2019 Code and separately pleaded for period before 25 November 2019)

79.10 The Tribunal found that Ms Von Wedel was fully aware of the transfers as she had made them herself. Ms Von Wedel was aware that in doing so she was in breach of the Rules because he knew the purpose for which the monies had been provided to her in the first place. The Tribunal found that she had embarked on a conscious course of conduct to put the funds beyond the client account, without presenting any good reason for doing so. The Tribunal was satisfied that this would be considered dishonest by the standards of ordinary decent people. Tribunal therefore found the allegation of dishonesty proved.

79.11 Having made that finding, there was no need to consider the alternative pleading of recklessness.

80. **Allegation 1.7**

Applicant's Submissions

80.1 Ms Sheppard-Jones reminded the Tribunal that Rule 17.2 states:

> "If you properly require payment of your fees from money held for a client or trust in a client account, you must first give or send a bill of costs, or other written notification of the costs incurred, to the client or the paying party."

80.2 Rule 17.4 states that a payment on account of costs must remain in the client account until Rule 17.2 above is complied with. Rule 17.7 states that costs transferred out of the client account, "must be specific sums relating to the bill or other written notification of costs…. Round sum withdrawals on account of costs are a breach of the rules."

80.3 Rule 4.3 of the SRA Accounts Rules, provides the equivalent rules currently in force, since 25 November 2019.

80.4 Ms Sheppard-Jones submitted that Ms Von Wedel's conduct in making 41 transfers totalling £182,005.00 from the client to the office account in circumstances where the transfers were not evidenced by documentation, lacked integrity.

80.5 Ms Von Wedel was the sole principal of the Firm and held all of the compliance roles. It was a fundamental part of her roles to ensure that client money was properly managed. The transfers were made without any supporting documentation to show which client they related to, and why they were being made. If they related to costs, there should have been records to evidence that. Ms Sheppard-Jones submitted that the absence of such records, the fact that the transfers were in round sums, were made at times when the office account was close to the overdraft limit, and were utilised for personal matters, supported an inference that the transfers did not genuinely relate to specific costs and fees. Accordingly, Ms Von Wedel had breached Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles along with the other pleaded Principle breaches.

80.6 Ms Sheppard-Jones further submitted that Ms Von Wedel's handling of the monies was dishonest.

The Tribunal's Findings

80.7 Ms Von Wedel had accepted that she made the transfers. Her evidence was that she had been unable to produce any documentation to justify them as the material had been lost during the intervention. The Tribunal had heard evidence from Ms Malhi who had confirmed that all papers had been collected from the Firm on intervention and they did not include documentation of the nature referred to by Ms Von Wedel. The Tribunal found it more likely than not that the material did not exist.

80.8 The Tribunal reviewed the transfers, which were in round-sums. The Tribunal noted that the Firm was close to its overdraft limit when the transfers were made, and Ms Von Wedel had confirmed in her evidence that she tended to run the Firm close to

its limit. Further, payments were being made from the office account for overheads and personal matters, which could not otherwise have been made had it not been for the client to office account transfers. Examples included polo fees, professional indemnity insurance and a MOT.

80.9 Ms Von Wedel had told the Tribunal that the transfers were in respect of recurring retainers. This was inconsistent with what she had said in her interview with the SRA.

80.10 The result of these transfers was a shortage on the client account of £182,005. The SRA analysis had not been seriously challenged and it was made out on the evidence. The Tribunal found the factual basis of Allegation 1.7, together with the breaches of Rules 17.2, 17.4, 17.7 (2011 Rules), Rule 4.3 (2019 Rules) and Principles 8 and 10 of the 2011 Code, proved on the balance of probabilities.

Dishonesty (Principle 4 of 2019 Code and separately pleaded for period before 25 November 2019)

80.11 Ms Von Wedel had accepted in her evidence that she had made all the transfers. She knew that she had not produced a bill of costs on any matter in the relevant period and she was aware that the transfers were not justified. Ms Von Wedel was also aware of the fact that the Firm was close to its overdraft limit and she had even told the Tribunal that this was a conscious decision, though she had not explained why. Ms Von Wedel would also have made the payments from the office account for overheads and personal matters. The Tribunal was satisfied on the balance of probabilities that treating client monies in this way would be considered dishonest by the standards of ordinary, decent people. The Tribunal therefore found the allegation of dishonesty proved.

80.12 Having made that finding, there was no need to consider the alternative pleading of recklessness.

Principles 2 and 6 (2011 Code), Principles 5 and 2 (2019 Code)

80.13 The Tribunal found these breaches of Principle proved on the same basis as it had done in relation to the improper transfers detailed in Allegation 1.6.

81. **Allegation 1.8**

Applicant's Submissions

81.1 Ms Sheppard-Jones submitted that Ms Von Wedel's failure to co-operate with the SRA lacked integrity and undermines public confidence in solicitors and the legal profession, on the basis that the public expected solicitors to co-operate with their regulators.

The Tribunal's Findings

81.2 Ms Von Wedel had admitted this Allegation in full, save for the alleged breach of Principle 5. The Tribunal was satisfied that the admissions, so far as they went, were properly made. The Tribunal further found that Ms Von Wedel's failure to co-operate with the SRA Production Notice was a serious breach of her professional obligations. Ms Von Wedel had shown defiance in the face of an investigation by her regulator. She

had made promises to the SRA to provide the material, but had not done so. This amounted to a clear lack of integrity and the Tribunal found Allegation 1.8 proved in full on the balance of probabilities.

Previous Disciplinary Matters

82. There were no previous findings at the Tribunal.

Mitigation

83. Ms Von Wedel made submissions in mitigation and, in doing so, addressed the issue of costs. At the time of addressing the Tribunal, Ms Von Wedel had heard Ms Sheppard-Jones' application and submissions on costs. The Tribunal had allowed Ms Von Wedel some time to digest the findings and to prepare her submission on mitigation and costs.

84. Ms Von Wedel told the Tribunal that she did not have a lot to say in mitigation. She told the Tribunal that she had been working under severe pressures at the material time. This had included being in hospital and then the imposition of lockdown. This had included the need for home-schooling, which had been difficult. This came against a background of difficult personal circumstances dating back to 2014.

85. Ms Von Wedel told the Tribunal that she had always had regard to her obligations to her clients and had tried to protect them as best she could. She had always tried to do her best. Ms Von Wedel told the Tribunal that she had struggled to obtain the material that would have needed to defend herself due to the way in which the intervention had occurred.

86. Ms Von Wedel denied that she had failed to ask for access to her files after intervention. She told the Tribunal that she had done so but the files had not been received. Ms Von Wedel submitted that "some issues could have been dealt with efficiently" three years ago but were not, due to the nature of the intervention.

87. Ms Von Wedel told the Tribunal that her financial circumstances had not changed since the documents filed in January 2023. In her statement of means dated 16 January 2023 Ms Von Wedel had stated that she had lost £500,000 approximately due to the intervention and £150,000 from unbilled costs – this was relevant to her complaint about access to files. Ms Von Wedel had also stated that "costs and damages" caused by the SRA amounted to £100,000, but these were not particularised.

Sanction

88. The Tribunal had regard to the Guidance Note on Sanctions (June 2022). The Tribunal assessed the seriousness of the misconduct by considering Ms Von Wedel's culpability, the level of harm caused together with any aggravating or mitigating factors.

89. In assessing culpability, the Tribunal identified the following relevant factors:

- Ms Von Wedel's motivation was multifaceted. It had started as a consequence of maladministration and personal pressures, and it grew from there. From that point

onwards, the motivation was to mask her own mistakes. The Tribunal accepted that Ms Von Wedel had initially been trying to provide a service to her clients. However, as matters got away from her she had doubled down and the situation spiralled as she sought to hide her actions and omissions. The misconduct therefore escalated and resulted in the use of client funds to prop up the Firm financially and support her personal expenditure.

- Ms Von Wedel's misconduct. if not originally planned, became so. The decision to make misrepresentations to clients and other solicitors and the attempt to threaten RP into backing off were some obvious examples of this. This was not a one of event but a pattern of planned misconduct that took place over a two-year period and involved more than one client.

- There was an element of a breach of trust in that there were personal friendships as well as a solicitor-client relationship. The trust placed in Ms Von Wedel as a friend and a solicitor was clearly breached.

- Ms Von Wedel had complete control of the matters giving rise to the misconduct.

- Ms Von Wedel was very experienced, having been admitted to Roll in 2000, almost 20 years before the misconduct began.

90. In assessing harm, the Tribunal identified the following relevant factors:

- The two clients were clearly hugely disadvantaged. The Tribunal could see from the correspondence the level of stress and anxiety caused by RP by his mortgage not being redeemed. This was then followed by abuse and threats when he tried to address the issue.

- Dr and Mrs Bran were similarly put to massive inconvenience and the SDLT ultimately had to be drawn down from the SRA Compensation Fund.

- The damage to the reputation of the profession was horrendous. It was extremely foreseeable that putting client monies beyond the client account and indeed outside the jurisdiction would result in missing funds, shortfalls and serious and substantial harm.

91. The misconduct was aggravated by the four findings of dishonesty. It was deliberate, calculated and repeated and continued over a period of time. There had been an element of bullying in relation to the correspondence with RP and there had been concealment of wrongdoing, by way of the false representation to the clients and to the solicitors engaged to try to resolve the clients' issues. Ms Von Wedel had even sought to blame her clients, and their solicitors as well as banks for her own misconduct. She had also refused meaningfully to co-operate with the SRA.

92. There were no mitigating factors of significance. The Tribunal noted that the only admission was a partial one to Allegation 1.8.

93. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by Ms Von Wedel. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off and the Tribunal had regard to Solicitors Regulation Authority v Sharma [2010] EWHC 2022. The circumstances in which such a sanction was not imposed were exceptional, described in Sharma as "a small residual category where striking off will be a disproportionate sentence in all the circumstances ...".

94. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis of which question of exceptional circumstances was assessed:

> "First, although it is well-established that what may amount to exceptional circumstances is in no sense prescribed and depends upon the various factors and circumstances of each individual case, it is clear from the decisions in Sharma, Imran and Shaw, that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation is the nature and extent of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty."

95. Ms Von Wedel had referred to personal circumstances, including, but not limited to, her hospitalisation, in the course of her mitigation. However, she had not established a direct link between those matters and the misconduct found by the Tribunal. Much of the misconduct pre-dated her admission to hospital and the subsequent lockdown in 2020. The Tribunal was unable to identify any exceptional circumstances. The Tribunal considered that Ms Von Wedel was a danger to the public and that it had a duty to protect the public by striking her off the Roll.

Costs

96. Ms Sheppard-Jones applied for costs in the sum of £49,001.00. this figure was unchanged from the costs as at the date of issue in March 2022. The costs had therefore not increased as a result of the additional hearing days. The notional blended hourly rate between the fee earners involved worked out at approximately £100 per hour.

97. Ms Sheppard-Jones invited the Tribunal to make a costs order in full. She submitted that this was not a case which engaged the principles set out in Barnes v Solicitors Regulation Authority [2022] EWHC 677 (Admin), in that Ms Von Wedel had, notwithstanding the bankruptcy in September 2021, told the Tribunal in evidence that she had access to funds to meet any liabilities. Ms Von Wedel had also not served a statement of means in the traditional format. Further, the comments made in the statement she had served concerning the SRA and the intervention were not accepted.

The Tribunal's Decision

98. The Tribunal reviewed the cost schedules and satisfied itself that they were reasonable and proportionate. There was no duplication of intervention costs and those connected to this investigation and proceedings. The notional blended hourly rate of £100 was very modest.

99. Ms Von Wedel had not served a detailed statement of means and indeed had been reticent and far from candid about her finances in the course of her evidence. What she had said on more than one occasion, however, was that she had funds from which she could meet any liabilities arising. She had not explained where those funds were, but the Tribunal was entitled to conclude that Ms Von Wedel had access to funds sufficient to meet a costs order. The Tribunal attached greater weight to this than to the bankruptcy order and the fact that Ms Von Wedel was on universal credit, as this oral evidence post-dated the documents in relation to those matters.

100. In all the circumstances, the Tribunal was satisfied that Ms Von Wedel should pay the SRA's costs in full and it made that part of the Order.

Statement of Full Order

101. The Tribunal Ordered that the Respondent, KIRSTEN VON WEDEL, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £49,001.00.

Dated this 9th day of August 2023
On behalf of the Tribunal

E Nally

E Nally
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
09 AUG 2023