SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12338-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

RICHARD CHARLES BOYD Respondent

Before:

Mr A N Spooner (in the chair)
Mrs L Boyce
Ms J Rowe

Dates of Hearing:
28 September – 3 October 2022

Appearances

Victoria Sheppard-Jones, barrister of Capsticks LLP instructed by the Solicitors Regulation Authority Ltd for the Applicant.

The Respondent represented himself.

JUDGMENT

Allegations

The allegations against the Mr Boyd, were that:

1.1 While in practice as a Partner in North Yorkshire Law (the Firm), on 27 February 2020 he made or authorised transfers of up to £37,677.60 from the Firm's client account to the office account that were improper, with prior written notifications of the costs incurred or a copy of the bills of costs not being given to the client or paying party.

In doing so he breached any or all of:

a) Rules 4.3 and 6.1 of the SRA Accounts Rules 2019 (the Accounts Rules)
b) Principles 2, 4, 5 and 7 of the SRA Principles 2019 (the Principles)

Proved in full.

1.2 On 2 April 2020 he stated to Mrs M, his executor client on the file of client B, that "It is perfectly normal to raise a bill and take costs and then discuss with the client…" when he did not believe this to be the case. In doing so he breached any or all of Principles 2, 4 and 5 of the Principles.

Proved in full.

1.3 Between 17 July 2020 at the latest and 4 February 2021 he failed to disclose material information to insurers, namely that he had been advised by the SRA that he was not authorised to practice by them, which was material to risk and which he knew, or should have known was so material. In doing so he breached any or all of Principles 2, 4 and 5 of the Principles.

Proved in full.

1.4 Between 4 February 2021 and 23 June 2021 he made a series of three statements to his insurers and/or insurance brokers concerning his correspondence with the SRA in relation to the issue of his authorisation to practice which were either untruthful or apt to mislead them as to the true position.

In doing so he breached any or all of Principles 2, 4 and 5 of the Principles.

Proved in full.

2. *[Dismissed]*.

In addition, allegations 1.1, and 1.3 were advanced on the basis that Mr Boyd's conduct was reckless. Recklessness was alleged as an aggravating feature of his misconduct but was not an essential ingredient in proving the allegations

Executive Summary

3. Mr Boyd, a partner in North Yorkshire Law, was found to have improperly withdrawn funds from client account to support the running of his Firm. When the partnership collapsed, the Firm no longer had SRA authorisation and Mr Boyd had not been granted authorisation as a sole practitioner. Mr Boyd was found to have failed to disclose this to the professional indemnity insurers and/or their brokers and to have misled them. The Tribunal found that Mr Boyd had acted dishonestly in these matters.

Sanction

4. The Tribunal ordered that Mr Boyd be struck off the Roll. It made no order as to costs on the basis that Mr Boyd had no means to pay any such order.

Documents

5. The Tribunal considered all of the documents in the case which included an agreed electronic bundle on CaseLines.

Preliminary Matters

6. Witness availability (Daniel Smith)

6.1 On 10 August 2022 the SRA had served a Civil Evidence Act notice in relation to Mr Smith's witness statement. On 14 August 2022 Mr Boyd had confirmed that he wished Mr Smith to attend the hearing for the purposes of cross-examination.

6.2 On 12 September 2022 the SRA wrote to the Tribunal to explain that there were witness difficulties in relation to Mr Smith (and Ms Foster, but those were subsequently resolved). It was said that "for professional and/or personal reasons" Mr Smith would not be available to give evidence until the fourth day of the hearing, which was listed for five days. The Tribunal had advised the SRA to raise this as a preliminary issue at the start of the hearing, which Ms Sheppard-Jones did.

Applicant's Submissions

6.3 Ms Sheppard-Jones applied for permission to call Mr Smith on the fourth day, which would either have involved him being interposed, most likely during Mr Boyd's case, or by not sitting for part of the third day. The application was made on the first day of the hearing and was refused on the basis that the Tribunal did not consider the explanation provided to be good enough, given the significant disruption to the hearing that would be caused by allowing it.

6.4 The application was renewed on the second day. Ms Sheppard-Jones told the Tribunal that Mr Smith was not available for any of the first three days of the hearing as his work commitments did not permit him to take time away to give evidence. Ms Sheppard-Jones reminded the Tribunal that the matter was listed for five days and the proposal was to accommodate Mr Smith's evidence within those five days. Ms Sheppard-Jones noted that in the course of refusing a previous application to adjourn, the Tribunal on that occasion had said the evidence should be given within

the five days and that was consistent with what was proposed. Ms Sheppard-Jones reminded the Tribunal that the SRA had brought this to the attention of the Tribunal on 12 September and had, as advised, raised it as a preliminary point. Ms Sheppard-Jones submitted that an application for a witness summons to compel Mr Smith's attendance would have been likely to fail and was neither necessary or proportionate given that he was available and willing to give evidence on the fourth day. Ms Sheppard-Jones told the Tribunal that the SRA had tried to engage with Mr Smith and encourage him to attend, following the Tribunal's indication that it was prepared to sit early, late or over lunchtime, to try to assist Mr Smith, but had been unsuccessful. While it was frustrating to have court time wasted, she submitted that it was just for Mr Smith's evidence to be heard.

Respondent's Submissions

6.5 Mr Boyd told the Tribunal that he had wanted to cross-examine Mr Smith and identify parts of his witness statement that supported his case. Mr Boyd enquired what the consequence of Mr Smith not giving evidence would be. The clerk explained that absent any application to exclude such evidence, it would be a matter for the Tribunal to attach such weigh to it as it saw fit, having heard submissions from both parties where appropriate. Mr Boyd told the Tribunal that all he would be asking him to do was repeat his evidence. Mr Boyd also expressed concerns about there being large gaps in the proceedings.

The Tribunal's Decision

6.6 The application was refused.

6.7 The Tribunal had not been given a proper explanation as to why Mr Smith could not give what was anticipated to be around 30 minutes of evidence at some point over a period of three days, particularly in circumstances where the Tribunal had offered to alter its own sitting arrangements to accommodate this. It was not fair on Mr Boyd to delay matters. There was a risk that, if the Tribunal rose early on the third day and did not resume until the morning of the fourth day for Mr Smith's evidence, the matter might go part-heard. This would be highly undesirable and should be avoided.

6.8 The SRA could have applied for a witness summons – it was speculative to conclude that such an application was doomed to fail.

6.9 The Tribunal did not interpret the decision of the panel that adjourned the matter to be an indication that Mr Smith could be called at any point in the five days and this was clearly not what was intended.

6.10 There was no application to exclude the evidence of Mr Smith. In the circumstances, the Tribunal did not agree to wait until the morning of the fourth day to hear from Mr Smith and it would therefore attach such weight to his evidence as it saw fit, having heard submissions from the parties.

7. Application to amend the Rule 12 statement in relation to recklessness

7.1 In opening the SRA's case, Ms Sheppard-Jones sought to clarify that the allegation of recklessness was an alternative to the allegation of dishonesty and not, as pleaded in the Rule 12 statement, an aggravating factor. Ms Sheppard-Jones applied to amend the Rule 12 statement to reflect this. Ms Sheppard-Jones submitted that dishonesty, if proved, could not be aggravated by recklessness.

7.2 Mr Boyd told the Tribunal that he had not appreciated that it was now being pleaded as an alternative as opposed to an aggravating feature.

The Tribunal's Decision

7.3 The application to amend was refused.

7.4 The Tribunal noted that the Rule 12 had already been amended once and the issue had not come up as part of that process. There was a significant difference in law between an allegation being pleaded as an aggravating factor and an allegation pleaded in the alternative. It was unsatisfactory for the matter to be addressed for the first time in the course of the case being opened at the substantive hearing, particularly in circumstances where Mr Boyd was unrepresented.

7.5 The Tribunal did not consider it appropriate to allow the amendment, though it agreed with the submission that dishonest conduct, if proved, could not then be aggravated by recklessness. The Tribunal addressed that point in its findings in due course.

8. Anonymity

8.1 The Rule 12 statement had anonymised, by initials, the vast majority of names. Ms Sheppard-Jones told the Tribunal that following Lu v SRA [2022] EWHC 1729 (Admin), this had been reviewed. Ms Sheppard-Jones applied for anonymity in respect of the clients including executors. Ms Sheppard-Jones submitted that there was confidential material that was not relevant to this case that would be made public if they were not anonymised. Ms Sheppard-Jones told the Tribunal that all other anonymised names no longer need to be anonymised.

8.2 Mr Boyd had no submissions on this point at this stage.

The Tribunal's Decision

8.3 The Tribunal refused to direct anonymity in respect of anyone referred to in the proceedings.

8.4 The starting point was the principle of open justice, as emphasised in Lu at [138]:

> "Courts and tribunals should not be squeamish about naming innocent people caught up in alleged wrongdoing of others. It is part of the price of open justice and there is no presumption that their privacy is more important than open justice."

8.5 The Tribunal saw no basis to depart from this principle at this stage. However it kept the matter under review throughout the hearing, with a view to revisiting the point if matters arose.

8.6 In the course of his submissions, Mr Boyd made references to the particular circumstances relating to the Baker estate. This prompted Ms Sheppard-Jones to invite the Tribunal to anonymise that estate. The Tribunal was content that it did not need to anonymise the estate as it could take full account of the points made by Mr Boyd in that regard, without needing to go into such detail as would cause a breach of privacy in this written judgment.

Factual Background

9. Mr Boyd was admitted to the Roll on 1 August 1980. He had been a partner in the Firm since it was formed on 1 September 2000, and prior to that in another firm which had merged with others to form the Firm, including in 2019 the purchase the goodwill of another local firm called Bedwell Watts (BW). Mr Boyd was either the majority or sole owner of the Firm at all material times. On 11 February 2021, a panel of SRA Adjudicators resolved to intervene into the practice of Mr Boyd. His practising certificate was suspended and at the time of the hearing he did not hold a practising certificate.

Allegations 1.1 and 1.2

10. In February 2020 the Firm had been unable to make the payments to the former BW partners when they fell due. Between 3 October 2019 and 16 March 2020 eleven new loans had been taken out totalling £243,480.19. These included a loan of £53,622.92 from 2 March 2020 in relation to VAT due from the quarter ending 31 December 2019.

11. Ms Foster told the SRA that prior to her joining the partnership the Firm had received a loan from 'Funding Circle' that had mainly been utilised by Mr Boyd for partnership payments or drawings. Although Payroll had initially not been a concern as there were still some loan funds available, she was "aware this was not a long-term solution".

12. In December 2019 Mr Boyd had assured Ms Foster the Firm could meet its financial obligations, but the day before breaking up for Christmas he had subsequently told her they could not pay staff salaries. As a result, Ms Foster urgently arranged a loan facility and salary payments were able to be made. Ms Foster further told the SRA that she became aware that Mr Boyd had significant personal debts and that there were also "significant rent arrears" on both office properties. In February 2020 the Firm faced further cashflow problems and Ms Foster and Mr Boyd had applied for further funding facilities. The Firm's overdraft limit was £10,000. At close of business on 26 February 2020 the Firm held £13,316.21 in its account with salaries of more than £36,000, and other payments due to be paid by the end of the month.

13. Following the purchase of BW by the Firm client money had been transferred to the Firm, but the former partners of BW retained various live files at their offices. The transfers relevant to these Allegations related to seven probate matters on which

Hilary Watts of BW had continued as fee-earner and retained the physical files within the former BW offices.

14. On 27 February 2020, invoices totalling £37,677.60 were prepared by Mr Boyd across seven of the eight files he had requested from BW as follows:

- Baker £21,120.00
- Hicken £768.00
- Freeman £8,448.00
- Amos £5,037.60
- Ramsay £384.00
- Hodgkinson £1,152.00
- Clarke £768.00

15. At least six of these invoices each contained the following identical narrative:

> "Professional charges relating to: The Estate of [deceased]
> The continuing administration of [deceased]
> Interim account raised in accordance with our Terms of Business
> With Compliments"

16. On the same day, the Firm transferred £42,584.60 to office account.

17. The affected estates were not notified before or at the time of the invoices being prepared or the funds transferred.

18. On 11 March 2020, Mr Watts became aware that significant funds had been transferred on the matter of Baker. Mr Watts subsequently wrote to Mr Boyd and Ms Foster noting the position had arisen on multiple files, requesting the costs be returned and a report be made to the SRA. Mr Boyd did not report the matters to the SRA but Ms Foster did so on 27 March 2020.

19. Mr Boyd subsequently did notify the clients about additional costs, or that a bill of costs had been raised on their matter. The written notifications were all made after the SRA Report. The SRA's case was that Mr Boyd had therefore processed and approved the seven bills and money transfers on 27 February 2020 without any of the clients having been informed of his current involvement, sent his Terms of Business or informed of the invoices or costs transfers.

20. In his interview with the SRA, when questioned on why he had not contacted the executor clients to agree any proposed change in terms and the bills, before then transferring the costs, Mr Boyd claimed that there had been "no urgency" to make transfers. He also denied he had made the transfers without consent in order to make office payments. Mr Boyd also told the SRA that it was not his standard practice to raise costs and then discuss it with the client after the event. In relation to wages, Mr Boyd had taken issue with the figures and told the SRA that he would have reached an agreement with the higher-wage fee earners about delays to the salary payments.

21. In relation to the Baker estate, having agreed to waive his costs, Mr Boyd returned an initial £1,343.34 on 20 May 2020, followed by £16,896.66 on 5 June 2020. This repayment of £18,240 from the original £21,120.00 left £2,880 from the original transfer, which was the amount recorded in the estate accounts as the costs calculated by BW. The Freeman estate ledger showed a repayment on 10 July 2020 of £3,408, leaving a balance of £5,040 (£4,200 plus VAT) which was the amount Mr Watts had indicated had been agreed to be taken on completion of the administration. All the balances of the seven invoices referred to were reversed and returned to the client account by February 2021.

Exemplified matter 1 – Baker Estate

22. BW had been instructed in or around July 2018 to act in the estate of Baker, who had died intestate. Mr Watts was the fee-earner. Mr Watts had provided Mrs Mainprize, the client, with an initial estimate of £884 for obtaining Letters of Administration and an estimate of potentially £10,000 for administering the estate, subject to how many relatives were traced and their location

23. On 27 February 2020, after a payment to Title Research, the Firm was holding £118,685.45 in its client account in respect of this matter. That was the day on which Mr Boyd requested the file along with seven others from Mr Watts, but this was one of two files that Mr Watts did not provide. As stated above, this was also the date on which he raised the invoice for £17,600 + VAT (£21,120) and transferred the funds to office account.

24. Mr Watts told the SRA that at the time the Respondent prepared the invoice, and transferred the money, no time was recorded on the Firm's system and he (Mr Watts) had retained the file.

25. Mr Watts became aware that funds had been transferred on 11 March 2020, as referred to above. A meeting took place on 18 March 2020 attended by Mr Boyd, Ms Foster and Mr Watts. At that meeting Mr Watts said that the bill submitted was many times larger than the figure of £2,400 plus VAT which he had discussed and agreed with the client and that at the time the bill was prepared there was no time recorded on the Firm's system.

26. On 19 March 2020, Mr Boyd spoke to Mrs Mainprize. In that call he advised her that he would need to arrange an Indemnity Policy to protect his firm and that this would cost "£17,600 plus VAT". Mr Boyd did not make Mrs Mainprize aware that the funds had already been taken. Mrs Mainprize was not minded to agree to this and the telephone call was terminated. Mrs Mainprize subsequently spoke with Mr Watts, who informed her that the costs had already been transferred and he had not been aware of it until afterwards.

27. Mr Boyd told the SRA he spoke to Mrs Mainprize on 27 March 2020 and confirmed payments had gone out to beneficiaries, and he would "add back our costs as agreed in due course". Mrs Mainprize wrote to the Respondent on 2 April 2020 confirming receipt of the cheques and stating:

> "I need to have immediate sight of your detailed accounting showing how you arrived at each total and how you apportioned the missing seventeen thousand pounds.
>
> I have been asked why the cheques received are less than the amount expected, taken from Mr Watts calculations…What an impossible position for me, and I must add that at no time did I agree for 'time to pay' regarding the seventeen thousand points you removed from the estate account without my knowledge or consent and it needs to be refunded without delay".

28. Mr Boyd replied stating:

> "It is perfectly normal to raise a bill and take costs and then discuss with the client. Rather than have any unseemly argument, we have agreed to waive that cost. It is still my advice that you should make further investigations and insure the risk…. the present crisis has hindered our ability to refund our costs immediately but you can rest assured that will be done as soon as ever possible."

29. An initial credit of £1,343.34 was provided on 20 May 2020, followed by £16,896.66 on 5 June 2020 before a credit note for the remaining balance on 1 February 2021.

30. Mr Boyd told the SRA in his interview that prior to 27 February 2020 the client was not aware of any intention to increase the fees substantially. He stated that it was not his standard practice to raise costs and then discuss it with the client after the event. He confirmed that Mrs Mainprize was not informed until 19 March 2020. Although Mr Boyd disputed the account of the telephone call in his interview, he did not require Mrs Mainprize (or Mr Watts) to attend the Tribunal for the purposes of cross-examination.

<u>Exemplified matter 2 – Freeman Estate</u>

31. Mr Watts was one of three executors for the matter and had been the fee-earner through BW, having been instructed in or around 2 November 2018. Mr Watts had passed the file to Mr Boyd on the afternoon of 27 February 2020, with the note saying that "Costs agreed at £4,200 + VAT to be taken on completion of administration". This was in line with the initial maximum estimate of fees that was provided by BW. On that date Mr Boyd raised the invoice for £8,448 and transferred that amount to office account. This was without written notification or consultation with Mr Watts or the other executors.

32. On 19 March 2020 Mr Watts noted a shortage on this matter. He wrote to Mr Boyd requesting the immediate return of the monies to client account.

33. On 13 April 2020 Mr Boyd emailed the executors, including Mr Watts, stating that a bill of £7,040 plus VAT had been raised on 27 February 2020. An undated letter from one of the other executors, Ms Freeman, expressed dissatisfaction at £8,448 being removed from client account "without justification and without my knowledge as executor". The letter stated she wished to terminate instructions to the Firm and

requested that the files and papers be delivered to Mr Watts for him to conclude the matter as executor in his personal capacity.

34. On 1 May 2020 one of the beneficiaries emailed Mr Boyd requiring the sum to be re-credited to the account. This was done by way of a payment of £3,408 on 10 July 2020, followed by the remainder on or around 29 January 2021.

Exemplified matter 3 – Amos Estate

35. BW were instructed in or around January 2018. Mr Watts was the fee-earner and retained the file after the takeover of BW. On 27 February 2020, the Firm held £29,989.78 in its client account. Mr Watts passed over the matter file in the afternoon, with his note stating:

> "Full probate costs taken July 2019. Waiting to hear from CTO at HMRC re corrective account before distributing income".

36. On the same date the bill was raised by Mr Boyd in the sum of £5,037.60.

37. The funds were transferred to the office account, but the executor client was not informed until a letter on or around 8 April 2020 was sent to her by Mr Boyd. In that letter Mr Boyd stated:

> "To cover our risk and liability, a bill of costs for £4,198 plus VAT was raised on 27.02.20. I attach our terms for information. The total costs are much less than we would charge for a large estate…I have not charged for a review of this case as such nor this correspondence. In the circumstances, I do not intend to charge further unless some difficult issues arise…."

38. On 16 April 2020 the executor wrote to Mr Boyd disputing the additional costs raised. She requested they be returned and wrote to terminate her instructions. Mr Boyd replied and stated that he had "done nothing improper".

39. Mr Boyd reversed and "refunded by way of rectification" the £5,037.60 on 29 January 2021.

Allegations 1.3 and 1.4

40. On 31 March 2020 Ms Foster resigned from her partnership with Mr Boyd. He continued to practice as a sole practitioner, still under the name of North Yorkshire Law.

41. Rule 15.1(a) of the SRA Authorisation of Firms Rules ("AFR") sets out that an application for temporary emergency authorisation may be made "within seven days of any change in the management or control of an authorised body or practice which brings into being a new unauthorised body or practice". Mr Boyd made no such application. Rule 4.2 of the AFR sets out that a body's authorisation shall cease to have effect if the body ceases to exist, which in this case it did by reason of Ms Foster's departure.

42. On 6 April 2020 Mr Boyd informed PIB, his Professional Indemnity Insurance (PII) broker, that Ms Foster had retired as a partner and he continued as a sole trader. PIB referred the matter to Mr Boyd's insurer, Paragon/Portland PII. On 23 April 2020 Portland PII wrote to Mr Boyd stating:

> "Further to your communication with PIB earlier today, we can confirm that participating syndicates of Portland PII will continue cover for North Yorkshire Law following the recent changes to its partnership structure. Cover is granted, upon acceptance and approval by the Solicitors Regulation Authority. Insurers trust this is sufficient, but any problems please let me know".

43. On 18 May 2020, following advice from the SRA Contact Centre, to the effect that he was required to submit an application for authorisation to continue to practice as a sole practitioner, Mr Boyd submitted an application to the SRA, for authorisation as a Recognised Sole Practice (RSP). The Form provided basic information and a declaration at the end that included acknowledgement of a statement that:

> "The Applicant must not provide any reserved legal activities or immigration work until it has been authorised by us…"

44. Peter Jenks, the SRA Authorisation Officer, informed Mr Boyd that he had lost his authorisation and/or should no longer practice, or that continuing would risk not having valid PII in place.

45. On 15 July 2020 Mr Jenks wrote to Mr Boyd:

> "North Yorkshire Law was a partnership. However, the partnership dissolved on 31 March 2020 when Natalie Foster ceased to hold the role of partner. This meant that North Yorkshire Law was no longer authorised by us and should have stopped practising.
>
> On 18 May 2020, we received your application for the authorisation of North Yorkshire Law as a recognised sole practice and as you are aware I am currently considering this. At present, there is an ongoing investigation into North Yorkshire Law and resultant of this I am unable to progress your application for the time being…Please do contact me if you need to discuss this further."

46. On 17 July 2020 Mr Jenks wrote to Mr Boyd:

> "…When Natalie Foster ceased to be a partner of North Yorkshire Law on 31 March 2020, we would have expected you to apply for temporary emergency authorisation as a sole practitioner within 7 days under rule 15.1(a) of the Authorisation of Firms Rules. Had we been able to authorise this application, it would have given you the time needed to submit a substantive application for authorisation, without causing any breaks in its authorisation status. As I previously mentioned, North Yorkshire Law should cease to practice as it is no longer authorised.

> In terms of the application that I am currently considering for North Yorkshire Law to be authorised as a recognised sole practice …At present, given the serious nature of the issues under investigation I am not in a position to make a decision."

47. Later on 17 July 2020 Mr Jenks sent a further email to Mr Boyd in which he stated:

> "I have just attempted to telephone you without success. It is your decision if you continue to practice, but this would be without our authorisation so you would need to consider the risks associated with this, such as having valid Professional Indemnity Insurance [PII] in place. The situation remains the same, in that I am not currently in a position to make a decision on your application for North Yorkshire Law to be authorised as a recognised sole practice. If I am to consider your application, unfortunately, I would draft a report recommending its refusal…and would provide you with an opportunity to make any representations that you may have."

48. On 22 October 2020 Mr Jenks wrote to Mr Boyd:

> "…I understand that you have been granted your practising certificate for practice year 2020/2021. <u>You would not be able to submit a renewal for North Yorkshire Law as it is not an authorised body</u>. Please do not submit an RF1 for this firm. As it stands your application for authorisation as a recognised sole practice remains on hold, due to our ongoing investigation…once the outcome is known I will be able to consider your application…"

49. On 27 January 2021 Mr Jenks wrote to Mr Boyd:

> "…On 31 March 2020, Natalie Foster ceased to be a partner in North Yorkshire Law and therefore the partnership no longer existed. North Yorkshire Law lost its authorisation as a licensed body. North Yorkshire Law has continued to practice without authorisation since the partnership ended…"

50. Mr Boyd had completed a proposal form for PII cover dated 6 July 2020 in the name North Yorkshire Law quoting the authorisation number of the former partnership. In completing that form he confirmed that he accepted that if in doubt whether any fact may influence the Insurer he should disclose it and that he understood that he had "a continuing obligation to disclose all material circumstances up to commencement of and throughout the period of the policy".

51. The proposal form was submitted by PIB to Inperio on 30 July 2020. Mr Boyd did not inform either PIB or Inperio that the SRA had advised him on 15 and 17 July 2020 that the previous partnership entity was no longer authorised and he was presently not authorised to practice as a sole practitioner under the style of North Yorkshire Law.

52. Thereafter, Mr Boyd completed several more declarations in support of his applications for PII Insurance, none of which disclosed that he had been informed by the SRA that he was not authorised to practice. Mr Boyd did not advise the insurers or brokers in question of the contents of the correspondence which he had received from

Mr Jenks concerning his authorisation status on 22 October 2020 and 27 January 2021.

53. On 5 February 2021 Inperio informed the SRA that it had voided the policy as 'North Yorkshire Law' had not been a properly authorised body.

54. On or around 4 February 2021, a representative of Inperio had spoken with Mr Boyd and discussed issues relating to his SRA Authorisation. The note of that telephone call records the Respondent as stating:

> "Advised his application for a sole practitioner was still outstanding with the SRA and "he should really chase it up". Confirmed that the old ABS ceased and closed in March last year when his partner left. He also confirmed he had no sole practitioner authorisation as the SRA was slowly progressing his application and he had not heard any further for a number of months. He advised someone in the SRA Authorisation team verbally advised it was ok to continue trading but they did not confirm in writing...."

55. Mr Jenks had contacted Mr Boyd on 27 January 2021 recommending refusal of his application.

56. In an email to PIB dated 5 February 2021, Mr Boyd stated eight points in relation to his PII disclosures and SRA authorisation status as follows:

> "1. I reported the SRA investigation, which was initiated by my former partner Natalie Foster in March 2020.She alleged dishonesty.
> 2. She left as a partner 31.03.21.
> 3. I applied for authorisation as a sole practitioner.
> 4. The SRA shows the Firm that ended on 31.03.21 is closed.
> 5. I was told by the SRA over the phone that I could continue pending the investigation. I am represented by Jon Goodwin Solicitor advocate of the Wirral, who advises in these matters exclusively. He advises me that I am holding over from the original authorisation pending any further decision. He has successfully argued this point.
> 6. I received my personal certificate in October from the SRA.
> 7. There will be no present change to a partnership.
> 8. The above shows matters are in hand."

57. On 23 June 2021, Mr Boyd told Inperio that he "was allowed to continue trading by the SRA in May 2020, holding over on the previous authorisation, pending the outcome of their investigation…".

Live Witnesses

58. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. The absence of any reference to particular

evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence. The following witnesses gave oral evidence:

59. Kiran Deol

59.1 Ms Deol confirmed that her witness statement was true to the best of her knowledge and belief. Ms Deol told the Tribunal that she had been employed by the SRA for six years and at the time had been the line manager for Peter Jenks. Ms Deol's evidence related to the question of authorisation. Ms Deol told the Tribunal that she had recorded the detail of the telephone conversation directly into the email to Mr Jenks. This was as an alternative to recording a separate attendance note. Ms Deol explained that the reason for this was that she wanted to let Mr Jenks know that she had spoken to Mr Boyd as soon as possible and sending the information by email would get his attention straight away as opposed to simply lodging an attendance note on file.

59.2 Mr Boyd put to Ms Deol that she had told him in a telephone conversation that he could 'hold over' under his previous authorisation while awaiting the conclusion of the investigation. Ms Deol did not agree that she had told Mr Boyd this. Ms Deol stated that once the partnership had broken, the authorisation was no longer valid and so there was no concept of holding over in those circumstances. Ms Deol accepted that she had not told Mr Boyd that he had to close, but she stated that she had made clear that he was not authorised. Ms Deol said that she had sympathised with the stress that Mr Boyd had referred to being under during the telephone conversation.

59.3 Mr Boyd repeatedly questioned Ms Deol's recollection on the point about being told he could hold over. Ms Deol maintained that she had not given such advice to Mr Boyd.

59.4 In response to a question from the Tribunal, Ms Deol stated that she would take one or two telephone calls a month of this nature.

60. Natalie Foster

60.1 Ms Foster confirmed that her witness statement was true to the best of her knowledge and belief. Ms Foster had been Mr Boyd's business partner for 12 months, ending in April 2020.

60.2 Ms Foster was cross-examined about a number of details concerning the financial operation of the firm, her role and level of involvement and the circumstances surrounding her departure from the firm. The Tribunal reminded itself that it was focussing on matters directly relevant to the Allegations of professional misconduct faced by Mr Boyd and not to make findings in relation to any partnership dispute between Ms Foster and Mr Boyd. The details of those questions are therefore not summarised here.

Findings of Fact and Law

61. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under

section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

62. **Allegation 1.1**

Applicant's Submissions

62.1 Mr Boyd had admitted the breaches of the SAR. The SRA's submissions on the Principles are set out below.

Principle 4

62.2 Ms Sheppard-Jones relied on the test for dishonesty set out in Ivey v Genting Casinos [2017] UKSC 67.

62.3 The SRA submitted that at the time Mr Boyd made or authorised the transfers he knew or believed the following matters as set out in the Rule 12 statement:

"a) The Firm was short of funds to meet forthcoming expenses of salaries the next day and/or other matters shortly afterwards;

b) He did not have proper access to financial and time-recording information on the files, but did know that funds were held on client account.

c) That in relation to the matter of Baker, he had not seen the underlying client matter file, the client care letter and the Estate Accounts.

d) That the fee-earner with conduct of the files did not consider that costs were properly due on any of the files at that time.

e) That he had not been the fee-earner on any of the files and had had no contact with the clients to inform them, let alone agree, his proposed changes in terms of business and increased charges.

f) That it was not his normal practice to raise invoices and transfer funds without informing the clients, and he had not done so on other files. In this respect he knew, or should have known, that client money is sacrosanct.

g) That clients could be easily contacted and informed if he wished to do so, although there would have been at least a slight delay.

h) That the clients would not have been expecting to receive a further interim bill at that time.

i) He had ensured invoices were prepared but had took no steps at all to contact the clients beforehand or contemporaneously, when it would be standard practice to do so even in less unusual circumstances."

62.4 Ms Sheppard-Jones submitted that Mr Boyd's conduct was dishonest by the objective standards of ordinary decent people in that he had unilaterally transferred client funds and, at least temporarily, used the monies to meet urgent office expenses without any notification being provided or attempted to be provided to the clients.

Principles 2 and 5

62.5 In relation to integrity, the SRA relied on the test set out in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366. Jackson L.J, which gave the example of making of improper payments out of client account as conduct which would constitute a lack of integrity. Ms Sheppard-Jones submitted that the transfers made by Mr Boyd were clearly improper as they were made in breach of the SAR and without the knowledge of the client, in circumstances where sums were being taken which were substantially in excess of the sums which some of the clients concerned had agreed to pay.

62.6 Ms Sheppard-Jones further submitted that the public trusted solicitors to retain their money properly and carefully, and not to transfer it to their own accounts improperly and without notification to the client, or without agreement from the client to the amount of costs. Mr Boyd's actions in relation to the transfers and/or in then not taking any prompt steps to correct or resolve matters properly, would reduce trust in the profession and legal services in breach of Principle 2.

Principle 7

62.7 Ms Sheppard-Jones submitted that Mr Boyd had failed to act in the best interests of his clients and that as such he had breached Principle 7.

Respondent's Submissions

62.8 Mr Boyd did not give evidence. He relied on his Answer and attached documents as well as his oral submissions, which are summarised below.

62.9 Mr Boyd submitted that he had always acted with integrity and honesty. He admitted the breaches of the SAR and maintained that these were errors but not conscious or deliberate actions on his part. He told the Tribunal that there had been no continuing resulting shortage and he had corrected what had occurred. Mr Boyd told the Tribunal that he had fully co-operated with the SRA. Mr Boyd noted that the SRA had full access to all the Firm's information including over 1,000 active matters. There was no evidence of any other improper transfers found.

62.10 Mr Boyd told the Tribunal that he did not dismiss the seriousness of the breaches. He submitted that he had a genuine belief at the time that he was entitled to proceed as he did. Mr Boyd referred to Ivey and noted that the requirement was that his belief was a genuine one, not necessarily a reasonable one. Mr Boyd told the Tribunal that no amount of financial pressures would have encouraged him to knowingly breach the

SAR. Mr Boyd denied the suggestion that the transfers were motivated to facilitate payment of staff wages. There was significant flexibility as to the payment of wages and the Firm would not have ceased trading if the salaries were not paid on the due date.

62.11 Mr Boyd told the Tribunal that he had always intended to contact the clients and that in four of the seven instances, no objection was taken when he did make contact.

62.12 Mr Boyd took issue with much of Ms Foster's evidence and invited the Tribunal to reject it as being unreliable.

62.13 Mr Boyd told the Tribunal that he was ruined, was 71 and had no prospect of running, or being employed by, a firm.

62.14 Mr Boyd confirmed that he was aware of the provisions of Rule 33 of the SDPR relating to a possible adverse inference being drawn on account of not having given evidence. Mr Boyd stated that he had been interviewed in person by SRA, had co-operated fully and had provided explanations for all his actions.

62.15 Mr Boyd reiterated that he had not acted dishonestly, recklessly or without integrity.

The Tribunal's Findings

62.16 The Tribunal noted that Mr Boyd had admitted the factual basis of this Allegation including the breaches of the SAR. The Tribunal was satisfied that these admissions were properly made and supported by the documentary evidence. It found those matters proved. It therefore followed as a matter of logic that Mr Boyd had failed to act in the best interests of his clients, given that it was client monies that were improperly transferred out of the client account. The Tribunal therefore found the breach of Principle 7 proved on the balance of probabilities.

Principle 4

62.17 The test for considering the question of dishonesty was that set out in Ivey 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."

62.18 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 Mr Boyd'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.

62.19 The Tribunal considered Mr Boyd's state of knowledge. In doing so, the Tribunal took full note of the character references that Mr Boyd had adduced and the fact that he had an unblemished career. This was relevant both to his credibility and to the likelihood of him being dishonest.

62.20 The Tribunal noted that all the transactions took place on the same day and were, on his own admission, authorised by Mr Boyd. He was therefore clearly fully aware of the movement of the monies. The financial position of the Firm was difficult and Mr Boyd knew that by reason of his role as a partner. The Tribunal had sight of the bank statements produced in evidence and noted the overdraft facility of £10,000, amongst other loans. The Tribunal also accepted the evidence of Ms Foster who was clear that the Firm faced significant financial difficulty. In relation to salaries, Mr Boyd had submitted that those could have been delayed or re-scheduled. There was no evidence to support that assertion, and the conclusion appeared to have been reached on the basis of speculation and optimism. In any event, the fact that such steps were under consideration was evidence in itself that the Firm was in financial difficulty.

62.21 As a partner, Mr Boyd also knew which funds were client monies and which were office. At the time he made the transfers Mr Boyd knew that he was not the fee earner on any of the cases and he knew that he had not ascertained that the invoices drawn up and the transfers made bore any relation to fees and costs actually incurred. The Tribunal also noted that the wording on all the bills was the same, which was further evidence that Mr Boyd knew he was making transfers that did not correlate to fees owed.

62.22 Mr Boyd also knew that neither he nor anyone at the Firm had contacted the clients to explain that fees and costs had risen unexpectedly – in many cases very substantially – before issuing the invoices and making the transfers. Mr Boyd had the ability, if he had wanted to, to contact the clients before making these transfers but had chosen not to do so. This lack of contact with the clients was demonstrated by the emails adduced in evidence from the clients, sent once they became aware of the transfers after the event. In the cases of the Bull, Amos and Baker estates they all expressed surprise and concern at the transfers. Mr Boyd's conduct in relation to the Baker estate is dealt with under Allegation 1.2 in more detail.

62.23 Mr Boyd had told the SRA that it was not his normal practice to raise invoices and transfer funds without informing the clients, and so it was clear on the basis of his interview that Mr Boyd knew that he was doing something unusual and out of the ordinary.

62.24 The Tribunal considered whether, in light of his state of knowledge as set out above, Mr Boyd's actions would be considered dishonest by the standards of ordinary, decent people. The Tribunal recognised that Mr Boyd had an unblemished career and was held in high regard by those who had provided character references. However, the Tribunal's findings as to his state of knowledge were based on contemporaneous documentary evidence and on witness statements that had not, other than Ms Foster, been challenged by him. The Tribunal found on the balance of probabilities that Mr Boyd's actions in making these improper transfers would be considered dishonest by the standards of ordinary decent people. Mr Boyd knew he was not entitled to make the transfers and he knew that he was doing so in order to address financial issues within the Firm. The public would, rightly, conclude that client monies were sacrosanct and that as such, the transfers made in these circumstances were dishonest.

62.25 The Tribunal therefore found the breach of Principle 4 proved on the balance of probabilities.

Principle 5

62.26 In considering whether Mr Boyd had lacked 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".

62.27 At [101] there were a number of examples given as to what constituted acting without integrity:

> "The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors:
>
> i) A sole practice giving the appearance of being a partnership and deliberately flouting the conduct rules (Emeana);
>
> ii) Recklessly, but not dishonestly, allowing a court to be misled (Brett);
>
> iii) Subordinating the interests of the clients to the solicitors' own financial interests (Chan);
>
> iv) Making improper payments out of the client account (Scott);
>
> v) Allowing the firm to become involved in conveyancing transactions which bear the hallmarks mortgage fraud (Newell-Austin);
>
> vi) Making false representations on behalf of the client (Williams)."

62.28 The Tribunal found that Mr Boyd had lacked integrity as his conduct fell squarely within the fourth example set out in Wingate. Further, the Tribunal had found that Mr Boyd acted dishonestly and it therefore followed as a matter of logic that a solicitor could not simultaneously be dishonest while also acting with integrity. The Tribunal found the breach of Principle 5 proved on the balance of probabilities.

Principle 2

62.29 The Tribunal found that the public would be incandescent to discover that monies belonging to estates had been improperly transferred for the benefit of the Firm. The trusted position that solicitors held, particularly when dealing with probate matters, meant that such a fundamental breach of obligations had a significant impact on the trust the public would place in the profession. The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

63. **Allegation 1.2**

Applicant's Submissions

Principle 4

63.1 Ms Sheppard-Jones submitted that Mr Boyd knew that his actions on 27 February 2020 were not "perfectly normal" but represented a significant deviation from his usual practice and the usual practice of the Firm. Ms Sheppard-Jones submitted that in those circumstances, given the state of knowledge set out in relation Allegation 1.1, Mr Boyd's statement to Mrs Mainprize on 2 April 2020 was dishonest by the standards of ordinary decent people.

Principles 2 and 5

63.2 Ms Sheppard-Jones further submitted that Mr Boyd had, again, lacked integrity and failed to act in a way that upheld public trust.

Respondent's Submissions

63.3 Mr Boyd denied this Allegation.

63.4 In his Answer, Mr Boyd submitted that the comments he had made to Mrs Mainprize had been taken "out of context". Mr Boyd explained to the Tribunal that the Baker estate was particularly complex. The details of that complexity are not set out in this judgment, but the Tribunal had regard to all of Mr Boyd's submissions when deliberating.

63.5 Mr Boyd again denied any allegation that he had lacked integrity, acted dishonestly or recklessly.

The Tribunal's Findings

63.6 The Tribunal referred to the unchallenged statement of Mrs Mainprize when considering this Allegation.

63.7 Mrs Mainprize described being informed by Mr Boyd on 19 March 2020, three weeks after the transfer had taken place, that "he would need to arrange an Indemnity Policy to protect his firm" at a cost of £17,000 + VAT. Mrs Mainprize described this as a "bombshell" and stated that Mr Boyd was insistent that the policy was required:

> "8. Mr Boyd told me that it was imperative that I agreed to the payment of £17,000.00 plus VAT to cover the insurance fee. He said that the matter would be unable to proceed unless I agreed to it."

63.8 The telephone call ended and Mrs Mainprize then spoke to Mr Watts. It was at that point that she was informed that the monies had already been taken.

63.9 Mr Boyd subsequently emailed Mrs Mainprize on 2 April 2020 and stated within that email:

> "3. I explained in our previous conversation that I had raised a bill for costs to cover our risk. It is perfectly normal to raise a bill and take costs and then discuss with the client. Rather than have any unseemly argument, we have agreed to waive that cost. It is still my advice that you should make further investigations and insure the risk."

63.10 This statement, specifically the sentence beginning "It is perfectly normal…" was clearly at odds with Mr Boyd's actual usual practice and with what he later said to the SRA during his interview. The Tribunal noted that this statement was made in the context of a conversation in which Mrs Mainprize had been kept entirely in the dark about the fact that the transfer he was asking her to approve had already bene made and had nothing to do with an indemnity policy.

63.11 Mr Boyd would therefore have known that what he was telling Mrs Mainprize was not the true position. Mr Boyd had not given evidence and so the Tribunal was unable to attach weigh to his submissions as they were flatly contradicted by the unchallenged evidence of Mrs Mainprize.

63.12 The Tribunal accordingly found the factual basis of Allegation 1.2 proved on the balance of probabilities.

Principle 4

63.13 The Tribunal again applied the Ivey test. Mr Boyd's state of knowledge had been analysed when considering the factual basis of the Allegation, which required the SRA to prove that he "did not believe" what he was telling Mrs Mainprize to be the case. In short, Mr Boyd had told something to Mrs Mainprize that was untrue and that he knew full well was untrue. The Tribunal therefore moved on to consider whether this would be considered dishonest by the standards of ordinary, decent people. The Tribunal found that such conduct would be considered dishonest on the basis that Mr Boyd, knowing he had transferred the monies, firstly sought to obtain Mrs Mainprize's approval retrospectively without disclosing the true circumstances of the request and then sought to justify the transferring of monies without consent by misleading her as to what was normal practice. The Tribunal found this would be considered thoroughly dishonest and therefore found the breach of Principle 4 proved.

Principles 2 and 5

63.14 The Tribunal found the breaches of these proved on the basis that it was the logical conclusion of its factual findings in this matter and the finding of dishonesty.

64. **Allegation 1.3**

Applicant's Submissions

Principle 4

64.1 Mr Boyd had made a series of declarations in documents addressed to insurers by which he declared that he had informed the insurer in question of all facts material to their decision to accept the risk. Ms Sheppard-Jones submitted that at the time he made each of those declarations he knew or ought to have known that he was not authorised to practice by the SRA. Ms Sheppard-Jones further submitted that Mr Boyd was also aware that a lack of authorisation would be regarded as material by the insurer. Despite this, he did not disclose the true position as set out by the SRA in correspondence as required by his declarations. Ms Sheppard-Jones therefore submitted that Mr Boyd's actions would be considered dishonest by the standards of ordinary and reasonable people.

Principles 2 and 5

64.2 Ms Sheppard-Jones submitted that insurers rely on transparent disclosure so that they can consider the appropriateness of a particular proposal or calculate the level of risk, with contracts of insurance being contracts of 'utmost good faith' and relying on veracity of disclosure. In this respect, insurers place trust in solicitors providing accurate and up to date information, including updating them on changes in material facts and circumstances. Beyond their legal or contractual obligations, solicitors are trusted by their insurers to simply Ms Sheppard-Jones reminded the Tribunal that Mr Boyd was an experienced solicitor.

64.3 Ms Sheppard-Jones submitted that Mr Boyd knew that his authorisation position was a live matter of interest to insurers having mentioned it briefly in his proposal form, agreed a higher premium on the basis that he was a 'sole practitioner', and already been informed by his then insurer in April 2020 that they would be willing to grant cover to his new arrangement "upon acceptance and approval by the Solicitors Regulation Authority".

64.4 Ms Sheppard-Jones submitted that despite signing multiple declarations confirming his understanding of his continuing obligations of disclosure, Mr Boyd failed to disclose or even mention the multiple letters he had received from the SRA as to authorisation.

64.5 Ms Sheppard-Jones submitted that if the true position been presented, Inperio would have been unlikely to issue the cover they initially did, evidenced by the subsequent decision to declare the policy void.

64.6 Ms Sheppard-Jones told the Tribunal that the SRA did not accept Mr Boyd's interpretation of his interactions with the SRA and relied on the evidence of Ms Deol in relation to the telephone call. In any event, she submitted, a prudent solicitor would have made written enquiries to confirm the position, especially where his interpretation of a short telephone conversation is stated to be so different to the written correspondence he received both before and after the conversation with Ms Deol. He would also have disclosed the full position to the insurers so that it could be dealt with an early stage.

64.7 Ms Sheppard-Jones submitted that members of the public, and insurers dealing with solicitors, trust solicitors to provide appropriate and accurate information. Mr Boyd's failure to disclose central issues represented was likely to reduce trust in the solicitors' profession and also amounted to a lack of integrity.

Respondent's Submissions

64.8 Mr Boyd denied this Allegation.

64.9 Mr Boyd referred the Tribunal to the evidence of the FI Officer, Ms Bridges, who he said had told his then-solicitor that it would be unfair to close the Firm. At the time Ms Bridges visited the office in August 2020 the Firm was still operating. Mr Boyd denied being a "dominating autocrat" as suggested by SRA.

64.10 Mr Boyd submitted that he had not appreciated the significance of a change from partnership ABS in which he owned 75% to a 100% sole practice. Mr Boyd told the Tribunal that the SRA contact centre suggested that an application for registration as a sole practice would be a formality and would not involve closing the Firm down. Mr Boyd submitted that he honestly believed no application was necessary at that point.

64.11 Mr Boyd submitted that his recollection of his telephone call with Ms Deol should be preferred over hers. He referred the Tribunal to his handwritten attendance note of the telephone call dated 28 July 2020 in which he had noted:

> "Call to Kiron [sic]. Held over until report by SI at end of August . RCB"

64.12 Mr Boyd reminded the Tribunal that a search on the SRA website in December 2020 showed that the Firm was authorised at that time. It was only in January 2021 that he had discovered that authorisation had been retrospectively withdrawn. Mr Boyd told the Tribunal that he had relied on PIB's form and that the insurer was fully aware of the SRA investigation.

64.13 Mr Boyd denied acting dishonestly, recklessly or with a lack of integrity. He denied failing to disclose information that he knew was material and also denied making statements that were untruthful and/or apt to mislead.

The Tribunal's Findings

64.14 The Tribunal considered the emails set out in full above, when determining this Allegation. It also took account of the evidence of Ms Deol, including the case put in

cross-examination as well as the handwritten note made by Mr Boyd which was said to be contemporaneous. There was a clear conflict of evidence between Mr Boyd and Ms Deol. There was no doubt that Mr Jenks had told Mr Boyd on several occasions in clear terms that he was not authorised. That in itself was something that ought to have been disclosed to the insurers as it was plainly a significant material fact. The Tribunal was satisfied that Mr Boyd fully understood his duties of disclosure to insurers, based on the forms he had completed and his extensive experience.

64.15 Mr Boyd's case was effectively that all of the emails from Mr Jenks were overridden by the contents of a telephone conversation between himself and Ms Deol. Ms Deol gave evidence and subjected herself to cross-examination, something Mr Boyd did not do. The Tribunal was entitled to attach greater weight to her evidence than to his submissions. Ms Deol's recollection was clear and the Tribunal noted that it was relatively unusual for her to take that sort of telephone call. This made it more likely that her recollection was accurate.

64.16 The Tribunal further noted that Mr Jenks would have been highly unlikely to have sent the email in October 2020 in the terms that he did if his line manager had confirmed that Mr Boyd remained authorised. The Tribunal also noted that there was no email at all, from Ms Deol, Mr Boyd, or anyone else for that matter, indicating any change in the position as advised by Mr Jenks. If Ms Deol had overridden Mr Jenks, the Tribunal would have expected Mr Boyd to send a follow-up email confirming the changed position.

64.17 The Tribunal noted that the SRA website had shown incorrect information concerning Mr Boyd's authorisation for several months. That was regrettable, but information on a website could not and would not have taken precedence over the contents of a clear email sent to Mr Boyd personally.

64.18 The Tribunal also noted that on 23 June 2021, Mr Boyd had told Mr Smith in an email that the arrangement that he could hold-over pending the outcome of the investigation had been communicated to him in May 2020, which was inconsistent with his case before the Tribunal that it had been communication in July 2020.

64.19 Taking all those matters into account, the Tribunal accepted the evidence of Ms Deol and preferred it to the case advanced by Mr Boyd. The Tribunal found the factual basis of Allegation 1.3 proved on the balance of probabilities.

Principle 4

64.20 The Tribunal again applied the Ivey test.

64.21 Mr Boyd's state of knowledge was that he had received several emails from Mr Jenks making abundantly clear that he was not authorised. Mr Boyd may have disagreed with that stance, but the fact remained that he was fully aware that this was the SRA's position. Mr Boyd was also fully aware of the duties he had to the insurers to disclose any material information. Mr Boyd would have been aware that notification that the Firm was not authorised to practice was a critical piece of information that should have been disclosed immediately. He had therefore made a conscious decision not to

disclose this. The result was that the insurer was kept in the dark – something that Mr Boyd was aware of and indeed, intended.

64.22 The Tribunal found that Mr Boyd knew he was not authorised, knew that he ought to have disclosed it to his insurers and knowingly chose not to do so. The Tribunal found that this conduct would be considered dishonest by the standards of ordinary decent people, as the duty to disclose material facts to insurers was an obvious obligation, particularly for a solicitor. The deliberate decision not to was not honest and the Tribunal therefore found the breach of Principle 4 proved on the balance of probabilities.

Principles 2 and 5

64.23 The Tribunal found the breaches of these Principles proved on the balance of probabilities as an obvious and inevitable conclusion from its factual findings.

65. **Allegation 1.4**

Applicant's Submissions

Principle 4

65.1 Ms Sheppard-Jones submitted that between 4 February 2021 and 23 June 2021 Mr Boyd made three statements to his insurer, each of which was either actively untruthful or was apt to mislead. There should have been a relationship of upmost good faith, and Mr Boyd owed a particular duty to be frank and truthful. Ms Sheppard-Jones submitted that each of those statements was made in a formal commercial context and each was made by him in the knowledge that it was untruthful, or at the very least, that a partial and potentially misleading version of events was being given. Ms Sheppard-Jones reiterated that Mr Boyd was privy to his correspondence with the SRA whereas his insurer was not. In those circumstances, she submitted, his conduct was dishonest by the standards of ordinary and reasonable people.

Principles 2 and 5

65.2 Ms Sheppard-Jones submitted that Mr Boyd's actions in providing incomplete and misleading information, would thereby be likely to reduce public trust in the solicitors' profession. She further submitted that a solicitor acting with integrity, when engaged in correspondence on a very specific issue by his insurer (or in principle by any third party), would know that written communications from his regulator on that specific issue, including very recent correspondence, are relevant to the issues. He would not fail to mention any of that correspondence, whether or not it is contrary to the position he is setting forward. Ms Sheppard-Jones submitted that this demonstrated a lack of integrity on the part of Mr Boyd.

Respondent's Submissions

65.3 Mr Boyd's submissions in relation to this were encompassed within his submissions in relation to Allegation 1.3. For the sake of completeness, Mr Boyd denied this Allegation and denied having any intention to mislead.

The Tribunal's Findings

65.4 The Tribunal examined the representations made by Mr Boyd to the insurers/brokers on 4 February 2021, 5 February 2021 and 23 June 2021, the details of which are set out above under the heading of 'Factual Background'. The effect of each of these representations was that he had authorisation from the SRA. These representations were made in the context of having knowingly withheld information from the insurers as set out in Allegation 1.3. The Tribunal had rejected Mr Boyd's case in respect of his authorisation generally and in particularly in relation to his telephone call with Ms Deol.

65.5 The Tribunal therefore found that each of the representations was untrue and apt to mislead. Throughout the representations, Mr Boyd continued to refer to verbal conversations but did not disclose the emails which contradicted his position and reflected the reality of the situation. The Tribunal found the factual basis of Allegation 1.4 proved on the balance of probabilities.

Principle 4

65.6 The Tribunal's assessment of Mr Boyd's state of knowledge insofar as his authorisation status was concerned is set out under Allegation 1.3. The short point is that he was aware he did not have authorisation. Mr Boyd was responsible for the communications he had on the three occasion that form the basis of this Allegation as he was the person communicating with the insurers. Mr Boyd therefore knew that what he was telling them was untrue and apt to mislead. The Tribunal found that this would be considered dishonest by the standards of ordinary decent people and accordingly found the breach of Principle 4 proved on the balance of probabilities.

Principles 2 and 5

65.7 The Tribunal found the breaches of these Principles proved on the balance of probabilities as an obvious and inevitable conclusion from its factual findings.

66. **Allegation 2**

66.1 In view of the Tribunal's findings in relation to dishonesty, the addition of recklessness as an aggravating feature was not relevant and so this Allegation was dismissed.

Previous Disciplinary Matters

67. There were no previous findings at the Tribunal.

Mitigation

68. Mr Boyd reminded the Tribunal that he had an unblemished regulatory history and submitted that had been fully co-operative with the SRA throughout. The transfers had been returned and no client had lost any monies.

69. Mr Boyd told the Tribunal that, as a result of the investigation and closure of firm being fully publicised, he had effectively been removed from the Roll. He had felt the consequences personally and professionally and would not be able to work in a firm again. The risk to the public was therefore "nil" as he could not practise.

Sanction

70. The Tribunal referred to its Guidance Note on Sanctions (10th Edition – June 2022) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering Mr Boyd's culpability, the level of harm caused together with any aggravating or mitigating factors.

71. In assessing culpability, the Tribunal found that Mr Boyd's motivation in relation to Allegations 1.1 and 1.2 was the significant financial straits in which he found himself. In relation to Allegations 1.3 and 1.4, Mr Boyd knew he needed insurance and was prepared to mislead insurers to obtain and retain it. The misconduct was planned in that Mr Boyd had called for the files and made several transfers and his correspondence with the SRA was ongoing for over a year on the issue of authorisation.

72. Mr Boyd had been in a position of trust, particularly as he was dealing with probate cases and he had total responsibility for his actions. He was a solicitor of considerable experience. The Tribunal found Mr Boyd's culpability to be high.

73. In assessing the harm caused, the Tribunal found that there was an inherent risk of significant harm in making improper transfers out of client account. This was exacerbated when the Firm was on such a precarious financial footing. The Tribunal recognised that the transfers were reversed, but this had not happened for almost a year, during which time the monies were unprotected.

74. The estate representatives had been caused significant distress in the three examples given in evidence. In the case of Mrs Mainprize, this had included Mr Boyd trying to browbeat her into agreeing to a transfer which had already taken place without her knowledge on a false pretext and subsequently lying about his usual practice.

75. The consequent harm caused to the reputation of the profession was serious, as the public would be deeply concerned about a solicitor improperly removing funds to run the business.

76. The misconduct was aggravated by the fact that it was deliberate, calculated and repeated. Although the transfers took place on one date, the misleading of the insurers continued over many months. The nature of probate work was such that there was a vulnerability on the part of the estates and so targeting of those client funds was an aggravating factor. Throughout the period, Mr Boyd had concealed matters from the

estate representatives and the insurers. He was aware that he was in material breach in all aspects.

77. The misconduct was mitigated to some extent by the fact that the monies were eventually returned to the client account. Mr Boyd had been unable to resolve the insurance position however. The Tribunal accepted that Mr Boyd had co-operated with the investigation and had made some admissions. The Tribunal did not find that he had significant insight into his misconduct however.

78. 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. The misconduct was at the highest level and the only appropriate sanction was a strike-off. The protection of the public and of the reputation of the profession demanded nothing less.

79. 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."

80. The Tribunal considered whether the circumstances in this case were exceptional, having regard to James. The Tribunal took account of Mr Boyd's age and the fact that he had been through a lot as a result of the intervention and investigation. The Tribunal recognised that he was not practising at present. Mr Boyd had referred to health issues in his written submissions, but there was no evidence that it had altered the balance of his mind such as to amount to exceptional circumstances. The character references were glowing, but that in itself could not amount to an exceptional circumstance.

81. The only appropriate sanction was that Mr Boyd be struck off the Roll.

Costs

82. Ms Sheppard-Jones applied for costs in the sum of £41,743.92. This was a reduction from the original sum claimed in the Schedule of Costs as that reflected estimates, some of which had not been incurred. Ms Sheppard-Jones told the Tribunal that the SRA was aware of Mr Boyd's bankruptcy and that the SRA would be a creditor in the bankruptcy. Ms Sheppard-Jones noted that all the Allegations had been proved.

83. Ms Sheppard-Jones took the Tribunal through the schedule in some detail. In response to a query from the Tribunal as to the time spent on information review and report preparation, which was recorded at 86 and 63.5 hours respectively,

Ms Sheppard-Jones explained that she was unable to comment but noted that it was lengthy FI report.

84. Ms Sheppard-Jones confirmed that the costs of the intervention had been claimed separately and did not form part of this claim for costs.

85. In relation to Mr Boyd's means, the Tribunal invited submissions following Barnes v Solicitors Regulation Authority [2022] EWHC 677 (Admin). Ms Sheppard-Jones acknowledged that the Tribunal should take account of Mr Boyd's means, which he had submitted.

86. Mr Boyd referred the Tribunal to his statement of means. He did not have any submissions on the costs claimed by the SRA in terms of their level.

The Tribunal's Decision

87 The Tribunal began by assessing the costs before moving on to consider Mr Boyd's financial circumstances.

88. In relation to the cost schedules, the time claimed for information review and report preparation was excessive. There had also been numerous errors in the Rule 12 Statement, some of which had been corrected following an earlier application to amend, and some of which had still been overlooked. The way in which recklessness had been pleaded was a significant issue that had required addressing during the hearing. The Tribunal therefore reduced the costs at date of issue from £30,929.72 to £17,500.

89. The legal costs thereafter had already been reduced by Ms Sheppard-Jones by £5,000. The Tribunal reduced this further to take account of some element of duplication involved by instructing Counsel. While it may have proved necessary and reasonable to do so due to the commitments of the previous advocate, this was not Mr Boyd's fault.

90. The Tribunal assessed the costs as a whole at £32,500.

91. The Tribunal had regard to Barnes and the importance of making a "reasonable assessment of the current and future circumstances" in relation to Mr Boyd's ability to pay. At [46], Cotter J stated:

> "[46] The courts have held for a long time that the guiding principle is that fines, costs and compensation should be capable of being paid off within a reasonable time if imposed in circumstances such as this (i.e., not in ordinary civil litigation). The decision of the tribunal on the reasonable assumption that she had an entitlement to half the monthly surplus would mean that the Appellant would never pay off the debt, on the then current level of remuneration at the time of the hearing (i.e., before she lost her job). I accept, as Mitting J set out, that the Solicitors Regulation Authority does not have the aim of pursuing impecunious solicitors against whom orders have been made and who cannot pay. However, I cannot see how the Authority or the profession is in any way better off leaving to the Enforcement Unit a debt that

> can never be paid, save in exceptional circumstances. The exceptional circumstances provision can be dealt with by what is known as "a football pools" order. That description may not now be understood by a number of younger people. I believe "a lottery order" would be more widely understood."

92. At [48] he stated:

> "[48] No proper exercise of discretion under the Rules could, produce an order for costs that will never be satisfied and will remain a burden on a party for life. I reject Ms Culleton's submission to the contrary i.e., that that is a proper order open to the tribunal even given the exercise of its generous discretion. Nor, as I have stated, can it be correct to leave what is effectively an unrecoverable debt to the Recovery Unit in the hope that it will then take a reasonable view. The tribunal itself is the one with the regulatory requirement to consider means and the Unit should only be required to recover debts which the tribunal considered to be properly recoverable."

93. Mr Boyd had completed a statement of means that was not contested by the SRA. He was not employed and was reliant on pension payments. He had told the Tribunal that he had no assets and had only recently been discharged from his bankruptcy. The reality was that he was in no position to pay a costs order now or at any time in the foreseeable future.

94. In all those circumstances the Tribunal decided to make no order as to costs, based on Mr Boyd's very limited means.

Statement of Full Order

95. The Tribunal Ordered that the Respondent, Richard Charles Boyd, solicitor, be STRUCK OFF the Roll of Solicitors and it further makes NO ORDER as to costs.

Dated this 7th day of November 2022
On behalf of the Tribunal

JUDGMENT FILED AT THE LAW SOCIETY
07 NOV 2022

A N Spooner
Chair