SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12350-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

EDWARD RICHARD FOSTER First Respondent

ROBERT JAMES NEWMAN Second Respondent

RASHPAL KAUR Third Respondent

Before:

Mr P S L Housego (in the chair)
Mr W Ellerton
Mr R Slack

Date of Hearing:
17 to 20 October 2022

Appearances

Victoria Sheppard-Jones, barrister, of Capsticks Solicitors LLP for the Applicant

The First Respondent did not attend and was not represented

Jonathan Goodwin, solicitor, of Jonathan Goodwin Solicitor Advocate Limited for the Second Respondent

The Third Respondent represented herself

JUDGMENT

The Allegations

1. Between 1 September 2018 and 6 December 2018, while a Director of County Solicitors Limited ("the Firm") and its Chief Executive and/or while providing consultancy services to the Firm, **the First Respondent** caused and/or allowed the following improper transfers to be made from the Firm's client account:

    (i) £53, 860.33 on 19 November 2018;
    (ii) £23, 190.61 on 6 December 2018;
    (iii) £20, 000 on 6 December 2018;
    (iv) £18,000 on 21 September 2018;
    (v) £62,000 on 27 September 2018;
    (vi) £7,000 on 28 September 2018;
    (vii) At least £162,832.00 in Client to Office account transfers in October 2018;
    (viii) £37,777 on 6 December 2018;

    and thereby breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the Principles") and Rule 20.1 of the Accounts Rules 2011 ("the Accounts Rules").

2. Between 8 July 2017 and 19 December 2018, **the First Respondent** while a Director of the Firm and its Chief Executive and/or while providing consultancy services to the Firm and/or **the Second Respondent** while a Director of the Firm and its COLP, caused and/or allowed the Firm, contrary to its clients' instructions, to:

    (i) Receive approximately £2,333,838.00 into its client account from mortgage lenders and thereafter pay out those sums to a third party;
    (ii) Fail to inform its clients that those sums were being so paid out;
    (iii) Fail to maintain client ledgers in respect of those sums;
    (iv) Fail to maintain client files in respect of those matters;
    (v) Submit certificates of title to lender clients, which had been signed by individuals who were not authorised to do so; and thereby breached any or all of Principles 2, 4, 5, 6 and 10 of the Principles.

3. **The First Respondent**, while a Director of the Firm and its Chief Executive and/or while providing consultancy services to the Firm, and/or **the Third Respondent** while a Director and Compliance Officer for Finance and Administration ("COFA") of the Firm breached the Accounts Rules in that he/she:

    (i) Between April 2018 and February 2019 failed to complete client account reconciliations every five weeks in breach of Rule 29.12 of the Accounts Rules.
    (ii) Between approximately November 2016 to March 2019 caused and/or permitted the Firm's suspense ledger to be used in breach of Rule 7.1 of the Accounts Rules.
    (iii) Between 1 June 2018 and 31 December 2018 caused and/or permitted the Firm's client account to be used as a banking facility involving approximately £2,333,838.00 in breach of Rule 14.5 of the Accounts Rules.

4. Allegations 1 and 2 were advanced on the basis that **the First and/or Second Respondents**' conduct was dishonest in respect of each or any of the allegations as alleged against them.

Executive Summary

The First Respondent

5. The Tribunal found that Mr Foster's various admissions, including one allegation of dishonesty, were properly made. The Tribunal found all allegations proved, including the one aggravating allegation of dishonesty which had not been admitted.

Findings – Allegation 1
Findings – Allegation 2
Findings – Allegation 3

The Second Respondent

6. The Tribunal found that Mr Newman's admissions were all properly made, including that his conduct had breached the requirement to act with integrity. Allegations 2(i) to 2(iv) were found proved. Allegation 2(v) and the aggravating allegation of dishonesty were found not proved. Mr Newman had had no knowledge that unauthorised individuals were signing certificates of title which was the focus of allegation 2(v).

Findings – Allegation 2

The Third Respondent

7. All elements of allegation 3 were proved. Ms Kaur's evidence was accepted by the Tribunal but the alleged breaches of the Principles were proved. There were no allegations that her conduct had lacked integrity or was dishonest.

Findings – Allegation 3

Sanction

8. The First Respondent, Mr Foster, was struck off the Roll of Solicitors.

9. The Second Respondent, Mr Newman, was suspended from practice for 3 months commencing on 20 October 2022.

10. The Third Respondent, Ms Kaur, was ordered to pay a fine of £3,000.

Documents

11. The Tribunal considered all the documents in the case which were included in an electronic bundle agreed and supplied by the parties.

Preliminary Matters

Anonymity

12. Ms Sheppard-Jones, for the SRA, stated that her instructions were to remove anonymity for all those anonymised in the Rule 12 Statement which had initiated the proceedings.

13. Mr Goodwin, for Mr Newman, and Ms Kaur both indicated that they took no issue with this.

14. The Tribunal determined that clients should continue to be anonymised. The Tribunal considered that the widespread and uncontentious expectation of client confidentiality, and the Article 8 (of the European Convention for the Protection of Human Rights and Fundamental Freedoms) rights of such clients meant that in the absence of specific reasons to the contrary, lay clients should not be named in a public hearing or judgment. Applying the case of Lu v SRA [2022] EWHC 1729 (Admin) and the principles of open justice the Tribunal determined that everyone else would be named.

Civil Evidence Act notices

15. At the outset of the hearing Ms Sheppard-Jones informed the Tribunal that Civil Evidence Act notices were inadvertently not served by the SRA as provided for in the Standard Directions issued by the Tribunal. She submitted that this did not affect the admissibility of the evidence before the Tribunal but may affect the weight given. She noted that documents seized from the Firm formed the basis of the SRA's case.

16. No objection was raised by either Mr Goodwin or Ms Kaur. Mr Goodwin noted that it demonstrated that even the most efficient organisation can make a mistake which is simply oversight and nothing more.

17. The Tribunal determined that no prejudice was caused to any respondent. Mr Foster admitted the allegations, bar one aggravating allegation of dishonesty, and no objection was raised by either Mr Newman or Ms Kaur. The Tribunal considered that, if relevant, consideration would be given to the weight to be placed on any specific evidence in due course.

Proceeding in the absence of Mr Foster

18. Ms Sheppard-Jones invited the Tribunal to proceed in Mr Foster's absence. She submitted that he had voluntarily absented himself from the hearing. He had not engaged with the proceedings, submitting no Answer to the allegations and not participating in case management hearings. She submitted that it was in the public interest that the serious allegations be determined, and also in the Second and Third Respondents' interests. She submitted that Mr Foster would not attend any future hearing in the event that the Tribunal decided not to proceed.

19. Neither Mr Goodwin nor Ms Kaur made any submissions on this issue.

20. The Tribunal was satisfied that the proceedings' paperwork, including notice of the substantive hearing, had been served on Mr Foster and that by virtue of Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 it had the discretion to hear the case in Mr Foster's absence if that was fair in all the circumstances. The Tribunal had regard to the cases of R v Jones [2002] UKHL 5 and GMC v Adeogba [2016] EWCA Civ 162. Correspondence to which the Tribunal was referred indicated that Mr Foster was aware of the proceedings and envisaged them continuing in his absence. He had not said that he was ill, nor had he requested an adjournment or given any indication that he wished to participate in any future hearing. The Tribunal noted the comment in Adeogba that there was a burden on all professionals to engage with their regulator both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they signed up when being admitted to the profession. The allegations were of serious misconduct. The Tribunal determined that Mr Foster had deliberately chosen not to exercise his right to be present or to give adequate instructions to enable lawyers to represent him and there was no good reason not to proceed. The Tribunal was satisfied that in all the circumstances it was appropriate and in the public interest for the hearing to proceed in the Mr Foster's absence.

Factual Background

21. Mr Foster was admitted to the Roll of Solicitors in August 1997. At the time of the hearing, he did not hold a practising certificate. He was said to be engaged by his own company, eLawyer Services Limited, an unregulated legal services company undertaking non-reserved legal activities.

22. The Firm began trading on 30 September 2016. Mr Foster was a consultant, director and majority shareholder (holding 75% of its shares). On 1 November 2018 Mr Foster resigned from these roles and remained as a consultant solicitor until the Firm closed in March 2019. At the time of the alleged misconduct, he was Chief Executive Officer and had responsibility for anti-money laundering compliance.

23. Mr Newman was admitted to the Roll of Solicitors in February 1981. At the time of the hearing, he held a practising certificate subject to conditions that he may not be an owner, manager, Compliance Officer for Legal Practice ("COLP") or Compliance Officer for Financial Affairs ("COFA") nor hold client money. At the time of the alleged misconduct, he held the role of COLP and manager at the Firm. He had responsibility for overseeing the conveyancing/mortgage area of work.

24. Ms Kaur was admitted to the Roll of Solicitors in February 2010. At the time of the hearing, she held a practising certificate subject to conditions relating to holding or receiving client money, authority over client accounts and providing that she may not act as COLP or COFA or act as a manager or owner of any authorised body. She was said to be employed at Taylor Rose TKK Limited as a consultant. At the time of the alleged misconduct, she was a director, COFA and practising solicitor at the Firm.

Witnesses

25. 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 considered all of 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:

- Mr Newman, the Second Respondent
- Ms Kaur, the Third Respondent

Findings of Fact and Law

26. The SRA 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 Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

27. **Allegation 1: Between 1 September 2018 and 6 December 2018, while a Director of the Firm and its Chief Executive and/or while providing consultancy services to the Firm, the First Respondent caused and/or allowed the following improper transfers to be made from the Firm's client account:**

(i) £53, 860.33 on 19 November 2018;
(ii) £23, 190.61 on 6 December 2018;
(iii) £20, 000 on 6 December 2018;
(iv) £18,000 on 21 September 2018;
(v) £62,000 on 27 September 2018;
(vi) £7,000 on 28 September 2018;
(vii) At least £162,832.00 in Client to Office account transfers in October 2018;
(viii) £37,777 on 6 December 2018;

and thereby breached any or all of Principles 2, 4, 5, 6 and 10 of the Principles and Rule 20.1 of the Accounts Rules.

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

Background

27.1 Drawing on the Rule 12 Statement, Ms Sheppard-Jones outlined various background matters relevant to all allegations which are summarised directly below to minimise repetition.

27.2 In addition to being the majority shareholder in the Firm, Mr Foster was also the majority shareholder in The Foster Partnership ("TFP"), a conveyancing firm that traded as County Conveyancing. TFP was regulated by the Council of Licensed Conveyancers.

27.3 The Firm held client and office bank accounts with both Santander Bank and Metro Bank.

27.4 The authorised signatories for the Santander Bank accounts were Mr Foster, Mrs Foster, Ms Homewood (a Director of TFP from 28 November 2016 to 17 October 2019) and Mr Newman.

27.5 The authorised signatories for the Metro Bank accounts were Mr Foster, Mrs Foster, Ms Homewood and Ms Carter (a self-employed accounts manager from 2013 until 21 July 2018 who also provided holiday cover for the Firm and TFP between 23 July 2018 and 23 October 2018).

27.6 The Firm also had online banking which could be accessed by Mr Foster and the accounts staff. When making transfers from the Firm's client account the accounts staff would accept verbal authority from Mr Foster in person, via phone or email.

27.7 Ms Kaur was not a signatory on the accounts.

27.8 The SRA's Forensic Investigation Officer ("FIO") raised concerns about the Firm's September and October 2018 reconciliations. While the 31 October 2018 reconciliation appeared on its face to reconcile, in so doing it relied on the inclusion of 13 unreconciled credits totalling £254,224.49.

27.9 In November 2018, the Firm's Accountants produced a report identifying unreconciled postings, the monies for which had not in fact been received by the Firm. In particular, the three largest credits referred to above giving rise to a minimum cash shortage of £248,725.61.

27.10 On being informed of this cash shortage, Mr Foster deposited £248,725.61 into the Firm's client account. As a result, the Firm determined that a shortage did not exist. It was alleged that thereafter monies were withdrawn from the Firm's client account on the basis they were due back to Mr Foster with the consequence that the cash shortage was repeated without any explanation as to how it had occurred in the first instance.

27.11 Further investigations allegedly revealed that from at least November 2016 to March 2019, the Firm improperly used a suspense ledger labelled "COU91.1 - County Solicitors Incorrect Bankings" ("the incorrect bankings ledger"). Postings to this ledger comprised the receipt and payment of mortgage advances, and debits and credits for transactions involving Mr Foster personally. It was alleged that consequently the Firm's reconciliations showed an inaccurate position of cash available.

27.12 A review of the incorrect bankings ledger identified entries with a similar narrative "Monies out E Foster/Transfer E Foster". On further examination the postings entries allegedly related to transfers from the client account to discharge the Firm's debts unrelated to client work. In addition, shortfalls were identified arising from client to office transfers as well as a significant number of unexplained client-to-office (CTO) transfers. No client authority and/or raised bills were produced by the Firm for these transfers of client funds.

27.13 Additionally, a review of the incorrect bankings ledger allegedly identified at least five occasions where there were posting entries with the narrative "E and C Foster", but where the corresponding bank statements did not identify the receipt or payment of the monies.

27.14 The SRA's case was that the Firm's client account was also used as a banking facility to receive £22,944,432 constituting mortgage advances received in relation to 129 transactions recorded on the Firm's incorrect bankings ledger. On receipt by the Firm, the mortgage advances were paid to TFP's client account rather than to the sellers' solicitors' client accounts. In the exemplified matters, relied upon in the allegations, TFP was not a client of the Firm nor was the Firm instructed in any legal transaction involving the mortgage advances.

27.15 It was submitted that neither Mr Foster and/or Ms Kaur as directors and as Chief Executive and/or COFA respectively, had had proper regard for the roles and responsibilities as provided for in the Accounts Rules. In particular, the failure to perform appropriate account reconciliations, the use of a suspense ledger as described above and the use of the Firm's client account as a banking facility all contravened the Accounts Rules.

27.16 On 4 September 2019 the Firm notified its former indemnity insurer that it had identified a client account shortfall of "c£258,000". This was caused in part by payments to shareholders (i.e., Mr Foster, Mrs Foster and Mr Freestone) and it was said that that the Firm "*incorrectly believed monies ...[were] due back to the shareholders*". The client monies were said to remain unaccounted for.

Allegation 1 – the improper transfer of client monies

Allegation 1(i) - (iii)

27.17 A review of the ledger the incorrect bankings ledger identified three posting entries with a similar narrative:

19/11/18	Monies out E Foster	£53,860.33
06/12/18	Monies out E Foster	£23,190.61
06/12/18	Transfer E Foster	£20,000.00
	Total	£97,050.94

27.18 These posting entries recorded transfers from the client account. The client account recorded corresponding transfers (made to E and C Foster, County Solicitors and The Foster Partnership respectively).

27.19 Whilst entry 2 (£23,190.61) was recorded on the incorrect bankings ledger as a transfer to Mr Foster, the payment was shown on the bank statements to in fact have been made to the Firm's office account. A review of the Firm's office account showed that a payment in the sum of £20,060.14 was made under the narrative "Outward Faster Payment HMRC VAT" on 7 December 2018. This happened the day after the sum of £23,190.61 had been transferred from the Firm's client account to its office account.

27.20 In respect of entry 3, the narrative appearing on the Firm's client account referred to both TFP and the office account. A review of the Firm's office account statements was said to have identified no credit for this amount on this date or within three days either side of the date of posting.

27.21 The Firm was asked to provide payment authorisations, payment requests, posting slips, and originator's slips for entries 2 and 3. Ms Kaur replied on 25 March 2019 advising that:

> *"The funds ... were remortgage funds which belong to Ed Foster and came into TFP. There [sic] were then transferred over to CS. These items were then incorrectly allocated to COU91/1 client ledger instead of the office account. Once everything was investigated, we found that this money was cleared funds in client account and was due back to Ed and since it was held in the client account and was then repaid to Ed's account with TFP for the re-mortgages. There are no client to office transfer slips or authorisation slips."*

27.22 On 26 March 2019, the FIO requested "*Evidence (e.g bank statements) of the re-mortgage funds deposited into the firm's client account*". On 4 April 2018 Ms Kaur replied, stating: "*Please see attached bank statement confirming the receipt of the re-mortgage funds from Ed Foster*". Attached to the email was a bank statement extract for a Santander account called "FP Client Current". This was an account held by TFP. The statement showed transactions for 14 November 2018 which included two payments of £120,000. The narrative for these two payments was "Transfer to E and C Foster".

27.23 Ms Kaur was interviewed by the FIO on 12 April 2019 and provided explanations for the above transactions describing them as "improper movements" arising from a historic situation within the Firm. Her explanation for the £20,000 and £23,190.61 transfers was that the monies initially came from TFP. They had been incorrectly paid into the Firm's client account and allocated to the incorrect bankings ledger. When asked why the amounts of £20,000, £23,190.61 and £120,000 were recorded as debit entries on the incorrect bankings ledger she stated:

(i) *"I think they're just, it just demonstrates that there is ... that funds are going incorrectly to different accounts and they should have been going in these, if these are re-mortgage funds they should be going into the capital ledger or the capital nominal ledger as opposed to this suspense account".*

(ii) Mr Foster authorised the £20,000 and £23,190.61 transfers.

(iii) When questioned in relation to the posting of £120,000 and a credit of £240,000 on 15 November 2018 she stated that "*those funds were supposed to come into County Solicitors as re-mortage fund [sic]. They should have come directly, moved across from TFP. If the re-mortgage matters with TFP, across to County Solicitors office account, and I don't think we would have had any of these discrepancies or issues ...*

... what it does show is that eh [sic] accounts staff do not appear to know which entries to post and what entries to not. Because you can see some of them are nonsensical. They go in twice, come out twice and then they come out again. And they're literally in sequence, which tells me that they are not clear on how to maintain those, those ledgers".

(iv) In relation to the £53,860.33 withdrawal Ms Kaur stated that this was the same amount identified on the Accountant's Report as not banked on 31 October 2018 and replaced with the £248,726.61 cheque on 15 November 2018. The withdrawal was authorised by Mr Foster for his benefit.

(v) The transfers were part of a historic situation with the Firm and not an isolated incident. She acknowledged that the series of three transactions highlighted by the FIO comprised "improper movements" that needed to be corrected.

27.24 Following the interview, the FIO sought further information and documents. Ms Kaur responded on 7 May 2019 stating:

> *"It was suggesting [sic] that there was a substantial shortfall on client account based upon incorrect postings on that COU91 ledger. Due to the incorrect postings, Ed had arranged for payments to be made from his re-mortgage ledger with TFP to the CS client account (c. £200,000 in total).*
>
> *Once these payments were allocated and cleared on the COU91 ledger, there was a substantial client credit balance on that ledger. In effect this meant that the funds were actually due back to Ed. We investigated the items and there has not been a shortfall on client account. The posting entries were simply to correct the incorrect items.*
>
> *1. A refund to be made to Ed, by transfer back to his remortgage ledger on TFP, in the sum of £120,000. This was a part payment of his loan account.*
> *2. A further refund to be made to Ed for £20,000. From recollection Ed believes that this went to his personal account with HSBC but cannot be certain.*
> *3. A further refund to be made for £23,190.61. These funds had been allocated to reinvest into CS to cover a potential shortfall on cash flow for the month. These funds ought to have been transferred straight to the office account and posted (correctly) against the nominal ledger for my loan account.*
>
> *Looking at the £53,860.33 - this looks like the repayment of another cash loan, which appears to have been made initially earlier in the month ... position was that the loan was made and then repaid. It is accepted that this should have been put through the nominal ledger for Ed's loan account, rather than COU91 on client account".*

27.25 On 5 November 2018, the FIO sent a production notice to the Firm requiring information and documents be provided. Ms Kaur responded on 19 December 2018 on behalf of (amongst others) herself and Mr Foster. It was said that posting entries was carried out by the accounts team following directions issued by Mr Foster. It was also stated that the Firm's directors had no cause to question maintenance of the client account or any transfers as this was undertaken by Mr Foster and reliance had been placed on assurances made by him that all was in order.

27.26 Mr Foster's involvement in the transfer of funds was detailed as follows:

(1) In response to a request for the authorisation/remittance advices requested it was said that "*The directors have been unable to locate the underlying authorisation paperwork. These instructions were given directly by the former CEO*".

(2) In response to a request for all internal communications providing instructions it was stated that "*The directors wish to reiterate, that prior to 1 November 2018, they did not have any active participation in the management of the firm's client and office account. This was undertaken by Edward Foster ...*"

(3) In response to a request to provide information as to who provided instructions for certain debits it was stated that "*The instructions were given either orally or by email from the former CEO directly to accounts staff to bank the funds*"

(4) In response to a query about why the funds were received into the Firm's client account "*The authorisation was issued by Edward Foster either orally or by email ...*"

(5) In response to a request for the underlying documentation to support the client to office transfers it was stated that "*the instructions were given either orally or by email. The directors have not been able to obtain copies of any such emails as we have been advised that they have been deleted and are therefore irretrievable. It is accepted by all that the directions were given by Edward Foster and not any of the directors, who were themselves unaware of this practice*".

(6) As to the procedural and authorisation process for client to office transfers it was stated that "*Edward Foster gave instructions to the accounts team regarding transfers*".

(7) "*All worked [sic] was supervised by Edward Foster in his role as Chief Executive and majority shareholder. The division of responsibilities within the Firm was such that the directors at that stage did not participate in the financial management of the business and were unaware of the issue since flagged...*"

(8) "*As the CEO, Edward Foster had day to day operation of the Firm's accounts*."

27.27 The SRA's case was that each of the above transfers involved transfers of client monies. Rule 20.1 of the Accounts Rules provides for eleven circumstances when client money may be withdrawn from a client account. It was submitted that none had been evidenced as a basis for the above transfers of client money. It was further alleged that credits said to have been received from Mr Foster were being recorded on the incorrect bankings ledger when no such credit was in fact received into the accounts. This gave rise to the impression that there were additional client monies when there were not. It was alleged that the capital loans were not provided in the manner suggested and as such money did not fall to be returned to Mr Foster. It was submitted that it followed that that the transfer of clients' monies was improper and undertaken without proper authorisation.

27.28 It was alleged that Mr Foster was responsible for the transfer of the client monies. Having overall control of the financial management at the Firm, he authorised all of the improper transfers.

Allegation 1 (iv) - (vi)

27.29 The Firm's reconciliation statements from April 2018 to October 2018 showed that the Firm did not conduct three-way reconciliations in accordance with the Accounts Rules. The Firm did not compare the balances on client cash accounts with balances shown on the bank statements after allowing for all unpresented items of the Firm's client accounts. As a result, the Firm's reconciliations allegedly failed to show cash shortages.

27.30 The FIO conducted a comparison of the total liabilities to clients with cash held in client bank accounts on 30 September 2018 which showed a shortage of £87,000.

27.31 The Firm's Accountants provided a report, on 14 November 2018, having undertaken a review of the Firm's client bank reconciliations at the Firm's request. They also identified an £87,000 cash shortage.

27.32 The Firm's Accountants reviewed the bank statements and were of the opinion that the £87,000 related to client to office account transfers not recorded in computer records at September 2018. Their report concluded that "*we have not found it is not possible [sic] to link the reconciled postings to CTO [client to office] transfer totalling £87,000 which were not entered in the previous month, the client Santander bank balances on the firms bank reconciliation do agree to the bank statements at the month end*".

27.33 The Firm was asked to produce a copy of the ledger for each relevant transaction, the underlying documentation supporting each of the client to office transfers and a statement identifying the purpose of the transfer and if relating to a bill a copy of the bill. The Firm did not provide these documents but stated:

> *"(i) There is no client ledger. The funds were incorrectly placed into this account.*
>
> *(ii) The instructions were given either orally or by email. The directors have not been able to obtain copies of any such emails as we have been advised that they have been deleted and are therefore irretrievable. It is accepted by all that the directions were given by Edward Foster and not any of the directors who themselves were unaware of this practice.*
>
> *(iii) ... the initial audit by Spurling Cannon identified delays in posting entries to the client ledgers ... There were often delays of several days in posting entries to client ledgers. As a result, sums of money were transferred from client to office based on a bills report which is generated from our accounts system. The directors had no cause to question the maintenance of the client account or any transfers previously as this element of the management was undertaken by Edward Foster and the directors acted on the assurances made and given to them that accounts were in order. There was no known reason to suspect that this was not the case. It should be noted that all time*

throughout that the month end reconciliation reports always balanced save for the September reconciliation which has been promptly rectified ... The funds were transferred on the basis of a covered bills report which is a report generated from our accounts system. It now appears that some of these sums were incorrect due to previously unknown posting errors made by accounts staff. Edward Foster confirms that historically if there was cash shortfall, these funds were moved immediately from his own personal resources. He accepts that this is not a satisfactory position and is also keen to ensure compliance and maintenance of proper records."

27.34 When asked about the £87,000 shortfall during her interview with the FIO Ms Kaur stated:

" ... our accounts software system um tells us on a daily basis how much we have in bills. So, how many invoices are posted to the system that we can legitimately take from client as the works have been done. If that figure is then incorrect or the entries are incorrect. It will then directly impact on what we withdraw. So, our response is that those figures were clearly incorrect. That has resulted in discrepancies or a shortfall, and then those funds were placed back by Mr Foster".

27.35 Ms Carter provided written responses to the FIO on 30 April 2019 stating:

"...b) A "covered bills" report and "covered disbursement" report would be generated by TFP. These reports would confirm the level of funds available in client account to be transferred to office account, reducing the liabilities generated by the invoice or disbursement being paid out.

c) Month end reconciliation reports were prepared every month end. The first step would be ensuring that every single debit or credit entry on both client and office bank accounts were posted to the ledgers thus ensuring that the balance shown on the bank report agreed with the closing balance on the bank statements. There will of course be "unpresented" items at every month end- both debit and credit entries. On a daily basis we would print off the bank statement for both client and office accounts and all items would be reconciled. The bank reconciliation report from TFP showed all items posted on client, office and nominal ledgers for that specific month. A further report would confirm all matter balances - by branch - and confirm that the correct funds are held in client and office account. Other reports included in the month end "bundle" included a bills delivered report, a report showing any overdrawn client ledgers or office ledgers showing a credit balance. On TFP only one month can be open at any one time so the month end procedures would have to be carried out on the system before any posting could be done for the following month."

27.36 Rule 20.1 provides for the specific circumstances when client monies can be withdrawn from the client account and it was submitted that no documentation giving rise to any of the circumstances justifying the transfer of sums in question as provided by Rule 20.1 was produced.

27.37 Again, it was alleged that the improper transfers of client monies were authorised by Mr Foster. The SRA's case attributed the identified shortfall of £87,000 to improper transfers of £18,000, £62,000 and £7,000 made between 21 and 28 September 2018.

Allegation 1(vii)

27.38 Thirty client to office account transfers totalling £243,858.36 were identified as having occurred in October 2018. Each transfer was said to represent money transferred for bills.

27.39 The Firm's accountants provided a report for the year ended 31 March 2018 to which a qualification was attached. The qualification arose as client to office transfers were made prior to bills being raised and recorded in the Firm's books of account. The report recorded that:

> *"Our review of a sample of office receipts from the months of October and March 2018 included CTO [client to office] transfers. It was identified that transfers from clients to the office bank account had been made before the bills were raised on the client's systems. This is in breach of the rule AR20.3 and a failure to keep proper records."*

27.40 The accountants attached a table setting out various dates where the client to office ("CTO") transfer did not correlate to the bill raised. Two particular dates were identified: 26 October 2017 and 2 March 2018. The Tribunal was referred to elements from this table.

27.41 An accountant's report following a review of the Firm's September 2018 and October 2018 reconciliations provided a further narrative on the Firm's billing procedures. The report identified similar issues to those set out above, namely that there were CTO account transfers in excess of bills raised:

> *"It is difficult to link transfers from clients' account to the office bank account as these are being made before bills are raised on the computer systems. This is in breach of the rules and a failure to keep proper records."*

27.42 The FIO conducted a review of all CTO transfers made in October 2018. The client and office bank statements indicated that there were at least thirty CTO transfers in October 2018. The Tribunal was referred to a table setting out these thirty transactions. Twenty of the thirty transfers were in round sum figures.

27.43 The Firm failed to provide the bill number and client name for each transaction when requested. The Firm provided some documentation. It was said to be apparent from the limited documentation provided that there were irregularities and missing documentation:

(1) The bills for ten CTO transfers could not be located.

(2) An email from Mr Foster to the Firm's accountants dated 14 November 2018 showed that transfers were made having regard to a covered bills report; any shortfalls on the ledgers at the end of the month would be corrected via payments from Mr Foster.

(3) An email from Ms Kaur to staff at both TFP and the Firm dated 11 December 2018 set out specific instructions on client bills and transfers; this included a specific instruction that "*any transfer of £10k or above must be approved by me first and not Ed*".

27.44 Following a request in January 2019 from the FIO for further information Ms Kaur provided two spreadsheets which included client matter numbers and invoice numbers for eighteen of the thirty CTO transfers. The twelve CTO transfers which could not be accounted for in the spreadsheets were identified in the FIO report and were all in round sum figures. No further information was forthcoming despite further requests.

27.45 A review of the twelve CTO transfers for which no information was provided showed that five were transferred to the Firm's Santander Office Account and seven were transferred to the Firm's Metro Office Account. Five debit balances were identified during the time of the CTO transfers in the Santander and Metro Office. Furthermore, in at least seven instances the office bank statements showed that a CTO transfer directly funded payments from the office account. In the absence of those CTO transfers, these payments could not have been made without the balance of the Firm's office account going beyond the Firm's agreed overdraft facility.

27.46 Ms Kaur explained in her interview with the FIO that CTO transfers were conducted on the basis of a covered bills report that identified the invoices posted to the system so the Firm could transfer client funds for work done. She also stated that the Firm's directors did not have the power or ability to authorise financial transactions, nor did she have access to financial information that a COFA ought to have. On becoming managing partner following Mr Foster's resignation, she put in place policies and procedures to ensure bills were posted correctly, ledgers were properly maintained, and the Firm kept proper records.

27.47 In her response to the FIO Ms Carter provided comments and explanations regarding CTO transfers which included:

(a) *"I was also dealing with the daily cash flow pressures and was spending a good part of each working day trying to find funds to cover the CS [the Firm's] trading expenses, which involved going though pages and pages of ledger reports, trying to identify cases where CS was due money and where we could transfer funds to office account".*

(b) *"Once work has been undertaken on a file by a fee earner, an invoice was raised and sent to accounts for posting on the individual ledger. A copy of the invoice was entered on to the clients file and a further copy was sent to the client. Specific posting tasks were allocated to certain accounts staff depending on the branch raising the invoice. CS had a*

number of offices, I cannot recall which members of staff would be responsible for posting which entries".

(c) *"Funds were being transferred from client to office account before the costs invoices were posted to the ledgers (sometimes, there was a delay of several days). This generally happe[ne]d at the end of the month when CS was under cash flow pressure to pay the staff salaries. On each occasion, I would advise EF of the shortfall which needed to be made up to meet all the liabilities. EF would then authorise a transfer of sufficient funds from client to office and we would need to make this up. EF and I would spend a lot of time going through client ledgers to identify sums which could be transferred. If there was still a shortfall at month end, EF would then issue a cheque or would make a bank transfer for the amount of the shortfall on client account, as a short term cash flow loan. This would then be repaid within the first week or so of the next month. I wish to reiterate none of the directors of CS or the COFA or COLP at the time were made [sic] of these issues under instructions".*

(d) "*Transfers on client and office account were required to be supported by posting slips created on the TFP system by the staff of CS. On other occasions, transfers were requested and authorised by EF".*

27.48 In summary, it was alleged that the Firm had not provided documentation in relation to twelve CTO transfers. As to the remaining eighteen bills relating to the other CTO transfers, there was alleged to be no evidence indicating that the bills were in fact sent as required by Rule 17.2 of the Accounts Rules. Additionally, as noted above, many of the sums transferred were round sum withdrawals in breach of Rule 17.7 of the Accounts Rules.

27.49 Rule 20.1 of the Accounts Rules provides for the circumstances in which client money can be withdrawn from the client account. None had been evidenced as arising in the CTO transfers in question. The CTO transfers were submitted to be improper transfers and to have been authorised by Mr Foster.

Allegation 1(viii)

27.50 On 6 December 2018 £37,777 was transferred from the Firm's client account to TFP. The transfer included the Firm's case reference. The Firm had acted in the probate of Ms D (Deceased) and Mr Foster was the co-executor.

27.51 In an email dated 25 March 2019 Ms Kaur stated that the file had been transferred to TFP. The FIO sought a copy of the client authority authorising the transfer for the funds from the Firm. Ms Kaur replied stating that she would revert shortly. It was said in the Rule 12 Statement that this query remained outstanding.

27.52 Ms Carter stated in her written response that:

"Transfers on client and office account were required to be supported by posting slips created on the TFP system by the staff of CS. On other occasions, transfers were requested and authorised by EF".

27.53 The SRA relied again on the comments on transfers generally made by Ms Carter and Ms Kaur as summarised above. It was again alleged that none of the circumstances in Rule 20.1 of the Accounts Rules where client monies may be transferred from the client account had been evidenced. The transfer was again authorised by Mr Foster.

Alleged breaches of the Principles

27.54 It was alleged that Mr Foster had failed to act with integrity in breach of Principle 2. The SRA relied upon Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366 in which it was said that integrity connotes adherence to the ethical standards of one's own profession.

27.55 As set out above, it was alleged that Mr Foster authorised the various improper transfers of client monies. None of those circumstances in the Accounts Rules were evidenced as a justification for the withdrawals. It was submitted to be evident that some of the transfers were made to overcome cashflow difficulties for the Firm. In addition, client monies were used to repay Mr Foster – monies said to have been provided by him to overcome short-term difficulties in meeting the Firm's liabilities. Some of the funds said to have been provided by him by way of loans were not recorded as having been received by the Firm despite appearing on the incorrect bankings ledger.

27.56 It was submitted that a solicitor acting with integrity would have ensured that all client money was used for the purposes for which it had been entrusted. Any transfer of client monies would have been conducted with the appropriate authorisation and/or client authority to do so. A solicitor acting with integrity would have ensured that all monies posted as having been received by the Firm were in fact received into the Firms' accounts ensuring that all matters could be reconciled. Mr Foster was an experienced solicitor and would have known that client monies could only be withdrawn when specific circumstances arise as provided for by the Accounts Rules. A solicitor withdrawing client monies in circumstances other than those provided for by the Accounts Rules was submitted not to be acting with integrity. Accordingly, Mr Foster was submitted to have breached Principle 2 of the 2011 Principles.

27.57 It was also alleged that Mr Foster's conduct breached Principles 4, 5, 6 and 10 of the 2011 Principles. It was not in the best interests of his clients for him to authorise the improper transfer of client monies. There was no evidence to indicate that the clients provided the monies to overcome the Firm's cashflow difficulties and/or to financially assist the Firm in meeting its financial obligations and/or to repay personal loans of Mr Foster to the Firm. To use client monies in this manner was submitted to fail to provide a proper standard of service to the client and to amount to a misappropriation of client monies such that their money and assets were not being protected.

27.58 The conduct alleged was submitted to amount to a breach of the requirement to behave in a way which maintained the trust placed by the public in solicitors and in the provision of legal services. Public confidence was likely to be undermined by solicitors using client monies to overcome cashflow difficulties and/or to meet financial obligations of the Firm and/or repay personal loans to a director of the Firm.

Rule 20.1 of the Accounts Rules

27.59 As set out above, it was submitted that no evidence had been produced suggesting that the circumstances in Rule 20.1 of the Accounts Rules when client monies can be withdrawn from the client account applied. The transfers were submitted to be improper transfers made in breach of this rule.

Dishonesty alleged

27.60 It was alleged that Mr Foster had behaved dishonestly according to the test set out by the Supreme Court in Ivey v Genting Casinos Ltd t/a Crockfords [2017] UKSC 67:

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

27.61 It was alleged that Mr Foster used client monies to overcome cashflow difficulties involved in running the Firm's business. In certain instances, monies transferred from the client account were used to discharge a debt. The transfers were made at times when the Firm's account had insufficient funds to make the payment and the transfer of client monies allowed for the payment to be made. Client monies were being used by Mr Foster to ensure that the Firm was able to discharge its ongoing liabilities without the agreement of the clients and in circumstances where he knew, but the relevant clients did not, that the transfers were being made. He knew this arrangement was for his own benefit as the majority shareholder in the Firm, and his associates, who were the minority shareholders, but to the detriment of clients whose money was being withdrawn but not, in fact, replaced (as was evidenced by the existence of a shortage on the client account). In addition, client monies were also allegedly used to repay monies purportedly due to Mr Foster but not in fact paid by him into the Firm's accounts.

27.62 Mr Foster had been given the opportunity to provide an explanation for his actions but had declined to provide one. It was submitted that the proper inference to be drawn from that failure was that he was unable to do so. It was submitted that ordinary, decent people would consider his conduct dishonest.

The First Respondent's Case (including on dishonesty)

27.63 Mr Foster's position was set out in a letter of 3 October 2022 sent to the Tribunal on his behalf by Peter Cadman of Russell Cooke Solicitors LLP. The letter stated:

> *"Mr Foster admits all allegations against him including now the dishonesty in Allegation 1."*

The Tribunal's Decision (including on dishonesty)

27.64 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the admissions were properly made.

27.65 The Tribunal accordingly found that the breaches of Principles 2, 4, 5, 6 and 10 of the Principles and Rule 20.1 of the Accounts Rules were proved to the requisite standard.

27.66 Mr Foster had authorised the various improper transfers of client money. The available evidence, and Mr Foster's admissions, indicated this was likely to be to overcome cashflow difficulties for the Firm and to repay monies to him in respect of loans which were not recorded having been received by the Firm. Ms Carter had told the FIO that she had been instructed by Mr Foster not to inform the other directors of these transfers. The Tribunal accepted that, applying the Ivey test, ordinary decent people would regard his conduct as dishonest. The Tribunal found the admitted aggravating allegation of dishonesty proved to the requisite standard.

28. **Allegation 2: Between 8 July 2017 and 19 December 2018, the First Respondent while a Director of the Firm and its Chief Executive and/or while providing consultancy services to the Firm and/or the Second Respondent while a Director of the Firm and its COLP, caused and/or allowed the Firm, contrary to its clients' instructions, to:**

(i) Receive approximately £2,333,838.00 into its client account from mortgage lenders and thereafter pay out those sums to a third party;
(ii) Fail to inform its clients that those sums were being so paid out;
(iii) Fail to maintain client ledgers in respect of those sums;
(iv) Fail to maintain client files in respect of those matters;
(v) Submit certificates of title to lender clients, which had been signed by individuals who were not authorised to do so;

and thereby breached any or all of Principles 2, 4, 5, 6 and 10 of the Principles.

The SRA's Case

28.1 The FIO identified movements of money in and out of the Firm's client account between 8 July 2017 and 6 December 2018 when the Firm received and subsequently paid £22,944,432 to TFP. The money was received as mortgage advances from lenders. As indicated above, the Firm maintained the incorrect bankings ledger in part to record the mortgage money received on behalf of TFP. The £22,944,432 received was recorded on this ledger as relating to 129 transactions.

28.2 The Firm acted in conveyancing matters in conjunction with TFP. TFP was instructed by the purchasers to act in the purchase of various properties. The Firm acted for the lending institution as it, unlike TFP, was a member of the relevant lender's conveyancing panel.

28.3 The Council of Mortgage Lenders' ("CML") Handbook provides instructions for those acting on behalf of lenders in residential conveyancing transactions. Part One, "Instructions and Guidance", states:

"1.3 The Lenders' Handbook does not affect the responsibilities you have to us under general law or any practice rule or guidance issued by your professional body from time to time.

1.4 The standard of care which we expect of you is that of a reasonably competent solicitor or licenced conveyancer acting on behalf of a mortgagee.

1.5 If you are regulated by the Solicitors Regulation Authority (SRA) the limitations contained in the SRA's Code of Conduct 2011 apply to the instructions contained in the Lenders' handbook and any separate instructions."

28.4 The CML Handbook further sets out the requirement that a firm be a member of the lender's conveyancing panel:

"1.12 In order to act on our behalf your firm must be a member of our conveyancing panel. You must also comply with any terms and conditions of your panel appointment.

1.12.1 Our instructions are personal to the firm to whom they are addressed and must be dealt with solely by that firm. You must not sub-contract or assign our instructions to another firm or body, nor may you accept instructions to act for us from another body, unless we confirm in writing otherwise."

28.5 It also sets out the following in relation to lender money in Section 6, 'Property', and Section 10, 'The Loan and Certificate of Title':

"*6.4.5 You must report to us ... if you will not have control over the payment of all of the purchase money (for example, if it is proposed that the borrower pays money to the seller direct) other than a deposit held by an estate agent or a reservation fee of not more than £1,000 paid to a builder or developer".*

"10.7 You must hold the loan on trust for us until completion. If completion is delayed you must return it to us when and how we tell you".

28.6 The CML Handbook sets out provisions providing for the maintenance of a mortgage file which includes:

"*14.3.1 For evidential purposes you must keep your file for a least six years from the date of the mortgage before destroying it. You should retain on file those documents as specified in these instructions, and/or our individual instructions, and any other documents which a reasonably competent solicitor/conveyancer would keep".*

28.7 The Firm was thus required to maintain a mortgage file which would include a record of the work performed including a client ledger, underlying authorisation paperwork and/or remittance, correspondence, a mortgage report and investigation on legal title, correspondence between the Firm and the lender/borrower and the Firm's terms of service.

28.8 The Firm explained the nature of its relationship with TFP in conveyancing matters to the FIO stating:

> *"CS are only permitted to undertake work as agents on behalf of The Foster Partnership (TFP) who are not on the lender's panels ... it should always be the case that CS would only ever act on behalf of lenders.*
>
> *Work undertaken by CS on behalf of the lenders is to investigate title and ensure that the property and legal title are satisfactory and meets the lenders' requirements."*

28.9 On 19 December 2018, the Firm provided a series of emails dated 10 December 2018 which had as the subject "Accounts and Solicitor Accounts Rules - TFP and County". The email addresses to which the email was sent involved the domain names @countyconveynacing.co.uk and @countysolicitors.com. Mr Foster and Mr Newman were included in the email. As part of the thread, Mr Huffey, one of three @countyconveyancing.co.uk domain email address holders, replied about the need for a change of conduct in conveyancing matters stating:

> *"the confusion is clearly the names County Solicitors and County Conveyancing, particularly now that we are in the same building ... are you saying that we are not on the panel CC cannot act for that client?"*

28.10 In further correspondence Mr Huffey stated:

> *" ... we seem to constantly get mortgage offers in the name of CS even where we are on the panel of that Lender and they take an incredibly long time to re-issue which some cases you will jeopardies (sic) a whole chain of transactions in todays "must have yesterday" world of conveyancing ... it appears the confusion is over the address ... what can we do to alter this."*

28.11 The FIO sought further information from the Firm in a second production notice in March 2019. This included any agreement between TFP and the Firm in addition to communications between the Firm and the lenders for nine exemplified transactions details of which were included in the Rule 12 Statement and to which the Tribunal was directed.

28.12 Ms Kaur provided a response on 5 April 2019 which was sent on behalf of (amongst others) herself and Mr Foster:

> *"There was no formal agency or consultancy agreements with TFP and CS. Apart from the TFP files, no additional communications and documents*

> *between client and TFP, County Solicitors and the Foster Partnership and the Foster Partnership and the lender was provided.*
>
> *County Solicitors role in the transactions was ... to prepare the mortgage report and investigate the legal title in accordance with the lender's requirements and in particular the Council of Mortgage Lenders' Requirements. A Certificate of Title would be signed off by County Solicitors once a good legal and marketable title to the property can be obtained."*

28.13 The Firm provided explanations about the mortgage funds in the incorrect bankings ledger and client account. In particular, the Firm stated that "*Ledger COU91/1 was initially set up as a suspense ledger*". The purpose of which was a "*holding account for any unclaimed monies before they could be allocated to the correct ledger. The SRA will note the high volume of transactions were due to the number of offices and the firm is predominantly a conveyancing practice*".

28.14 Included with the Firm's explanation was an email dated 14 November 2018 from the Firm's accountants to Ms Kaur and Mr Foster which stated:

> *"The COU91.1 ledger was created by Sandy Carter as client money from Mortgage Panel Lenders was being received on occasions by the wrong company ... We have previously been advised that now there are only a few lenders where CS Ltd is on the panel & TFP Ltd is not, so there should not be many occasion where monies clients is received (sic) by CS ltd & then paid to TFP ltd ... This account should only include clients (sic) money."*

28.15 Neither TFP nor CC were clients of the Firm at any stage. It was acknowledged that the Firm had provided ancillary services to TFP which included assistance on HR matters or providing administrative support for staff shortages.

28.16 On 5 December 2018 the SRA requested that the Firm produce documents and information relating to nine of the 129 transactions on the incorrect bankings ledger. These nine exemplified transactions accounted for £2,333,838 of the monies received into the client account. The ledger also recorded the same amounts being subsequently paid on to TFP. The Tribunal was referred to a table containing the dates, payment reference, amount, client ledger reference and client account reference for each of the exemplified transactions (and to copies of the underlying documents).

28.17 The Firm was requested to provide various documents in relation to these nine matters. The Firm was unable to produce any matter files or ledger accounts (other than the incorrect bankings ledger). However, it did produce nine matter files together with ledger accounts held by TFP. The Firm confirmed the Fee Earner for each of the nine matters which was either Mr Foster with Natalie Johnson or Trevor Huffey and on one occasion Mr Foster alone. In addition, the schedule provided by the Firm recorded that the entity involved was either TFP or CC (the trading name of TFP).

28.18 A review of the files indicated that they contained correspondence and documentation which showed that TFP was instructed by the purchaser in the conveyancing matter. The files showed no evidence of any underlying legal work performed by the Firm, other than the signing of the lender's certificate of title. Each file contained an

authorisation form signed by the borrower indicating that he/she was content with the Firm receiving the mortgage on their behalf and that TFP would supply copies of all other documents to the Firm relating to the transaction. The files included no documents which indicated that the Firm could act as agent for the conveyancer in the matter.

28.19 Each of the nine TFP files contained a Certificate of Title ("COT") signed in the name of the Firm. Four were signed by Mr Huffey and four were signed by Ms Johnson. The ninth was unsigned. The files produced contained emails and ledgers in which Mr Huffey and Ms Johnson were identified as legal executives at CC.

28.20 Each COT included the following statement:

> *"We the conveyancers named above, give the Certificate of Title referred to in IB (3.7) of the SRA Code of Conduct 2011, published by the Law Society, as if the same were set out in full, subject to the limitations set out in it."*

28.21 Indicative Behaviour 3.7 of the SRA Code of Conduct 2011, and the Law Society and CML Approved Certificate of Title - undertaking (h) and (i) state that the conveyancer:

(1) *"will notify you in writing if any matter comes to our attention before completion which would render the certificate given above untrue or inaccurate and, in those circumstances, will defer completion pending your authority to proceed and will return the mortgage advance to you if required";* and

(2) *"confirm that we have complied or will comply, with your instructions in all other respects to the extent that they do not extend beyond the limitations set out below".*

28.22 The SRA's case was that no documents were produced by the Firm suggesting that Mr Huffey and/or Ms Johnson were employed by the Firm or had authority to sign COTs on behalf of the Firm.

28.23 A meeting was held on 8 March 2019 between Ms Kaur and the FIO. At this meeting the Ms Kaur confirmed that the nine exemplified matters were typical of how conveyancing matters were conducted at the Firm and TFP.

28.24 During the course of Ms Kaur's interview with the FIO on 12 April 2019 she accepted that the lenders' instructions had not been followed. She did not accept that the lender was unaware of the nature of the relationship and for whom the Firm and CC were acting. Nevertheless, she acknowledged the following:

> *"Well ... they were aware, but ... what isn't explicit, which doesn't mean it hasn't happened or it hasn't occurred, is whether the buyer is separately represented. However, the nature of conveyancing transactions would be, and any normal high street bank would know, is that if you act for a buyer [sic] will nearly always act for lender. So, they would always necessarily, they would infer that you'd act for both ... it's also our role to ensure that they know that the buyer is separately represented. But the buyer and the borrower are nearly always the same person in any event".*

28.25 Ms Kaur stated that the system was established by Mr Foster and the shareholders, not the directors. In relation to the COTs, she stated that the process was that the COT would be signed off by a solicitor or partner. The solicitor in question would ask questions of the relevant fee earner who acted for both TFP and the Firm and as such they could confirm that the work has been completed. She accepted that neither Mr Huffey nor Ms Johnson should have signed their names to a COT.

28.26 In relation to whether the Firm held its own file on the mortgage matters she stated:

> *"There's not a separate file. From what I can gather and from the copies of the files that we have given you, and those files that you requested, historic files as well, some of them are live, I think you've got a cross section of live files. So they, they should be separate files, separate file for the lender. But as I say there isn't one"*.

28.27 Ms Kaur stated that she was unaware of the incorrect bankings ledger until the SRA investigation and was attempting to address what was ultimately a historic situation.

28.28 Mr Newman was interviewed by the SRA on 12 April 2019. He described his involvement in setting up the system whereby the Firm would act in TFP matters:

> *"When both entities the County Solicitors and The Foster Partnership started off, different lenders were taking different amounts of time to accept the, the two firms on their panels, and there was a form of reciprocal arrangement, although it didn't seem to, it seemed to be a little bit one way, um that um where The Foster Partnership was not on the panel, we agreed that County Solicitors would assist them. But it was on the basis they were not on the particular lender's panel. And I have basically set up arrangements where we would receive ID and client's authority to act, with an undertaking to basically let, let us have the client's file. We called upon them, we called upon them to do so."*

28.29 Mr Newman stated that Mr Foster originally had overall charge of conveyancing and saw the Firm and TFP's conveyancing as part of "one pot". Mr Newman stated that while Mr Foster originally had overall charge of conveyancing when it was first set up ultimately he "*seemed to have taken up that role at a later stage*". Mr Newman explained that he had spoken to Mr Foster originally as he had "*wanted to try and make sure it was done properly*."

28.30 Mr Newman stated that the Firm acted for the lender and had instructions from the borrower, but that in reality it was TFP who engaged in reporting to the borrower through correspondence and reporting on the title. He indicated that the lender was unaware of the arrangements between TFP and the Firm where the borrower would consent to documents passing between the two entities. He explained that the lender was not made aware of the arrangement due, he thought, to an oversight on his part.

28.31 During the interview, Mr Newman accepted that the arrangement between TFP and the Firm was "in a way" developed so as to overcome the fact that TFP was not on lender panels because "*you've got to go, if you're not on a panel, to another firm to ask them to deal, with with [sic] the mortgage*".

28.32 When asked about the nine exemplified files he stated that separate Firm files did not exist, that he believed TFP was on the relevant lender panels, that instructions should not have been issued to the Firm but that he was not aware of the specific files themselves.

28.33 When asked whether the Firm were the conveyancers Mr Newman stated that they would not be unless there was a file opened with client instructions. That being so he did not see how the Firm was in a position to sign a document stating that they had performed a role when they had not. In relation to the COT and how they came to be signed stated he "*was not aware of what was going on*". He said that "*as far as I was concerned TFP or County Conveyancing were not on the panel well therefore could not sign the Certificate ... I as the solicitor with County Solicitors, were on the panel could sign it, but they could not. Therefore, I would sign*." He stated that he knew nothing of those that were signed by others.

28.34 Mr Newman stated that Ms Johnson and Mr Huffey were not individuals he recognised as members of the Firm's staff and as such they should not have signed the COTs. When asked if the lender had been misled by non-firm staff signing COTs saying they were the conveyancer he said:

> *" ... on the face of the document they could be unless the individual signing is an employee of the firm".*

28.35 When asked if a blurring of the lines had occurred between the Firm and TFP he said:

> *"The Foster Partnership, they were a separate entity as far as I was concerned ... I didn't see any problem with it ... but I wasn't aware of somebody who might be employed by both signing Certificates."*

28.36 Mr Newman stated that mortgage funds received by the Firm should, on his understanding, have been paid to the seller's conveyancer. Regarding the transfer of mortgage money to TFP he stated that originally the arrangement was that the mortgage advance was to be paid from the Firm to TFP but he subsequently took a different view when:

> *"originally somebody phoned up the lender and I had a phone call from the lender saying they'd had a phone call and, and I think the person who phone [sic], I don't know whether it was misheard or not, but it was County Conveyancing. It wasn't Trevor C, it was somebody else there, and I did like the fact that somebody was phoning up on a mortgage offer which had been addressed to County Solicitors um and discussing a mortgage offer um which they had no business to. You know a mortgage offer is issued to County Solicitors, it must be County Solicitors who deal with the lender".*

28.37 Following this, Mr Newman took the view that the Firm should be dealing with the lender only if the mortgage offer was in its name.

28.38 When asked about the risk arising from the mortgage funds not being sent directly to the seller's solicitors Mr Newman stated:

"Obviously if the transfer you're confident if it's the same owner or business that you know, money goes astray it's going to be financially responsible and if it's not going to happen with him [Mr Foster], taking the money".

28.39 Mr Forster had declined to be interviewed about these matters.

Allegations 2(i) -(ii)

28.40 CML Handbook section 10.7 requires mortgage funds to be held on trust until completion. In each of the nine exemplified matters, the Firm received funds into its client account which were in turn posted on the incorrect bankings ledger. On receipt of these funds they were paid out from the Firm to TFP rather than to the seller's solicitor directly. TFP transferred the mortgage funds, on receipt from the Firm, to the seller's solicitor along with any other outstanding purchase amounts.

28.41 Ms Kaur confirmed that what occurred in the exemplified matters was indicative of how conveyancing matters were conducted during the relevant timeframe. Mr Newman also confirmed in interview that this was the process adopted for mortgage sums received by the Firm.

28.42 The SRA's case was that there was no evidence that the Firm communicated with the lender to say that it was sending the mortgage monies to a third party, or that they had agreed to such a variation of the process stipulated in the CML Handbook. The Firm had no instructions to transfer the money to TFP, nor did they inform the lender that they had done so.

28.43 Mr Foster was the fee earner recorded for each of the nine exemplified matters. In addition to which he was the individual with overall responsibilities for the Firm and TFP such that he was described as viewing them as "one pot". Mr Newman was also involved in overseeing the conveyancing aspect of the business. Mr Newman in interview described what was occurring and how the monies were received and transferred to TFP without the knowledge of the lender. This was a practice that both the Mr Foster and Mr Newman were a part of from its inception and a practice which continued such that over an 18-month period £22,944,432 of lenders' money was transferred from the Firm's client account to TFP's client account.

28.44 In summary, it was alleged that both Mr Foster and Mr Newman caused and/or allowed mortgage sums to be transferred to a third party without the knowledge or consent of the client.

Allegations 2(iii) -(iv)

28.45 As set out above, the mortgage sums received from the lender were transferred into the Firm's client account and recorded on the incorrect bankings ledger. This ledger was the Firm's suspense ledger. It was submitted that this was an inappropriate use of a suspense ledger and that the Firm ought to have had a separate client ledger with each individual mortgage sum received having a corresponding client file. The Firm did not hold such client files. TFP held client ledgers and files from which the relevant documentation in relation to the nine exemplified files were obtained.

28.46 Mr Foster was involved in establishing this practice between the Firm and TFP. Mr Newman accepted that he had overall responsibility for conveyancing matters while acknowledging that the Firm did not hold client ledgers and files.

28.47 It was alleged that both Mr Foster and Mr Newman failed to maintain client ledgers and client files in conveyancing matters in which they received lenders' monies.

Allegation 2(v)

28.48 The COTs included within the nine exemplified files were signed by either Mr Huffey and/or Ms Johnson. The COTs signed included a declaration that they were being signed on behalf of the Firm by an authorised signatory. Neither of those individuals worked for the Firm and as such did not have authority to sign the declaration on the COTs.

28.49 It was alleged that Mr Foster and Mr Newman developed and oversaw a system of practice which resulted in individuals signing COTs when they had no authority to do so.

Breach of the 2011 Principles

28.50 It was alleged that both Mr Foster and Mr Newman failed to act with integrity. They developed a system of practice to make it appear to a specific lender that mortgage transactions were being undertaken by the Firm when in fact they were being undertaken by TFP, who were not on the lender's panel and who it would not therefore have instructed to act on its behalf. Without the Firm and TFP working in conjunction in this manner, TFP would ultimately have lost business. The lender was not informed of the system, which operated in breach of the CML Handbook. The system adopted disguised the reality of the situation from the lender and occurred for a sustained period.

28.51 It was alleged that in continuing to act in breach of the CML Handbook and the terms agreed with the lender, Mr Foster and/or Mr Newman were prioritising their own business interests in generating income above those of the lenders they acted for and the terms of engagement they were obliged to adhere to. They had accordingly acted without integrity in breach of Principle 2.

28.52 It was also alleged that their conduct breached Principles 4, 5, 6 and 10 of the Principles. It was not in the best interests of their clients to allow for the transfer of client monies to a third party without their knowledge. The lenders had specific terms of engagement as provided by the CML handbook upon which monies were entrusted. It was alleged that Mr Foster and Mr Newman did not adhere to this such that the monies were in fact transferred to a third party under a system of practice designed to overcome the fact that the third party was not on the lender's panel.

28.53 In addition, there were no client files and/or ledgers opened and/or held by the Firm. They were held by the third party to whom the lenders' money was transferred unbeknownst to them. The Firm was required to maintain its own client files/ledger and it would have been in the clients' best interest to do so. Furthermore, providing a COT confirming the lender would acquire good title upon completion when the Firm had not

performed the underlying legal work was also not in the clients' best interests which, it was submitted, could ultimately have exposed the lenders to unsecured debt liabilities.

28.54 It was also submitted that the conduct alleged amounted to a breach by both Mr Foster and Mr Newman of the requirement to behave in a way which maintained the trust placed by the public in solicitors and in the provision of legal services (Principle 6).

Dishonesty alleged

28.55 It was alleged on the basis of the above that Mr Foster and/or Mr Newman acted dishonestly applying the test in Ivey.

28.56 Mr Foster and/or Mr Newman developed a system of practice to overcome TFP not being on a lender's panel as required by the CML Handbook. The system continued over an 18-month period and involved the transfer of millions of pounds in a manner contrary to the Firm's terms of engagement. The system developed was one that both Mr Foster and Mr Newman knew disguised the reality of the situation from the lender and that if the lender was to become aware of the true position they would not have advanced the mortgage sums involved. In furtherance of that system, certificates of good title were, to the knowledge of both, signed by individuals who had no authority to do so and were not employed by the Firm. Indeed, the Firm did not maintain its own files in relation to the transactions which it was purportedly undertaking. It was alleged that at its heart the system in practice was designed to hide the true reality of the operation from the lender.

28.57 It was submitted that ordinary, decent people would consider this behaviour dishonest.

The First Respondent's Case

28.58 As recorded above, Mr Foster's position was set out in the email of 3 October 2022 from his representative. The letter stated:

> *"Mr Foster admits all allegations against him … The only matter he will not admit is dishonesty with regard to Allegation 2."*

28.59 The letter further stated:

> "*There has never been a suggestion that the facts asserted are disputed…*
>
> *"On the basis that the admissions are not acceptable and the dishonesty allegation with respect to Allegation 2 is pursued by SRA, Mr Foster submits that there were clear instructions to Mr Newman, the COLP of the solicitors' firm, to create and implement a procedure where mortgage offers to the solicitors' firm were properly redirected to the conveyancers firm, where issued in error -------- and vice versa. Mr Newman did not do this but it was an error/incompetence not anything deliberate or dishonest."*

The Second Respondent's Case (including the allegation of dishonesty)

28.60 Mr Goodwin, for Mr Newman, confirmed Mr Newman's various admissions. He admitted allegations 2(i) to (iv) including the alleged breaches of Principles 2, 4, 5, 6 and 10 of the Principles.

28.61 Mr Newman denied allegation 2(v). In outline, this was on the basis that the scheme that he was involved in establishing did not provide for signature of COTs (certificates of title) by individuals not authorised to do so. He also denied the aggravating allegation of dishonesty.

28.62 Mr Newman was a director at the Firm from November 2016 to March 2019. Mr Newman oversaw conveyancing solely at the Firm (County Solicitors). He was not employed by TFP/CC and had no involvement with them.

28.63 Mr Newman's position was that Mr Foster was the person in control at both the Firm and TFP. He had knowledge of the finances of both firms that the other directors did not. Mr Newman's detailed Answer stated that the other directors had no involvement in the Firm's finances or the management of the client account.

28.64 Ms Carter, the self-employed accounts manager for the Firm from 2013 until 21 July 2018, had told the SRA's FIO:

> *"Funds were being transferred from client to office account before the costs invoices were posted to the ledgers (sometimes, there was a delay of several days). This generally happened at the end of the month when CS was under cash flow pressure to pay the staff salaries. On each occasion, I would advise EF of the shortfall which needed to be made up to meet all the liabilities. EF would then authorise a transfer of sufficient funds from client to office and we would need to make this up. EF and I would spend a lot of time going through client ledgers to identify sums which could be transferred. If there was still a shortfall at month end, EF would then issue a cheque or would make a bank transfer for the amount of the shortfall on client account, as a short term cash flow loan. This would then be repaid within the first week or so of the next month. I wish to reiterate none of the directors of CS or the COFA or COLP at the time were made aware of these issues under instructions of EF."*

Mr Goodwin drew the Tribunal's attention to the final line above which indicated that Ms Carter had been instructed by Mr Foster not to let the other directors of the Firm know about these arrangements.

28.65 Mr Goodwin reminded the Tribunal that Mr Foster had admitted dishonesty in relation to allegation 1. Mr Newman's case and evidence was that it was Mr Foster who had proposed the arrangements which Mr Newman had endeavoured to implement. His evidence was that this was always intended to be a temporary arrangement, for a few months, but he accepted that it had continued longer than that. Mr Foster was a solicitor, and it was submitted on Mr Newman's behalf that he was entitled to trust him and Mr Newman's evidence was that he did so.

28.66 Mr Newman's evidence was that when a previous firm which Mr Foster owned closed (Foster Mackay Limited) the clients were invited to transfer to the new companies (the Firm and TFP, County Solicitors and County Conveyancing, respectively). There were conveyancing matters in progress at that time, some where contracts had been exchanged and where completions of sales were approaching. Mr Goodwin submitted that Mr Foster would have been best placed to explain the arrangements which were then made, but he suggested that it may have been to assist borrowers with the completion of their transactions.

28.67 There were said to be various client matters which needed to be progressed when Foster Mackay Limited closed, and both the Firm and TFP applied for admission to mortgage lender panels. The response times from the different lenders varied. Clients had contacted both firms about progress on their transactions. Mr Newman's evidence was that, given this position, Mr Foster had proposed that if one of the two firms was on a lender panel that this business could help the other one out. This proposal was of no financial benefit to either business but was intended to help reduce the risk of transactions failing to complete.

28.68 Mr Newman was the COLP for the Firm and was a director. Mr Goodwin submitted that whilst this may put extra responsibility on him, it did not reflect the reality which was that Mr Foster was the controlling force at the Firm. It was acknowledged that the COLP and COFA roles were important and that directors and partners often remained liable for actions taken by others.

28.69 It was submitted that Mr Newman's account of his actions, understanding, intention and belief had remained consistent over time. This account had been set out on his behalf in an email of 7 October 2021 to which the Tribunal was referred. It was said in this document, sent on behalf of Mr Newman and Ms Kaur:

> "*Certain safeguards were put into place as part of the arrangement…*
>
> *… Identification was sought for clients who signed the terms of business of County Solicitors, and an undertaking was sought from TFP to produce the client's file if called upon to do so.*
>
> *… No Certificate of Title or request for mortgage funds were requested by the Herne Bay office until documentation had been received, together with evidence that the lender's requirements had been met in the deduction of legal title. There was no automatic release of funds: funds were not released until confirmation was received of completion taking place. Only solicitors or other qualified professionals at County Solicitors were authorised to sign Certificates of Title. No unqualified fee earner was ever authorised to sign such Certificates, or to hold themselves out as being qualified."*

28.70 It was also said in this account from October 2021:

> *"As is set out above, Ms Kaur was not aware or informed that County Solicitors had acted as an agent for TFP mortgages, which Ms Kaur understands was a temporary measure in respect of which the directors at the time had received*

> *certain advice. Mr Newman, similarly, was unaware that what had started as a temporary measure (in the circumstances and for the reasons set out in the introductory paragraphs of this document, above) was ongoing. As soon as Ms Kaur became aware of the historical practice and that it was in fact ongoing, she took action to notify all staff within County Solicitors on the same day and the position made clear that the practice was to stop immediately and not to continue."*

Mr Goodwin submitted that this account, that Mr Newman had not known that the temporary measure had continued, was consistent over time and reflected the true position on his belief and understanding at the time.

28.71 Mr Newman apologised for the shortcomings of his conduct which had been at the suggestion and instruction of Mr Foster. Mr Newman's evidence was that he sought to act in the best interests of clients, and considered that he had, but in hindsight he accepted that he had overlooked important requirements relating to lender clients. It was on this basis that sections (i) to (iv) of allegation 2, and the various alleged Principles breaches, were admitted.

28.72 Allegation 2(v), which was denied, related to COTs being signed by individuals who were not authorised to sign them. The SRA's case relied on nine exemplified transactions during the period of July 2018 to October 2018. Mr Newman had been away from work from August to mid-October 2018 due to an operation. His evidence was that he had had no involvement in any of the nine example transactions. Mr Foster had been the fee-earning solicitor with conduct of those matters. The COTs had been signed by Mr Huffey or Ms Johnson, employees of TFP, without Mr Newman's knowledge. One of the nine exemplar COTs was unsigned.

28.73 Mr Newman had stated in his Answer to the allegations that he had made embarrassing mistakes. He accepted that he did not personally ensure that separate files were opened for both client and lender. At the time he believed that clients would be protected and the Principles would not be breached, although he accepted with hindsight that they had been. He had said in his Answer, and repeated in his evidence, that faced with the same decision today he would not put the same arrangement in place. He maintained that he did not set out or intend to deceive. Mr Goodwin submitted this insight was to Mr Newman's credit but that what was most important was his knowledge and belief at the time in 2017 when he endeavoured to implement the scheme.

28.74 In his witness statement Mr Newman expanded on the safeguards which were intended when the arrangements were put in place. Having been told by Mr Foster that the Firm and TFP were to help one another out, Mr Newman stated:

> *"…In retrospect I think I rushed my research into what was needed. The arrangement was to be that the respective companies helped one another out whilst panel applications were pending. I intended that County Solicitors would receive instructions to act from the borrower with their ID so that we could open a County Solicitors file and my assistant Sally Austen was aware of what I wanted but I did not check and ensure it was done. I did not identify the requirement that I need to tell the lenders of the arrangement and to send the mortgage advance funds directly to sellers solicitors and therefore not ensure*

that the mortgage advance funds went directly to the seller's solicitor rather than be transferred from county solicitors client account to The Foster Partnersip. I was confident that Trevor Huffey a legal executive and Peter Lowe a solicitor would check the Property titles properly. I did also require authority from the buyer to the release of their file to County Solicitors if requested so that if necessary I could see what had been done."

28.75 The Tribunal was referred to copies of signed client authorisations for the Firm to receive the mortgage offer from the lender on their behalf and to act in relation to the completion of the mortgage. The clients also authorised TFP to supply copies of deeds and other documents to the Firm for this purpose. That client authority had been sought in this transparent way was submitted to support Mr Newman's explanation that he intended to implement the scheme in an open and transparent way. Mr Goodwin submitted that if Mr Newman had in fact had any thought that what he was doing was inappropriate, it was inconceivable that he would have openly involved the lay client in this way and made the involvement of both the Firm and TFP so clear. The lay client (the borrower) could easily go directly to the lender and it was submitted that if Mr Newman wished to prevent this and to mislead, he would have involved fewer people in the arrangements and been less transparent.

28.76 It was stressed in Mr Newman's witness statement, and his oral evidence, that:

"No authority was ever given for a Foster Partnership conveyancer to sign on behalf of County Solicitors."

Mr Newman stated during his oral evidence that he did not know who had signed the nine exemplified COTs. Ms Sheppard did not challenge this evidence during cross-examination.

28.77 All the mortgages were completed and registered and all transfers were properly completed without incident. Mr Goodwin submitted that there was no basis on which any of the mortgages which formed the backdrop to these allegations could be challenged.

28.78 Mr Newman's evidence, as noted above, was that this practice went on even after TFP was itself admitted onto lender panels. His case was that he did not authorise anyone not employed by the Firm to sign the COTs and had no knowledge of them doing so. He was absent from work due to an operation for most of the period to which the exemplified transactions had taken place and he had had no knowledge of them. Whatever the shortcomings of the scheme (which he now recognised with hindsight and which informed his various admissions), he maintained, from the time of investigation through to his cross-examination during the hearing, that he was unaware of anyone unauthorised signing the COTs. Mr Goodwin invited the Tribunal to accept what he described as his consistent explanation.

28.79 Mr Goodwin reminded the Tribunal that the burden of proof was on the SRA and that Mr Newman was required to prove nothing. He submitted that the SRA was obliged to prove every element of its case. If the Tribunal was undecided, and the probabilities were equal, then the allegation was not proved. He submitted that the more serious the allegation, the less likely it occurred and the stronger and more cogent the evidence

required to substantiate the allegation. He referred the Tribunal to the case of Re H (Minors) (Sexual Abuse: Standard of Proof) [1996] AC 563 in which Lord Nicholls stated:

> *"When assessing the probabilities the court will have in mind as a factor […] that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. ..."*

28.80 Mr Goodwin submitted that the inherent improbability of an aspect of the allegation was something the Tribunal should take into account. The burden was on the SRA to overcome this unlikelihood. The Tribunal should anxiously scrutinise the factual matrix given the seriousness of the allegation. He submitted that in this case the Tribunal should take as a starting point that solicitors are honest, particularly in the light of Mr Newman's unblemished 41 years as a solicitor.

28.81 Mr Newman had been a solicitor since 1981 and Mr Goodwin described his history as exemplary. He had conditions on his current practising certificate relating to being an owner, manager or COFA or holding client money. Mr Newman was currently employed as a solicitor by Hatten Wyatt who had provided a letter about his employment stating that they had no reason to doubt his honesty or integrity.

28.82 Mr Goodwin agreed that the two-stage test for dishonesty in Ivey should be applied by the Tribunal. First the Tribunal should establish the state of Mr Newman's knowledge at the time. It was submitted that Mr Newman's consistent explanation of his knowledge and belief at the time should be given full credit and should be accepted. Even if the Tribunal found this explanation unreasonable, the question was whether it was genuinely held. It was submitted that ordinary decent people would not consider his actions to be dishonest.

28.83 Mr Goodwin submitted that it was inherently improbably that Mr Newman had acted dishonestly as alleged. He had been open and transparent in seeking and recording the authority of lay clients to the involvement of both the Firm and TFP. Mr Newman accepted with hindsight that he had made errors which informed his admissions. However, his evidence was that he had no knowledge of or involvement with any of the nine examples relied upon by the SRA. It was submitted that without evidence of his involvement, the SRA had failed to discharge the burden of proof on them. The allegation was put on the basis of the exemplified nine transactions reflected in the sums quoted in the allegation.

28.84 Mr Goodwin submitted that evidence of Mr Newman's good character should be considered by the Tribunal. He had no propensity to be dishonest. A character reference to which the Tribunal was referred described him as "straightforward and honest".

28.85 Mr Goodwin reminded the Tribunal that Capsticks had made an error, failing to serve a Civil Evidence Act notice, and he had taken no point other than to note that even the most efficient do make mistakes which are nothing more than mistakes. He submitted that whilst it was easy to put the worst possible 'spin' on events, the simpler explanation was likely to be true. Mr Newman had accepted that, viewed objectively, he had got it wrong when making the arrangements described above. This objective assessment

informed his admission that his conduct had lacked integrity. However, whilst he had got things wrong, he maintained that he had always intended to implement a scheme correctly. Mr Goodwin submitted there had been no evidence called to challenge Mr Newman's evidence that this was his genuine intention and belief. Mr Goodwin submitted that if this was accepted by the Tribunal, the allegation of dishonesty must fail.

The Tribunal's Decision

The First Respondent

28.86 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Mr Foster's admissions were properly made.

28.87 The Tribunal accordingly found the breaches of Principles 2, 4, 5, 6 and 10 of the Principles proved to the requisite standard.

Dishonesty

28.88 Mr Foster denied that his conduct was dishonest. This was on the basis that:

> *"… there were clear instructions to Mr Newman, the COLP of the solicitors' firm, to create and implement a procedure where mortgage offers to the solicitors' firm were properly redirected to the conveyancers firm, where issued in error -------- and vice versa. Mr Newman did not do this but it was an error/incompetence not anything deliberate or dishonest."*

28.89 Mr Foster exercised a high degree of control over the finances and operation of the Firm and TFP/CC. This was reflected in the evidence of Mr Newman and Ms Kaur. It was also reflected in the responses to the SRA, summarised above, submitted on behalf of the Firm and the comments of Ms Carter including that authorisation for transfers in breach of the Accounts Rules were made by Mr Foster and she was instructed not to inform the other directors of the Firm. He had admitted dishonestly causing or allowing the various improper payments which were the subject of allegation 1. The Tribunal considered that this admitted dishonest conduct in the context of cash-flow difficulties for the Firm indicated at least some propensity towards dishonest conduct when significant external pressures were present.

28.90 Mr Foster had not given evidence nor submitted to cross-examination during the hearing. The Tribunal accepted the submission based on Iqbal v SRA [2012] EWHC 3251 and the Tribunal's Practice Direction 5 that a solicitor would ordinarily be expected to give an account of his actions. No explanation for the failure to do so had been provided beyond the comment made by his representative in the email of 3 October 2022 that: "*As a preliminary point Mr Foster has accepted that he will not be a solicitor at the end of these proceedings*." The documents before the Tribunal indicated that Mr Foster had also failed to engage with the FIO's investigation. The Tribunal determined that it was appropriate to draw a negative inference from his failure to engage, give evidence and explain his actions. The letters sent to him by the Tribunal met the preconditions for the drawing of such an inference set out in Kuzmin, R (On the Application Of) v General Medical Council [2019] EWHC 2129 (Admin).

28.91 Mr Newman's evidence to the Tribunal was that he had created an admittedly imperfect, and in retrospect non-compliant, system under which the Firm acted for the lender, receiving mortgage funds without creating a legal file for the lender client and without informing the lender that the Firm was not carrying out the conveyancing. This informed his admissions. He maintained throughout his evidence and under cross-examination that he had no knowledge of anyone outside the Firm signing the certificates of title (COTs). As set out below under the findings in relation to him, the Tribunal found it had not been proved that he had such knowledge.

28.92 In contrast, the Tribunal found that it was more likely than not that Mr Foster had been aware that employees of TFP/CC were signing COTs in the name of the Firm when they were not authorised to do so. Given the degree of control over the finances and operation of the Firm and TFP, as described by Ms Kaur and Ms Carter as set out above, the Tribunal did not find it credible that such a practise had evolved without Mr Foster's knowledge and without him allowing it. As the majority shareholder the personal motive was greater for Mr Foster. It was unlikely that the junior employees involved had taken it upon themselves to begin signing the COTs in the Firm's name. It was more likely than not, taking account of the negative inferences drawn from Mr Foster's refusal to explain his actions and submit to cross-examination, and the propensity towards improper including dishonest conduct when the financial pressures on the Firm/TFP were marked, that he was aware that the system put in place by Mr Newman had been changed in his absence and that unauthorised employees of TFP/CC were signing COTs in the Firm's name. The Tribunal found that Mr Foster caused or allowed this practice which featured in 8 of the 9 exemplified matters (the COT being unsigned in the other matter). This amounted to a material change to the scheme with which Mr Newman had been involved. Applying the test in Ivey, the Tribunal found that such conduct would be considered dishonest by the standards of ordinary decent people. The Tribunal found the aggravating allegation of dishonesty proved on the balance of probabilities.

The Second Respondent

28.93 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Mr Newman's admissions, made to allegations 2(i) to 2(iv), were properly made.

28.94 The Tribunal accordingly found that the breaches of Principles 2, 4, 5, 6 and 10 of the Principles proved to the requisite standard in respect of allegations 2(i) to 2(iv).

28.95 Mr Newman denied allegation 2(v) and that his conduct was dishonest. He was candid in his admissions and his evidence about the shortcomings of the scheme he put in place. He admitted that the lender client had not been informed about the arrangements and roles of the Firm and TFP/CC which he said was an oversight attributable to the pressured situation in which the scheme was devised. His denial, which had been consistent throughout the investigation and proceedings, was that he had been aware or involved with anyone outside the Firm signing the COTs. His case, which was corroborated by Ms Kaur in her evidence, was that he had been absent from work for most of the period during which the exemplified transactions had taken place. The Tribunal accepted that this was so. His evidence was that he had had no knowledge of this practice which he said was hidden from him. He was not challenged during cross-

examination of his evidence in which he stated that he had no knowledge of this practice or who had signed the exemplified COTs.

28.96 The Tribunal accepted that Mr Newman's unblemished forty years of practise as a solicitor was a factor relevant to the probability that he had known about and allowed the scheme he acknowledged setting up to be changed so that individuals outside the Firm began to sign in the Firm's name. The character references produced by Mr Newman indicated no propensity for such conduct.

28.97 The Tribunal found Mr Newman to be a credible witness. His answers were open, direct, detailed and consistent. He had admitted serious misconduct as set out above. The Tribunal accepted Mr Newman's evidence that his focus had been making arrangements which protected the purchaser/borrower clients and that he did not consider that any risk for the lender client was introduced as a result. It was conduct which fell well short of that was required, which was reflected in the admission and finding that his conduct in relation to allegations 2(i) to (2(iv) had lacked integrity. However, Mr Newman had put in place safeguards as described above which included a consent form to be signed by the lay client which clearly identified the roles of the Firm and TFP. The Tribunal considered the submission that this was not conduct suggesting an intent to mislead had force. The Tribunal accepted Mr Newman's evidence that he was unaware of the signing of COTs by individuals outside the Firm who were not authorised to do so. On that basis the Tribunal found that allegation 2(v) was not proved.

Dishonesty

28.98 The Tribunal again applied the Ivey two-stage test. The Tribunal had found that Mr Newman's focus had been delivering to the borrower/purchasers what they were expecting and to the lender client what they required. His failure to inform the lender of the arrangements, which was serious misconduct falling well below what was required, was due to oversight in the chaotic period when the scheme was established. He considered that he had set up a scheme, intended to last for months and not the extended period over which it ultimately operated, which introduced no legal risk and contained meaningful safeguards. These included expressly identifying the roles of the Firm and TFP/CC to the lay clients. The Tribunal had found he did not know about anyone outside the Firm signing the COTs. There was no direct personal gain to Mr Newman in these arrangements in the way there was to Mr Foster as the majority shareholder.

28.99 Applying the second limb of the Ivey test, the Tribunal found that whilst ordinary, decent people would have serious concerns about the conduct, it would be regarded as ill-judged and unprofessional rather than dishonest. Given the evidence about the pressured circumstances in which the scheme was devised and established, the aim of the scheme being to enable clients' transactions to complete as intended, the safeguards which were included, the inherent improbability of a credible solicitor with an unblemished record of over forty years of practise seeking to deliberately mislead lender clients, the Tribunal considered that, taking into account Mr Newman's genuine belief at the time, the aggravating allegation that he had acted dishonestly was not proved.

29. **Allegation 3: The First Respondent, while a Director of the Firm and its Chief Executive and/or while providing consultancy services to the Firm, and/or the Third Respondent while a Director and Compliance Officer for Finance and Administration ("COFA") of the Firm breached the Accounts Rules in that he/she:**

(i) Between April 2018 and February 2019 failed to complete client account reconciliations every five weeks in breach of Rule 29.12 of the Accounts Rules.

(ii) Between approximately November 2016 to March 2019 caused and/or permitted the Firm's suspense ledger to be used in breach of Rule 7.1 of the Accounts Rules.

(iii) Between 1 June 2018 and 31 December 2018 caused and/or permitted the Firm's client account to be used as a banking facility involving approximately £2,333,838.00 in breach of Rule 14.5 of the Accounts Rules.

The SRA's Case

29.1 The Firm's directors, including the Firm's COFA, Ms Kaur, had no access to the Firm's financial records. During her investigatory interview, Ms Kaur stated that she was not aware of issues identified with the Firm's reconciliations or the use of the Firm's client account as a banking facility.

29.2 The Firm stated to the FIO that:

(1) "*Prior to 1 November 2018 [the directors] did not have any active participation in the management of the firm's client and office account*".
(2) "*The directors have been unable to retrieve emails regarding the firm account information as they have been deleted*."
(3) "*The audit highlighted a resources and training issue with the accounts team ...* "
(4) "*Posting entries were carried out by the accounts team ...*"
(5) "*The directors had no cause to question the maintenance of the client account or any transfers previously as this element of management was undertaken by Edward Foster and the directors acted on the assurances made and given to them that accounts were in order*."

"*The division of responsibilities within the firm was such that the directors at that stage did not participate in the financial management of the business and were unaware of the issues since flagged by the accountants report and the Investigations Officer's concerns during the inspection. Neither were they aware of the issues highlighted with the initial audit [QAR] and first received this document when the directors were notified of the SRA's visit*".

29.3 As noted above, Mr Foster had declined to be interviewed by the FIO.

29.4 During her investigatory interview on 12 April 2019, when questioned about her role as COFA, Ms Kaur stated that she would

> *" ... check that everything balanced. That there was no discrepancies, which there weren't. So, in terms of my role it was quite restricted. Obviously, I wasn't aware of any historic problems."*

29.5 Ms Kaur explained how she managed her role as COFA without access to accounts. She said she:

> *"... was provided with a summary [the reconciliation coversheet] and if I had any queries, and they always balanced. I had no reason to suspect that there was no, there were any issues or concerns about those ... but if we have our annual audits and those are submitted to the SRA, our auditors would have flagged up any issues that haven't been flagged up. So I would see those month end reconciliations statements, they seem to have balanced."*

29.6 Ms Kaur also acknowledged that she did not go beyond the cover sheet explaining that she "*was quite reliant on Sandy, financial information despite requests isn't always provided and we made those requests on a number of occasions ...* "

Allegation 3(i)

29.7 In addition to the overview set out above, the SRA relied upon the FIO's review of the Firm's reconciliations statement from April 2018 to October 2018. In so doing he identified that the Firm did not conduct a three-way reconciliation in accordance with the requirements of Rule 29.12 of the Accounts Rules. In particular, the Firm did not compare the balances on client cash accounts with the balances shown on bank statements after allowing for all unpresented items of the Firm's client accounts. This was alleged to have resulted in the Firm's reconciliations failing to show cash shortages.

29.8 It was alleged that Ms Kaur did not perform her role as COFA as expected and required. She was alleged to have simply taken what was presented to her without going beyond it to determine its accuracy – relying on the cover sheet produced. In certain instances, she did not sign the cover sheet as she stated "*it was not brought to the attention of the COFA as it was not presented to her for signature*" which was submitted to indicate that even a cursory review was not undertaken.

29.9 The Firm's April 2018 to August 2018 reconciliations were signed by Ms Kaur. The Firm's September 2018 to October 2018 reconciliations were not signed. The Firm's November 2018 and February 2019 reconciliations were also not signed.

29.10 Rule 29.12 of the Accounts Rules specifies the manner in which client account reconciliations must be performed. The SRA's case was that this was not done by either Mr Foster or Ms Kaur. It was alleged that Mr Foster as CEO of the Firm ought to have ensured that reconciliations were being done correctly such that any issues were identified and addressed appropriately. Adopting the system of reconciliation such that the COFA was not provided with the appropriate information or access was submitted to be in breach of the Accounts Rules. It was further submitted that the Firm's COFA should not have simply accepted what was presented without reviewing and checking the underlying material to confirm its accuracy.

29.11 It was alleged that Mr Foster and/or Ms Kaur failed to ensure that account reconciliations were performed in accordance with the Accounts Rules.

Allegation 3(ii)

29.12 As noted above, the Firm used the suspense ledger to record mortgage monies received by the Firm (subsequently transferred to TFP). It was not opened in a specific client name but the SRA's case was that in reality it was used as a client account through which £22,944,432 was transferred. In addition, the ledger had incorrect postings which affected the Firm's reconciliation.

29.13 Included with one of the Firm's responses to the SRA was an email from the Firm's accountants to Mr Foster and Ms Kaur dated 14 November 2018 which stated:

> *"THE COU91.1 ledger was created by Sandy Carter as client money from Mortgage Panel Lenders was being received on occasions by the wrong company ... We have previously been advised that now there are only a few lenders where CS ltd is on the panel for & TFP Ltd is not, so there should not be many occasion (sic) where monies clients is received (sic) by CS ltd & the paid to TFP ltd ... This account should only include clients (sic) money".*

29.14 In his response to the SRA dated 2 June 2020 Mr Foster stated:

> *"while I was aware of the use of the suspense ledger by the former Accounts manager and her colleagues. I did not arrange for the setting up of the suspense ledger and relied upon the knowledge and expertise of the Accounts staff to deal with the postings themselves. I was subsequently made aware that the suspense ledgers should not have been used in this way and that there were, especially from April 2018 onwards, significant issues with regard to fundamental errors being made on those accounts."*

29.15 Rule 29.5 of the Accounts Rules specifies that a suspense client ledger account may be used only when one can justify its use: for instance, for temporary use on receipt of an unidentified payment where time is required to establish the origin/purpose of payment.

29.16 Given his role within the Firm it was alleged that Mr Foster had a responsibility to ensure that the suspense ledger was being used in accordance with Rule 29.5 of the Accounts Rules. It was said to be plain that the suspense ledger was in fact being used as a form of client account for mortgage monies received from lenders, monies which were subsequently transferred to TFP. Use of the ledger in this manner was submitted to breach the Accounts Rules.

29.17 As COFA of the Firm it was alleged that Ms Kaur had a responsibility to ensure that the suspense ledger was being used in accordance with Rule 29.5 of the Accounts Rules. Mr Kaur had stated she was unaware of the practice described above.

Allegation 3(iii)

29.18 In December 2014, the SRA issued a warning notice in relation to the use of a client account as a bank facility which stated:

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

29.19 During his investigation the FIO identified large sums of money paid into and out of the Firm's client account. The money was received as mortgage advances from lenders in circumstances where it was alleged the Firm was not properly instructed to act in the receipt of the loan money and transfer to TFP. TFP was instructed by the purchasers to act in the purchase of the various underlying properties.

29.20 As described above, the FIO reviewed an 18-month period (8 June 2017 to 6 December 2018) during which time £22,944,432 moved through the client account originating from lenders and ultimately being transferred to TFP.

29.21 Ms Kaur transferred £30,000 into the Firm's client account on 14 November 2018. The sum was then transferred to the office account. There was alleged to be no underlying legal transaction such that the money could be transferred into the Firms' client account. The monies were provided as a business loan, Ms Kaur stating:

> *"I also felt under pressure to advance a cash loan. It was a short-term loan to buy shares and at the time I was unaware of all the issues ..."*

29.22 Rule 14.5 of the Accounts Rules states that a banking facility cannot be provided through a client account and that payments in, transfers and withdrawals from the client account must be in respect of instructions relating to an underlying transaction. The Firm was not instructed in any such transaction such that it was submitted the funds should not have been received into the client account in the first instance.

29.23 Given his role within the Firm it was alleged that Mr Foster knew or ought to have known that the Firm's client account was being used in this manner. The sums involved, over an extended period of time, were significant. He was involved in the conveyancing side of the Firm and would have been aware of the processes in place in relation to mortgage monies.

29.24 During her interview on 12 April 2019, Ms Kaur stated that she was not aware of the Firm's client account being used to receive mortgage money which was then transferred to TFP prior to the SRA's investigation. She acknowledged that the payments to TFP in this manner were in breach of the Accounts Rules. Given her role within the Firm it was alleged that she knew or ought to have known that the Firm's client account was being used as a banking facility. It was alleged that as COFA she ought to have been aware these sums were passing through the client account and that there was no client ledger to correlate with any of the transfers.

Breach of the 2011 Principles

29.25 It was alleged that Mr Foster's and/or Ms Kaur's conduct breached principles 6, 8 and 10.

29.26 It was alleged that Mr Foster appeared to have been unaware of the process and/or ledgers in existence. Ms Kaur, as COFA, had stated she did not have access to the Firm's accounts, was dependent on Accounts staff while relying on Mr Foster and assurances provided by him as to how the Firm was operating. It was alleged that she failed to have effective financial supervision and control of the Firm by performing her role of COFA in this manner in breach of Principle 8.

29.27 The system of checking and ensuring the Firm was operating in accordance with the Accounts Rules was not undertaken by Mr Foster and/or Ms Kaur such that in many instances they both appear to have been unaware of the process and/or ledgers in existence. The described hands-off approach adopted was submitted to be behaviour which did not maintain the trust placed by the public in solicitors and in the provision of legal services in breach of Principle 6.

29.28 It was submitted that there was an expectation that solicitors, particularly those in positions of responsibility, will adhere to the Accounts Rules and that such adherence is in the clients' best interests such that their monies/business is kept secure. In allowing the Firm to operate in the manner described above, Mr Foster and/or Ms Kaur were submitted to have failed to ensure that client monies were protected in breach of Principle 10.

The First Respondent's Case

29.29 The email of 3 October 2022 from Mr Foster's representative did not address allegation 3 directly.

29.30 As recorded above, it was said on Mr Foster's behalf that "*[t]here has never been a suggestion that the facts asserted are disputed*". It was also said: "*The only matter he will not admit is dishonesty with regard to Allegation 2.*"

The Third Respondent's Case

29.31 Ms Kaur made various admissions in her Answer. She admitted that there had been various Accounts Rules breaches as alleged (Rules 29.12, 7.1 and 14.5 of the Accounts Rules) but stated that these were inadvertent and that she was not culpable for these breaches. She denied the alleged breaches of the Principles. Ms Kaur maintained this position throughout cross-examination during the hearing.

29.32 Ms Kaur provided written submissions in closing which summarised her key submissions and the evidence she relied upon. These submissions are set out in full below.

> "*I was a Director from January 2017 to 31st March 2019. In March the firm required a COFA and I took the role in March 2018 following departure from the previous COFA. The strict liability of the accounts rules apply to all regulated principles and COFA. The breaches of the rule 29.2, 7.1, 14.5 are accepted as breaches but they are all inadvertent. The principles breached 6, 8 and 10 do not carry strict liability and it should not be automatically inferred that if I accepted breach of the accounts rules that this then automatically caused a breach of the principles. I ask the panel to take an evaluative*

assessment to my knowledge, my beliefs my inexperience as COFA, my lack of accounting expertise and actions at the time to determine my level of culpability. In particular, a very clear distinction needs to be made from the absence of critical thought with the very significant benefit of hindsight, to a wilful dereliction or sheer ignorance of my duties as COFA, as a regulated principal as a solicitor.

1. *In my taped interview early admissions were made about my role as COFA. At para 240. I made early admissions about what work I did as COFA and that I did not have the accounting experience. The panel should not[e] the time before the SRA investigation and prior to the investigation by the SRA and the reforms I implemented.*
2. *It has been acknowledged throughout, I do regret not being able to have accounting experience to prepare the month end bundles myself. This was in my taped interview in March 2019.*
3. *At the time I took on the role of director, I was 7 years qualified and 8 years PQE at time of COFA. I attended one training day. I was in the role from 7 months before the SRA arrived.*
4. *I was not aware of the interim policy of holding mortgages or that the firm had ever provided banking facilities for TFP as this policy was devised and implemented before I was director and before I was a role holder. Had I known about, I could have investigated this and made the disclosures to the regulators.*
5. *Turning to the allegations specifically at the rule 12 at A2 of the bundle, I would like to submit as follows:*
6. ***Allegation 3 (i) The breach is inadvertent and it was my belief at the time of the investigation that 3 way reconciliation statements were infact being carried out.***
7. *At the relevant time so March 2018, I honestly believed Sandy Carter was qualified accountant employed inhouse to undertake 3 way reconciliations and she supervised a team of staff in the accounts department. The accounts department was not in the same office I was based in. It was located in the Ramsgate TFP and there were also cashiers onsite in the Rainham office. The relevant factors I took into consideration at the time before the SRA audited the firm was this:*
    1. *The firm has annual reports and audit by qualified accountants and these reports were submitted to the SRA each year. They did not indicate any concerns regarding breaches.*
    2. *The independent audit carried out is of a sample of files as well as random files. Expert accounts were not able to find a suspense ledger on their annual audits and it was not picked up by the previous COFA either. The annual audit for accounts to submit to the SRA at the end of the financial year.*
    3. *The policy of delegating the 3 way reconciliation statements to an inhouse accountant was a policy that was not set up by me, but I believed it was permissible and in force without any issues whatsoever ever being raised in the firms history for over 10 years. Not even*

when the firm suddenly closed down when it was Foster Mckay about banking facilities. I believed there was a proper compliant systems and the firm was large expanding and had been operating for many years.

4. *The previous COFA did not request financial statements. On the handover, she all I would need to do is sign off the reconciliation statements and Sandy Carter will do the rest for you [sic].*
5. *The reconciliation statements on face of it balanced. There was nothing to suggest this was not the case. I did not have specialist account training or any training on how to use the accounts software systems.*
6. *I was also not a director or COFA at the time the policy was devised to receive funds. If I was, then the proper inference would be that by me failing to not check this then I have acted in a way the public would lose confidence in me as a trusted solicitor a reputable profession.*
7. *The firm was large and had a number of offices and growing enterprise. I was inexperienced in the role to be able to appreciate that at the relevant time I should have insisted on financial documents. It was certainly not deliberate or me being complacent of my role.*
8. *It is opening, the SRA state, that there must be this system of trust, the sums are so large from lenders. A lay lender client must be able to rely on the honesty and integrity of the profession. Surely, I must also be able to take some assurance that regulated staff business member are observing the rules in the absence of any reasonable suspicion of foul play and work against me.*
9. *If you go to the statement of Sandy Carter at page X288 point 5 d, X289, she confirms reconciliations were carried out. She says "month end reconciliations were prepared every month end. The first step would be to ensure that every single debit and credit entry carried out on both client and office bank accounts were posted to the ledgers thus ensuring that the balance shown on the bank report agreed with the closing balance on the bank statements". The TFB system did not allow you generate the month end from the previous month. The suspense account was not picked upon.*
10. *Sandy Carter- left in July 2018 but continued to provide support and worked ad hoc. It was not known by any of the directors Sandy had handed in her notice at the time or that there was a suspense account this is noted in the First Production notice.*
11. *It was my belief at the time 3 way reconciliation were being carried out and in good faith by both Sandy Carter under the supervision of Ed foster with a team of cashiers to assist with posting entries. Ed Foster being a solicitor*

of 20 years PQE and business owner for at least 10 years. I had no reason to doubt that this was not case, given the operating policy of the firm and the number of offices he had. I certainty could not have anticipated rules were not being followed or predicted this.

12. *The three way reconciliations would have if done properly highlighted the suspense ledger. It is accepted this is a breach but an inadvertent one. I did not devise the policy but becoming aware of it I did everything to stop it happening, I was as forceful as I possibly could be about banking facilities. The emails are attached and I also made sure that a director of TFP also sent an email to their staff about banking facilities. I called Jane Baird to say she must also mirror my approach as it's a breach on both sides of the two firms. It was equally incumbent on Ed Foster to ensure that the policy did not continue.*

Allegation 3 (ii) Between November 2016 to March 2019, cause or permitted the firms suspense ledger to be used in breach of rule 7.1.

13. *I was not a director in November 2016. I was a director from 1st January 2017 to 31st March 2018. The panel should take entirely the same approach with me as the other regulated principles. The previous COFA did not pick up on this. I did not cause as I did not actually ever act of one of these types of files and I was not aware of policy as predated my appointment as a director. I did not permit it, but upon knowledge of it, I took steps to rectify it.*
14. *The use of the suspense ledger was completely withheld from me and all directors. It cannot be inferred I caused permitted or allowed or condoned it.*
15. *I did not have any reason to suspect the rules were not being followed. I am extremely remorseful that I stand before the panel and throughout I have expressed regret the SRA has had to take the action is has.*
16. *The statement of Sandy Carter, clearly states that she was not permitted to disclose the existence of the suspense ledger or any of the working practices to me. The SRA were aware that EF has complete control of the accounts and this information was never disclosed. In the absence of any cause for suspicion, I had no reason not to believe the first respondent was acting dishonestly. It is agreed that breach of 7.1 has occurred but entirely inadvertent. I did not create the account, I did not use it, I did not allow it I did not condone it. I refer to my attachments to my WS at D14 of the bundle, as part 3. You will see the tone and none responsiveness [sic] of the First Respondent to engage.*
17. *The panel should also take note of my email directions regarding the suspense ledger and ledger at D27, D28 in particular item 4 stating funds from the lender can only go to the sellers solicitors. Even with the directions which were also given orally at the time of the SRA audit, the transfers still continued. I was not given*

support from Ed Foster on banking facilities aspect, in fact he was critical of me for issuing the emails. Once the SRA arrived I could not just resign, as my professional obligations would not permit me to do so, the accounts rules carry strict liability.

18. *I did not devise the policy of the suspense ledger. I did not know about this policy if I did I could check the actual ledger to see if the interim policy had ceased. Also, it would not be easy to find. The suspense ledger is labelled as a client name. It would be unreconciled items which would alert immediate suspicions to me. Given the way documents were withheld from me, the cheque stubbs which the SRA requested in the audit, I would say that even if I insisted on it, all the first respondent or the accounts team would have done is given me a redacted view of the clients accounts, they were certainly happy to withhold documents from me in the SRA documentation, professionally embarrassing me.*
19. *This SRA in taped interview, at X239, page 1560- detail this they acknowledge that some of the breaches did not happen on my watch as COFA. Upon discovery I took all steps possible. Please see para 1586, 1592.*
20. *My initial and primary overall concern was to make sure client funds were safe first and had my email directions been followed, we would not had the shortfalls. Even with the directions issued to all staff about banking facilities, the FIO noted that items were not recorded on any ledgers and just taken. A matter not highlighted or picked up on by the company accountants specialist reports that were commissioned.*
21. *It should be noted my concerns about uninsured funds remaining on client account, is not indicative of someone who acted in away that placed mistrust in the profession.*

Breach 3 (iii) Cause or permitted the client account to be used as banking facility. The breach is accepted but it was inadvertent.

22. *The annual report submitted to the SRA was never even disclosed to me. I was not invited to the audit or given the report.*
23. *Please see my comments at 1946 of my taped interview. I was faced with responding to voluminous requests for information with deliberate obstruction by the first respondent against making sure the funds are safe, in particular my comments at 1955.*

The size of the undertaking and the number of offices made it impossible for one person alone to check through and investigate as well as respond to the SRA.

Breaches of the principles are not agreed on basis I did not cause permit or allow or cause these breaches to happen.

I ask the panel to read my response to the allegations and B1 and B2. My witness statement at D14 and my character references at Part L. My taped interview at X196 and my initial response to the allegations prior to proceedings being issued at X760.

I would also like the tribunal to take into account, had I not asked the SRA solicitors to provide me with access to my emails and the emails they have in their possession which may assist me, the SRA would have not disclosed them. The additional emails, I have attached are between Ed Foster and Maria Homewood which show how items were withheld from me and the recommendations and monitoring schedule submitted with the very first production notice which demonstrate compliance.

In terms of my character there are 6 character references 4 professional and 2 personal at part L1- L8. I provided on my own free time from the time I was at Fosters to date, free advice to a local dementia charity and their members. The character reference from Stephen Parry, states the overarching anxiety to do the best for my client to the best of my job. He would happily reemploy if the opportunity arose.

I have two clients which were clients from County Solicitors, who traced me to continue acting for me. One of those clients I did transactions which were in excess of £18.5 million. A high risk high value transaction. Given the TFP had closed down any association with irregularity of client funds, clients would not risk to continue to instruct me in their matters. I personally oversaw completions of this value. Clients continue to trust me.

I have an unblemished career and I provide a service to the public not just as consultant but also to a charity free of charge a public service. I have two personal statements which confirm I am person of good moral character. I have had no previous disciplinary matters with the SRA. I have found the matter professionally embarrassing, in-front of my own regulators the court and the profession itself. I have not had conditions placed on my certificate previously. The conditions have already affected my earning capacity. I have exemplary character references. I ask the court to take this into account and to please allow me to continue practising as solicitor and not to penalise me in costs. This was isolated period in my career in not asking for financial statements from the accounts manager prior to the audit. I fully engaged and co-operated fully both during the investigation and post intervention into the TFP in particular in relation the insurance claim. All these matters need to be considered."

The Tribunal's Decision

The First Respondent

29.33 The Tribunal was satisfied that the statement from Mr Foster legal representative that Mr Foster did not dispute the facts asserted by the SRA and that "*The only matter he will not admit is dishonesty with regard to Allegation 2*" represented an admission to allegation 3.

29.34 The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that Mr Foster's admission was properly made.

29.35 The Tribunal accordingly found the breaches of Principles 6, 8 and 10 of the Principles proved to the requisite standard.

The Third Respondent

29.36 Ms Kaur had admitted, with mitigation, the alleged breaches of Rules 29.12, 7.1 and 14.5 of the Accounts Rules. The Tribunal was satisfied on the balance of probabilities that these admissions were properly made and found these breaches proved.

29.37 Ms Kaur denied that she had breached the Principles and submitted that viewed in context she was not culpable for these breaches.

29.38 The obligation on a COFA, as Ms Kaur was for most of the relevant period, was to take reasonable steps ensure that the Firm and its managers and employees complied with the obligations imposed by the Accounts Rules.

29.39 Ms Kaur's evidence was that she assumed responsibility as COFA in an established firm and was advised by the previous COFA that all she needed to do was sign off the reconciliation statements and that the experienced accounts team and Ms Carter in particular would "do the rest". Ms Kaur's evidence was that the statements with which she was presented balanced and there was no indication of the issues which were later uncovered. Mr Kaur's case, corroborated by the comments of Ms Carter as set out above, was that the misuse of the suspense ledger and related practices was kept from her.

29.40 The Tribunal accepted Ms Kaur's evidence and that her understanding at the time was as she described in her evidence and submissions. Her evidence had been consistent over time, involved frank admissions and was credible. However, the COFA role is an important one and the Tribunal considered that on her own case she did not discharge the obligations on her. That a previous COFA may have failed to identify issues and that steps had been taken on the instruction of Mr Foster to keep matters from her were relevant to mitigation, but did not absolve Ms Kaur of culpability.

29.41 A COFA, as a guarantor of probity and regulatory compliance, was not entitled to accept what was provided at face value. In circumstances where Ms Kaur was, on her own case, excluded from relevant meetings and not provided with access to the Firm's banking details the Tribunal considered that she was obliged to take steps to ensure she had the access she required. A COFA did not need to have, and could not realistically have, oversight of all matters but she did need to ability to scrutinise and understand the reality behind the summary picture with which she was presented. This was particularly so where compliance with the Accounts Rules, which were ultimately a means of protecting client funds, was concerned.

29.42 As a minimum, in the circumstances described by Ms Kaur, the Tribunal considered that it was essential that she requested access to the Firm's bank statements in order to assess the reconciliations. If such access was not given, a COFA could not undertake their role and would be obliged to resign. To do otherwise risked lending a veneer of respectability to a firm in which no meaningful scrutiny of the financial arrangements was being undertaken. The summary sheet of the three-way reconciliations with which Ms Kaur said she was provided itself should have aroused suspicions given the lack of any supporting and corroborating information provided. The Tribunal considered that Ms Kaur could and should have questioned the accounts team more. She had referred

to the cost of her being granted full access to the financial systems, but the Tribunal considered she could have required further access and information be provided.

29.43 The Tribunal had considerable sympathy with Ms Kaur and the position in which she found herself. Nevertheless, all solicitors and even more so COFAs and directors of law firms, were obliged to be curious and to require reasonable and proportionate evidence to discharge their obligations.

29.44 The Tribunal found that Ms Kaur had not done enough to discharge the obligations on her by virtue of being the Firm's COFA. She had failed to take sufficient reasonable steps to seek to satisfy herself that the Accounts Rules were being complied with. Principle 8 of the Principles required that she carry out her role effectively and in accordance with proper governance and sound financial risk and management principles. For the reasons described above the Tribunal found that she had failed to do so, albeit in admittedly difficult circumstances, and that the breach of Principle 8 was proved on the balance of probabilities.

29.45 The Tribunal accepted the SRA's submission that the "hands-off" approach adopted by Ms Kaur, during which she continued as COFA when presented with only unsupported, outline information about reconciliations, was behaviour which failed to maintain the public trust placed in her as a solicitor and in the provision of legal services. The Accounts Rules were of critical importance in protecting client money and the failure to take proportionate steps to challenge and assess the information with which she was provided was corrosive of this public trust. The Tribunal found the breach of Principle 6 proved on the balance of probabilities.

29.46 For the same reasons, the Tribunal also found to the requisite standard that Ms Kaur had failed to protect client money in breach of Principle 10.

Previous Disciplinary Matters

30. Neither Mr Newman nor Ms Kaur had any previous Tribunal findings against them.

31. In 2012 the Tribunal had imposed a £20,000 fine on Mr Foster. When imposing this fine that Panel of the Tribunal had stated:

> *"… the Tribunal had found a number of very serious allegations proved against the Respondent which included acting in a way that compromised or impaired, or was likely to compromise or impair his independence or integrity, failing to act in clients' best interests, acting in a way that was likely to diminish the trust the public placed in him as a solicitor and in the legal profession, failing to inform clients of required costs information, acting in a conflict or potential conflict of interest situation, failing to have in place the required safeguards in relation to a separate business, allowing his firm's client account to be used to provide banking facilities and withdrawing money from client account other than in accordance with the rules."*

Mitigation

The First Respondent

32. As indicated above, Mr Foster did not participate in the proceedings and no mitigation was put forward. His representative had stated that "*Mr Foster has accepted that he will not be a solicitor at the end of these proceedings*" and "*He accepts that he will be struck off*". He submitted a personal financial statement which included one overseas property owned with his wife but otherwise excluded her on the basis she was not a party to the proceedings. Submissions on costs were made which are summarised below.

The Second Respondent

33. Mr Goodwin put forward submissions on behalf of Mr Newman. He had made admissions which was to his credit. It was accepted that formal admissions were made on the morning of the first hearing, but it was noted that he had initially been unrepresented. He had cooperated fully with the SRA.

34. Mr Newman had no prior findings against him and, other that the conditions imposed by the SRA by virtue of the events giving rise to these proceedings, his regulatory history since qualifying in 1981 was impeccable. The relevant events took place 5 years ago and nothing was known to his detriment since. He would not knowingly have done anything to jeopardise his status as a solicitor.

35. It was accepted that the scheme put in place by Mr Newman was inappropriate, but no loss was caused. All mortgages were properly registered.

36. By reference to the Tribunal's Guidance Note on Sanctions, Mr Goodwin stated that the Tribunal would first consider the lowest level of sanction and work up until the appropriate sanction was arrived at. It was submitted that the findings did not justify interfering with Mr Newman's right to practise. Mr Goodwin noted that Ms Sheppard-Jones had not suggested that suspension or strike off was required when she outlined the SRA's views on sanction.

37. Mr Newman's witness statement described the time he had given to others, for clubs, as a school governor (from 1987 to the present), charity fundraising and for his local church. Character references, including from his current employer, confirmed there was no reason to doubt his personal integrity.

38. Mitigating factors included that Mr Newman had sought to implement a system which had been proposed by Mr Foster. He had shown genuine insight and had learnt a difficult lesson. He would not act in the same way again.

39. It was submitted that a financial penalty would be sufficient. Mr Newman had submitted details of his financial circumstances, and his only significant asset was the family home. The costs claimed, around £107,000, were significant and any costs awarded would form part of the financial detriment. It was submitted that a fine in Level 3 of the indicative bands in the Tribunal's Guidance Note on Sanctions, or at the bottom

end of Level 4, would be sufficient. Mr Newman recognised that the findings were serious, and the Tribunal was invited to identify an appropriate figure.

40. The SRA had imposed conditions on Mr Newman's practising certificate and it was submitted that these were sufficient to meet any risk to the public. If they considered it appropriate the SRA had the power to reimpose the conditions each year. Mr Goodwin reminded the Tribunal that it should impose its own restrictions only where a future risk had been identified. He submitted that such further restrictions were not necessary either to guard against any future risk or to protect the reputation of the profession. He asked what the purpose would be of the Tribunal imposing restrictions which duplicated measures already taken by the SRA.

The Third Respondent

41. Mr Kaur had outlined mitigating circumstances in her written submissions which were set out in full above.

42. She expressed remorse for her actions which she said she regretted. She stated that the restrictions on her practising certificate imposed by the SRA had reduced her earning capacity and she invited the Tribunal to impose a fair and reasonable level of fine to reflect her culpability.

43. Ms Kaur provided details of her financial circumstances including her monthly disposable income and the one significant asset which was a leasehold property.

Sanction

44. The Tribunal referred to its Guidance Note on Sanctions (10th Edition) when considering sanction. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondents' culpability and the harm caused, together with any aggravating or mitigating factors.

The First Respondent

45. In assessing culpability, the Tribunal found the motivation for Mr Foster's conduct in respect of which dishonesty had been found was financial, for the Firm and also personally. He had initiated a scheme which misled lenders and had established a process which kept the Firm's COFA in the dark as to financial matters. He had a high degree of control over the circumstances and was a highly experienced solicitor.

46. The reputational harm to the profession of a solicitor acting dishonestly in the way described above was very serious and something which should have been obvious to Mr Foster. He had been sanctioned by the Tribunal previously for misconduct with similar characteristics. The Tribunal did not consider that there were any mitigating factors present, something which appeared to be acknowledged by the submissions made by his representative as set out above.

47. Having found that Mr Foster had acted dishonestly, and that he had failed to act with integrity, the Tribunal did not consider that a reprimand, fine or suspension were adequate sanctions. The Tribunal had regard to the case of SRA v Sharma [2010]

EWHC 2022 (Admin), and the comment of Coulson J that, save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll. The Tribunal did not consider that any exceptional factors were present such that the normal penalty was not appropriate, nor was the contrary submitted on Mr Foster's behalf. The Tribunal considered that the seriousness of the conduct found proved and the protection of the reputation of the legal profession required that the appropriate sanction was strike off from the Roll.

The Second Respondent

48. The Tribunal found the motivation for Mr Newman's conduct was benign; he was not seeking any personal advantage but to safeguard purchaser clients. He did not intend any harm to lender clients, and none occurred. However, it was planned conduct and continued over an extended period of time. He had been in a position of trust in relation to the lender clients as the mortgage funds which were sent to a third party were held on trust. He had vast relevant experience and was responsible for the circumstances of his misconduct.

49. Turning to assess harm, the Tribunal considered there was very significant harm caused to the reputation of the profession. Conveyancing functioned and depended on the trusted position of the regulated individuals involved.

50. The conduct was aggravated by the fact it was repeated and continued for a significant period of time. The lender clients had been misled, although the Tribunal had found that this was inadvertent on Mr Newman's part, and he had had no intent to do so. He had not sought to blame others, save to the extent he had stated that he had been instructed make arrangements to circumvent TFP not being on lender panels by Mr Foster. Mr Newman should have known that his conduct was in material breach of his obligations as a solicitor to protect the public and the reputation of the legal profession and this was a further aggravating factor.

51. In mitigation, Mr Newman had to some extent been pressurised by Mr Foster who was in a senior position within the Firm. Mr Newman's negotiating position with him was weak. Mr Newman had not sought to hide anything, and the Tribunal found his remorse and insight to be genuine. The Tribunal considered that the risk of any repeat of the misconduct in the future was extremely low.

52. The Tribunal assessed the misconduct as very serious. The Tribunal had found, and Mr Newman had admitted, that his actions had lacked integrity. The misconduct involved instigating a scheme in which lender clients were misled, albeit not wilfully, and improper payments were made, and client files and ledgers not maintained. Such conduct offended fundamental tenets of sound legal practice. Whilst the Tribunal had not found Mr Newman had acted dishonestly or deliberately set out to mislead the lender clients, the misconduct admitted and found proved resulted in this, and represented a very serious professional failing. In view of this seriousness and the potential for damage to the reputation of the profession, the Tribunal did not consider that No Order or a Reprimand were adequate sanctions.

53. The Tribunal carefully considered whether a fine was an appropriate sanction. However, given the particular importance of ensuring clients are not misled and the trusted position of solicitors with regards to mortgage monies, the Tribunal did not consider that a fine would adequately reflect the seriousness of the conduct found proved. The protection of the reputation of the profession required that a period of suspension from practise be imposed. The Tribunal determined that a fixed period of suspension of 3 months was the appropriate sanction to punish and deter whilst being proportionate. The Tribunal considered but rejected the possibility of imposing restrictions to run from the end of a period of suspension. The Tribunal accepted that there was no specific future risk against which to target restrictions.

The Third Respondent

54. The Tribunal found Ms Kaur's misconduct was had no particular motivation and resulted from a failure to take the further challenging steps that the circumstances of her role required. She passively adopted the practices of the previous COFA but did so without any malign intent. She was an experienced solicitor at the relevant time, although not an experienced COFA. She did not deliberately mislead the regulator.

55. The harm caused by the misconduct found proved was that she failed to discharge the gatekeeping role of COFA adequately. The importance of this role meant that, inevitably, the reputation of the profession was harmed by a COFA acting as something of a rubber stamp for unsupported summary documents presented. The Tribunal considered that this harm was foreseeable.

56. The only aggravating factors listed in the Sanctions Guidance that the Tribunal considered were present were that the misconduct continued over time and Ms Kaur ought to have been aware that she was not discharging the obligations of the role of COFA and that she thereby risked reputational harm to the profession.

57. In mitigation, there was no malign intent and others took active steps to mislead her as described above in the Tribunal's findings. The Chief Executive of the Firm had instructed accounts staff not to tell her things. The Tribunal did not accept that her reliance on the actions of others and information that they presented to her was reasonable. Although Ms Kaur had submitted that it was reasonable to have this reliance at the time, she now recognised the shortcomings in her actions and approach. The Tribunal considered she was developing insight into the misconduct.

58. The Tribunal assessed the misconduct as moderately serious. The misconduct had involved failing to perform the gatekeeping COFA role adequately and so allowed various Accounts Rules breaches to occur. The Tribunal had found that the conduct failed to uphold public trust. Notwithstanding the mitigating factors, the seriousness of the conduct was such that neither No Order nor a Reprimand was sufficient to reflect the seriousness of the conduct, nor to protect the reputation of the legal profession.

59. The Tribunal considered that a fine was the appropriate sanction. Having made this determination, the Tribunal did not go on to consider suspension or strike off from the Roll. The Tribunal considered that in all the circumstances, including the mitigation summarised above and the importance of the COFA role, a fine of £7,500 (at the top of

Level 2 in the indicative bands contained within the Guidance Note on Sanctions) was appropriate.

60. Ms Kaur had put forward a signed statement of means. The Tribunal was required to take her means into account and it should not order her to pay more than she could realistically pay, whether by way of a fine or costs or both combined. Her available funds were reduced significantly by repayments on a loan of around £30,000 she stated that she had made to Mr Foster which had not been repaid. Ms Kaur had indicated that repayments based on a figure of £150 per month were feasible. Having carefully reviewed the full and detailed schedule of means, the Tribunal accepted this was realistic and that a higher figure would not be. The Tribunal determined that a reduction of the fine payable to £3,000 was appropriate and proportionate in the circumstances.

61. This reduction to the fine payable, together with a means-based reduction to the assessed and apportioned costs, described below, would result in a repayment period of three years and four months at the proposed rate of repayment. In view of the statement of means, the Tribunal determined that in all the circumstances this was appropriate and resulted in a proportionate fine and costs award. The Tribunal reduced the fine of £7,500 due to means and determined that a fine of £3,000 should be imposed on Ms Kaur.

Costs

Application for costs made on behalf of the SRA

62. By reference to a schedule of costs dated 10 October 2022 Ms Sheppard-Jones applied for the SRA's costs in the sum of £107,870.10. This figure was comprised of the SRA's own costs of £49,670.10 and Capsticks' fixed fee of £48,500 (plus VAT).

63. The SRA's position was that apportionment of this sum between the three respondents, in proportions of 60% for Mr Foster and 20% each for Mr Newman and Ms Kaur would be appropriate. This was on the basis that Mr Foster had featured in each of the allegations.

64. Ms Sheppard-Jones submitted that the matter had been complex, both in terms of initial investigation and the eventual proceedings. This was reflected in the very detailed Rule 12 Statement. This had largely been drafted by counsel; the costs of which were met from the Capsticks fee. The hearing bundle was also extensive. There were various evidential issues relating to disclosure which required attention and resolution. The case preparation took three days. It was noted that the hearing took one day fewer than anticipated and accordingly Ms Sheppard-Jones indicated that she did not propose to claim the refresher fee in the schedule. This, coupled with the shorter hearing, reduced the time incurred by Capsticks to around 242 hours (rather than the 281 indicated on the schedule). Taking into account counsel's fees for the Rule 12 drafting, the time incurred meant that the notional hourly rate for Capsticks' work was around £150. Ms Sheppard-Jones submitted that this was reasonable in this complex case.

65. Ms Sheppard-Jones submitted that the Tribunal may find the statement of means submitted by Mr Foster to be fanciful. Unlike the statement provided by Mr Newman, Mr Foster had included no details of his wife's financial position. She submitted that

Mr Foster's schedule was also inconsistent stating that his wife owned the matrimonial home whilst also stating that he owned half of a holiday home overseas. The only outgoing included in the schedule was school fees and no proposal for the payment of fees was included which was described as unhelpful. Reference was made to the possibility of £35,000 being inherited without any indication when this was expected.

The First Respondent's position on costs

66. The email of 3 October 2022, submitted on Mr Foster's behalf by Peter Cadman of Russell Cooke Solicitors, included the following submissions on costs.

> *"It is submitted that the following are relevant facts to be borne in mind by SDT when it decides on the quantum of a costs order to be made against Mr Foster:*
>
> *1. The proceedings against Mr Foster can and should have been dealt with more promptly by SRA. He has accepted that his career as a solicitor was ended and should have been brought to an end earlier. By way of example he offered RSA or agreed outcome as long ago as April 5th 2021.*
>
> *2. SRA was invited to lodge proceeding promptly. It is unclear why SRA did not proceed simply and quickly to secure a strike off.*
>
> *3. SRA has been aware of Mr Foster's financial position for some time within these proceedings. Further, SRA has also been notified of his finances in the costs claim lodged from the intervention including a detailed reply in April 2021.*
>
> *4. Mr Foster has made a realistic offer to costs from the inheritance he will receive form this grandmother's estate.*
>
> *In summary, he submits that the appropriate outcome is that he be struck off with a costs order limited to his inheritance taking into consideration the proper and necessary costs, the end of his ability to earn an income as a solicitor and his financial circumstances."*

Response on behalf of the Second Respondent

67. Mr Goodwin agreed that apportionment between the respondents was appropriate and noted the costs claimed were significant. Only one page was submitted in support of the FIO's claim for £45,956.60 which was submitted to make it hard to assess the value, extent and scope of the work completed. 139 and 203 hours were attributed to "Info Review" and "Report Preparation" respectively, for example, without any further detail. Mr Goodwin noted that if six hours were allocated per day that the FIO would have worked for 33 working days on the report preparation. He invited the Tribunal to proceed with caution.

68. Mr Goodwin submitted that Mr Newman should only be ordered to pay a reasonable, fair and proportionate contribution to the SRA's costs. He noted that seven fee earners were involved with the case for Capsticks at various stages and submitted there must

inevitably have been elements of duplication. By reference to Capsticks' schedule of costs, he submitted it was not possible to determine what separate work had been completed by the Legal Director, in respect of whom 21 hours were incurred on "Review of case papers and case planning" and by the Paralegal, in respect of whom 20 hours were incurred for the same task over the same period. This was also submitted to be the case in relation to "Investigation and Preparation of Rule 12 and documents for issue". He submitted that the work undertaken by external counsel would also involve some duplication, although he did not seek to challenge the three days claimed for case preparation.

69. Mr Goodwin referred the Tribunal to the case of Beckwith v SRA [2020] EWHC 3231 (Admin) and submitted that the SRA must conduct the case giving proper regard to regulated individuals being able to defend themselves without exposure to excessive costs. The costs should be proportionate to the case. He submitted that Mr Foster should bear the bulk of the costs. Even if the Tribunal accepted the SRA's proposal that he should bear 60% of the costs, the Tribunal would still need to assess the quantum of costs and take into account Mr Newman's personal circumstances. The Tribunal should have regard to his current salary and the overall financial detriment imposed on him.

The Third Respondent's response

70. Ms Kaur said that a large proportion of what Mr Goodwin had outlined also applied to her position. She outlined her employment position as a self-employed consultant, by reference to the written statement of means she had submitted. She stated that she anticipated a fine but submitted that punitive costs would be unfair. She stated that if restrictions were imposed on her ability to practise this would affect her earning capacity. She described her income as modest and stated that she would need to pay any costs ordered in instalments. She proposed a repayment plan based on £150 per month.

The Tribunal's Decision

71. The Tribunal assessed the costs for the hearing. The Tribunal had heard the case and considered all the evidence. The Tribunal accepted that it was clear from the papers that there had been a huge amount of work for the FIO and also that the case work required from Capsticks was extensive. The case was complex, document heavy, and involved extremely serious allegations. The case was properly brought and pursued. The SRA was under no obligation to agree to resolve the matters brought against Mr Foster by way of an Agreed Outcome and, in any event, he maintained his denial of one of the two aggravating allegations of dishonesty.

72. The Tribunal considered the time particularised and the notional hourly rate was reasonable and proportionate. On the basis that the Tribunal accepted that with seven fee earners and the use of external counsel there would inevitably have been some duplication of work, and to reflect the shorter than anticipated hearing, the Tribunal considered that the overall costs payable to the SRA should be reduced from £107,000 to £100,000. The Tribunal considered, based on the documentation and complexity of the matter, and their experience of comparable cases, that figure was appropriate and proportionate.

73. The Tribunal considered that the costs caused by the allegations relating to the Third Respondent were limited. The one allegation which related to her was also brought against Mr Foster. The Tribunal considered it was clear that he was in control of the arrangements giving rise to the allegation and bore primary responsibility for the costs of the case brought. The extent of his control was illustrated by the £30,000 loan that Mr Kaur stated she had made to Mr Foster.

74. The Tribunal accepted that the SRA's costs should be apportioned between the three respondents. In light of the findings directly above, and by reference to culpability and the extent to which the costs were caused by and related to the individual respondents, the Tribunal considered that the costs should be apportioned in proportions of 70%, 20% and 10% between the First, Second and Third Respondents respectively.

75. The financial information provided by Mr Foster was incomplete and unhelpful. He had not provided evidence to substantiate the incomplete position outlined. The requirement for respondents to provide full details of assets, income and outgoings, supported by documentary evidence, was made clear in the Tribunal's Standard Directions of which Mr Foster had received a copy. He had failed to comply or provide meaningful alternative information, and the Tribunal accordingly proceeded without regard to his means. The Tribunal determined that Mr Foster should pay 70% of the SRA's costs which had been assessed at £100,000. The Tribunal accordingly ordered that he should pay £70,000 towards the SRA's costs.

76. In contrast, Mr Newman had submitted a detailed account of his financial circumstances. As noted above, his only significant asset was the family home. His income was relatively modest. Taking account of the information about his financial means, the Tribunal considered that a reduction should also be applied to the assessed and apportioned costs. The Tribunal reduced the assessed costs of £20,000 to £15,000 accordingly and ordered that Mr Newman should pay this sum towards the SRA's costs.

77. Ms Kaur had also provided detailed information about her financial means. As stated above, the Tribunal accepted that it should not order her to pay more than she could realistically pay in a costs award, although the ability to pay instalments over an extended period was a relevant factor. A fine of £3,000 had been imposed. Taking account of the information about her financial means, the Tribunal considered that a reduction should also be applied to the apportioned costs. The Tribunal reduced the assessed and apportioned costs of £10,000 to £3,000 accordingly. This figure, together with the fine imposed, would result in a repayment period 3 years and 4 months at the proposed rate of repayment which the Tribunal considered was realistic and reasonable. The Tribunal determined that Ms Kaur should pay a contribution of £3,000 towards the SRA's costs.

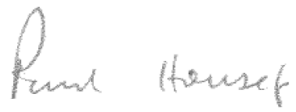
Statement of Full Orders

78. The Tribunal ORDERED that the First Respondent, EDWARD RICHARD FOSTER, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £70,000.

79. The Tribunal ORDERED that the Second Respondent, ROBERT JAMES NEWMAN, be suspended from practice as a solicitor for the period of 3 months to commence on 20 October 2022 and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £15,000.

80. The Tribunal ORDERED that the Third Respondent, RASHPAL KAUR, do pay a fine of £3,000, such penalty to be forfeit to His Majesty the King, and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £3,000.

Dated this 10th day of January 2023.
On behalf of the Tribunal



P S L Housego
Chair