The Tribunal's decision dated 21 December 2022 was subject to appeal to the High Court (Administrative Court) by the Applicant. On 13 July 2023 the Appeal was heard and on 31 August 2023 Judgment was handed down, with the Tribunal's first instance decision, as set out below at §8.16 in relation to the anonymisation of the Respondent's clients, being successfully appealed by the Solicitors Regulation Authority Limited.

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12360-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

EDWARD JAMES WILLIAMS Respondent

Before:

Mr A N Spooner (in the chair)
Mrs L Boyce
Mrs S Gordon*

Date of Hearing:
17-18 November 2022

Appearances

Michael Collis, counsel of Capsticks Solicitors LLP, 1 St George's Road, Wimbledon, London SW19 4DR instructed by the Solicitors Regulation Authority Ltd ("SRA") for the Applicant

The Respondent, Mr Williams did not appear and was not represented

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JUDGMENT

(*Mrs Gordon joined the Panel for the hearing on 18 November 2022 – see Preliminary Matters below.)

Executive summary

Allegations

1. The Allegations against the Respondent, Edward James Williams, made by the SRA, are that, whilst employed by Atherton Godfrey ("the Firm") as a Solicitor, he:

1.1. On or around 23 September 2016, caused the transfer £1,200 of client money, belonging to Client A and Client B, to Bell & Buxton LLP, without the clients' consent. and in doing so breached any or all of Rules 1.2(c) and 20.1 of the Solicitors Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

Proved.

1.2. On or around 23 September 2016, falsified an e-mail from Bell & Buxton LLP to suggest that the £1,200 owed to them related to a property transaction involving Client A and Client B and in doing so breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

Proved.

1.3. In relation to a transaction involving Property I,

1.3.1. On or around 16 January 2017, misappropriated £4,500 from Client J;

1.3.2. On or around 31 January 2017, caused the transfer of £5,712 client money, belonging to Client L and Client M, to Brabners LLP, without the clients' consent and in doing so breached any or all of Rules 1.2(c), 14.1 and 20.1 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011

Proved.

1.4. On or around 2 March 2017, created, or caused to be created, a false Attendance Note suggesting that he had met with Client L and that the client had been informed of plans to release funds to a plumber, when that was not the case and in doing so breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

Proved.

1.5 On or around 3 March 2017, created, or caused to be created, a false client care letter suggesting that he had been instructed by Clients L and M to represent them in providing tenancy advice in relation to dilapidations at Property P, when that was not the case and in doing so breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

Proved.

1.6 On or around 3 March 2017, caused the transfer of £1,034 of client money, belonging to Client L and Client M, to Person S, without the clients' consent and in doing so

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

Proved.

1.7. On or around 25 October 2017, created, or caused to be created, a false invoice for Clients L and M relating to work carried out in relation to property dilapidations and a tenancy dispute for Property P, when no so such work had been carried out and in doing so breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

Proved.

Dishonesty

2. In addition, all the allegations above were advanced on the basis that Mr Williams's conduct was dishonest. Dishonesty was alleged as an aggravating feature of Mr Williams's misconduct but proof of dishonesty is not required to establish the allegations or any of their particulars.

3. All the allegations were found proved in all their aspects. Dishonesty was also found proved in respect of all the allegations.

Sanction

4. Mr Williams was struck off.

Documents

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

[Following the decision of the Tribunal set out under the heading Preliminary Matters below the anonymisation of third-party names in the allegations in the Rule 12 Statement was not followed at the hearing and the identity of individuals is used in the body of the judgment.]

Preliminary Matters

6. **Adjournment of the in-person hearing on 17 November 2022 and change of format**

6.1 The Chair apologised for the delay in starting and explained that there was an administrative issue in that the Panel was not quorate to hear the matter. Arrangements had been made to provide a replacement Member who would be available from 10 am on 18 November 2022.

6.2 The Chair suggested that the question of the format of the hearing be revisited as the position had now changed; Mr Williams had not attended the first day listed for the hearing.

6.3 This case had been listed for an in-person hearing to commence on 17 November 2022 with a time estimate of 3 days. On 3 November 2022, the Panel then listed to sit on the substantive hearing dealt with an application on the papers from Capsticks on behalf of the SRA for the hearing to be remote having regard to the history of the case with little engagement from Mr Williams. The application included:

> "…Capsticks are anticipating that Mr Williams will not attend the Substantive Hearing and that we will have to make a proceeding in absence application. Given that the Substantive Hearing is likely to proceed in Mr Williams's absence and that there are no witnesses scheduled to give live evidence on behalf of the Applicant, we ask that the Substantive Hearing is changed to a remote hearing. As the last response from Mr Williams in February 2022 was following a letter being posted to his home address, we will be posting a copy of this application to him. We ask that the Tribunal bear this in mind when determing (sic) the appropriate timeframe to allow a response from Mr Williams."

6.4 The application was refused for the following reasons:

> "The Tribunal has carefully considered the Applicant's Application for the substantive hearing to be heard remotely.
>
> …
>
> In this case an "in person" hearing was ordered in the Standard Directions on 11 August 2022.
>
> No application was made at the CMH on 6 October 2022 by the parties, as was directed in the Standard Directions (paragraph 1.2), for the hearing to be held remotely.
>
> Instead, the Applicant made an Application on 3 November, two weeks before the substantive hearing, for it to be heard remotely.
>
> One panel Member was of the view that the hearing should be conducted remotely, inter alia, as the Respondent had failed to engage with the process; the hearing was now unlikely to last for three days; and, if he wished to do so, the Respondent could make any submissions remotely.
>
> However, the majority were of the view that the substantive hearing should remain as originally listed, in person. The Tribunal noted that the Respondent had written by hand in his letter dated February 2022 [cross reference to hearing bundle] and the Applicant itself had considered it appropriate to serve the Application by post.
>
> As such, it was Respondent would be able, at the present time, to participate in a hearing, remotely. In view of this, and to avoid the possibility of any communication or technological issues arising at the substantive hearing the majority of the panel's decision is that the substantive hearing should take place in person.

> The substantive hearing will remain listed for an in person hearing to be heard at Gate House, 1 Farringdon Street, London commencing at 10am on 17 November 2022."

Mr Williams then wrote to the Tribunal in handwriting dated 10 November 2022 explaining amongst other things that he did not have access to a computer or printing facilities and could not afford to travel to London to attend in person.

6.5 For the SRA, Mr Collis submitted that since the Tribunal's decision to maintain the hearing as in-person, Mr Williams 's letter of 10 November 2022 had been received in which he made it clear that he would not attend whether the hearing was remote or in-person. The Applicant had requested a remote hearing as it had been anticipated that Mr Williams would not attend. His non-attendance for the first day strengthened the Applicant's argument but the Applicant did not wish to trespass on a decision which was for the Tribunal. It did not wish to complicate the situation.

6.6 The Chair referred to the Tribunal's earlier decision. The majority of the members listed had been concerned that Mr Williams could not participate if the hearing were remote. Since then, Mr Williams had indicated in his letter of 10 November 2022 what his position was.

6.7 Mr Collis submitted that as indicated in its earlier application a remote hearing would be more convenient but this was a matter for the Tribunal.

<u>The decision of the Tribunal as to the format of the substantive hearing</u>

6.8 The Tribunal was obliged to ensure that the hearing proceeded fairly and at proportionate cost. The two Members of the Panel present Mr Spooner and Mrs Boyce had considered the position very carefully. They noted that were Mr Williams to change his mind about attending staff would be available to assist him to participate by Zoom or by telephone. If he did not attend, the quorate Panel would consider any application from Mr Collis to proceed in his absence, Mr Collis having indicated his intention to make such an application. In all the circumstances, the two Panel Members determined that the hearing would commence remotely the following day 18 November 2022 at 10 am.

7. Application on 18 November 2022 for the hearing to proceed in the absence of Mr Williams

7.1 Mr Williams was not present when the hearing was scheduled to start. Mr Collis made an application for the hearing of the substantive application to proceed in his absence. Mr Collis referred the Tribunal to the letter from Mr Williams dated 10 November 2022. He submitted that letter made it clear that Mr Williams was not planning on attending the hearing be it remote or in-person. The case had been listed for the previous day and Mr Williams had not attended then either. Mr Collis referred the Tribunal to a Chronology which commenced with correspondence received from Mr Williams dating back to February 2022 and went up to the November 2022 letter. That February correspondence was the last either the Tribunal or Capsticks had heard from Mr Williams. One could see in the Chronology the efforts to notify Mr Williams first that his case had been referred to the Tribunal and then following certification of the

case by the Tribunal on 11 August 2022, he was sent a copy of the Rule 12 Statement, the exhibits and the Standard Directions of the Tribunal by both e-mail and hard copy by first class post. The date for the substantive hearing was therefore set on 11 August 2022 and he was sent notification of the hearing dates on that date. The dates were repeated to him in a letter from Capsticks dated 21 September 2022 and in a letter sent by Capsticks on 4 October 2022. The latter included both the 4 October and 21 September 2022 letters and was hand delivered at Mr Williams's home address. A letter was sent on 3 November 2022 which also made reference to the dates of the substantive hearing.

7.2 Mr Collis pointed out that Mr Williams's letter of 10 November 2022 was not sent to Capsticks or to the SRA but direct to the Tribunal. Mr Collis clarified that if it became necessary to refer to any health issues of Mr Williams, he would ask to move into private session but this did not occur. He submitted that the letter made it clear that Mr Williams was aware of the hearing before the Tribunal. He made the point that he would not be able to attend a remote hearing because of a lack of computer equipment and the effect such a hearing would have on him. He also said that because of his financial circumstances he could not afford to purchase computer equipment and he could not afford to travel to London for an in-person hearing. The letter suggested that Mr Williams would be bound by any decision the Tribunal made and on the second page of the (handwritten) letter he invited the Tribunal to take into account assertions that he would make. Mr Collis submitted that the letter could be inferred as an acceptance on the part of Mr Williams that the hearing would proceed in his absence. It did not contain a request for the hearing to be adjourned either until he felt able to cope with attending a hearing or until he had sufficient funds to travel to London to participate. The letter raised the issue that Mr Williams was not always at the address to which correspondence was being sent for him but he had chosen not to provide a better address for communication and so unfortunately despite the contents of this letter the best place which Capsticks had was the address to which all previous correspondence had been sent.

7.3 Mr Collis submitted that the SRA had considered how best to respond to the November letter. In cases where a Respondent s could demonstrate that they could not afford to travel to London to attend an in-person hearing the SRA was willing to fund transport and accommodation costs to try to facilitate attendance but despite the claims made by Mr Williams a decision had been taken that he did not fit the criteria.

7.4 Enquiries which had been made with the Land Registry indicated that Mr Williams was the owner of the property to which correspondence had been sent. An up-to-date document from the Land Registry about that address was before the Tribunal. A mortgage was registered against it, but the SRA was unaware of its value. In reading the papers, the Tribunal might have identified that allegation 1.6 related to the assertion that Mr Williams diverted client funds to pay for the replacement of a boiler in a property owned by him and so at the time of the allegations he owned a second property. Recent inquiries with the Land Registry indicated that he was still the owner of that property Mr Collis submitted that it followed from the information Capsticks had that Mr Williams was the owner of at least two properties that the SRA knew of and so it was not felt appropriate to offer him funds to travel to London for an in person hearing even though he had indicated that he had no interest in attending a hearing whatever form that hearing took.

7.5 Mr Collis also drew the attention of the Tribunal to a letter from Capsticks to Mr Williams dated 14 November 2022 sent on receipt of his 10 November letter. It pointed out to Mr Williams that there were cases where Respondents raised issues relating to health where an assessment could take place to see if they were well and fit enough to attend and participate in the hearing. In the letter, Capsticks asked if Mr Williams wanted to make an application for an adjournment and to allow such an assessment to take place or whether he was content for the hearing to proceed in his absence.

7.6 Before the Tribunal was a certificate of service that the 14 November 2022 letter had been hand delivered to Mr Williams 's home address on 15 November 2022 at 10:41 am. Capsticks had not received a response to the 14 November letter and for completeness had written to him again on 17 November 2022 following the indication from the Tribunal that it was going to adjourn the hearing and convert it to a remote hearing and to notify him of that. That letter was also before the Tribunal.

7.7 Mr Collis submitted that Mr Williams was clearly aware of the substantive hearing which was scheduled to take place in this 3-day window from 17 November. He had not sought an adjournment of the 18 November hearing and he had not responded to the 14 November 2022 letter asking him if that was the course he wished to take. As the Tribunal had seen from the Chronology there had been a period of 19 months of silence from Mr Williams despite the fact that he was aware that regulatory proceedings were ongoing against him. In those circumstances, Mr Collis submitted that it was highly unlikely that Mr Williams would be prepared to attend and participate in any hearing in the future if the decision were taken at this hearing to adjourn and relist the substantive hearing for a future date. Therefore it was submitted that the appropriate course would be to proceed in Mr Williams's absence and allow the matter to be concluded.

<u>Determination of the Tribunal upon the application to proceed in the absence of Mr Williams</u>

7.8 The Tribunal had regard to the submissions made by Mr Collis and the evidence he had provided of Capsticks' attempts to contact Mr Williams and particularly to the latter's letter of 10 November 2022 to the Tribunal. It agreed that Mr Williams was clearly aware of the date fixed for the substantive hearing and indeed of the earlier CMH. As he said he intended in his letter, Mr Williams had not attended the first day of proceedings even though every effort had been made in communicating with him. Mr Williams had not applied to adjourn the substantive hearing and there did not appear to be anything that the Tribunal could do to improve his engagement with the proceedings. The Tribunal determined that Mr Williams had voluntarily absented himself from the proceedings. The Tribunal had to bear in mind its duty to protect the public and considered that having regard to all the circumstances it would be in the public interest for this matter to proceed. The Tribunal would therefore grant Mr Collis's application that the proceedings should proceed in the absence of Mr Williams in accordance with Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 ("SDPR") which provides:

> "If a party fails to attend and is not represented at the hearing and the Tribunal is satisfied that notice of the hearing was served on the party in accordance with these Rules, the Tribunal may hear and determine any application and make

findings, hand down sanctions, order the payment of costs and make orders as it considers appropriate notwithstanding that the party failed to attend and is not represented at the hearing."

8. **Anonymisation of third parties**

8.1 Mr Collis submitted that attached to the Rule 12 Statement was an anonymisation schedule. There was a great deal of anonymisation allied to the drafting of the Rule 12 Statement. This had been looked at again in the light of the High Court decision in the case of Lu v SRA [2022] EWHC 1729 (Admin). The principles in the case had been considered. The basis for the decision was that the Lu case did not in any way involve clients of a solicitor. The SRA's stance therefore was that the decision had not displaced an individual's right to confidentiality relating to matters in which they had sought legal advice and assistance from a solicitor.

8.2 The SRA took the view that it would like to maintain the anonymity of all the parties in the anonymisation schedule save for Company G, Company H, Person N, Property Q and Person S. Mr Collis clarified that no application for anonymity would be made in respect of those companies and persons under the SDPR. Companies G and H owned an interest in Property E and were clients of Mr Williams. The attempted purchase of the property by Client D was not successful. Therefore revealing the fact of their ownership of an interest in a particular property which a client was not successful in purchasing was not going to go behind any anonymity decision in relation to Client D.

8.3 Person N was the owner of Property I, which first of all was a leasehold interest owned by Clients J and K. The freehold interest owned by Person N was purchased by Clients J and K and subsequently sold onto Clients L and M. The SRA did not believe that revealing the identity of Person N would reveal the location of the property and so it would not unmask Clients J, K, L and M.

8.4 Regarding Property Q and Person S, Q was owned by Mr Williams and it was alleged that a replacement boiler had been inserted into it. The SRA did not believe that the fact that a Respondent's property which to the best of its knowledge was a rental property was a sufficient basis to seek anonymity of the property particularly when on the face of it did not appear to be Mr Williams's home address. Person S was the plumber who installed the replacement boiler and if the SRA succeeded in establishing allegation 1.6, he unwittingly received client funds diverted to him by Mr Williams to pay for the replacement boiler which he inserted into Property Q. The SRA did not believe that the fact that he was an unwitting recipient of client funds was sufficient grounds to continue with this anonymisation.

8.5 The Chair inquired whether any contact had been made with any of these individuals and Mr Collis confirmed that it had not. The Chair pointed out that the Tribunal's concern lay in paragraph 6 of the judgment in the Lu case:

> "… Open reporting is discouraged by what George Orwell once called a "plague of initials". Reading or writing reports about nameless people is tedious."

8.6 Mr Spooner who had also chaired a CMH in this case on 6 October 2022 did not recall whether there had been mention on that occasion of paragraph 138 of the Lu judgment which included:

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

8.7 The Tribunal noted what Mr Collis said about client confidentiality but felt that the starting point for consideration was this quotation from the judgment of Mr Justice Kerr in the Lu case.

8.8 Mr Collis responded that he agreed but in the Lu case there were no clients and the anonymity decision was the subject of an appeal relating to the firms employing Ms Lu, her co-workers, members of the SRA staff who were involved in the investigation of that case and lawyers who were appointed by her employers to investigate internally complaints that Miss Lu had made. The SRA appreciated Mr Justice Kerr's observations and comments and was seeking as best it could to. avoid "the plague of initials" but its position was that did not displace the right of a client to have confidentiality in terms of their dealings with a solicitor and have the confidentiality regarding the basis of those dealings for example if it was a property purchase the name of that property. That submission might not find favour with the Tribunal but that was the position the SRA was asserting. It would as best it could try and put in the public domain the full names of individuals, companies and properties which the SRA said was in accordance with the Judge's comments but it would continue to try and argue that clients and their legal dealings should still have the right to confidentiality notwithstanding that recent decision.

8.9 The Chair noted that clients were not mentioned in Lu. He asked for clarification as to whether there was anything else in the way of asides in the Lu judgment which might shed light and which the Chair might have missed apart from the two paragraphs which he had mentioned. Mr Collis confirmed that there was nothing in the judgment that specifically related to the unveiling of clients. The judgment and the paragraphs the Chair identified gave a very clear favour. It was a clear and loud trumpet call regarding the anonymisation which had crept in at a number of regulators which across the board regularly anonymised witnesses as a default position. The judgment was a call for a reversal of such an approach and a consideration of whether anonymisation could be justified given the obvious problems it created; the plague of initials that Mr Justice Kerr criticised.

8.10 The Chair suggested that quite a lot of care had been taken as part of the Lu case in contacting individuals to say what was going to happen and where their names might appear. Mr Collis responded that what was stated in Lu was that where anonymity was granted and then an individual sought to overturn that anonymity on appeal, notification needed to be given to the individuals in respect of whom an attempt was being made to lift their anonymity. Until a decision had been handed down no anonymity decision had been made. The SRA had applied a certain degree of anonymity in the Rule 12 Statement as a shorthand with a list of anonymisation appended.

8.11 Mr Collis submitted that the fact individuals and companies had been anonymised in a document they had never seen did not give them the same expectation of anonymisation that would follow if a formal direction were made by the Tribunal. So the notification element of this process which Mr Justice Kerr referred to was not the situation in this case. If the Tribunal made an anonymisation ruling and Mr Williams chose to appeal the Tribunal's decision including the anonymisation ruling, Mr Justice Kerr was clear that those parties needed to be notified of the attempt to lift the anonymisation ruling but the SRA felt there was no need to notify them if a decision was made not to seek anonymisation for them.

8.12 Mr Collis divided the individuals and companies mentioned in the Rule 12 Statement into three categories. The first category comprised Clients A, B, D and properties E and F. Client D was a client of Mr Williams who was trying to purchase Property E. A and B were also Mr Williams's clients who were trying to purchase property F. For the reasons Mr Collis had just given the SRA maintained its view that those clients and the properties they either purchased or attempted to purchase were covered by that right to confidentiality Mr Collis stressed that he accepted that the need for anonymisation relating to property E was less pressing because of course client D had not been successful regarding Property E; revealing the location of the property would not necessarily unmask client D.

8.13 Clients J, K, L and M and Property I fell into the second category; they were all clients of Mr Williams and the freehold reversion was purchased by J and K and sold on to L and M.

8.14 In the third category, Property P was owned by Clients L and M. In allegations 1.4 to 1.7 it was the Applicant's case that whilst there was no legal transaction going on between Clients L and M and Property P and Mr Williams, he fabricated a file suggesting that repairs were required to the property to conceal his diversion of L and M's funds to pay for a boiler that was installed at his property.

8.15 The Chair enquired whether there was anything regarding these individuals that for example might be particularly sensitive. In a case in which he had sat since the Lu decision several clients have been referred to one of whom for example had health or background issues for which the Tribunal was persuaded there was reason to maintain their anonymity but in most if not all cases there was not. Mr Collis responded that there was nothing the SRA could point to regarding any of these clients save that they were clients of a solicitor and entitled to confidentiality in relation to their legal dealings.

Determination of the Tribunal in respect of the SRA's application for anonymisation of Mr Williams's clients

8.16 The Tribunal had regard to the submissions made by Mr Collis and to the comments made by Mr Justice Kerr in the case of Lu about the principles of open justice particularly in paragraphs 6 about the "plague of initials" and in paragraph 138. The Tribunal understood Mr Collis to say that for the sake of convenience a considerable number of individuals, companies and properties had been anonymised when the Rule 12 Statement was drafted. They were then identified to the Tribunal by way of an anonymisation schedule attached to that Statement. None of these individuals or

companies had been contacted and/or given any commitment that they would be anonymised during the proceedings and in any judgment published following the proceedings. Mr Collis distinguished the need to do so as relating only to parties who had already been anonymised in a judgment handed down but faced the possibility of the anonymisation being lifted if an appeal against it succeeded in the High Court. Mr Collis applied for anonymisation to be maintained in respect of individuals and companies who were clients of Mr Williams based on an assertion of confidentiality for clients in respect of matters and dealings for which they had sought legal advice and assistance. As against this, the judgment of Mr Justice Kerr severely criticised the use of a multiplicity of initials in proceedings brought by regulators and in the judgments which resulted from them and also emphasised that courts and Tribunals should not be squeamish about naming innocent people (and by extension innocent companies) caught up in the alleged wrongdoing of others. He described it as being part of the price of open justice and made clear there is no presumption that their privacy is more important than open justice. While nowhere in the judgment did Mr Justice Kerr refer to the precise position of a solicitor's client whether an individual or entity, the Tribunal considered the judgement to be potentially broad in its application. It had been some months since the proceedings in this case had been issued and the SRA had not felt it necessary to approach any of the individuals or companies for comment. Furthermore paragraph 138 of the Lu judgment had been referred to during the 6 October 2022 CMH. Mr Collis had stated that the SRA was not aware of any particular sensitivities or vulnerabilities which needed to be protected by anonymisation. The Tribunal, while very conscious of the need for client confidentiality in the normal course of events could not detect any harm which might result to any of the individual or company clients referred to in the Rule 12 Statement and it therefore determined that this was not a case under Rule 35(9) of the SDPR of exceptional hardship or exceptional prejudice such that anonymisation should be applied. The Tribunal therefore saw no reason to depart from the principle set out by Mr Justice Kerr that "Courts and Tribunals should not be squeamish about naming innocent people caught up in alleged wrongdoing of others…" and his observation set out in paragraph 6 of the judgment. It refused Mr Collis's application in respect of Mr Williams's clients. However the Tribunal did not think it was necessary to identify the property numbers involved in the transactions the subject of the allegations which could be residential addresses of clients.

Reversed on appeal (Appendix 1).

Factual Background

9. Mr Williams was a solicitor who was admitted to the Roll on 15 September 1998.

10. Mr Williams worked at the Firm from 1 November 2014 until the 25 October 2017, according to the Firm as an Assistant Solicitor "in the Property Department dealing with Residential Conveyancing and some small Commercial Property work".

11. Mr Williams did not currently hold a Practising Certificate; no application was made for a renewal following the expiry of Mr Williams's 2020-2021 Practising Certificate.

Allegation 1.1

12. The Firm were instructed by Client D in relation to an attempt to purchase a property at (Property E). Mr Williams was the fee-earner dealing with the matter.

13. The property was owned by (Company G), but (Company H) held an interest in the land. Company H were represented by Bell & Buxton LLP. On 17 November 2014, Mr Williams gave an undertaking to Bell & Buxton LLP that Company H's legal costs of £1,000 plus VAT would be met by the Firm, whether or not the attempted purchase of the property proceeded to completion.

14. The purchase did not complete and on 5 August 2015, Bell & Buxton LLP sent a request to Mr Williams for £1,000 plus VAT.

15. On 25 May 2016, Bell & Buxton LLP sent a further request for the £1,000 plus VAT, in accordance with Mr Williams's 17 November 2014 undertaking. Mr Williams replied the same day to indicate that it was hoped that the purchase of the property would still proceed.

16. On 3 August 2016, Bell & Buxton LLP sent a further request for payment:

> "This one is going nowhere fast. Please now let me have your cheque, as requested, and note this is third time I have asked"

17. On 21 September 2016, Bell & Buxton LLP sent a further e-mail to Mr Williams.

18. On 22 September 2016, Mr Williams sent an electronic chit to the Firm's accounts department requesting a cheque payable to Bell & Buxton LLP for £1,200. The details provided for this request were, "Sellers legal costs". The client account number provided in that request though related to (Clients A and B respectively), not Client D. Clients A and B had instructed the Firm on 9 August 2016, to act in their purchase of the leasehold title for a property (Property F).

19. On 23 September 2016, Mr Williams sent a further e-mail to the Firm's accounts department, requesting the £1,200 cheque that day.

20. On 23 September 2016, Mr Williams also sent an e-mail to Bell & Buxton LLP informing them that the cheque was in the DX to them that night.

21. That same day, 23 September 2016, an outgoing payment of £1,200 was recorded on the client ledger for Clients A and B. The description for this payment was "Sellers legal costs".

Allegation 1.2

22. On 23 September 2016 at 8:23 am, Mr Williams forwarded onto himself a copy of Bell & Buxton LLP's 21 September 2016 e-mail. However, whilst the sender and time the original e-mail was sent (16:09) remained the same, both the title of the e-mail and its contents had been changed.

23. In this amended version of the e-mail, the title has been changed from referencing the Property E property (the property linked to Client D) to refer to the Property F property (the property Clients A and B were in the process of purchasing).

Allegation 1.3

24. The Firm was instructed by Clients (Client J) and (Client K) about a property in (Property I). They owned a leasehold interest in the property but on 20 October 2015, they instructed the Firm to purchase the freehold interest in the property from its then owner (Person N). He was represented by Brabners LLP.

25. Some of the documents in the Firm's possession referred to Client J and Client K's sale of the property rather than the purchase of the freehold reversion. The Firm formed the opinion that they were intending to purchase the freehold reversion in order to sell both the freehold and leasehold title to separate clients (Client L) and (Client M). This perhaps explained why certain documents for example the 20 October 2015 letter from Mr Williams to Client J and Client K referred to the sale of the Property I property rather than that the initial instruction related to the purchase of the freehold interest.

26. In any event on 14 January 2016, Mr Williams e-mailed Client J that the Person N was willing to sell his interest in the property for £4,500, plus costs of £1,000 and VAT. On 16 January 2017, Client J paid £4,500 by BACS transfer to an HSBC bank account the precise details of which were given in the Rule 12 Statement.

27. This HSBC bank account was not controlled by the Firm. It undertook enquiries as to the owner of the bank account. A search of its system revealed that this bank account ("account ending 268") featured in two separate e-mails that were sent by Mr Williams; an 8 January 2016 e-mail to the Firm's accounts department featured in a payment request by Mr Williams and a 23 October 2017 e-mail sent by Mr Williams to a client. The Firm were able to confirm that the Firm did not receive a payment of £4,500 into either into its client account or any other firm account at the time that payment was made (on or around 16 January 2017).

28. The freehold reversion completed on 31 January 2017 and the Firm reported to the SRA that £5,712 was owed to the vendor; the £4,500 plus costs plus VAT referred to. On that date, Mr Williams arranged for £5,712 to be transferred to Brabners LLP. However that transfer was registered against the account of Client L and Client M. The £5,712 transfer to Brabners LLP Client L took place and was registered for those clients Client L and Client M on 31 January 2017.

29. The Firm were unable to locate any instructions from those clients relating to this transaction. These two clients subsequently purchased this property for £82,000 from the original clients Client J and Client K. The Firm, when initially reviewing this matter following Mr Williams' departure, assumed that Client L and Client M had agreed to pay for the freehold reversion prior to their ultimate purchase of Property I from Client J and K. However in subsequent exchanges with the relevant clients the Firm learnt that was not the case.

Allegations 1.4-1.7

30. On 3 March 2017, a client ledger was opened for Client L and Client M entitled, "Tenancy Advice re: dilapidations". The client reference and matter number (45148.17) could be seen on a client care letter, also dated 3 March 2017, which related to the property. An Attendance note existed which appeared to relate to the property (Property P). These documents suggested that these clients were receiving tenancy advice in relation to dilapidations in respect of their property at Property P. The clients denied this was the case.

31. Correspondence was identified between Mr Williams and KE Young Property Services concerning the replacement of a boiler at a property owned by Mr Williams in (Property Q).

32. Monies were transferred from the account of Client L and Client M via the new client ledger referred to above to an individual (Person S) who had provided an estimate for the installation of a boiler at the Property Q property which Mr Williams had accepted.

33. On 25 October 2017, the day Mr Williams left the Firm, an invoice was created for Client L and Client M. It contained the information "General advice regarding the property dilapidations and dealings with the tenancy dispute at [the Property P address]"

Witnesses

34. There were no witnesses.

Findings of Fact and Law

35. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with Mr Williams 's 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.

<u>General submissions for the SRA</u>

36. Mr Collis submitted that the Tribunal could see that from 2017 to 2020 in his correspondence with the SRA, Mr Williams was raising the issue of health matters in broad terms and expressing remorse and shame for the way he had behaved but there was no attempt to engage meaningfully with the substance of the allegations against him until February 2022 in a document which he sent in response to the SRA's notice about making a recommendation to refer him to the Tribunal. In the course of this document he stated that he was truly sorry and ashamed of the distress that his actions had caused, that at the time of his actions he was struggling with health and complications in his private life. Specifically regarding the sum of £4,500 he had received from Client J he asserted that he had received it by way of a deposit and that it was due back to Client J on completion of the matter. Mr Williams stated that he still

retained those funds and would be happy to reimburse Client J, that it had never been his intention to retain these funds for himself. This assertion in relation to the sum of money received from Client J could be seen echoed in his most recent letter to the Tribunal dated 10 November 2022. Going back to the February 2022 letter, he said regarding other matters that he could not recall the circumstances around them, that he had no excuse to offer save for poor judgement being clouded by his own personal issues. He stated, "I will of course make any reparations necessary". In response to the notice he stated that he had reflected on matters and had no intention of practising in the future. He went on to say:

> "I feel like I have let everyone down. I have let down my family and my profession. I am deeply remorseful of any disrepute I have brought to the profession and regret my actions immensely. I would like to request removal from the Roll. I am not worth the title of solicitor…"

37. **Allegation 1.1 - On or around 23 September 2016, caused the transfer £1,200 of client money, belonging to (Client A) and (Client B), to Bell & Buxton LLP, without the clients' consent and in doing so breached any or all of Rules 1.2(c) and 20.1 of the Solicitors Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.**

37.1 For the SRA, Mr Collis submitted that Allegations 1.1, 1.3 and 1.6 all related to alleged misuse and misappropriation of client money. Mr Williams had been admitted on 15 September 1998 and regarding allegation 1.1 the earliest date of the allegations he had been admitted a little more than 18 years. The matters came to the attention of the SRA as a result of two separate reports from Mr Williams's then employers the Firm.

37.2 Mr Collis referred to the history of the transaction the subject of allegation 1.1 as set out in the Factual Background to this judgment. He referred to the final chaser email sent by Bell and Buxton LLP on 21 September 2022; its falsification was the subject of allegation 1.2 below. It stated:

> "I note I have not heard from you in reply to my email below. Unless I hear from you by close of business on Friday, I will need to raise the matter with Donald Bird as your COLP"

This e-mail was sent at 16:09 and the subject title contained a reference to the Property E. In the first request for a cheque payable to Bell and Buxton LLP from the Firm's accounts department the details provided contained the phrase, "Sellers legal costs". The client account number provided in that request related to Clients A and B, not Client D. The amount requested £1,200 was the amount owed by Client D on Mr Williams' undertaking. Bell and Buxton LLP were specified as the intended recipients and the name of the ledger account was Clients A and B. The Clients A and B had instructed the firm relatively recent to that request in relation to their purchase of the leasehold title to a property in Property F. Following two incoming payments into the Firm in relation to Clients A and B in August 2016, the balance on their client ledger stood (at its highest) at £72,495.

37.3 On 23 September 2016, Mr Williams sent a further e-mail to the Firm's accounts department, requesting the £1,200 cheque that day. This email contained the further explanation that:

> "…the client's [sic] are now buying the freehold reversion to this leasehold property and the sellers sols want their costs up front."

The same day Mr Williams finally replied to Bell and Buxton LLP.

37.4 A receipt from Bell & Buxton LLP acknowledged payment of the £1,200 referencing Company H and the Property E property. From 27 May 2016 to 28 June 2017, the balance on the client ledger for Client D was zero, meaning that the Firm held insufficient funds to meet the £1,200 due to Bell & Buxton LLP. During the Firm's review of Client D's file, it was unable to find any evidence of Mr Williams engaging with Client D about Bell & Buxton LLP's fees; asking for the Firm to be put in funds for the amount due; and no reference on Client D's file to Mr Williams seeking to agree with him the terms of the undertaking given by Mr Williams on 17 November 2014. In its report to the SRA, the Firm stated in relation to the £1,200 payment:

> "There is no record on file to explain why this payment was made from and funded by the [Clients A and B's] clients account"

37.5 Mr Collis submitted that this was a diversion of funds belonging to Clients A and B to meet a debt Mr Williams incurred for another client Client D.

<u>Breaches of Principles regarding allegation 1.1</u>

37.6 Mr Collis made the following submissions in addition to the points set out above. On or around 23 September 2016, Mr Williams arranged for the transfer of £1,200 of client funds belonging to Clients A and B, without their consent, when this money was in fact owed by Client D, following the undertaking given on his behalf by Mr Williams. Given the lack of documentation on Client D's file referred to by the Firm to suggest that Mr Williams had either instructions to give the undertaking provided on 17 November 2014; and/or that Mr Williams had made efforts to contact Client D in order to obtain funds to pay the amount due to Bell & Buxton LLP, it appeared that rather than engage with this client about a debt that was now owed because of the undertaking which he Mr Williams had given, Mr Williams chose instead deliberately to divert funds belonging to another client in order to meet that debt. The use of client funds belonging to Clients A and B to pay a debt owed by Client D represented a clear breach of Rule 1.2(c) of the Accounts Rules. Rule 20.1 of the Accounts Rules identified the scenarios in which client money might be withdrawn from the client account. None of the identified scenarios applied to Mr Williams's use of £1,200 belonging to Clients A and B. It followed that Mr Williams's conduct represented a breach of Rule 20.1. Diverting client funds in order to meet a debt owed by a completely separate client represented a failure to act in the best interests of the client, a failure to provide a proper standard of service, and also a failure to protect client money. For those reasons, Mr Collis submitted that the conduct represented breaches of Principles 4, 5 and 10 of the SRA Principles 2011. Misuse of client funds in this manner, particularly when, on the face of it, it would appear to have been done in an effort to shield Mr Williams from criticism from another client Client D that the debt had been incurred by Mr Williams in giving

the undertaking, was precisely the type of conduct that would damage the trust the public placed in Mr Williams and in the provision of legal services. Therefore, it was asserted that this conduct represented a breach of Principle 6.

37.7 In the case of Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession. A solicitor acting with integrity (that is with moral soundness, rectitude and steady adherence with an ethical code) would not have used funds belonging to one client to meet the debts of another client. It was therefore submitted that this conduct represented a breach of Principle 2 of the Principles.

37.8 In respect of the allegation of dishonesty attached to allegation 1.1, the SRA relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67 which applied to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

> "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."

37.9 Assuming the Tribunal found that this transfer was deliberately caused by Mr Williams, it must follow that he had been acting dishonestly. There is no suggestion that this transfer occurred due to a mistake or a genuine belief that Clients A and B consented to their funds being used in this manner. It must follow that Mr Williams knew what he was doing; that he was misusing those funds belonging to Clients A and B. On the face of it, this was a straightforward misappropriation of client funds in order to meet the debt owed by another client. As already indicated, it would appear that this took place in order to prevent Mr Williams having to engage with Client D first about the undertaking he had given on his behalf; and secondly the fact that monies were now owed as a result of the undertaking. It was difficult to envisage a set of circumstances in which a solicitor misusing client funds in this manner could be anything other than dishonest as viewed by the standards of ordinary decent people.

37.10 In determining the allegation of dishonesty in respect of allegation 1.1 the Tribunal might wish to consider some of the factors in allegation 1.2 in respect of which Mr Collis submitted that Mr Williams had deliberately tampered with an e-mail to make it appear that funds were to be paid from Clients A and B in relation to the property which they were trying to purchase. If the Tribunal determined in respect of allegation 1.2 that this was a deliberate falsification of an e-mail, Mr Collis submitted that must support and add weight to the SRA's case in respect of dishonesty under allegation 1.1. If Mr Williams felt the need to conceal and cover up that payment then surely, he must have known that that payment was wrong which lent weight to the SRA's assertion that this was dishonesty on his part.

Determination of the Tribunal in respect of allegation 1.1

37.11 The Tribunal had regard to the evidence, the submissions for the SRA and the communications from Mr Williams with the SRA dated February 2022 and with the Tribunal dated 10 November 2022. It noted that Mr Williams did not offer any evidence in respect of any of the allegations. He did not dispute allegation 1.1 rather it was covered by the statement in his handwritten representations against referral of his case to the Tribunal dated only February 2022 that aside from the subject matter of allegation 1.3 the £4,500:

> "I cannot recall the circumstances around them. I have no excuse to offer save for my poor judgment being clouded by my own personal issues. I will of course make any reparations necessary"

The Tribunal treated allegation 1.1 and all the other allegations including the associated allegation of dishonesty as denied by Mr Williams. On the evidence before it the Tribunal found proved as fact that Mr Williams had transferred £1,200 of money belonging to Clients A and B and used it to satisfy an undertaking which he had incurred on behalf of his client Client D to solicitors for their fees in acting for a company Company H which had an interest in a property which Client D was seeking to purchase. Under Rule 1.2(c) of the Accounts Rules, Mr Williams had an obligation to use each client's money for that client's matters and the Tribunal found him to be in clear breach of that rule. Under Rule 20.1:

> "Client money may only be withdrawn from a client account when it is:
>
> (a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held)…
>
> …
>
> (f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing"

37.12 The Tribunal found that the funds in question were not properly required for a payment relating to Clients A and B and there was no evidence of any instructions from them for Mr Williams to use the money as he did. The Tribunal therefore found him to be in breach of Rule 20.1 of the Accounts Rules. In respect of the breach of the Principles alleged under allegation 1.1, the Tribunal determined that Mr Williams's conduct constituted a failure to act with integrity as set out in the definition in SRA v Wingate. A solicitor acting with integrity would not have used funds belonging to one client to meet the debts of another. The Tribunal found proved to the required standard that Mr Williams had breached Principle 2 the requirement to act with integrity. He had also for the reasons Mr Collis had set out, breached Principle 4 act in the best interests of each client, Principle 5 provide a proper standard of service to your clients, Principle 6 behave in a way that maintains the trust the public places in you and in the provision of legal services and Principle 10 protect client money and assets.

37.13 The Tribunal had regard to the definition of dishonesty set out in the case of Ivey. It had first to determine Mr Williams's state of knowledge. He knew that there was no money in the client account for Client D. There was no evidence that he had asked Client D to put him in funds to satisfy the undertaking or indeed that Client D knew anything about it. The matter had been the subject of several requests for payment from Bell and Buxton LLP, culminating in a threat to report Mr Williams to the Firm's COLP. The Tribunal accepted that Mr Williams's behaviour in respect of allegation 1.2 where it found that he had falsified documents to justify using money belonging to Clients A and B to settle the obligation under the undertaking supported the allegation of dishonesty in respect of allegation 1.1. The Tribunal found that all of Mr Williams actions in respect of the misappropriation of Clients A and B's money and its application to Client D's matter were deliberate and done with full knowledge. Ordinary decent people would certainly consider his actions to be dishonest and the Tribunal found dishonesty proved to the required standard in respect of allegation 1.1.

38. **Allegation 1.2 - On or around 23 September 2016, falsified an e-mail from Bell & Buxton LLP to suggest that the £1,200 owed to them related to a property transaction involving (Client A) and (Client B) and in doing so breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.**

38.1 Mr Collis submitted that Mr Williams forwarded an email to himself that purported to be a 21 September 2016 email timed at 16.09, However it had been changed from the genuine email in two key respects. The subject of the email had been changed to a reference to the Property F property that Clients A and B were in the process of purchasing. Also the content of the email had been changed to the following:

> "I can confirm my client's charges in relation to the purchase of freehold interest in the above property total £1,200.00 inclusive of the premium, survey costs and legal costs. Please let me have your cheque in this amount held to order & pending completion and I will prepare the necessary documentation"

38.2 The changes only came to light in the course of the e-mail exchange between the Firm and Bell & Buxton LLP from 2 October 2018 and 11 April 2019. The Firm sent Bell & Buxton LLP a copy of the amended 21 September 2016 e-mail. Bell & Buxton LLP confirmed they were unaware of where the reference to the Property F Property came from in the header of that e-mail. They could find no trace of any record of the Property F property in their database. There was no record held by Bell & Buxton LLP of the 21 September 2016 e-mail in the form that it had been sent to them by the Firm, but they did hold an e-mail matching the date and sending time that referred to the Firm's COLP being notified. A copy of the genuine 21 September 2016 e-mail was forwarded onto the Firm on 11 April 2019. The Firm asked Bell and Buxton to send them what Mr Collis called the genuine version of the email. Mr Collis asked the Tribunal to draw the inference that the genuine copy of that email for whatever reason was no longer available on the Firm's system or any of the relevant client files. During the SRA's investigation of this matter, it was confirmed by the Firm that no-one else had access to Mr Williams's e-mail account in September 2016 save for Mr Williams and the Firm's IT team.

Breaches of Principles

38.3 In addition to the above submissions, Mr Collis submitted that on or around 23 September 2016, in an apparent attempt to legitimise the use of funds belonging to Clients A and B, Mr Williams doctored an e-mail sent to him by Bell & Buxton LLP to make it appear that monies were in fact owed by those clients, rather than Client D. The falsifying of an e-mail in an apparent attempt to conceal or legitimise the use of funds belonging to Clients A and B, again, represented a failure to act in the best interests of the client, a failure to provide a proper standard of service, and also a failure to protect client money. For those reasons, it was asserted that there had been breaches of Principles 4, 5 and 10 of the Principles. Just as with the actual misuse of client funds in allegation 1.1, the attempt to conceal that through the falsification of an e-mail was again precisely the type of conduct that would damage the public's trust in Mr Williams and the provision of legal services. For that reason, a breach of Principle 6 was alleged. No solicitor acting with integrity would take steps to alter an e-mail to suggest that a debt owed by one client was in fact owed by another. The original e-mail from Bell & Buxton LLP threatened escalation of the matter to the Firm's COLP. Not only did Mr Williams's doctoring of this e-mail create the impression that funds were in fact due from Clients A and B, but it also removed the suggestion of escalation within the Firm, and so inferentially removed the suggestion of wrongdoing on the part of Mr Williams. It was suggested that there were two motives for the falsification of the email; first to cover the misuse of funds belonging to Clients A and B and secondly to remove and destroy the implied criticism of his own conduct which was contained within the genuine e-mail. Such departure from the ethical code of the profession represented a clear breach of Principle 2.

Dishonesty in relation to Allegation 1.2

38.4 It was the SRA's case that Mr Williams deliberately tampered with an e-mail chasing payment in order to try to create the impression that money was owed by a different client, presumably in an effort to legitimise the use of that different client's funds to meet that debt. It was unclear how the alteration of this e-mail could have taken place in circumstances other than Mr Williams attempting to create such a false trail. If the Tribunal accepted that the alteration of this did take place deliberately, it must follow that Mr Williams knew what he was doing and was intending to create a false impression. It was difficult to envisage how the falsification could have taken place innocently or accidentally. It was difficult to envisage a set of circumstances in which the deliberate falsification of an e-mail particularly in these terms would not amount to dishonesty, but in this case, there was an obvious advantage to Mr Williams in doing so: It created the impression that funds were in fact due from Clients A and B to Bell & Buxton LLP and the subject of the email had been altered to refer to the Property F property which they were in the process of buying. Using funds belonging to Clients A and B to pay Bell & Buxton LLP removed the need for Mr Williams to engage with Client D about both the undertaking he had given on his behalf and the fact that a debt had been incurred to Bell & Buxton LLP as a result; and it removed the threat of escalation to the Firm's COLP and the obvious implied criticism of Mr Williams this entailed. It followed that the altering of the e-mail in these circumstances would undoubtedly be viewed as dishonest by ordinary decent people.

Determination of the Tribunal in respect of allegation 1.2

38.5 The Tribunal had regard to the evidence, the submissions for the SRA and the communications of February and November 2022 from Mr Williams to which the same consideration applied as set out in the Tribunal's findings in respect of allegation 1.1 above. The Tribunal found proved as facts that on or around 23 September 2016, Mr Williams falsified an e-mail which he had received from Bell and Buxton LLP to suggest that the £1,200 owed to them related to a property transaction involving Clients A and B. There was no other possible explanation for the changes which had been made after the Bell and Buxton LLP sent the e-mail to Mr Williams. The Tribunal also found to the required standard that this conduct clearly demonstrated a lack of integrity and was a breach of Principle 2 and that it also constituted breaches of Principles 4, 5, 6 and 10. In respect of the allegation of dishonesty associated with allegation 1.2, the Tribunal determined that Mr Williams knew what he was doing in changing the e-mail so that it would give a false picture of how the obligation to Bell and Buxton LLP arose and that ordinary decent people would consider that such conduct was dishonest. Dishonesty was therefore found proved to the required standard in respect of allegation 1.2.

39. **Allegation 1.3. - In relation to a transaction involving Property I:**

1.3.1. On or around 16 January 2017, misappropriated £4,500 from (Client J);

1.3.2. On or around 31 January 2017, caused the transfer of £5,712 client money, belonging to (Client L) and (Client M), to Brabners LLP, without the clients' consent and in doing so breached any or all of Rules 1.2(c), 14.1 and 20.1 of the SRA Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011

39.1 Mr Collis submitted that this allegation again related to misuse and misappropriation of client money by Mr Williams. Mr Collis referred to the facts set out in the Background to this judgment.

39.2 Mr Collis submitted that on 18 June 2019, the Firm received a call from Client K. In the course of that conversation, reference was made to Client J that Client L and Client M had funded the purchase price for the freehold reversion on the Property I property. Client J disagreed with this, and stated that it was his (business) partner, Client J who had paid £4,500 for the purchase of the freehold reversion. Client K stated that the money had been paid by faster payment to an HSBC account, as requested by Mr Williams. Client K subsequently sent documents to the Firm that demonstrated that outgoing payment of £4,500. The Telephone Note of this call with Client K recorded that he made the following comments:

> "He paid it by faster payment as requested by EJW [Mr Williams] to a HSBC account…"

and

> "He paid it to our [the Firm's] HSBC account on 16 January 2017"

39.3 Mr Collis submitted that the reasonable inference to be drawn from Client K's comments in the telephone call was that Client J and Client K had been provided with

the details of the HSBC bank account into which they were required to make payment; and that it was their understanding that this HSBC bank account belonged to the Firm.

39.4 On 25 June 2019, the Firm conducted a meeting with Client L. He was recorded as saying in the course of that meeting, that he was not aware that his money had been used to fund the Client J and Client K' purchase of the freehold reversion in Property I before he went on to purchase the property from them; that he had not been aware that the Firm held money on account for him to fund this purchase; that he had not authorised Mr Williams to use his funds for this purchase of the freehold reversion; and that it was his understanding that Client J and K had paid for the purchase of the freehold reversion prior to his purchasing it from them.

Breach of Principles

39.5 In addition to the points made above, Mr Collis submitted that on 16 January 2017, Mr Williams received £4,500 from Client J. It was understood by him and Client K that this money was to be used to purchase the freehold reversion of the property in Property I. Instead, Mr Williams used funds belonging to Client L and Client M to fund the purchase of the freehold reversion, without their consent. In failing to utilise the £4,500 for the purpose for which it was intended (the purchase of the freehold reversion), Mr Williams misappropriated client money. Mr Williams made an assertion in his February 2022 representations and his 10 November 2022 letter to the Tribunal that this payment was received as a "deposit". Regarding the credibility of that account, no explanation had been provided as to why this money was paid into an account belonging to Mr Williams, rather than to a Firm controlled account, nor why if it was a deposit, he still retained that money more than five years after it was paid to him. The Tribunal might wish to consider whether it could reject the explanation provided by Mr Williams in relation to this £4,500. That decision might impact on the Tribunal's determination of whether or not this sum of money was misappropriated and, if so, whether this misappropriation amounted to a breach of the alleged Rules and Principles, as well as amounting to dishonesty.

39.6 Mr Collis submitted that it was the SRA's case that if the Tribunal did feel that it might be right that when this money was first paid out it was intended as a deposit the SRA still said that the continued retention of those funds on the part of Mr Williams inevitably amounted to misappropriation of those funds. In making that assessment, the Tribunal was invited to consider the fact that the 18 June 2019 Telephone Note clearly suggested that Client J and K understood that the £4,500 was being paid into an account belonging to the Firm not Mr Williams There had been no adequate explanation forthcoming from M Williams as to why any such "deposit" should have been paid into an account controlled by him rather than the Firm, nor why the clients would have been left with the impression that their money was being transferred into a Firm-controlled bank account. If the Tribunal felt it could reject the deposit explanation provided by Mr Williams, it followed almost inevitably that this sum of money was misappropriated. As could be seen from the account provided by Client K in the telephone note it was clearly the understanding of Client J and K that this money had been used to purchase the freehold reversion of the property. The fact that the money was not used for this purpose and remained in the possession of Mr Williams was a clear indicator that this money was misappropriated.

39.7 If, however, the Tribunal felt that the money might have been paid as a deposit towards the purchase, that of course raised the issue of why those funds were not returned following the purchase, or used towards the purchase price but were used towards the £5,712 that ended up as the total purchase price for the freehold reversion. It was the SRA's case that the subsequent misuse of this money, either through failing to return it to the client or by not utilising it towards the purchase of the freehold reversion, amounted to a misuse of these funds. It followed that whether the Tribunal was able to reject Mr Williams's explanation or not, the SRA's case was that this sum of money was misappropriated.

39.8 Rule 14.1 of the Accounts Rules required client money to be paid into a client account without delay, subject to a number of limited exceptions which did not apply in this case. Given that the £4,500 was expected on the Client J and Client K s assertion to be used for the purchase of the freehold reversion or, on Mr Williams's case, to act as deposit towards this purchase, it was still client money and Rule 14.1 required this money to be transferred into a client account. The fact this this did not occur represented a breach of this Rule.

39.9 Mr Collis submitted that the transfer of £5,712 from funds belonging to Client L and Client M, without their consent, in order to fund Client J and Client K's purchase of the freehold reversion of the Property I property, represented a breach of both Rules 1.2(c) and 20.1 of the Accounts Rules. Client money should be used for client matters only and must only be withdrawn in certain circumstances; none of which applied in this case.

39.10 The misappropriation of £4,500 in funds from Client J and the transfer of £5,712 to Client L and Client M to fund the purchase of the freehold reversion represented a failure to act in the best interests of clients, a failure to provide a proper standard of service, and also a failure to protect client money. For those reasons, it was submitted that there had been a breach of Principles 4, 5 and 10 of the Principles. The misappropriation of £4,500 of client funds and then the transfer of £5,712 belonging to Client L and Client M, the SRA said in an effort to conceal the initial misappropriation of the £4,500 belonging to Client J, undoubtedly damaged the public's trust in Mr Williams and in the provision of legal services. On that basis, a breach of Principle 6 was alleged. No solicitor acting with integrity and adhering to the ethical standards of the profession would have even contemplated misappropriating £4,500 of client funds; and then using £5,712 of another client's funds, without their consent, to fund the purchase that the £4,500 was supposed to achieve. For those reasons, a breach of Principle 2 was made out.

<u>Dishonesty in relation to Allegation 1.3</u>

39.11 Mr Collis submitted that the Tribunal's determination of dishonesty in relation to Allegation 1.3.1 (the misappropriation of £4,500) would be affected by the Tribunal's consideration of the "deposit" explanation provided by Mr Williams. If the Tribunal rejected this explanation, and accepted that these funds were supposed to be used to purchase the freehold reversion of the Property I property, it followed inevitably that Mr Williams's failure to use the funds in this manner, and instead to retain it for himself, was conduct that would be viewed as dishonest by the standards of ordinary decent people. If Mr Williams had received funds from a client for an intended purpose, failed

to use it for that purpose, and had instead retained those monies that must be conduct that would be viewed by ordinary decent people as dishonest.

39.12 Mr Collis submitted that it was a slightly more nuanced consideration if the Tribunal were unable to reject the "deposit" explanation provided and felt there might be something to it and could not rule it out, but it remained the SRA's case that Mr Williams acted dishonestly. As set out above, even if Mr Williams might be right in his assertion about why he initially received the payment, he subsequently failed to use the funds in an appropriate manner, either by using the deposit to go towards the purchase price, or by failing to return it to Client J. It was the SRA's case that this must have occurred deliberately. The Tribunal could reject the possibility that this was an oversight or mistake by Mr Williams. The use of a bank account controlled by him, rather than one controlled by the Firm, to hold a deposit received from a client was presumably an unusual and striking incident. It was inconceivable that Mr Williams could have either forgotten that he had received these funds when he went on to have to divert funds belonging to Client L and Client M to fund the purchase price, or that he could have overlooked payment in the intervening five-year period that had passed since he received these funds and had not returned it to Client J. It followed that if the Tribunal accepted this was, as was alleged, a deliberate misappropriation, either by the actual receipt of the £4,500 or if the Tribunal thought there was something to the account given by Mr Williams that this was a deposit by the subsequent misuse of the money, either way this was conduct that would be viewed as dishonest by the standards of ordinary decent people.

39.13 Allegation 1.3.2, similar to allegation 1.1, involved a straightforward misappropriation of funds belonging to one client to make a payment that should have been paid by a different client. This misuse of the funds belonging to Client L and Client M took place, presumably, because of the earlier misappropriation of funds belonging to Client J. Client J and K would expect the £4,500 to be available towards the £5,712 to complete the purchase price for the freehold reversion for the Property I property, and given that Mr Williams had misappropriated for himself the sum of money he had received from Client J to put towards this purchase, it was not available and so he diverted funds belonging to another client. The purchase price had to be paid. Mr Collis submitted that the conduct in allegation 1.3.2, was therefore, committed in an effort to conceal the wrongdoing that had already occurred in relation to allegation 1.3.1. On any view, this was conduct that would be viewed as dishonest by the standards of ordinary decent people.

Determination of the Tribunal in respect of allegation 1.3

39.14 The Tribunal had regard to the evidence, to the submissions for the SRA and to the communications sent by Mr Williams to the SRA in February 2022 and to the Tribunal on 10 November 2022. This was the only one of the allegations which Mr Williams apparently recalled and for which he offered an explanation. The Tribunal found proved as fact that Mr Williams, on or around 16 January 2017, took £4,500 from Client J into an account of his own (allegation 1.3.1) and that on or around 31 January 2017, he caused the transfer of £5,712 client money, belonging to Client L and Client M, to Brabners LLP (the original sum of £4,500 having been taken as above), without the clients' consent (allegation 1.3.2). Mr Williams had offered an explanation about the money received from Client J that it constituted a deposit. He had not offered any

supporting evidence for his assertion including why such a payment should be made into an account of his as opposed to one controlled by the Firm. The Tribunal rejected the explanation.

39.15 The Tribunal found proved to the required standard that Mr Williams's actions under both aspects of this allegation constituted a breach of Mr Williams's obligation under Rule 1.2 (c) to use each client's money for that client only. They also constituted a breach of Rule 14.1 "Client money must without delay be paid into a client account, and must be held in a client account, except when the rules provide to the contrary (see rules 8, 9, 15, 16, 17 and 19)". The Tribunal also found proved to the required standard that the withdrawal of money belonging to Clients A and B constituted a breach of Rule 20.1:

> "Client money may only be withdrawn from a client account when it is:
>
> (a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held) …
>
> (f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing"

The Tribunal also found proved to the required standard that the actions found proved under allegation 1.3 constituted a breach of Principles 2, 4, 5, 6 and 10.

39.16 In respect to the allegation of dishonesty relating to allegation 1.3, the Tribunal considered Mr Williams's state of knowledge. In respect of allegation 1.3.1, Mr Williams knew that the bank account into which he required Client J to pay the amount of £4,500 was his own and not one controlled by the firm. He knew that he retained that money some five years after taking it notwithstanding his statement in the letter of 10 November 2022 that he was prepared to reimburse it, an offer which he had never fulfilled. The Tribunal considered that ordinary decent people would consider such conduct to be dishonest. In respect of allegation 1.3.2, Mr Williams knew that having taken Client J's money he did not have the funds to purchase the freehold of the property. He also knew that he was acting without the consent of Clients A and B when he took their money for the purchase. The Tribunal considered that ordinary decent people would consider such conduct to be dishonest. The Tribunal therefore found dishonesty proved to the required standard in respect of both aspects of allegation 1.3.

40. **Allegations 1.4 – 1.7 – Creation of false documents and transfer of £1,034 of client money**

Allegation 1.4. On or around 2 March 2017, created, or caused to be created, a false Attendance Note suggesting that he had met with (Client L) and that the client had been informed of plans to release funds to a plumber, when that was not the case and in doing so breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

Allegation 1.5 - On or around 3 March 2017, created, or caused to be created, a false client care letter suggesting that he had been instructed by (Client L) and

(Client M) to represent them in providing tenancy advice in relation to dilapidations at the (Property P), when that was not the case and in doing so breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

Allegation1.6 - On or around 3 March 2017, caused the transfer of £1,034 of client money, belonging to (Client L) and (Client M), to (Person S), without the clients' consent and in doing so breached any or all of Rule 20.1 of the Solicitors Accounts Rules 2011 and Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

Allegation 1.7. - On or around 25 October 2017, created, or caused to be created, a false invoice for (Client L) and (Client M) relating to work carried out in relation to property dilapidations and a tenancy dispute for (Property P), when no so such work had been carried out and in doing so breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011.

40.1 Mr Collis submitted that allegations 1.4 to 1.7 all related to the misuse of £1,034 of client funds owed to the plumber Person S for the fitting of a new boiler in a property that was owned by Mr Williams in Property Q. Mr Collis referred to documents before the Tribunal which indicated that Mr Williams had held the leasehold title of this property since 28 September 2015. As Mr Collis had set out in his submissions about Preliminary Matters in this case, Land Registry documents showed that Mr Williams still did so.

40.2 On 13 February 2017, Mr Williams received an e-mail (on his work e-mail account) from KE Young Property Services, informing him that the boiler at the Property Q property needed to be replaced. Reference was made within this e-mail to quotes provided by "Person S", most likely a plumber named Person S, for the obtaining and fitting of a replacement boiler. Mr Williams replied that same day to KE Young Property Services, indicating that he was happy to go ahead with the replacement of the boiler and confirming that he was happy to pay the £1,100 price. In an email later that same day, at 11:27am, Mr Williams requested KE Young Property Services that Person Sal should invoice Mr Williams directly. On 19 February 2017, KE Young Property Services sent an e-mail to Mr Williams, attaching an invoice from an individual named Person S, totalling £1,034 and related to the supply and fitting of a new boiler at the Property Q property. A key point to take from this invoice was its number that appeared in the top right-hand corner "056". Enquiries conducted by the SRA revealed that there was an individual by the name of Person S who advertised his services as a registered plumber.

40.3 On or around 2 March 2017, an Attendance Note was created, suggesting that Mr Williams met with Client L to discuss on-going repair issues in relation to a property. The client reference number placed at the top of this Attendance Note matched that on the client Ledger and the client care letter which related to the property in Property P. It was submitted that this Attendance Note was intended to reflect a discussion with Client L in relation to the Property P. Significantly, the Attendance Note contained the following entries:

> "[Client L] has arranged for the boiler to be replaced and tested"

And

> ""…EJW said that he would forward evidence to SCC of the works that had been done and make payment to the plumber from money held so that SCC could see evidence of the works being done."

40.4 On 3 March 2017, Mr Williams e-mailed the Firm's accounts department in relation to Client L and Client M. The e-mail stated:

> "I'm just clearing up the re-mortgage matters on the above properties and sorting a new matter for them."

40.5 The email then contained a request to make a number of inter-file transfers for these clients. Mr Collis submitted that significantly the final request in that email was for £1,963.30 to be transferred onto the file for Client L and Client M that related to the alleged dilapidations in respect of the Property P property (file number 45148.17). That same day, 3 March 2017, Mr Williams sent a request to the same individual within the accounts department to transfer £1,034 from that same file number (45148.17) to Person S. The transaction reference was stated as, "Property Dilapidations – [the Property P address]". It set out that the intended beneficiary was an "Person S" and that the beneficiary reference was to be, "Boiler invoice – 056". 056 matched the invoice number that featured in the invoice that KE Young Property Services had sent to Mr Williams for the work done in fitting a new boiler in a property owned by him. The bank account details for Person S that featured in the transfer request matched those that featured in the invoice sent to Mr Williams on 19 February 2017.

40.6 The client ledger for Client L and Client M recorded the transfer of £1,963.30 onto it that same day 3 March 2017, before £1,034 was transferred out, the recipient being recorded as Person S. This client ledger recorded a £6 debit on 16 March 2017 and then a transfer of £40 onto another one of these clients' files on 24 October 2017. Those two transactions, added to the £1,034 payment to Person S left a total of £889.30 on that client ledger as of 24 October 2017. On 25 October 2017, an invoice was created for these clients. Its creation was the subject of allegation 1.7. It contained the information "General advice regarding the property dilapidations and dealings with the tenancy dispute at [the Property P address]" This invoice totalled £889.30; the precise amount remaining on the client ledger for this file number; £736.08 of this was said to relate to the advice and dealings with the dispute allegedly provided, with VAT and a £6 disbursement fee. It is of note that this invoice was dated the same date as Mr Williams' last day of employment with the Firm.

40.7 Mr Collis submitted that following Mr Williams's departure the issue of the £1,034 transfer to Person S was discussed with Client L at the meeting that took place on 25 June 2019. The Attendance Note from this meeting recorded as follows:

> "I read out the attendance note on file. Client had no idea what I was talking about. He does not recall instructing EJW in a dispute with a tenant over dilapidations, and said that he never had any problems with the tenant at [the Property P address] (the property in question). "

40.8 In the Firm's reporting to the SRA, the following points were made in relation to this matter: that it was, "…very unusual to see any attendance note, telephone note or file

note on any file of EJW's"; and in relation to the invoice for £736.08 plus VAT the Firm stated:

> "...If genuine, this is clearly excessive given that no work was apparently undertaken on this matter. The cost figure does not make sense and has clearly been calculated simply to clear the balance on client account. Of further note is that the invoice was raised on EJW's last day of employment with the firm (25.10.17). Evidently this was done so the balance could be cleared and the file closed prior to his departure".

40.9 Mr Collis submitted that the Firm's report supported the SRA's contention that this was an attempt by Mr Williams to close this file down and clear the matter before he departed on his final day, shutting down what the SRA said was a creation of a false client matter done, it would seem, purely to conceal his diversion of client funds.

Breaches of Principles

40.10 Mr Collis submitted that rather than simply pay the money himself Mr Williams chose to divert client funds to pay the bill and created a series of false documents to suggest that the clients Client L and Client M whose funds had been used were involved in a tenant dispute related to the state of the property and that they were required to make a payment to a plumber to deal with that issue. It was the SRA's case that there was no tenant dispute relating to the Property P property for which a file was created to suggest there was. The documents created to suggest otherwise were created in an effort to conceal his misuse of funds belonging to those clients. Mr Williams or potentially individuals within the firm acting upon his instruction created an entirely new client matter carrying the number 45148.17 simply to facilitate his misappropriation. Once that matter had been created and sufficient funds had been transferred onto that file on 3 March 2017, he then used £1,034 of that amount to pay a debt that he owed. The invoice generated on 25 October 2017 was simply created to justify clearing the balance on that fabricated client file prior to Mr Williams's departure from the firm. If the Tribunal accepted the assertion that this was a complete work of fiction on the part of Mr Williams, and that he had not been instructed by Client L in relation to an ongoing tenancy issue at the Property P property Mr Collis submitted that it followed that the following documents had all been falsified: the 2 March 2017 Attendance Note the subject of allegation 1.4; the 3 March 2017 client care letter the subject of allegation 1.5 and finally the 25 October 2017 invoice the subject of allegation 1.7.

40.11 Mr Collis submitted that the transfer of £1,034 of client funds belonging to Client L and Client M without their consent to Person S represented a breach of Rule 20.1 of the Accounts Rules breaches of Principles 4, 5 and 10. The diversion of client funds, and the fabrication of documents designed to conceal this diversion, clearly represented a failure to act in the best interests of the client, a failure to provide a proper standard of service, and also a failure to protect client money. As submitted with the previous allegations for the same reasons, the SRA asserted that Principles 2 and 6 were engaged as well.

Dishonesty in relation to Allegations 1.4 – 1.7

40.12 Mr Collis submitted that it was difficult to see how Mr Williams's behaviour in relation to these allegations could have been anything other than deliberate. He knew he owed money to Person S as shown by the exchange with KE Young Property Services regarding the quote from Person S and the subsequent authorisation by Mr Williams for Person S to go ahead with that work. So Mr Williams must have known that he owed money to Person S but he chose instead to use funds belonging to Clients Client L and Client M to meet that debt. Not only that, before that money was transferred, he set in chain a process of creating documents on the Firm's system to suggest that these clients had instructed him in a case in which repairs were required to a property that they owned. Such acts could have only taken place in a pre-planned effort both to facilitate the transfer of their funds, and also to create a veneer of credibility to account for these clients needing to make a payment to a plumber. It made the outgoing transaction from the Firm's client accounts seem more legitimate if there were this paperwork on the Firm's system to suggest that these clients needed the services of a plumber in an ongoing tenancy dispute. On any view, this was precisely the type of behaviour, the deliberate creation of documents and the deliberate use of client funds that would be viewed as dishonest by ordinary decent people.

Determination of the Tribunal in respect of allegations 1.4 to 1.7

40.13 The Tribunal had regard to the evidence, to the submissions for the SRA and to the communications from Mr Williams to the SRA of February 2022 and to the Tribunal of 10 November 2022. These allegations were covered by Mr Williams's general statement that he had no recollection of the matters. The Tribunal found proved as fact that Mr Williams owned a second property at Property Q and that a problem had occurred with the boiler at the property in respect of which he had communications with the managing agents, authorised work to proceed based on an estimate from Person S the plumber and that he asked for the invoice to be sent to him to be paid direct. The Tribunal also found that there is no evidence that Client L had any issues with the tenant at the Property P property and so there could be no explanation for the documents which were the subject of allegations 1.4, 1.5 and 1.7 other than that they were an attempt by Mr Williams to conceal that he was using client money for personal expenditure. The Tribunal found proved to the required standard that in respect of allegation 1.6 Mr Williams had breached Rule 20.1 and that in respect of all four allegations he had breached Principles 2, 4, 5, 6, and 10.

40.14 As to the allegation of dishonesty in respect of all four of the above allegations the Tribunal found that Mr Williams knew that he was using client money to meet a personal financial obligation and that he was creating false documents in order to cover his tracks. The Tribunal found that ordinary decent people would consider such conduct to be dishonest and found the allegation of dishonesty in respect of allegations 1.4, 1.5, 1.6 and 1.7 proved to the required standard.

Previous Disciplinary Matters

41. Mr Williams had appeared before the Tribunal in 2012 as one of four respondents in case no. 10858-2011. The allegations related to matters under the professional indemnity insurance arrangements and Mr Williams was fined £5,000 and an order made for costs against him in the sum of £856.38.

Mitigation

42. Mr Williams was not present but had made points in his February 2022 communication to the SRA and his 10 November 2022 both of which are referred to above which could be regarded as mitigation.

Sanction

43. The Tribunal referred to its Guidance Note on Sanctions (10th edition June 2022) when considering sanction. The Tribunal assessed the seriousness of Mr Williams's misconduct. As to the level of culpability, the Tribunal did not know what his motivation had been. It was apparent from the evidence that his actions were planned, for example quite a lot of planning went into the formulation of the false documents. He had direct control of the circumstances giving rise to the misconduct. Mr Williams had a reasonably high level of experience at the material time having been admitted in 1998. He was not acting in breach of a position of trust nor had he deliberately misled the SRA. As to the harm caused by his misconduct; anything that reduced the public's faith in a solicitor and in the profession caused harm to the reputation of the profession. that harm was reasonably foreseeable. Harm to clients had been limited because the Firm had made good the losses. However Mr Williams still retained and admitted that he retained £4,500 of client money. He had repeatedly said that he could return it but had failed to do so. As to aggravating factors, dishonesty had been found proved in respect of seven allegations. The misconduct was deliberate and had continued over quite a period of time. Mr Williams had attempted to conceal his wrongdoing (but to the extent that this formed part of the allegations it would not be counted twice against him). He ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession. Mr Williams had a previous disciplinary matter before the Tribunal where the allegations were found proved but the Tribunal considered that the extent to which this constituted an aggravating factor was limited save that the fact of the previous disciplinary proceedings should have made him fully aware of the need to comply with all the regulatory provisions. As to mitigating factors there had been no third-party coercion and although he acknowledged liability for repayment of some of the money, he had not repaid it. He had not notified the regulator of what had happened. It was his firm which had investigated and made the reports to the SRA. This could not be described as a single episode. Mr Williams had shown some insight into the gravity of what he had done but it was limited both as to what had happened and why and how he could avoid it in the future. He had not made open and frank admissions at an early stage and his cooperation with the investigating body had been minimal. The Tribunal considered the appropriate sanction. Multiple allegations of dishonesty had been proved which made the matter too serious for a fine or suspension. Mr Williams had made reference to health and other personal issues but no supporting evidence had been submitted. There were no apparent exceptional circumstances. The Tribunal considered that any lesser sanction than strike off would be inappropriate and the protection of the public and the reputation of the legal profession required it.

Costs

44. Mr Collis applied for costs in the amount of £22,800. He explained to the Tribunal that Capsticks were working to a fixed fee of £18,500 for the preparation and presentation

of the case to which VAT of £3,700 had been applied. The fee was fixed by reference to the complexity, preparation time and hearing length and so no hourly rate was included however some Panels of the Tribunal liked to calculate an hourly rate to see if the sum claimed was reasonable. The notional hourly rates were arrived at by dividing the total hours by the fixed fee but this might need revisiting because the case had completed sooner than anticipated. It had also been contemplated that a legal executive would attend the hearing but was not in fact present. Allowing for that a notional hourly rate of £180-84 would be arrived at. The Chair pointed out that Mr Williams had indicated from a very early stage that he was not going to become involved or participate in the proceedings. Mr Collis submitted that one could not go as far as that; from 2017 until early 2022 there had been intermittent correspondence in which Mr Williams had expressed an intention to leave the profession but had never stated that he was not going to attend the hearing. The Chair pointed to the communication of February 2022. Mr Collins responded that there were expressions of remorse and a stated intention to leave the profession and these representations were sent to the SRA before it decided to refer the case to the Tribunal. Mr Collis clarified that Mr Williams's last practising certificate had been for the year 2020-2021 and so when he wrote in February 2022, he was not in possession of a practising certificate. The referral decision had been made on 28 February 2022 and the case was certified at the Tribunal on 11 August 2022. From February 2022 to 10 November 2022 no correspondence whatsoever had been received.

45. The Chair questioned the number of lawyers who had been involved in the matter, three of whom two were senior lawyers. It was also noted that a significant amount of time had been spent on the case and proportionality had to be considered before the Tribunal looked at the applicability of the authorities in the cases of Barnes v SRA Ltd [2022] EWHC 677 (Admin) and Matthews v SRA [2013] EWHC 1525 (Admin). The Chair suggested that this was a lot of resource for the case. The Tribunal appreciated that the fixed fee system included an element of swings and roundabouts in that sometimes Capsticks made a profit and on other cases they did not. The Chair was concerned that there was an element of duplication in having two senior lawyers involved throughout where effectively since before the proceedings started until a week before this hearing there had been no active participation in the matter by Mr Williams. Mr Collis repeated that nothing had been heard until the 10 November 2022 letter about Mr Williams not attending the substantive hearing and Capsticks had to prepare the case. If Mr Williams could not attend and there were no admissions, the case had to be presented as if nothing were admitted and this was not a case where there had been clear and unequivocal admissions. No Answer had been filed and from February 2022 absolutely nothing had been heard from Mr Williams. Mr Collis accepted that it could be seen as likely after February 2022 that he would not attend but until the Rule 12 Statement was filed and thereafter there had been engagement and the majority of the hours were spent on preparation and filing the Rule 12.

46. The Chair noted that there were seven allegations four of which were elements of alleged falsification of documents. If one took the 60 hours at 6 hours a day 10 days had been spent on the Rule 12 Statement. Relatively small amounts of money were involved in the allegations and the Chair suggested this was not a case of the greatest difficulty or complexity. Mr Collis assured the Tribunal that no one had dragged their heels; they had wanted to prepare as quickly and efficiently as possible so that they could move on to the preparation of other cases. The Rule 12 Statement was 29 pages

in length and had taken that time for Mr Collis to prepare the draft. It had been circulated internally at Capsticks and then sent on to the SRA from whom comments were received back for review and finalisation. Mr Collis assured the Tribunal that this process took some time and Capsticks wanted to undertake it as efficiently as possible.

47. Mr Collis also pointed out that costs orders made by the Tribunal did not automatically mean that Mr Williams would be obliged to pay that amount to the SRA. The costs recovery staff at the SRA engaged with respondents and made further inquiries about their means and ability to meet a costs order. In making a costs order the Tribunal was setting a theoretical maximum to what the SRA could recover. The Chair suggested that an element of caution should be applied to the question of enforcement. There had been occasions when that sort of submission had been made and things had not gone as planned regarding the interface with a respondent. Mr Collis emphasised that he was not asking the Tribunal to abdicate responsibility but just to bear in mind the approach that could be taken, that is that the order would not necessarily be fully enforced.

48. Mr Collis reminded the Tribunal that Mr Williams had not provided a statement of means. His letter of 10 November 2022 suggested a degree of current financial hardship. In respect to those assertions, Capsticks had written to him on 16 November 2022 setting out the results of its inquiries into his financial circumstances so that he would know that these points were to be brought to the attention of the Tribunal. They included that Mr Williams did not currently have an IVA. Also Land Registry documents showed that he was the registered owner of a home address and that he owned the Property Q property where the boiler had been installed although the Land Registry documents indicated that charges were registered against both and the SRA did not know their value. Enquiries had revealed that his home address was valued at around £304,000 but in the absence of the value of the charges the figure could be of limited assistance. The SRA had no information at all as to where his family resided nor any information about earnings, He had not held a practising certificate since the year 2020-2021. A search at Companies House showed he had one active role in a company but it was in liquidation. Aside from this the SRA knew very little of his financial circumstances. Mr Collis was invited to comment on the authorities of Matthews and Barnes and he repeated that Mr Williams owned two properties but his share in the equity of those properties was not known. He had paid £60,000 pounds for the Property Q property in 2015. This was a limited picture but Mr Collis submitted that Mr Williams had chosen to leave it that way.

49. The Tribunal had regard to the schedule of costs submitted by Capsticks, to the submissions by Mr Collis and the evidence which he had submitted about Mr Williams's assets. It noted what Mr Williams had said in his communications about the state of his finances. The Tribunal also noted that the case had not taken as long as estimated and that Mr Collis had identified that one member of his legal team had not attended the hearing as planned. Although there were seven allegations, the Tribunal did not consider that the facts of this case were particularly complex and it also felt that the number of lawyers involved in its preparation was somewhat high. The Tribunal accepted that Capsticks could never be sure whether a respondent would attend the substantive hearing and had to prepare for the hearing on that basis. However it had been quite apparent from February 2022 that Mr Williams was not really going to engage with the proceedings; he had not filed an Answer or attended the CMH in

October 2022. Nothing was then heard from him until November when he made it clear that he would not attend whatever the format of the substantive hearing. The Tribunal decided that a broad-brush approach to costs having regard to the amount of time spent and the proportionality of the costs claimed was appropriate in this case and assessed costs at £10,000. The Tribunal then considered carefully what if anything Mr Williams could afford to pay towards those costs. He had not filled in a personal financial statement but in his letter of 10 November 2022 had referred to his "dire financial situation". The SRA's investigations had shown that he owned two properties but both were subject to registered charges the amount of which was unknown. The Tribunal paid particular attention to the decision in the case of Barnes. It considered that Mr Williams potentially had a considerable number of working years ahead of him although his present working situation was unknown and he owned two properties one of which was apparently a buy to let property. The Tribunal did not make any allowance for whatever approach the SRA's recovery staff from might take. It did not seem likely that Mr Williams would be able to make any immediate payment but the Tribunal determined that it was quite possible that the costs could be met in the future if one of the properties was sold. The Tribunal would therefore make an order for costs in the amount of £10,000 not to be enforced without leave of the Tribunal.

Statement of Full Order

50. The Tribunal Ordered that Mr Williams, EDWARD JAMES WILLIAMS solicitor, 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 £10,000.00, such costs not to be enforced without leave of the Tribunal.

Dated this 21st day of December 2022
On behalf of the Tribunal

L Boyce
Solicitor Member

Clerks Note: The decision set out in this judgment was reached by the Panel of three members who heard the case. However, due to the resignation of Mr Spooner (in the Chair), the judgment has been reviewed by the remaining two members, Mrs Boyce (Solicitor Member) and Mrs Gordon (Lay Member), both of whom are content that it reflects the full Panel's decision.