

# SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12367-2022

## **BETWEEN:**

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

ANALIZA ABELLA KJAER

Respondent

---

Before:

Mr R Nicholas (in the chair)  
Mrs L Boyce  
Mr C Childs

Date of Hearing:  
8 December 2022

---

## **Appearances**

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

The Respondent did not attend and was not represented.

---

## **JUDGMENT**

---

## **Allegations**

1. The allegations against the Respondent, Analiza Abella Kjaer, made by the SRA were that, while in practice as a solicitor and sole practitioner at Able Law (“the Firm”):
  - 1.1 Having received £132,000 into the Firm’s client account between August and October 2020, she failed to account to the client, ET, in respect of the same, and misused £67,538.65 of the monies for other purposes, and in doing so she thereby breached any or all of Principles 2, 4, 5, and 7 of the SRA Principles 2019 (“the Principles”) and Rules 2.5, 5.1 and 5.3 of the Solicitors Accounts Rules 2019 (“the SARs 2019”).  
[PROVED](#)
  - 1.2 On 25 January 2021, she misrepresented to ET that she did not have authority to release the funds referred to in allegation 1.1, when in fact she had been given authority to do so on 17 December 2020, and she thereby breached any or all of Principles 2, 4 and 5 of the Principles.  
[PROVED](#)
  - 1.3 She failed to replace a minimum cash shortage of £67,538.65 on the client account and thereby breached Principle 2 of the Principles and Rule 6.1 of the SARs 2019.  
[PROVED](#)
  - 1.4 She failed to co-operate with the SRA’s investigation into her conduct, and thereby breached any or all of Paragraphs 7.3 and 7.4 of the Code of Conduct for Solicitors, (“the Code for Solicitors”) RELs and RFLS and Paragraph 8.1 of the Code of Conduct for Firms (“the Code for Firms”).  
[PROVED](#)

## **Executive Summary**

2. Ms Kjaer was instructed by ET in relation to divorce proceedings. ET received a settlement of £132,000.00 upon conclusion of the proceedings. That money was paid into the Firm’s client account and was due to be transferred to ET upon execution of the title deeds in respect of the former matrimonial home. Ms Kjaer failed to transfer the funds to ET when authority to do so was given upon execution of the title deeds. The allegations levelled against Ms Kjaer were predicated on that failure. The Tribunal accepted the unchallenged documentary and witness evidence advanced by the Applicant. In so doing it found all of the allegations proved on a balance of probabilities.

## **Sanction**

3. The Tribunal sanctioned Ms Kjaer to an Order Striking her from the Roll of Solicitors and it further Ordered that she do pay the Applicant’s costs in the sum of £ 27,577.90.

## **Documents**

4. The Tribunal considered all of the documents in the case contained in an electronic hearing bundle which included:

- Rule 12 Statement dated 22 August 2022 and Exhibit JTC1.
- Applicant’s Schedule of Costs dated 30 November 2022.

## **Preliminary Matters**

### 5. Application to Proceed in Absence

5.1 Ms Sheppard-Jones submitted that notice of the Substantive Hearing had been properly served in accordance with Rule 36 in that:

- On 25 August 2022, the Tribunal advised Ms Kjaer that the Rule 12 Statement had been certified as showing a case to answer. Standard Directions were issued which included:

“1.1 The case be listed for substantive hearing on Thursday 8 and Friday 9 December 2022 at 10:00 A.M...”

- Ms Sheppard-Jones stated that any email communication from Capsticks LLP and the Tribunal were sent to email addresses that Ms Kjaer had provided to the Applicant. Ms Sheppard-Jones reminded the Tribunal of the duty incumbent upon solicitors to ensure that up to date contact details are provided to the Applicant, their regulator.
- On 13 October 2022, the Tribunal convened a Non-Compliance Hearing given Ms Kjaer’s failure to file an Answer to the Rule 12 Statement as required by Standard Direction 2. Ms Kjaer was served with a Memorandum of that decision which reinforced the Standard Directions. It was further directed that a Case Management Hearing (“CMH”) would be convened in the event of future non-compliance.
- On 1 November 2022, Capsticks LLP emailed Ms Kjaer. That email confirmed the date of the imminent CMH and the substantive hearing.
- On 2 November 2022, Ms Kjaer did not attend the CMH. The memorandum from that CMH was sent to Ms Kjaer via email on 7 November 2022. That memorandum contained further directions from the Tribunal which included confirmation of the substantive hearing date and the fact that it would proceed remotely with joining details to follow.
- On 24 November 2022, Capsticks LLP emailed Ms Kjaer to reiterate the substantive hearing date and to warn that an application would be made to proceed in her absence should she not attend.

5.2 Ms Sheppard-Jones averred that, given the facts set out above, the Tribunal could be satisfied that notice of the hearing had been served in accordance with Rule 44.

5.3 Ms Sheppard-Jones referred the Tribunal to the seminal authorities regarding the exercise of discretion to proceed in a Respondent’s absence (which are fully set out below). Ms Sheppard-Jones submitted that in applying the principles promulgated in those authorities, the Tribunal could be satisfied that Ms Kjaer had voluntarily absented

herself. Ms Sheppard-Jones therefore invited the Tribunal to exercise its discretion and proceed in Ms Kjaer's absence on the grounds that (a) it could be inferred that Ms Kjaer had voluntarily absented herself, (b) an adjournment was unlikely to secure her attendance, (c) the allegations that fell to be determined were serious allegations of dishonesty in relation to the misuse of client money and (d) the public interest in the expeditious adjudication of allegations levelled against a solicitor.

### The Tribunal's Decision

5.4 The Tribunal applied the two-stage test required of it when determining applications to proceed in a Respondent's absence. Firstly, the Tribunal considered whether notice of the substantive hearing had been given in accordance with Rule 44 namely:

“44.—(1) Any document to be sent to the Tribunal or any other person or served on a party or any other person under these Rules, a practice direction or a direction given under these Rules must be—

(a) sent by pre-paid first class post or by document exchange, or delivered by hand, to the Tribunal's or other person's office or as the case may be the address specified for the proceedings by the party (or if no such address has been specified to the last known place of business or place of residence of the person to be served); or

(b) sent by email to the email address specified by the Tribunal or other person or specified for the proceedings by a party (or if no such address has been specified to the last known place of business or place of residence of the person to be served); or

(c) sent or delivered by such other method as the Tribunal may direct.

(2) Subject to paragraph (3), if a party specifies an email address for the electronic delivery of documents the Tribunal and other parties will be entitled to serve (and service will be deemed to be effective) documents by electronic means to that email address, unless the party states in writing that service should not be effected by those means.

(3) If a party informs the Tribunal and every other party in writing that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to send documents to that party, that form of communication must not be used...”

5.5 The Tribunal proceeded to consider whether or not notice of the substantive hearing had been properly served. The Tribunal accepted Ms Sheppard-Jones' submission that it was incumbent on Ms Kjaer (and solicitors in general) to provide up to date contact details to her regulator, the Applicant. The Tribunal accepted Ms Sheppard-Jones'

submission that the email addresses used by the Applicant and the Tribunal to contact Ms Kjaer were those she had provided to the Applicant. The Tribunal accepted Ms Sheppard-Jones' submission that the residential and business addresses used and attended on by the Applicant were those that Ms Kjaer had provided to the Applicant. In circumstances where Ms Kjaer had been notified of the substantive hearing date in writing on five occasions and given the fact that there had been two interlocutory hearings (the Non-Compliance Hearing and the CMH), the Tribunal was satisfied that notice had been effected in accordance with Rule 44.

- 5.6 The Tribunal secondly considered whether or not to exercise its discretion to proceed in Ms Kjaer's absence. The power to proceed in absence was vested in the Solicitors (Disciplinary Proceedings) Rules 2019 Rule 36 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...”

- 5.7 The principles applied by the Tribunal when exercising its discretion whether to proceed in Ms Kjaer's absence were promulgated in R v Hayward, Jones and Purvis [2001] QB, CA in which Rose LJ at §22(5) held:

“... fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case namely:

- (1) A defendant has, in general, a right to be present at his trial and a right to be legally represented.
- (2) These rights can be waived, separately or together, wholly or in part, by the defendant himself. They may be wholly waived if, knowing, or having the means of knowledge as to when and where his trial is to take place, he deliberately and voluntarily absents himself and/or withdraws instructions from those representing him. They may be waived in part if, being present and represented at the outset, the defendant, during the course of the trial, behaves in such a way as to obstruct the course of proceedings and/or withdraws his instructions from those representing him.
- (3) The trial judge has a discretion as to whether a trial should take place or continue in the absence of the defendant and/or his legal representatives.
- (4) The discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.
- (5) In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into

account. The judge must have regard to all the circumstances of the case, in particular;

- (i) the nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be and, in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;
- (ii) ...
- (iii) the likely length of such an adjournment;
- (iv) ...
- (v) ...
- (vi) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
- (vii) ...
- (viii) the seriousness of the offence, which affects defendant, victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
- (ix) the general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;
- (x) ...
- (xi) ...”

5.8 The Tribunal further applied GMC v Adeogba [2016] EWCA Civ 162, in which Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a Respondent. At §19 he held:

“... It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when the practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed...”

5.9 Leveson P went on to state at §23 that discretion must be exercised “having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interest of the public also taken into account.”

- 5.10 The Tribunal determined that in circumstances where Ms Kjaer, (a) had been advised in writing of the substantive hearing date, (b) failed to attend the Non-Compliance Hearing and the CMH interlocutory hearings, (b) faced an allegation of failure to cooperate with the Applicant and (d) faced allegations predicated on the failure to engage with a client, it was plain that she had voluntarily absented herself from the proceedings.
- 5.11 The Tribunal was required to adjudicate upon allegations levelled against solicitors in order to serve the overarching public interest. The public interest comprised of (a) protecting the public from harm, (b) the declaring and upholding of proper standards within the profession and (c) maintaining public confidence in the regulatory system. The public interest required the expeditious adjudication of allegations. In considering the competing right of Ms Kjaer to be present at the substantive hearing and the requirement to act in the public interest, the Tribunal determined that the public interest prevailed in circumstances where Ms Kjaer had voluntarily absented herself.
- 5.12 The Tribunal therefore GRANTED the application.

### **Factual Background**

6. Ms Kjaer was admitted to the Roll in April 2005. She was the sole practitioner, Compliance Officer for Legal Practice (“COLP”) and Compliance Officer for Finance and Administration (“COFA”) at Able Law (“the Firm”), which commenced trading on 30 July 2013. At the time of the alleged misconduct, Ms Kjaer held a practising certificate free from conditions.
7. The conduct upon which the allegations are predicated came to the attention of the Applicant on 10 February 2021, when Ms Kjaer’s client, ET, made a report that Ms Kjaer, having received settlement monies of £132,000.00 into the Firm’s client account on behalf of ET, had failed to account to ET in respect of the same.
8. In March 2021, separate concerns were identified by the Applicant in relation to the Firm but no allegations arise out of those concerns.
9. A further report to the Applicant was made by a third party on behalf of ET on 5 May 2021, which confirmed that ET had reported Ms Kjaer’s conduct to the police.
10. As a result of the reports in relation to ET and the issues identified at the Firm, the Applicant commenced a without notice forensic investigation of the Firm on 6 May 2021. However, on arrival at the Firm’s registered premises on that date, it transpired that Ms Kjaer had vacated the same some time prior to the visit.
11. Ms Kjaer failed to reply to any of the Applicant’s correspondence, whether prior to or during the forensic investigation, including a failure to comply with a Production Notice dated 6 May 2021.
12. An Interim Forensic Investigation Report (“Interim FIR”) was issued on 17 May 2021 which set out the background, the failure to account to ET and the inability of the FIO to conduct a forensic investigation due to the non-engagement of Ms Kjaer.

13. When the Firm was intervened into on 1 June 2021, the client account had a balance of £64,461.36.
14. Following intervention, the FIO produced a Final FIR dated 22 October 2021, which concluded that there existed a minimum cash shortage on the client account in respect of ET's matter in the sum of £67,538.65, which had been caused by payments out of the client account for unrelated matters, resulting in a shortage of the monies that should have been available for ET.
15. On 27 September 2021, the SRA Compensation Fund granted ET's application for compensation in the sum of £132,000 plus interest.

### **Witnesses**

16. The written evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case. No oral evidence was received. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

### **Findings of Fact and Law**

17. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the standard applicable in civil proceedings (on the balance of probabilities). The Tribunal had due regard to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondent's rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
18. **Allegation 1.1 - Failure to account and misuse of client monies**

#### The Applicant's Case

- 18.1 Ms Kjaer acted for ET in divorce proceedings. The client care letter to ET stated that the person dealing with her matter was Ms Kjaer who was a solicitor and who had "overall responsibility for supervision of your matter". The letter included contact details for Ms Kjaer by way of email on [analiza@ablelaw.co.uk](mailto:analiza@ablelaw.co.uk) and a mobile telephone number. The letter advised that the best way to contact her was by email. The header for the letter also included a landline number and email address for the Firm of [solicitors@ablelaw.co.uk](mailto:solicitors@ablelaw.co.uk)
- 18.2 The divorce proceedings settled by way of Consent Order dated 2 July 2020. The terms of the Order required ET's ex-husband to pay her £132,000 in consideration of ET's interest in the matrimonial home. The monies were to be paid into the Firm's client account in three sums of £44,000.00. Thereafter ET was required to sign the Transfer deeds, and the monies would be released to her upon execution of the transfer.



- 18.3 ET's ex-husband provided the Forensic Investigation Officer ("FIO") with copies of his bank statements and transfers slips showing that all three payments were made directly from his account to the Firm's client account on the following dates:
- 4 August 2020
  - 2 September 2020
  - 1 October 2020
- 18.4 Following intervention into the Firm, the FIO obtained the Firm's client account bank statements which reflected the receipt of the payments referred to above.
- 18.5 Having received the monies into the client account Ms Kjaer arranged for ET to sign the Transfer deed, transferring her interest in the matrimonial home to her husband. By way of letter dated 24 November 2020, the signed Transfer deed was sent from the Firm to Kirk and Partner Solicitors ("KP Solicitors"), who were representing ET's ex-husband.
- 18.6 On 17 December 2020, KP Solicitors emailed the Firm at [solicitors@ablelaw.co.uk](mailto:solicitors@ablelaw.co.uk), to advise that the transfer was complete and that they authorised release of the monies to ET. That email address was the same one previously used to correspond with KP solicitors on the matter on 27 October 2020 and 9 November 2020. It was also the email address on the Firm's headed letter sent to KP solicitors enclosing the signed transfer deeds.
- 18.7 On 16 January 2021, ET emailed Ms Kjaer at [analiza@ablelaw.co.uk](mailto:analiza@ablelaw.co.uk) and enquired "when I can receive the money?". ET did not receive a reply to that email and therefore sent a follow up email on the 20 January to the [solicitors@ablelaw.co.uk](mailto:solicitors@ablelaw.co.uk) address. She did not receive a reply to that email and sent a further follow up on 25 January to [solicitors@ablelaw.co.uk](mailto:solicitors@ablelaw.co.uk). ET also made a telephone call to Ms Kjaer's landline office number. A person answered the call and advised that Ms Kjaer was no longer there. ET attempted to contact Ms Kjaer on her mobile number and via "WhatsApp" but received no reply.
- 18.8 On 25 January 2021, Ms Kjaer replied to ET's email of 16 January 2021, from [analiza@ablelaw.co.uk](mailto:analiza@ablelaw.co.uk) and apologised for the delay in responding. She asked:
- "... can you let me have your bank details so I have them ready to transfer the funds. I will chase the other side for the release of the money..."
- 18.9 Due to concerns raised by ET about being unable to contact Ms Kjaer at her office, Ms Kjaer also forwarded ET an email from the reception desk at the offices confirming that Ms Kjaer was still a tenant.
- 18.10 Having failed to hear further from Ms Kjaer after 25 January 2021, ET contacted her ex-husband to check that the monies had been paid. He sent her a picture of three transfer receipts showing that he had transferred the money to the Firm's client account. He also provided ET with a copy of the letter from KP Solicitors dated 17 December 2020, referred to above, which confirmed that Ms Kjaer could release the monies to ET.

- 18.11 Despite numerous attempts to contact Ms Kjaer by email using both the “analiza” and the general email address for the Firm between 5 and 22 February 2021, ET received no response and did not receive any of the monies due to her.
- 18.12 On 19 February 2021, ET emailed Ms Kjaer on both email addresses, attaching a copy of the letter from KP Solicitors dated 17 December 2020, confirming that the monies could be released. She did not receive a response.
- 18.13 ET provided the FIO with her bank statements to show that no monies were received by her from the Firm.
- 18.14 To date, Ms Kjaer has failed to account to ET in respect of the £132,000.00 owed.
- 18.15 Following intervention into the Firm no books of account were identified. Therefore, the FIO was unable to establish the Firm’s liabilities compared to the funds held in the client account. However, a minimum cash shortage of £67,538.65 was identified on the client account as relating solely to the funds that ought to have been available to ET.
- 18.16 At the date of intervention there was only £64,461.35 on the client account, leaving a shortage of £67,538.65 in respect of monies available on ET’s matter. The cash shortage appeared to have been caused by payments in excess of monies held for ET’s matter, and when there was insufficient monies held to make these payments, including payments to:
- HMRC
  - Payments to apparently unrelated parties (Client to office transfers).
- 18.17 An FIO conducted enquiries into the “unrelated parties” payments and was able to establish that the payments to apparently unrelated parties related to the Probate matter of Person A (deceased), which the Firm was instructed on. Those payments appeared to be legitimate on the information available. However, the client file on the matter, including the client ledger, was not complete and therefore it was impossible for the FIO to determine what the balance on the estate should have been, and why some of the payments to the beneficiaries caused a shortage on the client account.
- 18.18 The FIO also identified from the Firm’s bank statements, a number of client to office account transfers between 2014 and 2020. Due to the absence of accounting records, the FIO could not determine what those payments related to. However, it was clear that from 21 August 2020 there was a shortage on the client account, and therefore all client to office transfers from that date until the intervention were improper on the basis that the client account did not retain sufficient funds to make them. The bank statements further revealed a number of office to client account transfers, which could have been made due to previous overpayments to the office account. Ultimately, the FIO was unable to draw firm conclusions into the Firm’s accounting due to an absence of records.
- 18.19 Whatever had originally caused the shortage, the fact remained that there existed a shortage on the client account of £67,538.65 in respect of monies due to ET.

18.20 Whilst some monies remained in the client account and therefore had not been misused as at the date of the intervention, that sum was only £64,461.35. Consequently, £67,538.65 had been used for purposes other than that for which it was intended and was therefore misused.

*Professional Misconduct*

**Rule 2.5** of the Solicitors Accounts Rules 2019 (“SARs 2019”) provides:

“You ensure that client money is returned promptly to the client, or the third party for whom the money is held, as soon as there is no longer any proper reason to hold those funds.”

18.21 Ms Sheppard-Jones submitted that Ms Kjaer was obliged to release the funds once the transfer of ET’s interest in the matrimonial home was complete. Ms Kjaer was notified by way of letter dated 17 December 2020, that the transfer was complete and the funds could be released. ET provided a further copy of that letter to Ms Kjaer on 19 February 2021. Neither the funds were released to ET nor did Ms Kjaer contact ET with any explanation for her failure to account for the monies owed.

18.22 The bank statements received from ET’s ex-husband and those obtained from the Firm after Intervention, confirmed that £132,000.00 was transferred into the Firm’s client account. However, the bank statements of the Firm, and the witness statement of ET confirmed that the funds were not released.

18.23 Ms Sheppard-Jones contended therefore that by failing to release the funds to ET, Ms Kjaer breached Rule 2.5 of the SARs 2019.

**Rules 5.1** of the SARs 2019 provides:

“You only withdraw client money from a client account:

- (a) for the purpose for which it is being held;
- (b) following receipt of instructions from the client, or the third party for whom the money is held; or
- (c) on the SRA’s prior written authorisation or in prescribed circumstances.”

**Rule 5.3** of the SARs 2019 provides:

“You only withdraw client money from a client account if sufficient funds are held on behalf of that specific client or third party to make the payment.”

18.24 Ms Sheppard-Jones submitted that the monies paid into the client account by ET’s ex-husband ought to have been available in the client account and withdrawn only in accordance with Rule 5.1. However, by 1 June 2021, despite ET not having received any of the monies due to her from the Firm, the Firm’s client account did not retain sufficient funds to account to ET in the total sum owed to her. The shortfall appeared to have occurred due to payments being paid out of the client account which exceeded money held on the client account in respect of ET’s matter when there were insufficient monies to do so.

18.25 Ms Sheppard-Jones therefore submitted that Ms Kjaer breached Rules 5.1 and 5.3 of the SARs 2019.

**Principle 5** of the SRA Principles requires solicitors to act with integrity.

18.26 Ms Sheppard-Jones averred that Ms Kjaer's conduct in failing to account to ET, and misusing part of the monies due to ET, lacked integrity. Ms Kjaer was fully aware of the terms of the Consent Order. She was the sole practitioner, COLP and COFA of the Firm, and would have known when the monies were received into the client account. Indeed she appeared to confirm the same by virtue of her email to ET on 25 January 2021, when she asked for ET's bank details. Despite being in receipt of those funds, and understanding that the terms of the Consent Order required her to release the same to the client once the transfer was complete, Ms Kjaer did not release the funds to ET. Ms Kjaer can have been in no doubt that the transfer of title had been completed because she was sent a letter from KP solicitors dated 17 December 2020, which was forwarded to her again by ET in February 2021, confirming the same and that the funds could be released. Furthermore, Ms Kjaer made no efforts to contact ET beyond 25 January 2021 and had not provided any explanation to date in relation to why the funds were not released to her client.

18.27 The bank statements of the client account revealed that from 21 August 2020 there existed a client account shortage. As at 20 December 2020, the client account held £64,541.34, and therefore Ms Kjaer could not have accounted to ET for the monies due to her. When ET enquired as to the funds in January 2021, the bank statements of the client account reveal that it held between £66,000.00 and £68,000.00.

18.28 An analysis of the bank statements across the period when ET's ex-husband paid the monies into the client account, demonstrated that payments were made to several parties, unrelated to ET, which brought the balance of the client account below that which ought to have been maintained in respect of ET's matter.

18.29 As a result of the payments out of the account, Ms Kjaer could not have accounted to ET in the full sum owed to her because part of the money had been misused for other purposes.

18.30 Ms Sheppard-Jones submitted that the principles promulgated in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, namely that integrity connotes adherence to the ethical standards of one's own profession and in failing to account to her client and misusing part of the monies owed to that client for other purposes, Ms Kjaer failed to achieve the ethical standards required of her and therefore failed to act with integrity by retaining monies due to her client and she accordingly breached Principle 5 of the SRA Principles 2019.

**Principle 4** of the SRA Principles requires solicitors to act with honesty.

18.31 Ms Sheppard-Jones submitted that Ms Kjaer's conduct in failing to account to ET and misusing part of the monies owed to her was dishonest.

18.32 Ms Sheppard-Jones relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, namely:

“... 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...”

18.33 In addressing the first limb of the test, Ms Sheppard-Jones asserted that:

- Ms Kjaer was aware of the terms of the Consent Order.
- Ms Kjaer knew when the monies had been received into the client account, not just because she was the sole practitioner with conduct of the matter but also because she confirmed the same by email dated 25 January 2021 to ET.
- Ms Kjaer knew that the transfer deed had been signed by her client because she sent the same to KP Solicitors.
- Ms Kjaer was advised of the completion of the transfer by virtue of the letter dated 17 December 2020, which was also sent to her by email on 19 February 2021.
- Ms Kjaer stopped engaging with the client and never engaged with the Applicant. She had not offered any explanation as to why the funds were not released to ET.
- Ms Kjaer must have known that by causing or allowing payments out of the account in excess of monies held for ET when there were insufficient monies to do so, she risked not being in a position to account to ET when the transfer was complete, which is precisely the situation that arose.
- Ms Kjaer knew that she had received the full amount of monies for ET. Ms Kjaer also knew that she did not have the full amount available to provide to ET by December 2020.
- Monies that should have been available for ET were not available, and therefore were used on other matters. Ms Kjaer must have known that using client money for purposes other than that for which it is intended, is misusing that money.

18.34 Against that backdrop, Ms Sheppard-Jones submitted that the ordinary decent person would consider Ms Kjaer’s conduct to have been dishonest and in contravention of Principle 4.

**Principle 7** of the SRA Principles required Ms Kjaer to act in the client’s best interests.

18.35 Ms Sheppard -Jones submitted that it was not in ET’s best interests to fail to account to her in the sum of £132,000.00 and misuse part of that sum on other matters. That money represented the outcome of ET’s divorce proceedings and was intended as full and final

payment for ET's interest in the matrimonial home. As a consequence of not receiving the funds from Ms Kjaer, ET was left without a permanent residence as she was not in a position to buy her own property. She had to wait until the outcome of her application to the SRA Compensation Fund in October 2021, before she received the monies due to her by which time house prices and interest rates had risen. Ms Sheppard-Jones therefore contended that Ms Kjaer's conduct breached Principle 7

**Principle 2** of the SRA Principles required Ms Kjaer to act in a manner which upholds public confidence in her and in the profession

18.36 Ms Sheppard-Jones submitted that, conversely, Ms Kjaer's conduct undermined public trust in her and in the profession. The public was entitled to expect that client money was managed in accordance with the regulatory framework, and that it was paid to clients as and when it is due to them. Public trust was further undermined by solicitors misusing client monies, such that they are not available for the client. Trust was placed in solicitors to manage significant legal transactions, involving large sums of money that have life changing implications for their clients. Ms Sheppard-Jones therefore contended that, in failing to discharge her obligations, Ms Kjaer undermined that trust and breached Principle 2 of the SRA Principles.

#### The Respondent's Position

18.37 Ms Kjaer did not provide any response to Allegation 1.1.

#### The Tribunal's Decision

18.38 The Tribunal considered the unchallenged evidence advanced in support of Allegation 1.1. In so doing it noted that ET was a client of Ms Kjaer as evidenced by the client care letter dated 11 December 2017.

18.39 Ms Kjaer received £132,000.00 into her Firm's client account as evidenced by the FIO during the investigation and intervention into the Firm and reflected in the client account bank statements.

18.40 The entirety of the £132,000.00 was owed to ET as evidenced by the Consent Order between ET and her ex-husband which was endorsed by the Family Court sitting at Liverpool on 2 July 2020.

18.41 Ms Kjaer did not pay the monies due to Ms Kjaer as evidenced by the FIO, the client account bank statements, ET's report to the Applicant, the plethora of emails from KP Solicitors and the fact that the Solicitors Compensation Fund met the debt.

18.42 Ms Kjaer deployed approximately half of the monies for extraneous matters as evidenced by the FIO during the investigation and intervention into the Firm and reflected in the client account bank statements.

18.43 The client account had a shortfall with only £67,538.65 remaining as evidenced by the FIO during the investigation and intervention into the Firm and reflected in the client account bank statements.

- 18.44 As at the date of the substantive hearing, Ms Kjaer had not released the £132,000.00 owed to ET who had to seek payment of the same via the Solicitors Compensation Fund as evidenced by the “Compensation Fund – Adjudication Report dated 27 September 2021.
- 18.45 The Tribunal accepted the evidence advanced by the Applicant and the submissions made by Ms Sheppard-Jones and in so doing, found the factual matrix of Allegation 1.1, breach of Principles 2, 4, 5 and 7 and breach of Rules 2.5, 5.1 and 5.3 PROVED on a balance of probabilities.

## 19. Allegation 1.2 - Misrepresentation to MT

### The Applicant’s Case

- 19.1 A Production Notice (“PN”) was served on KP Solicitors dated 11 May 2021, which required them to provide copies of all correspondence between themselves and the Firm regarding the matrimonial matter of ET and her ex-husband, confirmation of how the monies in respect of the matrimonial home were paid, and details with regards to the transfer of the title.
- 19.2 KP Solicitors responded on 12 May 2021 and attached copies of all correspondence requested. They also confirmed that to the best of their knowledge the monies were paid directly from their client to the Firm, that they received the executed transfer by post on 25 November 2020 and that there were no other steps required in the Consent Order beyond the transfer of the monies and execution of the title deeds. A copy of the letter from the Firm to KP Solicitors enclosing the signed transfer deeds was provided as part of the correspondence in response to the PN. KP Solicitors acknowledged receipt of that by way of letter dated 25 November 2020 and advised that they would arrange for their client to execute the deed. It further stated:
- “... Once all parties have executed the Transfer we will be able to confirm completion to you whereupon we will be able to release the funds...”
- 19.3 KP Solicitors sent a further letter by email dated 17 December 2020 to the Firm using the [solicitors@ablelaw.co.uk](mailto:solicitors@ablelaw.co.uk) address, to confirm that the transfer was complete and that “you may now release the funds held by you to your client.” That correspondence represented the first confirmation to Ms Kjaer that she was in the position to release the funds to ET.
- 19.4 There was no evidence to suggest that the email attaching the letter dated 17 December 2020 did not reach Ms Kjaer. The same email address had been used by the Firm to correspond with KP Solicitors in relation to ET’s matter. Furthermore, Ms Kjaer did not contact KP Solicitors in December 2020 or January 2021 to follow up the position regards the release of the monies, which she might have been expected to do if she was waiting to hear as to when funds could be released.
- 19.5 Following ET making enquiries with her in January 2021, Ms Kjaer emailed ET on 25 January 2021 to advise that:

“... I will chase the other side for the release of the money...”

- 19.6 Ms Sheppard-Jones contended that it could be inferred from the letter dated 17 December 2020, that Ms Kjaer already knew she had the authority to release the funds. That inference was strengthened by the fact that following the email of 25 January 2021, Ms Kjaer did not make contact with KP solicitors to “chase” them nor did she make contact with ET again.
- 19.7 Furthermore, ET emailed a copy of the December letter to Ms Kjaer on 19 February 2021, and did not receive a response.

*Professional misconduct*

- 19.8 With regards to **Principle 5** of the SRA Principles, Ms Sheppard-Jones relied on the test set out in Wingate, referred to at §18.30 above.
- 19.9 Ms Sheppard-Jones submitted that Ms Kjaer’s statement to ET in the email of 25 January 2021 (that she would chase the other side regards the release of the funds) suggested that she was unaware at that time that she already had authority to do so. However, Ms Kjaer had been made aware that she could release the funds by way of the letter dated 17 December 2020. Had Ms Kjaer genuinely not appreciated that she had authority to release the funds, she would have made good on her promise to chase the other side. KP Solicitors provided all correspondence with Ms Kjaer, and there was no evidence that Ms Kjaer communicated with them after 17 December 2020 with regards to the authority to release the funds. Ms Sheppard-Jones therefore submitted that one could infer that Ms Kjaer knew she had authority to release the funds by 25 January 2021, but did not advise ET of the same in order to avoid releasing the funds due to her.
- 19.10 Ms Sheppard-Jones therefore submitted that Ms Kjaer’s conduct in misrepresenting to ET that she did not have authority to release the funds lacked integrity and thereby breached Principle 5.
- 19.11 With regards to **Principle 4** of the SRA Principles, Ms Sheppard-Jones relied upon the test set out in Ivey referred to above at §18.32.
- 19.12 With regards to the first limb (knowledge of the facts at the material time) Ms Sheppard-Jones submitted that:
- Ms Kjaer knew that she had received the signed transfer from ET and that she had provided the same to KP solicitors. There was no evidence to suggest that Ms Kjaer did not receive the letter dated 17 December 2020, which provided her with authority to release the funds. Furthermore, no attempts were made by Ms Kjaer to chase KP Solicitors in respect of the same, which supported the inference that she already knew she had the authority to release the funds when she emailed ET on 25 January 2021. ET emailed a further copy of the letter to Ms Kjaer on 19 February 2021. Ms Kjaer did not respond.
  - Ms Kjaer knew that she had received the full amount of monies for ET into the Firm’s account. Ms Kjaer also knew that she did not have the full amount available to provide to ET by December 2020.



- Ms Kjaer had chosen not to engage with the Applicant and offered no explanation to ET as to why the funds had not been released.
- When Ms Kjaer advised ET that she would chase the other side for release of the funds, she knew that was a misrepresentation because she knew that she already had such authority.

19.13 Against that backdrop, Ms Sheppard-Jones submitted that ordinary decent people would consider Ms Kjaer's conduct to have been dishonest and in contravention of Principle 4.

19.14 With regards to **Principle 2** of the SRA Principles, Ms Sheppard-Jones submitted that Ms Kjaer's conduct plainly undermined public trust in her and in the legal profession. The public expected solicitors to advise clients of the true position in relation to their matters, such that the advice could be faithfully relied upon. Trust in the profession was undermined by Ms Kjaer repeatedly misstating the position to ET in relation to a significant asset which was due to her. Ms Sheppard-Jones therefore submitted that Ms Kjaer breached Principle 2.

#### The Respondent's Position

19.15 Ms Kjaer did not provide any response to Allegation 1.2.

#### The Tribunal's Decision

19.16 The Tribunal considered the unchallenged evidence advanced in support of Allegation 1.2. In so doing it noted that ET's settlement monies were deposited into the Firm's account by ET's ex-husband in three instalments on 4 August 2020, 2 September 2020 and 1 October 2020 as evidenced by his bank statements and the FIO's Final report dated 22 October 2021.

19.17 Ms Kjaer, having received those monies, arranged for ET to sign the transfer deed of the former matrimonial home and sent the same to KP Solicitors, as evidenced by the letter dated 24 November 2020.

19.18 KP Solicitors provided authority for Ms Kjaer to release the monies to ET as evidenced by their letter to the Firm dated 17 December 2020.

19.19 ET chased up the release of her monies by way of emails dated 16, 20 and 25 January 2021. Ms Kjaer responded to ET on 25 January 2021 ("the offending email") which stated:

"... can you let me have your bank details so I have them ready to transfer the funds. I will chase the other side for the release of the money..."

19.20 That email was sent in circumstances where Ms Kjaer was well aware of the fact that (a) the funds had already been deposited into the client account, (b) the deed of transfer had been executed and (c) KP Solicitors had provided authority for the funds to be released to ET. The Tribunal determined that the offending email plainly misrepresented the true position to ET.

19.21 The Tribunal accepted the evidence advanced by the Applicant and the submissions made by Ms Sheppard-Jones and in so doing, found the factual matrix of Allegation 1.2, breach of Principles 2, 4 and 5 PROVED on a balance of probabilities.

## 20. Allegation 1.3 - Failure to rectify a client account shortage

### The Applicant's Case

20.1 Ms Sheppard-Jones relied upon the facts and matters set out above at §18.1 - §18.20.

20.2 Ms Sheppard-Jones advised the Tribunal that the minimum cash shortage identified by the FIO and pleaded in allegation 1.1 had not been replaced by Ms Kjaer as at the date of the substantive hearing.

### *Professional misconduct*

**Rule 6.1 SARs 2019** provides:

“... You correct any breaches of these rules promptly upon discovery. Any money improperly withheld or withdrawn from a client account must be immediately paid into the account or replaced as appropriate...”

20.3 Ms Sheppard-Jones submitted that, in circumstances where Ms Kjaer was the sole practitioner of the Firm, and its COLP and COFA, she was solely responsible for the Firm's adherence to the SARs (pursuant to Rule 1 of the SARs 2019). Ms Kjaer failed to rectify the client account shortage prior to intervention or at all and had therefore breached Rule 6.1.

20.4 Ms Sheppard-Jones submitted that Ms Kjaer's conduct in failing to rectify a client account shortage undermined the trust the public has in Ms Kjaer as a solicitor and in the legal profession. The public trusted solicitors to manage client accounts in strict adherence to the Rules, such that client money will be available when required. Ms Sheppard-Jones submitted that Ms Kjaer's failures to do so therefore breached **Principle 2**.

### The Respondent's Position

20.5 Ms Kjaer did not provide any response to Allegation 1.3.

### The Tribunal's Decision

20.6 The Tribunal considered the unchallenged evidence advanced in support of Allegation 1.3. The FIO produced a Final Report dated 22 October 2022 following the intervention into the Firm. The FIO was able to obtain bank statements for the Firm's client and office accounts. The client account revealed a balance of £63,461,35. ET was owed £132,000.00 thus the Tribunal was satisfied that a shortfall existed of £67,538,65.

20.7 The Tribunal accepted the evidence advanced by the Applicant and the submissions made by Ms Sheppard-Jones and in so doing, found the factual matrix of Allegation 1.3, breach of Principle 2 and Rule 6.1 PROVED on a balance of probabilities.

## 21. Allegation 1.4 - Non co-operation with the SRA

### The Applicant's Case

- 21.1 Upon receipt of ET's complaint, the Applicant emailed Ms Kjaer on 12 February 2021 at both [analiza@ablelaw.co.uk](mailto:analiza@ablelaw.co.uk) and [solicitors@ablelaw.co.uk](mailto:solicitors@ablelaw.co.uk). The Applicant requested a response by 19 February 2019. No response was received.
- 21.2 On February 2021, the Applicant sent a further email to the same addresses and sought a response by 29 February 2021. No response was received.
- 21.3 In March 2021, the Applicant became aware of a potential issue in relation to the Firm and emailed Ms Kjaer in that regard on 26 March 2021 to the Firm's generic email address. A response was sought by 31 March 2021. No response was received. A chase up email was sent to the generic email address on 16 April 2021. A response was sought by 19 April 2021. No response was received.
- 21.4 On 20 April 2021, a further email was sent to Ms Kjaer to the Firm's generic email address, setting out that the Applicant had attempted to phone her using both the office and mobile numbers she had provided but to no avail. That email sought a response by 23 April 2021. No response was received.
- 21.5 On 24 April 2021, the Applicant sent emails to Ms Kjaer on both the Firm's generic and her personal email addresses to advise that further attempts to contact her by phone had failed and the email sought a response by 29 April 2021. No response was received.
- 21.6 A letter dated 26 April 2021 was also sent to Ms Kjaer at the Firm's registered address. No response was received.
- 21.7 On 6 May 2021, the Applicant wrote to Ms Kjaer at the Firm's registered address and sent by way of email to the Firm's generic email address, notice of the investigation and the PN. The letter and the PN required Ms Kjaer to undertake a number of actions in co-operation with the investigation. No response was received.
- 21.8 When the FIO attended upon the Firm's premises to conduct the investigation on 6 May, the offices had been vacated and Ms Kjaer was not in attendance. The FIO was advised by the building's receptionist that the Firm had moved out two or more months ago and that she had not seen Ms Kjaer "for a while". The FIO was shown a bundle of post for the Firm which had been held at reception. The receptionist showed the FIO to the offices in the building where the Firm had been based. The offices were empty save for office furniture.
- 21.9 Thereafter, the FIO made numerous attempts to contact Ms Kjaer throughout the investigation namely:

| <b>Date</b> | <b>Occurrence</b>  |
|-------------|--|
| 6 May 2021  | Letter hand delivered to the Firm's registered address which enclosed a notice of investigation and PN.<br>Emails sent to the Firm's generic and Ms Kjaer's personal email addresses enclosing the notice of investigation and PN.<br>Three telephone calls to the Firm and Ms Kjaer's mobile telephone. |
| 7 May 2021  | Four emails sent to the Firm's generic and Ms Kjaer's personal email addresses.  |
| 10 May 2021 | Four letters sent by recorded delivery (and signed for by Kerri/Kjaer/Law Society/BB) to addresses held for Ms Kjaer by Companies House.<br>Four emails sent to the Firm's generic and Ms Kjaer's personal email addresses.<br>One telephone call to Ms Kjaer's mobile telephone.                        |
| 13 May 2021 | Four emails sent to the Firm's generic and Ms Kjaer's personal email addresses.  |

21.10 Following the intervention into the Firm, the Applicant instructed an enquiry agent who identified further addresses linked to Ms Kjaer. Between 24 September 2021 and 13 October 2021, the FIO sent correspondence to the further addresses namely;

- Three letters to the address identified as her home address sent first class and recorded delivery. The Royal Mail tracking service was unable to confirm delivery for any.
- One letter to an address at which Ms Kjaer was identified to have a freehold interest sent by first class and recorded delivery. The Royal Mail tracking service was unable to confirm delivery.
- Two emails attaching some of the above correspondence sent to all three email addresses identified for Ms Kjaer as identified in the forensic report. Those sent to the Firm's generic email address were returned as undeliverable, but no such notification was received for the other two email addresses used.

21.11 All correspondence was sent to the addresses identified by the enquiry agent by way of first-class post and recorded delivery. The Royal Mail tracking service was unable to confirm delivery. No response was received.

21.12 The Applicant did not receive a response to the Notice Recommending Referral to the Tribunal dated 2 March 2022.

21.13 Ms Sheppard-Jones therefore submitted that Ms Kjaer had demonstrably failed to engage with the Applicant prior to, during or after the investigation. Specifically, Ms Kjaer did not co-operate with the forensic investigation and failed to comply with the PN.

*Professional Misconduct*

**Paragraph 7.3** of the Code of Conduct for Solicitors RELs and RFLs (“the Code”), provides;

“... You cooperate with the SRA, other regulators, ombudsmen, and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services...”

**Paragraph 7.4** provides:

“... You respond promptly to the SRA and:

- (a) provide full and accurate explanations, information and documents in response to any request or requirement; and
- (b) ensure that relevant information which is held by you, or by third parties carrying out functions on your behalf which are critical to the delivery of your legal services, is available for inspection by the SRA.”

21.14 Ms Sheppard-Jones submitted that Ms Kjaer failed to reply to any of the Applicant’s attempts at contacting her. Those attempts deployed a variety of communications methods over a significant period of time. Ms Sheppard-Jones therefore submitted that, by virtue of her conduct, Ms Kjaer had breached Paragraphs 7.3 and 7.4.

**Paragraph 8.1** of the Code of Conduct for Firms (“the Code for Firms”) provides that managers are responsible for compliance by a Firm with the Code of Conduct for Firms. Accordingly, Ms Kjaer, who was a sole practitioner, was responsible for ensuring compliance of her firm with the Code of Conduct for Firms.

21.15 Ms Sheppard-Jones submitted that Ms Kjaer was obliged both as a solicitor and as the sole principal of the Firm, to co-operate with her regulator, the Applicant. She failed to do so. In particular she failed to provide the Applicant with any of the information it had sought as part of its investigation and she further failed to comply with the PN.

21.16 Ms Sheppard-Jones submitted that the failure of Ms Kjaer to co-operate frustrated the investigation. Due to the non-cooperation the FIO was unable to obtain relevant information including client files and financial information. Therefore, it was unclear whether there may have existed other breaches of the Accounts Rules or Principles which have remained undetected. Ms Sheppard-Jones therefore submitted that, by virtue of her conduct, Ms Kjaer had breached Paragraph 8.1

The Respondent’s Position

21.17 Ms Kjaer did not provide any response to Allegation 1.4.

The Tribunal’s Decision

21.18 The Tribunal accepted the contemporaneous documents presented to it, set out in full above at §21.1 – §21.12. The Tribunal accepted that the onus was on Ms Kjaer to ensure that her regulator, the Applicant, was provided with up-to-date contact information for

her. The Tribunal accepted that strenuous efforts had been made to engage Ms Kjaer, which included enquiries made with Companies House, to no avail.

- 21.19 It was plain on the contemporaneous evidence and the FIO final report before the Tribunal that Ms Kjaer had failed to respond to communications from the FIO which included five telephone calls, one hand delivered letter, twenty emails, nine letters sent by recorded delivery, four letters sent by first class post as well as not being present at the Firm's premises when the FIO attended on 6 June 2021. Additionally, Ms Kjaer failed to respond to five emails and three letters sent by the Applicant which included the "Notice of Referral" to the Tribunal.
- 21.20 The Tribunal accepted the evidence advanced by the Applicant and the submissions made by Ms Sheppard-Jones and in so doing, found the factual matrix of Allegation 1.4, breach of paragraphs 7.3 and 7.4 of the Code for Solicitors and paragraph 8.1 of the Code for Firms PROVED on a balance of probabilities.

### **Previous Disciplinary Matters**

22. None.

### **Mitigation**

23. None.

### **Sanction**

24. The Tribunal referred to its Guidance Note on Sanctions (Tenth Edition: June 2022) when considering sanction. In so doing and given the two findings of dishonesty absent any exceptional circumstances, the Tribunal determined that the only sanction which adequately served the overarching public interest was an Order striking Ms Kjaer from the Roll of Solicitors.

### **Costs**

#### The Applicant's Application

25. Ms Sheppard-Jones applied for costs in the sum of £27,577.90 as particularised in the Applicant's Schedule of Costs dated 30 November 2022.

#### The Tribunal's Decision

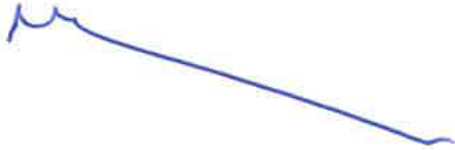
26. The Tribunal was unable to assess Ms Kjaer's financial position given that she had not filed a Statement of Means. The Tribunal therefore proceeded to evaluate the Schedule of Costs and in so doing determined that it was reasonable and proportionate, particularly given the additional work caused to the Applicant as a consequence of Ms Kjaer's failure to cooperate.

**Statement of Full Order**

27. The Tribunal ORDERS that the Respondent, ANALIZA ABELLA KJAER, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £27,577.90.

Dated this 22<sup>nd</sup> day of December 2022

On behalf of the Tribunal

A handwritten signature in blue ink, consisting of a stylized 'R' followed by a long, sweeping horizontal line that tapers to the right.

**JUDGMENT FILED WITH THE LAW SOCIETY**  
**22 DEC 2022**

R Nicholas  
Chair