SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12377-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

MICHAEL WILLIAM PILKINGTON Respondent

Before:

Miss H Dobson (in the chair)
Ms H Appleby
Mr R Slack

Date of Hearing: 5 – 6 January 2023

Appearances

David Hopkins, counsel of 39 Essex Chambers, 81 Chancery Lane, London WC2A 1DD, instructed by Capsticks Solicitors, 1 St George's Road, Wimbledon, London SW19 4DR for the Applicant.

Neair Maqboul, counsel of 7 Harrington Street Chambers, 7 Harrington Street, Liverpool L2 9YH, instructed by Tony Marriott, solicitor of Brown Turner Ross Solicitors, 11 St George's Place, Lord Street, Southport, Merseyside PR9 0AL for the Respondent.

JUDGMENT

Allegations

1. The allegations made against Mr Pilkington by the Solicitors Regulation Authority Limited ("SRA") were that whilst in practice as the sole director at Pilkingtons Solicitors ("the Firm"):

1.1 From in or around March 2020, having received payment for settled cases, he failed to pay outstanding professional and non-professional disbursements on at least fifty cases and instead caused or allowed the money to be used for the running of the Firm, and in doing so, he breached any or all of Principles 2, 4 and 5 of the SRA Principles 2019 ("the Principles").

1.2 From in or around March 2020 until on or around 4 November 2020 when he provided his business bank account reconciliation statement to the forensic investigation officer as part of her investigation, he failed to notify the SRA of his firm's serious financial difficulties and in doing so failed to achieve Paragraphs 7.7 and 7.8 SRA Code of Conduct for Solicitors 2019 ("the Solicitors Code") and breached any or all of Principles 2 and 5 of the Principles.

Executive Summary

2. Allegation 1.1 - Mr Pilkington admitted that he had received monies for the payment of disbursements but had used those monies to run his firm. Mr Pilkington accepted that such conduct breached the trust placed in him by the public. He denied that his conduct also lacked integrity or was dishonest. The Tribunal accepted his admissions as being properly made. It found that his conduct also lacked integrity and was dishonest. The Tribunal reasoning can be found here:

- Tribunal's Findings on allegation 1.1

3. Allegation 1.2 - Mr Pilkington also admitted that he had failed to notify the SRA of his Firm's serious financial difficulties as he was required to do. The Tribunal accepted those admissions and found the allegation against him proved. The Tribunal reasoning can be found here:

- Tribunal Findings on allegation 1.2

Sanction

4. The Tribunal considered that in light of its finding of dishonesty, the only appropriate and proportionate sanction was to strike Mr Pilkington off the Roll of Solicitors. The Tribunal's sanctions and its reasoning on sanction can be found here:

- Sanction

Documents

5. The Tribunal reviewed all the documents submitted by the parties, which included (but was not limited to):

- Rule 12 Statement and Exhibit MLR1 dated 8 September 2022
- Respondent's Answer and Exhibits dated 11 October 2022
- Applicant's Schedule of Costs dated 22 December 2022

Preliminary Matter

Applicant's application to rely on matters pleaded but not particularised in the Rule 12 Statement.

6. At the commencement of the hearing the Tribunal invited the parties to address it on matters that had been pleaded but not particularised in the Rule 12 Statement. At allegation 1.1, the Applicant alleged that Mr Pilkington's conduct was in breach of Paragraph 4.2 of the Solicitors Code. At allegation 1.2, it was alleged that Mr Pilkington's conduct was in breach of Principle 5.

The Applicant's Submissions

7. Mr Hopkins accepted that the Rule 12 Statement did not contain any of the particulars relied upon in support of the allegation that Mr Pilkington's conduct amounted to a breach of Paragraph 4.2 of the Solicitors Code.

8. That had been remedied by the Applicant's Note for Hearing dated 22 December 2022 which stated:

> "Paragraph 4.2 provided that at all material times: "You safeguard money and assets entrusted to you by clients and others." The monies were received for disbursements in settled cases which were entrusted to the Respondent and the Firm to be paid over to the relevant creditors. The Respondent failed to safeguard these monies in that:
>
> As he admitted in interview, he prioritised the day-to-day running expenses of the business over making these payments to relevant creditors; and
>
> As a result of the Respondent prioritising the business's day-to-day expenses, and as explained at para 24 of the Rule 12 Statement, there were insufficient funds to cover the unpresented payments to relevant creditors if they were to clear the bank account."

9. Mr Pilkington had breached the provision. Further, Mr Pilkington understood the case against him. Insofar as any further particulars were required, the breach had been admitted in interview. Accordingly, no further particulars were required.

10. With regard to the allegation of a breach of Principle 5, the recitation of the definition of integrity contained in the Rule 12 Statement was of general application. Mr Pilkington had notice of the allegation of a breach of Principle 5, as it was contained in the Notice Recommending Referral to the Tribunal. Mr Pilkington had denied that his conduct breached Principle 5 in his Answer. He had not asked for further and better particulars of the alleged breach. Nor did he say that he did not understand the case he faced.

11. In all the circumstances, the Applicant should be allowed to proceed with those matters against Mr Pilkington.

The Respondent's Submissions

12. Ms Maqboul submitted that Mr Pilkington understood the case against him from an early stage. He had provided a comprehensive response to the Notice Recommending Referral to the Tribunal and had provided a full Answer. Accordingly, no application was made due to the lack of particularisation.

The Tribunal's Decision

13. The Tribunal noted that the particularisation of the alleged breach of paragraph 4.2 of the Solicitors Code had been provided after Mr Pilkington had provided his Answer and his witness statement in the proceedings.

14. The Applicant, having failed to particularise the alleged breach in the Rule 12 Statement, should not be permitted to do so by filing additional documents that were not part of the pleadings.

15. The Applicant was at liberty to make an application to amend the Rule 12 Statement to correct its omission; it had failed to do so.

16. The Tribunal determined, notwithstanding the submissions made on Mr Pilkington's behalf, that it would be unfair to allow the Applicant to proceed with the alleged breach of paragraph 4.2 of the Solicitors Code. Accordingly, that part of the allegation 1.1 was struck out for want of particularity.

17. With regard to the alleged breach of Principle 5 at allegation 1.2, the Applicant had not particularised this either in the Rule 12 Statement or in the Note for the Hearing. The Tribunal had been directed to the Notice Recommending Referral to the Tribunal. The Tribunal found that the information as regards failing to act with integrity contained in the Notice Recommending Referral was not sufficiently particularised as to remedy any omission to particularise it in the Rule 12 Statement. It was insufficient to rely on the Notice Recommending Referral in circumstances where not all matters included in any such Notice would be proceeded with. The Notice Recommending Referral did not form part of the pleadings in the case.

18. It was insufficient to rely on the definition of integrity as detailing how it was that the Applicant alleged that Mr Pilkington had breached the requirement to act with integrity. The Tribunal was required to consider whether the Applicant had discharged its burden of proving, on the balance of probabilities, that Mr Pilkington had breached Principle 5 as alleged. It could not do so when it did not know how it was that the Applicant put its case in that regard.

19. As detailed above, it had been open to the Applicant to apply to amend the Rule 12 Statement; it had failed to do so.

20. The Tribunal determined that in all the circumstances, it would not be fair or just to allow the Applicant to proceed with the allegation that Mr Pilkington's conduct as regards allegation 1.2 lacked integrity in breach of Principle 5. Accordingly, that part of the allegation was struck out.

21. The allegations cited at paragraph 1 above reflect the Tribunal's decision regarding the alleged breaches of paragraph 4.2 of the Solicitors Code in relation to allegation 1.1 and Principle 5 in relation to allegation 1.2.

Factual Background

22. Mr Pilkington was admitted to the roll of solicitors in June 1998. On 1 October 2008, Pilkingtons Solicitors was created as a Sole Practitioner Law Practice. On 31 March 2010 Mr Pilkington ceased trading as a Sole Practitioner and on 1 April 2010 Pilkingtons Solicitors Limited ("the Firm") was created as a Company Limited by Shares. The Firm predominantly practiced in the area of personal injury disputes.

23. Mr Pilkington was the sole director, Compliance Officer for Legal Practice ("COLP"), Compliance Officer for Finance and Administration ("COFA"), Money Laundering Reporting Officer ("MLRO") and Money Laundering Compliance Officer ("MLCO") of the Firm, which traded as Pilkington Shaw. For most of the material period he was assisted by sixteen members of staff, including three qualified solicitors and a trainee. He was also assisted by a finance manager, Mr Roberts, whose hours were 10am to 4pm, Monday to Friday.

24. Mr Pilkington was the sole signatory on the client account. Mr Pilkington and Mr Roberts were the joint signatories for the Firm's business account.

25. Following concerns raised in respect of the Firm's approach to personal injury matters, a forensic inspection was commissioned on 3 September 2020. The inspection did not identify any areas of concern in relation to the reported matters. A review of the Firm's books of accounts identified issues in relation to the Firm's financial position and the payment of disbursements.

26. During the investigation Mr Pilkington made the decision to close the Firm and hand over the winding down of the firm to administrators.

Witnesses

27. The following witnesses provided statements and gave oral evidence:

    - Michael Pilkington – Respondent

28. The written and oral evidence of the 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 the documents in the case and made notes of the oral evidence. 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

29. The Applicant was required to prove the allegations 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 Pilkington's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Dishonesty

30. The test for dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

> "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 factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

31. When considering dishonesty, the Tribunal firstly established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people. When considering dishonesty, the Tribunal had regard to the references supplied on Mr Pilkington's behalf.

Integrity

32. The test for integrity was that set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366, as per Jackson LJ:

> "Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members … [Professionals] are required to live up to their own professional standards … Integrity connotes adherence to the ethical standards of one's own profession".

33. **Allegation 1.1 - From in or around March 2020, having received payment for settled cases, he failed to pay outstanding professional and non-professional disbursements on at least fifty cases and instead caused or allowed the money to be used for the running of the Firm, and in doing so, he breached any or all of Paragraph 4.2 of the Solicitors Code and Principles 2, 4 and 5 of the Principles.**

The Applicant's Case

33.1 Mr Pilkington had informed the Applicant that in March 2020 Mr Roberts told Mr Pilkington that the Firm did not have sufficient funds to cover its outgoings. Mr Roberts suggested posting the sums and setting up the payments, but that Mr Pilkington should not authorise the final payment of the sums from the account. Mr Pilkington sanctioned that approach but stated that he was not fully aware of the amount of money involved at the time.

33.2 The unpresented items had been entered as electronic payments onto the Firm's online banking facility but they had not been executed for payment.

33.3 At interview Mr Pilkington confirmed that the process was for costs and disbursements to be received into client bank account. Once a bill was raised, costs and disbursements were transferred to the business bank account, then disbursements paid from that account. He said that the accounts staff would set up the payments on the Firm's online banking system and then he would log on at the end of each day and authorise the payments.

33.4 As at 30 September 2020, there were 310 unpresented items in the Firm's business accounts ranging in date from 20 December 2019 to 30 September 2020. The amounts ranged from £2.50 to £6,416.80. The outstanding payments were owed to the following types of creditor:

Type	**Number**	**Amount (£)**
Medical (reports and treatment)	203	88,403.48
Counsel fees	17	20,783.76
Costs draftsman fees	5	13,172.40
Fund repay (disbursement funder)	39	30,125.60
ATE insurance	21	6,568.75
Other	25	12,983.50
Total		172,037.49

33.5 The payments in the table above were entered into the Firm's system as follows:

- March 2020 - 87 entries totalling £49,572.46
- April 2020 – 72 entries totalling £30,616.18
- May 2020 – 63 entries totalling £44,958.40
- June 2020 – 16 entries totalling £11,688.95
- July 2020 – 36 entries totalling £10,279.80

- August 2020 - 7 entries totalling £2,491.40
- September 2020 – 27 entries totalling £21,967.30

The total amount was £171,574.49

33.6 Of the 310 items, 303 had a client matter reference, meaning that they were sums relating to client matters as opposed to overheads of the Firm. The 303 matters totalled £169,506.99. Of the remaining seven, five were “PBA” court payments not yet taken by authorised direct debit.

33.7 The FI (Forensic Investigation) Officer reviewed a selection of 64 ledgers relating to the unpresented items. These 64 ledgers involved 89 of the unpresented items, totalling £71,920.96. Of those 89 unpresented items, monies had been received (from third party insurers) for payment of 50 of these items. The 50 items represented £61,642.16 of the total of £71,920.96.

33.8 At interview, Mr Pilkington explained that unpresented items which were not matched by a corresponding payment into the Firm were likely to have arisen where payment terms required payment within a certain period which had expired and a request for payment had been made.

33.9 The FI Officer reviewed four client files relating to the unpresented items. On each of the files, monies had been received into client bank account for payment of the disbursement, transferred into office account, and an entry raised on the system for its payment.

33.10 By 31 January 2021, the list of unpresented items had increased by £19,729.64 to £191,767.13. At interview, Mr Pilkington explained that he had not been aware that the amount of unpaid disbursements had increased. He said that he had instructed the accounts staff to pay all client disbursements from the client bank account, but that this had not been followed through. Mr Pilkington admitted these matters during his interview and confirmed those admissions in his Answer.

33.11 Mr Pilkington stated in interview that, to the best of his knowledge, creditors were asking for routine updates about the status of cases but were not chasing for payments.

33.12 Mr Hopkins submitted that as at 30 September 2020 the client account balance was £82,837.79 in credit and the business account was £242,743.03 in debit.

33.13 Taking into account the unpresented items, the business bank account was £414,780.52 in debit. The Firm's business bank account had an overdraft facility of £250,000. There were therefore insufficient funds to cover the unpresented payments if they were to clear the bank account.

33.14 In his submission to the Applicant on the Notice recommending referral to the Tribunal dated 25 March 2022, Mr Pilkington explained that from around 2015, circumstances negatively affected the Firm's business and finances:

- Costs reforms led to a reduction in recovery for PI work which was the Firm's speciality.

- Two litigation funders/ATE Insurers owing the Firm a total of approximately £450,000 became insolvent without paying the Firm what was owed. The Firm was still required to continue to pay interest on the costs that it had incurred.

- The Firm invested in developing a novel area of litigation – cavity wall disputes – many of which in the event were found not to be meritorious. The Firm had to cover much of the costs of this litigation from its own resources.

- The Firm purchased the caseload of a retiring solicitor. It had to pay for these over a six-month period but it transpired that the caseload contained a higher than expected proportion of long-running and complex cases that would not conclude for some time, and some were not worth pursuing at all despite the Firm having paid to acquire them.

- Purchasing this caseload also caused the Firm's insurance premiums to increase tenfold.

- The Firm relied for cashflow upon a disbursement-funder, which withdrew from the market.

- The backlog caused in the Court system due to COVID-19 lockdowns had knock-on consequences of cases not concluding and thus money not coming into the Firm.

33.15 In interview, Mr Pilkington explained that whilst he was aware of the financial position, he was not aware of its full extent. He thought that the withholding of disbursements would be a very short term solution of around a month. He believed that he had no option but to withhold the payments, in order to keep the Firm running so that he could trade through the cashflow crisis. He had had to pay rent and staff salaries in order to keep the business going.

33.16 Mr Pilkington stated that he had informed two of the medical agencies of the Firm's cashflow problems and that the Firm entered into payment plans with them to try to clear some of the debt each month. He had not taken any money out of the Firm for himself since February 2020 i.e., the last month before this problem arose.

33.17 Rule 2.1(d) of the Accounts Rules defined unpaid disbursements, if held or received prior to delivery of a bill for the same, as client money.. Mr Hopkins submitted that the public would be concerned by a solicitor who knowingly used money received to pay third parties for the ulterior purpose of keeping his own Firm running. Further, such conduct undermined the confidence that other businesses had as regards being paid by law firms for services provided. The SRA's guidance on 'Taking money for your firm's costs' noted that "Consumer confidence in the legal services market is underpinned by the expectation that all money and assets that has been entrusted to a law firm or an individual we regulate will be properly safeguarded." It also provided: "You have an ongoing duty to safeguard money and assets that have been entrusted to you and not prefer your own interests, for example in maintaining cashflow, over those of your clients. The obligation to safeguard money entrusted to you is not limited to only that money which is held in a client account." The guidance was published on 14 September 2020, midway through the events in question, but represented the Applicant's longstanding view and position. In using unpaid disbursements to fund the

Firm's running costs, Mr Pilkington had failed to behave in a way that upheld public trust and confidence in the profession and in legal services in breach of Principle 2 of the Principles.

33.18 In Wingate, the Court of Appeal stated that "Subordinating the interests of the clients to the solicitors' own financial interests" and "Making improper payments out of the client account" were examples of acting without integrity.

33.19 Mr Pilkington made a conscious decision to use funds belonging to others for the running costs of his own Firm. In doing so, he used client funds for his Firm's financial interests. Mr Hopkins submitted that the SRA had only become involved in the Firm due to unrelated complaints made. It was to be inferred that save for the SRA's involvement, Mr Pilkington would have continued to trade without notifying the SRA had he had the opportunity to do so. By March 2021, the Firm was trading in serious financial difficulty, approximately £700,000 of debt. Such conduct, it was submitted, failed to abide by the higher standards expected of solicitors by the profession and the public. Accordingly, in conducting himself as he did, Mr Pilkington had acted without integrity in breach of Principle 5 of the Principles.

33.20 Mr Hopkins submitted that Mr Pilkington knew that:

a) **When cases settled, and monies were received in respect of his costs and disbursements, that the amount received in respect of disbursements should have been used to pay the disbursement providers for their assistance in making the claim.**

33.21 That this was the case was evident on Mr Pilkington's own evidence. In his submissions on the referral to the Tribunal, Mr Pilkington stated:

> "I never intended to deprive anyone of money that was rightfully theirs on any kind of long-term basis, as my hope was always to be able to pay the sums out of receipts, and to catch up on the payments, preferably after ownership of the firm had been transferred."

33.22 Mr Hopkins submitted that it could be inferred that Mr Pilkington intended to deprive those who were rightfully due payment on a short-term basis. He knew that the monies he had received belonged to the disbursement providers as he had received those monies in order to pay the disbursements. It mattered not whether the monies were client monies, as no bill had been raised, or whether the monies were not client monies, a bill having been raised. The money belonged to the disbursement providers; Mr Pilkington knew that to be the case.

b) **In respect of at least some of the disbursements, payment had fallen due.**

33.23 When asked why he had prioritised using the monies in order to keep the business going, Mr Pilkington explained:

> "Well purely because you have to pay your staff … otherwise they don't come to work and you have to pay your rent otherwise they have nowhere to work. in some of these cases, for example, medical fees, we were still within our

contractual terms. I haven't gone back over the contracts and I don't know what it says … 'you must pay this within a certain length of time of receiving the funds' but I mean to my mind it had to be the priority to pay the day-to-day running expenses of the business in order that the business could keep going so that we could then hopefully clear this issue and keep going along."

33.24 Mr Hopkins submitted that Mr Pilkington's answer alluded to an understanding and awareness that in some cases, fees were due and payable. He had chosen not to pay those fees and instead use the monies to support his Firm.

c) **By accepting further funds but then not paying those on to disbursement providers, the debt was continuing to accrue. The Firm continued to make claims for a sustained period of time for monies due to disbursement providers which Mr Pilkington was aware may not be paid on and instead would be used for the purpose of supporting the Firm.**

33.25 Mr Pilkington knew that the debts were continuing to accrue. He had accepted that the scheme had commenced in March 2020. Whilst the majority of the transfers had taken place in March, April and May, over 90 payments had been posted in the following months. Mr Pilkington, as the sole signatory to the client account, was the only person with authority to arrange for the transfer of the funds. In his witness statement, Mr Pilkington asserted that having been told by the FI Officer that he ought to cease using disbursement monies in that way, he instructed all staff that all costs and disbursements were to paid into the client account in order to "ensure that no further incidences would occur". However, the use of disbursement monies to fund the Firm continued after the FI Officer's visit. As had been accepted, the Firm used a further £19,729.64 of disbursement monies in this way.

33.26 Ordinary and reasonable people would not believe that using money belonging to others for the purposes of supporting one's own business was reasonable. Taking or using someone else's money without their knowledge or agreement was an example of dishonesty, even if the solicitor did not intend to permanently deprive the other person of their money. In Bultitude v Law Society [2004] EWCA Civ 1853 Kennedy LJ found that found that proof of dishonesty did not necessitate a finding of an intention to permanently deprive. Accordingly, in using the monies as he did, Mr Pilkington had been dishonest.

The Respondent's Case

33.27 Mr Pilkington admitted that the Firm, having received payment for settled cases, had failed to pay outstanding disbursements on a number of occasions. The number and value of the unpresented items was not disputed. It was admitted that such conduct was in breach of Principle 2 as alleged. Mr Pilkington denied that his conduct also amounted to breaches of Principles 4 and 5.

33.28 In his Answer, Mr Pilkington explained that leading up to March 2020, the Firm started undertaking cavity wall insulation claims and had employed staff to service that work. It had not proved to be lucrative and as a result, the team was closed. Redundancies were also made in the first response team. This meant that the Firm's rented premises was larger than required. The Firm exercised its break clause and moved to smaller

premises for about a third of the previous cost resulting in a considerable reduction in the Firm's overheads.

33.29 As a result of the financial difficulties, Mr Pilkington decided to dispose of the Firm. Three members of staff were interested in taking over the Firm, but due to their status, would need to apply for the Firm to become an Alternative Business Structure ("ABS"). The proposal was that the new owners would take over the Firm and Mr Pilkington would leave. The new owners would take on all existing liabilities and Mr Pilkington would not receive any consideration.

33.30 During the application process, Mr Pilkington became a consultant for another firm, after which he stopped taking any money from the Firm. Mr Pilkington took no money from the Firm from February 2020.

33.31 In March 2020, the ABS application was not complete. Mr Roberts informed Mr Pilkington that the Firm's finances were such that it was unable to pay essential expenses without additional funds. Mr Roberts proposed that money received in respect of incurred disbursements, some of which were not contractually due to be paid out, be used to assist in paying the Firm's liabilities. Mr Pilkington considered that this was a viable solution to what he considered to be a temporary problem. In circumstances where it was considered that the immediate closure of the Firm was not in anyone's best interests, Mr Pilkington considered that the solution suggested by Mr Roberts was a logical way forward. He did not think that the proposal was in breach of the Accounts Rules.

33.32 In his witness statement, Mr Pilkington explained that he informed the FI Officer of the scheme and provided her with all the documents. He had volunteered the information as he believed that what the Firm was doing was "perfectly legitimate". He explained to the FI Officer that he knew that it had previously been prohibited, but that it was not prohibited in the new Accounts Rules. The FI Officer agreed that the rules had changed. She indicated that she would need to report the practice to the SRA, but was not sure whether the SRA would take any action. Following that conversation, Mr Pilkington instructed staff that all costs and disbursements had to be paid into the client account. As he was the sole person with access to the client account, he could ensure that no further incidences would occur, as long as the money was correctly paid into the client account.

33.33 As a result of the Covid-19 pandemic and the knock-on effect that it had on court hearings and cases, the Firm's income stream diminished. Thereafter, the application for the Firm to become an ABS was refused. Mr Pilkington explained that he negotiated with another firm with a view to it taking over, but those negotiations were not successful. He then tried to wind the Firm down by contacting a company that specialised in rehousing active caseloads.

33.34 Mr Pilkington explained that whilst the practice of withholding disbursements continued, it took place at a time when active steps were being taken to solve the financial issues by passing the Firm on to others or transferring its work.

33.35 Ms Maqboul submitted that Mr Pilkington was a credible witness. He had, and acknowledged that he had made, a number of grave errors in his practice. This was because he was a lawyer not a businessman. In his interview he explained: "I am actually, believe it or not, quite a good lawyer, much better than I am a businessman." Ms Maqboul submitted that this was the crux of this case; the skills Mr Pilkington possessed as a lawyer had not necessarily transferred to his ability to carry out his duties as a practice owner. That this was the case was evident in the fact that the legal issues complained of which instigated the investigation were not pursued by the SRA.

33.36 Mr Pilkington was completely open with the FI Officer as regards the scheme. This was testament to his honesty and his desire, from the outset, to be transparent and open about what was happening during the time of the allegations. He had disclosed in full the operation of the scheme. Ms Maqboul submitted that the full disclosure was in line with Mr Pilkington's understanding of his duty to be open and honest with his regulator.

33.37 During the course of his evidence, Mr Pilkington confirmed that the FI Officer told him that he probably shouldn't be doing what he was doing in terms of the scheme. He had not attempted to exonerate his behaviour.

33.38 Ms Maqboul submitted that there was a perfect storm of difficulties that arose. His misconduct arose as a result of his deficient understanding of his regulatory obligations as opposed to any obligations imposed by the Accounts Rules. Mr Pilkington had explained that unlike the 2011 Accounts Rules, the 2019 Accounts Rules did not impose any time limit on the payment of disbursements to third parties. Further, disbursement monies were no longer considered to be client money. Ms Maqboul submitted that Mr Pilkington's evidence regarding his consideration of the Accounts Rules as to the permissibility of the scheme evidenced that he had at least appraised himself of what the situation was. The fact that his understanding may have been deficient did not mean that his actions were dishonest or lacking in integrity. In fact, it was the polar opposite. It was clear that Mr Pilkington had done all that he could to ensure that others (and in particular his employees) were not affected by the perfect storm of difficulties the Firm was facing. He had downsized the Firm's premises, attempted to transfer ownership of the Firm, and had drawn no money from the Firm since February 2020. The fact that there was no personal gain from his misconduct was, it was submitted, probative of his state of mind. When asked during his interview if he considered that as the COFA he should have exercised more control over payments he stated:

> "I think the honest answer is had I taken more control over it, it wouldn't have made any difference because I would still be in the situation that we either have to, we either do this or you know we, we close our doors today because we can't pay wages so I think, I don't, hand on heart I don't think it would have made a great deal of difference …"

33.39 Ms Maqboul submitted that Mr Pilkington's response was reflective of his attitude not only to the difficulties he faced, but also at to these proceedings and his desire to be candid about the issues that he faced.

33.40 A key feature of the case against him was that he intended to deprive people of payment in the short term. Irrespective of whether that decision that was made as a long term versus short term decision, the decision was still nevertheless to deprive people of their

fees. This, the Applicant had submitted, was reflective of his character and supported the allegation that his conduct lacked integrity and was dishonest. Ms Maqboul submitted that his explanation, namely that he had given no consideration whatsoever to deprivation, should be accepted. This was further evidence of his perhaps being a better lawyer that than a businessman. The Tribunal had been directed to payment terms on invoices, with payment being due in a relatively short space of time after the delivery of the invoice. It was Mr Pilkington's evidence that the Firm had, in fact, agreed payment terms of 24 months to make payment. If that evidence was accepted, then it was clear that there was no intention or conscious effort by Mr Pilkington to deprive people of what was owed to them.

33.41 Such conduct, taking into account the context, did not amount to dishonesty or a lack of integrity. Ms Maqboul reminded the Tribunal that Mr Pilkington had taken no money for himself from the Firm since February 2020.

33.42 In applying Ivey, the Tribunal had to analyse or assess the actual state of Mr Pilkington's knowledge or belief as to the facts. Once that assessment had been made, the Tribunal would then consider whether his conduct was dishonest by the objective standards of ordinary decent people.

33.43 As to his state of mind, Ms Maqboul submitted that:

- Mr Pilkington had considered the Accounts Rules albeit that his conclusions were incorrect;
- there was no personal gain on his behalf;
- Mr Pilkington had extended payment terms with some suppliers;
- There had been no conscious decision to deprive others of payment.

33.44 The state of his knowledge and belief at the time did not evidence that his conduct had been dishonest.

33.45 Mr Hopkins had referred the Tribunal to Bultitude. That case was entirely different in that it involved the transfer of approximately £50,000 to office account without sight of supporting documentation as to the purpose of the transfer or any real enquiries to the requirement for those funds. Further, there had been no real attempt to troubleshoot any difficulties in Bultitude. Mr Pilkington had taken a number of steps to try to deal with the Firm's issues.

33.46 With regards to the allegation that his conduct lacked integrity, it was submitted that Wingate was factually different to the instant case such that it could be distinguished. In Wingate, the vocabulary used as regards the character traits of the Respondents was very strong and did not apply to Mr Pilkington.

33.47 In Wingate, Jackson LJ detailed some matters that he considered would demonstrate a lack of integrity.

a) **subordinating the interests of the clients to the solicitors own financial situation**

33.48 Ms Maqboul submitted that Mr Pilkington's case could be distinguished as there was an absence of any personal financial gain.

b) **improper payments out of the client account**

33.49 Ms Maqboul submitted that having heard the context and the steps taken by Mr Pilkington to avoid any difficulties, his conduct had not lacked integrity.

33.50 In all the circumstances, it was submitted, Mr Pilkington had not been dishonest in breach of Principle 4, nor did his conduct lack integrity in breach of Principle 5. Accordingly, those matters should be dismissed.

The Tribunal's Findings

33.51 The Tribunal noted that there was no dispute as to the facts; Mr Pilkington accepted the facts detailed in the Rule 12 Statement. The Tribunal found on the facts and the evidence that Mr Pilkington's conduct breached Principle 2 and Paragraphs 7.7 and 7.8 of the Solicitors Code. The Tribunal found that his admissions had been properly made.

33.52 The Tribunal then considered whether the misconduct also amounted to breaches of Principles 4 and 5.

33.53 Mr Pilkington admitted that he had used monies, received to pay disbursements, to finance his Firm. This had been a deliberate and conscious decision on his part. The Tribunal noted that even after he had been advised that he should not continue to use disbursement monies in this way, he had continued to do so.

33.54 It was plain, the Tribunal had found, that Mr Pilkington had subordinated the interests of others to the financial interests of the Firm. The Tribunal determined that whilst Wingate referred to the subordination of client interests to the solicitor's own financial interests, the word "clients" could be properly substituted with "others". The subordination of priority interests was not limited to clients.

33.55 That the payments had been improperly made from the client account was plain. Mr Pilkington accepted that the scheme worked in a similar way to writing cheques, so that for all intents and purposes it appeared that the disbursements had been paid, and then retaining those cheques. The scheme was devised so as to enable the transfer of money from client account into the office account in circumstances where that money should not be transferred. The accounting system showed that those monies had been transferred in order to satisfy payment for disbursements, but those monies were then retained for use by the Firm. The Tribunal did not accept that knowledge of the context in which the monies were transferred evidenced that Mr Pilkington had acted with integrity.

33.56 That such conduct lacked integrity was plain. The Tribunal did not accept that the authority of Wingate could be distinguished on the basis of its factual differences. The Applicant had not relied on Wingate for its facts; it was relied on as it was the authoritative case on integrity.

33.57 Accordingly, the Tribunal found that Mr Pilkington had failed to act with integrity in breach of Principle 5 as alleged.

Dishonesty/Principle 4

33.58 The Tribunal firstly considered Mr Pilkington's state of mind. The Tribunal determined that Mr Pilkington knew that the monies were received for the purpose of paying disbursements. He also knew that whilst some may not be contractually due for payment, others were due for payment. He was also aware that the Firm's financial situation was such that he could not satisfy the Firm's business expenses and satisfy the payment of the disbursements.

33.59 The Tribunal accepted that Mr Pilkington might have considered that this was a short-term solution, but as time went on, it became increasingly clear to him that the Firm was unable to satisfy its liabilities. Mr Pilkington's witness statement exhibited a cashflow forecast which showed that by June 2020, there would be a shortfall of approximately £220,000.00. Notwithstanding that projection, he continued to use disbursement monies to fund the Firm.

33.60 As the only person who could transfer monies from the client account, Mr Pilkington was aware that he was transferring monies, received by him to pay disbursements, to cover the running costs of the Firm. He was also aware that the accounting system in use by the Firm would only allow those transfers in order to pay the disbursements. He thus knew that it would appear from the accounts system that the disbursements had been paid when that was not the case, and he knew that was not the case.

33.61 The Tribunal did not accept that once informed by the FI Officer that he should no longer operate the scheme, Mr Pilkington instructed staff not to do so, such that any further use of the scheme was an error. It was his evidence that he had sole access to the client account and only he and Mr Roberts had access to the office account. Accordingly, the Tribunal did not accept that the continued use of the scheme following the advice from the FI Officer was the result of staff error. The Tribunal considered that the continued deployment of the scheme following advice from the FI Officer was instructive of Mr Pilkington's state of mind. As he had stated in his interview, he had considered that he had no option but to use the monies. Had he not done so, the Firm would not have been able to keep trading. Whilst he might have intended to repay those monies, this did not absolve him of his responsibility not to improperly use those monies.

33.62 The Tribunal accepted that Mr Pilkington believed that his conduct was not in breach of the Accounts Rules. The Tribunal found that Mr Pilkington, knowing that the monies had been paid to him for the purpose of paying disbursements, knew that the monies were not his to use as he chose and that he was therefore not entitled to use those monies for the purposes of the Firm, whether or not the monies amounted to client monies and whether or not such use was in breach of the Accounts Rules. Further, even on his own

case, he knew that some of the monies used to support the Firm was contractually due to be paid. He did not distinguish between monies that were ought to have been paid and those that he was not contractually obliged to pay at that time.

33.63 The Tribunal found that ordinary and decent people would find that it was dishonest for a solicitor to use monies that he knew he was not entitled to use to prop up his firm. The Tribunal agreed that Mr Pilkington did not need to have intended permanently to deprive others in order for such conduct to be dishonest.

33.64 Accordingly, the Tribunal found allegation 1.1 proved on the balance of probabilities, including that Mr Pilkington's conduct lacked integrity in breach of Principle 5 and was also dishonest in breach of Principle 4.

34. **Allegation 1.2 - From in or around March 2020 until on or around 4 November 2020, when he provided his business bank account reconciliation statement to the forensic investigation officer as part of her investigation, he failed to notify the SRA of his Firm's serious financial difficulties and in doing so failed to achieve Paragraphs 7.7 and 7.8 of the Solicitors Code and breached any or all of Principles 2 and 5 of the Principles.**

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

34.1 Paragraph 3.6 of the Code of Conduct for Firms required the SRA to be notified promptly of any indicators of serious financial difficulty. Mr Pilkington was the sole director, COLP, COFA, MLRO and MLCO of the Firm and was required pursuant to Paragraph 3.6 to notify the SRA of the serious financial difficulties experienced by the Firm.

34.2 Mr Hopkins submitted that by March 2020, Mr Pilkington was or ought to have been aware that his Firm showed indicators of serious financial difficulty. On his account, he was already aware by March 2020 of a number of circumstances undermining the Firm's profitability. The seriousness of the position was or ought to have been clear to him in March 2020 when his bookkeeper told him that the Firm had insufficient funds to meet its liabilities, and that in order to resolve this issue it would be necessary to withhold funds intended for others and use them to keep the business going.

34.3 Mr Hopkins submitted that even if Mr Pilkington reasonably believed that this was a short-term solution, it was or ought to have become clear to him that the issue was becoming entrenched. The circumstances affecting the Firm's profitability did not change. The retention of disbursements continued and even increased.

34.4 The SRA's Guidance Note on Firm closures due to financial difficulties (published 5 August 2020) provided:

> "We want to be told this information so that we can monitor the situation and provide support to firms which are in difficulties and protect client interests where necessary. We do this so that, where possible, firms can continue to trade and work in their clients' best interests. Where continued trading is not possible, in the overwhelming majority of cases we are able to work with firms so that

they can close in an orderly way without the need for us to consider using our intervention powers."

34.5 Mr Pilkington did not notify the SRA. Instead, the issue only came to light, incidentally, when the FI Officer commenced a forensic investigation into the Firm which had been commissioned for other reasons. The inference to be drawn was that Mr Pilkington would have continued to withhold notice from the SRA but for the commencement of the forensic investigation.

34.6 Paragraph 7.7 of the Solicitors Code required:

> "You report promptly to the SRA … any facts or matters that you reasonably believe should be brought to its attention in order that it may investigate whether a serious breach of its regulatory arrangements has occurred or otherwise exercise its regulatory powers."

34.7 Paragraph 7.8 of the Solicitors Code required:

> "Notwithstanding paragraph 7.7, you inform the SRA promptly of any facts or matters that you reasonably believe should be brought to its attention in order that it may investigate whether a serious breach of its regulatory has occurred or otherwise exercise its regulatory powers."

34.8 Mr Hopkins submitted that from March 2020, the Firm's cashflow difficulties were substantial enough that Mr Pilkington authorised the withholding of disbursement payments. At that point, he ought immediately to have informed the SRA of the Firm's financial difficulties. As the COLP and director of the Firm, he was aware of the serious financial difficulties the Firm faced, yet he failed to notify the SRA, as the Firm's regulator.

34.9 One of the regulator's functions was to provide guidance and assistance to distressed law firms. The public would be concerned to know that a firm that was trading in serious financial difficulties did not report these to the SRA for around a year. Instead, Mr Pilkington sought out his own solution of using professional disbursements to fund the Firm's business expenses.

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

34.10 Mr Pilkington admitted that he failed to notify the SRA of the Firm's financial difficulties in breach of Paragraphs 7.7 and 7.8. Such conduct, it was admitted, also breached Principle 2 of the Principles.

<u>The Tribunal's Findings</u>

34.11 The Tribunal found allegation 1.2 proved on the facts and the evidence. The Tribunal found that Mr Pilkington's admissions were properly made.

Previous Disciplinary Matters

35. None before the Tribunal.

Mitigation

36. Ms Maqboul submitted that the Tribunal was required to consider the seriousness of the misconduct, the purpose of sanction (namely to protect the public and the reputation of the profession). The Tribunal should then impose the appropriate sanction.

37. Whilst the misconduct had taken place over a period of time, when considered in the context of Mr Pilkington's lengthy and unblemished career, this was a relatively short and isolated incident. He had been completely transparent about the operation of the scheme from the outset both with the FI Officer and during the course of the proceedings before the Tribunal. There had been no attempt by him to mislead the regulator.

38. Ms Maqboul reminded the Tribunal of Mr Pilkington's evidence of the difficulties the Firm had suffered at the time. He had not been motivated by personal gain. On the contrary his motivation was to keep his employees in employment. He had regarded that as superseding his obligation to the Firm's creditors.

39. It was submitted that the finding of dishonesty meant that the Tribunal would be considering a sanction that was at the upper end of its powers. Mr Pilkington was currently employed as a consultant. He did not have any of the responsibilities that he held when he was running the Firm. He had no dealings with client money and was now practising in a different area of law.

40. These proceedings had been ongoing for a significant amount of time and had taken a toll on him. From his personal financial statement, it could be seen that he was the primary earner in his household. Removing his ability to practice would affect his dependants and his partner.

41. Ms Maqboul submitted that placing restrictions on his ability to practice would protect the public from future harm. The risk of any harm had, in any event, been reduced given his current employment and the area in which he now practised.

42. Mr Pilkington recognised the privilege of working within the profession. He was desperate to continue working within the profession and wanted the opportunity to rectify his mistakes by demonstrating to the Tribunal and the public that there would be no reoccurrence of his misconduct.

43. Ms Maqboul explained that his current employer had confirmed that it would be able to facilitate any restrictions placed on his practice.

44. Should the Tribunal consider that a restriction order did not meet the seriousness of the misconduct, Ms Maqboul submitted that a short suspension would be appropriate, and could likewise be accommodated by his current employer. Mr Pilkington had made a good impression on his employer such that he was being considered to take over as the team leader for a colleague who was leaving the firm imminently.

45. Ms Maqboul referred the Tribunal to the testimonials submitted on Mr Pilkington's behalf, all of which attested to his professionalism and proficiency as a solicitor.

Sanction

46. The Tribunal had regard to the Guidance Note on Sanctions (10th Edition – June 2022). The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, it was the Tribunal's role to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances.

47. The Tribunal found that Mr Pilkington had been motivated by his desire to keep the Firm running. Whilst he had not taken any money personally, he was the sole owner and beneficiary of the Firm. His actions were planned; the scheme was devised to enable the Firm to utilise monies that was due to third parties. He had direct responsibility and control over his misconduct. Having been informed of the scheme, he sanctioned it and actively participated in its operation. He was an experienced solicitor who should have known that his conduct was in breach of his regulatory obligations.

48. Mr Pilkington's conduct was aggravated by his proven dishonesty, which was in material breach of his obligation to protect the public and maintain public confidence in the reputation of the profession; as per Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin:

> "34. There is harm to the public every time that a solicitor behaves dishonestly. It is in the public interest to ensure that, as it was put in Bolton, a solicitor can be "trusted to the ends of the earth"."

49. The harm he had caused was foreseeable, and became all the more apparent in time. It was clear to him that the Firm's financial position meant that it was unlikely to be able to repay the disbursement monies used. That knowledge increased throughout the duration of the scheme and was plain from the cashflow forecast prepared by the Firm.

50. Mr Pilkington's conduct was deliberate and calculated. It had continued over a period of time, including when he had been told by the FI Officer to cease operating the scheme. Whilst he had not sought to conceal the conduct from the FI Officer, his books of account showed that the disbursements had been paid when that was not the true position.

51. In mitigation the Tribunal took account of Mr Pilkington's unblemished career. His misconduct arose from a single course of conduct. He had been completely candid throughout the investigation. He had admitted the facts from the outset. His misconduct had occurred during extremely trying circumstances, many of which were beyond his control. He had ceased taking any money from the Firm for himself and had not directly benefited from his misconduct. The Tribunal considered that whilst this was far more serious than a moment of madness given that his misconduct had taken place over a period of time, the conduct was out of character.

52. Taking all matters and circumstances into account, the Tribunal found that the serious nature of the misconduct meant that the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions did not adequately reflect the misconduct.

The Tribunal had regard to the case of Bolton v Law Society [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

> "….Lapses from the required standard (of complete integrity, probity and trustworthiness)….may….be of varying degrees. The most serious involves proven dishonesty….In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors."

53. The Tribunal considered that a suspension did not adequately protect the public and the reputation of the profession from future harm by Mr Pilkington. Public confidence in the profession would be damaged by the knowledge that a solicitor who had been found to be dishonest and had conducted himself the way that Mr Pilkington had, had been allowed to remain on the Roll.

54. The Tribunal considered the nature and extent of Mr Pilkington's dishonesty, and his degree of culpability. As detailed, the Tribunal found that Mr Pilkington was wholly culpable for his misconduct. The Tribunal did not find that the difficult circumstances amounted to exceptional circumstances. As per Flaux LJ in SRA v James et al [2018] EWHC 3058 (Admin):

> "… in my judgement, pressure of work or extreme working conditions whilst obviously relevant, by way of mitigation, to the assessment which the SDT has to make in determining the appropriate sanction, cannot either alone or in conjunction with stress or depression, amount to exceptional circumstances. Pressure of work or of working conditions cannot ever justify dishonesty by a solicitor.."

55. The Tribunal did not find any circumstances that were enough to bring Mr Pilkington in line with the residual exceptional circumstances category referred to in the case of Sharma. The Tribunal decided that in view of the serious nature of the misconduct, in that it involved dishonesty, the only appropriate and proportionate sanction was to strike Mr Pilkington off the Roll of Solicitors.

Costs

56. Mr Hopkins applied for costs in the sum of £33,459.10. This was comprised of:

- £1,200 investigation and supervision costs
- £10,059.10 forensic investigation costs
- £18,500 + VAT legal costs

57. Mr Hopkins submitted that whilst Mr Pilkington had provided a personal means statement, he had provided no supporting documentation as regards his means. In the circumstances, the Tribunal was entitled to disregard that statement. In the event that it was accepted, it would be appropriate for the Tribunal to make an order for costs not to be enforced without the leave of the Tribunal. Mr Hopkins drew the Tribunal's attention to the decision in Barnes v SRA [2022] EWHC 677 (Admin) in which it was held that no order for costs should be made where it was unlikely, on any reasonable

assessment of Mr Pilkington's current or future means, that he would ever be able to satisfy that order.

58. Ms Maqboul referred the Tribunal to the personal means statement, which showed that Mr Pilkington had a number of outstanding personal liabilities. His financial position had changed since the signing of that statement in that his liabilities had increased.

59. Ms Maqboul submitted that if the costs of the original investigation were included in the amount claimed for the forensic investigation, there should be a reduction. No submissions were made as to the quantum claimed for supervision and legal costs. The Applicant agreed that there should be a reduction in the costs claimed for the forensic investigation.

60. The Tribunal noted that Mr Pilkington was prepared to give sworn evidence as to his means. The Tribunal accepted the personal statement of means; it did not require Mr Pilkington to give evidence. The Tribunal noted the significant personal liabilities, including that he had received letters before action in relation to personal guarantees given by him in the sun of £875,000.00. The Tribunal determined that whilst the Applicant was due to receive its costs, there was no reasonable prospect that Mr Pilkington could currently or in the future meet any costs order.

61. Accordingly, and in line with the decision in Barnes, the Tribunal made no order as to costs.

Statement of Full Order

62. The Tribunal Ordered that the Respondent, MICHAEL WILLIAM PILKINGTON solicitor, be STRUCK OFF the Roll of Solicitors and it further Orders that there be No Order as to costs.

Dated this 30th day of January 2023
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
30 JAN 2023

H Dobson
Chair