SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12414-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

JAMES HUXTABLE Respondent

Before:

Ms A E Banks (in the chair)
Mr E Nally
Mr C Childs

Date of Hearing: 3 April 2023

Appearances

Andrew Bullock, barrister of Solicitors Regulation Authority of The Cube, 199 Wharfside Street, Birmingham, B1 1RN, for the Applicant.

The Respondent did not attend and was not represented.

JUDGMENT

The Allegations

1. The allegations against the Respondent, James Huxtable, made by the SRA are that, while in practice as a Solicitor and Principal at Absolute Legal Ltd (the Firm):

1.1 He used client money for a purpose not permitted under the Solicitors Accounts Rules as evidenced by the minimum cash shortage which arose on Client matters C and D and in doing so he thereby:

1.1.1 Insofar as such conduct took place on or after 2014 but before 25 November 2019, acted in breach of any or all of Rules 1.2(c) and Rule 20 of the SRA Accounts Rules 2011 and/or;

1.1.2 Insofar as such conduct took place on or after 25 November 2019 acted in breach of Rule 5.1 of the SRA Accounts Rules;

1.1.3 Insofar as such conduct took place on or after 6 October 2011 but before 25 November 2019, acted in breach of any or all of Principles 2, 6 and 10 of the SRA Principles 2011;

1.1.4 Insofar as such conduct took place on or after 25 November 2019 acted in breach of either or both of Principles 2 and 5 of the SRA Principles and/or;

1.1.5 Insofar as such conduct took place on or after 25 November 2019 acted in breach of Paragraph 4.2 of the Code of Conduct for Solicitors, RELS and RFLs (the 'Code').

1.2 Between an unknown date in 2016 and 12 May 2020, he: (a) failed to carry out client account reconciliations; (b) failed to keep accounting records for the Firm properly written up to show dealings with client and office money and failed to appropriately record all dealings with client money in accordance with the applicable rules. Insofar as such conduct took place on or after 6 October 2011 but before 25 November 2019, he acted in breach of:

1.2.1 Either or both Principle 6 and 10 of the SRA Principles 2011;

1.2.2 Rules 29.1, 29.2, 29.9 and 29.12 of the SRA Accounts Rules 2011

Insofar as such conduct took place on or after 25 November 2019, he acted in breach of:

1.2.3 Principle 2 of the SRA Principles

1.2.4 Rules 8.1 and 8.3 of the SRA Accounts Rules

1.2.5 Rule 4.2 of the Code

1.3 Between 1 October 2014 and 30 March 2020, he failed to obtain accountants' reports for the Firm in breach of: Insofar as such conduct took place on or after 6 October 2011 but before 25 November 2019, he acted in breach of:

1.3.1 Either or both Principle 6 and Principle 10 of the SRA Principles 2011

1.3.2 Rule 32A. 1(a) of the SRA Accounts Rules 2011

Insofar as such conduct took place on or after 25 November 2019, he acted in breach of:

1.3.3 Principle 2 of the SRA Principles 2019;

1.3.4 Rule 12.1 of the SRA Accounts Rules

1.4 He caused or allowed to be deleted two emails addressed to Mrs Huxtable (COLP of the Firm) from the SRA dated 23 August 2019 and 29 October 2019 and in doing so breached Principles 2 and 6 of the SRA Principles 2011.

Recklessness

2. In addition, Allegations 1.2 and 1.3 above are advanced on the basis that the Respondent's conduct was reckless. Recklessness is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegation.

Dishonesty

3. In addition, Allegation 1.4 above is advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegation.

Executive Summary

4. The Tribunal found all allegations against Mr Huxtable proved in their entirety, including that his conduct had been dishonest in relation to Allegation 1.4.

5. The Tribunal's Findings can be found here.

6. The Tribunal determined that the only appropriate sanction was to strike Mr Huxtable off the Roll. The Tribunal's sanctions and its reasoning on sanction can be found here.

Other Bookmarks

Preliminary Matter

7. Application to Proceed in Absence

7.1 Mr Huxtable did not attend the hearing and was not represented. He had not applied to adjourn or vacate the hearing.

7.2 Mr Bullock submitted that there was evidence before the Tribunal, in the form of a statement of truth dated 31 January 2023 from Mr John Power, a process server that Mr Huxtable had on 30 January 2023 been served correctly with the proceedings, in accordance with the rules pertaining to service. Within this material had been the Tribunal's Standard Directions setting out the date of the present substantive hearing.

7.3 Mr Power had attended at Mr Huxtable's address and left the documents at the property having spoken with Mr Huxtable's partner who was present at the address and who telephoned Mr Huxtable in Mr Power's presence and told Mr Huxtable that the documents had been delivered. Mr Huxtable's partner reported to Mr Power that Mr Huxtable would receive the documents when he returned home from work later that day.

7.4 Mr Bullock submitted that valid service had been effected on 30 January 2023. Further, prior to and subsequent to the service of proceedings upon him, Mr Huxtable had been sent letters and e-mails from the SRA and the Tribunal to his known physical and e-mail addresses informing him of the proceedings; notifying him of the date of the substantive hearing; providing him with joining instructions to join remotely and warning him of the potential consequences of non-compliance.

7.5 In the event, Mr Huxtable, whilst aware of the proceedings and the present substantive hearing had not engaged. He had provided no Answer to the allegations and no explanation for not attending the substantive hearing.

7.6 Mr Bullock applied therefore for the substantive hearing to proceed in Mr Huxtable's absence placing reliance upon the decisions in General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 16231 which in turn approved the principles set out in R v Hayward, R v Jones, R v Purvis QB 862 [2001], EWCA Crim 168 [2001] namely that proceeding in the absence of a respondent was a discretion which a Tribunal should exercise with the upmost care and caution bearing in mind the following factors:

- The nature and circumstances of the respondent's behaviour in absenting himself from the hearing;
- Whether an adjournment would resolve the respondent's absence;
- The likely length of any such adjournment;
- Whether the respondent had voluntarily absented himself from the proceedings and the disadvantage to the respondent in not being able to present their case.

7.7 It was held in Adeogba that in determining whether to continue with regulatory proceedings in the absence of the respondent, the following factors should be borne in mind by a disciplinary tribunal:-

- the Tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;
- the fair, economical, expeditious and efficient disposal of allegations was of very real importance;
- it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and
- there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.

7.8 In Mr Bullock's submission the Tribunal had evidence that Mr Huxtable had been correctly served and that he was on notice of the hearing date but that he had voluntarily absented himself.

The Tribunal's Decision

7.9 The Tribunal was satisfied on the evidence presented to it that Mr Huxtable had been correctly served with the proceedings. The evidence from Mr Power and the other correspondence sent to Mr Huxtable indicated that Mr Huxtable would have been aware of the date of the substantive hearing.

7.10 Mr Huxtable had made no application to adjourn, and there was nothing before the Tribunal upon which it could base a reasoned decision to adjourn which would be in accordance with its own publicly available Guidance on adjournments.

7.11 Indeed, there had been no engagement at all from Mr Huxtable. The Tribunal decided not to adjourn the hearing as there was no evidence before it reasonably to do so.

7.12 With respect to proceeding in Mr Huxtable's absence the Tribunal was mindful that it should only decide to proceed in his absence having exercised the utmost care and caution.

7.13 The Tribunal considered the factors set out in Jones and Adeogba in respect of what should be considered when deciding whether to exercise the discretion to proceed in the absence of a respondent. The Tribunal noted that Mr Huxtable had been served with notice of the hearing under Rule 13(5) SDPR 2019 and the Tribunal had the power under Rule 36 SDPR 2019, if satisfied service had been effected, to hear and determine the application in his absence.

7.14 The Tribunal found that in the circumstances an adjournment would not resolve Mr Huxtable's absence, given he had never engaged, and there was nothing to suggest that he would attend a hearing on a future date. The Tribunal concluded that Mr Huxtable had voluntarily absented himself.

7.15 The Tribunal also considered the serious nature of the allegations made against Mr Huxtable and it decided it was in the public interest that this case should be concluded expeditiously and without further delay particularly when there had been nothing from Mr Huxtable to provide the slightest glimmer he would participate.

7.16 The Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence and the Tribunal decided that it should exercise its power under Rule 36 SDPR to hear and determine the application in Mr Huxtable's absence, and that the case should proceed.

Documents

8. The Tribunal considered all the documents in the case which were contained in an agreed electronic bundle.

Findings of Fact and Law

9. The Applicant was required by Rule 5 of The Solicitors (Disciplinary Proceedings) Rules 2019 to prove the allegations to the civil standard (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 Huxtable'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.

10. 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. The absence of any reference to particular evidence should not be taken as an indication that the Tribunal did not read, hear or consider that evidence.

The Principles, Outcomes, Rules, and Tests

<u>SRA Principles 2011 (and 2019 where relevant)</u>

11. Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles 2019 requires solicitors to act with integrity. In <u>Wingate v SRA</u> [2018] EWCA Civ 366, the Court of Appeal stated that integrity connotes adherence to the ethical standards of one's profession. In giving the leading judgement, Lord Justice Jackson said: "Integrity is a broader concept than honesty. In professional codes of conduct the term "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."

12. Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019 requires solicitors to behave in a way that maintains the trust the public places in them and in the provision of legal services.

13. Principle 10 of the SRA Principles 2011 requires a solicitor to protect client money and assets.

Recklessness

14. The test for recklessness is set out in the case of Brett v SRA [2014] EWHC 1974. At paragraph 78 in that case, Wilkie J said that for the purposes of the Brett appeal, he adopted the working definition of recklessness from the case of R v G [2004] 1 AC 1034. He said that the word recklessly is satisfied: with respect to (i) a circumstance when (the solicitor) is aware of a risk that it exists or will exist and (ii) a result when (the solicitor) is aware that a risk will occur and it is, in circumstances known to them, unreasonable for them to take the risk.

Dishonesty

15. The test for dishonesty is that stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

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

SRA Code of Conduct for Solicitors, RELs and RFLs

16. Rule 4.2:

> "You safeguard money and assets entrusted to you by clients and others."

SRA Accounts Rules 2011 (SARS)

17. Rule 1.2:

> "You must comply with the Principles set out in the Handbook, and the outcomes in Chapter 7 of the SRA Code of Conduct in relation to the effective financial management of the firm and in particular must:
>
> …
>
> c) Use each client's money for that client's matters only"

18. Rule 20.1:

> "Client money may only be withdrawn from a client account when it is:
>
> (a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held);
>
> (b) properly required for a payment in the execution of a particular trust, including the purchase of an investment (other than money) in accordance with the trustee's powers;
>
> (c) properly required for payment of a disbursement on behalf of the client or trust;
>
> (d) properly required in full or partial reimbursement of money spent by you on behalf of the client or trust;
>
> (e) transferred to another client account;
>
> (f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing;
>
> (g) transferred to an account other than a client account (such as an account outside England and Wales), or retained in cash, by a trustee in the proper performance of his or her duties;
>
> (h) a refund to you of an advance no longer required to fund a payment on behalf of a client or trust (see rule 14.2(b));
>
> (i) money which has been paid into the account in breach of the rules (for example, money paid into the wrong separate designated client account) - see rule 20.5 below;
>
> (j) money not covered by (a) to (i) above, where you comply with the conditions set out in rule 20.2; or
>
> (k) money not covered by (a) to (i) above, withdrawn from the account on the written authorisation of the SRA. The SRA may impose a condition that you pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received."

Rule 29

19. Rule 29.1:

> "You must at all times keep accounting records properly written up to show your dealings with:

(a) Client money received, held or paid by you; including client money held outside a client account under rule 15.1(a) or rule 16.1(d); and

(b) Any office money relating to any client or trust matter."

20. Rule 29.2:

"All dealings with client money must be appropriately recorded:

(a) in a client cash account or in a record of sums transferred from one client ledger account to another; and

(b) on the client side of a separate client ledger account for each client (or other person, or trust). No other entries may be made in these records."

21. Rule 29.9:

"The current balance on each client ledger account must always be shown, or be readily ascertainable, from the records kept in accordance with rule 29.2 and 29.3 above."

22. Rule 29.12:

"You must, at least once every five weeks:

(a) compare the balance on the client cash account(s) with the balances shown on the statements and passbooks (after allowing for all unpresented items) of all general client accounts and separate designated client accounts, and of any account which is not a client account but in which you hold client money under rule 15.1(a) or rule 16.1(d), and any client money held by you in cash; and

(b) as at the same date prepare a listing of all the balances shown by the client ledger accounts of the liabilities to clients (and other persons, and trusts) and compare the total of those balances with the balance on the client cash account; and,

(c) prepare a reconciliation statement; this statement must show the cause of the difference, if any, shown by each of the above comparisons."

23. Rule 32.A: Obtaining delivery of accountants' reports

"Subject to rule 32A. 1, if you have, at any time during an accounting period held, or received client money, or operated a client's own account as a signatory, you must:

(a) Obtain an accountant's report for that accounting period, within six months of the end of the accounting period; and

(b) If the report has been qualified, deliver it to the SRA within six months of the end of the accounting period.

This duty extends to the directors of a company, or the members of an LLP, which is subject to this rule."

SRA Accounts Rules 2019

24. Rule 5.1:

"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."

25. Rule 8.1:

"You keep and maintain accurate, contemporaneous, and chronological records to:

(a) Record in ledgers identified by the client's name and an appropriate description of the matter to which they relate:

(i) All receipts and payments which are client money on the client side of the client ledger account;

(ii) All receipts and payments which are not client money and bills of costs including transactions through the authorised body's accounts on the business side of the client ledger account;

(b) Maintain a list of all the balances shown by the client ledger accounts of the liabilities to clients (and third parties), with a running total of the balances; and

(c) Provide a cash book showing a running total of all transactions through client accounts held or operated by you."

26. Rule 8.2:

"You obtain, at least every five weeks, statements from banks, building societies and other financial institutions for all client accounts and business accounts held or operated by you."

27. Rule 8.3:

> "You complete at least every five weeks, for all client accounts held or operated by you, a reconciliation of the bank or building society statement balance with the cash book balance and the client ledger total, a record of which must be signed off by the COFA or a manager of the firm. You should promptly investigate and resolve any differences shown by the reconciliation."

Factual Background

28. Mr Huxtable was admitted to the Roll of Solicitors on 1 November 1999 and did not currently hold a practising certificate.

29. He was the co-director and held the roles of Compliance Officer for Finance and Administration (COFA) and Money Laundering Reporting Officer (MLRO) at the Firm which closed on 30 March 2020.

30. Mrs Kamal Huxtable (a solicitor and the Respondent's wife) was the co-director, co-owner and Compliance Officer for Legal Compliance (COLP) of the Firm.

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

31. On 13 May 2019, the SRA received a report from Mr and Mrs B in relation to the sale of Property A. The report stated that they were receiving correspondence from the local council in relation to breaches of planning in relation to Property A and that the property had not been registered in the buyer's name with the Land Registry.

32. On 23 August 2019, the SRA wrote to Mrs Huxtable via her email "kam@absolute-legal.com" in her capacity as the Firm's COLP in relation to matters concerning Property A. A system generated 'read' report shows that the email was read on the same date. As no response was received, a further letter was sent by the Investigation Officer on 29 October 2019 and a system generated 'read' report supports that it was read on the same date.

33. In March 2020, the SRA commenced an investigation, which was conducted by a Forensic Investigation Officer of the SRA ("the FIO") and her report ("the FIR") dated 9 July 2020 identified the following areas of concern:

- Minimum cash shortage of £50,614.21 as at 12 May 2020 in relation to two client matters;
- There were no available client account reconciliations;
- The client ledgers were inaccurate and out of date;
- The list of client liabilities could not be relied upon;
- The Firm had failed to obtain any Accountant's Reports after each of the financial years from September 2014.

34. The FIO arrived at the Firm's offices on 9 March 2020 and was informed that Mr Huxtable was not available and it was not known where he was. Mrs Huxtable took control of the Firm's client account by freezing the current one and reopening a new one.

35. The FIO was provided with copies of the Firm's bank statements from the previous 3 months for the original client account.

36. On 7 September 2022, Mrs Huxtable received a Warning from the SRA arising from her involvement in these matters investigated by the SRA.

37. Applicant's Submissions

37.1 **Allegation 1.1 - He used client money for a purpose not permitted under the Solicitors Accounts Rules, as evidenced by the minimum cash shortage which arose on Client matters C and D**

37.1.1 The FIR identified that the minimum cash shortage related to two client matters caused by an unknown number of improper payments of unknown amounts out of the Firm's client account.

37.1.2 The FIR noted that the Firm had minimum liabilities in respect of Client matters C and D, totalling £201,107.33 as at 12 May 2020 but that the balance held in the client account totalled £150,493.12 leaving a minimum cash shortage of £50,614.21. The FIR stated that due to a lack of accounting records it was not possible to identify when the cash shortage arose or what had caused it.

37.1.3 The FIO stated that she was unable to identify how the client account shortage had arisen because:

- the Firm's books of accounts were not up to date or reliable;
- there were no available client account reconciliations;
- the client ledgers were inaccurate and out of date; and
- the list of client liabilities could not be relied on.

37.1.4 The client account shortage was represented in a table set out as follows:

Liability owed		**Balance in client account**	**Total**
Client C	£183,805.33		
Client D	£17,302.00		
Totals			£201,107.33
		£150,493.12	[£150,493.12]
Minimum cash shortage			**£50,614.21**

37.1.5 Between 27 May 2020 and 29 May 2020, the total sum of £39,838.59 was repaid into the Firm's client account consisting of £13,000 from the office account and the remainder, £26,838.59 from Mrs Huxtable's own funds. Mrs Huxtable stated that she had calculated the total due to the clients as £191,019.59.

Client C's matter

37.1.6 In respect of Client C's matter, the Firm acted in the sale of Property E. A revised client ledger dated 12 May 2020 identified that the Firm should have held £183,805.33 as of 12 May 2020.

37.1.7 The FIO identified that part of the liability owed to Client C related to costs of £8,400.00 which could not be identified as being taken from the client account. Mrs Huxtable provided evidence of nine client to office bank transfers which 'related to the matter of [Client C]'.

37.1.8 The FIO reviewed the list of transfers recorded on the client account bank statement, but each held a different client reference which did not relate to Client C. The FIO sought clarification from both Mr Huxtable and Mrs Huxtable regarding the historical costs totalling £8,400 but was unable to confirm whether the costs had in fact been paid in the absence of any evidence in the client bank statement to confirm that it had been.

Client D's matter

37.1.9 In respect of Client D's matter, the Firm acted in the purchase of Property F. The FIO noted that the client ledger showed a balance of £17,322.00 which was held in the client account as at 12 May 2020 but that, on a review of the client account bank statements, a payment of £20.00 was made to the Land Registry on 1 April 2020 which was not recorded on the client ledger.

37.1.10 As such, the FIO calculated that the Firm should have held £17,302.00 in the client account for Client D. In an email to the FIO on 20 May 2020, Mr Huxtable stated that:

> "There is a shortfall of approximately £57,000 on client account (I think this should be slightly less as there are some small balances that will be accounted for that I could not clear with the information I had). The shortfall is down to me and accrued during a mentally difficult time for me over the last couple of years which came to a head with me leaving and not being in a good mental state".

37.1.11 In interview with the FIO, Mrs Huxtable was asked about what the shortfall had been used for and stated "I've got no idea. I would assume it was – I mean for the business' 'I think, I think what he did was, he was, he was using the funds to prop up the business."

37.1.12 Mrs Huxtable agreed that the Firm should have been holding £17,302.00 for Client D and agreed that the shortfall was £50,614.21.

37.1.13 Mrs Huxtable repaid the sum of £39,868.59 on 27 May 2020 and 29 May 2020. Mr Huxtable was not involved in remedying the shortfall.

37.1.14 At interview with the FIO, Mrs Huxtable stated that, "if there is a shortfall, that I will meet, meet it so, and remedy it. I'm going through, I'm negotiating with the Insurers, and once we come to a final figure, then I'll be able to, be able to pay them. I'll have to try and borrow some money and pay it."

37.1.15 Mr Huxtable stated in interview with the FIO on 22 June 2020, that:

- In relation to how the shortage had arisen, 'I, I think to pay down tax liability'.
- He agreed that the bank statement as at 12 May 2020 showed the Firm held £150,493.12 in its client account.
- He agreed that the Firm should have been holding £175,405.33 if costs had been paid, or £183,805.33 if they had not.
- He agreed that there was a client account shortfall.
- He agreed that the Firm should have held £17,302.00 for Client D.
- He agreed that the shortfall was not shown on any books of account or in any client account reconciliations.

37.1.16 On 3 September 2021, the SRA received an accountant's report for the period between 1 October 2014 and 30 September 2020 from Xaviers Accountants via Mrs Huxtable's representative with attachments. Page 2 of the report stated that: "We have not been instructed to prepare SRA Accountants Report [sic] (AR1) in accordance with the SRA Accounts Rules. Our report is also based on the result of our tests on various samples selected and also on the information provided by AL [the Firm]."

37.1.17 The accountant's report confirmed that the Firm:

- Had not prepared account reconciliations every five weeks since 30 September 2014;
- Had not kept client and office ledgers updated;
- Had not obtained an accountant's report since 30 September 2014;
- Held a client balance of £852.68.

37.1.18 Under the section 'Ledger and file review', the report stated that, "We have reviewed the bank statements of both the client bank account and the office bank account for the period from October 2014 and 30 September 2020. We have not identified any unusual transactions." In addition, within the document entitled 'Chronology', it stated that, "- also taken into account were monies paid by Mrs Huxtable personally for the purported shortfall. Figures also entered into same spreadsheet to show a true and accurate account of each client matter ledger".

37.1.19 Mr Huxtable stated that he thought the money had been used to pay a tax liability which is improper and in breach of the Accounts Rules.

<u>Alleged accounting breaches</u>

37.1.20 Rule 1.2(c) provides that client money should be used for that client's matter only.

Withdrawals from the client account cannot be made to provide liquidity for the Firm's tax liabilities and the Respondent has breached Rules 1.2(c) and Rule 20 by withdrawing client monies for this purpose.

37.1.21 In causing or allowing the withdrawal from client account of money other than for the purpose it was being held, it was said that Mr Huxtable had breached Rule 5.1 of the Solicitors Accounts Rules 2019.

Alleged Breach of Principle 2 of the Principles 2011 and Principle 5 of the Principles 2019

37.1.22 The FIO was unable to establish the dates on which the transfers of client money out of client account had taken place and what the client money had been used for due to the record keeping at the Firm.

37.1.23 By causing or allowing improper transfers to be made, and thereby causing shortages to develop in the Firm's client account, Mr Huxtable failed to respect the sacrosanct nature of client money. In allowing those funds to mix with the Firm's expenditure, Mr Huxtable failed to act with integrity, i.e., with moral soundness, rectitude and steady adherence to an ethical code. In Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession. Further, a solicitor acting with integrity and would have at the very least, been able to evidence exactly what the client money had been used for.

37.1.24 Mr Bullock submitted that Mr Huxtable breached Principle 2 of the SRA Principles 2011 for the conduct before 25 November 2019 and/or Principle 5 of the SRA Principles for the conduct on or after 25 November 2019.

Alleged Breach of Principle 6 of the Principles 2011 and Principle 2 of the Principles 2019

37.1.25 The conduct alleged also amounted to a breach by Mr Huxtable of the requirement to behave in a way which maintains the trust placed by the public in solicitors and in the provision of legal services. The public expects to be able to trust solicitors and members of a solicitor's firm securely to hold and use client monies appropriately in accordance with the relevant rules governing such matters. Allowing the use of client money to pay office expenses which resulted in a significant shortfall to the client account, undermines that trust. Members of the public would expect solicitors to be diligent in how they handled funds received into their client account and provide an accurate matter balance listing when requested.

37.1.26 Mr Huxtable breached Principle 6 of the SRA Principles 2011 for the conduct before 25 November 2019 and/or Principle 2 of the SRA Principles for the conduct on or after 25 November 2019.

Alleged Breach of Principle 10 of the Principles 2011

37.1.27 By allowing shortages to develop on the Firm's client account, Mr Huxtable failed to protect/safeguard the money entrusted to him by Clients C and D, in breach of Principle 10 of the SRA Principles 2011 for the conduct before 25 November 2019 and/or Rule 4.2 of the Code for the conduct on or after 25 November 2019.

37.2 **Allegation 1.2 - Between an unknown date in 2016 and 12 May 2020, he:**

(a) failed to carry out client account reconciliations;

(b) failed to keep accounting records for the Firm properly written up to show dealings with client and office money and failed to appropriately record all dealings with client money in accordance with the applicable rules.

37.2.1 The FIO stated that:

- No client account reconciliations were available;
- Client ledgers were inaccurate and out of date; and
- The list of client liabilities could not be relied on.

37.2.2 As a result of these factors the FIO was unable to rely on the books of account and could not ascertain the total liabilities the Firm owed to its clients or confirm if the Firm held sufficient funds in the client account. During a discussion between the FIO and Mr Huxtable on 22 April 2020, he stated that there were postings missing from the client ledgers and that the client matter listing did not correctly reflect the Firm's liabilities.

37.2.3 In an interview with the FIO, Mr Huxtable stated in relation to the client ledgers that:

- He was responsible for maintaining the books of account;
- He was responsible for making postings to individual ledgers;
- He would be given a paper request for posting on matters which were not his;
- He thought he had stopped keeping the client ledgers fully up to date in 2016;
- He stopped preparing client account reconciliations during the same period [i.e., 2016].

37.2.4 In the same interview with the FIO, Mr Huxtable stated in relation to the client account reconciliations that:

- He was carrying them out up to 2016;
- There were no client account reconciliations after 2016;
- The 'External Accountants' Report' dated 2 September 2021 provided by the Firm stated that the client ledgers 'both client and office side' were not updated on a regular basis.

37.2.5 Mr Huxtable was co-director of the Firm and stated that he was responsible for maintaining the books of account. However, Mr Huxtable was unable to provide the FIO with any client account reconciliations or accurate ledgers which meant that the FIO was unable to ascertain how the shortfall had arisen. Mr Huxtable stated that he

had stopped keeping client ledgers fully up to date in 2016. Mr Huxtable stated in interview with the FIO when asked about the reliability of the matter balance listing that, "It, it, its [sic] not 100% accurate. It, it is in the region of that amount, yes."

Accounting Breaches - Pre-25 November 2019

37.2.6 Mr Bullock said that from a date unknown in 2016 to 25 November 2019, the Firm's client account reconciliations were not in compliance with the rules.

37.2.7 Rule 29.1 of the SRA Accounts Rules 2011 requires that at all times accounting records are properly written up to show dealings with client money received, held or paid by you and any office money relating to any client or trust matter. Further, all dealings with client money must be appropriately recorded (Rule 29.2) and the balance on each client ledger must always be shown, or readily ascertainable, from the records (Rule 29.9). Mr Huxtable was unable to demonstrate to the FIO that these Rules had been adhered to.

37.2.8 Mr Huxtable informed the FIO that he had stopped keeping the ledgers fully up to date in 2016. The FIO was unable to establish what funds the Firm should have been holding on behalf of clients.

37.2.9 Rule 29.12 of the SRA Accounts Rules 2011 requires that a reconciliation statement must be prepared at least once every five weeks. However, the FIO found that five-weekly client account reconciliations had not been carried out. Mr Huxtable stated that he had not carried them out since 2016. Accordingly, Mr Huxtable failed to comply with the rules.

Breaches of the Principles – Pre-25 November 2019

Alleged Breach of Principle 6 of the Principles 2011

37.2.10 By not undertaking reconciliations, Mr Huxtable had no, or no adequate mechanism in place to ensure that he was complying with the SRA Accounts Rules 2011. Members of the public would expect solicitors and their firm to comply with the regulatory rules in place at the time.

37.2.11 By not having an adequate mechanism in place for the protection of client funds, Mr Huxtable failed to behave in a way that maintained the trust the public had in him and in the provision of legal services and therefore breached Principle 6 of the SRA Principles 2011.

Alleged Breach of Principle 10 of the Principles 2011

37.2.12 By failing to carry out client account reconciliations and an accurate record of client money when obligated to do so, Mr Huxtable failed to protect client money and assets and therefore breached Principle 10 of the SRA Principles 2011.

Accounting Breaches – from 25 November 2019

37.2.13 From 25 November 2019 to 20 May 2020 the Firm's client account reconciliations were not in compliance with the rules. The SRA Accounts Rules requires that accurate, contemporaneous, and chronological account records are kept (Rule 8.1). Further, Rule 8.3 provides that a reconciliation must be completed at least every 5 weeks for all client accounts held or operated by Mr Huxtable in his role as manager of the Firm.

Alleged Breach of Principle 2 of the Principles 2011

37.2.14 For the reasons set out above, Mr Bullock submitted that Mr Huxtable had breached Principle 2 of the SRA Principles and/or Rule 4.2 of the Code.

37.3 **Allegation 1.3: Between 1 October 2014 and 30 March 2020, he failed to obtain Accountant's Reports**

37.3.1 The SRA Accounts Rules 2011 and the SRA Accounts Rules 2019 provide that the Firm was required to obtain an accountant's report because it held or received client money.

37.3.2 Mr Huxtable stated that he had not obtained an accountant's report since 30 April 2015 which was for the accounting period 1 October 2013 to 30 September 2014. He also stated when asked why he had not obtained a report that: "-I think at the time the, the ruling, the rules changed from submitting to the SRA I think. I know you had to have them done, but they only had to be submitted if, if there were issues."

Accounting Breaches – between September 2014 and 25 November 2019

37.3.3 Rule 32A.1(a) of the SRA Accounts Rules 2011 provides that if you have held, received client money or operated a client account as a signatory at any time during an accounting period, you must obtain an accountant's report for that accounting period within six months of the end of the accounting period and if the report has been qualified, it should be delivered to the SRA within 6 months of the end of the accounting period (Rule 32A.1(b)).

Accounting Breaches – between 25 November 2019 and 20 May 2020

37.3.4 Rule 12.1 of the SRA Accounts Rules provides that if you have at any time during an accounting period, held or received client money, or operated a joint account or a client's own account as a signatory, you must obtain an accountant's report for that accounting period within six months of the end of the period.

Breaches of the Principles - between September 2014 and 25 November 2019

37.3.5 By failing to obtain an accountant's report pursuant to the rules, Mr Huxtable was not aware of whether an issue did in fact need reporting to the SRA which placed client money at risk.

Alleged Breach of Principle 6 of the Principles 2011 and Principle 2 of the SRA Principles 2019.

37.3.6 Members of the public would expect solicitors and their firm to comply with the regulatory rules in place at the time. By having an inadequate mechanism in place for the protection of client funds, Mr Huxtable failed to behave in a way that maintained the trust the public had in him and in the provision of legal services and therefore breached Principle 6 of the SRA Principles 2011 and breached Principle 2 of the SRA Principles 2019.

Alleged Breach of Principle 10 of the Principles 2011

37.3.7 By failing to obtain an accountant's report when obligated to do so, Mr Huxtable failed to protect client money and assets and breached Principle 10 of the SRA Principles 2011.

Recklessness in relation to allegations 1.2 and 1.3

37.3.8 In Mr Bullock's submission as an experienced solicitor and in his role as a manager of the Firm and COFA, Mr Huxtable must have been or ought to have been aware of the overarching purpose of the SRA Accounts Rules 2011 and the SRA Accounts Rules to keep client money safe and his requirement to comply with those rules. He must have been aware that failing to comply with the rules meant that there was a risk client money was not being kept safe. The Respondent admitted that he had stopped maintaining the Firm's books of account in 2016 and was not undertaking client account reconciliations or maintaining the client ledgers. The absence of adherence to the relevant rules placed client money at risk (for example the risk may have crystallised had the Firm gone into administration) and the Respondent was aware of that risk. He nonetheless went on to run that risk and in doing so, he acted recklessly.

37.4. **Allegation 1.4: He caused or allowed to be deleted two emails addressed to Mrs Huxtable from the SRA dated 23 August 2019 and 29 October 2019**

37.4.1 On 23 August 2019 at 14:39 the SRA Investigation Officer received a system generated reply to an e-mail he had sent to Mrs Huxtable which stated that, "Your message – To: Kam Huxtable - was read on Friday, August 23, 2019 2:35:55PM…".

37.4.2 A further letter was sent by the FIO on 29 October 2019 at 10:47 by email which requested a response to the letter sent on 23 August 2019. On the same day, the FIO received a system generated reply which stated that, "Your message – To: Kam Huxtable was read on Tuesday 29, 2019 11:10:13AM…" The FIO did not receive a response and a s44B Notice was issued and sent to Mr Huxtable on 7 November 2019 which requested the production of the client file and email correspondence relating to Property A.

37.4.3 On the same day, the FIO received a system generated reply which stated that, "Your message – To: James Huxtable - was read on Thursday, November 7, 2019 7:56:45AM…"

37.4.4 The production notices were not complied with. At an interview with the FIO on 22 June 2020 Mrs Huxtable ('KH') was asked about the letters sent by email on 23 August and 29 October 2019. The following exchange took place:

"FIO So, you also said when I came in March, your view was possibly that James Huxtable had seen these emails and deleted them, so that you didn't become aware of the SRA investigation. Is that still your belief of what happened?

KH Yes

FIO Ok. Is there anything else you want to add about that?

KH Every time I've received emails from you, I've dealt with them in a timely fashion and immediately. So, I hope that demonstrates that from my conduct, that had I received these, and had I seen them, I would have dealt with them immediately

FIO Yes. So, you definitely, you didn't receive anything until you received our letter in March 2020, right before the onsite investigation started?

KH That's correct."

37.4.5 At interview with the FIO on 22 June 2020, Mr Huxtable (referred to in the quotes from the transcript as 'JH') admitted that he had deleted the emails intended for Mrs Huxtable on 23 August and 29 October 2019. The following exchange took place:

"FIO Ok. Ok and then if I can go, thank you for that. If, if I can go further back to the beginning of the SRA investigation. The SRA contacted you on 17 June 2019, in relation to a complaint received, and there were some email exchanges between yourself and the SRA after that, between then and 10 July 2019. After that, the SRA sent two letters by email to Mrs Huxtable as the firm's COLP, and those letters were sent on 23 August 2019 and 29 October 2019, and they were both sent by email. And I've appended them, they're in Appendix K, if you can have a quick look at those.

JH Wes [sic], yes, yeah.

FIO Mmmh. Ok, we've spoken to Mrs Huxtable who has said that she did not receive these emails, and in her view, she thinks you might have seen the emails and deleted them to avoid her finding out about the SRA investigation, is that correct?

JH Yes, yes, it is."

Breaches of the Principles

Alleged Breach of Principle 2 of the Principles 2011

37.4.6 Mr Bullock said that by deleting emails addressed to Mrs Huxtable as a compliance officer of the Firm and sent by her professional regulator concerning matters which Mr Huxtable was aware were under investigation, it must be inferred that Mr Huxtable sought to hide the SRA's investigation from her and accordingly Mr Huxtable failed to act with integrity.

37.4.7 In this case, a solicitor acting with integrity would have allowed Mrs Huxtable to consider the letter(s) from the SRA and respond accordingly. By not doing so, Mr Huxtable breached Principle 2 of the SRA Principles 2011.

Alleged Breach of Principle 6 of the Principles 2011

37.4.8 In addition, the conduct alleged also amounted to a failure by Mr Huxtable to behave in a way that maintains the trust placed by the public in him and in the provision of legal services. A member of the public would not expect a solicitor to take deliberate steps to delete correspondence addressed to a co-director and the Firm's COLP which had been sent by the SRA as part of their enquiries into a matter concerning the Firm.

Dishonesty in relation to allegation 1.4

37.4.9 Mr Bullock relied upon the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67, which applies to all forms of legal proceedings, namely that the person had acted dishonestly by the standards of ordinary decent people.

37.4.10 Mr Huxtable would have known that the SRA was considering matters relating to Property A by virtue of the fact that they had corresponded with him about this. Mr Huxtable would have been aware of the importance of cooperating with the SRA and Mrs Huxtable's duties to her regulator when he caused or allowed both emails addressed to her from the SRA to be deleted.

37.4.11 His motivation for deleting both emails was to prevent Mrs Huxtable from becoming aware of the matters the SRA were investigating. By the standards of ordinary and decent people, Mr Huxtable's actions were dishonest in that he deleted correspondence which was not addressed to him. Further, he prevented both the SRA's ability to contact Mrs Huxtable by email about matters it was considering and afford Mrs Huxtable the opportunity to respond and cooperate with the SRA.

38. Mr Huxtable's Case

38.1 Mr Huxtable had not provided an Answer to the allegations nor a statement setting out his account of matters. He did not give evidence nor call any evidence on his behalf. He had not engaged save for matters he had discussed with the FIO in correspondence during the investigation and at his interview on 22 June 2020.

39. The Tribunal's Findings

39.1 The Tribunal reminded itself with respect to all the allegations that the Applicant must prove its case on the balance of probabilities; the Respondent, Mr Huxtable, was not bound to prove that he did not commit the alleged acts and that great care must be taken to avoid an assumption (without sufficient evidence) of any deliberate failure or act on his part.

39.2 The Tribunal approached the other allegations on the basis that they were denied by Mr Huxtable, and by applying the requisite standard of proof, namely the balance of probabilities.

39.3 The Tribunal carefully considered the evidence and observed that its task in determining the facts and Mr Huxtable's position in relation to the allegations was made more difficult in circumstances where he had not engaged in the proceedings, given no account of his actions and not submitted himself to cross-examination.

39.4 The Tribunal was aware that in circumstances, such as here, where a Respondent fails to send or serve an Answer in accordance with the Tribunal's directions under the rules or give evidence at a substantive hearing or submit themselves to cross-examination, the Tribunal was entitled under Rule 33 of the SDPR 2019 to take into account the position that the Respondent has chosen to adopt and to draw such adverse inferences from the Respondent's failure as the Tribunal considers appropriate.

39.5 Allegation 1.1

39.5.1 The Tribunal found the facts of the allegation proved to the requisite standard, namely the balance of probabilities. In his interview with the FIO on 22 June 2020, Mr Huxtable had in effect made admissions in that he believed he had used client money to pay down a tax liability and that there had been a client account shortfall and that the shortfall was not shown on the books of account or in any client account reconciliations.

39.5.2 The information from Xavier Accountants that the Firm had not prepared account reconciliations every five weeks since 30 September 2014; had not kept client and office ledgers updated; had not obtained an accountant's report since 30 September 2014 and held a client balance of £852.68 was accepted by the Tribunal as there was no evidence before the Tribunal or evidence reasonably discernible by the Tribunal to contradict or cast doubt upon this information.

39.5.3 With respect to the alleged breaches of the SAR and the Code the Tribunal therefore found each of them to be proved on the balance of probabilities.

39.5.4 With respect to the alleged breaches of the SRA Principles, the Tribunal found each of them to be proved on the balance of probabilities.

39.5.5 By causing or allowing improper transfers to be made, and thereby causing shortages to develop in the Firm's client account, Mr Huxtable failed to respect the sacrosanct nature of client money. In allowing those funds to mix with the Firm's expenditure, Mr Huxtable failed to act with integrity, i.e., with moral soundness, rectitude and steady

adherence to an ethical code as set out in Wingate. Further, a solicitor acting with integrity would have at the very least, been able to evidence exactly what the client money had been used for.

39.5.6 The Tribunal found that Mr Huxtable breached Principle 2 of the SRA Principles 2011 for the conduct before 25 November 2019 and/or Principle 5 of the SRA Principles for the conduct on or after 25 November 2019.

39.5.7 The Tribunal found, to the same standard, that Mr Huxtable's conduct also amounted to a breach by him of the requirement to behave in a way which maintains the trust placed by the public in solicitors and in the provision of legal services. The public expects to be able to trust solicitors and members of a solicitor's firm to securely hold and use client monies appropriately in accordance with the relevant rules governing such matters. Allowing the use of client money to pay office expenses which resulted in a significant shortfall to the client account, undermines that trust. Members of the public would expect solicitors to be diligent in how they handled funds received into their client account and provide an accurate matter balance listing when requested.

39.5.8 The Tribunal found that Mr Huxtable breached Principle 6 of the SRA Principles 2011 for the conduct before 25 November 2019 and/or Principle 2 of the SRA Principles for the conduct on or after 25 November 2019.

39.5.9 By allowing shortages to develop on the Firm's client account, the Tribunal found that Mr Huxtable failed to protect/safeguard the money entrusted to him by Clients C and D, in breach of Principle 10 of the SRA Principles 2011 for the conduct before 25 November 2019 and/or Rule 4.2 of the Code for the conduct on or after 25 November 2019.

39.5.10 The Tribunal therefore found Allegation 1.1 to 1.1.5 proved in full.

39.6 Allegation 1.2

39.6.1 Again, the Tribunal found the facts proved on the balance of probabilities. There was nothing within the material presented to the Tribunal which gave it cause to doubt the findings of the FIO that no client account reconciliations were available; client ledgers were inaccurate and out of date; and the list of client liabilities could not be relied on. The FIO had therefore been unable to ascertain the total liabilities the Firm owed to its clients or confirm if the Firm held sufficient funds in the client account.

39.6.2 Similarly, the Tribunal had no cause to doubt the matters discussed between the FIO and Mr Huxtable on 22 April 2020, wherein Mr Huxtable accepted that there were postings missing from the client ledgers and that the client matter listing did not correctly reflect the Firm's liabilities.

39.6.3 Mr Huxtable was co-director of the Firm, and he was responsible for maintaining the books of account. Mr Huxtable was unable to provide the FIO with any client account reconciliations or accurate ledgers which meant that the FIO was unable to ascertain how the shortfall had arisen. Mr Huxtable stated that he had stopped keeping client ledgers fully up to date in 2016.

39.6.4 With respect to the alleged breaches of the SAR and Code in this allegation the Tribunal found each of them to be proved on the balance of probabilities.

39.6.5 With respect to the alleged breaches of the SRA Principles, the Tribunal also found each of them to be proved on the balance of probabilities.

39.6.6 By not undertaking reconciliations, Mr Huxtable had no, or no adequate mechanism in place to ensure that he was complying with the SRA Accounts Rules 2011. Members of the public would expect solicitors and their firm to comply with the regulatory rules in place at the time.

39.6.7 By not having an adequate mechanism in place for the protection of client funds, Mr Huxtable failed to behave in a way that maintained the trust the public had in him and in the provision of legal services and therefore breached Principle 6 of the SRA Principles 2011 for the conduct before 25 November 2019 and Principle 2 of the SRA Principles for the conduct on or after 25 November 2019.

39.6.8 By failing to carry out client account reconciliations and accurate record of client money when obligated to do so, Mr Huxtable failed to protect client money and assets and therefore breached Principle 10 of the SRA Principles 2011.

39.6.9 The Tribunal therefore found Allegation 1.2 to 1.2.5 proved in full.

39.7 Allegation 1.3

39.7.1 The SRA Accounts Rules 2011 and the SRA Accounts Rules 2019 provide that the Firm was required to obtain an accountant's report because it held or received client money, however, upon his own admission to the FIO the Tribunal found that Mr Huxtable had not obtained an accountant's report since 30 April 2015 which was for the accounting period 1 October 2013 to 30 September 2014.

39.7.2 He also stated when asked why he had not obtained a report that: '- I think at the time the, the ruling, the rules changed from submitting to the SRA I think. I know you had to have them done, but they only had to be submitted if, if there were issues.'

39.7.3 The Tribunal found as a fact in relation to the foregoing allegations that there had been significant issues with the Firm's accounts which would have obliged him to submit an accountant's report if he had obtained such a report.

39.7.4 With respect to the alleged breaches of the SAR and Code in this allegation the Tribunal found each of them to be proved on the balance of probabilities.

39.7.5 With respect to the alleged breaches of the SRA Principles, the Tribunal also found each of them to be proved on the balance of probabilities.

39.7.6 By failing to obtain an accountant's report pursuant to the rules, Mr Huxtable was not aware of whether an issue did in fact need reporting to the SRA which placed client money at risk.

39.7.7 Members of the public would expect solicitors and their firm to comply with the regulatory rules in place at the time. By having an inadequate mechanism in place for the protection of client funds, Mr Huxtable failed to behave in a way that maintained the trust the public had in him and in the provision of legal services and therefore breached Principle 6 of the SRA Principles 2011and breached Principle 2 of the SRA Principles 2019.

39.7.8 Also, by failing to obtain an accountant's report when obligated to do so, Mr Huxtable failed to protect client money and assets and breached Principle 10 of the SRA Principles 2011.

39.7.9 The Tribunal therefore found Allegation 1.3 to 1.3.4 proved in full.

39.8 Recklessness in relation to Allegations 1.2 and 1.3

39.8.1 Applying the test set out in Brett, the Tribunal found that Mr Huxtable had been reckless.

39.8.2 Mr Huxtable admitted he had stopped maintaining the Firm's books of account in 2016 and was not undertaking client account reconciliations or maintaining the client ledgers. The absence of adherence to the relevant rules placed client money at risk (for example, the risk may have crystallised had the Firm gone into administration) and Mr Huxtable had been aware of that risk but nonetheless went on to run that risk.

39.8.3 He must also have been aware that failing to comply with the rules meant that there was a risk client money was not being kept safe.

39.8.4 Therefore, given its findings of fact in relation to Allegations 1.2 and 1.3 and the significant breaches of the SAR the Tribunal accepted as more likely than not that as an experienced solicitor and in his role as a manager of the Firm, Mr Huxtable must have been or ought to have been aware of the overarching purpose of the SRA Accounts Rules 2011 and the SRA Accounts Rules to keep client money safe and his requirement to comply with those rules.

39.8.5 The Tribunal therefore found recklessness proved to the requisite standard in relation to Allegations 1.2 and 1.3.

39.9 Allegation 1.4

39.9.1 Having carefully reviewed the evidence, the Tribunal found on the balance of probabilities that Mr Huxtable had deleted the e-mails as alleged. Mrs Huxtable said that she considered her husband had deleted the e-mails.

39.9.2 In his interview with the FIO Mr Huxtable had, on the face of it, admitted he had deleted the e-mails to prevent his wife finding out about the SRA investigation.

39.9.3 Whilst the burden of proof was not on the Respondent, it solely remained with the Applicant, there was nothing in the evidence to suggest that Mr Huxtable's response had been anything less than a straightforward admission to a straightforward question.

Mr Huxtable had provided no subsequent account to dislodge this reasonable conclusion.

39.9.4 With respect to the alleged breaches of the SRA Principles, the Tribunal found each of them to be proved on the balance of probabilities.

39.9.5 By deleting emails addressed to Mrs Huxtable as a compliance officer of the Firm and sent by her professional regulator concerning matters which Mr Huxtable was aware were under investigation, it was more likely than not that Mr Huxtable sought to hide the SRA's investigation from her and accordingly Mr Huxtable failed to act with integrity, and he breached Principle 2 of the SRA Principles 2011.

39.9.6 His conduct in this regard also amounted to a failure by Mr Huxtable to behave in a way that maintains the trust placed by the public in him and in the provision of legal services. A member of the public would not expect a solicitor to take deliberate steps to delete correspondence addressed to a co-director and the Firm's COLP which had been sent by the SRA as part of their enquiries into a matter concerning the Firm.

39.9.7 The Tribunal therefore found Allegation 1.4 proved in full.

39.10 Dishonesty in relation to allegation 1.4

39.10.1 Applying the test for dishonesty stated by the Supreme Court in Ivey the Tribunal found it was more likely than not that he acted dishonestly by the standards of ordinary decent people.

39.10.2 The Tribunal found that Mr Huxtable would have known that the SRA was considering matters relating to Property A, by the fact that they had corresponded with him about it. Mr Huxtable would have been aware of the importance of cooperating with the SRA and Mrs Huxtable's duties to her regulator when he caused or allowed both emails addressed to her from the SRA to be deleted.

39.10.3 The Tribunal found Mr Huxtable's motivation for deleting both emails was to prevent Mrs Huxtable from becoming aware of the matters the SRA were investigating. By the standards of ordinary and decent people, Mr Huxtable's actions were dishonest in that he deleted correspondence which was not addressed to him. Further, he deliberately prevented both the SRA's ability to contact Mrs Huxtable by email about matters it was considering and deliberately prevented Mrs Huxtable being afforded the opportunity to respond and cooperate with the SRA.

39.10.4 The Tribunal therefore found dishonesty proved to the requisite standard in relation to Allegation 1.4.

Previous Disciplinary Matters

40. There were no previous findings.

Mitigation

41. None.

Sanction

42. The Tribunal had regard to the observation of Sir Thomas Bingham MR (as he then was) in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> "to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth".

43. The Tribunal considered the Guidance Note on Sanction (10th Edition/June 2022) ("the Sanctions Guidance"). The Tribunal was mindful of the three stages it should follow when approaching sanction, namely the seriousness of the misconduct, the purpose for which sanctions are imposed by the Tribunal, and the sanction which appropriately fulfils that purpose in light of the seriousness of the misconduct.

44. The Tribunal assessed the seriousness of the misconduct by considering the level of Mr Huxtable's culpability and the harm caused, together with any aggravating or mitigating factors.

45. The Tribunal found Mr Huxtable's motivation had been to hide the Firm's financial distress and the chaos into which his accounts had descended, and to conceal the SRA's investigation from his wife. This may have started as something spontaneous, but it became a deliberate course of action which spiralled away from Mr Huxtable.

46. Mr Huxtable had abused the trust placed in him by his clients to look after their money. Due to the poor state of the accounts, it was not possible to determine whether all the money due to his clients had been returned. Mr Huxtable had complete control and responsibility for his misconduct.

47. Mr Huxtable had been an experienced solicitor and he should have known the importance of maintaining accurate accounts to abide by SARs and thereby protect client money. He would have known that it had been wrong to delete e-mails from his regulator and for the attention of his wife.

48. It appeared that he had made no attempt to pay back the lost funds and he had abdicated this responsibility to his wife. The consequential damage to the reputation of the profession by Mr Huxtable's misconduct was significant and his conduct was a marked departure from the complete integrity, probity and trustworthiness expected of a solicitor.

49. The extent the harm was reasonably and entirely foreseeable by him, and he had had clear knowledge of his actions.

50. The Tribunal assessed the harm caused as very high.

51. The Tribunal then considered aggravating factors. The Tribunal found he had acted dishonestly which was the gravest possible aggravating factor.

52. He had allowed his accounting systems to fail and taken no steps to put matters right. His actions in this regard had been therefore deliberate, calculated and repeated over a

period of 4 years. He had concealed matters by deleting e-mails from the regulator for the purpose of delaying the investigation and preventing his wife from finding out the depth of the issues which he had also concealed from her.

53. There was no evidence that Mr Huxtable had taken advantage of a vulnerable person or that he had deliberately targeted a vulnerable person or indeed that his misconduct had been motivated by, or demonstrated hostility, based on any protected or personal characteristics of a person.

54. There had been no abuse of his power and no misconduct involving violence, bullying or coercion by him.

55. Whilst there had been concealment of wrongdoing, there was no evidence that Mr Huxtable had sought to place the blame for the misconduct on others. However, the misconduct was such that Mr Huxtable knew or ought reasonably to have known that the conduct complained of was in material breach of obligations to protect the public and the reputation of the legal profession.

56. The Tribunal noted that it had heard no evidence in mitigation and there was limited, if any evidence to Mr Huxtable having any insight or remorse for his conduct save for the matters he had discussed with the FIO in one interview. Thereafter there had been no meaningful engagement from him.

57. There were very few mitigating factors save that Mr Huxtable had no previous disciplinary findings recorded against him and that he had had a hitherto unblemished career.

58. In all the circumstances of this case the Tribunal considered the seriousness of the misconduct to be extremely high: this was perhaps an inevitable conclusion given the findings of dishonesty. In addition, Mr Huxtable's conduct had lacked integrity and he had failed to uphold public trust in the provision of legal services, along with multiple other failures of the SARs.

59. The public would expect a solicitor to act honestly, with integrity and to uphold public trust in the profession. The trust the public placed in the profession was shattered when a solicitor was dishonest.

60. The misconduct was so serious that a Reprimand, Fine or Suspension Order, with or without restrictions would not be a sufficient sanction to protect the public or the reputation of the profession from further harm from him.

61. Mr Huxtable was found to have been dishonest. The element of dishonesty was therefore an aggravating factor. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

> "there is harm to the public every time 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"."

62. Also:

> "A finding that an allegation of dishonesty has been proved will almost invariably lead to striking off, save in exceptional circumstances …. "confined to..." a small residual category whose striking off will be a disproportionate sentence in all the circumstances ...".

63. The Tribunal considered the nature, scope and extent of the dishonesty. His actions had been motivated by a desire to conceal his actions from his wife and the regulator and to frustrate the regulator's investigation. It had been planned and deliberate.

64. The Tribunal did not find there were any exceptional reasons present in Mr Huxtable's case such that a lesser sanction was warranted. This had not been a momentary lapse and Mr Huxtable had not acted in blind panic. Neither had Mr Huxtable advanced any exceptional reasons as to whether the ultimate sanction of striking off should not apply in this case given the Tribunal's finding of dishonesty

65. Following the guidance given in SRA v James et al [2018] EWHC 3058 (Admin) the Tribunal considered that where dishonesty has been found, mental health issues, specifically stress and depression suffered by the solicitor because of work conditions or other matters are unlikely without more to amount to exceptional circumstances.

66. The Tribunal noted that Mr Huxtable had provided no evidence as to his health at the material time of the misconduct.

67. The protection of the public and public confidence in the profession and the reputation of the profession required no lesser sanction than that he be struck from the Roll.

Costs

68. Mr Bullock said the quantum of costs claimed by the Applicant was in the sum of £23,132.66.However, he conceded that this figure could be reduced to £19,362.66 to account for the reduction in court time and also that the investigation costs encompassed the investigation into Mrs Huxtable and other matters which did not feature in the final case before the Tribunal.

69. The proceedings had been correctly brought by Applicant and it was right that it should recover its costs in doing so. The Applicant had proved its case to the requisite standard. The hours claimed by the Applicant were not excessive and were reasonable and proportionate in the circumstances of the case.

70. Mr Huxtable provided no information with respect to his means nor any submissions on costs.

The Tribunal's Decision

71. The Tribunal considered that it was able to summarily assess costs to consider whether they were reasonable and proportionate in all the circumstances of this case. The Tribunal had heard the case and it was appropriate for the Tribunal to determine the liability for costs and the quantum of any costs it ordered to be paid.

72. The Tribunal was aware that it had a wide discretion as to costs and that by rule 43(4) of the Solicitors (Disciplinary Proceedings) Rules 2019, the Tribunal had first to decide whether to make an order for costs. When deciding whether to make an order, against which party, and for what amount, the Tribunal also had to consider all relevant matters.

73. The Tribunal noted the following factors:

- The substantive hearing had taken less time than anticipated: 1 instead of 3 days;
- Mr Huxtable had not engaged in the proceedings;
- There had been no need to call live witness evidence;
- All matters, including dishonesty had been found proved;
- Mr Huxtable had provided no evidence regarding his means nor his ability to pay a costs order.

74. The Tribunal found the case had been properly brought by the Applicant as it had raised serious issues involving integrity and dishonesty and the public would expect the Applicant to have prepared its case with requisite thoroughness, and, in this regard, it had properly discharged its duty to the public and the Tribunal. In principle therefore the Applicant was entitled to its costs.

75. Given that Mr Huxtable had provided no evidence as to his means there was nothing in this regard upon which the Tribunal could base a properly reasoned decision.

76. However, the Tribunal noted that the investigation costs (£13,849.10) had also encompassed the investigation into the conduct of Mrs Huxtable.

77. Therefore, in fairness to Mr Huxtable the Tribunal decided to reduce this aspect of the costs to £13,000.

78. The Tribunal fixed the costs in the sum of £18,500.

Statement of Full Order

79. The Tribunal Ordered that JAMES HUXTABLE, solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £18,500.00.

Dated this 11th day of May 2023
On behalf of the Tribunal

A E Banks
Chair