SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No.12416-2022

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

ALTAF HUSEN BHURAWALA Respondent

Before:

Ms A Kellett (in the Chair)
Mr P Lewis
Dr S Bown

Date of Hearing: 3 – 4 April 2023

Appearances

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

Timothy Becker, counsel of Burlington Chambers, 180 Piccadilly, London W1J 9HF for the Respondent.

JUDGMENT

Allegations

1. The allegations made against Mr Bhurawala by the Solicitors Regulation Authority Limited ("SRA") were that while in practice as a solicitor at Morgan Hall Solicitors Limited (the "Firm"):

1.1 In relation to his client MS:

1.1.1 On or around 2 March 2020, he proposed a scheme to MS, the purpose of which was to conceal from the benefits authorities some of the money that MS was to gain from the payment of a judgment debt so that MS would not lose his entitlement to benefits.

1.1.2 As part of the scheme in Allegation 1.1.1, on or around 2 March 2020, the Respondent drew or caused to be drawn up a client care letter and conditional fee agreement, one, or both, of which were sham agreements. The agreement(s) was/were sham agreements in that the Respondent did not intend to be legally bound by it/them and intended to repay in cash to MS part of the fees payable to the Firm under the agreement(s).

1.1.3 In relation to either or both of Allegations 1.1.1 and 1.1.2, the Respondent breached any or all of Principles 1, 2, 4 and 5 of the SRA Principles (the "2019 Principles").

1.2 In relation to his client EN:

1.2.1 The Respondent permitted the Firm to retain £86,308.83 of EN's money in the Firm's client account from the date her matter was substantially complete, in or around January 2013, until 4 October 2018, thereby failing to return EN's money to her promptly as soon as there was no longer any proper reason to retain those funds. In so doing, he breached rule 14.3 of the SRA Accounts Rules 2011 (the "2011 Accounts Rules").

1.2.2 The Respondent failed to advise EN of the risks of lending £75,000 to TOO despite the existence of warning signs such as the high rate of interest promised, namely £555.55 per day, equating to around 270% per annum. In so doing, he breached either or both of Principles 4 and 6 of the SRA Principles 2011 (the "2011 Principles").

1.2.3 The Respondent failed to protect EN's money in that the legal charge over TOO's property proposed to be taken as security was never executed and never registered with HM Land Registry. In so doing, he breached Principle 10 of the 2011 Principles.

1.2.4 The Respondent acted contrary to his client EN's interests in respect of the loan she made to TOO by offering to arrange that her loan be repaid without interest and not disclosing to EN that to do so he would substitute Secure Reversions Limited ("SRL"), a company which he owned and controlled, in her place. In so doing, he breached any or all of Principles 2, 4 and 6 of the 2011 Principles.

1.3 In relation to TOO, the Respondent caused SRL to lend £75,000 to TOO for a period of four weeks and represented to TOO that, to repay the loan, TOO was legally bound to pay SRL £125,000 when this was not the case. In so doing, he breached either or both of Principles 2 and 6 of the 2011 Principles and failed to achieve Outcome 11.1 of the SRA Code of Conduct 2011 (the "2011 Code").

Executive Summary

2. The Tribunal found all allegations against Mr Bhurawala proved in their entirety, including that his conduct had been dishonest. The Tribunal's reasoning can be found here:

- Allegation 1.1
- Allegation 1.2
- Allegation 1.3

Sanction

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

Documents

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

- Rule 12 Statement and Exhibit JTC1
- Respondent's Answer and Exhibits
- Applicant's Schedule of Costs

Preliminary Matters

5. Constitution of the panel

5.1 The matter was listed to be considered by Ms Kellett, Mr Abramson and Dr Bown. During the course of the Applicant's opening, Mr Abramson had to withdraw from the proceedings for pressing personal reasons.

5.2 Mr Lewis replaced Mr Abramson. The Applicant re-started the opening. The entire substantive case was considered by Ms Kellett, Mr Lewis and Dr Bown. Neither party objected to the reconstitution of the Tribunal. The Tribunal discussed whether, in the circumstances, the application to adjourn should be re-heard. The Tribunal determined that as the decision on the adjournment had been fully considered and determined, it was unnecessary for the newly constituted panel to re-consider the application. There was no unfairness or prejudice to Mr Bhurawala in circumstances where the application had been heard in full and determined.

6. Application to adjourn

6.1 The application to adjourn was considered by Ms Kellett, Mr Abramson and Dr Bown.

6.2 Mr Becker applied to adjourn the proceedings on the grounds of the ill health of Mr Bhurawala. Given the nature of the application, the application, the Applicant's submissions and the Tribunal's reasons are contained in a private annex to the Judgment.

6.3 The Tribunal refused the application to adjourn.

Factual Background

7. Mr Bhurawala was admitted to the Roll of Solicitors in August 1993. From 26 May 1998 to 31 July 2008, he was a solicitor at Morgan Hall and, from 1 August 2008 to 30 September 2021, a solicitor employed by the Firm. He was, at all material times, the sole director and shareholder of the Firm. At the time of the alleged conduct, he was the Firm's Money Laundering Compliance Officer ("MLCO") and Money Laundering Reporting Officer ("MLRO")**.**

Witnesses

8. None.

Findings of Fact and Law

9. 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 Bhurawala'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

10. 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."

11. When considering dishonesty, the Tribunal firstly established the actual state of Mr Bhurawala'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.

Integrity

12. 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".

13. **Allegation 1.1 - In relation to his client MS, Mr Bhurawala: (1.1.1) on or around 2 March 2020, proposed a scheme to MS, the purpose of which was to conceal from the benefits authorities some of the money that MS was to gain from the payment of a judgment debt so that MS would not lose his entitlement to benefits. (1.1.2) As part of the scheme in Allegation 1.1.1, on or around 2 March 2020, Mr Bhurawala drew or caused to be drawn up a client care letter and conditional fee agreement, one, or both, of which were sham agreements. The agreement(s) was/were sham agreements in that Mr Bhurawala did not intend to be legally bound by it/ them and intended to repay in cash to MS part of the fees payable to the Firm under the agreement(s). (1.1.3) In relation to either or both of Allegations 1.1.1 and 1.1.2, Mr Bhurawala breached any or all of Principles 1, 2, 4 and 5 of the 2019 Principles.**

The Applicant's Case

13.1 The SRA received a complaint from client MS dated 30 September 2020, which reported that MS had been evicted by his landlord and subsequently instructed the Firm to make a claim against the landlord. MS was successful in that claim and was awarded £33,000. MS stated: "The solicitor then made me the beneficiary of two of her properties" (that is, obtained charging orders) but as there was no equity in the properties, the judgment could not be paid at that time.

13.2 Sometime later, MS returned to the Firm to enforce the judgment. By this time, MS understood that, taking into account a £10,000 reduction in the amount payable, proposed by the landlady, and to which he agreed, the judgment debt amounted to "£106,000 which was the £33,000 with interest added." Mr Bhurawala told MS that MS would get "£26,000 what you agreed on the phone". When he demurred, Mr Bhurawala was abusive telling MS that he "smelt of drugs" and telling him to "Just leave you junkie".

13.3 MS had "recorded some messages" from Mr Bhurawala as "I knew I couldn't trust him" and "I feel like from the recording which I have shows that he is using my vulnerable state and in the recording he said to me 'this money is going to be a curse for and the government is going to take this from you and you will be homeless on the street.' [sic.] This is all in the recording. He advised me in the recording that if he takes 50% then

this will not be taxed and then he will pay me back 25% in cash to avoid the government taking this."

13.4 As a result of the complaint from MS, the SRA commenced an investigation. The investigation was conducted by Sean Grehan, a Forensic Investigation Officer ("FIO").

13.5 In 2010, the Firm represented MS in a dispute with his landlord ("SS"). The matter was funded by Legal Aid. Proceedings were commenced in the County Court at Dartford ("MS v SS").

13.6 MS was successful in his claim and on 9 February 2011, DJ Greenfield granted judgment in favour of MS in the amount of £33,083 in damages, plus interest, plus costs (the "2011 Judgment").

13.7 In or around 2012, MS instructed the Firm to enforce the 2011 Judgment debt against two properties owned by SS and a final charging order was obtained against the two properties. However, it appeared that SS had insufficient equity in the properties to satisfy the judgment debt at that time.

13.8 The costs of MS v SS were sent for detailed assessment but that exercise did not take place because, on 12 November 2012, a Default Costs Certificate was issued in the sum of £19,465.90.

13.9 The Firm submitted a bill of costs to the Legal Aid Agency ("LAA") in 2015, which was duly paid by the LAA. The LAA contacted the Firm on a number of occasions between 2015 and 2017 seeking information to enable the LAA to pursue SS and recover costs.

13.10 It appeared that, in or around late 2019/early 2020, SS informed MS that she was now willing and able to pay the 2011 Judgment debt.

13.11 The Firm prepared a "Revised Statement of Account" dated 24 June 2020 showing the damages, costs and interest due to MS from SS. This totalled £116,072.83, comprising:

Damages awarded in the 2011 Judgment	£33,083.00
Interest on those damages	£25,657.75
The issue fees (presumably) for making two applications	£528.00
Costs awarded to MS in respect of MS v SS	£19,645.90
Interest on those costs	£12,115.41
The costs of enforcing the 2011 Judgment	£14,203.20
Interest on those costs	£10,839.57
TOTAL	**£116,072.83**

13.12 In or around June–July 2020, the Firm, acting on behalf of MS, and Estate and Corporate Solicitors Ltd ("E&C"), acting on behalf of SS, negotiated terms of a settlement deed between MS and SS. The deed provided:

"1.2 […] "the Settlement Sum" The sum of £106,072.83.

[…]

2.1 ln consideration of SS paying the Settlement Sum, MS agrees not to enforce the terms of the Order dated 9th February 2011 by applying for Orders for Sale in respect of the Properties until at the earliest 31st July 2020 if the necessity arises.

IT IS AGREED AS FOLLOWS:-

3.1 SS will pay or cause to be paid, the Settlement Sum to MS.

3.2 MS has agreed to reduce the monies payable under the Revised Statement of Account Sum by £10,000.00 as a gesture of goodwill subject to SS abiding by the terms of this Deed.

3.3 Within 7 days of the Settlement Sum being paid to MS, his Solicitors … [shall] take all necessary steps to remove entry number C4, C5, C6, C7, C8 and C9 of the Charges Register of the Title No. TGL191344 and to remove entry number C4, C5, C6, C7, C8 and C9 of the Charges Register of the Title No. TGL202842 at Land Registry and provide evidence thereof to SS."

13.13 On 20 July 2020, MS attended the Firm's offices and refused to sign the deed. It was unclear whether or not the terms of the settlement were ever carried into effect. Mr Hopkins submitted that this was not material to the proceedings before the Tribunal.

13.14 Prior to the deed being drawn up, on 2 March 2020, MS had attended at the Firm's offices and met with Mr Bhurawala. MS made an audio recording of his meeting with Mr Bhurawala without Mr Bhurawala's knowledge. Mr Hopkins drew the Tribunal's attention to the following from the transcript of the conversation.

- AB = Mr Bhurawala
- MS = Client MS

"AB If you get thirty odd grand in your hands

MS Mmm.

AB your benefits are going to zero, right? Am I right? Have you got any non-means tested benefits or all means tested?

MS I believe it's all means tested because I'm on full PIP [Personal Independence Payment].

AB Ah, right, ok. Right, so you're on PIP. So, the moment you touch – so what happens is 16, you're allowed £16,000.00 grand?

MS Yeah, I believe so, yeah.

AB It used to be £16,000.00 I don't know whether it's changed [unclear]

MS I think it's still 16

…

AB I'm taking the mick, I'm taking the bloody piss. I will give you a document that you have to have signed (sic) [unclear] alright [unclear]. All the help you've given them it sounds like; it's been ten years hasn't it?

MS Well yeah.

AB We'll do it like three years ago, four years they will, they will get half, or they'll get £10,000.00 grand out of your winnings. So, when I actually disburse this money from here when we get it, I'm not going to be giving you erm £50,000.00 grand. I'm going to take out my bit and I'm going to take your, your famil[y's] and I'm going to give you £16,000.00

MS Yes.

AB so there's going to be another £16,000.00. So that £16,000.00 is a good figure because what happens with that £16,000.00 is they may see that you're still going to get benefits, but if you breach that £16,000.00 you're going to get bollocked.

MS Yeah, yeah.

AB At £16,000.00 they'll ask you where you got the money from, that's no problem, I can do that for you, right.

MS Yeah.

AB Ok, I can - because you'll have all my letters/correspondence.

MS Yeah.

AB Your family will get the, the lump of it. We get our bit and you get your six fifty, £17,500.00, ok?

…

AB because if you collect this money you're screwed.

MS Yeah.

AB So I've got to get your family in there to take some of it off you.

MS Because they want, they don't pay you like right…

AB No, no, [unclear] you lose the lot you get screwed.

MS Yeah.

AB Completely fucked, you're buggered…

MS Mmm.

AB Yeah, as I said to you its curse having and not having.

MS Yeah.

AB Yeah, that works, just about works. So, we get them to have like half of your winnings or whatever you want to call it £10,000.00 grand, brings you down to £14,000.00. I'll give you my, I'll give you my bit in cash to you and we're done and then you discuss with them how…

MS [unclear]

AB [unclear name]."

(Applicant's emphasis added.)

13.15 At the meeting, Mr Bhurawala instructed his secretary (BT) to draw up a client care letter (the "Client Care Letter") and conditional fee agreement ("CFA"). Once this was done, the meeting continued as follows:

"AB Can I have a look at it quickly, can you bring it; can you print me one

BT Ok.

AB please.

BT The CFA as well?

AB Yeah, yeah it's the CFA I need

BT Ok.

AB and the client care letter. Can you bring me both please? You're right, it's just like a…

MS Yeah. [unclear]

AB How about we do – I know oh, ok so you don't have that. [Telephone call starts] … [BT], will you take this…Ok…Address it to [M—]

BT Ok.

AB [—S], change the date and reference oh, new file reference

BT Ok.

AB Actually, or no, use yeah, new file reference, new date. I'll give you the details to put in, in a moment. That's all fine

BT [unclear] file register or just erm on the computer?

AB 325. No, no proper.

BT Mmmh

AB That's it that one's done you can do that one on [unclear] So [MS], what's your address [MS]?

…

AB There you are, there you go. Ok, if you get that set up please. [Short pause before anyone speaks]

AB That's it, do you want to read it?

MS [unclear]

AB No, not yet. It tells you erm, it's erm, you can read it? I'll give you a copy to take, ok. It's a success fee there and that's 25 yeah, as we discussed, yeah?

MS Yeah.

AB The other 25 I'll have to put it through and then give you half of whatever we make,

MS Yeah.

AB is that fair? I mean because I pay tax on it I can't give – because you have to take my word for it. You will get half of whatever I get, ok?

MS Fine.

AB The rest of it is all here. This tells you the costs and erm etc, etc. I think that's a really shit deal. You can trust me, I promise you. Do you know what it is? If it was like £20m quid I might think it was a bit dodgy, but it isn't.

MS Yeah [MS laughs].

AB It's not worth me getting in trouble for that little amount of money. Err yeah, and I don't – and I'll tell, tell you what you have – I always believe that you should never screw someone, you shouldn't screw anyone anyway right, but especially where people are really in a vulnerable state

> or where they're not like well off to take on the hit or something, right. I could never do that to anyone. You don't know what that person's situation is, however, it may appear. You have to start believing that. It doesn't matter if you take a bank or someone.
>
> MS Mmm.
>
> AB it's irrelevant, it's ok in my books. You shouldn't do it to another person, yes."

13.16 Before leaving the Firm's offices on 2 March 2020, MS signed the Client Care Letter and CFA. The Client Care Letter provided:

> "Mr Altaf Husen Bhurawala will carry out most of the work in this matter. He is a Solicitor in the Litigation Department.
>
> …
>
> We will charge you £325.00 per hour for each hour engaged on your matter by Mr Bhurawala.
>
> …
>
> You should note that the above terms is the basis upon which our Ordinary Fees will be calculated in respect of any Conditional Fee Agreement ("CFA") entered into with yourselves and it is these fees which we will seek to recover from the Opponents."

13.17 Clause 10.1 of the CFA provided that the Firm's Success Fee was 50% of Damages (a defined term). However, Clause 1.1.2 of the CFA provided that the definition of "Success Fee" was "25% of the damages and interest awarded to the client". At Annex 1 to the CFA, titled "Reasons for the level of the Success Fee", the word "fifty" was struck out and replaced by "25%" in manuscript.

13.18 Mr Hopkins submitted that:

- At the 2 March 2020 meeting, Mr Bhurawala proposed a scheme to MS, the purpose of which was to conceal from the benefits authorities some of the money that MS was to gain from SS's payment of the 2011 Judgment debt to MS so that MS would not lose his entitlement to benefits.

- The scheme involved paying: (i) part of MS's share of the 2011 Judgment debt to MS's family; and (ii) part of it to the Firm, which Mr Bhurawala would then pay, in part or in whole, in cash to MS.

- The Client Care Letter and/or the CFA was/ were sham agreements, in that Mr Bhurawala did not intend for the fees stated to be charged in the Client Care Letter and/or the success fee element of the CFA to be legally binding. Mr Bhurawala intended to pay part of the fees charged and/or the success fee back to MS in cash after the Firm had received them. The purpose of the sham

agreement(s) was to be able to present to the benefits authorities paperwork which ostensibly explained why MS had received £16,000 notwithstanding that, in reality, MS would receive a greater sum.

13.19 As to the recording of the 2 March 2020 meeting, a copy of the recording and the transcript provided to Mr Bhurawala on 4 December 2020. Mr Bhurawala obtained an expert report in relation to the recording, however this was not disclosed to the Applicant. During his interview on 17 February 2021, Mr Bhurawala's legal representative confirmed that Mr Bhurawala was not seeking to rely on the expert's report. Whilst Mr Bhurawala declined providing any explanation for what was said by him to MS in the meeting on 2 March 2020, he did not dispute that the recording was of him.

13.20 The Tribunal, it was submitted, could properly rely on the covert recording and transcript. In Naqvi v SRA [2020] EWHC 1394 (Admin). In that case Mr Naqvi had appealed against the Tribunal's findings on the basis that (amongst other things) the Tribunal had erred in law in allowing the covert evidence to be adduced. Flaux LJ considered the relevant caselaw and found that the Tribunal had not erred in law in admitting the evidence that had been covertly obtained. Accordingly, it was proper for the Tribunal to hear and consider the covert evidence.

13.21 Mr Hopkins submitted that Principle 1 of the 2019 Principles required Mr Bhurawala to act in a way that upheld the constitutional principle of the rule of law, and the proper administration of justice. In The Rule of Law (2010), Lord Bingham defined the rule of law as the principle that:

> "all persons and authorities within the state, whether public or private, should be bound by and entitled to the benefit of laws publicly and prospectively promulgated and publicly administered in the courts."

13.22 During the 2 March 2020 meeting with MS, Mr Bhurawala proposed a scheme to MS that would have the effect of concealing from the benefits authorities money that MS was to gain so that MS would not lose his entitlement to benefits. Such a scheme, if carried into effect, would have enabled MS to obtain benefits in excess of those to which he was properly entitled. The result would be the unequal application of the law to MS as against benefit recipients who made full and complete declarations of their financial status to the relevant authorities. Such conduct, it was submitted was in breach of Principle 1 of the 2019 Principles.

13.23 Public trust in the solicitors' profession would inevitably be undermined if the public were aware of an instance in which a solicitor proposed to their client a scheme for concealing the client's money from the benefits authorities so that the client will not lose their entitlement to benefits. That trust was further undermined by the fact that it was Mr Bhurawala, and not MS, who instigated the discussion regarding the scheme. In doing so, Mr Bhurawala had failed to act in a way that upheld public trust and confidence in the profession and in legal services provided by authorised persons in breach of Principle 2 of the 2019 Principles.

13.24 A solicitor acting with integrity and adhering to the ethical standards of the profession would not propose to their client a scheme to conceal the client's money from the benefits authorities so that their client did not lose their entitlement to benefits. In the circumstances, Mr Bhurawala's actions lacked integrity in breach of Principle 5 of the 2019 Principles.

Principle 4 – Dishonesty

13.25 Mr Hopkins submitted that during the 2 March 2020 meeting, Mr Bhurawala subjectively knew that the scheme he proposed to MS would, if carried out, have the effect of enabling MS to claim benefits to which he was not properly entitled at law. As Mr Bhurawala said at the meeting: "If it was like £20m quid I might think it was a bit dodgy". His actions, in proposing the scheme to MS, were dishonest by the standards of ordinary decent people. Ordinary decent people would not seek to facilitate an arrangement to conceal an individual's money from the benefits authorities knowingly for the purpose of claiming benefits to which the individual was not properly entitled at law.

13.26 Further, during the 2 March 2020 meeting, Mr Bhurawala subjectively knew that, despite their appearance, he did not intend for the Client Care Letter and/or the CFA to be legally binding, in that he intended to repay to MS in cash some or all of the fees due to the Firm under the Client Care Letter and/or the CFA. As Mr Bhurawala said at the meeting: "I'll give you my, I'll give you my bit in cash to you and we're done" and "If it was like £20m quid I might think it was a bit dodgy". His actions, in drawing or causing to be drawn up the Client Care Letter and/or the CFA despite not intending for the Firm to be legally bound by them, were dishonest by the standards of ordinary decent people. Ordinary decent people would not draw or cause to be drawn up documents which are sham agreements.

The Respondent's Case

13.27 Mr Becker submitted that due to Mr Bhurawala's medical issues, he had been unable to provide an Answer or witness statement in the proceedings. Whilst the allegation was not accepted, no positive defence was advanced.

The Tribunal's Findings

13.28 The Tribunal examined the documents upon which the Applicant relied. As to the admissibility of the covert evidence, an application of the principles detailed by Flaux LJ in Naqvi showed that it was entirely proper to admit and consider that evidence. MS was not an agent of the state. Further, and in any event, it could not be suggested that MS had sought to entrap Mr Bhurawala in circumstances where it was Mr Bhurawala that had suggested the scheme whereby MS could continue to claim benefits to which he was not entitled.

13.29 The Tribunal noted that at no stage (including during his interview with the Applicant) did Mr Bhurawala suggest that he was not the person on the recording provided to the Applicant by MS, or that the transcript of the recording was incorrect. The Tribunal determined that in the absence of any objection or explanation, it was entitled to infer

that the transcript was an accurate record of the conversation that took place between Mr Bhurawala and MS on 2 March 2020.

13.30 The transcript evidenced that it was Mr Bhurawala that had proposed the scheme to MS. Mr Bhurawala asked MS how the money was going to affect his benefits. When MS stated that he would "just take whatever I get in the end please", Mr Bhurawala replied: "No, no, no, no." He then went on to explain that MS might get £37,500 and that if he did so, MS was: "going to get bollocked for benefits, they'll stop … Boom gone, and that's actually as bad as not having the money in my books. So shall I tell you what we'll do? You have to trust me".

13.31 Mr Bhurawala then went on to explain how he would give MS £16,000 (the limit above which it was said that MS would no longer be entitled to receive means tested benefits) and would then pay some money to MS's family as well as taking out "my bit".

13.32 If the benefits agency questioned MS about the money that was "no problem" as MS would have the letters and correspondence from Mr Bhurawala. It was suggested that having given some of the money to MS's family and taking out his "bit", Mr Bhurawala would then give MS "my bit in cash". The Tribunal found that there was no legitimate reason for Mr Bhurawala to receive money into the Firm and then to provide it to MS in cash, after taking out 'his bit'. It was clear that the purpose of doing so was to carry the scheme into effect i.e., to make it appear that MS had not received a sum that would mean he was no longer entitled to means tested benefits.

13.33 In order to lend credence to the scheme, Mr Bhurawala caused documents to be created upon which he did not intend to rely. The Tribunal found that by 2 March 2020, there was no necessity for a CFA in circumstances where the issues had already been litigated and MS had a Judgment in his favour. The only outstanding issue was for MS to receive the monies due to him pursuant to the Judgment. The Tribunal determined that the only purpose of the CFA and the CCL, was to show that there were monies due to the Firm (the success fee and costs). This would assist in reducing the amount that MS was to receive. Further, the CFA and CCL provided MS with the documentary evidence he might need to produce to the benefits agency. As Mr Bhurawala explained: "At £16,000.00 they'll ask you where you got the money from, that's no problem, I can do that for you, right. …Ok, I can - because you'll have all my letters/correspondence."

13.34 The Tribunal found that the scheme suggested by Mr Bhurawala (together with the creation of documents to lend credence to the scheme) was contrary to the constitutional principle of the rule of law and the proper administration of justice. Solicitors who complied with their regulatory duty to uphold the rule of law, did not suggest schemes to their clients which encouraged their clients to commit benefit fraud, nor did they provide documentary evidence to assist in that fraud. The Tribunal found that in acting as he did, Mr Bhurawala breached Principle 1 of the 2019 Principles as alleged.

13.35 Public trust in the profession was inevitably undermined by a solicitor who suggested and actively encouraged their clients to commit benefit fraud and in an attempt to facilitate that fraud, created documents to support it. Such conduct, it was found, was in breach of Principle 2 of the 2019 Principles. That such conduct also lacked integrity in breach of Principle 5 of the 2019 Principles was evident.

Principle 4/Dishonesty

13.36 The Tribunal found that Mr Bhurawala knew that MS was in receipt of means tested benefits. He also knew that MS was due to receive more than £16,000 which would affect his entitlement to means tested benefits. Mr Bhurawala suggested a scheme whereby the monies that MS would receive would be disbursed so that he did not appear to have exceeded the £16,000 limit in order for MS to continue to claim benefits to which he would not have been entitled. In order to carry the scheme through, Mr Bhurawala caused documents to be created which purported to show that monies were owing to the Firm. In fact, it was Mr Bhurawala's intention to give some of that money back to MS in cash after Mr Bhurawala had taken his bit.

13.37 The Tribunal found that ordinary and decent people would consider that creating sham documents to support an improper scheme was dishonest. Further, ordinary and decent people would consider that it was dishonest for a solicitor to suggest, assist and encourage their clients to commit benefit fraud. They would also find that it was dishonest for a solicitor to create sham documents in order to support an improper claim. The Tribunal found that in conducting himself as his did, Mr Bhurawala had acted dishonestly in breach of Principle 4 of the 2019 Principles.

13.38 Accordingly, the Tribunal found allegation 1.1 proved in its entirety.

14. **Allegation 1.2 - In relation to his client EN: (1.2.1) Mr Bhurawala permitted the Firm to retain £86,308.83 of EN's money in the Firm's client account from the date her matter was substantially complete, in or around January 2013, until 4 October 2018, thereby failing to return EN's money to her promptly as soon as there was no longer any proper reason to retain those funds. In so doing, he breached rule 14.3 of the 2011 Accounts Rules; (1.2.2) Mr Bhurawala failed to advise EN of the risks of lending £75,000 to TOO despite the existence of warning signs such as the high rate of interest promised, namely £555.55 per day, equating to around 270% per annum. In so doing, he breached either or both of Principles 4 and 6 of the 2011 Principles; (1.2.3) Mr Bhurawala failed to protect EN's money in that the legal charge over TOO's property proposed to be taken as security was never executed and never registered with HM Land Registry. In so doing, he breached Principle 10 of the 2011 Principles; (1.2.4) Mr Bhurawala acted contrary to his client EN's interests in respect of the loan she made to TOO by offering to arrange that her loan be repaid without interest and not disclosing to EN that to do so he would substitute SRL, a company which he owned and controlled, in her place. In so doing, he breached any or all of Principles 2, 4 and 6 of the 2011 Principles.**

The Applicant's Case

14.1 In 2012, the Firm acted for EN in a litigious probate matter. As EN spoke little English, she gave instructions through a family friend and confidant, Mr M. The matter culminated in Thackray Williams LLP making a payment to the Firm's client account of £114,498.12 on 21 December 2012 which was posted to EN's ledger.

14.2 Despite the matter being substantially complete by January 2013, the money remained in the Firm's client account for EN until 2018.

14.3 In or around May 2018, MOO, an individual already known to Mr Bhurawala, contacted Mr Bhurawala informing him that he and TOO were seeking funding of £150,000 for a property investment in Norfolk.

14.4 On 24 May 2018, MOO and TOO attended the Firm's offices and met with Mr Bhurawala. They told him that monies loaned to fund the property investment would be secured as a first legal charge against an address in London ("7NR"), a house previously owned by TOO's deceased father and which TOO was set to inherit. They told Mr Bhurawala that if a loan of £75,000 was made to TOO, he would pay back £125,000 in twelve weeks' time.

14.5 Browne Jacobson LLP, instructed by Mr Bhurawala in 2020 to respond to a professional negligence claim advanced by TOO, stated that, at the same meeting:

> "Mr Bhurawala explained that that property, [7NR], may prove to be acceptable security but that [TOO] was not the registered proprietor of it. As a result [TOO] could not enter into an immediate binding legal charge so in order to protect the interests of any lender client any loan would have to be dependent upon [the Firm] being satisfied that probate procedures were in place which would lead to [TOO] becoming the registered proprietor in his capacity as Administrator of his father's estate. Thus, Mr Bhurawala explained to [TOO] that it would have to be a condition of the loan that [the Firm] oversaw the process of the application for a Grant of Administration and the registration of [7NR] into the name of [TOO] so that a legal charge could be put over it in due course for the benefit of its client."

14.6 On or around 25 May 2018, Mr Bhurawala told EN about MOO and TOO's proposal. She agreed to lend TOO £75,000. EN instructed the Firm to represent her in the loan. The Firm sent or gave to EN a client care letter dated 25 May 2018. The client care letter stated, in part:

> "We refer to your recent instructions to act on your behalf in connection with the above matter, and should like to take this opportunity of outlining certain matters pertaining to your proposed transaction.
>
> We confirm that our fees in respect of your proposed transaction will be £750.00, Indemnity Contribution of £125.00 plus V.A.T. and disbursements, if applicable, plus all other relevant fees, […]. In addition to those fees you will also be responsible for our costs in attending to the application for Letters of Administration and Land Registry in order to protect your security.
>
> …
>
> We would advise you that in the event that your transaction becomes abortive, we will charge you on the basis outlined below:-
>
> (i) If either you or the Borrower withdraws from the transaction before we have issued security documentation, we will charge 25% of the above mentioned fees. You will be responsible for VAT on these fees and any expenses incurred up to that point.

(ii) If however security documentation has been sent out and either you or the Borrower withdraws from the transaction, we will charge between 50% and 75% of the above mentioned fees. You will be responsible for V.A.T. on these fees and any expenses incurred up to that point.

…

The person responsible for your matter is Mr Altaf Husen Bhurawala, who is a Director of this firm."

14.7 The Firm drew up a loan agreement and legal charge. The loan agreement provided:

"1.1 Definitions in this agreement:

…

"Facility" means the gross loan facility of £75,000.00 made available by the Lender to the Borrower under this Loan Agreement;

…

"Interest Rate" means the equivalent of five hundred and fifty five pounds and fifty five pence per day;

"Repayment Date" means any date determined by the Borrower occurring no later than twelve weeks after the Drawdown Date unless otherwise determined by the Lender.

…

2.1 The Borrower acknowledges receipt from the Lender of the Facility, and undertakes and binds and obliges itself and its successors whomsoever all jointly and severally without the necessity of discussing them in their order to repay the Facility to the Lender as provided in this Loan Agreement together with interest as provided in this Loan Agreement and all expenses and charges."

14.8 Also on 25 May 2018, the Firm gave TOO the loan agreement, legal charge, and a covering letter of the same date. The letter stated:

"Further to your meeting at our offices with [MOO], we confirm that our client, [EN] is prepared to loan the sum of £75,000.00 in consideration of you repaying £125,000.00 in **twelve weeks**. To that end, please find enclosed herewith the following:-

1. Loan Agreement.
2. Legal Charge."

14.9 EN signed a letter dated 25 May 2018 which appeared to have been drawn up by the Firm. The letter stated, in part:

> "I hereby authorize you to transfer the sum of £75,000.00 in respect of the above to Edward Marshall Solicitors, details of which I have already provided to you."

14.10 As per the letter, the Firm transferred £75,000 of EN's money from its client account to Edward Marshall Solicitors, who were acting for TOO, on the same day.

14.11 On or around 6 July 2018, TOO attended at the Firm's offices. The Firm drew up (i) a HMRC return of estate information (IHT205) form; and (ii) an oath for administrators: surviving child (the "Oath") on TOO's instructions:

14.12 TOO took the Oath to Regal Law Limited and swore it the same day and then brought it back to the Firm.

14.13 TOO signed a letter addressed to the Firm dated 6 July 2018, which appeared to have been prepared by the Firm. The letter stated:

> "Whilst I understand that you are unable to advise me, you can submit the IHT205, Oath for Administrators and supporting evidence to the Probate Registry in order to obtain Grant of Letters of Administration. Accordingly, I hereby authorise you to file the documents as soon as possible.
>
> Finally, I hereby waive any rights that I may have as a client instructing your firm since you are merely acting as a post box on my behalf and shall not hold your firm responsible for any delays that may occur in relation to the application for Letters of Administration."

14.14 On 10 July 2018, the Firm wrote to the Leeds District Probate Registry on TOO's behalf, applying for a grant of letters of administration and attaching the IHT205 form, the Oath, a cheque in the sum of £156.50 and a certified copy of TOO's father's death certificate. On 13 July 2018, the Leeds District Probate Registry granted administration to TOO.

14.15 On 17 July 2018, the Firm applied to HM Land Registry to register TOO as the proprietor of 7NR. The application was completed on 17 August 2018.

14.16 TOO did not repay the loan by 17 August 2018, twelve weeks after 25 May 2018. TOO met with Mr Bhurawala on 24 August 2018. The next day, Mr Bhurawala sent a text to TOO, asking "Did you get hold of [MOO]". TOO replied: "Yes…I couldn't really work out the game plan…but honestly…as a novice that I am…your help is needed".

14.17 By 5 September 2018, EN was concerned that she had not been repaid. The Firm sent or gave to EN a letter of the same date stating:

> "I refer to the above and my conversation with [Mr M]. I understand that you are becoming concerned that the Loan has not been repaid. He confirmed to me that it did not matter whether the additional £50,000.00 would be paid but you really wanted your money back.
>
> [Mr M] stated that he was happy for someone else to take over the loan in consideration of the £75,000.00 being returned to you and any costs incurred in

> relation to not be charged. I advised him that we should wait a little longer but alternatively, I could arrange for the return of the £75,000.00 from another entity and take over the responsibility of recovering this with the additional £50,000.00 as per the loan arrangement. He confirmed that this was your preference.
>
> …
>
> As agreed, I shall wait for fourteen days and if I do not hear from you, I shall take steps to arrange for the above on the basis of your loan being taken over by a third party who will then make funds available for you to have your £75,000.00 returned to you."

14.18 SRL was a private limited company of which Mr Bhurawala was one of two directors. He also owned 100% of SRL's share capital.

14.19 Mr Bhurawala, acting on behalf of SRL, sent a letter dated 25 September 2018 to TOO, stating:

> "Further to our meeting of yesterday, we confirm that our Company will be making a loan of £75,000.00 for a period of four weeks.
>
> Accordingly, we confirm that these monies will be remitted from our Bank to your nominated account."

14.20 On 26 September 2018, SRL paid £75,000 to TOO. The following day, TOO paid £75,000 to the Firm's client account. This amount was credited to EN's ledger.

14.21 On 4 October 2018, the remaining balance of £86,308.83 on EN's ledger in the client account was paid from the Firm's client account to EN.

14.22 Mr Hopkins submitted that Rule 14.3 of the 2011 Accounts Rules provided:

> "Client money must be returned to the client (or other person on whose behalf the money is held) promptly, as soon as there is no longer any proper reason to retain those funds. Payments received after you have already accounted to the client, for example by way of a refund, must be paid to the client promptly."

14.23 Guidance note (vii) to rule 14 stated: "Rule 14.3 is concerned with returning funds to clients at the end of a matter (or the substantial conclusion of a matter) […]."

14.24 Mr Hopkins submitted that by January 2013, the litigious probate matter in which EN had instructed the Firm to act had substantially concluded, following Thackray Williams LLP's payment into the client account of £114,498.12 on 21 December 2012. The Firm debited three invoices against EN's ledger in January 2013. No further activity took place until April–August 2014. After that, there was no activity until May 2018, when the Firm transferred £75,000 from the client account for the purpose of EN making a loan to TOO.

14.25 In the circumstances, there was a clear failure to return EN's money to her promptly as soon as there was no longer any proper reason to retain those funds. Mr Bhurawala, it was submitted, was responsible for this breach of Rule 14.3 as the only partner of the Firm and the solicitor with day-to-day conduct of EN's matter.

14.26 A solicitor acting in EN's best interests would have advised that EN take enforcement action against TOO, relying on the terms of the loan agreement, rather than accepting repayment of the £75,000 without interest. He also failed to advise EN that the loan was a high-risk investment, given the obvious red flag that it bore a rate of interest equivalent to 270% per annum. In failing to properly advise EN, Mr Bhurawala had failed to act in her best interests in breach of Principle 4 of the 2011 Principles.

14.27 Further, he had failed to protect her monies and assets in breach of Principle 10 of the 2011 Principles. Mr Bhurawala was aware at the time that EN agreed to make the loan that it was not possible for TOO to grant a legal charge over 7NR, as he was not its registered proprietor. Additionally, and in any event, Mr Bhurawala did not ever register a legal charge against 7NR in favour of EN with HM Land Registry.

14.28 Mr Hopkins submitted that Mr Bhurawala had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Public trust in the profession was undermined when a solicitor substituted a company he owned and controlled in place of his client under a loan agreement so that the solicitor's company benefited from a profit which otherwise would have been due to the client. Public trust was also undermined when a solicitor failed to warn his client of obvious red flags in a proposed transaction such as the high rate of interest promised by TOO, namely 270% per annum. In conducting himself as he did, Mr Bhurawala breached Principle 6 of the 2011 Principles.

14.29 Mr Bhurawala, it was submitted, had subordinated the interests of the clients to his own financial interests. After EN became concerned that the loan had not been repaid, Mr Bhurawala wrote to her on 5 September 2018 stating: "I advised [Mr M] that we should wait a little longer but alternatively, I could arrange for the return of the £75,000.00 from another entity and take over the responsibility of recovering this with the additional £50,000.00 as per the loan arrangement. He confirmed that this was your preference." Mr Bhurawala did not disclose that the other entity would be a company, SRL, that he personally owned and controlled.

14.30 He had subordinated EN's interests – to be repaid the £75,000 with interest as set out in the loan agreement – to his own financial interests. A solicitor acting with integrity (and in EN's best interests) would have advised that EN take enforcement action against TOO, relying on the terms of the loan agreement. Further, a solicitor acting with integrity would not have sought to take the benefit that was due to his client for himself, via a company that he owned and controlled.

14.31 In conducting himself as he did, Mr Bhurawala lacked integrity in breach of Principle 2.

The Respondent's Case

14.32 Mr Becker submitted that due to Mr Bhurawala's medical issues, he had been unable to provide an Answer or witness statement in the proceedings. Whilst the allegation was not accepted, no positive defence was advanced.

14.33 In closing Mr Becker submitted that EN had been difficult to contact, and at no time had she contacted the Firm requesting the return of her monies.

The Tribunal's Findings

14.34 The evidence showed that there was no activity on the EN file from August 2014 to May 2018 when the loan was made to TOO. It was plain, the Tribunal found, that Mr Bhurawala had failed to return EN's money to her promptly in breach of Rule 14.3. The responsibility to return the monies promptly was not abrogated by the fact that EN had not contacted the Firm to ask for the return of those monies.

14.35 In a letter dated 9 July 2020 in response to a pre-action protocol of professional negligence letter sent by TOO's representatives, Browne Jacobson (who represented the Firm) stated:

> "Mr Bhurawala explained that that property … may prove to be acceptable security but that TOO was not the registered proprietor of it. As a result, TOO could not enter into an immediate binding legal charge so in order to protect the interests of any lender client any loan would have to be dependent upon Morgan Hall Solicitors Limited being satisfied that probate procedures were in place which would lead to TOO becoming the registered proprietor in his capacity as Administrator of his father's estate. Thus, Mr Bhurawala explained to TOO that it would have to be a condition of the loan that Morgan Hall oversaw the process of the application for a Grant of Administration and the registration of [the property] into the name of TOO so that a legal charge could be put over it in due course for the benefit of its client."

14.36 Mr Bhurawala was thus aware that for EN's loan to be secured, the property would need to be registered in TOO's name. The registration of 7NR in TOO's name was not completed until 17 August 2018. This was 12 weeks after the loan monies had been transferred to TOO, and was also the date that the latest date for the loan to be repaid. As the property was not registered in TOO's name when the loan was made, it could not be secured on the property. Thus the loan made by EN was not secured. Mr Bhurawala failed to advise EN that the loan was not secured. At no point did Mr Bhurawala advise EN of the inherent risks in making the loan particularly in light of the interest rate. Further, he failed to advise her to take enforcement action when the loan was not repaid in accordance with the loan agreement. Instead, he arranged for his own company to loan monies to TOO. Having made the loan he then caused TOO to pay the interest that was due to EN to his own company. Such conduct, the Tribunal determined, was not in the bests interests of EN, nor did it protect her money and assets. Accordingly, the Tribunal found that Mr Bhurawala had failed to act in EN's best interests in breach of Principle 4 of the 2011 Principles, and had failed to protect her money and assets in breach of Principle 10 of the 2011 Principles.

14.37 Such conduct failed to maintain public trust in solicitors and the provision of legal services. Mr Hopkins submitted that Mr Bhurawala had failed to behave in a way that maintained the trust the public placed in him and in the provision of legal services. Members of the public would not expect a solicitor to allow his client to make unsecured loans without fully advising that client of the inherent risks of doing so. Nor would members of the public expect a solicitor to fail to advise their client to take enforcement action so as to benefit personally from monies that were due to the client under the loan agreement. Mr Bhurawala's failings were clearly in breach of his obligations pursuant to Principle 6 of the 2011 Principles.

14.38 Mr Bhurawala did not inform EN that the other entity was (i) wholly owned by him or (ii) would receive the interest payment that EN was entitled to under the loan agreement. Further, he had not advised EN that she could take enforcement action against TOO. The Tribunal found that these failings were the result of Mr Bhurawala's intention of benefitting personally from the interest payment that was due to EN. The Tribunal found that Mr Bhurawala had subordinated the interests of EN to his own financial interests. Such conduct plainly lacked integrity in breach of Principle 2 of the 2011 Principles.

14.39 Accordingly, the Tribunal found allegation 1.2 proved in its entirety.

15. **Allegation 1.3 - In relation to TOO, Mr Bhurawala caused SRL to lend £75,000 to TOO for a period of four weeks and represented to TOO that, to repay the loan, TOO was legally bound to pay SRL £125,000 when this was not the case. In so doing, he breached either or both of Principles 2 and 6 of the 2011 Principles and failed to achieve Outcome 11.1 of the 2011 Code.**

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

15.1 In respect of the loan from SRL, TOO requested Mr Bhurawala to provide him with a contract stating the loan's terms. No such document was ever provided by Mr Bhurawala, save for the letter sent to TOO on 25 September 2018. Mr Hopkins asserted that Mr Bhurawala represented to TOO that, to repay the loan, TOO was legally obliged to pay SRL £125,000 in total when, in fact, TOO was under no such obligation to SRL.

15.2 On 12 October 2018, TOO applied to Seculink Limited (an unconnected company) for a three-month loan of £225,000. In the form which TOO filled out to apply for the loan, under the heading "Disbursement of Loan to Third Parties", TOO named the Firm with the amount of £125,000.

15.3 On 17 October 2018, Seculink paid £225,000 to TOO. TOO sent a text message to Mr Bhurawala stating: "Funds received". Mr Bhurawala sent the following text messages to TOO:

> "Ok. Can you please send over 125000 to my secure reversions limited account. Account details to follow in mining (sic). Can I please request that the funds are paid tomorrow. Thank you."
>
> "Also pls stay on top of the property deal. We can make something."

"[TOO]. I am waiting for [MOO] to confirm the amount to be sent over."

"125[000] was the original sum some 7 weeks ago. So there is an additional amount to pay. Let's keep in touch. God bless"

15.4 He also provided the account details for SRL with the reference "repay loan". On 18 October 2018, TOO paid £125,000 to SRL.

15.5 Outcome 11.1 of the 2011 Code provided: "you do not take unfair advantage of third parties in either your professional or personal capacity"

15.6 Mr Bhurawala, it was submitted, had taken unfair advantage of TOO:

- SRL, a company owned and controlled by Mr Bhurawala, made a loan to TOO of £75,000 for four weeks. Mr Bhurawala did not appear to have advised TOO to take independent advice before entering into the loan.

- Despite TOO's requests that Mr Bhurawala provide a copy of a contract setting out the terms of the loan, Mr Bhurawala never provided such a document. The only document which SRL and the Respondent provided to TOO in relation to the loan was SRL's letter of 25 September 2018. That letter did not provide any terms as to the amount of money that would need to be repaid by TOO to SRL in order to discharge the loan.

- There was no term of the contract between SRL and TOO that obliged TOO to repay £125,000 to discharge the loan.

15.7 Notwithstanding the above, Mr Bhurawala represented to TOO that TOO was obliged to repay £125,000 to discharge the loan. For example, the Respondent texted TOO on 17 October 2018 stating: "Can you please send over 125000 to my secure reversions limited account" and "125[000] was the original sum some 7 weeks ago. So there is an additional amount to pay." This was unfair because, as Mr Bhurawala knew, TOO did not have the benefit of independent advice, which created an imbalance of power between Mr Bhurawala, as a solicitor, on the one hand, and TOO, as an unrepresented layperson, on the other.

15.8 For the above reasons, Mr Bhurawala's actions amounted to taking unfair advantage of TOO, and failing to achieve Outcome 11.1 of the 2011 Code.

15.9 The public's trust in the solicitors' profession would inevitably be undermined if they were aware of instances in which a solicitor uses his position to take unfair advantage of a third party in the manner Mr Bhurawala did. Such conduct failed to maintain the trust the public placed in solicitors and in the provision of legal services in breach of Principle 6 of the 2011 Principles

15.10 Further, a solicitor acting with integrity and adhering to the ethical standards of the profession would not represent to a third party, who was not legally represented at the time, that the third party was under a legal obligation to pay £125,000 to discharge a loan when that was not the case. Such conduct lacked integrity in breach of Principle 2 of the 2011 Principles.

The Respondent's Case

15.11 Mr Becker submitted that due to Mr Bhurawala's medical issues, he had been unable to provide an Answer or witness statement in the proceedings. Whilst the allegation was not accepted, no positive defence was advanced.

15.12 In closing Mr Becker submitted that TOO was not a novice investor and that he was aware that there would be a premium applied to any monies that he borrowed from a non-commercial lender. The position as regards the assignment of the EN loan was unclear, and there was no evidence of what TOO considered the position to be.

The Tribunal's Findings

15.13 The Tribunal found that there was nothing in the letter of 25 September 2018 that required TOO to pay £50,000 interest to SRL. The loan made by EN had not been transferred or novated to SRL. Mr Bhurawala was not entitled to assume the terms of the loan made by EN as terms of the loan made by SRL to TOO, without that being expressly stated. There was no evidence that this was the case. In fact, on the documentary evidence, there was no provision for there to be any interest charged on the loan made by SRL.

15.14 In representing to TOO that he was required to pay SRL interest in the sum of £50,000, Mr Bhurawala had taken unfair advantage of him and had thus failed to achieve Outcome 11.1 of the 2011 Code. Members of the public would be concerned that a solicitor had taken unfair advantage of a third party for the solicitors own financial benefit. Such conduct, it was found, failed to maintain public trust in the profession and the provision of legal services in breach of Principle 6 of the 2011 Principles.

15.15 That such conduct lacked integrity was plain. Solicitors acting with integrity did not take advantage of others for their own financial gain.

15.16 Accordingly, the Tribunal found allegation 1.3 proved in its entirety.

Previous Disciplinary Matters

16. None.

Mitigation

17. Mr Becker submitted that with regard to allegation 1.1, the scheme was not carried into effect. There had been no loss to the public purse or to MS. Mr Bhurawala had not taken any monies, nor had he made any profit from the scheme. There was a strong case of duress; Mr Bhurawala was intimidated by MS who had made threats to kill Mr Bhurawala. Mr Becker conceded that Mr Bhurawala had not informed the police of any threats. The suggested scheme, it was submitted, was not something that Mr Bhurawala would necessarily have freely entered into.

18. With regard to EN, the delay in the return of the monies had never been queried by her, nor had she asked for her monies to be returned. EN had been unwell and had been difficult to contact. She had suffered no loss from the delay in returning her monies.

19. Whilst EN had not received the £50,000 interest payment, she had not elected to seek to obtain those monies; she was satisfied with the return of the £75,000 that she had loaned to TOO.

20. Mr Becker submitted that there had been mistakes as regards securing EN's loan, but Mr Bhurawala had not been reckless with her money. It was accepted that the loan had not been secured on the property, but the loan had been secured in part.

21. As to allegation 1.3, TOO was an experienced investor. The Applicant had referred to the loan that TOO obtained following the receipt of monies from SRL. How TOO chose to fund the repayment to SRL was not a relevant matter. There was no evidence that TOO was threatened by Mr Bhurawala regarding payment of the uplift. TOO had willingly made the payment. He could have refused to do so, but he did not.

22. Mr Bhurawala was aware that the findings made by the Tribunal were serious and threatened his ability to practise. In moments of despair, Mr Bhurawala had suggested that he be struck off the Roll. He was now in a position where he did not want such a sanction. He had dedicated the last 30 years of his career to the profession.

23. He was currently unemployed. The investigation and proceedings had impacted on his health and his marriage.

Sanction

24. 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.

25. The Tribunal found that Mr Bhurawala had been motivated, in part, by personal gain. He had taken unfair advantage of TOO and had failed to EN to take enforcement action so that he could benefit personally from the new financial arrangement. His actions were planned. He had devised and suggested a scheme to his client which he knew amounted to benefit fraud. Mr Bhurawala was wholly responsible for the circumstances giving rise to his misconduct.

26. Mr Bhurawala's conduct had caused immense harm to the profession. Members of the public did not expect solicitors to suggest illegal schemes to their clients. Nor did they expect solicitors to neglect providing proper advice so that they could derive a personal financial benefit. Such harm, the Tribunal found, was wholly foreseeable.

27. Mr Bhurawala'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"."

His misconduct was deliberate and calculated. He had used his position as a solicitor to take advantage of EN and TOO.

28. Given the serious nature of the allegations, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand or restrictions. 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."

29. The Tribunal did not find that any of the mitigation advanced on Mr Bhurawala's behalf was enough to bring him 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 Bhurawala off the Roll of Solicitors.

Costs

30. Mr Hopkins sought costs in the sum of £31,180. This comprised of the SRA's internal costs of investigation in the sum of £8,980, and legal fees in the sum of £18,500 + VAT. The legal fees were fixed. From those fees there were disbursement of £14,000 to be paid, leaving a total of £4,500. Capsticks had spent approximately 128 hours in preparation, which meant that the notional hourly rate was approximately £35.

31. Mr Hopkins noted that Mr Bhurawala had not engaged in any meaningful way with the proceedings until Friday 31 March 2023, the last working day before the substantive hearing. He had wholly failed to comply with any of the Tribunal's directions. He had not admitted any of the facts, notwithstanding the documentary evidence. Mr Hopkins submitted that in all the circumstances, the Applicant should be awarded its costs in full.

32. Mr Becker submitted that Mr Bhurawala had limited capital. He had significant debts as a result of the closure of the Firm by way of personal guarantees given.

33. The matters to be determined were easy to investigate, with there being 1 allegation that was "bang to rights". The Tribunal should consider whether the time claimed both for the investigation by the SRA, and the time spent preparing the case by Capsticks was reasonable. Mr Becker submitted that spending 128 hours on a case that was "largely indefensible" was a considerable amount in circumstances where some of the allegations "could not be defended". Mr Bhurawala stated that the allegations followed what was in the notice of referral and that the work undertaken by Capsticks mirrored the notice sent by the SRA.

34. Mr Hopkins observed that contrary to the Standard Directions, Mr Bhurawala had failed to provide any evidence to support the representations made about his means. As such, those representations should be discounted.

35. The Tribunal considered that the costs claimed were reasonable having regard to the issues to be determined. Whilst Mr Becker might consider that the case was largely indefensible, no admissions had been made by Mr Bhurawala, which meant that the Applicant had to prove its case in full.

36. Mr Becker noted that there were significant debts to be placed against Mr Bhurawala's capital assets, however no information was provided as to the amount of those debts or the amount of capital that Mr Bhurawala had.

37. In the circumstances, the Tribunal was unable to take account of Mr Bhurawala's means; it had no means information.

38. Given its finding that the costs claimed were reasonable, and the lack of any evidence of means, the Tribunal ordered that Mr Bhurawala pay the costs claimed in full.

Statement of Full Order

39. The Tribunal Ordered that the Respondent, ALTAF HUSEN BHURAWALA, 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 £31,180.00.

Dated this 16th day of May 2023
On behalf of the Tribunal

A Kellett
Chair