SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12435-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

PRINCE FOMBA GOBA	First Respondent
WAQAS HASSAN	Second Respondent
SYED RAFAQAT HUSSAIN	Third Respondent
BRIGHT ARREY-MBI	Fourth Respondent

Before:

Mr A Ghosh (in the Chair)
Ms H Appleby
Mrs L McMahon-Hathway

Date of Hearing: 26-29 June 2023

Appearances

Mr David Hopkins, barrister of 39 Essex Chambers, instructed by Capsticks LLP for the Applicant.

The Respondents, Mr Syed Rafaqat Hussain and Mr Bright Arrey Arrey-Mbi each represented themselves.

The Respondents, Mr Prince Fomba Goba and Mr Waqas Hassan did not attend, and neither was represented.

JUDGMENT

Allegations

Allegations against the First Respondent, Prince Fomba Goba [R1]:

1. While in practice as a solicitor at PG Solicitors trading as Edward Marshall (the "Firm"):

1.1 By permitting a minimum client account shortage of £472,320.00 to exist as at 31 August 2021 he breached any or all of:

Principles 6 and 10 of the SRA Principles 2011;
Principle 2 of the SRA Principles 2019;
Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019;
Rule 20.1 of the SRA Accounts Rules 2011; and Rule 5.1 of the SRA Accounts Rules 2019.

1.2 By failing promptly to rectify the minimum client account shortage as at 31 August 2021, or thereafter, he breached any or all of:

Rules 7.1 and 7.2 of the SRA Accounts Rules 2011; and Rule 6.1 of the SRA Accounts Rules 2019.

1.3 Between 16 September 2019 and 13 April 2021, he:

1.3.1 Made, caused to be made, or permitted to be made, without authority from the relevant clients or any other good reason, 14 payments from the Firm's client account, totalling £172,320.00, to a bank account controlled by Yawar Ali Shah, who was not a member, partner, employee, or consultant of the Firm; and

1.3.2 Permitted Mr Shah to direct how client money was handled.

And in doing so, he breached any or all of:

Principles 2, 6 and 10 of the SRA Principles 2011;
Principles 2, 4 and 5 of the SRA Principles 2019;
Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019;
Rule 20.1 of the SRA Accounts Rules 2011; and Rule 5.1 of the SRA Accounts Rules 2019.

1.4 Between 22 June 2018 and 19 March 2020, he personally received 24 payments, totalling £32,430.00, from Mr Shah's bank account into which client monies had been paid. And in doing so, he breached any or all of:

Principles 2, 6 and 10 of the SRA Principles 2011;
Principles 2, 4 and 5 of the SRA Principles 2019;
Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs 2019; Rule 20.1 of the SRA Accounts Rules 2011; and Rule 5.1 of the SRA Accounts Rules 2019.

1.5 During the course of the SRA's investigation into his conduct, by providing the SRA's Forensic Investigation Officer with forged documents and incomplete and misleading information, he breached any or all of:

Principles 2, 4 and 5 of the SRA Principles (2019); and
Paragraph 7.3 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019).

1.6 By failing to comply with his professional and regulatory obligations to ensure that the firm was run with proper or effective systems and sound financial and risk management principles, he breached either or both of:

Principle 8 of the SRA Principles 2011; and
Paragraph 2.1 of the SRA Code of Conduct for Firms 2019.

Dishonesty

In addition, Allegations 1.3 and 1.4 are advanced on the basis that R1's conduct was dishonest. Dishonesty is alleged as an aggravating feature of R1's misconduct but is not an essential ingredient in proving the allegations.

Allegation 1.5 relates only to matters which occurred on or after 25 November 2019 and therefore only the SRA Principles (2019) are relevant. Allegation 1.5 expressly alleges, among other things, that the First Respondent breached Principle 4 of the SRA Principles (2019), *"You act with honesty"*.

Allegations against the Second Respondent, Waqas Hassan, [R2]

2. While in practice as a registered foreign lawyer at the Firm:

2.1 By permitting a minimum client account shortage of £472,320.00 to exist as at 31 August 2021 he breached any or all of:

Principles 6 and 10 of the SRA Principles 2011;
Principle 2 of the SRA Principles (2019);
Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019);
Rule 20.1 of the SRA Accounts Rules 2011; and Rule 5.1 of the SRA Accounts Rules (2019).

2.2 By failing promptly to rectify the minimum client account shortage as at 31 August 2021, or thereafter, he breached any or all of:

Rules 7.1 and 7.2 of the SRA Accounts Rules 2011; and Rule 6.1 of the SRA Accounts Rules (2019).

2.3 Between 16 September 2019 and 13 April 2021, he:

2.3.1 Made, caused to be made, or permitted to be made, without authority from the relevant clients or any other good reason, 14 payments from the Firm's client account, totalling £172,320.00, to a bank account controlled by Yawar Ali Shah, who was not a member, partner, employee, or consultant of the Firm; and

2.3.2 Permitted Mr Shah to direct how client money was handled. And in doing so, he breached any or all of:

Principles 2, 6 and 10 of the SRA Principles 2011;
Principles 2, 4 and 5 of the SRA Principles (2019);
Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019);
Rule 20.1 of the SRA Accounts Rules 2011; and Rule 5.1 of the SRA Accounts Rules (2019).

2.4 Between 3 January 2018 and 6 January 2021, he personally received 65 payments, totalling £166,940.37, from Mr Shah's bank account into which client monies had been paid. And in doing so, he breached any or all of:

Principles 2, 6 and 10 of the SRA Principles 2011;
Principles 2, 4 and 5 of the SRA Principles (2019);
Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019);
Rule 20.1 of the SRA Accounts Rules 2011; and Rule 5.1 of the SRA Accounts Rules (2019).

2.5 During the course of the SRA's investigation into his conduct, by providing the SRA's Forensic Investigation Officer with forged documents and incomplete and misleading information he breached any or all of:

Principles 2, 4 and 5 of the SRA Principles (2019); and
Paragraph 7.3 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019).

2.6 By failing to comply with his professional and regulatory obligations to ensure that the firm was run with proper or effective systems and sound financial and risk management principles, he breached either or both of:

Principle 8 of the SRA Principles 2011; and
Paragraph 2.1 of the SRA Code of Conduct for Firms (2019).

Dishonesty

In addition, Allegations 2.3 and 2.4 are advanced on the basis that R2's conduct was dishonest. Dishonesty is alleged as an aggravating feature of R2's misconduct but is not an essential ingredient in proving the allegations.

Allegation 2.5 relates only to matters which occurred on or after 25 November 2019 and therefore only the SRA Principles (2019) are relevant. Allegation 2.5 expressly alleges, among other things, that the Second Respondent breached Principle 4 of the SRA Principles (2019), "*You act with honesty*".

Allegations against the Third Respondent, Syed Rafaqat Hussain, [R3]

3. While in practice as a registered foreign lawyer at the Firm:

3.1 By permitting a minimum client account shortage of £472,320.00 to exist as at 31 August 2021 he breached any or all of:

Principles 6 and 10 of the SRA Principles 2011;
Principle 2 of the SRA Principles (2019);
Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019);
Rule 20.1 of the SRA Accounts Rules 2011; and Rule 5.1 of the SRA Accounts Rules (2019).

3.2 By failing promptly to rectify the minimum client account shortage as at 31 August 2021, or thereafter, he breached any or all of:

Rules 7.1 and 7.2 of the SRA Accounts Rules 2011; and Rule 6.1 of the SRA Accounts Rules (2019).

3.3 Between 16 September 2019 and 13 April 2021, he:

3.3.1 Made, caused to be made, or permitted to be made, without authority from the relevant clients or any other good reason, 14 payments from the Firm's client account, totalling £172,320.00, to a bank account controlled by Yawar Ali Shah, who was not a member, partner, employee, or consultant of the Firm; and

3.3.2 Permitted Mr Shah to direct how client money was handled. And in doing so, he breached any or all of:

Principles 2, 6 and 10 of the SRA Principles 2011;
Principles 2 and 5 of the SRA Principles (2019);
Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019);
Rule 20.1 of the SRA Accounts Rules 2011; and Rule 5.1 of the SRA Accounts Rules (2019).

3.4 By failing to comply with his professional and regulatory obligations to ensure that the firm was run with proper or effective systems and sound financial and risk management principles, he breached either or both of:

Principle 8 of the SRA Principles 2011; and
Paragraph 2.1 of the SRA Code of Conduct for Firms (2019).

Allegations against the Fourth Respondent, Bright Arrey Arrey-Mbi, [R4]

4. While in practice as a solicitor at the Firm:

4.1 By permitting a minimum client account shortage of £448,920.00 to exist as at 1 January 2021 he breached any or all of:

Principles 6 and 10 of the SRA Principles 2011;
Principle 2 of the SRA Principles (2019);
Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019);

Rule 20.1 of the SRA Accounts Rules 2011; and Rule 5.1 of the SRA Accounts Rules (2019).

4.2 By failing promptly to rectify the minimum client account shortage as at 1 January 2021, or thereafter, he breached any or all of:

Rules 7.1 and 7.2 of the SRA Accounts Rules 2011; and Rule 6.1 of the SRA Accounts Rules (2019).

4.3 By failing to comply with his professional and regulatory obligations to ensure that the firm was run with proper or effective systems and sound financial and risk management principles, he breached either or both of:

Principle 8 of the SRA Principles 2011; and
Paragraph 2.1 of the SRA Code of Conduct for Firms (2019).

Executive Summary

5. R1 and R2 had never engaged in the proceedings, and they did not attend the substantive hearing. Their position regarding the allegations was not known, although the Tribunal proceeded on the basis that they were disputed.

6. R3 and R4 denied all the allegations against them.

7. The Tribunal reviewed the evidence and found the allegations against R1 and R2, including dishonesty, proved on the balance of probabilities. They were each struck off the roll of solicitors and ordered to pay costs in the sum of £54,905.00, on a joint and several basis.

8. The allegations were dismissed in relation to R3 and R4. The Tribunal found that R3 had not been involved with the Firm at the relevant time and R4 was a partner in name only with no true ability to influence any management or financial decisions made by the Firm.

9. The Facts can be found here
The Applicant's Case can be found here
The Respondents' Cases can be found here
The Tribunal's Findings can be found here.
The Tribunal's Decision on Sanction and costs can be found here

Documents

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

Preliminary Matters

11. Adjournment and proceeding in absence

11.1 R1 and R2 did not attend the hearing and they were not represented. Neither had applied to adjourn or vacate the hearing.

11.2 Mr Hussain, R3, informed the Tribunal and the Applicant by e-mails sent close to the date of the substantive hearing and on the first day of the hearing itself that he was out of the country performing Islamic pilgrimage from 4th to 27th June. He said that he would attend the hearing on 28 June i.e., the third day of the hearing.

11.3 Mr Hopkins said the Applicant respected the religious observances of Respondents, however, R3 must have been planning his pilgrimage for some time and it was unlikely to have been a spur of the moment decision on his part. R3 had been under a duty as a regulated professional to engage openly about his plans and make any necessary application in good time.

11.4 It appeared that R3 may have misunderstood his requirement to attend the entirety of the proceedings and Mr Hopkins observed that R3 had not applied to adjourn the hearing and it was his stated intention to attend on 28 June 2023.

11.5 The Tribunal had information before it that the Standard Directions were issued to the parties by the Tribunal on 7 February and that the matter was listed for a substantive hearing from 26-29 June 2023 with a time estimate of 5 days.

11.6 The Standard Directions required the Respondents to file and serve their Answers to the allegations, together with any documents upon which they sought to rely at the substantive hearing by 7 March 2023. None of the Respondents complied with this direction and the matter was listed for a non-compliance hearing.

11.7 At that hearing the Deputy Clerk noted that R3 had accessed the papers on 8 February 2023 and R1 had requested a password to access them from Capsticks. R2 had emailed to say that he was abroad dealing with health issues in his family and R4 had sent an email indicating that he denied the allegations in general terms, but not in the form of an Answer as required by the Standard Directions.

11.8 There were no applications from any party to vary any of the Standard Directions and accordingly the Deputy Clerk did not make any variation. The Deputy Clerk confirmed that the matter remained listed on the dates set out above. Although none of the Respondents attended the hearing, after the hearing had concluded the Deputy Clerk was made aware that R4 had been attempting to join but had been encountering technical difficulties. R4 was made aware of the outcome of the hearing and advised that if he wished to apply to vary any of the Standard Directions then he should make that application in writing using the prescribed form.

11.9 The matter was next listed for a Case Management Hearing on 6 April 2023. On that occasion the Tribunal was told that R4 had filed a witness statement which was "substantially an Answer" but that none of the other Respondents had filed an Answer or engaged with the proceedings.

11.10 In the circumstances, the Applicant applied for, and was granted, an order under Rule 20(3)(a) and (c) of the Solicitors (Disciplinary Proceedings) Rules 2019 (SDPR 2019) in respect of R1, R2 and R3 precluding them from serving or relying upon an Answer or any evidence in these proceedings without the permission of the Tribunal.

11.11 Mr Hopkins submitted that there was sufficient evidence before the Tribunal that R1, R2 and R3 had been served correctly with the proceedings and that they were aware of the date of the hearing. By his e-mails to the Tribunal R3 had clearly been aware of the date the hearing, and by his presence, so had Mr Arrey-Mbi, R4.

11.12 Mr Hopkins submitted, on the information before the Tribunal, it could have little confidence that an adjournment would secure the R1 and R2's attendance in the future. There had been no meaningful engagement by either R1 and R2 and no application in good time by them to adjourn the substantive hearing. R3 had not asked for an adjournment and had raised no issue with the substantive hearing commencing in his absence.

11.13 Mr Hopkins applied for the substantive hearing to proceed in R1, R2 and R3's absence and he placed 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 R1, R2 and R3's behaviour in absenting themselves from the hearing;
- Whether an adjournment would resolve their absence;
- The likely length of any such adjournment;
- Whether they had voluntarily absented themselves from the proceedings and the disadvantage to them in not being able to present their case.

11.14 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.

11.15 In Mr Hopkins' submission the Tribunal had evidence that each missing Respondent had been correctly served and that each was aware of the hearing date but that they had voluntarily absented themselves.

The Tribunal's Decision re:

(i) Adjournment

11.16 The Tribunal considered with care the submissions made by Mr Hopkins and the material relating to the history of the matter and the communications passing between the Applicant and R1, R2 and R3.

11.17 The Tribunal was satisfied that the Respondents had been correctly served with the proceedings under Rule 13(5) SDPR 2019 and it was also satisfied that there was sufficient evidence to demonstrate that they were aware of the substantive hearing which was due to take place.

11.18 The Tribunal next considered whether the hearing should be adjourned. The Tribunal referred to its current Guidance Notes: Adjournments which sets out the principles to be applied in consideration of such applications under Rule 23 SDPR 2019.

11.19 The Tribunal noted that Rule 23 SDPR 2019 sets out, amongst other things, that an application for an adjournment of a hearing must be supported by documentary evidence of the need for the adjournment and should be made in the prescribed form, indicating the full reasons as to why an adjournment was being sought e.g. medical reports and state whether the other party to the proceedings supported or opposed the application for an adjournment. The Tribunal would be reluctant to agree to an adjournment unless the request was supported by both parties or, if it was not, the reasons appeared to the Tribunal to be justifiable because not to grant an adjournment would result in injustice to the person seeking the adjournment.

11.20 In this case the Tribunal was satisfied that the Respondents had been aware of the proceedings and the date of the substantive hearing since February 2023 and despite this knowledge, they had chosen not to attend before the Tribunal to give an account of themselves and/or be questioned. There was no application or any evidential material from R1 and R2 to support adjourning the substantive hearing and in any event the Tribunal had no confidence that an adjournment of any length would ensure their participation and attendance.

11.21 In relation to R3, the Tribunal noted that it would invariably give due deference and respect to a Respondent's religious duties; however, in this case R3 would have known about his planned pilgrimage well in advance of the hearing and he had been under an obligation to bring this to the Tribunal's attention in good time before the start of the hearing. These were very serious allegations, and it was in the public interest for the

case to be dealt with expeditiously. The Tribunal therefore decided not to adjourn the hearing.

(ii) Proceeding in absence

11.22 Having decided not adjourn the substantive hearing the Tribunal considered, as a separate and distinct issue, whether it should proceed in the absence of R1, R2 and R3. In doing so, it gave due weight to its statutory duty, under section 6 of the Human Rights Act 1998, to act in a manner which was compatible with the Respondents rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

11.23 With respect to proceeding in absence of the first three Respondents the Tribunal was mindful that it should only decide to proceed in his absence having exercised the utmost care and caution.

11.24 The Tribunal considered the factors set out in Jones and Adeogba as to what should be considered when deciding whether to exercise the discretion to proceed in the absence of a respondent. It had regard to the observations of Leveson P. in Adeogba, that whilst the principles outlined in Jones were the starting point, it was important that the analogy between a criminal prosecution and regulatory proceedings should not be taken too far. In a criminal prosecution steps could be taken to enforce attendance by a defendant; they could be arrested and brought to court. No such remedy was available to a regulator and a regulatory tribunal did not have such powers. The Tribunal noted that R1, R2 and R3 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 affected, to hear and determine the application in their absence.

11.25 The Tribunal considered that, given the information it had been provided regarding the Respondents' state of knowledge of the hearing and complete lack of engagement from R1 and R2, an adjournment would not resolve their absence and there was nothing to suggest that R1 and R2 would attend a hearing on a future date. The Tribunal concluded that R1, R2 and R3 had voluntarily absented themselves.

11.26 The Tribunal also considered the serious nature of the allegations made against them and it decided it was in the public interest that this case should be concluded expeditiously and without further delay. Further, any delay would prejudice R4 who had attended the Tribunal and expected his case to go ahead.

11.27 The Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in R1, R2 and R3's absence and the Tribunal decided that it should exercise its power under Rule 36 SDPR to hear and determine the application in their absence.

11.28 The Tribunal noted the position regarding R3 and that, should he attend, as he had stated he would do, on 28 June, he would be brought up to speed then on those matters which he had missed and would be able to present his case at that time.

12. Application to amend the Rule 12 Statement

12.1 Mr Hopkins applied under Rule 24 SDPR 2019 to amend the Rule 12 Statement with respect to certain typographical mistakes and inaccuracies. Mr Hopkins said these were minor in nature and their amendment would not impact upon the gravamen of the allegations nor the Applicant's narrative of the case against the Respondents; they would not suffer any prejudice by the granting of the application.

12.2 Mr Arrey-Mbi neutral, neither supporting nor objecting to the application.

The Tribunal's Decision

12.3 The Tribunal refused to grant the application.

12.4 The application had been made far too late in the day. The Rule 12 Statement should have been checked meticulously before it had been filed, especially as it contained a statement of truth.

12.5 Further, the Tribunal would not countenance an amendment in circumstances where R4 was not represented and R1, R2 and R3 were not present to make representations. To do otherwise would run counter to natural justice and their rights to a fair hearing under Article 6 of the ECHR.

Factual Background

13. R1 was admitted to the Roll of Solicitors on 15 September 2003. He did not apply to renew his Practising Certificate for 2022-2023. His Practising Certificate was revoked on 8 December 2022, and he does not hold a current Practising Certificate. His 2021-2022 Practising Certificate was issued on 9 March 2022 and was subject to the following conditions:

- Prince Goba shall not act as a manager or owner of any authorised body.

- Subject to condition 1 Prince Goba may act as a solicitor, only as an employee where the role has first been approved by the SRA.

- Prince Goba may not act as a compliance officer for legal practice (COLP) or compliance officer for finance and administration (COFA) for any authorised body.

- Prince Goba does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account."

14. R2 was registered as a registered foreign lawyer ("RFL") on 20 October 2011. He did not apply to renew his registration. His registration for 2021-2022 was subject to the following conditions, which remain in place:

- Waqas Hassan may not act as a manager or owner of any authorised body.

- Subject to condition 1, Waqas Hassan may act as a registered foreign lawyer only as an employee, whose role has first been approved by the SRA.

- Waqas Hassan may not act as a compliance officer for finance and administration (COFA) for any authorised body.

- Waqas Hassan does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account.

15. R3 was registered as an RFL on 28 February 2013. He had not applied to renew his registration. His registration for 2021- 2022 was subject to the following conditions, which remain in place:

- Mr Hussain may not act as a manager or owner of any authorised body.

- Mr Hussain may not act as a compliance officer for finance and administration (COFA) for any authorised body.

- Mr Hussain does not hold or receive client money, or act as a signatory to any client or office account or have the power to authorise transfers from any client or office account.

16. R4 was admitted to the Roll of Solicitors on 16 May 2005. He held a Practising Certificate free from conditions.

17. The Firm was a firm of solicitors with its head office in Ilford, Essex. The Firm was authorised by the SRA as a recognised body (partnership) on 13 January 2012 and began trading on the same date.

18. The SRA resolved to intervene into the practices of R1, R2 and R3 and the Firm and, on 26 November 2021, the SRA attempted to effect the intervention. The Firm ceased to exist as a recognised body as of that date.

19. R1 was, from 13 January 2012 until 26 November 2021 the sole equity partner in the Firm. At the time of the alleged conduct, he was a manager of the Firm and the Firm's Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA").

20. R2 was, from 19 March 2021 until 24 November 2021 a salaried partner in the Firm and held out to the outside world as a partner of the Firm. At the time of the alleged conduct, he was a manager of the Firm and the Firm's Money Laundering Reporting Officer ("MLRO").

21. R3 was, from 3 April 2013 until 24 November 2021 a salaried partner in the Firm and held out to the outside world as a partner of the Firm. At the time of the alleged conduct, he was a manager of the Firm.

22. R4 was, from 15 August 2018 until 24 November 2021 a salaried partner in the Firm and held out to the outside world as a partner of the Firm. At the time of the alleged conduct, he was a manager of the Firm.

Witnesses

23. The written and oral evidence of witnesses is quoted or summarised in the Findings of Fact and Law below. The evidence referred to will be that which was relevant to the findings of the Tribunal, and to facts or issues in dispute between the parties. For the avoidance of doubt, the Tribunal read all of the documents in the case and made notes of the oral evidence of all witnesses. 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 third and fourth Respondents gave oral evidence:

Findings of Fact and Law

24. 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 the Respondent's right to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

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

25.1 On 18 December 2019, the SRA received a report from Richards Solicitors who acted for the purchasers, NPI Holdings Limited, in connection with the purchase of a property 'Greystoke'. Mr Peace stated that: "Contracts were exchanged and completed on 18th October [2019] but we have not received the seller's part of the contract or the executed TR1 and we are aware that Edward Marshall have not discharged the charges on the property and the property remains in the name of the seller."

25.2 The report further stated that:

> "During the issues relating to the Greystoke property transaction we were advised that MR [sic] Prince Goba was the senior partner and despite several efforts to speak with Mr Goba he was never available and did not return calls. We were subsequently informed that the person handling the issue within the firm was a Mr Alan Baker."

25.3 Following an investigation by Richards Solicitors, they believed Mr Baker was in fact an alias used by Mr Yawar Ali Shah (about whom further details are provided below). In light of this report, the SRA commenced an investigation by Jason Gregory.

Yawar Ali Shah

25.4 Yawar Ali Shah was as born on 26 December 1983. He was called to the Bar in November 2006. He did not undertake pupillage, but instead became a Fellow of the Chartered Institute of Legal Executives ("CILEx").

25.5 Mr Shah set up a bridging loan company, Shahsons Bridging and Finance Limited ("SBFL"). SBFL was incorporated on 13 November 2008, with Mr Shah its sole director at that time. SBFL was dissolved via compulsory strike-off on 29 June 2010.

25.6 Per the Court of Appeal's judgment [Attorney-General's References Nos 70 and 83 of 2014 [2014] EWCA Crim 2267 at para 12], Mr Shah also "set up a firm of solicitors called Conifer and Pines" ("C&P").

25.7 The SRA's records show that C&P was subject to an intervention and was closed on 12 August 2009. It was clear from the Court of Appeal's judgment that Mr Shah was intimately connected with C&P. However, the SRA's records do not record Mr Shah as being a manager, owner, or solicitor at C&P and it seems that neither he nor anyone else made his involvement with C&P known to the SRA.

25.8 On 2 July 2013, Mr Shah was convicted before HH Judge Griffiths and a jury sitting in the Crown Court at St Albans of two counts of conspiracy to defraud. Around 13 months later, on 31 July 2014, he was sentenced to two concurrent sentences of 18 months' imprisonment.

25.9 On a reference by the Attorney-General, on 7 October 2014, the Court of Appeal ordered that the sentences should run consecutively, for a total term of three years [A-G's Refs Nos 70 and 83 of 2014"].

25.10 The matters which gave rise to Mr Shah's convictions do not appear to have involved the Firm:

25.10.1 The first count on which Mr Shah was convicted involved a single fraudulent mortgage in which C&P purported to act for the "purchasers" and Mr Shah's conspirator, Peter Daniel Hastings, purported to act for the "vendors" *[Mr Hastings pleaded guilty to three counts of conspiracy to defraud and one count of retaining a wrongful credit].* In fact, the transaction was entirely bogus, and Mr Shah and Mr Hastings fraudulently obtained £385,000.00.

25.10.2 The second count on which Mr Shah was convicted involved Mr Hastings and Mr Shah cloning a real firm of solicitors, Beck Partnership, to use as a front to enable the disposal of assets that mortgage companies had intended to be used as loans or mortgages on different properties. The fraud came to light when a partner at the real Beck Partnership was asked why the firm had not issued discharge documents to a commercial lender who had advanced £1.2 million in relation to two transactions. Mr Shah and Mr Hastings obtained over £2 million using this fraud over four transactions. £1.4 million was laundered through a company owned by Mr Hastings and through Mr Shah's company, SBFL.

25.11 The Court of Appeal concluded:

> "This was in our view sophisticated offending by two men who had qualified as lawyers, which involved very significant sums of money, particularly in the case of Hastings, but also as regards Shah. [...] The extent of the offending by both men negates any possible suggestion that their criminality was simply a reaction

to financial hardship or to a desire to provide for their families. Very substantial sums of money have simply disappeared."

25.12 Mr Shah was disbarred by the Bar Standards Board on 14 June 2016 and indefinitely excluded from membership of CILEx on 14 August 2016.

Mr Shah's involvement with the Firm, 2012-2014

25.13 In addition to C&P and SBFL, in around 2012-2014, Mr Shah was also involved with the Firm. On 29 May 2012, around five months after the Firm was authorised by the SRA and began trading, Edward Marshall LLP ("EM LLP") was incorporated as an LLP in England and Wales under partnership number OC375615. EM LLP is a separate legal entity to the Firm and was never authorised by the SRA to provide legal services. The designated members of EM LLP on incorporation were, R1, Azhar Naveed and Mr Shah.

25.14 The SRA saw email correspondence in 2012 to and from Mr Shah on behalf of the Firm, at the email address *ali@edwardmarshall.org.uk*, including correspondence with HMCTS.

25.15 On 23 November 2012, Rizwan Ahsan, who had joined the Firm as a partner in May 2012, resigned from the Firm. In his letter of resignation, Mr Ahsan said:

> "It was agreed in our first meeting with Mr Yawar Ali Shah that I shall be more of a trainee lawyer because I had no prior legal experience in the UK [...]. [...] Whilst [sic] my stay in the firm I learned that the affairs of the firm were not being handled as they should have been. I learned that although Mr. Goba was the Principal and Mr. Naveed, a senior partner, the practice was fully under the control of Mr. Shah who was not even a partner in the firm. Mr. Shah had control over the firm's accounts and all the practice. It appeared as if Mr. Shah was the owner of the firm and yet his name was nowhere in the firm."

25.16 On 30 November 2012, as part of a previous and separate investigation, two SRA forensic investigation officers, Gary Page and Sean Grehan, attended the Firm's offices. Mr Page recorded the following information, amongst other things:

> "Mr Naveed is a salaried partner at the firm. [He] was extremely nervous and appeared to have no knowledge of the firm's accounting procedures. He stated that during the time he had been at the firm as a partner he had not seen the other partner Bushra Shabab and that the other partner Mr Waqar Hussain only attends the firm 2 days a week. He stated that Mr Yawar Ali Shah is the proprietor of the business and that he did not know who owned the equity in the firm but believed it to be Mr Goba. [...] We then proceeded to examine the firm's bank account statements and we were then joined by Mr Yawar Ali Shah who stated that he was not the proprietor but owned the building where the office was located and leased the office to Mr Goba. Mr Shah stated that he did work at the firm dealing with immigration matters. Mr Shah then proceeded to take control of supplying information and dealing withy [sic] requests for files from Mr Naveed, who left the premises having stated that he was feeling unwell."

25.17 On 5 July 2013, three days after Mr Shah's conviction at St Albans Crown Court, the Firm wrote to its then accountants, Messrs J Nelson & Company stating:

> "Authorised signatories on our accounts are Prince Goba (partner), Waqas Hassan (partner), [...], Yawar Shah (office manager for Wanstead Branch), [...]"

25.18 On 30 October 2013, Mr Shah wrote a letter on the Firm's headed notepaper to the manager of the HSBC branch at 79 High Street, Wanstead, London, asking them to close three designated client accounts. Mr Shah signed on behalf of EM LLP, the footer of the letter confirmed that "Edward Marshall is a trading name of PG Solicitors with SRA number: 564488" and did not refer to EM LLP.

25.19 In his interview with the FIO, R1 stated that "We worked with Ali Shah years back as 2013/14."

25.20 In his interview with the FIO, R2 stated that Mr Shah *"*[...] used to work there in the past I think, so 2014, yeah when I joined Edward Marshall he was there".

25.21 Mr Shah's appointment as a designated LLP member of EM LLP was terminated as of 3 November 2014.

The Firm's accountants 2019-2021, Delshaw & Higgins LLP

25.22 On 19 August 2019, Delshaw & Higgins LLP ("D&H") was incorporated as an LLP in England and Wales under partnership number OC428516. The designated members of D&H on incorporation were: Syed Ali Haider and R2.

25.23 D&H's registered office address is, and has always been, First Floor Imperial Chambers 10-17 Seven Ways Parade, Woodford Avenue, Gants Hill, United Kingdom, IG2 6JX which was substantively the same building/street address as the Firm's registered office address.

25.24 R2's appointment as a designated member was terminated on 2 March 2021. On 20 May 2020, Mr Shah was appointed as a designated member of D&H. His appointment was terminated on 29 April 2021.

25.26 D&H acted as the Firm's accountants from around the time of its incorporation until the SRA intervened into the Firm: Ahdel Hussain is another designated member of D&H, appointed on 6 May 2020. Mr Hussain was commonly known as "Del" to R1 and R2.

Payments made by the Firm to Mr Shah, 2019-2021

25.27 On 15 June 2021, the SRA sent NatWest a notice under Regulation 66 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692) (the "ML Regs").

25.28 The notice sought further information from NatWest, pursuant to the SRA's powers under the ML Regs, about an account with sort code 60-06-08 and account number

28106091, which the SRA's investigations had led it to understand was controlled by the Firm.

25.29 On 21 June 2021, NatWest responded to the notice confirming the full name of the account holder linked to the account 28106091 for sort code 600608 was Mr Yawar Ali Shah - DOB 26/12/1983 and that this account was opened on 8 February 2012. Also, it was confirmed that Mr Yawar All Shah opened the account and provided ID documentation to verify his identity. Mr Yawar Ali Shah was the only authorised signatory on the account 28106091 for sort code 600608.

25.30 Mr Shah therefore opened the account (hereinafter referred to as the Shah Account) around one month after the Firm was authorised by the SRA and began trading and the name of the account shown on the bank statements for the Shah Account provided by NatWest is "R YAWAR SHAH EDWARD MARSHALL".

25.31 From his analysis of the Shah Account bank statements, the FIO identified that from 23 January 2019 to 13 April 2021, the Firm made 86 payments, totalling £1,788,502.81, from its client account to the Shah Account and from 30 January 2019 to 8 June 2020, the Firm made 124 payments, totalling £236,839.57, from its office account to the Shah Account.

Minimum client account shortage as at 31 August 2021

Clients Mr and Ms M: £300,000.00

25.32 The Firm acted for Mr and Ms M in the proposed sale of Greystoke. The proposed buyer was NPI Holdings Limited ("NPI"), which was represented by Richards Solicitors. The proposed purchase price was £300,000.00. The Firm sent a client care letter to Mr and Ms M dated 11 June 2019 which stated, in part, that: "Mr. Prince Goba, a Senior Partner in this firm is responsible for your file. Mr. Goba or his assistant Mr Jones will be available between the hours of 9.30am - 5.30pm Monday to Friday."

25.33 On behalf of NPI, on 17 October 2019, Richards Solicitors sent £300,000.00 to the Firm's client account. According to the Firm's client ledger these funds were then transferred to a designated deposit account (the "DDA") held with RBS on 18 October 2019.

25.34 During the SRA's investigation, the Firm provided to the SRA documents purporting to show that:

- the DDA was held at sort code 16-16-12 and bore account number 10924479.
- the £300,000.00 was transferred to the DDA from the client account on 18 October 2019 and remained held within that account as of 31 July 2021

25.35 On 18 August 2021, the SRA issued a notice under Reg 66 of the ML Regs to RBS. On 24 August 2021, RBS responded to the Reg 66 notice, stating that "Please note from bank records, the account numbered 10924479 at sort code 161612 [that is, the DDA] returned as an invalid account". The bank statements provided by RBS with this response show the £300,000.00 being received in the client account on 17 October 2019

but do not record a transfer of £300,000.00 from the client account to the DDA on 18 October 2019 or at any other time.

25.36 In a letter dated 23 September 2021 to the SRA, RBS further confirmed that:

> "Please note, from bank records for account numbered 10924479 at sort code 161612 this is an invalid account number and sort code combination and not recognized within bank records as an open or closed account".

Payments made from the Client Account to the Shah Account

25.37 14 payments, totalling £172,320.00, were made out of the Firm's client account between 16 September 2019 and 13 April 2021, each of which contained in its narrative description a reference to "HMRC Shipley Stamp", "HMRC SD", "HMRC Stamp Duty or "HMRC Stamp"

25.38 The 14 payments were associated with five clients:

- CR, five payments, £63,330.00;
- KS, one payment, £8,500.00;
- Victor Assets and Estates Ltd, five payments, 277,240.00;
- GJ, two payments, €18,250.00; and
- Victory Heights Limited, one payment, £5,000.00.

25.39 As part of the notice issued to RBS under Reg 66 of the ML Regs on 18 August 2021 the SRA requested further information about these payments, including the "bank coordinates (i.e. sort code and account number) for the receiving bank". In respect of all 14 of the payments, RBS's response on 24 August 2021 stated that the payment was made to the Shah Account and, for 12 of these payments, "The payment was conducted via Bankline with the User details of Mr Waqas Hassan".

25.40 During the SRA's investigation, the Firm provided to the SRA documents purporting to show that the 14 payments were made to bank accounts other than the Shah Account. Contrary to the documentation supplied by the Firm, RBS has confirmed that all 14 of the payments were made to the Shah Account; and the SRA saw no evidence that the Firm had the consent of any of the five clients concerned to make such payments or there was any other good reason why the payments should have been made to the Shah Account.

25.41 In the absence of instructions from the clients to make payments to Mr Shah or any other good reason to make such payments, the natural inference is that Mr Shah directed that the payments should be made to him and the Respondents followed such directions.

25.42 For the above reasons, the FIO concluded that a minimum client account shortage of £472,320.00 existed as at 31 August 2021 comprising:

- £300,000.00 which the Firm asserted was held in the DDA, but which could not be held in the DDA since no such bank account existed; and

- £172,320.00 which the Firm asserted had been transferred to accounts other than the Shah Account, but which in fact had been transferred to the Shah Account.

Payments made to the First and Second Respondents from the Shah Account

25.43 In his analysis of the statements for the Shah Account provided by RBS, the FIO identified that:

- between 23 January 2019 and 13 April 2021, 86 payments, totalling £1,788,502.81, were made from the Firm's client account to the Shah Account.

- between 22 June 2018 and 19 March 2020, 24 payments, totalling 232,430.00, were made from the Shah Account to the First Respondent. In 23 instances, the narrative on the Shah bank statements was "Prince F Goba office loan". In the remaining instance the narrative was "Gants Hill Travel P F Goba" (£280.00)

- between 3 January 2018 and 6 January 2021, 65 payments, totalling £166,940.37, were made from the Shah Account to R2. In 64 instances, the narrative on the Shah bank statements was either "Waqas Hassan Professional Fees" or "Mr Waqas Hassan Professional Fees". In the remaining instance the narrative was "Inchcape Mercedes Waqas Hassan GLS" (£19,000.00).

25.44 Given that between January 2019 and April 2021, £1,788,502.81 was transferred from the Firm's client account to the Shah Account, the SRA considered it very likely that one or more of the above payments were mixed with client monies.

Misleading information provided by the First and Second Respondents to the SRA during the course of its investigation in relation to the supposed transfer of £300,000.00 from the client account to the DDA.

R1 and R2's responses to the SRA's requests for documents relating to the DDA

25.45 On 17 April 2020, further to the First Production Notice, R12 emailed the FIO attaching, among other things: A letter from the Firm to the FIO of even date stating, among other things:

> *"Please see attached letter from our bank confirming all accounts held by us";* and a document with the filename "Letter from Bank Re Accounts.pdf" (the "16 Mar 2020 Letter").

25.46 The 16 Mar 2020 Letter is dated 16 March 2020, purports to be written by Rodrigue Eid, Relationship Support Manager, on behalf of RBS to the First Respondent, and bears RBS's logo. It states: "I am pleased to confirm that Edward Marshall currently hold the following accounts with The Royal Bank of Scotland. [...] Account Name: The Partnership of Edward Marshall Designated Account Sort Code: 16-16-12; Account Number: 1092 - 4479 Swift/BIC: RBOSGB2L IBAN: GB45 RBOS 1616 1210 9244 79"

25.47 On 15 September 2020, the FIO served a production notice under s 44B of the Solicitors Act 1974 on the Firm and all the Respondents (the "Second Production Notice"). The notice required them to provide, among other things:

> "In respect of the [Mr and Ms M] matter (matter reference CON194):
> a. A copy of the complete matter file.
> b. A narrative describing the matter, including but not limited to:
> i. The reason funds totalling £300,000.00 were received.
> ii. Whether the firm currently holds funds totalling £300,000.00, and if so, the reason these funds are still held.
> iii. If the funds have been paid out, identify to whom the funds were paid and the reason for the payment.
> c. Highlighted bank statements evidencing the receipt and transfer of funds related to the matter."

25.48 The Firm replied by letter on 25 September 2020 stating, in part:

> "Please see attached the file of [Mr and Ms M]. The sum of £300,000 was received form [sic] Messrs Richards on behalf of NPI, which we hold and shall continue to hold pending our claim as our claim sum exceeds this figure. We have legal advice to this effect and will not be returning these funds to NPI pending litigation - not to ignore the Crown Court Restraint Order against Mr Stevens and then the FCA's freezing order covering the Stevens properties, assets and companies. [...]"

25.49 The letter gave the Firm's reference as "Our Ref: EM/PG/SRA/2020" suggesting that R1's, whose initials are "PG", was responsible for the Firm's reply. The Firm's allusion to the "FCA's freezing order" appeared to be to litigation the Financial Conduct Authority commenced against NPI, its director, Daniel Stevens, and related parties. This litigation is not material to present proceedings.

25.50 On 7 October 2020, the FIO wrote to R1, as COLP for the Firm, stating that the responses to the First and Second Production Notices were deficient and, in particular, requesting further information about the Mr and Ms M matter, including "Highlighted bank statements evidencing receipt and transfer of funds related to the matter [...]"

25.51 On 14 October 2020, R1 replied stating, in part:

> "Please find attached our bank statements of October 2019 showing receipt of £300,000 and then transfer. We also attach our DCA statement which holds these funds. As to the monies in the sum of £300,000, we are still holding these and "will not" be returning the same to either Messrs Richards or the Stevens."

25.52 An email of 14 October 2020 from R1 attached this letter, stating that the documents could not be sent electronically due to their size and would instead be sent by post.

25.53 On the 15 October 2020, R1 sent a further 12 emails with in total 10 attachments comprising the documents referred to in the letter.

25.54 On 10 November 2020, the FIO wrote to R1 as COLP for the Firm, in part to request documents and information:

> *"3) The firm's reconciliations, bank statements (both client and office), client matter lists, and cashbooks for the following periods:*
>
> *a. March 2018 to May 2018 b. August 2019 and September 2019"*

25.55 On 12 March 2021, the Firm / R1 wrote to the FIO stating:

> "As to the designated account, the reason the balance was zero in August 2019 reconciliation was because this account was not even opened in August - it was opened in October 2019. The fact that it did in fact feature at all with zero balance on our August 2019 reconciliation was because those reconciliations were produced after October 2019 upon your specific request to show separate sheets identifying ledger balances, designated deposit balances, all cashbook balances and bank balances."

25.56 During the course of the investigation, 6 purported RBS bank statements were supplied by the R1 and R2 to the SRA in respect of the DDA. The SRA noted the following features in particular of these purported statements:

25.57 All of the statements state on their faces that they relate to an account with sort code 16-16-12 and account number 10924479, that is, the DDA.

25.58 Statements 1 and 2 both covered the period during which £300,000.00 was supposedly paid into the DDA on 18 October 2019. These two statements each contain a single transaction on 18 October 2019 but these entries are inconsistent with each other:

- Statement 1 states that the transaction type is *"EBP"* and the narrative is *"TRF FROM EDWARD MARSHALL CLIENT 413, FP 18/10/19 40, 59023111221168000R'*.

- Statement 2 states that the transaction type is *"CDD"* and the narrative is *"EDWARD MARSHALL, EDWARD MARSHALL"*. Further, the statement states at the top *"BROUGHT FORWARD"*, but, given that the account was supposedly opened in October 2019, it was unlikely that a bank statement covering 1 October 2019 to 30 September 2020 would state a balance had been brought forward.

25.59 Statement 6 covered the period 1 August 2020 to 31 August 2021. It showed a single transaction, supposedly on 31 August 2020. The transaction type is *"CDD"* and the narrative is *"BALANCE BROUGHT FWD"*. However, 31 August 2020 was the summer bank holiday in 2020 and it was unlikely that a transaction of any sort took place on this date.

25.60 In any event, there would be no reason for the bank to bring forward a balance to a date which falls neither at the beginning nor at the end of the period which the statement covers.

25.61 In its 24 August 2021 response to the 18 August 2021 Reg 66 notice RBS stated that "Please note from bank records, the account numbered 10924479 at sort code 161612

[that is, the DDA] returned as an invalid account". The bank statements provided by RBS with this response show the £300,000.00 being received in the client account on 17 October 2019 but do not record a transfer of £300,000.00 from the client account to the DDA on 18 October 2019 or at any other time.

25.62 In a 23 September 2021 letter to the SRA, RBS further confirmed that: "Please note, from bank records for account numbered 10924479 at sort code 161612 this is an invalid account number and sort code combination and not recognized within bank records as an open or closed account".

25.63 Accordingly, all of the bank statements were forged, since the DDA did not exist and never existed.

25.64 Further, during the course of the investigation, purported RBS bank statements were supplied by R 1 and R2 to the SRA in respect of the Firm's client account. Both of these statements purported to show:

- On 17 October 2019, a receipt of 2686,059.00 into the client account from Priority Law Limited and on 18 October 2019, a transfer of £300,000.00 out of the client account to the DDA.

- However, the statements for the same account provided by RBS to the SRA show:

    - On 17 October 2019, a receipt of £386,059.00 into the client account from Priority Law Limited, £300,000.00 less than in the statements provided by R1 and R2 and no transfer of £300,000.00 out of the client account to the DDA.

25.65 Accordingly, both bank statements were altered to show misleading information before they were provided to the SRA, since there was in fact no transfer of £300,000.00 to the DDA on 18 October 2019 or at any other time and the receipt from Priority Law Limited on 17 October 2019 was in fact £386,059.00, not £686,059.00. The purpose of inflating the receipt from Priority Law Limited in the forged statements was to ensure that the balances shown in the forged statements before and after 17-18 October 2019 would continue to match the balances that were actually present in the account, notwithstanding that the forged statements showed a £300,000.00 transfer out of the account which had not taken place.

25.66 During the investigation the following monthly reconciliations were supplied by R1 to the SRA. All the monthly reconciliations refer to the DDA, stating that it was held with RBS; had account number 10924479; and contained £300,000.00. The monthly reconciliations, provided by R1 to the SRA, were therefore misleading since the DDA did not exist and has never existed.

Misleading information provided by R1 to the SRA during the course of its investigation in relation to the 14 payments made from the client account to the Shah Account

25.67 On 2 August 2021, the FIO served a production notice under s 44B of the Solicitors Act 1974 on the Firm and R1, R2 and R3 (the "Third Production Notice") requiring them to provide, among other things:

> "In respect of each the transactions identified on the firm's RBS client account and detailed at Appendix A appended to this notice provide the following information: [...]
>
> 5. The bank coordinates (i.e. sort code and account number) for the receiving bank.
> 6. The account holder's name for the receiving bank.
> 7. Identify who authorised the payments to be made. Identify who made the payments. [...]
> 13. The RBS Bankline transaction reports [...]"

25.66 The transactions detailed at Appendix A to the Third Production Notice were the 14 payments out of the Firm's client account between 16 September 2019 and 13 April 2021.

25.67 On 16 August 2021, further to the Third Production Notice, the Firm wrote to the FIO, stating:

> '[Table setting out the 14 payments and, in each case, indicating the payment was made to an account other than the Shah Account.]
>
> Payment receipts of all of the above payments are attached herewith for your persual [sic]. Please note that all these payments were made via on-line commercial faster payment system and not by Bank Line - hence receipt format is not the same as that of the Bank Line receipts.
> The "Stamp Duty" or "HMRC" reference is incorrect, and the funds were in fact returned to the clients in their accounts - full details are on the receipts.
>
> We have double checked this and can report that the references were not corrected at the time of the payment and as most of these were repeat payments, in particular in the case of [CR] and Victor Assets, and unfortunately the wrong reference was quoted on the statement. The ledgers, however, are correct, and we were able to reconcile that with them and the files. Hence it took us this long to respond."

25.68 The 14 receipts attached to the letter each bore RBS's logo in the top-left corner and appeared to be a confirmation printed or downloaded from an online banking system. Each receipt matched the information given in the Firm's letter. However, the information in the letter and the receipts was misleading, because, RBS confirmed on 24 August 2021 that, contrary to the information provided by the Firm, in respect of all 14 of the payments, the payment was made to the Shah Account and for 12 of these payments, "The payment was conducted via Bankline with the User details of Mr Waqas Hassan".

25.69 Also on 24 August 2021, R1 emailed the FIO attaching a table of information. The table's rightmost column was headed "Authorised & Payment" and stated, in respect of the payment made on 19 February 2021: "This is not a Bankline payment and given that these payments were made some time ago, without a reference on the receipt, unlike Bankline receipts, it is not possible to identify whether it was Mr Goba or Mr

Hassan who authorised and/or made the payments or which ones were made by who. You nevertheless have the payment receipts."

25.70 The remaining rows of the column, concerning the other 13 payments, all stated "As above". This information was also misleading, in that, as confirmed by RBS on 24 August 2021, 12 of the payments were *"conducted via Bankline with the User details of Mr Waqas Hassan"*.

The Breaches of Rules and Principles

25.71 *Breach of Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles (2019)* At all material times, either: Principle 2 of the SRA Principles 2011 provided: "*You must: [...] act with integrity"* or Principle 5 of the SRA Principles (2019) provided: *"You act with integrity"*.

25.72 In Wingate and Evans v SRA, and Solicitors Regulation Authority v Malins [2018] EWCA Civ 366; [2018] 1 WLR 3969. ("Wingate"), Jackson LJ, giving the only substantive judgment, held that:

> "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. [...]
>
> The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards. [...]
>
> Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. [...]
>
> The duty to act with integrity applies not only to what professional persons say, but also to what they do. It is possible to give many illustrations of what constitutes acting without integrity. For example, in the case of solicitors: A sole practice giving the appearance of being a partnership and deliberately flouting the conduct rules: the Emeana case [2014] ACD 14. (ii) Recklessly, but not dishonestly, allowing a court to be misled: the Brett case [2015] PNLR 2. Subordinating the interests of the clients to the solicitors' own financial interests: the Chan case [2015] EWHC 2659 (Admin). (iv) Making improper payments out of the client account: the Scott case [2016] EWHC 1256 (Admin). (v) Allowing the firm to become involved in conveyancing transactions which bear the hallmarks of mortgage fraud (the Newell-Austin case [2017] Med LR 194. (vi) Making false representations on behalf of the client: the Williams case [2017] EWHC 1478 (Admin)."

25.73 In the circumstances, when set against the guidance given by the Court of Appeal in Wingate, R1, R2 and R3 actions lacked integrity. A solicitor or RFL acting with integrity and adhering to the ethical standards of the profession would not:

25.74 Make or permit to be made, improper payments out of the client account - example (iv) from Wingate - or permit a third party to direct how client money was handled as:

- R1 did in respect of Allegation 1.3
- R2 did in respect of Allegation 2.3; and
- R3 did in respect of Allegation 3.3;

Receive monies from a third party which had been mixed with client funds as a result of the improper payments he had made or permitted to be made out of the client account, as:

- R1 did in respect of Allegation 1.4; and
- R2 did in respect of Allegation 2.4; or

Provide incomplete and misleading information to the SRA during the course of the SRA's investigation into his conduct, as:

- R1 did in respect of Allegation 1.5; and
- R2 did in respect of Allegation 2.5.

25.75 *Breach of Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles (2019) (Maintenance of public trust in the profession)* At all material times, either: Principle 6 of the SRA Principles 2011 provided: "You must: [...] behave in a way that maintains the trust the public places in you and in the provision of legal services" or Principle 2 of the SRA Principles (2019) provided: "You act in a way that upholds public trust and confidence in the solicitors' profession and in legal services provided by authorised persons".

25.76 In the circumstances, R1, R2, R3 and R4's actions in respect of Allegations 1.1, 2.1, 3.1 and 4.1 undermined the trust the public placed in them, in the solicitors' profession, and in the provision of legal services. The public's trust will inevitably be undermined if they are aware of instances in which a solicitor or RFL permitted a firm of which he was a manager to have a client account shortage running into the hundreds of thousands of pounds.

25.77 R1, R2 and R3's actions further undermined the trust the public placed in them, in the solicitors' profession, and in the provision of legal services. The public's trust will inevitably be undermined if they are aware of instances in which improper payments are made from the client account; a solicitor or RFL receives monies which have been mixed with client monies; or a solicitor or RFL provides incomplete and misleading information to their regulator during the course of an investigation into their conduct.

25.78 *Breach of Principle 10 of the SRA Principles 2011 and Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019) (Protection of client assets)* - At all material times, either Principle 10 of the SRA Principles 2011 provided: "You must: [...] protect client money and assets" or Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019) provided: "You safeguard money and assets entrusted to you by clients and others."

25.79 By acting as they did:

- R1's actions set out in allegations 1.1 and 1.3;
- R2's actions set out in allegations 2.1, 2.3 and 2.4;

- R3's actions set out in allegations 3.1 and 3.3; and
- R4's actions set out in allegation 4.1;

failed to protect or safeguard their clients' money and assets and breached Principle 10 (2011) or Paragraph 4.2 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019).

25.80 Their clients' money and assets were not protected because:

- The existence of minimum client account shortages as at 1 January 2021 of £448,920.00 and as at 31 August 2021 of £472,230.00 necessarily means that the Firm had control of a total amount of cash which was less than it required to satisfy all of its liabilities to its clients. That created a clear risk that the Firm would not be able to satisfy all of its liabilities to its clients.

- Payments made out of the client account to Mr Shah without the relevant clients' authority to make such payments created a clear risk that the clients' money would not be returned to the clients. The same applies to the Respondents' permitting Mr Shah to direct how client money was handled and, in the case of the First and Second Respondents, their personal receipts of monies from the Shah Account which had been mixed with client monies.

25.81 *Breach of Paragraph 7.3 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019) (Duty to co-operate with the SRA).* At all material times, paragraph 7.3 of the SRA Code of Conduct for Solicitors, RELs and RFLs (2019) provided: *"You cooperate with the SRA, other regulators, ombudsmen, and those bodies with a role overseeing and supervising the delivery of, or investigating concerns in relation to, legal services."*

25.82 R1 and R2, as set out in allegations 1.5 and 2.5, breached this paragraph by providing incomplete and misleading information to the SRA during the course of its investigation into their conduct.

25.83 *Breach of Rule 20.1 of the SRA Accounts Rules 2011 and Rule 5.1 of the SRA Accounts Rules (2019) (Withdrawals of client money).* - At all material times, either: 97.1 Rule 20.1 of the SRA Accounts Rules 2011 provided: "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.";

or

25.84 Rule 5.1 of the SRA Accounts Rules (2019) provided:

"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."

25.85 R1 (as set out in allegations 1.1, 1.3 and 1.4); R2 (as set out in allegations 2.1, 2.3 and 2.4); the R3 (as set out in allegations 3.1 and 3.3) and R4 (as set out in allegation 4.1) breached Rule 20.1 of the SRA Accounts Rules 2011 and/or Rule 5.1 of the SRA Accounts Rules (2019) because:

25.86 Between 23 January 2019 and 13 April 2021, 86 payments, totalling £1,788,502.81, were made from the Firm's client account to the Shah Account.

25.87 The Respondents had no authority from their clients and no other good reason to make these payments from the client account to the Shah Account. In particular, none of the reasons why it would be permissible under Rule 20.1 or Rule 5.1 to withdraw client money applied to any of the 86 payments.

25.88 These matters were exemplified by the 14 payments made out of the client account to the Shah Account.

25.89 *Breach of the Accounts Rules: Rules 7.1 and 7.2 of the SRA Accounts Rules 2011 and Rule 6.1 of the SRA Accounts Rules (2019) duty to rectify breaches.* At all material times, either Rules 7.1 and 7.2 of the SRA Accounts Rules 2011 provided:

> "7.1 Any breach of the rules must be remedied promptly upon discovery. This includes the replacement of any money improperly withheld or withdrawn from a client account.
>
> 7.2 In a private practice, the duty to remedy breaches rests not only on the person causing the breach, but also on all the principals in the firm. This duty extends to replacing missing client money from the principals' own resources, even if the money has been misappropriated by an employee or another principal, and whether or not a claim is subsequently made on the firm's insurance or the Compensation Fund."

or

25.90 Rule 6.1 of the SRA Accounts Rules (2019) provided: "You correct any breaches of these rules promptly upon discovery. Any money improperly withheld or withdrawn from a client account must be immediately paid into the account or replaced as appropriate."

- R1 (as set out in allegation 1.2);
- R2 (as set out in allegation 2.2);
- R3 (as set out in allegation 3.2); and
- R4 (as set out in allegation 4.2) breached these rules in that the SRA saw no evidence that the minimum client account shortage was ever rectified by the Respondents, either promptly or at all after its discovery.

25.91 *Breach of Principle 8 of the SRA Principles 2011 and Paragraph 2.1 of the SRA Code of Conduct for Firms (2019) (Proper governance).* At all material times, either Principle 8 of the SRA Principles 2011 provided: "You must: [...] run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles" or Paragraph 2.1 of the SRA Code of Conduct for Firms (2019) provided:

> "You have effective governance structures, arrangements, systems and controls in place that ensure:
>
> (a) you comply with all the SRA's regulatory arrangements, as well as with other regulatory and legislative requirements, which apply to you;
> (b) your managers and employees comply with the SRA's regulatory arrangements which apply to them;
> (c) your managers and interest holders and those you employ or contract with do not cause or substantially contribute to a breach of the SRA's regulatory arrangements by you or your managers or employees;

(d) your compliance officers are able to discharge their duties under paragraphs 9.1 and 9.2 below."

- R1 (as set out in allegation 1.6);
- R2(as set out in allegation 2.6);
- R3 (as set out in allegation 3.4); and
- R4 (as set out in allegation 4.3) breached Principle 8 of the SRA Principles 2011 and Paragraph 2.1 of the SRA Code of Conduct for Firms (2019)

25.92 The Respondents were all managers of the Firm at the time of the conduct alleged. No firm run in accordance with proper governance and sound financial and risk management principles would have permitted, between 23 January 2019 and 13 April 2021, 86 payments, totalling £1,788,502.81, to be made from the Firm's client account to the Shah Account in circumstances where the relevant clients had not given their authority for the payments to be made and there was no other good reason for the payments to be made.

25.93 In particular, the Respondents failed to put in place effective governance structures, arrangements, systems and controls that ensured the outcomes under paragraphs 2.1(a)-2.1(d) of the SRA Code of Conduct for Firms (2019) were achieved, as evidenced by the matters already set out above.

Dishonesty

25.94 The test for dishonesty is set out in Ivey v Genting Casinos (UK) Ltd (t/a Crockfords Club) [2017] UKSC 67; [2018] AC 391 ("Ivey") per Lord Hughes at para 74:

> "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."

R1
Allegations 1.3 and 1.4

25.95 At all material times, R1 subjectively knew:

- None of the five clients who were associated with the 14 payments set out above had given authority for any of their monies to be paid to Mr Shah or were aware that their money had been paid to Mr Shah;

- There was no other good reason for these clients' monies to be paid to Mr Shah; and

- The 14 payments were made to the Shah Account.

25.96 R1's conduct in making, causing to be made, or permitting to be made the 14 payments was dishonest by the objective standards of ordinary decent people. An ordinary decent person would neither make, cause to be made, nor permit to be made a payment of client money to a third party in circumstances where the client was unaware the payment was being made to the third party, the client had not given authority to make such a payment, and there was no other good reason for the payment to be made.

25.97 Further, at all material times, R1 subjectively knew that between 22 June 2018 and 19 March 2020, he personally received 24 payments, totalling £32,430.00, made from the Shah Account. Despite being aware that payments of client money had been made to the Shah Account without authorisation or any other good reason, R1 did not seek to account to clients for any client monies that he received because of the 24 payments he received between 22 June 2018 and 19 March 2020 from the Shah Account.

25.98 R1's conduct in receiving these payments and not accounting for them to clients was dishonest by the objective standards of ordinary decent people. An ordinary decent person would, having received the payments, seek to account for them to the rightful owners.

Allegation 1.5

25.99 At all material times, R1 subjectively knew:

25.100 The DDA did not exist and had never existed. The 14 payments had been made to the Shah Account.

25.101 R1's conduct in providing incomplete and misleading information to the SRA during the course of its investigation, was dishonest by the objective standards of ordinary decent people. Ordinary decent people would not provide bank statements which had been forged to show the existence of an account which they knew did not exist or provide bank receipts which had been forged to show that payments were made to bank accounts different to those to which they knew the payments had in fact been made.

R2

Allegations 2.3 and 2.4

25.102 At all material times, R2 knew:

25.103 None of the five clients who were associated with the 14 payments had given authority for any of their monies to be paid to Mr Shah or were aware that their money had been paid to Mr Shah;

25.104 There was no other good reason for these clients' monies to be paid to Mr Shah and the 14 payments set out were made to the Shah Account.

25.105 R2's conduct in making, causing to be made, or permitting to be made the 14 payments was dishonest by the objective standards of ordinary decent people. An ordinary decent person would neither make, cause to be made, nor permit to be made a payment of client money to a third party in circumstances where the client was unaware the payment was being made to the third party, the client had not given authority to make such a payment, and there was no other good reason for the payment to be made.

25.106 Further, at all material times, R2 subjectively knew that between 3 January 2018 and 6 January 2021, he personally received 65 payments, totalling £166,940.37, made from the Shah Account. Despite being aware that payments of client money had been made to the Shah Account without authorisation or any other good reason, the Second Respondent did not seek to account to clients for any client monies that he received as a result of the 65 payments he received between 3 January 2018 and 6 January 2021 from the Shah Account.

Allegation 2.5

25.107 At all material times, R2 subjectively knew that the DDA did not exist and had never existed. R2's conduct in providing incomplete and misleading information to the SRA during the course of its investigation was dishonest by the objective standards of ordinary decent people. Ordinary decent people would not provide bank statements which had been forged to show the existence of an account which they knew did not exist.

26. The Respondents' Cases

Note: the evidence of R3 and R4 was taken out of turn and this is reflected in this part of the judgment

26.1 R1 and R2

26.1.1 Mr Goba and Mr Hassan had not engaged in the proceedings and neither had served an Answer to the allegations. Their respective positions with regard to the allegations against each of them was not known.

26.2 R4

26.2.1 Mr Arrey-Mbi gave evidence. He said he was a trusting person who had taken R1 at his word.

26.2.2 He confirmed that he had worked for the Firm from sometime in August 2018 to sometime in December 2020. Thereafter, he became a Consultant with the Firm until the Firm was subject to intervention.

26.2.3 He was not a Compliance Officer in the Firm. The terms of his employment barred him from having anything to do with the finances of the Firm and this could be seen from the fact that he was not a signatory to the Accounts of the Firm and did not have anything to do with the accounts of the Firm.

26.2.4 He had no supervisory role in the Firm except if authorised by R1 when R1 was unavailable. This never happened as R1was always around and never authorised him.

26.2.5 He was employed on a monthly salary of £1,000.00 increasing to £1,500, plus 50% of the costs on cases that he brought into Firm and worked on.

26.2.6 He said that when he had joined the firm in 2018 as a salaried partner he had signed a partnership agreement *(adduced in evidence)* which R1 had drafted and presented to him. The agreement was very clear in setting out that he, Mr Arrey-Mbi, had no true managerial role in the Firm as this was retained by R1. Under the partnership agreement he would only make decisions if called upon to do so by R1but this never happened. The Tribunal was referred to Clause 3 of the Partnership Agreement as follows:

> "**3. MANAGEMENT AND DECISION MAKING**
> PFG would be the principal decision maker and the supervisor, however, he may call upon BAAM, WH and SRH from time to time for their expertise and assistance. On occasions, when PFG is unavailable, BAAM may make the management decisions and in such decision making the interest of the FIRM would be the paramount consideration. Any decision made by BAAM against the interest of the FIRM would stand void. BAAM would assist PFG and other partners at the FIRM in the day to day running of the firm and would undertake such management duties as can reasonably be expected of a partner under the supervision of PFG."

26.2.7 His area of knowledge had been immigration, criminal and civil litigation, however, despite his lack of conveyancing knowledge, he agreed that it was probable that he had been brought into the Firm to ensure that it had the required number of solicitors for it to be included in lender conveyancing panels.

26.2.8 To the best of his information and recollection the Firm was investigated for a period of over three years before it was finally intervened by the SRA. He was never informed by the Owner/Principal or anyone of the reasons for the investigations and he was never a party to any investigation.

26.2.9 The SRA commenced disciplinary proceedings against the Partners of the Firm, and he was only brought into the matter more than a year after and only after the intervention and while he had an application at the SRA pending a decision to manage another Firm.

26.2.10 He was aware that the Owner/Principal of the Firm had been very honest about his role at the Firm and wrote to the SRA setting out that Mr Arrey-Mbi had had no Compliance, Administrative or Financial function in his office (Mr Arrey-Mbi adduced a copy of this e-mail from Mr Goba to the SRA dated 14 July 2022).

26.2.11 In cross-examination his attention was drawn to Clause 4 of the Partnership Agreement which set out:

> **"4. ACCOUNTING RECORDS AND ANNUAL ACCOUNTS**
> PFG would be the principal decision maker and the supervisor, however, he may call upon BAAM, WH and SRH from time to time for his assistance."

26.2.12 As a partner in the Firm it was put to him that he was responsible for the running of the Firm, including its finances. Mr Arrey-Mbi said that he had never been called upon to make any financial decisions and he had had nothing to do with the finances of the Firm; he never saw the accounts of the Firm and he had not known which bank the Firm had used.

26.2.13 Mr Arrey-Mbi confirmed that he was not interviewed by the SRA investigator and the only occasion he recalled when the investigator spoke to him was when the investigator wanted to speak to every member of the Firm. It had been a very casual conversation in which the investigator had asked for three randomly selected files which he glanced through and said that they raised no issues.

26.2.14 He said that he was a trusting person and that when he had withdrawn from the partnership he had not done so in writing and believed that R1 would do what was necessary to ensure his name was removed. Mr Arrey-Mbi said that he notified the SRA that he was no longer a partner of the Firm in December 2020. After stepping down as a partner he remained at the Firm as a consultant until he left.

26.3 R3

26.3.1 Mr Hussain attended on day three of the hearing and was permitted by the Tribunal to give evidence.

26.3.2 The Tribunal noted its earlier order made under Rule 20 of its 2019 rules and decided that on the basis he had now attended it was in the interests of justice to allow him to give his evidence, it being a matter for the Tribunal to decide what weight to place upon it.

26.3.3 He denied all the allegations made against him.

26.3.4 He said that he left the Firm in 2018 and he had not been involved with the Firm since leaving it. In fact, he had not worked as a solicitor since 2018 and had instead been working in the security industry on a full-time basis (56 hours a week).

26.3.5 He had sent evidence of his security work (employment contracts, payslips, and P60 covering the relevant period also adduced in the present proceedings before the Tribunal) to the Applicant and he was not sure why he had been included as a party to the proceedings.

26.3.6 He was not aware of investigation being conducted by the Applicant and he said that he had met, seen, or been interviewed and questioned by those undertaking the investigation.

26.3.7 On the day of intervention, he had not been at any of the Firm's and there was no evidence to suggest that he had had any dealings with the Firm since he left in 2018 and he only found out about the investigation and intervention afterward when the SRA/Gordons wrote to him sometime in December 2021.

26.3.8 Further, the SRA records were not updated to show his departure from the Firm in 2018 and he stopped being an RFL that year.

26.3.9 He did not have possession or control of any files, papers, wills, accounting records, diaries, logs of telephone calls, computer records, emails, or anything to do with the Firm relating to any of its present or former clients. The Applicant was fully aware of his position as his when it brought the recovery proceedings against the former partners of the Firm and erroneously included him in their action through Gordons LLP.

26.3.10 This matter was in the High Court where he attended and explained his position. The Judge accepted his account i.e., that he had left the firm in 2018 and the Judge removed him from those proceedings (Mr Hussain adduced the Notice of Discontinuance).

26.3.11 In cross-examination by Mr Hopkins, Mr Hussain said that he had been an immigration lawyer at the Firm. He said that he had never been called upon by R1 to make any management decisions.

26.3.12 It was put to him that Clause 7 of the Partnership Agreement stipulated that the partnership could only be dissolved by written agreement, yet Mr Hussain had not left the partnership following the service of written notice. Mr Hussain re-iterated that he had given oral notification of his resignation from the firm.

26.3.13 Mr Hussain denied that the signature on the Partnership Agreement was his signature and when asked why he had not mentioned this fact before he said that no one asked him and that before that day he had not seen the Partnership Agreement. Mr Hussain disputed that other examples of his signature found within the bundle were similar to the signature purported to be his on the Partnership Agreement. It was put to him that this was a convenient denial and that he was lying about it.

26.3.14 In response to a question from the Chair, Mr Hopkins confirmed that he was not suggesting the Tribunal embark upon an exercise to determine the authenticity of the signatures on the Partnership Agreement. However, it would be a matter for the Tribunal to assess on the balance of probabilities whether it accepted Mr Hussain's denial that the signature on the Partnership Agreement was his, considering the totality of the evidence and to employ its common sense. The Tribunal need not making a finding regarding the authenticity of the signature but as to whether Mr Hussain had entered into a binding partnership agreement with R1, R2 and R4.

26.3.15 Mr Hussain said that he had not actively told the SRA that he had left the Firm or of his decision to remain no longer as an RFL. Mr Hopkins said it appeared that the SRA had recorded Mr Hussain as being an RFL in the years 2020-2022 and to do so he must have paid the yearly fee. Mr Hussain said that he had not paid the fee.

26.3.16 It was put to him that the SRA records showed him as being a partner of the Firm and an FRL as far as it knew that was exactly what he was in 2020-2021. Mr Hussain said that he had trusted R1 to notify the SRA that he had left the Firm in 2018 and that R1 had told him that he had indeed notified the SRA.

26.3.17 It was put to Mr Hussain that when the Firm was intervened on 26 November 2021 his name had had been written on a list of current staff members by R2. He was asked to explain this anomaly given that he said he had left the Firm in 2018 and this would have been a strange mistake for R2 to have made given that on Mr Hussain's account he had left 3 years earlier. Mr Hussain said he could not account for R2's actions.

26.3.18 Mr Hussain pointed to his pay slips and records of being a security guard in the years 2018-2022. He had worked 72 hours per week on that job and he had not worked for the Firm. He had no idea why he had been included in the investigation and he was innocent.

26.3.19 Mr Arrey-Mbi had no questions for Mr Hussain in cross-examination.

27. Closing Submissions

27.1 R3

27.1.1 Mr Hussain repeated that he had not signed the Partnership Agreement. He was looking to the Tribunal for justice.

27.2 R4

27.2.1 Mr Arrey-Mbi said that he and Mr Hussain did not face allegations of dishonesty. The central claim against him was that there was a shortfall on the client account which he did not rectify. However, he had had no ability to do so as he had not been a signatory to the Firm's account (client or office) and did not sign or submit any of the accounts.

27.2.2 He was merely a salaried partner and the terms of the Partnership Agreement excluded him from any active management decisions unless called upon to do so by R1, and this never happened.

27.2.3 He had had no access to the Firm's accounts at any stage and he was not responsible for the shortfall or any shortfall. He was 'passive' within the Firm, and he had had no management role and the Firm, which was controlled and managed by the owner, R1.

27.2.4 None of his cases were the cause of any complaints or a reason for intervention and none of his cases caused or resulted in any shortfall or intervention and he was not privy to the cases that caused the Firm's closure.

27.2.5 He was never questioned or interviewed in connection with the allegations.

27.2.6 It was wrong to say he had not complied with his with my regulatory obligations. He had left the salaried partnership almost a year before the firm was intervened. He had updated his status with the Firm and the SRA records were also duly updated.

27.3 Applicant's Submissions on Matters of Law

27.3.1 Mr Hopkins said:

"As a matter of law when a partnership adds or deletes a member the old partnership is extinguished and the new one comes into being."

27.3.2 The Tribunal did not need to find that any of the Respondents were *de jure partners* but that they were held out as partners of the Firm and thereby they fell within the relevant rules.

27.3.3 Lack of authority over the accounts or lack of knowledge generally were matters of mitigation. They were held out as partners, and they should have exercised the proper control over the Firm.

28. The Tribunal's Findings

28.1 The Tribunal applied the civil standard of proof. The burden of proof lay with the SRA and the Respondents were not obliged to prove anything.

28.2 The Tribunal carefully considered the evidence it had heard and read and it observed that its task in determining the allegations was made more difficult in circumstances where R1 and R2 had not engaged with the proceedings.

28.3 *R1 and R2 - Prince Fomba Goba and Waqas Hassan*

28.3.1 In circumstances where R1 and R2 had failed to send or serve an Answer in accordance with the standard directions, give evidence at a substantive hearing or submit themselves to cross-examination the Tribunal decided to draw an adverse inference from R1 and R2's failure pursuant to Rule 33 of the Solicitors (Disciplinary Proceedings) Rules 2019.

28.3.2 The Tribunal considered all the evidence very carefully but it could find no evidence which negated the case against R1 and R2 and which would cause the Tribunal to conclude that the Applicant had not established its full case against each of R1 and R2 on the balance of probabilities. Accordingly, the Tribunal found proved to the requisite standard the factual matrix against R1 and R2 with respect to all the allegations each faced.

28.3.3 Having found the facts proved the Tribunal next considered the alleged breaches of the Principles, and applicable rules. Again, the Tribunal found, on the balance of probabilities, all breaches proved against R1 and R2, including dishonesty, for the reasons which had been set out by the Applicant.

28.3.4 In making its finding on dishonesty the Tribunal applied the test in Ivey.

R1

1.1	Permitting a minimum client account shortage of £472,320.00 to exist as at 31 August 2021	Proved
1.2	By failing promptly to rectify the minimum client account shortage as at 31 August 2021, or thereafter, he breached any or all of: Rules 7.1 and 7.2 of the SRA Accounts Rules 2011; and Rule 6.1 of the SRA Accounts Rules 2019.	Proved
1.3	Between 16 September 2019 and 13 April 2021, he:	
1.3.1	Made, caused to be made, or permitted to be made, without authority from the relevant clients or any other good reason, 14 payments from the Firm's client account, totalling £172,320.00, to a bank account controlled by Yawar Ali Shah, who was not a member, partner, employee, or consultant of the Firm	Proved
1.3.2	Permitted Mr Shah to direct how client money was handled	Proved
1.4	Between 22 June 2018 and 19 March 2020, he personally received 24 payments, totalling £32,430.00, from Mr Shah's bank account into which client monies had been paid.	Proved
1.5	During the course of the SRA's investigation into his conduct, by providing the SRA's Forensic Investigation Officer with forged documents and incomplete and misleading information.	Proved
1.6	By failing to comply with his professional and regulatory obligations to ensure that the firm was run with proper or effective systems and sound financial and risk management principles, he breached either or Principle 8 of the SRA Principles 2011; and Paragraph 2.1 of the SRA Code of Conduct for Firms 2019.	Proved
Dishonesty re: 1.3; 1.4; 1.5		Proved

R2

2.1	Permitting a minimum client account shortage of £472,320.00 to exist as at 31 August 2021	Proved

2.2	By failing promptly to rectify the minimum client account shortage as at 31 August 2021, or thereafter, he breached any or all of Rules 7.1 and 7.2 of the SRA Accounts Rules 2011; and Rule 6.1 of the SRA Accounts Rules (2019).	Proved
2.3 2.3.1	Between 16 September 2019 and 13 April 2021, he: Made, caused to be made, or permitted to be made, without authority from the relevant clients or any other good reason, 14 payments from the Firm's client account, totalling £172,320.00, to a bank account controlled by Yawar Ali Shah, who was not a member, partner, employee, or consultant of the Firm	 Proved
2.3.2	Permitted Mr Shah to direct how client money was handled	Proved
2.4	Between 22 June 2018 and 19 March 2020, he personally received 24 payments, totalling £32,430.00, from Mr Shah's bank account into which client monies had been paid.	Proved
2.5	During the course of the SRA's investigation into his conduct, by providing the SRA's Forensic Investigation Officer with forged documents and incomplete and misleading information.	Proved
2.6	By failing to comply with his professional and regulatory obligations to ensure that the firm was run with proper or effective systems and sound financial and risk management principles, he breached either or Principle 8 of the SRA Principles 2011; and Paragraph 2.1 of the SRA Code of Conduct for Firms (2019).	Proved
Dishonesty re: 2.3; 2.4; 2.5		Proved

28.4 *R3 - Syed Rafaqat Hussain*

28.4.1 The Tribunal found Mr Hussain to be a credible witness and that he had been naïve with respect to the trust he had placed in R1. He should have checked directly with the SRA that it held accurate information about him rather than relying upon R1's assurances.

28.4.2 Mr Hussain appeared genuinely bemused by the events which had led him to the Tribunal and he had provided an account, backed up with evidence, which had been consistent throughout, including the proceedings before the High Court.

28.4.3 The Tribunal considered the evidence Mr Hussain had adduced before it concerning his employment as a security guard. This material demonstrated that he had started his security work in 2017 on a trial basis for 6 months and thereafter he went full time. This evidence, which included payslips covering the period indicated that Mr Hussain would not have been working at the Firm or present in any capacity during the material time set out in the allegations.

28.4.4 The Tribunal found the payslip, P60 and his work contract with the security company employer to be conclusive and persuasive evidence and material capable of negating the allegations.

28.4.5 The Tribunal noted Mr Hussain's denial that the signature on the Partnership Agreement was his. In any event, this was perhaps nullified by the Tribunal's acceptance that he had been no position to permit or prevent any action of R1 and R2 given he was no longer working in any capacity with the Firm and Mr Hussain was not involved in its work within the period set out in the allegations against him.

28.4.6 However, notwithstanding this finding the Tribunal considered the essential issue was not whether the signature was genuine (upon which it made no finding) but whether the Partnership Agreement itself was a *bona fide* document to bind R3 and R4 into a true, *de jure* partnership with R1 and R2.

[The Partnership Agreement is considered in more detail below with respect to R4, Mr Arrey-Mbi]

28.4.7 The Tribunal did not find any of the SRA's allegations concerning Mr Hussain to be proved in accordance with the civil standard of proof.

3.1	Permitting a minimum client account shortage of £472,320.00 to exist as at 31 August 2021	Not proved
3.2	Failing promptly to rectify the minimum client account shortage as at 31 August 2021, or thereafter	Not proved
3.3	Between 16 September 2019 and 13 April 2021, he:	
3.3.1	Made, caused to be made, or permitted to be made, without authority from the relevant clients or any other good reason, 14 payments from the Firm's client account, totalling £172,320.00, to a bank account controlled by Yawar Ali Shah, who was not a member, partner, employee, or consultant of the Firm; and	Not proved
3.3.2	Permitted Mr Shah to direct how client money was handled.	Not proved
3.4	Failing to comply with his professional and regulatory obligations to ensure that the firm was run with proper or effective systems and sound financial and risk management principles, he breached either or both of:	Not proved

28.5 *R4 - Bright Arrey Arrey-Mbi*

28.5.1 The Tribunal considered Mr Arrey-Mbi a credible witness. He too appeared to the Tribunal to be naïve. The Tribunal considered that he too had been duped by R1 who had exploited Mr Arrey-Mbi's credulity.

28.5.2 Mr Arrey-Mbi accepted that he had signed the document which purported to be a Partnership Agreement and appeared, on paper, to be a salaried partner.

However, the Tribunal accepted his explanation that that was all he was a *'paper partner'*. However, in reality he had never been a true partner, because he had never had any managerial authority or power. The firm was entirely controlled by R1.

28.5.3 The Tribunal found that Clause 3 and 4 of the purported Partner Agreement *(set out above)* were the keys to understanding that it was merely a device - an instrument to present the appearance of a partnership, in order to dupe mortgage lenders. Mr Arrey-Bright had been precluded both in practice and by the terms of the agreement from exercising the managerial control over the Firm which would have been expected of a true partner. All power and control had been retained by R1, no doubt for the benefit of Mr Shah, a convicted criminal person. The agreement was a sham.

28.5.4 The purported Partnership Agreement was a-piece with R1's dishonest *modus operandi.* It was clear from all the evidence that he had never had any intention R3 or R4 or anyone else to assume any authority or control within the Firm other than, perhaps, Mr Shah, whose name did not appear on the document. Therefore, it was more probable than not that, irrespective of the words on the page and signatures set out at its foot, this was a document upon which no reliance could be placed as representing a true partnership in any normal sense – it was a sham.

28.5.5 The Tribunal found that Mr Arrey-Mbi had not, in reality, been a partner of the firm, salaried or otherwise and, therefore, it did not find any of those allegations concerning him proved to the required, civil, standard.

4.1	By permitting a minimum client account shortage of £448,920.00 to exist as at 1 January 2021	Not proved
4.2	Failing promptly to rectify the minimum client account shortage as at 1 January 2021, or thereafter	Not proved
4.3	By failing to comply with his professional and regulatory obligations to ensure that the firm was run with proper or effective systems and sound financial and risk management principles	Not proved

Previous Disciplinary Matters

29. None.

Mitigation

30. None.

Sanction

R1 and R2 were considered together, given the similar factual findings and breaches of the relevant Principles and rules.

31. R1 and R2 had been found to have been dishonest. As stated in Section C of the Tribunal's Guidance Note on Sanction (10th Edition/June, unless there were exceptional

circumstances, the judgment of the Divisional Court in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 (Admin) required that these Respondents be struck off the Roll. There were no exceptional circumstances and neither R1, nor R2, had engaged in these proceedings to suggest that there were any.

32. In Sharma the Divisional Court had held that:

> "save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll….that is the normal and necessary penalty in cases of dishonesty... There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances… In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary… or over a lengthy period of time …whether it was a benefit to the solicitor, and whether it had an adverse effect on others."

33. The Tribunal observed that this had not been a fleeting or momentary lapse of judgment, but it had been repeated misconduct involving dishonesty and mis-direction by the use of forged documents.

34. The Tribunal therefore ordered that R1 and R2 be struck off the Roll.

35. the profession had no place for dishonest solicitors.

Costs

36. Neither Mr Hussain nor Mr Arrey-Mbi made applications for their costs.

37. Mr Hopkins applied for the Applicant's costs to be paid by Mr Goba and Mr Hassan in the sum of £64,109.00.

38. Mr Hopkins said that the proceedings had been brought by the Applicant and it was right that it should recover its costs in doing so. The hours claimed by the Applicant were not excessive were reasonable and proportionate in the circumstances of the case and that the Applicant was entitled to its costs save for a reduction to mark that the case had not taken 5 days as previously anticipated but only 3 days.

39. Further, the bulk of the investigation, in round terms about 90%, had been in respect of the misconduct of R1 and R2.

40. The Tribunal decided to assess costs summarily.

The Tribunal's Decision on Costs

41. The Tribunal noted the following factors:

- the substantive hearing had taken less time than had been anticipated;

- neither Mr Goba nor Mr Hassan had attended the hearing and they had provided no evidence as to their means;

- there had been no witnesses, save for Mr Hussain and Mr Arrey-Mbi;

- this had been a relatively complex case to investigate, and it had raised issues relating to the nature of salaried partnership which the Tribunal had to determine within the factual nexus of this case.

42. The Tribunal found that the costs claimed by the Applicant were reasonable and proportionate subject to a reduction for the fewer days the substantive hearing had taken to conclude and also to reflect the 10% of the investigation/ prosecution costs which related purely to the allegations concerning R3 and R4 which had been dismissed.

43. The Tribunal therefore ordered Mr Goba and Mr Hassan to pay the Applicant's costs in the sum of £54,905.00 on a joint and several basis.

Statement of Full Orders

44. The Tribunal Ordered that the Respondent, PRINCE FOMBA GOBA, 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 £54,905.00, such costs to be paid on a joint and several basis with the Second Respondent.

45. The Tribunal Ordered that the Respondent, WAQAS HASSAN 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 £54,905.00, such costs to be paid on a joint and several basis with the First Respondent.

46. The Tribunal Ordered that the allegations against SYED RAFAQAT HUSSAIN, solicitor be DISMISSED. The Tribunal further Ordered that there be no Order as to costs.

47. The Tribunal Ordered that the allegations against BRIGHT ARREY-MBI, solicitor, be DISMISSED. The Tribunal further Ordered that there be no Order as to costs.

Dated this 24th day of August 2023
On behalf of the Tribunal

JUDGMENT FILED WITH THE LAW SOCIETY
24 AUG 2023

A Ghosh

A Ghosh
Chair