

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12499-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

RAJINDER HEER

Respondent

Before:

Mr M N Millin (in the Chair)

Mr A Horrocks

Mrs S Gordon

Date of Hearing: 19 February 2024

Appearances

Joshua Bold, barrister of the Solicitors Regulation Authority Limited for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent, Rajinder Heer, made by the SRA are that, while in practice as a Solicitor at Coventgate Law Limited (“the Firm”), he:
 - 1.1 Between 11 October 2021 and 22 February 2022, failed to maintain qualifying insurance whilst continuing to undertake activities in connection with private legal practice. In doing so he breached all or any of the following:

Principles 2, 5 and 7 of the SRA Principles 2019, and Rules 2.1, 2.4 and 4.2 of the SRA Indemnity Insurance Rules 2019.

PROVED

- 1.2 Between 9 July 2021 and 22 February 2022, gave misleading information to any or all of the following parties:
 - 1.2.1 to the SRA on the number of live matters that the firm were working on / had worked on, and in his response to the Production Notice;
 - 1.2.2 to the Intervention Agents on the number of live matters at the time of intervention;
 - 1.2.3 to his clients, by omitting to tell them that the firm did not hold appropriate insurance;
 - 1.2.4 to third-party solicitors that the firm were still trying to obtain authorisation of a new firm.

In doing so he has breached any or all of the following:

Paragraphs 1.4 and 7.4(a) of the Code of Conduct for Solicitors/REs and RFLs 2019 and Principles 4 and 5 of the SRA Principles 2019.

PROVED

- 1.3 Failed to produce or maintain proper books of account, including appropriately recording dealings with client money, completing client account reconciliations, and obtaining Accountants’ Reports. In doing so he has breached any or all of the following:

For conduct before 25 November 2019:

Rules 29.2(a)/29.12/32A.1 of the SRA Accounts Rules 2011

Principles 6, 8 and 10 of the SRA Principles 2011

For conduct on or after 25 November 2019:

Rules 8.1(c)/8.3/12.1 of the SRA Accounts Rules 2019

Principle 2 of the SRA Principles 2019

Paragraph 4.2 of the Code of Conduct for Solicitors, REs and RFLs 2019

PROVED

Executive Summary

2. Mr Heer owned and ran the Firm from 2018-2022. In 2021 he found himself unable to obtain professional indemnity insurance. The SRA Indemnity Insurance Rules (“SIIR”) made clear provision for what should happen in those circumstances, which ultimately would have required Mr Heer to close the Firm. Mr Heer did not do so and continued acting for clients. He attempted to set up a new firm but was unable to obtain authorisation. The Tribunal found that Mr Heer not only breached the SRA Indemnity Insurance Rules but that he deliberately and dishonestly concealed the position from the SRA, the intervention agents, a third-party firm of solicitors and his clients. The Tribunal also found multiple breaches of the SRA Accounts Rules.
3. Mr Heer did not engage with the proceedings and did not attend the hearing.
4. The Tribunal found all Allegations proved in full.

Sanction

5. Mr Heer was [struck of the Roll of solicitors](#) and was ordered to pay costs in the sum of £10,966.36.

Documents

6. The Tribunal considered all of the documents in the case which were contained in an electronic bundle.

Preliminary Matters

Application to proceed in absence

7. Mr Heer did not attend the hearing and was not represented. Mr Bold applied to proceed in his absence.
8. Mr Bold told the Tribunal that Mr Heer had been served with the proceedings. His only engagement had come by way of an email to the Tribunal dated 22 November 2023, in which he sought an application for an adjournment of the Case Management Hearing (CMH) that had been listed for 23 November 2023. The date of that CMH had been contained within the standard directions, which had also contained the date of the substantive hearing. The CMH had not been adjourned and Mr Heer was sent the Memorandum following the hearing. The email from Mr Heer had referred to health difficulties but had provided no details and no evidence relating to any such difficulties had been served.
9. Mr Bold submitted that Mr Heer had demonstrated a history of non-compliance, and he invited the Tribunal to proceed in his absence. Mr Bold confirmed that Mr Heer did not currently hold a practising certificate, though he remained on the Roll.

The Tribunal's Decision

10. The Tribunal considered the representations made by Mr Bold. The Tribunal was satisfied that Mr Heer was aware of the date of the hearing and Rule 36 of the Solicitors (Disciplinary Proceedings) Rules 2019 (“SDPR”) was therefore engaged. The Tribunal had regard to the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which states:

“In exercising that discretion, fairness to the defence is of prime importance but fairness to the prosecution must also be taken into account. The judge must have regard to all the circumstances of the case including, in particular:

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

11. In GMC v Adeogba [2016] EWCA Civ 162, Leveson P noted that in respect of regulatory proceedings there was a need for fairness to the regulator as well as a respondent. At [19] he stated:

“...It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had

deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed”.

Leveson P went on to state at [23] that discretion must be exercised:

“having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account”.

12. The Tribunal noted that Mr Heer had not engaged with the proceedings at all, save for the single email of 23 November 2023. He had not complied with any directions, including the requirement to serve an Answer to the Allegations. Mr Heer had not sought an adjournment of the substantive hearing and had provided no evidence to suggest that he was unable to attend. The Tribunal was therefore satisfied that he had voluntarily absented himself. Mr Heer faced serious allegations and there was a public interest in their resolution without unjustified delay. The Tribunal was satisfied that there was nothing to be gained by adjourning the matter as there was no indication that Mr Heer would attend any future hearing date. In those circumstances, the Tribunal agreed to grant Mr Bold’s application.

Anonymisation

13. Mr Bold also applied for the former clients of Mr Heer to be anonymised in the hearing and in the written Judgment. This was on the basis that they were entitled to the protection of legal professional privilege (LPP), which they had not waived.

The Tribunal’s Decision

14. In circumstances where LPP had not been waived, it was absolute and must be respected, as emphasised in SRA v Williams [2023] EWHC 2151 (Admin). The Tribunal therefore granted Mr Bold’s application.

Factual Background

15. Mr Heer was admitted to the Roll-on 1 November 2013. At the time of the alleged misconduct, he was one of three directors and the main shareholder of the Firm, which was authorised as a licensed body on 21 May 2018. The remaining two directors were not solicitors. He held the roles of both Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA).
16. On 5 January 2022, a forensic inspection was commissioned by the Applicant. The forensic investigation officer (FIO) interviewed Mr Heer on 12 January 2022 and produced a forensic investigation report (FIR) on 25 January 2022.
17. The FIR identified that the Firm had continued to act on three client matters following the end of the Cessation Period as defined in the SIIR (“CP”). Mr Heer was unable to provide any books of account, client reconciliations or accountant’s reports during the

inspection. The Firm retained £79,374.18 in the client account but it could not be determined which clients these monies related to.

18. On 18 February 2022, a decision was made by the SRA to intervene into the Firm, and the intervention was effected on 22 February 2022.

19. Allegation 1.1

19.1 The Firm held a certificate of professional indemnity insurance with AmTrust Europe Limited until 10 May 2021. The Firm had obtained an extension of this insurance coverage until 10 July 2021. On 9 July 2021, Mr Heer emailed the SRA and stated “*please note that we are entering the run-off period as of 10 July 2021. We understand that we will no longer be permitted to take any new instructions (which we will comply with).*”

19.2 On 10 July 2021, the Firm’s insurance expired, and it was unable to obtain alternative coverage. It therefore entered the Extended Policy Period (“EPP”). The SRA’s guidance on ‘Professional Indemnity’ stated:

“The EPP makes sure that further indemnity cover is provided by the last-named insurer for the firm for a further 90 days. The firm can use this to secure insurance, however, after 30 days it cannot take on any new business’. Any firm still in the EPP after the 30 days enter the Cessation Period.”

19.3 On 5 October 2021, in an email to the SRA, Mr Heer confirmed he had been unable to secure further insurance and the Firm’s CP would expire shortly. Mr Heer told the SRA:

“I would envisage that other than the litigation files, most will be completed by the end of December 2021”.

19.4 Mr Heer also told the SRA that the Firm had reapplied for authorisation as a new entity.

19.5 On 10 October 2021 the CP ended, and the Firm was unable to obtain alternative insurance. From this date on, the Firm was no longer permitted to practise and was not insured to do so. Under the SIIR, the Firm was required to cease to practise promptly and by no later than the expiry of the CP.

19.6 On 21 October 2021, the SRA wrote to Mr Heer stating that the Firm’s insurance expired on 8 October 2021 (it had in fact done so on 10 October 2021). The letter asked for confirmation that no work was being conducted or, if the Firm was still practising, for details of those matters. On 5 November 2021, Mr Heer responded. The details of this exchange of correspondence is set out below in relation to Allegation 1.2.

19.7 On 24 November 2021, Mr Heer’s application for new entity, Stratford & Park Law Ltd, to be authorised was closed as Mr Heer had been unable to provide the information needed, including evidence that the new firm could obtain professional indemnity insurance.

19.8 On 21 December 2021, the SRA were contacted by Harrison Clark Rickerbys Solicitors (HCR) who were acting in the purchase of a property in which the Firm was acting for the seller. HCR queried the status of the Firm, having received an email from Mr Heer that day stating:

“I am prepared to give an undertaking, which will be moved to the new entity when it is authorised to allow you to pay the completion sums directly to our clients or resign those undertakings within 2 working days of authorisation of the new entity to give you comfort”.

19.9 The same day, an SRA investigation officer spoke to Mr Heer, and he confirmed that he had been acting for the seller but that this was a “one off” and that he, “has not acted on any other matter”.

19.10 The SRA identified a number of client matters in relation to this Allegation. Client I is used as an example in this Judgment as she made a witness statement in relation to this matter. Client I was a client of the Firm and had the following four live matters at the time of intervention:

- (a) A neighbour dispute over trees and a complaint to the local council. The file showed correspondence in early February 2022 on a council visit to Client I’s property. The final email from Mr Heer, dated 9 February 2022, was to the council inspector confirming that Mr Heer would be in attendance at the visit, which was scheduled for 15 February 2022.
- (b) A dispute with a plumbing and heating company. The file showed the Firm continued to act on this matter post the CP, involving court proceedings which were due to take place in January 2022. Monies on account were requested on 18 January 2022 and a corresponding payment of £600 was noted on the client account.
- (c) A dispute with a landscaper. The Firm were actively contacting potential experts in November 2021 and February 2022.
- (d) A dispute with a training provider. The Firm began work on this matter before expiry of the CP in October 2021, with a hearing set to take place in May 2022. The Firm continued to act on this matter until intervention.

19.12 In her witness statement, Client I stated:

“5. At no time prior to 22 February 2022 did Mr Heer tell me either verbally or in writing that:

a. the firm were having difficulties with obtaining insurance

b. the firm did not have insurance in place

c. he was attempting to obtain authorisation of a new firm, nor seek my consent to transfer my files to any new firm

d. the firm needed to close or was in the process of closing.”

19.13 The SRA also relied on a witness statement of a trainee solicitor, who stated as follows:

“3. Around September 2021, at a meeting with my colleagues, Mr Heer told us that there were issues in getting indemnity insurance for the firm. Mr Heer said his plan was to shut the firm and open a new entity called Stratford & Park. There were many property transactions which were due to complete but kept getting pushed back. He said that by opening a new firm he would be able to obtain insurance and there would be no lapse in employment.

4. Sometime before December 2021, we were then told by Mr Heer that he was having difficulty in obtaining insurance. He said that we could continue to work on existing transactions with run-off insurance, but the firm would not be able to take on new matters. I was not told of any cut-off point where the firm would have to close. He gave the impression that the new entity would be in place at any moment.”

20. Allegation 1.2

20.1 The SRA’s case was that Mr Heer had misled them, the intervention agents, client and third parties on a variety of matters surrounding the insurance issue.

20.2 In relation to the allegation that Mr Heer had misled the SRA, the SRA relied on a letter dated 21 October 2021 that it had written to Mr Heer informing him that his conduct was under investigation. The letter contained the following relevant passages;

“To help me with our investigation, please can you provide me with the following information by 27 October 2021:

1. As the cessation period for Professional Indemnity Insurance expired on 8 October 2021, please confirm that no work is being conducted on any client matter (any such work must cease immediately upon the cessation period ending). If work is still being conducted after 8 October 2021, please provide details of the client matters involved. Have those clients been informed the work conducted does not have the benefit of professional indemnity insurance?

2. Provide a client matter listing for open client matters as at the date the firm closed (10 July 2021) and also an up to date client matter listing.

3. A list of archived files together with destruction dates. What arrangements are in place for the storage of archived files. If a company is used, please provide those details as well as how the storage will be paid for.

4. Provide a copy of the latest client account bank statement(s).

5. Provide a copy of the latest bank reconciliation conducted.

6. Explain how clients were informed about the firm’s closure together with a sample copy of any letter/email used to explain to clients.

7. Please provide details of the clients who have transferred instructions since the firm closed. Of the clients who have not yet transferred instructions, have they been invited to transfer instructions?

8. Confirm the run-off cover for professional indemnity insurance has now been paid."

- 20.3 The SRA also relied on the attendance note of a telephone conversation with Mr Heer on 25 October 2021. The note read as follows:

"Mr Heer confirmed he has about 100 client matters he is in the process of writing to the client saying instruct a new firm or he will try and arrange local firm to act. He confirmed he has done no legal work on these files at all and has not done so since well before 8 October 2021. I queried why he was not sending a standard letter to all remaining clients explaining the current situation (including that he has applied to the SRA for a new firm to be authorised). Then clients would be fully informed about the closure of old firm and could choose to wait for new firm to be authorised or instruct new firm.

He confirmed there is approx. £20,000 in client account. Bearing in mind the firm closed 3 months ago he needs to sort out what is client money and what is office money if there are outstanding invoices. He wonders whether old firm can still invoice. I could not see why not but suggested he obtain definitive advice from Ethics. At same time he can see if Ethics will help him with what he should be telling clients about the closure of old firm and that he is waiting for new firm to be authorised. He will contact Ethics today. If he agrees a letter to go out to clients, I will need a copy of that letter.

He has paid tranche 1 and 3. He still needs to pay tranche 2 next week and then he will be able to get insurance for his new firm. He needs to send in the FCN even though he cannot close client account just yet. He will do so today."

- 20.4 As at 25 October 2021, Mr Heer was acting on at least three client matters. He had completed on the Client B purchase on 12 October 2021.

- 20.5 Mr Heer had replied to the letter of 21 October 2021 on 5 November 2021. In response to Question 1, Mr Heer replied:

"Confirmed. I would add that we have been trying to gather in all of our outstanding invoices since 12 October 2021."

- 20.6 The SRA and Mr Heer spoke on the telephone on 21 December 2021 and the attendance note of that call included the following:

"I asked if he was working on any matters. He admitted to acting for a seller. The purchaser's solicitors were about to send completion money yesterday but found out Coventgate had closed. They have not sent the money. He thought he could act once the runoff had been paid in full on existing matters but not new

instructions. He has now realised since speaking to the purchaser's solicitor and checked the rules that he cannot proceed.

I explained he is in breach and should not be acting on any matters from 8 October 2021 (end of the cessation period) and in doing so he has acted without insurance. He needs to cease any further work on this matter immediately. He says he has turned new enquiries away.

He confirmed this was a one off and has not acted on any other matter.

I asked about receipt of money relating to this matter. He thinks he rec'd some money in June when the firm was still open and that was that."

20.7 As at 21 December 2021, Mr Heer had acted on at least three client matters. He had completed on Client A's sale five days earlier on 16 December 2021.

20.8 In relation to the allegation of misleading the intervention agents, the SRA relied on an attendance note of the agent's attendance at Mr Heer's office on 22 February 2022. This note included the following:

"HA asked how many files were at the office and if there were any live files Mr Heer stated that there are none. They were all removed previously, and Mr Ferrari from the SRA had a full list. JEO asked if this included archived files. Mr Heer stated that all files were stored off-site, and he needed to make payment for the archive storage on the other side of Rochester in order to access them.

JEO asked if there was any live or ongoing matters at all, for example any conveyancing which is in its final stages. Mr Heer stated that there may be a few files that have loose ends or requisitions. HA explained that we would consider these to be live files. Mr Heer went on to state that on the [Client B] file the TR1 needs to be certified and this is required for [Client B] to sell, but this was the only matter he could think of."

20.9 In relation to the allegation of misleading third parties, the SRA relied on the email to HCR dated 21 December 2021 referred to above.

20.10 In relation to the allegation of misleading clients, the SRA's case was that none of the clients referred to in the FIR or Client I were told that Mr Heer had no insurance. The SRA relied on Client I's witness statement, referred to above.

20.11 In his interview on 12 January 2022, Mr Heer admitted accepting new instructions during the CP on the matter of Client B and completing on Client A's matter after the end of the CP on 16 December 2021.

21. Allegation 1.3

21.1 The FIO was unable to calculate whether the Firm held sufficient funds in the client bank account to meet all its liabilities to clients as at the extraction date of 30 November 2021 Mr Heer was unable to produce:

- any cash book or client matter listings;
- any client account reconciliations;
- any accountant's reports from when the Firm had opened in 2018.

21.2 In the interview on 12 January 2022, Mr Heer confirmed he was still not able to provide these documents. The FIO asked Mr Heer:

“And you’ve never actually been provided with any information by R & B Accountancy Services to show what they’ve done?” to which Mr Heer replied, *“No”*.

21.3 The SRA's case was that the Firm's accounts were not compliant at any stage in the period from 2018 to 2022.

Findings of Fact and Law

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

23. Allegation 1.1

Applicant's Submissions

23.1 Mr Bold submitted that members of the public would expect a firm of solicitors to provide legal services in compliance with its regulatory obligations, including having professional indemnity insurance in place. The public would not expect Mr Heer to put his clients at risk by continuing to trade without appropriate insurance. Mr Bold submitted that by operating the Firm without appropriate insurance, Mr Heer had undermined the trust the public placed in the profession and the provision of legal services and that he had therefore breached Principle 2 of the SRA Principles 2019. He had also breached Principle 7 as it was not in clients' best interests for the Firm to continue to act for them without insurance.

23.2 Mr Bold further submitted that Mr Heer had lacked integrity. He relied on the test set out in Wingate v Solicitors Regulation Authority v Malins [2018] EWCA Civ 366. Mr Bold submitted that by continuing to practise without insurance, Mr Heer had subordinated the interests of his clients to his own and the firm's interests. He had continued to charge fees for this work for the benefit of the firm, and himself as director.

23.3 Mr Bold submitted that the ethical standards of the profession had been breached by Mr Heer continuing to act for clients during and after the CP when there was no insurance in place to protect them from any loss or negligence. Mr Heer had therefore in his submission breached Principle 5 of the SRA Principles 2019.

Respondent's Position

23.4 Mr Heer had not provided an Answer, but he had made representations to the SRA following the recommendation of referral to the Tribunal in April 2023. In summary he had submitted that he was “*completely confused about how I interpreted the rules as not having insurance in place caused me significant distress*”. He referred to difficult personal circumstances that he was dealing with at the time. He accepted that he had failed his clients or to uphold public trust.

The Tribunal's Findings

23.5 The Tribunal found the factual basis of Allegations 1.1 proved on the balance of probabilities. Mr Heer had not challenged any of the evidence presented to the Tribunal, despite having had the opportunity to do so. The evidence was quite clear that Mr Heer did not have qualifying insurance in the time period specified in the Allegations. The evidence of Client I was compelling, and it proved that Mr Heer had continued to undertake activities in connection with legal practice in that period. The Tribunal found that this amounted a breach of the pleaded sections of the SRA Indemnity Insurance Rules 2019 as well as Principle 7 of the SRA Principles 2019.

Principles 2 and 5

23.6 The Tribunal was satisfied that the public's confidence in the profession would be severely undermined by a firm continuing to act on client matters without professional indemnity insurance. The presence of insurance was a vital part of the regulatory system of protection for clients. The Tribunal found the breach of Principle 2 proved on the balance of probabilities.

23.7 In considering the question of integrity, the Tribunal applied the test in Wingate. A solicitor was under a duty to ensure that the client protections referred to above remained in place. If that proved impossible, as had been the case here, then the solicitor was under a duty to cease practising and to advise clients to seek alternative representation. Mr Heer had failed to discharge his duties in this regard, and this was a serious departure from the ethical standards required of him. The Tribunal found that Mr Heer had lacked integrity, and it found the breach of Principle 5 proved on the balance of probabilities.

23.8 Allegation 1.1 was therefore proved in full.

24. Allegation 1.2

Applicant's Submissions

24.1 Mr Bold submitted that Mr Heer had breached Paragraphs 1.4 and 7.4(a) of the Code of Conduct. He further submitted that Mr Heer had acted dishonestly. In doing so, he relied on the test for dishonesty set out in Ivey v Genting Casinos [2017] UKSC 67. In relation to Mr Heer's state of knowledge, the Statement under Rule 12 of the SDPR pleaded the following:

“58. During the time that The Respondent was operating the Firm he knew or believed the following matters:

58.1. That following the expiry of the CP, the Respondent repeatedly told the SRA that he was not acting on live files, and only admitted to doing so on specific files when questioned, right up to and including the day of intervention. This belief cannot be genuinely held as he was actively completing on the client matters of Client A and B and attempted to complete on the matter Client C & D and had taken on a new client, Client E shortly before the intervention. The Respondent was copied into most of the correspondence on these files and was the only individual who could access the client account. It is inconceivable that he could not know these transactions were being carried out. In addition to these three client matters, live files were found at the time of intervention. As the sole director involved in the day to day running of the firm, it is not plausible that the Respondent did not know these files existed.

58.2. The Respondent was aware that he did not have qualifying insurance in place post 10 October 2021 and so he was not permitted to act for clients. The Respondent says that he told clients of the position and that they had agreed to wait for his new firm to be authorised. Paragraph 50 onwards clearly shows that the Respondent did not tell his clients the following:

- the firm did not hold qualifying insurance;*
- the firm should be closed and;*
- that he had applied to authorise a new firm, but that the application was not progressing.*

Despite being aware that he had not informed his clients of the actual position, the Respondent told the SRA that clients were prepared to wait for authorisation of his new firm which was fundamentally incorrect.

58.3. In his email dated 21 December 2021, the Respondent misled HCR that he was waiting for his new proposed entity to be authorised by the SRA and that all live clients were happy to wait for authorisation. The actual position was that the application for a new entity had been closed and clients had not been made aware that there was any problem. The Respondent would have known that his email to HCR was misleading because the SRA had written to him to confirm that his application for a new entity had been closed on 24 November 2021 and he was not in ongoing correspondence with the SRA on the application. because of this communication, the Respondent could not have genuinely believed that his application was ongoing. The Respondent also knew that he had not notified the clients, or even members of his own staff, that the firm should be closed. As the Respondent knew that his application was not ongoing and he had not notified clients of the true position, then the information given to HCR at that time was incorrect and misleading.”

- 24.2 Mr Bold submitted that Mr Heer's actions would be considered dishonest by the standards of ordinary decent people and a breach of Principle 4.
- 24.3 Mr Bold additionally submitted that Mr Heer had lacked integrity, in breach of Principle 5.

Respondent's Position

- 24.4 In his representations made to the SRA, Mr Heer denied dishonesty and said any omissions were due to a genuine misunderstanding as to the insurance position. Mr Heer again referred to his personal circumstances at the time and to health issues.

The Tribunal's Findings

- 24.5 The Tribunal considered each of the allegations of misleading in turn.
- 24.6 In relation to the allegation that Mr Heer had misled the SRA, the Tribunal carefully reviewed the evidence in relation to correspondence and telephone attendance notes quoted above. This evidence had not been challenged by Mr Heer and the Tribunal was entitled to attach full weight to it, which it did. It was clear that the information given to the SRA was misleading as Mr Heer was continuing to work on a number of cases despite telling the SRA that he was not.
- 24.7 In relation to the intervention agents, the Tribunal noted the attendance note of the visit to Mr Heer's office. Similar information was provided to the agents, which was, again, misleading.
- 24.8 In relation to the misleading of third parties, this was proved by the letter sent to HCR solicitors on 21 December 2021.
- 24.9 In relation to the clients of the Firm, the misleading was done by omission. There was no evidence of clients having been told by Mr Heer that there was any issue with his insurance. The witness statement of Client I was clear evidence of this. At the outset of matters the clients received a client care letter. Client F, for example, had received one dated 12 February 2021 which contained the following:
- "We have professional indemnity insurance to cover any claim brought by you in the unlikely event that we breach our duty of care to you."*
- 24.10 At the time this letter was sent, this information was correct. However, the failure to notify clients when this information ceased to be accurate was misleading as it gave the impression that the Firm still had professional indemnity insurance when it did not.
- 24.11 The Tribunal found the factual basis of Allegation 1.2 proved on the balance of probabilities. On that basis, Mr Heer had also breached Paragraph 1.4 and, in relation to the SRA, 7.4(a) of the Code.

Principle 4

24.12 The Tribunal considered the allegation of dishonesty based on the test set out in Ivey at [74];

“the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: 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 knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

24.13 The Tribunal applied this test and adopted the following approach:

- Firstly, the Tribunal established the actual state of Mr Heer’s knowledge or belief as to the facts at the time of the misleading statements or omissions, noting that the belief did not have to be reasonable, merely that it had to be genuinely held.
- Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

24.14 Mr Heer’s state of knowledge was evidenced by his correspondence with the SRA, including the telephone calls with it. On 9 July 2021 Mr Heer had emailed the SRA to say he was entering the run-off period. In that email he stated

“We understand that we will no longer be permitted to take any new instructions (which we will comply with).”

24.15 Mr Heer was therefore aware that he should not be taking on any new instructions from that time. On 5 October 2021 Mr Heer had emailed the SRA confirming that the CP ended on 10 October 2021 and so he was clearly aware of that fact.

24.16 Despite this, Mr Heer was continuing to work on files, including new matters, as was clearly established by the uncontested evidence from Client I. Nevertheless, Mr Heer told the SRA on 25 October 2021 that he was in the process of writing to clients advising them to instruct a new firm and confirming that he had “done no legal work on these files at all and has not done so since well before 8 October”.

24.17 Mr Heer would have known that he was working on those matters. Moreover, on 22 December 2021 he sent a list of clients who he claimed were willing to wait for authorisation of the new entity. This was also misleading in two ways. Firstly, one of the clients was Client I and she contradicted this suggestion in her witness statement. Secondly, Mr Heer had been told that the application for authorisation could not be

progressed on 24 November 2021, something Mr Heer acknowledged on 19 January 2022 when he applied for a refund of the fee.

- 24.18 The Tribunal was therefore satisfied on the balance of probabilities that Mr Heer knew that what he was telling the SRA was misleading. Mr Heer knew the correct position as to his insurance; he knew that he was doing work for clients, and he knew that he was telling the SRA that he was complying with his obligations when in fact (as he knew) he was doing the opposite. The Tribunal was satisfied that this would be considered dishonest by the standards of ordinary decent people.
- 24.19 In relation to the representations to the intervention agents, these were made in February 2022. Mr Heer's state of knowledge had continued to be as described above. Mr Heer therefore knew that what he was telling the intervention agents was misleading as it gave a false impression of matters. The Tribunal was satisfied that this would be considered dishonest by the standards of ordinary decent people.
- 24.20 In relation to the clients, the Tribunal took into account the context of the omissions, specifically that Mr Heer was, at the material time, knowingly misleading the SRA as to the true position in relation to those clients. The effect of the misleading information was to convey the impression to the SRA, and others, that he was acting appropriately in relation to the matter of his insurance. Having told the SRA that he was writing to all his clients, Mr Heer had in fact done nothing of the sort. Similarly, having told the SRA that he had secured the consent of a number of clients to await new authorisation, in fact that had not happened at all and he knew that authorisation was not going to be forthcoming. The Tribunal was therefore satisfied on the balance of probabilities that the failure to notify the clients that the Firm was no longer insured was not an oversight or an error, but was part of a pattern of deliberate behaviour aimed at concealing the true position as regards his insurance and/or his compliance with his professional obligations, depending on his audience. The Tribunal was therefore satisfied that this omission would be considered dishonest by the standards of ordinary decent people.
- 24.21 In relation to the email to HCR, as noted above, at the time Mr Heer wrote to them in December 2021, he was already in receipt of the email from the SRA dated 24 November 2021 informing him that his application had been closed. Mr Heer therefore knew that it was untrue to say, almost a month later, that he was awaiting new authorisation. The Tribunal was satisfied that this would be considered dishonest by the standards of ordinary decent people.
- 24.22 In each case, the Tribunal had in mind the personal circumstances outlined by Mr Heer. These were clearly difficult circumstances for him. However, Mr Heer had not established a clear link between those issues and the repeated instances of making misleading statements or omissions over the period of time referred to in the Allegations. Therefore, the Tribunal remained satisfied on the balance of probabilities that Mr Heer's conduct would be considered dishonest by the standards of ordinary decent people.
- 24.23 The Tribunal found the breach of Principle 4 proved in respect of all elements of Allegation 1.2.

Principle 5

24.24 The Tribunal found the breach of Principle 5 proved in respect of the entirety of Allegation 1.2 for the same reasons, and in light of the finding in relation to, Principle 4.

25. Allegation 1.3Applicant's Submissions

25.1 Mr Bold submitted that the breaches of the SRA Accounts Rules in the Firm's accounts amounted to breaches of Principles 6, 8 and 10 and Paragraph 4.2 of the Code of Conduct, on the basis that the trust the public placed in the profession, the duty to run the business in accordance with sound financial and risk management principles and the duty to keep client monies and assets safe were all undermined by the failures identified by the FIO.

The Tribunal's Findings

25.2 The FIR had not been challenged by Mr Heer and it was supported by documentary evidence exhibited by the FIO. The Tribunal reviewed this material and was satisfied on the balance of probabilities that Mr Heer had breached the SRA Accounts Rules as pleaded in the Rule 12 Statement.

25.3 Failure to comply with the SRA Accounts Rules was a serious breach of Mr Heer's obligations to his clients. The Rules were in place to protect client monies and assets. The breach of Principles 6, 8 and 10 were particularly acute due to the lack of insurance in place at the time of many of the breaches. The Tribunal found Allegation 1.3 proved in full on the balance of probabilities.

Previous Disciplinary Matters

26. There were no previous findings at the Tribunal.

Mitigation

27. Mr Heer had not submitted any mitigation due to his lack of engagement with the proceedings. However, the Tribunal had regard to the written representations he had made to the SRA during the investigation.

Sanction

28. The Tribunal had regard to the Guidance Note on Sanctions (10th edition - June 2022). The Tribunal assessed the seriousness of the misconduct by considering the Respondent's culpability, the level of harm caused together with any aggravating or mitigating factors.

29. In assessing culpability, the Tribunal found that Mr Heer's motivation was to try to keep the Firm running. His misconduct was clearly planned as it involved making misleading statements to a range of entities. Mr Heer had direct control and

responsibility for these matters as he was the owner of the Firm and held all the relevant compliance roles. Mr Heer was experienced and had deliberately misled the regulator.

30. In assessing the harm caused, there was no evidence before the Tribunal of specific harm caused to any individual or of claims to the SRA Compensation Fund. The potential for significant harm was nevertheless wide in scope. The failures to maintain insurance and then to conceal both the absence of insurance and the SRA Accounts Rules breaches undermined two key planks of client protections. Without those in place, clients were undoubtedly at risk of harm.
31. The reputation of the profession was also seriously undermined in circumstances where a solicitor had been dishonest to multiple audiences about his insurance position and his compliance (or lack of it) with the SRA Indemnity Insurance Rules.
32. The misconduct was aggravated by the fact that the conduct was deliberate, repeated and continued over several months. It involved a large number of clients and included dishonest statements/omissions to Mr Heer's regulator, the intervention agents, a third party and clients. The Tribunal had found that Mr Heer knew that he was in material breach of his obligations.
33. The Tribunal was unable to identify any mitigating factors beyond the personal mitigation referred to above. It was difficult to assess the degree of any insight in circumstances where Mr Heer had failed to engage with the proceedings.
34. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm.
35. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

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

36. The Tribunal noted that the usual sanction where misconduct included dishonesty would be a strike-off and the Tribunal had regard to Sharma. The circumstances in which such a sanction was not to be imposed were exceptional, described in Sharma as *“a small residual category where striking off will be a disproportionate sentence in all the circumstances ...”*.
37. In Solicitors Regulation Authority v James [2018] EWHC 3058 (Admin) at [101], Flaux LJ set out the basis on which question of exceptional circumstances was assessed.

“First, although it is well-established that what may amount to exceptional circumstances is in no sense prescribed and depends upon the various factors and circumstances of each individual case, it is clear from the decisions in Sharma, Imran and Shaw, that the most significant factor carrying most weight and which must therefore be the primary focus in the evaluation is the nature

and extent of the dishonesty, in other words the exceptional circumstances must relate in some way to the dishonesty.”

38. The Tribunal considered whether the circumstances in this case were exceptional, having regard to James.
39. As noted above, the Tribunal had noted what Mr Heer had said about his personal circumstances, which it acknowledged would have been a strain on him personally. The question was whether it related in some way to the dishonesty. Mr Heer had not demonstrated that it did. The Tribunal was not dealing with a one-off instance of misconduct in the midst of those personal issues but had instead found multiple and repeated instances of a lack of integrity, dishonesty, and failure to comply with basic rules and regulations put in place to protect clients. There was no link between the personal circumstances that Mr Heer was dealing with and the pattern of concealment, untrue statements, and evasion that he undertook over several months.
40. The Tribunal was therefore unable to identify any exceptional circumstances and the only appropriate sanction was that Mr Heer be struck off the Roll.

Costs

41. Mr Bold applied for an order for costs in the sum of £10,966.36. Mr Bold told the Tribunal that the bulk of those costs related to the investigation and drafting of the FIR. The hourly rates applied were £130 for Mr Bold himself and £100 for the SRA’s Investigation Officer.
42. The Tribunal was satisfied taking account of the factors set out in SDPR Rule 43(4) that the costs claimed including the time spent were reasonable and proportionate in all the circumstances of the case. There was a large amount of material that needed reviewing including numerous client files. The costs claim took account of the fact that the Tribunal hearing was a short one due to the non-attendance and non-participation of Mr Heer.
43. Mr Heer had not submitted a statement of means and so the Tribunal concluded taking into account Rule 43(5) that there was no basis to reduce the costs on account of any issue with his ability to pay. The Tribunal ordered costs to be paid by him in the sum claimed.

Statement of Full Order

44. The Tribunal ORDERED that the Respondent, RAJINDER HEER, 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 £10,966.36.

Dated this 8th day of March 2024
On behalf of the Tribunal

M N Millin

M N Millin
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
08 March 2024