

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12502-2023

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD. Applicant

and

BHAVANI RAJAYA LAXMI HOGARTY Second Respondent

and

MAEVE TERESA VICKERY Third Respondent

Before:

Mr B Forde (in the Chair)

Mr E Nally

Ms L Fox

Date of Hearing: 17- 20 June 2024

Appearances

Mr Michael Collis, barrister of Capsticks Solicitors LLP of 1 St George's Road, Wimbledon, London SW19 4DR, for the Applicant.

Ms Susanna Heley, solicitor of Weightmans LLP, 105 Fenchurch Street, London, EX3M 5GJ, for the Second and Third Respondents.

JUDGMENT

Allegations

Pension Contributions

1. The allegations against the Respondents, made by the SRA are that, while in practice as Equity Partners at Pardoes Solicitors LLP (“the Firm”):
 - 1.1. Between April 2019 and July 2020, the Second and Third Respondents caused or allowed the Firm to allocate employee and Firm pension contributions to the office account, to be used for the general running of the Firm, instead of paying the contributions to the Firm’s pension provider.
 - 1.1.1 In doing so, any or all of the Second and Third Respondents thereby breached any or all of the following,
 - i. Prior to 25 November 2019, Principles 2 and 6 of the SRA Principles 2011.
 - ii. On or after 25 November 2019, Principles 2 and 5 of the SRA Principles.

Legal Aid Payments

- 1.3. Between September 2018 and July 2019, the Second and Third Respondents caused or allowed client money in the form of professional disbursements from the Legal Aid Agency (“LAA”) to be retained in the Firm’s office account beyond 14 days of receipt, resulting in a shortfall of £7,737.02 on the client account. In doing so, any or all of the Respondents’, thereby breached any or all of the following:
 - i. Rules 6.1, 7.1 and 19.1 (b) of the SRA Accounts Rules 2011; and/or failed to achieve either or both,
 - ii. Outcomes 7.2 and 7.4 of the SRA Code of Conduct 2011.
2. The Applicant subsequently withdrew the allegation that the Second and Third Respondents had breached Rule 7.1 of the SRA Accounts Rules 2011 in relation to Allegation 1.3.
3. The Second and Third Respondents admitted having breached Rules 6.1 and 19 (b) of the SRA Accounts Rules 2011.
4. These allegations and other allegations, including an allegation of dishonesty, were made in these proceedings also against the First Respondent, Mr Guy Andrew Adams, who subsequently admitted all the allegations made against him. The Applicant and Mr Adams have separately agreed on the outcome of the Applicant’s case against Mr Adams and a separate Agreed Outcome Judgment has been rendered against the First Respondent, Mr Adams.

Executive Summary

5. The Tribunal found that the Applicant had appropriately withdrawn its allegation that the Second and Third Respondents had breached Rule 7.1 of the SRA Accounts Rules 2011. The Tribunal further found, on the balance of probabilities, that the Second and Third Respondents had properly admitted having breached Rules 6.1 and 19.1(b) of the SRA Accounts Rules 2011 but that the Second and Third Respondents had not breached Principles 2 and 6 of the SRA Principles 2011 or Principles 2 and 5 of the SRA Principles 2019 and had not failed to achieve Outcomes 7.2 and 7.4 of the SRA Code of Conduct 2011.

Sanction

6. No sanction was imposed on the Second and Third Respondents. The Tribunal made no order against the Second Respondent, Ms Bhavani Rajaya Laxmi Hogarty, and no order against the Third Respondent, Ms Maeve Teresa Vickery. The Tribunal further ordered that there be no order as to costs.

Documents

7. The Tribunal reviewed and considered all of the documents in the case which included (but was not limited to):
 - Rule 12 Statement and Exhibit HV11 dated 21 September 2023
 - First Respondent's Answer, dated 13 November 2023
 - Second Respondent's Answer dated 13 November 2023
 - Third Respondent's Answer dated 13 November 2023
 - Applicant's Reply to the Third Respondent's Answer dated 27 November 2023 and SRA response to consultation: Account Rules dated 1 June 2017
 - Witness Statement of Sara Houchen, dated 25 July 2023
 - Witness Statement of Leanne Routledge, dated 22 August 2023
 - Witness Statement of Catherine Murton, dated 29 August 2023
 - Witness Statement of Isobel Lisa Holden, dated 19 September 2023
 - Witness Statement of Donna McCarthy, dated 19 September 2023
 - Witness Statement of Paul Sykes, dated 7 October 2023
 - Witness Statement of Zlatina Brusarska, dated 23 February 2024, and Exhibits
 - Witness Statement of Sasha Loveridge, dated 16 April 2024

- Witness Statement of Laura Paton, dated 18 April 2024, and Exhibits
 - Witness Statement of Guy Andrew Adams, dated 7 May 2024
 - Witness Statement of Julie Innis, dated 7 May 2024
 - Witness Statement of Bhavani Hogarty, dated 7 May 2024 and Exhibit BH1-BH4
 - Witness Statement of Maeve Vickery, dated 7 May 2024, and Exhibit MV1
 - Witness Statement of Mike Miller, dated 7 May 2024, and Exhibits MM1-MM10
 - Witness Statement of Samantha Backler, dated 9 June 2024
 - Applicant's Schedule of Costs dated 21 September 2023 and Final Schedule of Costs dated 7 June 2024 and FIO Costs dated 7 June 2024
 - Second and Third Respondents' Character References
 - Statement of Agreed Facts and Outcome between the Applicant and the First Respondent, Mr Adams, dated 12 June 2024
8. Both the Applicant and Respondent relied on witness statements, authorities and documents which are a matter of record, and which have been read and considered by the Tribunal. References are made to those documents in so far as they are relevant to the issues determined by the Tribunal.

Preliminary Matters

Anonymisation

9. The Applicant's Counsel, Mr Collis explained that the name of the Firm's client had been anonymised in the Applicant's Rule 12 Statement and in the Statement of Agreed Facts and Outcome between the Applicant and the First Respondent due to the nature of the client's health issue. The Applicant submitted that the anonymisation was appropriate under rule 35 of the Solicitors (Disciplinary Proceedings) Rules 2019. None of the Respondents had any issue with the anonymisation. The Tribunal accepted that the anonymisation had been appropriate.

Agreed Outcome between the Applicant and the First Respondent

10. The SRA and the Respondent invited the Tribunal to deal with the Allegations against the First Respondent in accordance with the Statement of Agreed Facts and Outcome annexed to this Judgment. The Tribunal has rendered a separate judgment on the Agreed Outcome between the Applicant and the First Respondent, Mr Guy Andrew Adams.

Witness Testimony

11. Prior to the Hearing the Applicant's Counsel, Mr Collis had advised Ms Heley that he did not intend to cross-examine Mr Miller, a witness that had been scheduled to give evidence on behalf of the Second Respondent. The Tribunal excused Mr Miller from testifying but allowed Mr Miller to follow the Hearing in person.

Second and Third Respondents' Halftime Submissions

12. In the Hearing, Mr Collis advised on behalf of the Applicant that the Applicant withdraws the allegation that the Second and Third Respondents had breached Rule 7.1 of the SRA Accounts Rules 2011.
13. After the Applicant's witnesses had given oral evidence in the Hearing, Ms Heley on behalf of the Second and Third Respondents submitted as half-time submissions that the Second and Third Respondents had no case to answer in these proceedings, except for the breach of Rules 6.1 and 19 (b) of the SRA Accounts Rules 2011, which the Second and Third Respondents admitted.
14. Among other things, Ms Heley asserted that the Applicant's allegations regarding the Second and Third Respondents' lack of integrity in breach of Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles 2019) rested wholly on the factual assumption that the spreadsheet that the Firm had provided to the FIO had showed that between September 2019 and July 2020, the Firm failed to make any payments to Scottish Widows. However, as confirmed by the Applicant's witnesses during their respective examination, the reality was that the Firm made payments to Scottish Widows during this time. These payments were, however, allocated towards the pensions of leaving employees – the leavers' contributions were made fully up to date during this time. Ms Heley further submitted that in or around September 2019 the Firm could not repay the backlog because the Firm had to save up until it could make the payments in full. Scottish Widows was unable as a feature of their own systems to accept partial payments of the pension arrears.
15. Ms Heley made further submissions on behalf of the Second and Third Respondents asserting that the Applicant's case was not set out – these are summarised in more detail below in the section Findings of Facts and Law.
16. Mr Collis submitted on behalf of the Applicant, among other things, that while the Firm had made payments to Scottish Widows from September 2019 onwards these payments did not relate to the pension contributions that were required to be paid for the months in question. Regardless of these payments towards the leavers' pension funds, it emerged from the evidence that employee and Firm pension contributions were used for the general running of the Firm rather than for pension arrears.
17. A complete set of pension contributions from September 2019 to July 2020 was missing and the amount of the arrears in question was not insubstantial. Mr Collis asserted that when the Second and Third Respondents had become aware of the pension issue, they should have taken immediate steps to prevent the pension contributions from being used for the general running of the Firm. Instead, they had left Mr Adams in charge of solving the matter.

18. Mr Collis further asserted that there had been lack of communication from the Second and Third Respondents to the affected employees in the immediate aftermath of finding about the pension issue.
19. After having carefully considered the Applicant's and the Second and Third Respondents' submissions, the Tribunal rejected the submissions of Ms Heley that there was no case to answer applying the relevant Galbraith principles and concluded that it was necessary to hear further evidence from the Respondents' witnesses before it could determine the matter. Accordingly, the Tribunal decided to reconvene the substantive Hearing.

Factual Background

20. The First Respondent, Mr Adams and the Second and the Third Respondents were Equity Partners of the Firm, which was based in Somerset. The Firm had three offices, in Bridgwater, Taunton and Yeovil, and largely practised in probate, conveyancing, crime, personal injury and family law.
21. The First Respondent, Mr Adams, was Managing Partner of the Firm and primarily based in the Firm's Bridgwater office, which was the Firm's largest office and base for finance and administration. Mr Adams had become a partner of the Firm on 2 September 2013 and Managing Partner in 2016. He was the Firm's Compliance Officer for Finance and Administration ("COFA") at the time of the alleged misconduct.
22. The Second Respondent, Ms Hogarty is a solicitor having been admitted to the Roll of Solicitors on 1 November 1991. She joined the Firm in 2011 and became an Equity Partner in 2013. Ms Hogarty was based in the Firm's Yeovil branch. She currently holds a practising certificate free from conditions. Ms Hogarty is currently employed as Partner with South West Advocates Limited.
23. The Third Respondent, Ms Vickery is a solicitor having been admitted to the Roll of Solicitors on 17 January 2000. She also joined the Firm in 2011 and became Equity Partner in 2013. Ms Vickery was the Firm's Compliance Officer for Legal Practice ("COLP") at the time of the alleged misconduct. She was based in the Firm's Taunton branch. Ms Vickery left the Firm on 23 December 2022 and currently works at Vista Employment Services Limited as an employment lawyer. She holds a practising certificate free from conditions.

Pension Contributions

24. Between 8 December 2020 and 6 April 2021, the SRA received four reports from former and current employees of the Firm, which all concerned the Firm's alleged failure to pay pension contributions on behalf of its staff to the Firm's pension provider. These former and current employees of the Firm submitted statements to the SRA setting out the knowledge of the Firm's failure to pay pension contributions to the pension's provider, Scottish Widows.

25. As a result of the complaints received by the SRA, it commissioned a Forensic Investigation Report (“FIR”). Following notice having been given to the Firm, the investigation commenced on 14 June 2021 at the Firm’s office in Bridgwater.
26. As part of the forensic investigation, all three Respondents were interviewed by the Forensic Investigation Officer (“FIO”) on 22 February 2022. The FIR produced on 26 April 2022 identified the following:
 - 1 *“Between August 2019 and July 2020, the firm had collected pension contributions from staff but had not paid the monies to the pension provider. The monies were taken to the firm’s office account and used to fund general office expenses. As at July 2020 the total owed in pension arrears was £57,078.22.*
 - 2 *The firm engaged in a repayment plan with the pension provider and arrears began to be paid from July 2020. By September 2021, the pension payments were up to date.*
 - 3 *The reason given by the firm for the delay in the payment of pensions was that the firm was experiencing cashflow issues.*
 - 4 *As at 28 May 2021, the firm had a client account shortage of £7,737.02. This was due to monies received by the firm from the Legal Aid Agency but not paid to suppliers for professional disbursements prior to 25 November 2019 (the introduction of the new Standards and Regulations). The funds had been paid into the firm’s office account. The shortage was rectified between 1 June 2021 and 15 June 2021 when the disbursements were paid.”*
27. Pursuant to section 3 of the Pensions Act 2008, every employer must auto-enrol their eligible staff into a workplace pension and pay into it. Section 2(1) of the Pension Act 2008 sets out the duty of an employer not to take any steps (or make any omission) by which the “jobholder” (who has been auto-enrolled) stops being an active member, or the scheme stops counting as a qualifying scheme for auto enrolment purposes.
28. Workplace pensions are regulated by the Pensions Regulator (“TPR”), whose role it is to ensure that employers fulfil their duties to members of their pension scheme.
29. The Firm’s pension provider was Scottish Widows. Those staff enrolled with the scheme made contributions to their pension, which were deducted from their monthly salary. The Firm also made a monthly contribution, which was paid to the pension provider along with the staff contribution.
30. The Firm provided the FIO with a spreadsheet showing pensions arrears for pension contributions between September 2019 and January 2022. Whilst it showed that between September 2019 and July 2020 the Firm did not make regular pension payments to Scottish Widows, it showed that the Firm nevertheless made payments to Scottish Widows during this time.
31. These additional payments to Scottish Widows had been noticed by the FIO during her review of the office account bank statements. She considered that these additional

payments to Scottish Widows could not be reconciled with the spreadsheet. When asked about this, the First Respondent, Mr Adams advised by email dated 20 April 2022, that those payments related to arrears dating back as far as April 2019, and included payments made in order to bring the contributions up to date of employees that had left the Firm.

32. Despite arrears in fact dating back to April 2019, Mr Adams told the FIO on 14 June 2021, at the start of the investigation, that the issues with the pensions had commenced in around August 2019. He stated that due to staffing difficulties the fee income in his team had reduced, which had affected cash flow and as a result pension contributions were not paid over to the provider. Covid then struck which exacerbated the problem. He said there was no Firm wide decision not to pay the provider as such, it was just an issue of cash flow. Mr Adams advised the FIO that the monies had been used for general expenses and had not been ring fenced.
33. In an interview with the FIO, Mr Adams clarified that the decision was made by the Finance Team “under my supervision” and that this decision was not initially taken in consultation with the Second and Third Respondents.
34. The Second and Third Respondents both told the FIO that they were advised of the non-payment of the pension contributions in September 2019. Both the Second and Third Respondents stated that they had no knowledge of the financial situation of the Firm that led to the decision not to make the pension payments.
35. The Firm commenced regular repayments in July 2020, in accordance with a payment plan agreed with Scottish Widows. In July 2020, the Firm owed a total of £57,078.22 in arrears. This sum was made up of £35,513.22 in employees’ contributions and £21,565.00 in Firm contributions. All outstanding pension contributions were brought up to date by September 2021.
36. Catherine Murton, previous Head of the Private Client Department at the Firm during the relevant period, has in her statement to the SRA stated that none of the Respondents had spoken to the staff about the non-payment of the pension contributions prior to October 2020.
37. Mr Adams has in the Statement of Agreed Facts and Outcome admitted that he did not advise the staff, either in advance or at the time, of the decision not to pay the pension contributions. He had told the FIO that from around October 2019, individual meetings with affected staff members were held. However, there were allegedly no records of any such meetings. Catherine Murton, previous Head of the Private Client Department at the Firm during the relevant period has in her statement to the SRA disputed that the Respondents undertook any such meetings.
38. On the documentation provided to the SRA during its investigation, Mr Adams formally advised the staff of the pensions issue by way of email dated 16 October 2020 (shortly after the Heads of Department meeting), in which he stated that:

“As you may be aware, the firm has some pension arrears which we are in the process of bringing up to date. We are in regular contact with both the Pensions Regulator and Scottish Widows and are working closely together

to resolve this. We are currently part way through a repayment plan and will be continuing with this to bring the pension payments completely up to date.”

39. The Firm was in communication with TPR from April 2020 onwards, when TPR emailed the Firm to advise that Scottish Widows had been in contact with them in relation to the Firm’s late pension contributions in relation to the period from August 2019 to January 2020. TPR put the Firm on notice that the Firm had failed to pay the relevant contributions. TPR issued the Firm with a formal Unpaid Contribution Notice (“UCN”) in August 2020, directing payment of any outstanding contributions by September 2020.
40. On 3 September 2020, the Firm replied to the UCN. However, TPR required further information and on 23 September 2020, it issued a Notice to Produce Documents or Information directing the Firm to provide it with evidence that monies had been paid over to Scottish Widows.
41. A further UCN was issued on the Firm dated 2 December 2020, with a direction that further re-payments be made by 25 February 2021.
42. On the basis of information provided to it by the Firm by March 2021, TPR closed the enquiry with no further action. It reminded the Firm that:

“failure to pay contributions is a breach of the legislation. On this basis, a record will be retained of this enquiry and may be taken into consideration if there are further issues.”
43. The pensions issue was not reported to the SRA by any of the Respondents. All pension arrears were up to date by September 2021.

Legal Aid Payments

44. Rule 19.1 (b) of the SRA Accounts Rules provides that monies received into the office account from the Legal Aid Agency (“LAA”), which includes payment for professional disbursements, must be paid to the provider within 14 days or transferred to the client account.
45. At the extraction date of 28 May 2021, the FIO found that the Firm’s office account held funds received from the LAA for professional disbursement’s totalling £7,737.02, which had been received prior to 25 November 2019 (when the 2011 Accounts Rules were in force). Those funds had neither been paid to the provider within 14 days nor transferred to the client.
46. As a result, there was a shortage of £7,737.02 on the client account. The shortage was rectified between 1 June and 15 June 2021 when the disbursements were paid. Five of the seven payments were made before the FIO attended on site at the Firm, one on the day of the visit (14 June 2021) and one the following day.

47. The FIR summarised the client matters, the suppliers, the total amounts due, the date the funds were received and the date the suppliers were paid. The summary table showed that in six cases the monies were held in the client account for over 2 years and in one case, for 1 year and 11 months. The FIR attached the relevant documentation in support of the findings.
48. The client matter of RB was exemplified in the FIR. In summary, the Firm acted for RB, during which a medical report was obtained. The LAA paid £1,871.93 to the Firm in respect of this disbursement, as part of a larger payment of £3,982.48 which was paid into the office account on 17 September 2018. The ledger records that the payment to the supplier was made on 1 June 2021, as part of a larger payment of £3,082.86 which encompassed monies due on another client matter as well.

Witnesses

49. The following witnesses gave oral evidence on behalf of the Applicant in the Hearing:
- Ms Laura Paton, a team manager within Scottish Widows Limited, responsible for managing a telephony team within the Workplace Pensions department.
 - Ms Sara Houchen, a Forensic Investigation Officer at the SRA.
 - Ms Zlatina Brusarska, Case Manager in the Compliance and Enforcement team at the Pensions Regulator (“TPR”).
50. The following witnesses gave oral evidence on behalf of the Second and Third Respondents:
- The Second Respondent, Ms Hogarty
 - Third Respondent, Ms Vickery
 - Ms Sasha Loveridge, Solicitor at South West Advocates Limited (for the Second Respondent)
 - Ms Samantha Backler, a Trainee Solicitor at South West Advocates Limited (for the Third Respondent).
51. The oral and written evidence of the Second and Third Respondents and other witnesses is referred to or summarised in the Findings of Fact and Law below in so far as they are 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.

Findings of Fact and Law

52. 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.

Allegation 1.1 – Pension Contributions

53. Allegation 1.1 – Between April 2019 and July 2020, the Second and Third Respondents caused or allowed the Firm to allocate employee and Firm pension contributions to the office account, to be used for the general running of the Firm, instead of paying the contributions to the Firm's pension provider. In doing so, any or all of the Second and Third Respondents thereby breached any or all of the following,

(i) Prior to 25 November 2019, Principles 2 and 6 of the SRA Principles 2011.

(ii) On or after 25 November 2019, Principles 2 and 5 of the SRA Principles.

The Applicant's Case – Allegation 1.1

Alleged lack of integrity (Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles 2019)

- 53.1 The Applicant alleged that in failing to pay pension contributions to Scottish Widows and utilising the monies on running expenses for the Firm, the Second and Third Respondents failed to act with integrity (i.e. with moral soundness, rectitude and steady adherence to an ethical code) in breach of Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles 2019 (so far as the conduct occurred on or after 25 November 2019). In this respect, the Applicant relied on *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, where it was said that integrity connotes adherence to the ethical standards of one's own profession.
- 53.2 Whilst the original decision not to pay the pension contributions was Mr Adams' decision, in the Applicant's view, the Second and Third Respondent became aware of the issue in September 2019. The non-payment of pension contributions continued until July 2020 and repayment was only complete by September 2021. The Applicant asserts that during this period, the Second and Third Respondents, who were both Equity Partners along with the First Respondent, failed to stop the non-payment of pension contributions.
- 53.3 According to the Applicant, the Second and Third Respondents knew that the monies were not being paid and that staff pensions were at risk, and they also knew that the monies were being used on the running of the Firm instead. The Applicant asserts that despite this knowledge and despite both stating that they were horrified and shocked at discovering the issue in September 2019, the Second and Third Respondents took no action to report the First Respondent or remove him from his position.
- 53.4 The Applicant alleges that in so doing, the Second and Third Respondents allowed Mr Adams to continue in his role both as Equity Partner and COFA. They also permitted him to remain in control of the Firm's financial affairs.

- 53.5 In the Applicant's view, Equity Partners acting with integrity would have ensured that once they discovered the non-payment of pension contributions, a stop was put to it immediately and payments were made from that point onwards. The Applicant asserts that the Second and Third Respondents' actions failed to do that. Therefore, from the point at which they knew in September 2019 to the commencement of repayment in July 2020, in the Applicant's view, they were complicit in the decision of Mr Adams' to utilise the employee and the Firm pension contributions for the running of the Firm.
- 53.6 Accordingly, the Applicant alleged that the Second and Third Respondents breached Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles (so far as the conduct occurred on or after 25 November 2019).

Alleged failure to maintain public trust (Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019)

- 53.7 The Applicant alleged that the Second and Third Respondents' actions also undermined public confidence in them as solicitors, and in the profession. The Pensions Act 2008 required all employers to auto-enrol eligible staff into a pension scheme and ensure that they do not risk the employees' status within that scheme.
- 53.8 The Applicant asserted that the public would expect a solicitors Firm to honour its pension obligations to staff, and to ensure that both staff and Firm contributions were paid to the pension provider on time. According to the Applicant, the public would further expect that monies intended for pension contributions were not used by the Firm to support its cash flow.
- 53.9 The Applicant further asserted that pensions are relied upon by individuals to ensure that they can enjoy quality of life after retirement. The purpose of the Pension Regulator and pension legislation is to safeguard pensions because of the importance they have in people's lives. Therefore, the Applicant alleged that public confidence in the Respondents' and the profession would be wholly undermined by the knowledge that the Respondents' acted in breach of their pension obligations to their staff. Accordingly, the Applicant alleged that the Second and Third Respondents had breached Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles (so far as the conduct occurred on or after 25 November 2019).

Second and Third Respondents' Case – Allegation 1.1

Alleged lack of integrity (Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles 2019)

- 53.10 The Second and Third Respondents denied having caused or allowed the Firm to allocate employee and Firm pension contributions to the office account between April 2019 and July 2020, to be used for the general running of the Firm, instead of paying the contributions to the Firm's pension provider. In particular, the Second and Third Respondents denied the Applicant's allegation that by having failed to take any actions to report Mr Adams to the Applicant or remove him from his position, the Second and Third Respondents had breached Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles 2019.

- 53.11 Contrary to the Applicant's allegation that this case was a case of non-payment of pension contributions, the Second and Third Respondents submitted that this was a case of delayed pension payments. Ms Heley pointed out on behalf of the Second and Third Respondents that there were various areas of conflicts of evidence between the statements produced by employees and former employees of the Firm and the evidence presented by the Second and Third Respondents and various other inconsistencies in the evidentiary record.
- 53.12 The Second and Third Respondents asserted that acting with integrity means doing the right thing in the circumstances of the case and in the present circumstances the right thing for the Second and Third Respondents had been to go to the TPR that had the specific powers to deal with the pension arrears issue. Going to the Applicant would not have solved the issue as the Applicant did not have the specific powers that the TPR had to deal with the pension issue. Therefore, in the Second and Third Respondents' view, it could not be said that they had lacked integrity because they did not inform the Applicant about the pension issue after they had become aware of it.
- 53.13 Whilst the Second and Third Respondents considered that Mr Adams' conduct had constituted a serious misconduct and should not have taken place, they asserted that the evidence showed that they took the issues seriously once they heard about them in early September 2019 and took the steps to ensure that the staff was informed of the pension issue, pension payments recommenced in September 2019, that the matter was referred to the TPR, a payment plan was agreed with TPR, payments were brought up to date, despite the financial difficulties faced by the Firm and the uncertainties created by Covid at the relevant time.
- 53.14 According to the Second and Third Respondents, they had tried their best to solve the matter and the steps that they took were reasonable, addressed the pension issues without making things worse and coincided with the steps that the TPR was taking, although The Second and Third Respondents did not know that at the time.
- 53.15 The Second and Third Respondents asserted that they could not have known that the pensions contributions continued to be used for running of the Firm after September 2019 because significantly larger payments were made to Scottish Widows from September 2019 onwards.
- 53.16 The Second and Third Respondents had been told that there was a specific way in which the Firm needed to catch up with the pension contributions. The Firm had to save up until the arrear for a specific month could be paid in full. Scottish Widows would return partial payments back to the Firm because such partial payments could not be allocated to a particular employee. When the Second and Third Respondents became unsatisfied with the catch-up payments in November 2019, they involved the TPR in the matter. The TPR had told them that there was no sufficient deficit at the time and the TPR did not take any action against the Firm at the time.
- 53.17 The Second and Third Respondents asserted that removing Mr Adams from his position would have either made matters worse or would not have had any effect. In their view, the consequence of removing Mr Adams as the Managing Partner of the Firm would have been devastating at the time.

- 53.18 The Second and Third Respondents further reiterated that they had been in a difficult position that was solely the making of Mr Adams but the Second and Third Respondents nevertheless had managed to navigate the situation and had brought it to satisfactory conclusion.
- 53.19 The Second and Third Respondents further denied the Applicant's assertion that as Equity Partners they should have ensured that once they had discovered the pension payment issue – which the Applicant had called as the case of non-payment of pension contributions – a stop was immediately put to the use of the pension contributions to the running of the Firm and payments were made from that point onwards and that by failing to do that they had been complicit in the decision of Mr Adams to use the pension contributions towards the running of the Firm.
- 53.20 Contrary to the Applicant's allegation that the Firm made no pension contributions between April 2019 and July 2020, the Second and Third Respondents asserted that the evidence showed that the Firm made payments to Scottish Widows during this time. Whilst regular pension payments were not made, the Firm made payments to the pension funds of those employees that were leaving and those leavers' contributions were being made up to date. These leaver payments had the effect of narrowing the pool of employees that were affected by the issue and brought the deficit down and, thus, brought the issue closer to the solution.
- 53.21 According to the Second and Third Respondents, the Applicant had incorrectly ignored the Firm's payments towards leavers' pension funds and had only concentrated on the regular pension payments. As the Applicant's allegation of alleged lack of integrity was based on the incorrect premise that the Firm made no pension payments between April 2019 and July 2020, when this was clearly not the case, the Second and Third Respondents asserted that the Applicant's had failed to prove that the Second Respondents had breached Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles 2019.

The Alleged failure to maintain public trust (Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019)

- 53.22 The Second and Third Respondents denied having undermined public confidence in them as solicitors, and in the profession in breach of Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019 on the basis that they had allegedly acted in breach of their pension obligations to their staff.
- 53.23 The Second and Third Respondents noted that the Applicant's allegation had been formulated in a very generic terms and the allegation concentrated on the Firm, not on the Second and Third Respondents. The Second and Third Respondents further asserted that the Applicant had not pointed on any specific act or omission of the Second and Third Respondents, on the basis of which they could have possibly been alleged to have breached Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019.
- 53.24 The Applicant had the burden of proof and in the Second and Third Respondents' view, the Applicant had failed to prove that the acts or omissions of the Second and Third

Respondents had breached Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019.

- 53.25 In any event, the Second and Third Respondents submitted that for the same reasons that they had not lacked integrity, they had not acted in a manner that had undermined the public confidence in them as solicitors, and in the profession at large. According to the Second and Third Respondents, a reasonable member of the public, properly informed of the background facts, would have considered the acts that the Second and Third Respondents took once they had learnt about the pension issue as reasonable steps.

The Tribunal's Findings – Allegation 1.1

- 53.26 The Tribunal first noted that the use of the words 'allowing' or 'causing' in Allegation 1.1 suggested that the Second and Third Respondents had actively permitted the First Respondent, Mr Adams to use the employee and Firm pension contributions to for the general running of the Firm instead of paying the contributions to the pension provider. The Tribunal found that there was no evidence of the Second and Third Respondents having actively permitted Mr Adams to use the employee and Firm pension contributions in such a way.
- 53.27 In contrast, the evidence showed that once the Second and Third Respondents had become aware of the pension arrears issue in September 2019, they had taken all the appropriate steps available to them to solve the pension issue such as informing the affected employees of the issue, pressurising Mr Adams to solve the issue, referring the matter to the TPR, agreeing on a payment plan with the TPR and otherwise ensuring that the pension arrears were brought up to date. It is undisputed that the pension arrears were brought up to date by September 2021.
- 53.28 The Tribunal further accepted the evidence of the Second and Third Respondents that they did not know that employee and the Firm pension contributions continued to be used for running of the Firm after September 2019. They knew that the Firm could not make partial payments towards the pension arrears - the Firm had to catch up for the pension arrears by saving enough money to allow the Firm to pay the arrears in full. At the same time, the Second and Third Respondents had seen that the Firm was making significant payments to Scottish Widows from September 2019 onwards. When the Second and Third Respondents had not been satisfied that Mr Adams was taking sufficient steps to resolve the pension arrears issue, they had contacted the TPR.
- 53.29 The Tribunal accepted the Second and Third Respondents' submission that irrespective of the character of the payments, the Firm was making payments to Scottish Widows between September 2019 and July 2020 that went towards fixing the arrears in the Firm's pension contributions. While the Firm was not making regular pension payments to the Scottish Widows, the evidence showed that the Firm was making payments to Scottish Widows to bring the pension contributions of the leaving employees up to date.
- 53.30 Therefore, the Tribunal found that the Applicant's factual allegation that the Firm made no payments to the Firm's pension provider between April 2019 and July 2020 was incorrect. The relevant time period referred to in the Applicant's allegation 1.1. was

also incorrect as the Second and Third Respondents had become aware of the pension arrears issue in September 2019, not in April 2019.

- 53.31 Accordingly, the Tribunal concluded that the Applicant had failed to prove the facts in Allegation 1.1 to the requisite standard, namely the balance of probabilities. The evidence did not show that the Second and Third Respondents had caused or allowed the Firm to allocate employee and Firm pension contributions to the office account, to be used for the general running of the Firm, instead of paying the contributions to the Firm's pension provider.

Alleged lack of integrity (Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles 2019)

- 53.32 As the Tribunal concluded that the Applicant had failed to prove the facts in Allegation 1.1, the Applicant's case against the Second and Third Respondents failed on that basis alone. In any event, the Tribunal considered that the Second and Third Respondents had not acted with lack of integrity in breach of Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles 2019.

- 53.33 The relevant test for integrity was that set out by Jackson LJ in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366:

“Integrity is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members ... [Professionals] are required to live up to their own professional standards.

[...]

Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.

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. ...

Obviously, neither courts nor professional tribunals must set unrealistically high standards ... The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public.”

- 53.34 On the balance of probabilities, the Tribunal considered that Applicant had not shown what else the Second and Third Respondents could reasonably have been expected to do in addition to the steps that they had taken to solve the pension arrears issue once they had become aware of the issue.

- 53.35 In contrast, the Tribunal accepted that the Second and Third Respondents had taken all the reasonable steps available to them to resolve the pension arrears issue and every payment to Scottish Widows had gone towards the solving of the issue, irrespective of the characterisation of the payments.
- 53.36 The Tribunal further accepted the Second and Third Respondents' evidence that removing Mr Adams from his position as Managing Partner and COFA, at the time would have had a devastating effect on the Firm's ability to fix the pension issue, particularly as the Firm was already suffering from financial difficulties and the Covid pandemic also created further uncertainties.
- 53.37 Mr Adams had, prior to the emergence of the pension issue, successfully managed the Firm's financial and administrative issues for a substantial period of more than 10 years, whilst the Second and Third Respondents did not have any experience of managing the Firm's financial matters. The Second and Third Respondents were not aware of the full scale of Mr Adams' conduct in September 2019 and given his previous track record there was no reason in their minds not to trust Mr Adams with resolving the issue.
- 53.38 The Tribunal was also mindful of Lord Justice Jackson's statement in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366 that it is important not to set unrealistically high standards of integrity and that the duty of integrity does not require professionals to be paragons of virtue.
- 53.39 Given that the Second and Third Respondents had taken all the reasonable steps available to them at the time to solve the pension arrears, the Tribunal concluded that they did not act with lack of integrity and, therefore, did not breach Principle 2 of the SRA Principles 2011 and Principle 5 of the SRA Principles 2019.

Alleged failure to maintain public trust (Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019)

- 53.40 As the Applicant had failed to prove the facts in Allegation 1.1, the Applicant's case against the Second and Third Respondents failed on that basis alone. In any event, the Tribunal found that the Second and Third Respondents had not failed to maintain public trust and, thus, had not breached Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019, as alleged by the Applicant.
- 53.41 The test for determining whether a solicitor has behaved in a way that maintains the trust the public places in a solicitor in question and the provision of legal services has been set out in *Wingate and Evans v SRA and SRA v Malins* [2018] EWCA Civ 366, as per Jackson LJ:

“Principle 6 is directed to preserving the reputation of, and public confidence in, the legal profession. It is possible to think of many forms of conduct which would undermine public confidence in the legal profession. Manifest incompetence is one example. A solicitor acting carelessly, but with integrity, will breach Principle 6 if his careless conduct goes beyond mere professional negligence and constitutes “manifest incompetence”; see Iqbal and Libby.

In applying Principle 6 it is important not to characterise run of the mill professional negligence as manifest incompetence. All professional people are human and will from time to time make slips which a court would characterise as negligent. Fortunately, no loss results from most such slips. But acts of manifest incompetence engaging the Principles of professional conduct are of a different order.”

53.42 The Tribunal agreed with the Second and Third Respondents that the Applicant’s allegation had been formulated in very generic terms and the Applicant had failed to specify which act or omission of the Second and Third Respondents the Applicant considered to have breached Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019.

53.43 In any event, the Applicant had entirely failed to establish that the Second and Third Respondents’ conduct had been manifestly incompetent in solving the pension issues in line with the test set out in *Wingate and Evans v SRA and SRA v Malins* [2018] EWCA Civ 366. In contrast, the Tribunal considered that the Second and Third Respondents had taken all the reasonable steps available to them to bring the pension issue to a successful completion.

Allegation 1.3 – Legal Aid Payments

54. Allegation 1.3 – Between September 2018 and July 2019, the Second and Third Respondents caused or allowed client money in the form of professional disbursements from the Legal Aid Agency (“LAA”) to be retained in the Firm’s office account beyond 14 days of receipt, resulting in a shortfall of £7,737.02 on the client account. In doing so, any or all of the Respondents’, thereby breached any or all of the following:

- iii. Rules 6.1, 7.1 and 19.1 (b) of the SRA Accounts Rules 2011; and/or failed to achieve either or both,**
- iv. Outcomes 7.2 and 7.4 of the SRA Code of Conduct 2011.**

The Applicant’s Case – Allegation 1.3

54.1 The Applicant withdrew its allegation regarding a breach of Rule 7.1 of the SRA Account Rules 2011.

54.2 The Applicant alleged that Rule 19.1 (b) of the SRA Accounts Rules 2011 had been breached because the Firm’s office account had held funds received from the LAA for professional disbursement’s totalling £7,737.02, which had been received prior to 25 November 2019 (when the 2011 Accounts Rules were in force), and that those funds had neither been paid to the legal aid provider within 14 days nor transferred to the client.

54.3 Whilst the shortage of £7,737.02 on the client account was rectified between 1 June and 15 June 2021 when the disbursements were paid the FIR showed that in six cases the breach had existed for over 2 years because the monies had been held in the client

account for over 2 years and in one case the breach had existed for 1 year and 11 months, during which the monies had been held in the client account.

- 54.4 The Applicant alleged that pursuant to Rule 6.1 of the SRA Accounts Rules 2011, the Second and Third Respondents were strictly liable for breaches of the Accounts Rules.
- 54.5 The Applicant further alleged that the fact that none of the Respondents apparently identified or rectified the breach of Rule 19.1 (b) which resulted in a shortage on the client account for over two and a half years, demonstrated that the Firm did not have effective systems and controls in place to comply with the SRA Accounts Rules.
- 54.6 The Second and Third Respondents were Equity Partners of the Firm and were responsible for ensuring that they had processes in place whereby they could satisfy themselves that the Rules were being complied with. In the Applicant's view, the fact that the shortage occurred over a lengthy period shows that any such systems and controls were either not in place or were ineffective.
- 54.7 The Applicant further asserted that in failing to identify and/or rectify the breach and shortfall, the Second and Third Respondents failed to maintain systems for monitoring the financial stability of the Firm. Accordingly, the Applicant alleged that the Second and Third Respondents failed to achieve outcomes 7.2 and 7.4 of the Code of Conduct 2011.

Second and Third Respondents' Case – Allegation 1.3

- 54.8 The Second and Third Respondents admitted that as Equity Partners of the Firm they had breached of Rules 6.1 and 19.1 (b) of the SRA Accounts Rules 2011 on a strict liability basis. However, the Second and Third Respondents denied having failed to achieve outcomes 7.2 and 7.4 of the Code of Conduct 2011.
- 54.9 The Second and Third Respondents asserted that they did not know about the breach of the SRA Accounts Rules until the SRA's investigation. After the Second and Third Respondents became aware of the breach, the sum of £7,737.02 had been paid into the client account to remedy the breach.
- 54.10 The Second and Third Respondents asserted that the Firm had proper systems and controls on place to comply with the SRA Account Rules 2011. These systems included accounts software, the appointment of sufficient accounts staff to properly manage the client account, the appointment of an Accounts Manager, the creation of a specific role requiring one of the partners to have express responsibilities for overseeing the operation of the client account on a daily basis, the appointment of Mr Adams to hold that role, the monitoring of all aspects of the business including the client account in regular partners' meetings and the instruction of a respected firm of Auditors who specialized in Solicitors Accounts to prepare annual Accountants' Reports.
- 54.11 The Second and Third Respondents further asserted that the breach of the SRA Accounts Rules took place because of a wilful failure of Mr Adams, not because the Firm's systems had failed.

54.12 Moreover, the Second and Third Respondents submitted that the Applicant had failed to prove that the Firm did not have effective systems and controls in place to achieve and comply with all the SRA Principles, SRA Account rules and outcomes of the Code of Conduct and that the Firm had failed to maintain those systems and controls for monitoring the financial stability of the Firm and risks to money and assets entrusted to the Firm by clients and others and/or had failed to take steps to address issues identified.

The Tribunal's Findings – Allegation 1.3

54.13 The Tribunal noted that Rule 19.1 (b) of the SRA Accounts Rules 2011 provides that monies received into the office account from LAA, which includes payment for professional disbursements, must be paid to the suppliers of legal aid or transferred to the client account within 14 days of receipt.

54.14 The Tribunal further noted that Rule 6.1 of the SRA Accounts Rules 2011 provides that all the principals in a firm must ensure compliance with the rules by the principals themselves and by everyone employed in the firm. This duty also extends to the directors of a recognised body or licensed body which is a company, or to the members of a recognised body or licensed body which is an LLP. It also extends to the COFA of a firm (whether a manager or non-manager). The liability under Rule 6.1 of the SRA Account Rules 2011 is one of strict liability.

54.15 The Tribunal accepted that the Second and Third Respondents' admission of a breach of Rules 6.1 and 19.1 (b) of the SRA Accounts Rules 2011 had been properly made. Whilst the Second and Third Respondents had not been aware of the breach of the SRA Accounts Rules, as Equity Partners of the Firm they were strictly liable for breach of the SRA Account Rules 2011.

54.16 The Tribunal noted that Rule 7.1 of the SRA Accounts Rules 2011 provides that any breach of the rules must be remedied promptly upon discovery. The Tribunal further noted that the Applicant had withdrawn its allegation that the Second and Third Respondents had breached Rule 7.1 of the SRA Account Rules 2011.

54.17 The Tribunal found that the Applicant's withdrawal had been properly made because the Second and Third Respondents had not been aware of the breach of the SRA Account Rules until the SRA's investigation. Once the Second and Third Respondents had become aware of the breach, the sum of £7,737.02 had been paid into the client account to remedy the breach.

54.18 The Tribunal noted that Rule 7.2 of the SRA Code of Conduct 2011 required the Second and Third Respondents as Equity Partners of the Firm to ensure that the Firm has effective systems and controls in place to achieve and comply with all the Principles, rules and outcomes and other requirements of the Handbook, where applicable.

54.19 Rule 7.4 of the SRA Code of Conduct 2011 in turn required the Second and Third Respondents to ensure that the Firm maintains systems and controls for monitoring the financial stability of the Firm and risks to money and assets entrusted to the Firm by clients and others, and that the Second and Third Respondents take steps to address any issues identified.

- 54.20 Unlike liability for breach of the Rules 6.1 and 191(b) of the SRA Accounts Rules 2011, the liability for the failure to achieve outcomes 7.2. and 7.4 of the SRA Code of Conduct 2011 was not one of a strict liability. The Tribunal found that the Applicant had not proven the facts in relation to the alleged failure of the Second and Third Respondents to achieve the outcomes 7.2 and 7.4 of the SRA Code of Conduct 2011.
- 54.21 The Tribunal accepted the Second and Third Respondents' evidence that they had not been aware of the legal aid payment issue until the SRA's investigation. Therefore, in the Tribunal's view, the Second and Third Respondents could not be said to have "caused or allowed" client money in the form of professional disbursements from the Legal Aid Agency to be retained in the Firm's office account beyond 14 days of receipt, resulting in a shortfall of £7,737.02 on the client account.
- 54.22 The Tribunal considered that it followed from the Applicant's failure to establish the facts relating to the allegation concerning outcomes 7.2 and 7.4 of the Code of Conduct that the Applicant had failed to prove that the Second and Third Respondents had failed to achieve outcomes 7.2 and 7.4 of the Code of Conduct 2011.
- 54.23 The Tribunal found that the Applicant's allegations relating to outcomes 7.2 and 7.4 of the SRA Code of Conduct 2011 would not have succeeded in any event because the Applicant had failed to prove on the balance of probabilities that the Firm did not have effective systems and controls in place and/or that the Second and Third Respondents had failed to maintain those systems and controls. The Applicant had not even identified how the Firm and/or the Second and Third Respondents could have or should have improved their systems or controls.
- 54.24 The Tribunal noted that Mr Adams had admitted in the Statement of Agreed Facts and Outcome that in addition to other admitted breaches he had failed to achieve outcomes 7.2 and 7.4 of the Code of Conduct Rules, although he claimed that the Firm's accountants and auditors had not raised the legal aid payments issue with him, and he had not been aware of the shortage on the client account.
- 54.25 The Tribunal considered that it did not automatically follow from Mr Adams' admission that the Firm had not had effective systems and controls in place. The mere failure to pay the legal aid payments either to the supplier of legal aid or transfer the payments to the client account within 14 days did not automatically mean that the Firm did not have effective systems and controls in place within the meaning of Outcome 7.2 of the SRA Code of Conduct 2011 or that the Second and Third Respondents and/or the Firm had failed to maintain those systems and controls within the meaning of Outcome 7.4 of the SRA Code of Conduct.
- 54.26 In fact, the evidence suggested that Mr Adam's management of the Firm's systems and his acts or omissions rather than the Firm's system may have caused the legal aid payments issue. In the Tribunal's view, it had not been unreasonable for the Second and Third Respondents to have delegated the management of the administration of the legal aid payments to Mr Adams. Mr Adams had been responsible for managing the Firm's financial and administrative matters, including the administration of the legal aid payments, for more than 10 years and the Second and Third Respondent never had had any reasons not to trust Mr Adams.

- 54.27 On the basis of the above, the Tribunal found that the Second and Third Respondents had breached Rules 6.1 and 19.1 (b) of the SRA Accounts Rules 2011, but that the Second and Third Respondents had not breached Rule 7.1 of the SRA Accounts Rules 2011 and had not failed to achieve Outcomes 7.2 and 7.4 of the SRA Code of Conduct 2011.

Previous Disciplinary Matters

55. There were no previous disciplinary matters against the Second or Third Respondents.

Sanction

56. The Tribunal has found that the Second and Third Respondents have breached Rules 6.1 and 19.1 (b) of the SRA Accounts Rules 2011. In determining a sanction for the Second and Third Respondents, the Tribunal considered the Solicitors Disciplinary Tribunal's Guidance Note on Sanction (10th Edition /June 2022) (the "Sanctions Guidance").
57. The Tribunal's overriding objective, when considering sanction, was the need to maintain public confidence in the integrity of the profession. In determining sanction, the Tribunal's role was to assess the seriousness of the proven misconduct and to impose a sanction that was fair and proportionate in all the circumstances. In determining the seriousness of the misconduct, the Tribunal was to consider the Respondent's culpability and harm identified together with the aggravating and mitigating factors that existed.
58. In assessing the Second and Third Respondent's culpability, the Tribunal found that the Second and Third Respondents had committed a technical breach of the SRA Accounts Rules 2011 due to their position as Equity Partners of the Firm and due to the strict liability attached to the breach of Rule 6.1 of the SRA Accounts Rules 2011. The Second and Third Respondents had not been aware of the legal payments issue until the SRA's investigation into the Firm's affairs. For these reasons, the Tribunal assessed the Second and Third Respondents' level of culpability as very low.
59. The Tribunal then considered the issue of harm. There was no evidence of direct harm having been caused from the fact that the money had not been transferred to the client account on time. Whilst the Tribunal considered that it was regrettable that the affected legal aid suppliers' payments had been delayed, the breach of the Rule 19.1 (b) of the SRA Accounts Rules 2011 concerned the fact that the money was sitting in the office account and was not transferred to the client account on time. If the Second and Third Respondents had complied with Rule 19.1 (b) of the SRA Accounts Rules 2011 and transferred the legal aid payments to the client account, the legal aid suppliers would have been in the same regrettable position that their payments had been delayed.
60. The Tribunal further considered that there were no aggravating factors relating to the Second and Third Respondents' breach of Rules 6.1 and 19.1 (b) of the SRA Accounts Rules 2011. However, the Tribunal found that there were mitigating factors. The Tribunal noted that the duration of the breach had been short in light of the Second and Third Respondents' long and otherwise unblemished career and the character references as well as the witnesses giving evidence on behalf of both the Second and Third

Respondents had spoken very highly of both the Second and Third Respondents' honesty, integrity and trust and comfort secured from their clients and employees of the Firm. The willingness of the Second and Third Respondents to admit liability for breach of Rules 6.1 and 19.1 (b) of the SRA Accounts Rules 2011 had been pragmatic and demonstrated their genuine insight.

61. Whilst any breach of the Principles or the SRA Account Rules was not to be treated lightly, the Tribunal concluded that for all the factors it had determined and the circumstances in this case indicated that the level of seriousness of the misconduct and the Second and Third Respondents' culpability was low that it would be unfair or disproportionate to impose a sanction on the Second or Third Respondents. The Tribunal then proceeded to assess the Applicant's application for an order for costs.

Costs

62. Mr Collis on behalf of the Applicant applied for an order for costs in the sum of £13,348.81, including VAT and disbursements, against each of the Second and Third Respondents. Mr Collis submitted that the Applicants' total costs amounted to £53,395.25, including VAT and disbursements.
63. Mr Collis submitted that 25% of the Applicant's total costs should be attributed to the each of the Second and Third Respondents. The Applicant's view was that 50% of the Applicant's total costs was to be attributed to the First Respondent, Mr Adams, albeit a different sum had ultimately been agreed between the Applicant and Mr Adams in the Statement of Agreed Facts and Outcome.
64. The Tribunal noted that the Second and Third Respondents had not submitted any statement of means, nor submitted their own application for an order for costs.
65. The Tribunal further noted that whilst the Tribunal had found that the Second and Third Respondents had breached Rules 6.1 and 19.1 (b) of the SRA Accounts Rules 2011, the Second and Third Respondents were responsible for these breaches on a strict liability basis simply because of their position as Equity Partners of the Firm rather than due to any action or omission on their part and the Second and Third Respondents had successfully defended themselves against the Applicant's other more serious allegations, which had formed the main part of the Applicant's case.
66. In considering the Applicant's application for an order for costs the Tribunal also took into account the decision of *Broomhead v Solicitors Regulation Authority* [2014] EWHC 2772 (Admin), in which Mr Justice Nicol stated as follows:

"42. However, while the propriety of bringing charges is a good reason why the SRA should not have to pay the solicitor's costs, it does not follow that the solicitor who has successfully defended himself against those charges should have to pay the SRA's costs. Of course, there may be something about the way the solicitor has conducted the proceedings or behaved in other ways which would justify a different conclusion. Even if the charges were properly brought it seems to me that in the normal case the SRA should have to shoulder its own costs where it has not been able to persuade the Tribunal that its case is made out. I do not see that this would constitute an unreasonable disincentive to take appropriate regulatory action."

67. The Applicant had failed to prove to the requisite standard the main part of its case against the Second and Third Respondents and the Second and Third Respondents had a low level of culpability with respect to breaches of Rules 6.1 and 19.1(b) of the SRA Account Rules 2011. Applying *Broomhead v Solicitors Regulation Authority* [2014] EWHC 2772 (Admin), the Tribunal, therefore, concluded that it was appropriate to make no order as to costs.

Statement of Full Order

Second Respondent

68. The Tribunal makes NO ORDER against BHAVANI RAJAYA LAXMI HOGARTY, solicitor. The Tribunal further Ordered that there be No Order as to costs.

Third Respondent

69. The Tribunal makes NO ORDER against MAEVE TERESA VICKERY, solicitor. The Tribunal further Ordered that there be No Order as to costs.

Dated this 15th day of July 2024
On behalf of the Tribunal

B Forde

B Forde
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
15 JULY 2024