

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 12535-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD.

Applicant

and

GUY NICHOLAS HURST

Respondent

Before:

Mr G Sydenham (in the Chair)

Mr U Sheikh

Ms E Keen

Date of Hearing: 25 June 2024

Appearances

Mr Montu Miah, barrister of Solicitors Regulation Authority Limited, The Cube, 1999, Wharfside Street, Birmingham, B1 1RN, for the Applicant

The Respondent did not participate in the proceedings.

JUDGMENT

Allegations

The allegation against the Respondent, Guy Nicholas Hurst, made by the SRA was that:

1. Between 2016 and May 2017 while working at Eric Robinson Solicitors, the Respondent provided his personal bank account details to clients on two occasions and received sums of £2,000.00 from Client S and £5,000.00 from Client M respectively, into his personal bank account in relation to those clients' property matters. In doing so, the Respondent breached all or any of:
 - (a) Principle 2 of the SRA Principles 2011.
 - (b) Principle 4 of the SRA Principles 2011.
 - (c) Principle 6 of the SRA Principles 2011.
 - (d) Rule 1.2 (a) of the SRA Accounts Rules 2011, to keep other people's money separate from the money belonging to you or your firm.
 - (e) Rule 1.2 (b) of the SRA Accounts Rules 2011, to keep other people's money safely in a client account.

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

2. Between 23 January 2023 and 28 February 2023 while working as a Consultant for Keystone Law, the Respondent misled Keystone Law and/or its COLP:
 - (a) by giving a false warranty as to whether he was subject to any regulatory investigations into his conduct by the SRA;
 - (b) as to whether he had requested clients pay funds to his personal bank account on any other occasions; and/or
 - (c) as to the reason for requesting that a client make payment to the Respondent's personal account.

In doing so, the Respondent breached all or any of:

- (a) Principle 2 of the SRA Principles 2019
- (b) Principle 4 of the SRA Principles 2019
- (c) Principle 5 of the SRA Principles 2019
- (d) Paragraph 1.4 of the SRA Code of Conduct for Solicitors, REL's and RFL's.

3. On 1 February 2023, while working as a Consultant for Keystone Law, the Respondent provided his personal bank account details to Client J and received £3,000.00 into his personal bank account in relation to Client J's property matter. In doing so, the Respondent breached all or any of:
- (a) Principle 2 of the SRA Principles 2019
 - (b) Principle 5 of the SRA Principles 2019
 - (c) Principle 7 of the SRA Principles 2019
 - (d) Rule 2.3 of the SRA Accounts Rules 2019, to ensure client money is paid promptly into a client account.
 - (e) Rule 2.5 of the SRA Accounts Rules 2019, to ensure client money is returned promptly to the client as soon as there is no longer any proper reason to hold those funds.

Executive Summary

4. The Tribunal found, on the balance of probabilities, that the Applicant has proven all the allegations and that the Respondent had been dishonest and had breached Principles 2, 4 and 6 of the SRA Principles 2011, Rules 1.2 (a) and 1.2 (b) of the SRA Accounts Rules 2011, Principles 2, 4, 5, 7 of the SRA Principles 2019, paragraph 1.4 of the SRA Code of Conduct for Solicitors, REL's and RFL's and Rules 2.3 and 2.5 of the SRA Accounts Rules 2019.

Sanction

5. The Respondent, Mr Guy Nicholas Hurst was struck off the Roll of solicitors and ordered to pay £6,282.50 in costs.

Documents

6. The Tribunal considered all of the documents in the case which included but were not limited to:
- Rule 12 Statement, dated 5 January 2023 and Exhibit MM1
 - Applicant's Statement of Costs, dated 5 January 2024 and 31 May 2024
 - Letters from the Applicant to the Respondent, dated 1 December 2023, 12 January 2024, 31 January 2024, 12 February 2024, 15 February 2024, 22 February 2024, 1 March 2024, 4 March 2024, 18 April 2024, 1 May 2024, 31 May 2024 and 12 June 2024 regarding the present proceedings

Preliminary Matters

The Applicant's Application to Proceed in the Absence of the Respondent

7. The Tribunal noted that the Respondent had not been participating in the proceedings. The Applicant confirmed that it was seeking to proceed in the absence of the Respondent. The Applicant further explained the efforts made to contact the Respondent and keep him informed of the proceedings. The Applicant had obtained a copy of the Respondent's driving licence as a proof of his address and had obtained a confirmation of the Respondent's email address from the Respondent.
8. The Tribunal considered that it had discretion as to whether to proceed in the absence of the Respondent. In considering the matter, the Tribunal was mindful of the following principles set out by the Court of Appeal in *R v Hayward, R v Jones, R v Purvis* [2001] EWCA Crim 168 at [22]:
 - 3 *"The trial judge has a discretion as to whether a trial should take place or continue in the absence of a defendant and/or his legal representatives.*
 - 4 *That discretion must be exercised with great care and it is only in rare and exceptional cases that it should be exercised in favour of a trial taking place or continuing, particularly if the defendant is unrepresented.*
 - 5 *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) *whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings;*
 - (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) *whether an absent defendant's legal representatives are able to receive instructions from him during the trial and the extent to which they are able to present his defence;*

- (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) *the risk of the jury reaching an improper conclusion about the absence of the defendant;*
- (viii) *the seriousness of the offence, which affects defendant, victim and public;*
- (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) *where there is more than one defendant and not all have absconded, the undesirability of separate trials, and the prospects of a fair trial for the defendants who are present.”*

9. The Tribunal also had regard to the Court of Appeal’s judgment in *GMC v Adeogba* [2016] EXCA Civ 162 at [17-20], which established how the principles set out in *R V Hayward* apply in the context of professional disciplinary proceedings:

“... the principles set out in Hayward ..., provide a useful starting ... however, it is important to bear in mind that there is a difference between continuing a criminal trial in the absence of the defendant and the decision ... to continue a disciplinary hearing.

... it is important that the analogy between criminal prosecution and regulatory proceedings is not taken too far. Steps can be taken to enforce attendance by a defendant; he can be arrested and brought to court. No such remedy is available to a regulator.

...

Thus, the first question which must be addressed in any case such as these is whether all reasonable efforts have been taken to serve the practitioner with notice. That must be considered against the background of the requirement on the part of the practitioner to provide an address for the purposes of registration along with the methods used by the practitioner to communicate with the [regulator] and the relevant tribunal during the investigative and interlocutory phases of the case. Assuming that the Panel is satisfied about notice, discretion whether or not to proceed must then 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 [regulator] and the interests of the public also taken into account; the criteria for criminal cases must be considered in the context of the different circumstances and different responsibilities of both the [regulator] and the practitioner.”

10. After careful consideration, the Tribunal was satisfied that all documents were deemed appropriately served on the Respondent in accordance with Rule 45 of the Solicitors

(Disciplinary Proceedings) Rules 2109. The Respondent had also been granted access to the Solicitors Disciplinary Tribunal's document management system, where all the relevant case documents are stored.

11. The Tribunal further noted that the Applicant had sent numerous notifications to the Respondent regarding the present proceedings. The Respondent had also responded to the Applicant's emails at the start of the Applicant's investigations. The Applicant had not received bounce back to its subsequent emails, the Respondent had not informed the Applicant of a change of contact details and there was nothing else to suggest that the Respondent had not received all the communication and documents in the proceedings.
12. After carefully considering the above factors and other circumstances of the case, the Tribunal determined that the Respondent had deliberately and voluntarily absented himself from the proceedings despite the Applicant's repeated attempts to engage with the Respondent. The Respondent had been under a duty to engage with the Applicant as his regulator as well as a duty to participate in the present proceedings. Yet, the Respondent had chosen not to do so. Accordingly, the Tribunal decided that it was appropriate to proceed without the engagement of the Respondent.

Anonymisation

13. The Applicant explained that the names of the Respondent's former clients had been anonymised to protect their personal information. These three clients have provided witness statements explaining the Respondents' conduct in their respective matters. The Rule 12 Statement contains an anonymisation schedule. The Tribunal considered that the anonymisation was appropriate and decided to grant the anonymisation protection with respect to these three former clients of the Respondent.

Factual Background

14. The Respondent is a solicitor having been admitted to the Roll of Solicitors on 15 September 1997. The Respondent joined Eric Robinson Solicitors as a non-equity partner from April 2015 to early 2017. The Respondent ceased to be a non-equity Partner and instead became a consultant with the firm from early 2017 to April 2017. The Respondent left Eric Robinson Solicitors on 20 April 2017.
15. Following the Respondent's departure with Eric Robinson Solicitors in April 2017, he began working for Paris Smith LLP between June 2017 to June 2021.
16. The Respondent left Paris Smith LLP and was employed as a Consultant Solicitor at McPhersons Solicitors LLP between June 2021 to December 2022.
17. In January 2023, the Respondent commenced an appointment as a self-employed Consultant at Keystone Law Limited. The Respondent was terminated from his contract with Keystone Law Limited in February 2023.
18. The Respondent does not have a current practising certificate.

19. **Factual Background Relating to Allegation 1**

19.1 The alleged misconduct with respect to Allegation 1 relates to the Respondent's alleged requests for additional fees from two clients to be paid into his personal bank account, whilst the Respondent was a non-equity partner at Eric Robinson Solicitors. This matter came to the attention of the Applicant when Mr David Lawrence, Senior Partner and COLP of Eric Robinsons Solicitors, filed a report with the Applicant on 23 November 2022 with concerns about the Respondent's alleged conduct and sent further emails, dated 16 January 2023 and 13 February 2023, respectively, concerning that report.

The £2,000.00 Payment from Client S

19.2 Between 2016 and May 2017, the Respondent acted for Client S in relation to the sale of his property. The purchase exchanged and completed in March 2017.

19.3 Eric Robinsons Solicitors had cause to investigate matters following a poor service complaint made to the Legal Ombudsman about the handling of the sale of Client S's property.

19.4 During the course of that investigation, Client S emailed the firm on 11 October 2021 concerning the £2,000.00 payment made to the Respondent. Client S stated that prior to completion of the purchase, the Respondent had asked Client S to make payment for additional work to the Respondent's personal bank account. A screenshot of the payment to the Respondent on 6 July 2016 was provided by Client S to the firm on 19 October 2021. Client S marked the payment with the reference '*CONSULTANCY*' and to '*G Hurst*'. Client S informed the firm that he did not ask the Respondent to undertake any additional work on a personal basis.

19.5 The evidence with regards to Client S' matter shows the original fee estimate was just £700.80 including VAT, plus £35,803.70 in disbursements. The Respondent invoiced Client S for £5,040.00 on 31 October 2016 which was already in excess of the fee quote provided. The Respondent also requested an additional £2,000.00 to his personal bank account from Client S for '*additional work*' in a telephone call prior to completion, taking Client S's fees far above the original fee estimate.

19.6 According to the Applicant, there is no record that the Respondent performed any additional work for Client S in relation to the additional payments to his personal bank account.

19.7 Mr Lawrence had a telephone conversation with the Respondent on 28 March 2022 concerning Client S's payment. In the telephone note made by Mr Lawrence about this conversation, he states that the Respondent said there was '*no excuse*'. Mr Lawrence further states '*After perhaps a couple of seconds Guy said he had forgotten about this one, that again it was entirely his fault*'. The Respondent admitted to Mr Lawrence that he needed money.

19.8 Mr Lawrence emailed the Respondent on 30 March 2022 setting out the telephone conversation that he and the Respondent had on 28 March 2022. Mr Lawrence wrote Client S '*has also advised that he had been asked by you for the payment of an*

additional £2000 into your personal account, ostensibly for “additional work”. Mr Lawrence further wrote *‘When confronted with this, you stated that you had forgotten about this payment, but accepted it. You again had no excuses.’* The Respondent responded to the email on the same day stating: *‘I confirm that your email is correct.’*

- 19.9 Mr Lawrence informed that the Respondent repaid the firm the sum of £2,000.00 that was wrongly taken from Client S.
- 19.10 Mr Lawrence informed that the Respondent was not authorised by the firm to request or receive payments due for the work undertaken on behalf of the firm into his personal bank account.

The £5,000.00 Payment from Client M

- 19.11 Eric Robinson Solicitors received a Pre-Action Protocol (‘PAP’) letter of claim on 28 January 2022 from Client M’s solicitors in respect of an allegation of professional negligence against the firm. By way of context, the Respondent acted for Client M in relation to the sale of a property in 2016.
- 19.12 The PAP letter alleged the Respondent had requested £5,000.00 from Client M and that payment was made to the Respondent directly. The PAP letter further alleged that the payment was made to an account in the name of *‘GN and PA Hurst.’*
- 19.13 The evidence with regards to Client M’s matter shows the original fee estimate including disbursements and VAT was £10,862.40 to £12,062.40. £12,052.80 was billed to Client M on 30 April 2015, and a further £5,508.30 was billed to the Client on 19 July 2016. The Respondent issued a credit note for £3,600.00 the same day; however the Respondent also delivered an invoice to Client M dated 20 April 2016 for £5,000.00. This took Client M’s total fees paid far in excess of the initial fee quote.
- 19.14 Evidence of the payment by way of a bank statement reflects the payment made to GN and PA Hurst on 20 April 2016 by Client M.
- 19.15 According to the Applicant, there is no record that the Respondent performed any additional work for Client M in relation to the additional payments to his personal bank account.
- 19.16 A copy of the invoice for the payment is dated 20 April 2016 for the sum of £5,000.00. It was not provided to Client M until after the payment had been made. Client M wrote an email to the Respondent on 17 August 2016 whereby she stated, *‘I also need an invoice for the separate consultation fee.’*
- 19.17 The invoice stipulates it was for *“Professional services in connection with the sale of property”*. The invoice is not on Eric Robinson Solicitors letterhead. The invoice instead indicates the name of the Respondent and not the registered address for Eric Robinson Solicitors.

- 19.18 In the report to the SRA dated 23 November 2022, Eric Robinson Solicitors state they were wholly unaware of the invoice until they received the PAP letter from Client M's solicitors. The firm wrote to the Respondent on 24 March 2022 seeking an explanation for the version of events set out in the PAP letter.
- 19.19 Mr Lawrence had a telephone conversation with the Respondent on 28 March 2022 concerning the PAP letter. In the telephone note made by Mr Lawrence about this conversation, he states that '*GH confirmed that he understood the allegation made by Client M 'as set out in our letter. There was no excuse.'*
- 19.20 Mr Lawrence emailed the Respondent on 30 March 2022 setting out the telephone conversation that he and the Respondent had on 28 March 2022. The Respondent responded to the email on the same day stating: '*I confirm that your email is correct.'*
- 19.21 On 19 April 2022, the firm returned the payment of £5,000.00 to Client M's solicitors.
- 19.22 Mr Lawrence informed that the Respondent was not authorised by the firm to request or receive payments due for the work undertaken on behalf of the firm into his personal bank account.

The Respondent's explanation about the above matters

- 19.23 Mr Guest, an SRA Investigation Officer, emailed the Respondent on 13 December 2022 seeking the Respondent's explanation about the payments.
- 19.24 The Respondent provided a reply to the matter on 9 January 2023. In summary, the Respondent advised:
- (a) both Client S and Client M agreed the transfer to his personal account and neither sum had been billed in excess of the original fee quote so the transfer was at no extra cost to the clients;
 - (b) the reason for requesting the transfer was that the Respondent needed money, was going through a divorce and his son was undergoing medical treatment; and
 - (c) the Respondent alleged that he did not, and at time of writing his response, still had not received his final month's pay from Eric Robinson Solicitors.
- 19.25 In a telephone call with Mr Guest on 21 December 2022, the Respondent asked if he would be struck off and volunteered that he may ask to come off the Roll of Solicitors.
- 19.26 On 9 February 2023, the SRA asked Mr Lawrence for his views on the points made by the Respondent on 9 January 2023. Mr Lawrence responded on 13 February 2023 and informed that the Respondent's version of events lacked credibility and are untrue.

20. Factual Background Relating to Allegation 2

- 20.1 The Respondent's alleged misconduct with respect to Allegation 2 relates to a false warranty that the Respondent had allegedly given concerning a regulatory investigation into his conduct by the Applicant. It was further alleged that the Respondent had

requested a client transfer fees to his personal bank account. It was also alleged that the Respondent misled the firm as to the reason for requesting payment from the client.

- 20.2 The Respondent's alleged misconduct relating to Allegation 2 came to the attention of the Applicant when Mr William Robins, Director and COLP of Keystone Law, filed a report with the SRA with concerns about the Respondent's alleged conduct on 3 March 2023 and sent a further email, dated 10 March 2023 concerning that report.

Allegation 2 (a) – False Warranty

- 20.3 On 23 January 2023, the Respondent was appointed as a self-employed Consultant solicitor at Keystone Law. The firm emailed a number of documents to the Respondent. One of those documents emailed on 23 January 2023 was titled '*Contract for Services*'.
- 20.4 The Respondent was required to review the document and sign indicating agreement to its terms. The Respondent viewed and signed the document on 24 January 2023.
- 20.5 Mr Robins explains in his report to the SRA that before and on joining the firm, the firm checks new joiners are not subject of any regulatory investigation into their conduct.
- 20.6 Keystone Law emailed a further document titled '*Compliance Agreement*' to the Respondent on 23 January 2023 for the Respondent to review and sign indicating agreement to its terms.
- 20.7 Clause 14.3.4 of that document asks new joiners to confirm that have never been subject to disciplinary procedures or investigations by the SRA. Clause 14.3.4 specifically states:

“they have never been subject to disciplinary procedures of, or reached settlement with or been investigated by any of a former firm or employer, the Law Society of the England and Wales, the Solicitors Disciplinary Tribunal, the Bar Council, the Bar Standards Board, the SRA, the Legal Complaints Board, the Office for the Supervision of Solicitors, the Consumer Complaints Service or the Chartered Institute of Legal Executives, Legal Ombudsman for England and Wales or any like regulator (including any relevant overseas regulator), nor has any firm with which they were previously or are currently associated been subject to any such disciplinary procedures or investigations which arose in whole or in part on account of their acts or omissions.”

- 20.8 The Respondent viewed and signed the document on 24 January 2023. The Respondent did not inform the firm or Mr Robins that he was, at the time, subject to an investigation into his conduct by the SRA.
- 20.9 Sometime in February 2023, the Respondent was invited to join the roster of lawyers with access to Lenders Exchange, a bank panel management portal used by residential conveyancers. The Respondent completed the application form to join and sent this to Ms Rosewarne, the firm's conveyancing counsel, on 27 February 2023. As part of the application, the Respondent was asked '*are you subject to a current Regulatory Body Investigation*'. The Respondent indicated '*Yes.*'

- 20.10 On 28 February 2023, Mr Robins was made aware of this issue. Mr Robins states he was surprised about this given the warranty the Respondent provided in the Compliance Agreement on joining the firm.
- 20.11 Mr Robins states that he telephoned the Respondent on 28 February 2023 seeking an explanation about this. During that telephone conversation, the Respondent informed Mr Robins that in 2016 he had asked a client to make a payment direct into his personal bank account. The Respondent advised Mr Robins that the monies received had been repaid. Mr Robins asked the Respondent why he had not disclosed this earlier to the firm, but the Respondent had no answer to give.
- 20.12 The Respondent was suspended with immediate effect by the firm on 28 February 2023. The Respondent's contract with the firm was terminated thereafter.

Allegation 2 (b) – Requested clients to pay funds to his personal bank account on any other occasion

- 20.13 During a telephone conversation on 28 February 2023, Mr Robins asked the Respondent whether the request in 2016 for Clients to pay directly into his personal bank account was an isolated incident. Mr Robins also asked if there had been a repeat of this behaviour. The Respondent assured Mr Robins that that this behaviour was isolated.
- 20.14 Mr Robins explained in his report to the SRA that he expressed disappointment at the Respondent's answer. During the telephone conversation on 28 February 2023, Mr Robins referred the Respondent to an email dated 1 February 2023 between the Respondent and Client J. In that email, the Respondent had invited Client J to send him £3,000.00 in anticipation of conveyancing work that the Respondent had offered to undertake.
- 20.15 The Respondent had specified his personal bank account details in an email to Client J on 1 February 2023. This was contrary to the assurance the Respondent gave to Mr Robins on whether the 2016 matters were an isolated event.
- 20.16 Mr Robins informed that the Respondent was not authorised by the firm to request or receive payments due for the work undertaken on behalf of the firm into his personal bank account.

Allegation 2 (c) Reason for requesting Client J make payment to the Respondent's personal bank account

- 20.17 Mr Robins sought an explanation from the Respondent about the reasons for requesting Client J to make payment to the Respondent's personal bank account. Mr Robins explains in the report to the SRA that the Respondent struggled to answer. The Respondent explained that he was still in the process of joining the firm and had no business bank account. The Respondent stated he did not believe that it was possible for him to be paid via the firm. Mr Robins explained to the Respondent that it was never appropriate to provide one's own personal bank account details to a client and to take payment directly from a client in anticipation of work, or at all.

20.18 Mr Robins states in the report to the SRA that the firm undertook a review of the Respondent's files. The firm established that another client had paid for services to be rendered by the Respondent and had paid into the firm's office account, as per the firm's usual process. As such, the reason why the Respondent had asked Client J to make payment to the Respondent's personal bank account is inconsistent, as another client had paid for services to be rendered by the Respondent, into the firm's office account. Furthermore, the firm established that the Respondent could receive funds from the firm in payment for his services as the Respondent had established a business bank account.

21. **Factual Background Relating to Allegation 3**

The £3,000.00 payment from Client J

- 21.1 The Respondent was instructed in November 2022 to act for Client J in relation to the sale of his property. At that time, the Respondent worked as a consultant solicitor at McPhersons Solicitors.
- 21.2 On 30 November 2022, the Respondent emailed Client J with a fixed fee quote in relation to the property matter. The fee was for £3,500.00 plus additional transfer fees and VAT.
- 21.3 On 30 January 2023, Client J was informed that the Respondent had left McPhersons Solicitors and was transitioning to Keystone Law. On that same occasion, the Respondent explained to Client J that as he had moved firms it would be helpful for him to have cash flow into his business. The Respondent offered Client J a discount of £1,000.00 if the fees quoted originally were paid upfront. This would be £3,000.00 inclusive of VAT. Client J confirmed he would be happy to do so.
- 21.4 The Respondent had been appointed as a self-employed consultant solicitor at Keystone Law on 23 January 2023. The Respondent signed the "*Contract for Services*" document on 24 January 2023.
- 21.5 On 1 February 2023, Client J received an email from the Respondent from his Keystone Law email address. That email address was guy.hurst@keystonelaw.co.uk. In that email, the Respondent advised Client J that his account had not yet been set up and for Client J to send the agreed sum of £3,000.00. The Respondent provided details of his personal bank account to Client J. Client J subsequently confirmed that he made payment of £3,000.00 to the Respondent's personal bank account.
- 21.6 In terms of supervision of the Respondent by the firm, Mr Robins explains in his report to the SRA that he considered the Respondent would require enhanced level of supervision. Sometime in February 2023, Mr Robins asked Ms Rosewarne to undertake reviews of the Respondent's case files. In the course of those file reviews, on 28 February 2023, the email sent by the Respondent to Client J on 1 February 2023 was discovered.
- 21.7 Mr Robins states that he telephoned the Respondent on 28 February 2023 seeking an explanation about this email. During that telephone conversation, Mr Robins asked the Respondent to pay the sums back to Client J. The Respondent informed Mr Robins that he had spent the monies paid to him by Client J.

- 21.8 Mr Robins subsequently made contact with Client J and arranged for Keystone Law to return the monies paid from the office account.

The Respondent's explanation about these matters

- 21.9 On 15 March 2023, Mr Guest, Investigation Officer at the SRA wrote to the Respondent asking for his account concerned with the matters involving Keystone Law. The Respondent responded to the matters put to him on 21 April 2023. In summary, the Respondent advised:
- (a) he had no intention of misleading Keystone regarding regulatory investigation, and he did disclose this in his CQS application;
 - (b) the transfer of £3,000.00 from Client J to his personal account was purely a commercial transaction to help cashflow while he waited for his business account to be opened. It was agreed that the sum would be discounted from future invoices; and
 - (c) he had been told by Keystone Law that he could not be paid by Keystone Law until he had opened a business account for his trading company.

Witnesses

22. The Respondent failed to participate in the Hearing and no witnesses were heard.

Findings of Fact and Law

23. The Applicant was required to prove the allegations beyond 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

24. **Allegation 1 – That between 2016 and May 2017 while working at Eric Robinson Solicitors, the Respondent provided his personal bank account details to clients on two occasions and received sums of £2,000.00 from Client S and £5,000.00 from Client M respectively, into his personal bank account in relation to those clients' property matters. In doing so, the Respondent breached all or any of:**
- (a) **Principle 2 of the SRA Principles 2011.**
 - (b) **Principle 4 of the SRA Principles 2011.**
 - (c) **Principle 6 of the SRA Principles 2011.**
 - (d) **Rule 1.2 (a) of the SRA Accounts Rules 2011, to keep other people's money separate from the money belonging to you or your firm.**

- (e) **Rule 1.2 (b) of the SRA Accounts Rules 2011, to keep other people's money safely in a client account.**

Allegation 1 - In addition, the allegation above is advanced on the basis that the Respondent's conduct was dishonest. Dishonesty is alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegations.

The Applicant's Case – Allegation 1

Alleged Dishonesty

- 24.1 The Applicant relied on the test of dishonesty stated by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67.
- 24.2 According to the Applicant, the Respondent has told the Applicant that he understood or believed the facts to be as follows:
- (a) The funds were requested in relation to work he had carried out for Client S and Client M;
 - (b) Both Client S and Client M agreed to pay the funds to his personal account;
 - (c) Neither Client S nor Client M was disadvantaged by the sums requested, they were within the original fee estimates and resulted in no additional cost to the client; and
 - (d) Invoices were raised with Client S and Client M to be paid to his personal account directly because of his personal circumstances and he believes he was due outstanding fees from Eric Robinson Solicitors.
- 24.3 The Applicant asserted that notwithstanding the Respondent's understanding or belief of the facts as set out above, he did not initially dispute that he should not have asked Client S and Client M to pay the sums in question or pay them directly to his personal bank account. The Respondent had also stated that there was '*no excuse*' for his actions and immediately offered to pay the funds back when asked about the payment by Eric Robinson Solicitors.
- 24.4 According to the Applicant, the Respondent had then changed his position in his response to the Applicant. The Applicant asserted that the Respondent attempted to justify his additional charges to Client S and Client M by claiming that both agreed to pay, and the payments were not in addition to the fees agreed at the outset of each transaction.
- 24.5 While Client S and Client M did pay the sums requested, in the Applicant's view, this is not sufficient justification for the charges or for requesting that they were paid to the Respondent's personal bank account. The Applicant asserted that the evidence shows that the Respondent's initial fee estimates were far lower than the amounts billed in both cases. The Applicant further asserted that the Respondent had admitted that he

raised the bills because he needed money, and he did so in a way which was not visible to Eric Robinson Solicitors.

- 24.6 The Applicant claimed that ordinary and decent people would not expect a solicitor to misappropriate or otherwise misuse money to which they were not entitled, and which belonged to clients, and would regard such conduct as dishonest in line with the test laid down in *Ivey v Genting Casinos*.

Alleged Lack of Integrity (Principle 2 of the SRA Principles 2011) and Failure to Maintain Public Trust (Principle 6 of the SRA Principles 2011)

- 24.7 The Applicant relied on *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, where it was said that integrity (i.e. moral soundness, rectitude and steady adherence to an ethical code) connotes adherence to the ethical standards of one's own profession.
- 24.8 The Applicant asserted that a solicitor of integrity in the position of the Respondent would understand that providing his personal bank account details to his clients, without authorisation from the firm, in order to receive payments in relation to their property matters, undermines such integrity. Moreover, the fees eventually charged by the Respondent took the total fees paid by the clients beyond what they had originally been quoted. This benefitted the Respondent at the expense of the firm by overcharging the clients. According to the Applicant, this alleged conduct has the capability to damage trust and confidence in the profession as a whole.
- 24.9 The Applicant further asserted that public confidence in solicitors and in the provision of legal services is likely to be undermined by a solicitor who acts in a way the Respondent had as alleged. Clients need to trust that solicitors will act in a way consistent with their professional duties and obligations.
- 24.10 The Respondent received into his personal bank account payment of £5,000.00 from Client M on 20 April 2016. The Respondent also received into his personal bank account £2,000.00 from Client S on 6 July 2016. The requests and methods of these payments were never authorised by Eric Robinson Solicitors.
- 24.11 The Applicant asserted that by acting in the manner the Respondent had had failed to act with integrity and to behave in a way that maintained the trust the public places in him and in the provision of legal services, in breach of Principles 2 and 6 of the SRA Principles 2011

Alleged Failure to Act in the Best Interests of Each Client (Principle 4 of the SRA Principles 2011)

- 24.12 The Applicant alleged that by requesting and accepting unauthorised payments of £2,000.00 and £5,000.00 into his personal bank account from Client S and Client M respectively, the Respondent did not act in the best interests of his clients. The clients had been charged in excess of the original fee estimate to their detriment for the eventual benefit of the Respondent. The Applicant asserted that this was in breach of Principle 4 of the SRA Principles 2011.

Alleged breach of Rules 1.2(a) and 1.2(b) of the Accounts Rules 2011

24.13 The Applicant asserted that by requesting and accepting unauthorised payments of £2,000.00 and £5,000.00 into his personal bank account from Client S and Client M respectively, the Respondent failed to keep his clients' money separate from the money belonging to him. In addition, the Respondent also failed to keep his clients' money safely in a client account. The Applicant alleged that these actions were in breach of Rules 1.2(a) and 1.2(b) of the SRA Solicitors Accounts Rules 2011.

The Respondent's Case – Allegation 1

24.14 The Respondent failed to participate in the proceedings and did not any answer to the Applicant's allegations.

Tribunal's Findings – Allegation 1

Alleged Dishonesty

24.15 The test for dishonesty applied by the Tribunal was that laid down by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67, which applies to all forms of legal proceedings, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people:

“When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts.

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

24.16 When considering dishonesty, the Tribunal first established the actual state of the Respondent's knowledge or belief as to the facts, noting that the belief did not have to be reasonable, merely that it had to be genuinely held. It then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

24.17 The Tribunal drew inference from the Respondent's silence and accepted the Applicant's case. Despite repeated opportunities to participate in the proceedings, the Respondent had chosen not to participate in the proceedings and thereby had seemingly decided not to challenge the Applicant's case and the evidence presented by the Applicant in support of its case. In addition, the Tribunal relied on the other evidence and reasons set out in this judgment.

24.18 The Tribunal noted that whilst at Eric Robinson Solicitors the Respondent had, at least on two occasions, generated client invoices, to which he had inserted his personal bank

account details and requested clients to pay the invoices to his personal bank account. He had charged the clients for additional work although he had not done any additional legal work. As requested, the clients had paid the money to the Respondent's personal bank account and the Respondent had spent the money.

- 24.19 Consequently, the firm's clients had paid for legal work that had never been done. In addition, the funds that the clients had paid were not insured because the funds were paid to the Respondent's personal account and were, thus, not covered by the firm's professional indemnity insurance. Tribunal considered that the Respondent had also misled the firm about the above events as he had kept the firm in the dark about all of this.
- 24.20 The Tribunal further noted that the Respondent's above-described conduct was not an isolated event. The Respondent had repeated the same conduct at least once more whilst he was a consultant at Keystone Law. Thus, the Respondent's conduct amounted to a pattern of behaviour that had taken place at two different firms. In the Tribunal's view, the Respondent had been the author of every act as he had not involved anyone else.
- 24.21 The Tribunal considered that the Respondent had fully understood that his conduct was dishonest. Whilst he had subsequently changed his mind about the account of the events, he had initially admitted that it was wrong that he had taken the money from the clients simply because he needed money and had accepted that there had been "*no excuse*" for his actions. The Respondent had then repeated the same conduct at another firm.
- 24.22 The Tribunal concluded that ordinary decent people would consider the acts of the Respondent as dishonest. Accordingly, the test for dishonesty set out in *Ivey v Genting Casinos* was established in the present case. The Respondent's conduct was aggravated by his dishonesty.

Alleged Lack of Integrity (Principle 2 of the SRA Principles 2011)

- 24.23 The test for integrity applied by the Tribunal was that set out in *Wingate and Evans v SRA and SRA v Malins* [2018] EWCA Civ 366, as per Jackson LJ:

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

Integrity connotes adherence to the ethical standards of one's own profession. 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. [...]"

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.”

- 24.24 The Tribunal accepted that on the balance of probabilities the Applicant’s case had been proven. The Respondent had chosen not to challenge the Applicant’s case. The Tribunal also found that the Respondent had given incentives to the clients to persuade them to make payments to his personal account.
- 24.25 Following the test set out in *Wingate v Evans* the Tribunal considered that acting with integrity means adhering to the SRA’s ethical rules. The Tribunal noted that every solicitor, less an experienced solicitor such as the Respondent, knows that they should not ask clients to pay to their personal bank account. Such method of payment is never authorised.
- 24.26 The Tribunal concluded that the Respondent acted without integrity as he knew what the rules were and nevertheless decided to act contrary to them. Accordingly, the Tribunal found that on the balance of probabilities the Respondent had breached Principle 2 of the SRA Principles 2011.

Failure to Maintain Public Trust (Principle 6 of the SRA Rules 2011)

- 24.27 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.”

- 24.28 The Tribunal found that the Applicant’s case was proven on the balance of probabilities, given that the Respondent had chosen not to challenge it.
- 24.29 The Tribunal found that by giving incentives to the clients to pay to the Respondent’s personal bank account the Respondent had circumvented the protections provided in the firm’s indemnity insurance to the clients. The Tribunal found that the Respondent had misled the clients and the firm. The Tribunal further found that as a result of the Respondent’s actions, the firm lost money and suffered a reputational damage.

24.30 The Tribunal concluded that by acting dishonestly and without integrity, the Respondent had damaged the reputation of the profession, and public confidence in the legal profession, in line with the test set out in *Wingate v Evans*. Therefore, the Tribunal found that on the balance of probabilities the Respondent had breached Principle 6 of the SRA Principles 2011.

Alleged Failure to Act in the Best Interests of Each Client (Principle 4 of the SRA Principles 2011)

24.31 The Tribunal considered that it can never be in the best interest of the client to request the client to pay money to the solicitor's personal account. For that reason, the SRA Accounts Rules have been directed at protecting the clients. The Respondent had circumvented the protection that would have been afforded to the clients by the firm's professional indemnity insurance by requesting the clients to pay the fees to the Respondent's personal bank account. Consequently, the clients were unable to challenge the invoices under the firm's professional indemnity cover.

24.32 Moreover, the Tribunal found that the fact that there was no clear basis for the invoices that the Respondent had sent to the clients could not have been in the clients' best interest. Instead of acting in the clients' best interest, the Respondent had acted solely in his self-interest.

24.33 Accordingly, the Tribunal found that the Applicant had proven on the balance of probabilities that the Respondent breached Principle 4 of the SRA Principles 2011 by failing to act in the best interests of the clients.

Alleged Breach of Rules 1.2(a) and 2.1 (b) of the Accounts Rules 2011

24.34 The Tribunal noted that Rule 1.2(a) of the SRA Accounts Rules 2011 requires a solicitor to keep other people's money separate from money belonging to them or their firm. Rule 1.2(b) of the SRA Accounts Rules 2011 in turn requires a solicitor to keep other people's money safely in a bank or building society account identifiable as a client account (except where the rules specifically provide otherwise).

24.35 The Tribunal was satisfied that the Applicant had proven on the balance of probabilities that the Respondent had requested and accepted unauthorised payments from the clients to his personal bank account. Therefore, the Tribunal found that the Respondent had in breach of Rule 2.1(a) of the SRA Accounts Rules 2011 failed to keep the clients' money separate from money belonging to himself.

24.36 Similarly, the Tribunal found that by requesting and accepting unauthorised payments from the clients to his personal bank account, the Respondent, the Respondent also failed to keep his clients' money safely in a client account in breach of Rule 1.2(b) of the SRA Accounts Rules 2011.

Allegation 2

25. Allegation 2 – Between 23 January 2023 and 28 February 2023 while working as a Consultant for Keystone Law, the Respondent misled Keystone Law and/or its COLP:

- (d) by giving a false warranty as to whether he was subject to any regulatory investigations into his conduct by the SRA;**
- (e) as to whether he had requested clients pay funds to his personal bank account on any other occasions; and/or**
- (f) as to the reason for requesting that a client make payment to the Respondent’s personal account.**

In doing so, the Respondent breached all or any of:

- (e) Principle 2 of the SRA Principles 2019**
- (f) Principle 4 of the SRA Principles 2019**
- (g) Principle 5 of the SRA Principles 2019 (d) Paragraph 1.4 of the SRA Code of Conduct for Solicitors, REL’s and RFL’s.**

The Applicant’s Case – Allegation 2 (a), (b) and (c)

Alleged Dishonesty (Principle 4 of the SRA Principles 2019)

- 25.1 The Applicant relied upon the test for dishonesty stated by the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67, namely that the person has acted dishonestly by the ordinary standards of reasonable and honest people.
- 25.2 The Applicant alleged that the Respondent had been dishonest within the meaning of in *Ivey v Genting Casinos* when he provided a false warranty to Keystone Law as to whether he was subject to any regulatory investigation into his conduct by the SRA.
- 25.3 The Applicant further alleged that the Respondent had also been dishonest, when he had been directly asked, whether he had requested clients, in addition to Client J, to pay funds to his personal bank account on other occasions and the answer he gave was not true.
- 25.4 The Applicant further asserted that the reasons that the Respondent gave for having requested Client J to make payment to the Respondent’s personal bank account were not true and, thus, the Respondent had been dishonest also in this respect. According to the Applicant, the Respondent had explained that he had given his personal bank account details because he had no business account and that it was not possible for him to be paid via Keystone Law.
- 25.5 However, Keystone Law had subsequently established that at that time another client had paid for services to be rendered by the Respondent and had paid into the firm’s

office account in the usual way. Furthermore, the firm established that the Respondent could receive funds from the firm in payment for his services as the Respondent had established a bank account.

Alleged Lack of Integrity (Principle 5 of the SRA Principles 2019)

25.6 The Applicant relied on *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, where it was said that integrity (i.e. moral soundness, rectitude and steady adherence to an ethical code) connotes adherence to the ethical standards of one's own profession. The Applicant asserted that a solicitor of integrity in the position of the Respondent would understand that providing a false warranty to the firm is an act that lacks integrity and has the capability of diminishing confidence in the profession.

Principle 2 (maintaining trust) of the SRA Principles 2019

25.7 The Applicant asserted that the public would expect any statement made by a solicitor in connection with his practice to be strictly true and accurate. Consequently, in the Applicant's view, the public's trust in the solicitors' profession will inevitably be undermined if a solicitor provided false warranty to a prospective employer as to whether they were subject to any regulatory investigation by the SRA.

25.8 The Applicant further argued that the public's trust would further be undermined if a solicitor, when directly asked, whether they had requested clients pay funds to their personal bank account on other occasions and the answer given in response was not true.

25.9 As regarded the reason given by the Respondent as to why he had requested Client J to make payment to the Respondent's personal bank account, this reason was not true because Keystone Law had established that another client had paid for services to be rendered by the Respondent and had paid into the firm's office account and that the Respondent could receive funds from the firm in payment for his services as the Respondent had established a bank account.

25.10 The Applicant alleged that the Respondent's alleged conduct also amounted to a breach by the Respondent of the requirement to behave in a way which maintains the trust placed by the public in them and in the provision of legal services.

Alleged breach of paragraph 1.4 of the SRA Code of Conduct for Solicitors, REL's and RFL's

25.11 The Applicant alleged that the Respondent misled Keystone Law and Mr Robins by giving a warranty on commencement of his employment stating that he was not under investigation by the SRA. According to the Applicant, the Respondent was aware that the issue was ongoing and that there was an active investigation into his conduct at the time of his appointment at Keystone Law. The Respondent had subsequently disclosed that he was under investigation on 28 February 2023 when making an application for access to Lender Exchange.

25.12 Moreover, the Applicant asserted that in discussion with Mr Robins on 28 February 2023, the Respondent had denied asking any clients (other than Client S

and Client M) to pay funds to his personal bank account. When confronted with evidence that he had done so only four weeks earlier with Client J (on 1 February 2023), the Respondent then admitted to having requested and received funds to his personal account.

- 25.13 As regarded the reason given by the Respondent as to why he requested the payment from Client J to his personal bank account, the Applicant considered that the Respondent should have known the reason he gave was false but attempted to mislead Keystone Law's COLP nonetheless.
- 25.14 Therefore, the Applicant alleged that the Respondent misled Keystone and/or its COLP as to whether he was subject to regulatory investigation, whether he had requested further payments to his personal bank account and/or the reason for requesting payment to his personal bank account by Client J.

The Respondent's Case – Allegation 2 (a), (b) and (c)

- 25.15 The Respondent failed to participate in the proceedings and did not any answer to the Applicant's allegations.

The Tribunal's Findings – Allegation 2 (a), (b) and (c)

Alleged Dishonesty (Principle 4 of the SRA Principles 2019)

- 25.16 The Tribunal was satisfied on the balance of probabilities that the Applicant had proven that the Respondent had deliberately given false warranty to Keystone Law about his previous investigations. The Respondent had at the time known that the investigation into his previous conduct was on-going. The Tribunal further considered that the Respondent's requests and acceptance of unauthorised payments from clients to his personal bank account formed a pattern of behaviour.
- 25.17 The Tribunal was also satisfied that the Applicant had proven to the requisite standard, namely the balance of probabilities that the Respondent had also been dishonest when he had given untrue reasons for requesting and accepting payment from Client J to his personal bank account whilst working as a consultant at Keystone Law. The evidence presented by the Applicant had not been challenged by the Respondent, who had chosen not to participate in these proceedings despite numerous reminders from the Applicant to do so.
- 25.18 The Tribunal concluded that ordinary decent people would consider the acts of the Respondent as dishonest, in line with the test set out in *Ivey v Genting Casinos* [2017] UKSC 67. Therefore, the Respondent had breached Principle 4 of the SRA Principles 2019.

Alleged Lack of Integrity (Principle 5 of the SRA Principles 2019)

- 25.19 The Tribunal was satisfied that the Applicant had proven on the balance of probabilities that the Respondent acted with lack of integrity when he provided a false warranty to Keystone Law about the on-going investigations into his alleged previous misconduct.

25.20 Applying the test set out in *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, the Tribunal agreed with the Applicant that a solicitor that is dishonest and gives false warranty lacks integrity and has the capability of diminishing confidence in the profession. Therefore, the Tribunal found that the Respondent had breached Principle 5 of the SRA Principles 2019.

Principle 2 (maintaining trust) of the SRA Principles 2019

25.21 As described further above, the Tribunal was satisfied on the balance of probabilities that the Applicant had proven that the Respondent had deliberately given false warranty to Keystone Law about his previous investigations. The Tribunal also found on the balance of probabilities that the Respondent had been dishonest about the reason for requesting Client J to make payment to the Respondent's personal account.

25.22 Applying the test set out in *Wingate and Evans v SRA and SRA v Malins* [2018] EWCA Civ 366 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, the Tribunal considered that securing a contractual consultancy by providing false warranty and, thus, misleading the firm in question damages the public trust and confidence in the legal profession. The Tribunal considered that the Respondent had deliberately given false warranty to Keystone Law, although he was fully aware of the on-going disciplinary proceedings against him.

25.23 The Tribunal further found that the Respondent had also failed to maintain public trust and confidence in the legal profession by being dishonest about the reasons for having requested Client J to make payment to the Respondent's personal bank account.

25.24 Therefore, the Tribunal concluded that the Respondent had breached Principle 2 of the SRA Principles 2019.

Alleged breach of paragraph 1.4 of the SRA Code of Conduct for Solicitors, REL's and RFL's

25.25 Paragraph 1.4 of the Code of Conduct required the Respondent not to mislead her clients or other by her decision to complete the conveyancing transaction without the executed mortgage deed in place. The Tribunal found on the balance of probabilities that the Applicant had also proven that the Respondent had breached paragraph 1.4 of the Code of Conduct for Solicitors, RELs and RFLs by giving false warranty to Keystone Law about his ongoing disciplinary proceedings and being dishonest about the reasons for requesting Client J to pay the legal fees to the Respondent's personal bank account.

Allegation 3

26. On 1 February 2023, while working as a Consultant for Keystone Law, the Respondent provided his personal bank account details to Client J and received £3,000.00 into his personal bank account in relation to Client J's property matter. In doing so, the Respondent breached all or any of:

(f) Principle 2 of the SRA Principles 2019

(g) Principle 5 of the SRA Principles 2019

- (h) **Principle 7 of the SRA Principles 2019**
- (i) **Rule 2.3 of the SRA Accounts Rules 2019, to ensure client money is paid promptly into a client account.**
- (j) **Rule 2.5 of the SRA Accounts Rules 2019, to ensure client money is returned promptly to the client as soon as there is no longer any proper reason to hold those funds.**

The Applicant's Case – Allegation 3

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

- 26.1 The Applicant asserted that the public trusts solicitors to properly handle monies that they receive, and to use them for their intended purpose. According to the Applicant, the Respondent used client funds for his own personal use.
- 26.2 The Applicant alleged that the Respondent failed to act in accordance with Principle 2 because using client funds for the Respondent's personal use would cause the public great concern, damaging the public trust and confidence placed in solicitors and in the provision of legal services.

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

- 26.3 The Applicant asserted that a solicitor of integrity, acting in accordance with the high ethical standards of the profession does not improperly appropriate client money to his own use; nor do they take unfair advantage of their client.
- 26.4 The Applicant relied on the fact that the Respondent had requested £3,000.00 on account of costs from Client J on 1 February 2023. The Applicant asserted that when asked by Mr Robins to repay the funds received from Client J, the Respondent had advised that he could not as he had spent the money. However, Client J had paid the fees to the Respondent on account of costs. The work had not yet been carried out. The Applicant asserted that the money was therefore not the Respondent's to spend.
- 26.5 The Applicant also relied on the facts that the Respondent had asked Client J to transfer the funds to the Respondent's own personal bank account. The Applicant asserted that in doing so, the Respondent took advantage of the fact that Client J, who is not a solicitor, was likely unaware of the rules and regulations surrounding client money and that this was prohibited.
- 26.6 The Applicant alleged that the Respondent's conduct in taking advantage of Client J's lack of knowledge of the rules and requesting funds to his personal bank account and for his personal benefit had the capability of undermining the profession and is in breach of Principle 5.

Alleged failure to act in the client's best interest (Principle 7 of the SRA Principles 2019)

- 26.7 The Applicant asserted that the Respondent did not act in the best interest of Client J by requesting that Client J pay a significant sum of money into his personal bank

account, where it would not be subject to the same protections as if it had been paid to Keystone Law's client account.

- 26.8 The Applicant further asserted that the Respondent did not safeguard Client J's money (as he should have done) but instead spent that money as if it were his own. The Applicant alleged that the Respondent breached Principle 7 by failing to act in the best interest of Client.

Alleged breach of Rule 2.3 of the SRA Account Rules 2019 (to ensure client money is paid promptly into a client account) and Rule 2.5 of the SRA Account Rules 2019 (to ensure client money is returned promptly to the client as soon as there is no longer any proper reason to hold those funds)

- 26.9 The Applicant alleged that the Respondent did not pay Client J's money into a client account and therefore breached Rule 2.3 of the SRA Accounts Rules 2019.

- 26.10 The Applicant further asserted that the Respondent had spent Client J's money although the Respondent could not complete the work in breach of Rule 2.5.

- 26.11 The Applicant further alleged that the Respondent had held this money in his bank account for over five years knowing he had not completed any additional work, nor paid any disbursements, in breach of the Accounts Rules.

The Respondent's Case – Allegation 3

- 26.12 The Respondent failed to participate in the proceedings and did not answer to the Applicant's allegations.

The Tribunal's Findings – Allegation 3

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

- 26.13 The Tribunal was satisfied that the Applicant had proven on the balance of probabilities that the Respondent had requested and received £3,000.00 from Client J to his personal account in relation to Client J's property matter. The evidence presented by the Applicant had not been challenged by the Respondent, who had chosen not to participate in these proceedings despite numerous reminders from the Applicant to do so.

- 26.14 The Tribunal considered that by requesting and receiving fees from Client J to the Respondent's personal account, the Respondent exposed Keystone Law to a potential litigation from Client J and denied Client J the protection that the Firm's professional indemnity insurance would have provided to Client J's monies if Client J had paid the fees to the Firm's account in the usual way. As described further below, the Respondent's conduct in requesting client funds into his personal account and using the client funds for his personal use was contrary to Rules 2.3 and 2.5 of the SRA Accounts Rules 2019.

- 26.15 The Tribunal further took into account the fact that requesting and receiving client funds to the Respondent's personal account formed a pattern of behaviour. Prior to requesting

and receiving funds from Client J to his personal account, the Respondent had at least on two other occasions requested and received funds from clients to his personal bank account.

- 26.16 Applying the test set out in *Wingate and Evans v SRA and SRA v Malins* [2018] EWCA Civ 366, the Tribunal found that the Respondent had failed to maintain public trust in the legal profession by requesting and receiving client funds to his personal bank account and then using the client funds for his own personal use. The Tribunal agreed with the Applicant that the public trusts solicitors to properly handle monies that they receive, and to use them for their intended purpose, not for their own personal use. In the Tribunal's view, maintaining the public trust was particularly important in conveyancing matters, where solicitors deal with their client's substantial assets.
- 26.17 Accordingly, the Tribunal found that the Respondent had breached Principle 2 of the SRA Principles 2019 also with respect to Allegation 3.

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

- 26.18 The tribunal considered that the Respondent had misled Client J as he had not told Client J he would use Client J's funds for the Respondent's personal use and that by paying the funds to the Respondent's personal bank account Client J's funds would not be protected by Keystone Law's professional indemnity insurance.
- 26.19 Applying the test set out in *Wingate v Solicitors Regulation Authority v Malins* [2018] EWCA Civ 366, the Tribunal agreed with the Applicant that a solicitor of integrity, acting in accordance with the high ethical standards of the profession does not improperly appropriate client money to his own use; nor do they take unfair advantage of their client. Accordingly, the Tribunal found that the Respondent had breached Principle 5 of the SRA Principles 2019.

Alleged failure to act in the client's best interest (Principle 7 of the SRA Principles 2019)

- 26.20 The Tribunal considered that by requesting and receiving funds from Client J to the Respondent's personal bank account, the Respondent denied Client J the protection that would have been afforded to Client J if they had paid to Keystone's Law's client account. In the Tribunal's view, this was clearly not in the best interest of Client J. Moreover, by spending Client J's money as if it was the Respondent's own money, the Respondent failed to safeguard Client J's money and also clearly failed to act in the best interest of Client J. Accordingly, the Tribunal found that the Respondent had breached Principle 7 of the SRA Principles 2019.

Alleged breach of Rule 2.3 of the SRA Account Rules 2019 (to ensure client money is paid promptly into a client account) and Rule 2.5 of the SRA Account Rules 2019 (to ensure client money is returned promptly to the client as soon as there is no longer any proper reason to hold those funds)

- 26.21 The Tribunal noted that Rule 2.3 of the SRA Account Rules 2019 obligated a solicitor to ensure that:

"client money is paid promptly into a client account unless:

(a) *in relation to money falling within 2.1(c), to do so would conflict with your obligations under rules or regulations relating to your specified office or appointment;*

(b) *the client money represents payments received from the Legal Aid Agency for your costs; or*

(c) *you agree in the individual circumstances an alternative arrangement in writing with the client, or the third party, for whom the money is held. ...”*

26.22 Rule 2.5 of the SRA Accounts Rules 2019 in turn require a solicitor to “*ensure that client money is returned promptly to the client, or the third party for whom the money is held, as soon as there is no longer any proper reason to hold those funds.*”

26.23 The Tribunal found that by failing to pay Client J’s money into a client account of Keystone Law, the Respondent breached Rule 2.3 of the SRA Accounts Rules 2019.

26.24 The Tribunal also found that the Respondent had breached Rule 2.5 of the SRA Account Rules 2019 because he had spent Client J’s money although the Respondent did not complete the work for which Client J had paid the funds.

Previous Disciplinary Matters

27. There were no previous disciplinary matters against the Respondent.

Mitigation

28. The Tribunal noted that by deciding not to participate in these proceedings, the Respondent had availed himself the opportunity to provide an explanation for his conduct and/or plead mitigating factors, if any existed. The Tribunal was satisfied that the Respondent had been kept up to date of the proceedings and the Applicant had sent several reminders to the Respondent to participate in the proceedings. Yet, the Respondent had not sought to contest these proceedings in any way. The Tribunal considered that it was accordingly entitled to draw inferences from the Respondent’s non-participation.

Sanction

29. In determining a sanction for the Respondent, the Tribunal considered the Solicitors Disciplinary Tribunal’s Guidance Note on Sanction (10th Edition /June 2022) (the “Sanctions Guidance”).

30. 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.

31. In assessing the Respondent's culpability, the Tribunal found that the Respondent's motivation had been his financial difficulties and personal gain. The Tribunal further considered that the Respondent was a very experienced solicitor with more than 25 years of experience and that the Respondent's misconduct in requesting and receiving funds from clients to his personal account had been planned and deliberate and repeated for at least three times.
32. The Respondent had provided incentives to the clients to pay the funds to his personal account and he had not explained to the clients the consequences of this to the clients. The Respondent had also deliberately given false warranty to Keystone Law about the investigation into his conduct and attempted to conceal his wrongdoing; the Respondent had not been upfront with his clients and had misled the Keystone Law about the reasons for requesting and receiving funds from Client J into his personal bank account.
33. The Respondent's conduct had not been influenced by anyone. The Respondent had acted alone, and he was solely responsible for his deliberate and planned misconduct. The Tribunal concluded that the Respondent was highly culpable in this matter.
34. The Tribunal then considered the issue of harm. the Tribunal found that the Respondent's dishonesty had caused harm to the reputation of the profession as per Coulson J in *Solicitors Regulation Authority v Sharma* [2010] EWHC 2022 Admin:

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

35. In the Tribunal's view, the Respondent had caused serious harm to his clients and the reputation of the profession by repeatedly requesting and receiving client funds to his personal account and thereby denying the clients of the protection that they would have had if the funds had been paid to the respective firm's accounts. In addition, using client funds for his own personal purposes although the Respondent had not performed the additional work for which Client J had been billed, had similarly caused significant harm to the client and to the reputation of the profession as a whole.
36. Moreover, the Tribunal considered that the harm caused by the Respondent's misconduct was aggravated by the fact that the Respondent's conduct had been deliberate, dishonest and repeated. The Tribunal further noted that the loss to the Client J had been made good by Keystone Law, not by the Respondent.
37. In *Sharma* [2010] EWHC 2022 (Admin) at [13] Coulson J summarised the consequences of a finding of dishonesty by the Tribunal against a solicitor as follows:

"(a) Save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the Roll ... That is the normal and necessary penalty in cases of dishonesty..."

(b) There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances ...

(c) In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself, whether it was momentary ... or over a lengthy period of time ... whether it was a benefit to the solicitor ... and whether it had an adverse effect on others... ”

38. In addition, the Tribunal had regard to the case of *Bolton v Law Society* [1994] 2 All ER 486 in which Sir Thomas Bingham stated:

“... Lapses from the required standard (of complete integrity, probity and trustworthiness) may....be of varying degrees. The most serious involves proven dishonesty.... In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced by the solicitor, ordered that he be struck off the roll of solicitors.”

39. Applying the test set out in by Flaux LJ in *Solicitors Regulation Authority v James* [2018] EWHC 3058 (Admin) at [101], the Tribunal did not find that there were any exceptional circumstances such that striking the Respondent’s striking off the Roll would be disproportionate.
40. Given the serious nature of the allegation of dishonesty, the Tribunal considered and rejected the lesser sanctions within its sentencing powers such as no order, a reprimand, or restrictions. Therefore, in line with *Sharma* [2010] EWHC 2022 (Admin) and *Bolton* [1994] 2 All ER 486, the Tribunal concluded that the only appropriate and proportionate sanction was to strike the Respondent, Mr Guy Nicholas Hurst off the Roll of Solicitors. The Tribunal considered that strike off will have an appropriate effect on public confidence in the legal profession and adequately reflects serious misconduct.

Costs

41. The Applicant’s schedule of costs amounted to £6,282.50, which equated to a notional hourly rate of £130.
42. The Respondent had not submitted any statement of means and/or in any other way commented on the Applicant’s schedule of costs.
43. Having carefully reviewed and considered the Applicant’s cost schedule, the Tribunal was satisfied that the Applicant’s application for costs was reasonable and properly made.
44. Accordingly, the Tribunal ordered the Respondent to pay the Applicant’s costs of and incidental to this application fixed in the sum of £6,282.50 including disbursements and VAT.

Statement of Full Order

45. The Tribunal ORDERED that the Respondent, GUY NICHOLAS HURST 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 £6,282.50.

Dated this 6th day of August 2024
On behalf of the Tribunal

G Sydenham

G Sydenham
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
6 AUGUST 2024