SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12625-2024

BETWEEN:

SOLICITORS REGULATION AUTHORITY LTD Applicant

and

PETER KENNETH FELTON GERBER Respondent

Before:
Mrs C Evans (Chair)
Ms B Patel
Mr A Pygram

Date of Hearing: 8-10 January 2025

Appearances

Dr Edward Morgan KC of Outer Temple Chambers, 222 Strand, Temple, London, WC2R 1 BA instructed by Capsticks Solicitors, for the Applicant

Mr Geoffrey Williams KC of Farrar's Building, Temple, London EC4Y 7BD instructed by Murdochs Solicitors, for the Respondent.

JUDGMENT

Allegations

The Allegations made by the SRA against the Respondent, Peter Felton Gerber (are that, whilst in practice as a solicitor at Feltons Law ("the Firm") he:

1. On or after 17 September 2021, provided information to prospective insurers in a professional indemnity insurance proposal form ("PIIPF") which indicated that all current and former fee-earners/partners/consultants over the past 6 years have received formal anti-money laundering training and that this had been properly documented in accordance with the requirements of the SRA. This information was false and the Respondent knew or ought to have known it was false.

   In doing so, he breached or failed to achieve:

   Principle 2 of the SRA Principles 2019 ("the 2019 Principles"); and/or
   Principle 4 of the 2019 Principles; and/or
   Principle 5 of the 2019 Principles; and/or
   Rule 1.4 of the SRA Code of Conduct for Solicitors RELs and RFLs ("the Code").

   The Respondent admitted breaches of Principle 2 and Rule 1.4. He denied breaches of Principles 4 and 5 (respectively honesty and integrity).

1.2 Between 26 June 2017 and 11 November 2022, he materially contributed to the Firm's anti-money laundering failures by failing adequately or at all to ensure the Firm had in place:

   1.2.1 A firm wide risk assessment as required by Regulation 18 of the Money Laundering Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ("the 2017 MLR's");

   1.2.2 Policies, controls and procedures as required by Regulation 19 of the 2017 MLR's;

   1.2.3 Training as required by Regulation 24 of the 2017 MLR's;

   1.2.4 Customer due diligence measures ("CDD") as required by Regulation 28 of the 2017 MLR's.

   In doing so, he breached or failed to achieve:

   In so far as the conduct took place prior to 25 November 2019:

   Outcome 7.5 of the SRA Code of Conduct 2011; and /or
   Principle 6 of the 2011 Principles

   In so far as the conduct took place after 25 November 2019:

   Principle 2 of the 2019 Principles; and/or
   Paragraph 7.1 of the SRA Code of Conduct for Solicitors RELs and RFLs; and/or
   Paragraph 2.1(a) and 2.1(b) of the SRA Code of Conduct for Firms

The Respondent admitted breaches of Rule 7.1 and 2.1. He denied a breach of Principle 2 of the 2019 Principles and a breach of Principle 6 of the 2011 Principles (public trust and confidence).

1.3 On 9 January 2020, he provided information to the SRA which indicated the Firm had in place a firm wide risk assessment. This information was false, and the Respondent knew or ought to have known it was false.

In doing so, he breached or failed to achieve:

Principle 2 of the 2019 Principles; and/or
Principle 4 of the 2019 Principles; and/or
Principle 5 of the 2019 Principles; and/or
Rule 7.4(a) of the SRA Code of Conduct for Solicitors RELs and RFLs.

The Respondent admitted breaches of Principle 2 and Rule 7 (4) (a). He denied breaches of Principles 4 and 5 (respectively honesty and integrity).

1.4 Between 1 April 2020 and 30 April 2020, he caused or allowed payments to be made from the Firm's client account in circumstances other than in respect of instructions relating to an underlying transaction being undertaken by the Firm and the funds arising therefrom or in respect of the delivery by the Firm of a service forming part of its normal regulated activities.

In doing so, he breached or failed to achieve:

Rule 3.3 of the SRA Accounts Rules 2019 ("the SAR 2019"); and/or Principle 2 of the 2019 Principles; and/or Principle 5 of the 2019 Principles.

The Respondent admitted a breach of Rule 3.3. He denied breaches of Principles 2 and 5.

1.5 Between 1 November 2017 and 30 April 2022, failed to return funds promptly to the client or a third party entitled to the funds in respect of the following client matters:

1.5.1 Company D; and/or

1.5.2 Company D vs Mr Y.

In doing so, he breached or failed to achieve:

In so far as the conduct took place prior to 25 November 2019:

Rule 14.3 of the SRA Accounts Rules 2011 ("the SAR 2011"); and /or Principle 6 of the 2011 Principles.

In so far as the conduct took place after 25 November 2019:

Rule 2.5 of the SAR 2019; and/or Principle 2 of the 2019 Principles.

The Respondent admitted a breach of Rule 2.5 and Rule 14.3. He denied a breach of Principle 2 of the 2019 Principles and a breach of Principle 6 of the 2011 Principles (public trust and confidence).

Recklessness

1.6 In addition, allegations 1.1 and 1.3 were advanced in the alternative to dishonesty on the basis that the Respondent's conduct was reckless. Recklessness was alleged as an aggravating feature of the Respondent's misconduct but is not an essential ingredient in proving the allegation.

The Respondent denied recklessness with respect to Allegations 1.1 and 1.3 on the basis that in neither of these cases did he perceive there to be a material risk.

Executive Summary

2. The Respondent gave evidence and stated that at the time the declarations were made, he genuinely believed he had complied with the AML Regulations. In his interview with the SRA, he had readily accepted that he had not. He had not been dishonest. Thereafter he had taken steps to remedy the situation.

3. The Tribunal accepted that the Respondent had not been dishonest but found his conduct, amongst other things, to have been lacking in integrity and was reckless. Solicitors are expected to keep up to date with their regulatory and compliance obligations and to be proactive in seeking information and help to ensure they are not in breach. In this case the Tribunal found the Respondent to have been too sure of his compliance in the circumstances where he had not checked the rules and been unacceptably tardy in putting in place the necessary written AML policies and firm-wide risk assessment. He had also provided a banking facility to a client in the absence of an underlying legal transaction and retained client monies for far too long.

Sanction

4. The Respondent was fined £45,000 and made subject to restrictions on his practise as set out in the Order.

4.1 The Tribunal's sanction and its reasoning on sanction can be found here.

Documents

5. The Tribunal considered all the documents in the case which were contained in the electronic bundle.

Preliminary Matters

6. The Applicant applied to refer to clients of the Firm by cipher to protect legal professional privilege. The application was unopposed.

7. The Respondent applied to adduce additional material in evidence which, amongst other things, included two witness statements for the Respondent (dated 20 December and

23 December) which had been served after the deadline for the direction to serve witness evidence (20 November 2024). The Applicant adopted a neutral position on the application.

The Tribunal's Decisions

8. Both applications were granted.

Factual Background

9. The Respondent was admitted as a solicitor on 15 February 1991. He holds a current Practising Certificate, free from conditions. At material times he was a manager at the Firm, the Recognised Sole Practice of the Respondent, and held the following positions:

- Compliance Officer for Finance and Administration ("COFA");
- Compliance Officer for Legal Practice ("COLP");
- Money Laundering Reporting Officer ("MLRO"); and
- Money Laundering Compliance Officer (MLCO").

Witnesses

10. The witnesses were as follows:

- Forensic Investigation Officer, Mr Roberto Ferrari (FIO)
- The Respondent

Findings of Fact and Law

11. The Applicant was required to prove the allegations on a 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.

12.. The Tribunal had due regard to the following and applied the various tests in its fact-finding exercise:

Dishonesty
The test set out at paragraph 74 of Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67.

Integrity
The matters set at paragraphs 97 to 107 of Wingate v SRA [2018] EWCA Civ 366,

Recklessness
Matters set out at paragraph 78 of Brett v SRA [2014] EWHC 1974.

NOTE: While all the evidence was carefully considered the Tribunal does not refer to each and every piece of the evidence or submissions in its judgment and findings.

Click here for the Rule 12 Statement

13. **Allegation 1.1: On or after 17 September 2021, provided information to prospective insurers in a professional indemnity insurance proposal form ("PIIPF") which indicated that all current and former fee-earners/partners/consultants over the past 6 years have received formal anti-money laundering training and that this had been properly documented in accordance with the requirements of the SRA. This information was false and the Respondent knew or ought to have known it was false.**

The Applicant's Case

13.1 Having made admissions to breaches of Principles 2 and 1.5 of the Code the remaining allegations to be determined by the Tribunal were:

Principle 4 –honesty

13.2 The Applicant relied upon the test for dishonesty stated by the Supreme Court in *Ivey*.

13.3 On behalf of the SRA, Dr Morgan submitted that as a sole practitioner of the Firm since its inception in 2015, and its COLP and COFA, the Respondent would have been aware of the duty to present accurate information to prospective insurers. It is only following the disclosure of such information that risk can properly be considered, and premiums calculated by the insurance company. He should also have been aware that under the SRA Indemnity Insurance Rules, an insurer is unable to avoid or repudiate the contract on grounds including, without limitation, any breach of the duty to make a fair presentation of the risk, or any misrepresentation, in each case whether fraudulent or not .

13.4 The Respondent, when answering the relevant question on or before 17 September 2021, knew he had not undertaken formal AML training and that this had therefore not been properly documented. The Respondent knew that the insurers could not have discovered the existence of the lack of AML training and documentation of such at the Firm without requesting disclosure from the Respondent. Given their then current state of knowledge, the insurers had no reason to make such a request and relied upon the statement being accurate and true. Given his state of knowledge and belief, , the Respondent was dishonest according to the test laid down in *Ivey*.

13.5 It was said that ordinary decent people would regard the Respondent's conduct (in knowingly giving untruthful answers to questions on an insurance proposal form) to be dishonest. Principle 4 was therefore breached.

Principle 5 -Integrity

13.6 In Wingate integrity connotes adherence to the ethical standards of one's profession. A solicitor acting with integrity would not provide information to a prospective insurer or insurance broker on a PIIPF which he knew to be false. Principle 5 was therefore breached.

Recklessness

13.7 In the alternative to the allegation of dishonesty, it was said that the actions of the Respondent were reckless when providing an inaccurate declaration to his insurer on the PIIPF. The Respondent acted recklessly by providing information to a prospective insurer that he had undertaken AML training and that this had been properly documented, when it had not. Given the Respondent had not undertaken such training, he could not have believed that the declaration he was making was true. Consequently, he was aware of the risk that he might mislead the insurer by making it.

13.8 It was said that no reasonable solicitor in the Respondent's position and of his experience would have taken that risk. He was making a formal statement to a prospective insurer concerning matters falling within its regulatory remit. In those circumstances, a reasonable solicitor would have been scrupulous in ensuring the declaration contained only accurate assertions before signing it and attesting to the truth of the facts therein. A reasonable solicitor would at the very least have checked with the insurer or the Applicant what the correct answer to this question was. In the particular circumstances of being an experienced solicitor running a sole practice, before signing and submitting the declaration, the signatory must satisfy themselves it is true. To take the risk of providing incorrect information in this manner was reckless.

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

13.9 The Respondent said that his staff were made redundant in August 2020 leaving him as a sole practitioner. He had not been dishonest because when he had ticked the box in the affirmative, he genuinely believed that his staff had been properly trained with respect to AML requirements albeit that their training was not formal in nature. The Respondent told the Tribunal that he had been a member of Central Law Training (CLT) and had attended yearly training on updates on good practise and a component module of the training had included AML. He had not retained any of the course materials and had not been able to obtain a record of his attendance from CLT to present to the Tribunal.

13.11 All staff previously employed were fully aware of AML procedures in so far as their work was in scope and the Respondent had at all times been fully aware of his responsibilities and carried out AML client ID and source of funds checks on all relevant matters when opening his files.

13.12 The Respondent's insurers were not in any way misled.

14. **Allegation 1.2 Between 26 June 2017 and 11 November 2022, he materially contributed to the Firm's anti-money laundering failures by failing adequately or at all to ensure the Firm had in place:**

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

14.1 Having made admissions to breaches of Rule 7.1 and 2.1. the remaining allegations to be determined by the Tribunal were:

14.2 *Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles (public trust)* It was said by Dr Morgan that the AML failures at issue here were so serious and sustained that they constituted breaches, by the Respondent, of 6 and 2 of the 2011 and 2019 Principles.

14.3 The Respondent, as the sole practitioner of the Firm and therefore the Firm's COLP had responsibility for taking reasonable steps to ensure compliance by the Firm, its managers, employees or interest holders with the SRA's regulatory arrangements. The Respondent was also the individual responsible for ensuring the Firm's compliance with the Money Laundering Regulations 2017. The Respondent failed to ensure the Firm discharged its AML obligations as required by the regulations e.g. by not having in place a Firm-wide Risk Assessment (FWRA) or the necessary policies and training.

14.4 Members of the public rightly expect regulated persons (especially experienced solicitors and partners) to heed and scrupulously comply with all applicable AML legislation. The Respondent's failure to heed and comply with such laws in the circumstances, or to take even basic steps that would be expected, was clearly likely to undermine public trust in the profession, particularly where it, as here, it had continued over a lengthy period of time.

Outcome 7.5 of the Code

14.5 Outcome 7.5 of the SRA Code of Conduct 2011 requires the Respondent to *"comply with legislation applicable to your business, including anti-money laundering…legislation"*. For reasons set out above he had failed to do so.

The Respondent's Case

14.6 The Respondents case was that he had mistakenly believed that it was sufficient compliance to maintain AML records on individual client files. He had conducted very little *in-scope* work (about 5.75% of his total work).

14.7 It had never been suggested that any money laundering took had taken place at the Firm and whilst the investigation was ongoing the Respondent obtained template documents, completed them and was told by the SRA that it was satisfied that he was then fully compliant.

15. **Allegation 1.3 On 9 January 2020, he provided information to the SRA which indicated the Firm had in place a firm wide risk assessment. This information was false, and the Respondent knew or ought to have known it was false.**

The Applicant's Case

15.1 Having made admissions to breaches of Principle 2 of the Principles 2019 and Rule 7 (4) (a) the remaining allegations to be determined by the Tribunal were:

Principle 4 –Honesty

15.2 The Respondent was dishonest in accordance with the test laid down in *Ivey* Dr Morgan said it was the Applicant's position that the declaration made by the Respondent on

9 January 2020 was false because the Respondent's firm at that time did not have in place a compliant, firm-wide anti-money laundering risk assessment. The Respondent, as sole owner, manager, COLP, COFA and MLRO of the firm knew this and therefore knew the declaration he made to the SRA that he had this in place was false. He therefore breached Principle 4 of the 2019 Principles.

Principle 5-Integrity

15.3 It was said that a solicitor acting with integrity would not have made such a declaration. The Respondent therefore breached Principle 5 of the 2019 Principles.

Recklessness

15.4 Pleaded in the alternative to the allegation of dishonesty, it was said that the actions of the Respondent were reckless when providing an inaccurate declaration to the SRA in regards to a firm-wide risk assessment. The Respondent acted recklessly by making a declaration that the Firm had a firm wide risk assessment that met the requirements of Regulation 18 of the MLRs 2017 without making adequate enquiries as to what was required for a sole practitioner.

15.5 Given the Firm did not have such a risk assessment, the Respondent could have had no certainty that the declaration he was making was true. Consequently, he was aware of the risk that he might mislead the Applicant by making it. No reasonable solicitor in the Respondent's position and of his experience would have taken that risk. He was making a formal statement to his regulator concerning matters falling within its regulatory remit. In those circumstances, a reasonable solicitor would have been scrupulous in ensuring the declaration contained only accurate assertions before signing it and attesting to the truth of the facts therein.

15.6 A reasonable solicitor would have checked the requirements for a firm wide risk assessment for sole practitioners and that it was in line with the requirements of Regulation 18 of the MLRs 2017, before signing and submitting the declaration. To take the risk of providing incorrect information in these circumstances was reckless.

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

15.7 The Respondent said that at the material time he had genuinely believed that he had a compliant firm wide risk assessment in place. The Respondent said that he was effectively "the Firm" and he personally conducted risk assessments on each and every *in-scope* matter in which he was instructed as set out above.

16. **Allegation 1.4 Between 1 April 2020 and 30 April 2020, he caused or allowed payments to be made from the Firm's client account in circumstances other than in respect of instructions relating to an underlying transaction being undertaken by the Firm and the funds arising therefrom or in respect of the delivery by the Firm of a service forming part of its normal regulated activities.**

16.1 Having made an admission to a breach of Rule 3.3 the remaining allegations to be determined by the Tribunal were:

Principle 5-Integrity

16.2 On behalf of the SRA, Dr Morgan said that the Respondent had failed to act with integrity by accepting money into the client account and authorising transactions made from it totalling £4,400,000.00. This allowed the Firm's client account to be used as a banking facility, in breach of the SRA Accounts Rules, creating a clear risk of the Firm facilitating money laundering and/or the circumvention of other rules on insolvency. The Respondent, as demonstrated by his interview with the FIO, was aware that the client was at risk of losing the said funds. The Respondent was aware that the funds moved at his client's request did not relate to an underlying transaction being undertaken by the Firm. Nevertheless, in the face of instructions from his client, the Respondent continued to receive money into the client account and authorise payments from it without raising any queries with the client, in breach of Rule 3.3 of SAR 2019. This willingness to consciously act in this manner showed a lack of integrity in breach of Principle 5 of the 2019 Principles

Principle 2 of the 2019 Principles (public trust)

16.3 It was said that funds tainted by insolvency, fraud, or other wrongdoing that pass-through client account risk damaging public confidence in the profession. Whilst a solicitor cannot and is not expected to eliminate all risks of fraud or insolvency, by allowing the client to use the Firm's client account as a banking facility, the Respondent risked harming the reputation of the profession. The Respondent therefore breached Principle 2 of the 2019 Principles.

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

16.4 The Respondent explained that Companies A and C were connected. Company A received and held dividends from Company C.

16.5 Company B had a designated deposit account within the client ledger of the firm. The relevant funds were all held for the Group. The Group's Bank was threatening to de-bank the Group as it did not wish to be associated with a particular individual, Mr Y.

16.6 The Respondent said that he had faced an unprecedented situation, not only regarding Mr Y: the Group was also facing the reality, that due to the Covid pandemic, and the restrictions in place that Company C no longer had any income stream to support its borrowing. There was a concern that the reputational issue surrounding Mr Y might cause the bank to close the accounts. The Respondent acted with good intentions, to safeguard his client's money so that it remained readily available for it to pay its staff and other out-goings. Had he not taken this action there was a real risk that Company C would have folded.

16.7 The Respondent said he genuinely believed that he was undertaking an underlying legal commercial transaction in protecting his client. The funds were all the legally held funds of the Group. They were returned within 3 weeks of receipt. The Respondent did not charge a fee for his work.

17. **Allegation 1.5 - Between 1 November 2017 and 30 April 2022, failed to return funds promptly to the client or a third party entitled to the funds.**

The Applicant's Case

17.1 Having made an admission to a breach of Rule 2.5 SAR 2019 and Rule 14.3 SAR 2011 the remaining allegations to be determined by the Tribunal were:

Principle 6 of the 2011 Principles and Principle 2 of the 2019 Principles (public trust)

17.2 On 30 April 2022, the Respondent held residual client balances on 2 matter ledgers totalling £33,712.64. There had been no movement on these accounts for over 2 years and there appeared to have been no efforts to return this money to the client. There was no proper reason for the Respondent to be in possession of this money and it should have been returned promptly to clients.

17.3 Dr Morgan pointed out that on the Respondent's own account he had failed to act promptly, hence his admissions to a breach of Rule 14.3 of the and Rule 2.5 of the SAR 2019. However, he had also breached the trust placed in him and the profession generally by the public. The public would expect a solicitor/solicitor's firm to take proper care of money entrusted to them. By holding money in his client account for longer that he should have done, and by failing to tell those clients that he was holding money on their behalf, the Respondent breached Principle 6 of the SRA Principles 2011 and Principle 2 of the SRA Principles 2019.

The Respondent's Case

17.4 The Respondent said he was instructed with respect to the recovery of unpaid Council Tax on behalf of Company D. They provided him with a "float" to be held in client account to enable him to move quickly with enforcement proceedings on their behalf. There came a time when Company D outsourced this function to another Company, Z.

17.5 This caused a significant problem. In particular Z declined to discuss the situation with the Respondent. The accounting exercise was left entirely to the Respondent. It was a tortuous process, and he accepted that he had put this off due to the perceived difficulty. In the event when he did get down to the task it proved easier than he had anticipated. It was ascertained that the vast bulk of the monies held (c.£27K) were actually due to the Respondent for costs and disbursements. The remaining small balance was remitted back to Company D.

No complaint was made to the Respondent in relation to this matter.

18. Mr Williams' Final Submissions

18.1 Mr Williams referred the Tribunal to Solicitors Regulation Authority v Day & Ors (Leigh Day). In that case the Court set out the threshold test for a finding of misconduct. The breach must on the balance of probabilities be sufficiently serious/reprehensible and culpable and concern the nature of the solicitor or firm's conduct *(paras. 156-158).*

18.2 The Respondent had made appropriate and timely admissions. His misconduct, such as it was, came from acts of omission rather than commission. His belief in his compliance at the time he completed the various forms and declarations had been genuinely held and he had accepted his errors when these were pointed out to him. He had made honest

mistakes. When applying the test in *Ivey* had not been dishonest. He was not a liar, and ordinary decent members of the public would not, having heard his explanation, consider him to be one.

18.3 As to the Respondent's good character Mr Williams referred to a number of character references submitted on the Respondent's behalf which supported his credibility as a witness and his lack of propensity to be dishonest. He was of exemplary character, a solicitor of 33 years of spotless service to the profession and it would be a strange concept for such a person to become dishonest. Further, he had not lacked integrity, his long career showed a steady adherence to an ethical code as required by *Wingate.*

18.4 At most, his actions had been the result of the *'careless stroke of a pen'* though he had denied recklessness, and the evidence had not established that he had been aware of the risks which he had nonetheless gone on to take.

19. **The Tribunal's Findings**

19.1 Broadly speaking the Respondent admitted the factual context of all the allegations and the Accounts Rule breaches, (or the technical element of the matters) but he did not admit that his conduct lacked integrity, was dishonest or reckless. The Tribunal reviewed all the material before it and was satisfied on the balance of probabilities that the Respondent's admissions were properly made.

19.2 The remaining, unadmitted, allegations were inherently serious and crossed the threshold test for a finding of misconduct as set out in *Leigh Day*.

19.3 The two matters which included the element of dishonesty were set out in Allegations 1.1 and matter 1.3. Both contained an admitted falsehood. In relation to Allegation 1.1 this was telling his broker that fee earners of the Firm had received formal, documented AML training. It was a fact later accepted by the Respondent that no such training had been undertaken, and it had not been documented.

19.4 In relation to Allegation 1.3 the falsehood had involved telling the SRA that the Firm had had a FWRA in place when it had not.

19.5 The Respondent accepted in his interview with the FIO that he had not done the formal training required to conduct *in scope* work and that he did not have a compliant FWRA in place. However, he denied any intention to mislead by submitting that at the time the declarations were made he honestly believed they were true.

19.6 The Tribunal had therefore to determine whether this conduct amounted to misconduct. In so doing it examined the case as set out in the Applicant's Rule 12 Statement and the responses given by the Respondent in a telephone call with a member of SRA Staff on 10 August 2021, interview of 12 October 2022, his later witness statements (amongst other material in the bundle) and the evidence he gave under oath.

19.7 In relation to the matters relating to formal AML training and the completion of the insurance form, set out in Allegation 1.1, the Respondent said that at the relevant time that he confirmed in the insurance form that all fee earners had received formal AML training he believed this related only to him and he believed it was true. In his interview

he explained that as a solicitor with over thirty years' experience and knowledge he thought he was entitled to answer the question in the affirmative.

19.8 In his more recent witness statements of December 2024, he based his entitlement to sign the declaration positively on attendance at one or more Civil Litigation training Days with CLT (which had an AML module). The Tribunal rejected this latterly submitted explanation as an unsupported afterthought. However, the Tribunal did accept that the account which the Respondent gave to the FIO was the truthful one. His responses were certainly flippant but also candid.

19.9 To believe that experience alone is an ample substitute for formal training was misguided. Although the Tribunal did not believe that adopting such a position was reasonable, it did accept that the Respondent genuinely thought this was sufficient and his belief was genuinely held.

19.10 Similarly in relation to Allegation 1.3 the Respondent said in interview that his FWRA was in his head. As a sole practitioner he saw no merit in reducing it in writing for himself to read. Whilst this was a serious misconception on the Respondent's part of the important purpose of the AML Regulations, and an objectively unreasonable one, the Tribunal accepted it had been genuinely held by the Respondent. In not finding the Respondent dishonest the Tribunal weighed into the balance his many years of honest professional endeavor, the character evidence adduced on his part and the consistent account he gave to the FIO and the Tribunal. He was a credible witness who had no obvious propensity to be dishonest. In the Respondent's world view he had genuinely believed that he was justified in answering as he did, in his mind he had been truthful and not dishonest albeit others would have considered his belief an unreasonable one.

19.11 It is uncontentious to say that solicitors work in an environment which is inherently and increasingly risky. The Money Laundering Regulations were brought in to mitigate that risk. They apply to all solicitors equally. For the Respondent to work on the false assumption he made, without ever checking the underlying rules and regulations (despite his stated view that he was an avid reader of the Law Society Gazette, Balilli and other legal publications where legal updates and reports of decisions were published) was an unwarranted circumvention of those rules. This was more than a grave error of judgment; it was clearly reckless, and the Tribunal made findings of recklessness (the alternative to dishonesty) where this was pleaded in Allegations 1.1 and 1.3.

19.12 Further, in the circumstances as the Tribunal found them to be the Respondent had lacked integrity, as it pertained to solicitors. The declarations he made were false and he made no effort prior to or afterwards to review and reassess his practice in this regard. There had been several opportunities for the Respondent to review his procedures commencing from the initial call in August 2021, however he did not take those opportunities, and it took at least another two years for the Respondent to take remedial action. His approach in this regard was pedestrian in the extreme. It was only when the SRA imposed a restriction on his practicing certificate that he finally took advice and put the necessary written FWRA and AML policies in place and attended relevant, formal training as required by the Regulations. This placed his clients at risk. Such conduct would erode the trust placed in the profession by the public, and in the Respondent, if it was aware that solicitors were operating in ignorance of rules and

regulations designed to protect their money and assets from the threat of criminality. The public would expect solicitors to act responsibly by keeping themselves abreast of developments and changes in practice.

19.13 The Tribunal adopted as its own the reasoning for its findings set out by the Applicant in relation to the Respondent's conduct in Allegations 1.2, 1.4 and 1.5. The Tribunal found that the Respondent's conduct in relation to these Allegations represented a continuation and natural consequence of his approach to the AML failures and his rigid mindset typified in Allegations 1.1 and 1.3 which permeated the running of his business. The breaches of the Principles in Allegations 1.2, 1.4 and 1.5 were found proved.

19.14 In conclusion, the Tribunal found the following proved on the balance of probabilities:

Allegation 1.1 [proved in part]
Breaches of Principle 2 and 5 of the 2019 Principles and Rule 1.4 and recklessness. Dishonesty was not proved.

Allegation 1.2 [proved in full]
Breaches of Principle 2 of the 2019 Principles and a breach of Principle 6 of the 2011 and Rule 7.1, and 2.1.

Allegation 1.3 [proved in part]
Breaches of Principle, 2 and 5 of the 2019 Principles and Rule 7 (4) (a) and recklessness. Dishonesty was not proved.

Allegation 1.4 [proved in full]
Breaches of Principles 2 and 5 of the 2019 Principles and a breach of Rule 3.3.

Allegation 1.5 [proved in full]
Breaches of Principle 2 of the 2019 Principles and a breach of Principle 6 of the 2011 Principles and breaches of Rule 2.5 and Rule 14.3.

Previous Disciplinary Matters

20. None

Mitigation

21. Mr Williams informed the Tribunal that the Respondent was 64 years of age. He had been qualified as a solicitor for over 33 years and in that time, this was his first ever appearance before the Tribunal. He had been living under this cloud for some time and it had had a shattering effect upon him.

This case was characterised by four particular facts:

1. No improper gain, and none suggested.
2. No loss to any party, and none suggested.
3. He was still insured by the same insurer
4. No one ever complained and there were no claims against him.

22. He had fully co-operated with SRA and with the Tribunal, though he may have been blunt and forthright. He was to be given credit for his admissions. The Respondent took to heart the fact that he had not been found to be dishonest. He remained of exemplary character as attested to by the wealth of character witnesses to which the Tribunal had been taken to before making its factual findings. Such character evidence was also relevant to sanction. The Respondent was considered by those who knew him as an excellent solicitor and a leader in his field. The Tribunal could be satisfied that he posed no risk at all to the public or the profession. These matters had taken place three years ago, there had been no repetition, and he had set matters right by being fully compliant though he accepted that he had been tardy in doing so hitherto.

23. The burden of regulation on sole practitioners is extremely high. It was now his intention to merge with another firm, an arrangement which had been placed hold, but would now likely go ahead now that the spectre of dishonesty had gone. It would be in his interests to have the support of another firm and he hoped the merger could be fully effected by the end of January 2025 *[Note: to this end when the issue of restrictions was raised by the Tribunal (as per Manak v Solicitors Regulation Authority) the Respondent did not object but asked for 12 weeks before any such restrictions became operative in order to carry out an orderly closure and merger]*.

24. Mr Williams said that as to a final disposal there was no need to interfere with the Respondent's right to practice and that in the circumstances a fine would be a sufficient sanction.

Applicant's application to be heard on sanction

25. This was refused by the Tribunal. This case raised no novel issues and/or points of law. The issue of the most appropriate sanction was well with the Tribunal's capabilities as an expert and experienced Tribunal.

Sanction

26. The Tribunal considered the Guidance Note on Sanction (10th Edition June 2022) ("the Sanctions Guidance") and the proper approach to sanctions as set out in Fuglers and others v SRA [2014] EWHC 179. In doing so the Tribunal assessed the culpability and harm identified together with the aggravating and mitigating factors that existed.

27. Stage One: seriousness of the misconduct (culpability and harm)

27.1 The Tribunal found that the Respondent had not been dishonest, though it had found that his approach to the AML Regulations he had been found to be lacking in integrity and reckless. His motivation, if it could be so characterised, had been his implacable belief that he was right and he had not needed to check the requirements imposed upon him by the AML Regulations. He simply believed that they did not apply to him, and he adopted a cavalier approach to them manifesting in his answers to the insurance application and the various declarations he made. This had been an ongoing continuum of behaviour. He was directly responsible for his actions. He was an experienced solicitor and should have known better and the public would have expected better. He ought reasonably to have known that his conduct was a material breach of his obligations to protect the public and the reputation of the legal profession.

27.2 The Respondent advanced mitigation regarding an unblemished career and numerous character references which the Tribunal accepted demonstrated that he was held in high regard by professional colleagues, his clients and others.

27.3 He had shown some insight by his early admissions to some aspects of the allegations (he had contested dishonesty, lack of integrity and recklessness but this was not to be held against him). The Tribunal accepted his remorse to be sincere and genuine, he may have been struggling to some extent as a sole practitioner. However, his insight on the potential harm to which he had exposed clients was limited. Nonetheless, it was noted that there had been no loss to any party, no unwarranted gains to the Respondent and no one's vulnerabilities exploited.

27.4 The Tribunal considered that whilst dishonesty had not been proved the misconduct had been embedded and persisted for several years without remedy, even when shortcomings had been pointed out to him by the FIO and others. That said the Respondent had co-operated fully with the Regulator.

27.5 The Tribunal found that the Respondent's misconduct was such that he had fallen far short of the standards of integrity and probity expected of a solicitor and in the circumstances the level of seriousness of the misconduct was high.

28. Stage Two: the purpose of sanctions

28.1 The Tribunal had regard to the observation of Sir Thomas Bingham MR (as he then was) in Bolton v Law Society [1994] 1 WLR 512 that the fundamental purpose of sanctions against solicitors was:

> *"to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth."*

29. Stage three: the most appropriate sanction

29.1 As to sanction, the Tribunal adopted a *'bottom up'* approach. The Tribunal considered the Respondent's good character and everything which had been said attesting to his personal and professional qualities. The Tribunal considered that these had not been minor breaches of a minor nature and Mr Williams conceded that this was not a case where no order nor a reprimand were appropriate sanctions, and nor could it be given the findings on lack of integrity and recklessness made by the Tribunal.

29.2 Nevertheless, weighing all things in the balance the Tribunal were persuaded that neither the protection of the public nor the protection of the reputation of the legal profession justified Suspension or Strike Off or restrictions on the Respondent's practice.

29.3 The Tribunal found that the most appropriate sanction would be a fine set at the upper end of the range in Level 4 of the Indicative Fine Bands, *(conduct assessed as very serious*) and the Tribunal imposed a fine of £45,000 upon the Respondent*.

29.4 Further, the protection of the public required an indefinite restriction order to be combined with the fine (see Order section below for the restrictions imposed on the Respondent's practice).

[*Note: the Tribunal had already been addressed on the Respondent's means as set out in the Costs section below, and it found that the level of the financial resources open to her was sufficient to permit the Tribunal to make its order]

Costs

30. Dr Morgan submitted that as a matter of principle the Applicant was entitled to its proper costs. It had, absent two allegations of dishonesty, proved the majority its case to the requisite standard. The Applicant had pursued its case in a reasonable and proportionate way.

31. The quantum of costs claimed by the Applicant was set out in its amended itemised statement of costs dated 23 December 2024 in the total sum of £66,902.00. Dr Morgan submitted that this was a reasonable and proportionate sum given a case of this nature, though the Applicant reduced its costs application by £580 to take into account lower than expected costs incurred during the hearing. In the event, the Tribunal had found the Respondent to have been reckless and lacking in integrity.

32. Mr Williams said that the Respondent had provided the Tribunal with a statement of his finances as he had been required to do. The Respondent was not impecunious, but he was not a man of unlimited means. The legal costs of defending the case were substantial.

Tribunal's Decision on Costs

33. The Tribunal noted that under Rule 43 (1) of The Solicitors (Disciplinary Proceedings) Rules 2019 it has the power to make such order as to costs as it thinks fit, including the payment by any party of costs or a contribution towards costs of such amount (if any) as the Tribunal may consider reasonable. Such costs are those arising from or ancillary to proceedings before the Tribunal.

34. It noted that neither party had applied for the Tribunal to make a direction for the costs to be subject to detailed assessment by a taxing Master of the Senior Courts, therefore it remained open to the Tribunal to make a summary assessment of the costs.

35. By Rule 43(4), the Tribunal must first decide *whether* to make an order for costs and when deciding whether to make an order, against which party, and for what amount, the Tribunal must consider all relevant matters such as:

- The parties' conduct.
- Were directions/ deadlines complied with?
- Was the time spent proportionate and reasonable?
- Are the rates and disbursements proportionate and reasonable?
- The paying party's means.

36. The Tribunal found the case had been properly brought by the Applicant and that both parties had complied with the directions and deadlines set. Each had approached the case with professionalism and rigour. The public would expect the Applicant to have prepared its case with requisite thoroughness and, in this regard, it had properly discharged its duty to the public and the Tribunal.

37. The Tribunal also noted the following factors:

- The substantive hearing had taken three full days, as estimated at the outset by the Applicant.
- This had not been a case of legal complexity, and the matters had been relatively straightforward.
- The Respondent had made sensible concessions and admissions and agreed much of the factual matrix of the case.
- The rates at which the Applicant claimed its costs appeared proportionate and reasonable.

38. As usual in dealing with costs applications the Tribunal adopted a 'broad brush' approach to the costs and looked at matters in the round.

39. The Tribunal found that the costs claimed by the Applicant were on the whole reasonable and proportionate and that in principle the Applicant's costs should be paid by the Respondent. However, the Tribunal considered that there was room for reduction, particularly given the relatively straightforward nature of the case, the admissions made by the Respondent and the dismissal of the dishonesty allegations, being the most serious ones faced by the Respondent.

40. The Tribunal, in considering the Respondent's liability for the costs of the Applicant, had regard to the following principles, drawn from *R v Northallerton Magistrates Court, ex parte Dove (1999) 163 JP 894*:

- it is not the purpose of an order for costs to serve as an additional punishment for the respondent, but to compensate the applicant for the costs incurred by it in bringing the proceedings and
- any order imposed must never exceed the costs actually and reasonably incurred by the applicant.

41. The Tribunal was mindful that it should not make an order for costs where it is unlikely ever to be satisfied on any reasonable assessment of the respondent's current or future circumstances as per *Barnes v SRA Ltd [2022] EWHC 677 (Admin).*

42. The Tribunal considered that the Respondent was not impecunious in the *Barnes'* sense, in fact he had substantial resources to draw upon though it noted Mr Williams' admonition that the Respondent was not man of unlimited means. There were no persuasive factors to divert the Tribunal from the normal course involving costs though the Tribunal would set the costs at a level to take account of fact that dishonesty had

not been proved by the Applicant (though the alternative allegation of recklessness had been found) and that costs should not serve as an additional punishment.

43. The Tribunal ordered that the Respondent should pay the Applicant's costs in the sum of £60,000.00.

Statement of Full Order

44. The Tribunal ORDERED that the Respondent, **PETER KENNETH FELTON GERBER**, solicitor, do pay a fine of £45,000.00, such penalty to be forfeit to His Majesty the King, and it further Ordered that he do pay the costs of and incidental to this application and enquiry fixed in the sum of £60,000.00.

45. The Respondent shall be subject to conditions imposed by the Tribunal, suspended until Friday 4 April 2025 upon which date they will become operative, as follows :

- The Respondent may not:
- Practise as a sole practitioner or sole manager or sole owner of an authorised or recognised body; or as a freelance solicitor; or as a solicitor in an unregulated organisation;
- Be a partner or member of a Limited Liability Partnership (LLP), Legal Disciplinary Practice (LDP) or Alternative Business Structure (ABS) or other authorised or recognised body;
- Be a Head of Legal Practice/Compliance Officer for Legal Practice or a Head of Finance and Administration/Compliance Officer for Finance and Administration; Money Laundering Reporting Officer or hold any compliance management role.
- Hold client money;
- Be a signatory on any client account;
- There be liberty to either party to apply to the Tribunal to vary the conditions set out at paragraph 2 above.

Dated this 3rd day of February 2025
On behalf of the Tribunal

C Evans

Mrs C Evans
Chair

JUDGMENT FILED WITH THE LAW SOCIETY
3 FEBRUARY 2025