SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974 Case No. 12086-2020

BETWEEN:

SOLICITORS REGULATION AUTHORITY Applicant

and

JONATHAN THOMAS GORMAN Respondent

Before:

Mr J Evans (in the chair)
Mrs J Martineau
Ms E Chapman

Date of Hearing: 12 October 2020

Appearances

Charlotte Watts barrister of Capsticks Solicitors LLP, 1 St Georges Road, Wimbledon, London, SW19 4DR for the Applicant.

The Respondent did not appear and was not represented.

JUDGMENT

Allegations

1. The allegations against the Respondent were that while in practice as a Solicitor and Head of Commercial Property at EAD Solicitors LLP ("the Firm"):

1.1 Between approximately January 2016 and June 2017 he acted in one or more property transactions in which he failed to properly advise his clients and/or or protect their interests in those transactions and in doing so he breached any or all of Principles 2, 4, 5, 6 and 10 of the SRA Principles 2011 ("the Principles").

1.2 Between approximately November 2016 and March 2017, in acting in one or more property transactions, he failed to perform an undertaking which he had given to the purchaser's solicitors and thereby breached any or all of Principles 2 and 6 of the Principles and Outcome O(11.2) of the SRA Code of Conduct 2011 ("the Code").

1.3 Between approximately January 2016 and June 2017 he caused or allowed the Firm's client account to be used as a banking facility by means of payments to third parties contrary to Rules 14.5 and/or 20.1 of the SRA Accounts Rules 2011 ("the SARs") and thereby breached any or all of Principles 2 and 6 of the Principles.

2. In addition, allegations 1.1, 1.2 and 1.3 above were advanced on the basis that the Respondent's conduct was dishonest. Dishonesty was alleged as an aggravating feature of the Respondent's conduct, but was not an essential ingredient in proving the allegations.

3. Further or alternatively, allegations 1.1, 1.2 and 1.3 were advanced on the basis that the Respondent's conduct was reckless. Recklessness was alleged as an aggravating feature of the Respondent's misconduct but was not an essential ingredient in proving the allegation.

Documents

Applicant

- Application and Rule 5 Statement with exhibit "IWB1" dated 16 April 2020
- Standard directions dated 20 April 2020
- Memorandum of non-compliance hearing 28 May 2020
- Memorandum of Case Management Hearing dated 20 July 2020
- Gorman chronology and bundle dated 11 October 2020
- Applicant's skeleton argument dated 12 October 2020
- SDT Policy and Practice Note on Adjournments
- Schedule of Costs dated 16 April 2020 and 2 October 2020
- E-mail correspondence

Respondent

- E-mail from Potter Derby dated 9 October 2020
- E-mail from Potter Derby 12 October 2020

Preliminary Matters

4. Adjournment

4.1 The Respondent did not attend the hearing and was not represented, however, Ms Watts for the Applicant informed the Tribunal that on 3 August 2020 Richard Derby of Potter Derby Solicitors had written to Capsticks Solicitors, who acted for the Applicant, notifying Capsticks that Potter Derby was now instructed by the Respondent in the proceedings before the Tribunal.

4.2 Ms Watts also said that on 8 October 2020, LY, Practice Manager of Potter Derby, had telephoned Capsticks to say that Mr Derby and the Respondent were out of the country and she asked whether Capsticks would agree to an adjournment of the substantive hearing listed for 12 October 2020.

4.3 On 8 October 2020 a representative of Capsticks e-mailed the Rule 12 Statement and the exhibits bundle to Potter Derby and LY sent an e-mail on 9 October 2020 to Capsticks, copying in the Tribunal, seeking an adjournment of the substantive hearing. The e-mail read as follows:

> "Good morning,
>
> Thank you for providing us with the bundle and your assistance yesterday on the phone. As discussed, we respectfully request an adjournment of this hearing. I was made aware there have been hearings previous in relation to this matter and it was deemed sufficient service, correspondence being sent to Mr Gorman's e-mail address. However, this was an account saved on his ipad, an ipad [redacted] to which Mr Gorman has had no access to since. In relation to a postal address Mr Gorman has received several Osman warnings and has had attacks on his house he for that reason been sceptical to provide his new address to anyone.
>
> Neither Mr Gorman or ourselves have saw (sic) this bundle until recently and have not been able to discuss the content and his instructions. Furthermore he is out of the Country on Monday on holiday which was booked in May and prior to notice of the hearing, Mr Derby of our firm is also not available Monday.
>
> Briefly Mr Gorman has no desire to practice as a Solicitor and is willing for that to be taken from him, he does however seek to challenge this being done on any grounds of dishonesty. Could we please on this occasion for a small adjournment in order to try and agree a document for Mr Gorman to sign and remove the need for a contested hearing?
>
> Thank you for your consideration and we await your response.
>
> Kind regards
>
> LY"

4.4 On the morning of the substantive hearing the Tribunal received an e-mail from Potter Derby as follows:

> "Good morning,
>
> We write in relation to the above named and to assist with representations regarding an adjournment request for the contested hearing this morning- Further to my e-mails of last week may I firstly apologise for this request only being made today. As explained Mr Gorman had not received service of the documents for a number of factors, his e-mail address only accessed via his [redacted] iPad, his changes of address due to personal circumstances and appreciate it was served upon us the 3 August 2020.
>
> We was not aware of the hearings previous and as such the hearing date today both Mr Gorman and Mr Derby of our firm had pre-arranged holidays. I would like to assure the board that on having received the Rule 12 document we will consider the content at length with Mr Gorman and advise both the tribunal and SRA of his intentions at the earliest opportunity in writing with the hope to finalise matters outside of a hearing.
>
> Please note that I am available on [redacted mobile number] should the tribunal wish me to comment further on these representations.
>
> Thank you for your consideration in this matter.
>
> Kind regards,
>
> LY
> Practice Manager"

4.5 Ms Watts opposed the request to adjourn the hearing and made the following submissions.

4.6 Whilst the Respondent had a right to be present and represented the Tribunal had to consider whether the Respondent had waived his right to attend having regard to his lack of meaningful engagement with the Applicant to date, and to the nature of the adjournment application which, in Ms Watt's submission, lacked any proper evidential basis.

4.7 Ms Watts referred to the earlier e-mails from Potter Derby and said that the Respondent had indicated his intention to apply to adjourn the proceedings for the first time on 8 October 2020, less than 2 working days before the present listing. The Respondent and his representatives had been aware (or should have been aware) of the listing since 3 August 2020 at the latest and it was wholly unsatisfactory for the practice manager of the solicitor's firm acting on behalf of the Respondent to say that the solicitor with conduct of the matter was "not available" on the day of the hearing without further explanation and within such close proximity to the date of the substantive hearing.

4.8 The background of the case was as follows, the Tribunal was informed that the matter had been certified by a solicitor member of the Tribunal as showing a case to answer on 20 April 2020 and the proceedings served upon the Respondent by way of email soon afterwards.

4.9 Capsticks had written to the Respondent's last known postal address concerning some post issue matters but did not receive a response. Capsticks therefore instructed a tracing agent to confirm whether the Respondent resided at this address.

4.10 The tracing agent confirmed that the Respondent had relocated and further correspondence regarding the hearing was sent to this updated postal address.

4.11 The Respondent did not serve an Answer to the allegations by the date set out in the standard directions, 18 May 2020, and the matter was listed for a non-compliance hearing on 28 May. The Respondent did not attend this hearing and the date for service of his Answer was extended to 11 June 2020.

4.12 The matter was listed for a Case Management Hearing ("CMH") on 14 July 2020. The Respondent did not attend this hearing and had not filed and served his Answer. At this hearing, the Tribunal deemed it was satisfied that service of the proceedings had been effected but for completeness, it directed that another copy of the papers be sent to the Respondent's last known email address.

4.13 On 3 August 2020, Capsticks received an email from Potter Derby confirming they had been instructed by the Respondent that day.

4.14 On 22 September 2020, Capsticks wrote to Mr Derby after serving the Applicant's certificate of readiness and advised him that the allegations were outlined within the Rule 12 statement and the supporting evidence was in the bundle marked IWB1. Capsticks requested that Mr Derby notify them if he required a further copy of the documents which they would provide to him. Capsticks did not receive a response to this email.

4.15 Ms Watts submitted that it was clear the Respondent had been aware of the date of the hearing and there was evidence before the Tribunal that the Respondent had been served correctly with the proceedings and had also been notified of the date of the hearing.

4.16 Ms Watts said that the Respondent, neither in person nor via his solicitors, had provided the Tribunal with a good and compelling reason to adjourn the hearing and the application, such as it was, to adjourn did not comply with the Tribunal's Policy and Practice Note on adjournments which provided guidance to Applicants and Respondents seeking an adjournment of a hearing the date of which had been fixed.

4.17 Ms Watts said that the Practice Note specifically set out that the lack of readiness on the part of either the Applicant or Respondent or any claimed inconvenience or clash of engagements whether professional or personal was unlikely to be a reason that the Tribunal would accept as a reason to adjourn.

4.18 Ms Watts submitted, on the information before the Tribunal, it could have little confidence that an adjournment would secure the Respondent's attendance in the future and the Tribunal could safely infer that the Respondent's application was an attempt to derail the proceedings at a late stage. There had been no engagement from the Respondent and no application in good time from him or on his behalf to adjourn the substantive hearing.

The Tribunal's Decision

4.19 The Tribunal considered with care the submissions made by Ms Watts and the material relating to the history of the matter including the correspondence passing between Capsticks and Potter Derby.

4.20 The Tribunal was satisfied that the Respondent had been correctly served with the proceedings under Rule 13(5) Solicitors Disciplinary Procedure Rules 2019 ("SDPR 2019") and it was also satisfied that there was sufficient evidence to demonstrate that the Respondent was aware of the substantive hearing which was due to take place between 12 and 15 October 2020.

4.21 The Tribunal next considered whether the hearing should be adjourned. The Tribunal referred to its current Policy/Practice Note on Adjournments which sets out the principles to be applied in consideration of such applications under Rule 23 SDPR 2019.

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

4.23 In this case the Tribunal was satisfied that the Respondent had been aware of the proceedings and the date of the substantive hearing since April 2020 and at the very least since 3 August 2020.

4.24 Despite this knowledge, the Respondent had, in May 2020, booked a holiday out of the country which coincided with the date of the substantive hearing and the Respondent had made no earlier application to adjourn the substantive hearing. The Respondent had in fact not engaged at all in the process until very late in the day and that had been via an e-mail from the practice manager at Potter Derby which provided no substantial evidence in support.

4.25 Notwithstanding that the application for adjournment had not been in the correct form there was no evidential material from the Respondent to support the application and in any event the Tribunal had no confidence that an adjournment of any length would ensure the Respondent's participation and attendance.

4.26 The public expects cases to be dealt with expeditiously and the Tribunal decided not to adjourn the hearing as there was no evidence before it for it to reasonably do so**.**

5. Application to proceed in absence

5.1 Ms Watts next applied for the substantive hearing to proceed in the Respondent's absence and relied upon the decisions in General Medical Council v Adeogba; General Medical Council v Visvardis [2016] EWCA Civ 16231 which in turn approved the principles set out in R v Hayward, R v Jones, R v Purvis QB 862 [2001], EWCA Crim 168 [2001] namely that proceeding in the absence of the Respondent was a discretion which a Tribunal should exercise with the upmost care and caution bearing in mind the following factors:

- The nature and circumstances of the Respondent's behaviour in absenting himself from the hearing;
- Whether an adjournment would resolve the Respondent's absence;
- The likely length of any such adjournment;
- Whether the Respondent had voluntarily absented himself from the proceedings and the disadvantage to the Respondent in not being able to present his case.

5.2 It was held in Adeogba that in determining whether to continue with regulatory proceedings in the absence of the accused, the following factors should be borne in mind by a disciplinary tribunal: -

- the Tribunal's decision must be guided by the context provided by the main statutory objective of the regulatory body, namely the protection of the public;
- the fair, economical, expeditious and efficient disposal of allegations was of very real importance;
- it would run entirely counter to the protection of the public if a respondent could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage in the process; and
- there was a burden on all professionals subject to a regulatory regime, to engage with the regulator, both in relation to the investigation and ultimate resolution of allegations made against them. That is part of the responsibility to which they sign up when being admitted to the profession.

5.3 Ms Watts informed the Tribunal that these principle had been re-affirmed in Sanusi v General Medical Council [2019] EWCA Civ 1172.

5.4 Ms Watts submitted that the Respondent had a duty to co-operate with his Regulator in the investigation and disciplinary process and the Respondent was acting in breach of that duty and displaying a flagrant discourtesy to the Tribunal and its Orders. Whilst fairness to the Respondent was of prime importance, fairness to the Applicant was also a relevant factor.

5.5 The matter had been listed since 20 April 2020 and had been prepared for a final hearing. There was a public interest in the expeditious disposal of regulatory cases and the allegations relate to events that occurred in 2016 and 2017.

5.6 Rule 37 of the SDPR 2019 provided the safeguard that at any time before the Tribunal's Order was sent to the Society under Rule 42(1) or within 14 days after it is sent, a party may apply to the Tribunal for a re-hearing of an application if (a) the party neither attended in person nor was represented at the hearing of the application; and (b) the Tribunal determined the application in the party's absence.

5.7 In Ms Watts' submission the Tribunal could reasonably infer that the Respondent had been aware of the proceedings but that he had voluntarily absented himself and that the hearing should proceed in his absence.

The Tribunal's Decision

5.8 The Tribunal was mindful that it should only decide to proceed in the Respondent's absence having exercised the utmost care and caution. It was essentially a question of fairness weighing up the potential prejudice to the Respondent against the responsibility the Applicant had to dispose of cases justly and expeditiously.

5.9 To this end the Tribunal considered the factors set out in Jones and Adeogba in respect of what should be considered when deciding whether or not to exercise the discretion to proceed in the absence of the Respondent. The Tribunal noted that the Respondent had been served with notice of the hearing under Rule 13(5) SDPR 2019 and the Tribunal had the power under Rule 36 SDPR 2019, if satisfied service had been effected, to hear and determine the application in the Respondent's absence.

5.10 The Tribunal considered the Respondent had been correctly served and was aware of the date of the proceedings and that an adjournment would not resolve his absence. The Respondent had a duty to engage but had not done so and there was nothing to suggest that he would attend a hearing on a future date. There was no evidence that he had medical issues preventing him from attending and so the Tribunal concluded that the Respondent had voluntarily absented himself.

5.11 The Tribunal also took into account the serious nature of the allegations which had been made against the Respondent. These involved allegations of dishonesty and related to events that had taken place as far back as 2016. A significant period of time had elapsed since then and it was therefore in the public interest that this case should be concluded expeditiously and without further delay.

5.12 Taking all these matters into account, the Tribunal was satisfied that it was appropriate and in the public interest for the hearing to proceed in the Respondent's absence and the Tribunal decided that it should exercise its power under Rule 36 SDPR to hear and determine the application in the Respondent's absence.

Factual Background

6. The Respondent was a solicitor having been admitted to the Roll on 1 June 2011.

7. Between September 2009 to December 2011 he was a trainee (and then an assistant) solicitor at Morecrofts LLP in Liverpool. Between December 2012 and December 2015, he was an assistant solicitor at Maxwell Hodge Limited, also based in Liverpool.

8. From 4 January 2016, the Respondent was an assistant solicitor at the Firm and its Head of Commercial Property. In or around June 2017 the Firm identified material breaches in relation to matters of which he had conduct and he was dismissed by the Firm for gross misconduct on 22 June 2017.

9. The Respondent had not held a practising certificate since 31 October 2017.

Witnesses

10. No witnesses were called to give evidence.

Findings of Fact and Law

11. The Applicant was required to prove the allegations on the balance of probabilities. The Tribunal had due regard to the Respondent's rights to a fair trial and to respect for his private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Overview of the Applicant's case

12. Ms Watts set out the Applicant's case and said that conduct in this matter came to the attention of the Applicant on 22 June 2017 when the Firm's COLP informed the SRA of what he described as "material breaches" in relation to the Respondent and that he was making the report after becoming aware of a potential negligence claim which could be made against the Firm. The COLP added that further transactions had caused concern and 'other matters might come to light'.

13. The Firm then conducted its own investigation into the Respondent's conduct and made further reports to the Applicant in respect of the Respondent's conduct. In its letter to the Applicant dated 20 September 2017, it concluded that "what has become clear is that most of the transactions which cause concern all involve [RW], a former solicitor, now property developer or companies owned by him. There are matters which have been reviewed and which do not raise concerns. So it is apparent that [the Respondent] was well aware of his duties as a solicitor acting in commercial property transactions."

14. RW was admitted as a solicitor in 2008 and between December 2005 to September 2015 had worked as a trainee (and then as an assistant) solicitor at Morecrofts LLP in Liverpool.

15. In October 2012, the Applicant brought proceedings before the Solicitors Disciplinary Tribunal against RW in respect of conveyancing irregularities. RW was fined £2,000 and undertook to remove himself from the Roll.

16. The Applicant also received reports from:

- BL (a property agent based in Dubai);
- LW (a partner at M Solicitors)
- J W (a solicitor at H J W S)

17. On 16 October 2017, the Applicant commenced an investigation, during the course of which production notices were served on the Firm. The Firm also conducted its own investigation into the Respondent's actions. Between approximately January 2016 and June 2017 the Respondent had been involved in a number of property transactions whilst at the Firm.

18. It was the Applicant's case that the Respondent failed to properly follow his client's instructions in those matters particularised below and failed to act in their best interests; failed to perform an undertaking which he had given, and had caused or allowed the Firm's client account to be used as a banking facility.

19. In several of those matters, the Respondent failed to register his clients' interests with the Land Registry in property in which they had acquired an interest and/or take steps to ensure that the correct amount of Stamp Duty Land Tax was (SDLT) was paid in respect of their transactions. As to each the Respondent's clients were exposed to risk:

- Transfers of freehold and leasehold land must be registered at the Land Registry. If registration is not properly effected, the transfer or lease becomes void as against the legal estate. The legal estate in a transfer reverts to the transferor, who holds the land as bare trustee for the transferee. In the case of a grant of a lease, the lease takes effect as an agreement for lease.

- Guidance on HMRC's website provides that SDLT must be paid on the purchase of land or property over a certain price in England. A completed SDLT return and payment of the correct sum amount of SDLT must be paid to HMRC within 14 days of completion of the transaction. The website warns that purchases may be charged penalties and interest if they do not file the return and make payment within that 14-day timescales.

The events forming the substance of the allegations

Acting for BM and SA

20. The SRA's Forensic Investigation Officer ("FIO") reviewed six transactions in which the Respondent acted for MB and SA, who were introduced to the Respondent by RW. Both MB and SA were based in Saudi Arabia and wished to make cash purchases of properties through UK companies established by the Respondent (FM Limited and AR Limited). The seller in each transaction was a company of which RW was the director. In each case those companies were represented by Mr B of MN Solicitors.

P House, 6 L Lane, Liverpool

Lease to SR

21. In January 2016, the Respondent was instructed by SR who was purchasing a 999-year leasehold interest in 6 L Lane, Liverpool for £600,000. Part of the purchase price (£420,000) was to be funded by way of a mortgage from Lloyds Bank, for whom the Respondent also acted.

22. A report on title prepared by the Firm showed that the registered proprietor was M Limited, whose sole director was RW. B acted for M Limited. The Respondent had been recommended to SR by M Limited. The FIO noted that no copy of the sale contract appeared on the client file, but that the purchase monies of £600,000 were sent to MN Solicitors on 19 February 2016. Those monies comprised:

    - £420,000 - mortgage monies received from Lloyds Bank; and £180,000 - an inter-ledger transfer from a file in the name of a different client with reference *Purchase 426 The C, A D, L3 xxx*.

23. The FIO reviewed the Firm's file and client account ledger relating to 426 The C. The ledger recorded the transfer of £180,000 as a "loan advance" but the FIO was unable to find any evidence of the reason for that transfer. The FIO was unable to find any evidence that SR's interest in the property had been registered.

24. In a letter to the Firm dated 19 October 2017, M Solicitors (who by this point were acting for SR) confirmed that neither SR's leasehold interest nor the bank's charge had been registered. Their client claimed losses of over £700,000.

25. Ms Watts submitted on the Applicant's behalf that as an experienced solicitor, and the Firm's Head of Commercial Property, the Respondent would have been aware that his clients' interests would not be protected if they were not registered and that they were likely to suffer loss.

Sale to FM

26. In June 2016, the Respondent was instructed to act on behalf of FM in the purchase of P House, 6 L Lane, Liverpool for £1,475,000. The seller was M Limited, of which RW was the sole director. The property was to be immediately leased back to M Limited for 10 years at an annual rent of £195,000. The heads of terms provided that M Limited would pay half the SDLT payable on the sale. In an email dated 23 June 2016, the Respondent wrote to Mr Bin the following terms:

> "You will recall that earlier in the year you acted in the completion of a sale of the back part of the property (comprising three flats) to another client of mine [SR]. I understand that this part of the property is included in the sale. Rather than make [SR] a party to this transaction I thought it would be far simpler to execute a deed of surrender simultaneously on completion to surrender the lease so that the whole property transfers to my current client under one freehold title. I attach a deed of surrender for our perusal. This figure to be inserted as consideration will be the figure required to discharge [SR's] mortgage to Lloyds

> bank and any other monies agreed between he and your client. Please can you take instructions from your client to confirm that they are agreeable to dealing with matters in this way."

27. It appeared that neither FM nor MB was made aware of SR's leasehold interest or the steps which would be required (or were intended) to surrender that interest.

28. On 30 June 2016, the Respondent emailed Mr B confirming that he held the funds to complete the purchase and that:

> "I await confirmation that you have taken instructions in relation to the deed of surrender. I understand this matter was being agreed yesterday afternoon. This should enable completion this week".

29. Ms Watts told the Tribunal that in fact completion took place later that day. The contract showed that FM Limited was to purchase the freehold of the property; that it was to be sold with vacant possession; and that it was sold "subject to all matters contained to [sic] or referred to therein the property and charges register of title number LA 250658 as at 09.06.2016 at 17:24:26 other than financial charges".

30. A copy of the register as at that date and time appeared on the Firm's file. SR's leasehold interest in the property was not referred to in that register. The client ledger showed that the purchase monies of £1,475,000 were paid to MN Solicitors on 30 June 2016 and that none of those purchase monies was retained in connection with the proposed surrender of SR's lease.

31. Accordingly, as at 30 June 2016, it was said that the Respondent was aware:

- That SR had purchased a long leasehold interest in part of the property with the aid of a mortgage from Lloyds Bank, both parties were former clients of the Respondent;
- that neither of his former clients' respective interests had been registered at the Land Registry and were therefore not protected;
- that it was necessary to agree a surrender of SR's lease to properly effect the instructions of FM on its purchase of the property, and that a payment to SR would be necessary to secure that surrender;
- that his clients had not been made aware of SR's leasehold interest or the steps which would be required (or were intended) to surrender that interest;
- that as at the point of completion, no deed of surrender had been completed and no monies had been retained to make the necessary payment (which had not been agreed).

32. On 7 December 2016, a person, GW, emailed the Respondent requesting that he obtain MB's half of the SDLT payable (GW confirmed that RW had paid the full amount to HMRC and required the balance as per the heads of terms). He calculated that the SDLT payable was £135,000.00 and that, accordingly, MB's share was £67,750.

33. The Firm received MB's share on 8 February 2016. On the same day £56,373.82 was paid out of the Firm's client account with the reference "FAST TRACK - CONTRIBU SDLT". The client ledger showed that a payment of £11,369.18 was made to HMRC on the same date.

34. The FIO was unable to locate any information on the client file to explain:

- why sums had been paid to "Fast Track" rather than to the Firm's client;
- if that sum was to represent half the SDLT which RW had paid, why only £56,373.82 had been paid (rather than the full amount received);
- to what the payment of £11,369.18 to HMRC related;
- or if that sum related to the transaction, why a further payment was made to HMRC if the full SDLT sum due had already been paid by RW;
- the capacity in which GW acted in giving instructions when providing instructions to the Respondent, although FIO noted that he was a director of a company known as FTC Limited.

35. In these circumstances Ms Watts submitted the following:

- The Respondent failed to properly advise his clients and/or protect their interests, thereby exposing them to the risk of loss, in that he failed to register the interests of his clients, SR and Lloyds Bank, at the Land Registry and the effect of such failure was that those interests might not be protected against subsequent dispositions of the property;
- Further, he failed to advise FM or MB that (as the Respondent was aware) SR had a leasehold interest in the property to which, on completion, they were or might be subject and he failed to advise them of the steps that he knew were required (or were intended) to surrender that interest. He also failed to take any or adequate steps to secure a surrender of that interest. The effect was that his clients would acquire the property subject to an interest of which they were unaware;
- The Respondent took no steps to ensure that the correct amount of SDLT (or any SDLT at all) had been paid to HMRC by the vendor. The effect was that, if insufficient (or no) SDLT had been paid, his client would be liable to pay interest and penalties;
- Purported to send his client's half of the SDLT payment to the vendor in accordance with the agreement reached between the parties; but sent less than the sum which he knew was required and sent it to a third party (Fast Track Completions) rather than the vendor. The effect was that the vendor would be entitled to require payment of the balance (or the full amount) of the Respondent's client's payment;

- The Respondent made a payment of SDLT to HMRC from his client's funds when, on the basis of the agreement reached between the parties, no such payment was required. The effect was that £11,369.18 of his client's funds were sent to HMRC when no such payment was required.

68-70 D Street, Liverpool

36. On 15 March 2016, the Respondent was instructed to act for FM in the purchase of 68-70 D Street for £1,800,000. The seller was A 2 Limited.

37. At the relevant time, RW was the sole director (GW became a co-director in June 2017). Mr B was to act for A 2 Limited. An email from GW confirmed that the property was to be leased back to RW on a 10-year full repairing and insuring lease. Completion was to take place by 31 March 2016, to avoid an increase in the SDLT payable as a result of changes in legislation.

38. On 31 March, the Respondent emailed MB to confirm that if completion took place later that day, the SDLT payable would be £18,000 and that he would have a balance of £47,000 to return.

39. The Firm received £1,871,292 from the client on 31 March 2016. Exchange and completion took place that day. A deposit of £18,000 was paid to MN Solicitors that day, with the balance of £1,620,000 being paid the following day. Accordingly, as at 1 April, the Firm held £71,292 on its client account in respect of this matter.

40. The client ledger showed that on 27 May 2016 a payment of £10,800 was made with reference "WAREHOUSE - E/A FEE". The FIO noted that the client file contained no evidence to show how this payment related to the transaction or to explain why it had been paid.

41. On 30 June 2016 (i.e. some 3 months after completion of FM Limited's purchase of the property) an inter-ledger transfer of £47,084 was made to the client ledger for FM Limited's purchase of 6 L Lane.

42. As at 20 October 2016, the client account ledger showed a balance of £7,200. The Respondent had told his client that SDLT payable on the transaction was £18,000 and the client account ledger showed that, at this point, no SDLT payment had been made. The client ledger showed that a payment of £7,200 was made to HMRC on 9 December 2016 but that no further SDLT payments were made.

43. In his letter to the Firm dated 4 April 2016 Mr B enclosed a copy of the signed transfer and contract and asked to receive FM's part of the lease in favour of RW. He repeated that request on 19 April, 2 June 2016 and 11 October 2016, but no response from the Respondent appeared on the Firm's file and there was no copy of that lease on the file.

44. Ms Watts submitted that in this transaction the Respondent failed to properly advise his clients and/or protect their interests, thereby exposing them to the risk of loss in that:

- The Respondent made a payment of SDLT to HMRC of only £7,200 when (as he knew) further sums in respect of SDLT were due.

- The effect was that, if insufficient SDLT had been paid, his client would be liable to pay interest and penalties.

9-11 F Street and 16-16A C Road, Liverpool

45. In October 2016, the Respondent was instructed to act for FM Limited in the purchase of two further properties 9-11 F Street, for a purchase price of £700,000; and 16-16a C Road for a purchase price of £1,350,000.

46. The heads of terms noted that seller of both properties was to be M Limited (the sole director of which was RW) and that Mr B was to act for that company.

47. However, M Limited did not own either property: 9-11 F Street was owned by CP Limited and 16-16a C Road was owned by A 2 Limited.

48. Mr B indicated to the Respondent in an email dated 19 October 2016 that his client was in the process of purchasing 9-11 F Street and that "effectively this will be a back to back/simultaneous transaction". However, the FIO was unable to locate any evidence that the Respondent told his client that M Limited did not own the 757 property (as the heads of terms indicated) or that such an arrangement would be necessary.

49. On 7 December 2016, GW emailed the Respondent to say that RW owed MB £217,750 which would be "offset" against the purchase price of C Road (and that, accordingly, the purchase price would be £1,132,500).

50. The contracts of sale on the Firm's files recorded the completion date for both purchases would be 13 December 2016 and documents on the Firm's file indicated that completion of the purchase of 16-16a C Road took place on that date. The client ledger showed that, on that date, the sum of £1,837,187 was received from MB and that £1,832,500 was paid to MN Solicitors.

51. In respect of 16-16a C Road, the FIO noted that the file did not contain any post-completion documentation and that there was no evidence to show that the Respondent took any steps to register the property in his client's name. In fact, FM Limited's interest in the Property was only registered on 19 September 2017 (i.e. 9 months after completion) by new solicitors instructed by MB.

52. In respect of 9-11 F Street the FIO was unable to locate any evidence on the file to show that the sale of the property from CP Limited to M Limited had taken place (which, as Mr B had identified, was necessary prior to a sale from M Limited to FM Limited).

53. Accordingly the only purchase which could complete on 13 December 2016 was the purchase by FM Limited of 16-16a C Road. The agreed purchase price for that property was £1,132,500 and it followed that a further £700,000 was sent to MN Solicitors on 13 December 2016 in respect 9-11 F Street - a transaction which could not complete.

54. On 14 December 2016, in an email headed "16 & 16a C Road" Mr B emailed the Respondent to ask "I do need to know what the other payment sent over was for" but there appeared to be no response from the Respondent evident on the file.

55. During the course of the Applicant's investigation, the Firm's COLP referred to a meeting which the Respondent attended on 14 June 2017 and in which the Respondent "was adamant" that completion had taken place on both transactions and that he would "produce documents".

56. The Applicant noted that the file contained a transfer signed by MB only (dated 13 December 2016) and a letter from the Respondent to MN Solicitors dated 2 March 2017 (i.e. 3 months later) referring to completion of the purchase of the property.

57. The Respondent then spoke with Mr B. The Respondent said that Mr B admitted that there was no completion but he sent the funds to his client in error. Two days later, on 16 June 2017, the Respondent gave a statement to the Firm which gave an account of his meeting with Mr B in the following terms:

> "Following this issue coming to light I asked to meet with JB [Mr B] on 14 June 2017. During that meeting I asked why he had not completed on the Property. He said that for some reason he had thought that all the funds were for 16CR [i.e. 16-16a C Road]. I referred him to the fact that I sent him the funds for the total consideration of the two properties with the rent deductions. He apologised and admitted his error and said he would meet with his client in order to take instructions and resolve matters".

58. Ms Watts submitted that Mr B's explanation as reported by the Respondent ("for some reason he had thought that all the funds were for 16 C Road") was at odds with Mr B's email the day after the receipt of the funds which stated "I do need to know what the other payment sent over [i.e. the additional £700,000] was for".

59. The Respondent's position before the Firm that he was "adamant" that completion had taken place was at odds with him having received that email and having not replied.

60. On 14 June 2017, the Firm's COLP sent an email to MN Solicitors noting that the sale of 9-11 F Street had not completed and asking for the sum of £482,500 to be returned.

61. Ms Watts informed the Tribunal that this sum had still not be returned and she submitted that the Respondent had failed to properly advise his clients and/or protect their interests and had thereby exposed them to the risk of loss, in that:

- With respect to 16-16a C Road, Liverpool he failed to take any steps to register his client's interest in the property (that interest was only registered when his clients appointed new solicitors to act on their behalf). The effect was that the client's interest might not be protected against subsequent dispositions of the property;

- In respect of 9-11 F Street, Liverpool he failed to advise his client that (as he knew) the intended vendor did not own the property, or that a "back-to-back" purchase was required; and sent completion monies totalling £700,000 to MN Solicitors, without qualification or explanation, in circumstances where he had seen no evidence that the vendor was in a position to complete the sale of the property to his client. There was therefore a risk (as eventuated) that those monies might be improperly paid away to a third party prior to completion of that transaction.

Purchases by AR Limited

62. In June 2016, the Respondent was instructed to represent SA in his purchases of 14 O M Lane, Liverpool (for a purchase price of £1,400,000); and 5 R Street, Liverpool (for a purchase price of £600,000).

63. SA was a resident of Saudi Arabia. As with the matters on which the Respondent acted for MB, SA was to purchase those properties through a UK limited company (AR Limited) which was set up for that purpose and of which SA was the sole director.

64. The sellers of the properties were A Limited and M Limited. At the relevant time, RW was a director of both companies. Mr B was to act for the sellers in these transactions. Emails on the file show that SA visited Liverpool and met with RW and GW and that the Respondent was recommended to act as SA's solicitor in these transactions.

14 O M Lane, Liverpool

65. The heads of terms for the sale to R Limited dated 14 June 2016 provided that the sale price was £1,400,000 and that the property was to be immediately leased back to A 2 Limited on a 10 year lease at an annual rent of £182,000. Although the heads of terms provided that the seller was to be A 2 Limited, Land Registry records show that, at the time of the purchase, the owner of the property was A Limited. A winding up petition had been issued against that company on 28 April 2016 (i.e. 7 weeks before heads of terms were issued in this matter) and a winding up order was made on 8 August 2016.

66. The Firm received the sum of £1,400,000 from its client on 6 July 2016 and sent it to MN Solicitors later that day. An email from Mr B to the Respondent confirmed that completion had taken place on 6 July 2016. However, the FIO was unable to locate any evidence on the client file that the Respondent had taken any steps thereafter to register the property in the name of AR Limited.

67. Between 1 November 2016 and 31 May 2017, SA and his representatives chased the Respondent and the Firm on multiple occasions for an explanation as to why the property had not been registered in the name of AR Limited. Neither the Firm nor the Respondent sent any substantive response to those requests. In fact, correspondence sent by the Firm to Mr B in April 2017 suggested that it had not been possible to register AR's interest in the property because of the liquidation of A Limited (which remained the registered proprietor of the property).

68. Ms Watts submitted that that the Respondent failed to properly advise his clients and/or protect their interests, thereby exposing them to the risk of loss, in that:

- The Respondent purported to complete his client's purchase of the property in circumstances where a winding up petition had been issued against the company. The effect was that (as eventuated) it might not be possible to register his client's interest in the property;

- he failed to advise his clients that a winding up petition had been issued against the company and of the risks which might result;

- he failed to take any steps to register his client's interest in the property. The effect was that his client's interest might not be protected against subsequent dispositions of the property and/or that (as eventuated) by the time steps were taken to effect registration, it may not be possible to register his client's interest.

32 W Road, Birkenhead

69. On 15 July 2017, JW (the sole principal of H J W S Solicitors) reported to the SRA that the Firm was in breach of undertakings which the Respondent had given to him in relation to 4 transactions at this property. Mr W acted for purchasers of apartments at the W Road property. The Respondent acted for the seller, W Limited. RW was the sole director of that company between 15 February 2016 and 4 April 2017 and GW was the sole director between 4 April 2017 and 29 October 2018.

70. The FIO noted that the Respondent had opened 11 matter files for W Limited being the sale of 9 apartments, the refinancing of two flats and a client file described as "development file".

71. Mr W's report related to four matters in which the Respondent had failed to comply with undertakings which he had given to merge his client's freehold title to the development with leasehold titles relating to individual flats at the property which Mr W's clients were purchasing. Mr W stated that it was not possible to register his clients' interests in the properties they had purchased until those titles had been merged. One of the matters referred to in Mr W's report is exemplified below:

Sale of Apartment 2, 32 W Road, Birkenhead

72. Mr W's clients were to purchase a leasehold interest in this property for £297,500. The Respondent was acting for the vendor, W Limited.

73. On 16 November 2016, the Respondent sent an email to Mr W confirming that his client owned the freehold to the property and the leasehold titles "for various apartments in the building". He noted that "the leases which are currently in place are for varying terms and are not particularly great"; that "the term of the existing leases are quite low and we intend to grant new 999 year leases"; and that: "we therefore intend to surrender the existing leases on completion of each apartment and grant new leases so that all leases are uniform and make provision for a management company to provide services".

74. Accordingly, clause 12 of the agreement for lease for the sale of this property (dated 15 December 2016) provided as follows:

> "12.1 Within 5 working days of the date of this agreement, the Landlord's Conveyancer [i.e. the Respondent] shall make an application to HM Land Registry to merge the leasehold title to the Property... into the freehold title for the Development..."

75. The Respondent subsequently made an application to the Land Registry to merge the leasehold title of the Property into the freehold title for the development, but had received a requisition from the Land Registry indicating that it would not be able to

complete that application until it had received confirmation that S Limited had discharged a charge over the leasehold title.

76. On 22 February 2017, Mr W requested a copy of the completion statement and "the amended freehold title showing the merger of the old lease of Apt. 2 per clause 12 of the contract asap, please".

77. Later that day, the Respondent replied to Mr W as follows: "On lease merger, attached is the requisition. I had hoped that given it is merging into freehold and current lender has a charge of the same date on that title that it could be dealt with by consent. Given that we will be getting a discharge from them then is this something we can deal with on completion if I give the necessary undertaking?"

78. Mr W replied later that day to confirm that he was content to proceed on that basis. Completion of the sale took place on 24 February 2017. In an email to Mr W that day, the Respondent wrote:

> "In respect of the Land Registry requisition dated 22 February 2017 which I provided under cover of email to you dated 22 February 2017, we undertake to use all reasonable endeavours to have the application subject to this requisition completed within 14 days from today and to immediately provided (sic) you with confirmation of the collapse of the leasehold title. In respect of the registration of the new lease to be granted on completion we confirm that we will provide the consent to lease in accordance with the attached replied to requisitions within 28 days of completion".

79. The FIO was unable to identify any evidence on the Firm's file to show that the Respondent had done any further work to comply with his undertaking. Mr W confirmed in his report to the SRA that his client's application to register their purchase of the property had been cancelled by the Land Registry because (contrary to his undertaking) the Respondent had not completed an application to merge the old lease into the freehold title to the development.

Payments made from the sale funds

80. The FIO reviewed the client ledger for this file and noted the following receipts:

- £29,750 (15 December 2016). Received from H J W S Solicitors. These funds were the 10% deposit payable in respect of the property;

- £30,000 (21 December 2016). An inter-ledger transfer from a file relating to the sale of Flat 1, R Road, 34 W Road. The FIO was not able to identify from the client file why that transfer had taken place;

- £21,000 (22 December 2016). Received from JH Limited. The FIO was not able to identify from the client file why those monies had been paid to the client ledger, what the funds related to, or how they related to this transaction.

81. On 23 December 2016, £81,250 was transferred to a client ledger in the name of MF Limited with description "Loan on Former C W Public House, L25 xxx". The FIO was unable to identify why this transfer was made.

82. The balance of the completion monies (£267,887.26) was received on 24 February 2017. The FIO noted that none of the completion monies was sent to the client. For example, four payments totalling £143,748.26 were sent to FTC Limited whose sole director was GW (and of which RW had been a director from 1 December 2016 to 21 January 2017. On 24 February 2017 £29,000 was paid to W H S Limited.

Other matters concerning 32 W Road, Birkenhead

83. The FIO carried out a review of the seven transactions in which the Respondent had acted in connection with this property and she identified that the Firm had received £1,296,345.84 into its client account representing sale proceeds in those transactions and analysed the payments which had been made out of those sums. The FIO identified that none of the sale proceeds were sent to the Respondent's client in those matters but were instead paid to third parties or transferred to other client ledgers.

84. The FIO officer noted that the recipients of those sums included a number of companies in which RW had an interest:

- £90,748.26 paid to FTC Limited;
- £100,000 paid to M Limited;
- £18,750 paid to A2 Limited.

85. The FIO also noted a number of payments and receipts on the client ledger for the sale of Apartment 1 which did not relate to that transaction. These included a payment of £75,000 received from Seneca Securities on 24 October 2016 which was paid out to Fast Track Completions on 9 November 2016 and two payments of £20,000 each from J M S on 10 November 2016 with reference "to repay loan".

Mr CS. Mr JS. Mr P and WHS Limited

86. On 1 February 2018, the Firm also reported to the SRA that it had received a preliminary notice of a professional negligence claim from DDE Law, who were acting for Mr CS, Mr JS, Mr P and WHS Limited *(the S Clients*).

87. The notice alleged that the Respondent had acted in relation to loans which the S Clients had made to RW (and other third parties which RW had introduced to them) but where, contrary to those clients' instructions, the Respondent had failed to register the relevant charges. The letter alleged that the S Clients had suffered losses in the sum of around £9m and that they had paid monies to, and received monies from, the Firm's client account.

88. During the course of her investigation, the FIO identified that between April 2016 and April 2017 24 payments totalling £1,983,594.465 were made from the Firm's client account to the S Clients, but that only 10 of those payments (totalling (773,659.10) had been posted to a ledger in the name of those clients and 15 payments totalling £1,07,926.00 had been paid into the Firm's client account by the S Clients, but only five of those payments (totalling £531,926) had been posted to a ledger in the name of those clients.

89. The remaining 24 payments had been posted to nine other ledgers which did not relate to the S Clients. They included five client ledgers relating to matters where the Respondent was acting for companies of which RW was or had been a director. In those transactions, the FIO identified no correlation between those matters and the properties referred to in the loan documentation provided by DDE Law.

90. One of those ledgers related to the sale of 22 H Avenue by JW. Mr B acted for the purchasers in that transaction. None of the completion monies in that transaction were paid out to JW. Instead, two payments totalling £51,000 were sent to Fast Track Completions (a company associated with RW) and a payment of £89,550 was made to Lloyds Bank for the redemption of a loan and £68,878.76 was paid to WHS Limited as an "interest payment".

91. Another of those ledgers related to the redemption of a loan for SS. The FIO was informed by the Firm that SS was RW's partner. It could not be identified from the documentation held by the Firm whether SS was the lender or the borrower and that there did not appear to be a genuine underlying legal transaction.

92. DDE Law's correspondence did not provide any evidence of a loan to SS. The client ledger showed that the Firm received £103,000 on 24 August 2016. This comprised of £33,000 shown as "[SS] - redemption loan"; £45,000 from MN Solicitors (with reference 'loan') and two payments from WC of £10,000 and £15,000 respectively.

93. On 24 August 2016 a payment of £198,000 was made to Mr S with reference "repay loan" and on 20 October 2016 a payment of £4,778 was posted and referred to as "[SS] - balance".

Allegations

94. **Allegation 1.1: failure to properly advise clients and/or protect their interests.**

The Applicant's Case

94.1 In all of the property transactions described, Ms Watts contended that the Respondent failed to properly advise his clients and/or protect their interests, thereby exposing them to the risk of loss, for the reasons given under each of those properties.

94.2 It was said that the Respondent's conduct amounted to:

94.2.1 *Breach of Principle 2 of the Principles* - By reason of the conduct described, the Respondent failed to act with integrity, i.e. with moral soundness, rectitude and steady adherence to an ethical code. In Wingate v Solicitors Regulation

Authority v Malins [2018] EWCA Civ 366, it was said that integrity connotes adherence to the ethical standards of one's own profession. The Respondent was an experienced solicitor of some 8 years' qualification. A solicitor acting with integrity would have taken steps to ensure that his clients were advised of relevant matters relating to their transactions, particularly those that did, or had the potential to, significantly affect their interest in the property they were purchasing. He would have taken steps to ensure that his clients' interests were protected and, if it was not possible to do so, notified them immediately. The Respondent failed to do so. He therefore breached Principle 2 of the Principles.

94.2.2 *Principles 4, 5, and 10 of the Principles* - The Respondent repeatedly failed to advise his clients of relevant matters relating to their transactions, particularly those that did, or had the potential to, significantly affect their interest in the property they were purchasing. He repeatedly failed to take steps to ensure that his clients' interests were protected and failed to inform them that they were not so protected. He therefore failed to act in the best interests of his clients *(breach of Principle 4)*; failed to provide a proper standard of service to his clients *(breach of Principle 5)* and failed to protect his client money and assets *(breach of Principle 10).*

94.2.3 *Breach of Principle 6 of the Principles* - The conduct alleged 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. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by solicitors who repeatedly fail to advise their clients in the manner described and who repeatedly fail to ensure that their interests are protected. The Respondent it was said therefore breached Principle 6 of the Principles.

The Respondent's Case

94.3 The Respondent had not engaged in the proceedings and did not serve an Answer to the allegations. The Respondent's position with respect to this allegation was not known.

The Tribunal's Findings

94.4 The Tribunal reminded itself with respect to all the allegations that the Applicant must prove its case on the balance of probabilities; the Respondent was not bound to prove that he did not commit the alleged acts and that great care must be taken to avoid an assumption (without sufficient evidence) of any deliberate failure or act on the Respondent's part.

94.5 The Tribunal approached this, and all the other allegations, on the basis that they were denied by the Respondent and by applying the requisite standard of proof, namely the balance of probabilities.

94.6 The Tribunal carefully considered the evidence it had heard and read. The Tribunal observed that its task in determining the allegations was made more difficult in circumstances where the Respondent had not engaged in the proceedings and had presented no evidence in his case.

94.7 The Tribunal was cognisant of the fact that under rule 33 of the SDPR 2019 where, as in this case, a Respondent had failed to send or serve an Answer in accordance with a direction under rule 20(2)(b) or failed to give evidence at a substantive hearing or submit himself to cross-examination the Tribunal was entitled to take into account the position that the Respondent had chosen to adopt and to draw such adverse inferences from the Respondent's failure as the Tribunal considered appropriate.

94.8 The Tribunal relied on the extensive documentary evidence which had been presented for its consideration and the evidence contained with the FIO's report which, in the absence of any contrary argument, it found determinative in its entirety.

94.9 The Tribunal found, on the balance of probabilities, that the Respondent had between approximately January 2016 and June 2017 acted in one or more property transactions and that in these transactions the Respondent had failed to advise his clients and protect their interests properly as set out by the Applicant.

94.10 By way of example the evidence demonstrated that the Respondent had not registered SR's interest in the property at P House, Liverpool; that he had failed to advise FM or MB when they sought to purchase P House that SR had a leasehold interest in the property to which, on completion, they were or might be subject; failed to advise them of the steps that he knew were required (or were intended) to surrender that interest; and failed to take any or adequate steps to secure a surrender of that interest. The effect was that his clients would acquire the property subject to an interest of which they were unaware.

94.11 Further, the Respondent took no steps to ensure that the correct amount of SDLT (or any SDLT at all) had been paid to HMRC by the vendor.

94.12 With respect to the purchase of 68-70 D Street, Liverpool, the Respondent made a payment of SDLT to HMRC of only £7,200 when he was aware further sums in respect of SDLT were due.

94.13 With respect to the purchase of 9-11 F Street and 16-16a C Road, Liverpool, the Respondent failed to take any steps to register his client's interest in the property and that in respect of 9-11 F Street, Liverpool he failed to advise his client that the intended vendor did not own the property, or that a "back-to-back" purchase was required.

94.14 With respect to O M Lane, Liverpool, the Respondent purported to complete his client's purchase of the property in circumstances where a winding up petition had been issued against the owner company the effect of which was that it was not possible to register his client's interest in the property.

94.15 The Tribunal proceeded to consider whether on the basis of its factual findings the Respondent had breached any, or all, of Principles set out by the Applicant in this allegation.

94.16 The Tribunal considered that the circumstances identified by the Applicant and found by the Tribunal to have occurred in the exemplified property transactions represented failures by the Respondent to properly advise his clients and protect their interests, thereby exposing them to the risk of loss.

94.17 The Tribunal considered that a solicitor acting with integrity would have taken steps to ensure that his clients were advised of relevant matters relating to their transactions, particularly those that did, or had the potential to, significantly affect their interest in the property they were purchasing. He would have taken steps to ensure that his clients' interests were protected and, if it was not possible to do so, notified them immediately. The Respondent failed to do so and he breached Principle 2 of the Principles.

94.18 By failing on multiple times to advise his clients of relevant matters relating to their transactions, particularly those that did, or had the potential to, significantly affect their interest in the property they were purchasing and by repeatedly failing to take steps to ensure that his clients' interests were protected, and, by failing to inform them that they were not so protected he did not act in their best interests. He also failed to provide a proper standard of service to his clients and failed to protect his client money and assets. He therefore breached all of Principles 4, 5 and 10 of the Principles.

94.19 It followed quite naturally that such repeated failings as those found above 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. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by solicitors who repeatedly fail to advise their clients in the manner described and who repeatedly fail to ensure that their interests are protected. The Respondent had therefore breached Principle 6 of the Principles.

94.20 The Tribunal found that the Respondent had breached Principles 2, 4, 5, 6 and 10 of the Principles.

94.21 Allegation 1.1 was found proved in full to the requisite standard of proof, namely on the balance of probabilities.

95. **Allegation 1.2: failure to perform an undertaking**

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

95.1 Ms Watts submitted that the Respondent undertook to merge the leasehold title to the property into the freehold title to the development within 14 days of 24 February 2017. The FIO was unable to locate any evidence that the Respondent had taken any steps to comply with that undertaking.

95.2 It was said that the Respondent's conduct amounted to:

95.2.1 *Breach of Principle 2 of the Principles* - The Respondent failed to act with integrity when applying the test set out above. As an experienced solicitor specialising in property transactions, the Tribunal could infer that the Respondent was aware of the importance of performing undertakings which he had given. The Respondent did not perform that undertaking and appeared to have taken no steps to attempt to perform it. The Respondent did not notify the recipient of that undertaking that he had not performed the undertaking or might not be able to perform it, even after repeated correspondence from the recipient. A solicitor acting with integrity would have ensured that he complied with undertakings which he had given and alerted the recipient of any difficulties

which he was experiencing in performing it and confirmed that he had not performed it.

95.2.2 *Breach of Principle 6 of the Principles* - The Respondent failed to behave in a way which maintains the trust placed by the public in him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by solicitors who fail to perform undertakings which they have given. Accordingly, it was said that the Respondent acted in breach of Principle 6 of the Principles.

95.2.3 *Failure to achieve Outcome O(11.2) of the Code* - Outcome O(11.2) provides that all undertakings must be performed within an agreed timescale or within a reasonable amount of time. The Respondent failed to perform that undertaking within the agreed timescale or at all. Accordingly, the Respondent failed to achieve Outcome 11.2 of the Code.

The Respondent's Case

95.3 The Respondent had not engaged in the proceedings and did not serve an Answer to the allegations. The Respondent's position with respect to this allegation was not known.

The Tribunal's Findings

95.4 The Tribunal found, on the balance of probabilities, that the Respondent had acted in one or more property transactions between approximately November 2016 and March 2017 and that he had failed to perform an undertaking which he had given to the purchaser's solicitors.

95.5 The Tribunal considered as compelling the e-mail from the Respondent to Mr W dated 24 February 2017 in which the Respondent gave a clear undertaking to Mr W that he would use "all reasonable endeavours to have the application subject to this requisition completed within 14 days from today and to immediately provided [sic] you with confirmation of the collapse of the leasehold title. In respect of the registration of the new lease to be granted on completion we confirm that we will provide the consent to lease in accordance with the attached replied to requisitions within 28 days of completion."

95.6 On the evidence presented to the Tribunal it concluded, on the balance of probabilities, that there was nothing to show that the Respondent had taken any steps to comply with the undertaking he had given.

95.7 The Tribunal proceeded to consider whether on the basis of its factual findings the Respondent had breached any, or all, of Principles set out by the Applicant in this allegation.

95.8 The Tribunal considered that in circumstances where the Respondent had given an undertaking to a fellow professional; taken no steps to comply with the undertaking and had failed notify the recipient of that undertaking that he had not performed the undertaking or might not be able to perform it, even after repeated correspondence from the recipient was a stark example of lack of integrity.

95.9 A solicitor acting with integrity would have ensured that he complied with undertakings which he had given and would alert the recipient of any difficulties which he was experiencing in performing it and confirmed that he had not performed it. The Tribunal found that the Respondent had breached Principle 2 of the Principles.

95.10 In such circumstances as found by the Tribunal the Respondent had, in failing to perform an undertaking, failed to behave in a way which maintains the trust placed by the public in him and in the provision of legal services. Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by solicitors who fail to perform undertakings which they have given. The Respondent was therefore found to be in breach of Principle 6 of the Principles.

95.11 It followed therefore that the Respondent had failed to achieve Outcome O (11.2) of the Code: all undertakings must be performed within an agreed timescale or within a reasonable amount of time. The Respondent had failed to do so.

95.12 The Tribunal found that the Respondent had breached Principles 2, and 6 of the Principles and he had failed to achieve Outcome O (11.2) of the Code.

95.13 Allegation 1.2 was found proved in full to the requisite standard of proof, namely on the balance of probabilities.

96. **Allegation 1.3 - Use of the Firm's client account as a banking facility**

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

96.1 In respect of the matters described above, substantial sums were paid into and withdrawn from the Firm's client account in respect of instructions which did not relate to the underlying transactions. These included:

- A payment of £10,800 with reference "WAREHOUSE - E/A FEE" on the ledger relating to 68-70 D Street, Liverpool;
- Payments and inter-ledger transfers received and paid out and recorded against the ledger in respect of Apartment 2, 32 W Road;
- Payments to third parties in respect of the proceeds of sale received in respect of other properties at 32 W Road;
- Payments in respect of matters on which the Respondent acted for the S clients.

96.2 It was said that with respect to these matters the Respondent's conduct amounted to:

96.2.1 *Breach of Principle 2 of the Principles*

Applying the test for lack of integrity set out above it was said that the Respondent had lacked integrity. An experienced solicitor acting with integrity would not have passed substantial sums through the Firm's client account in breach of the SARs *(see below).*

On 18 December 2014 those professional obligations had been specifically highlighted by the SRA to the profession by way of a warning notice on the

improper use of a firm's client account as a banking facility. The warning notice also noted that it would not be sufficient to rely on an underlying transaction if legal advice was not being provided to the parties and, while some solicitors had previously been prepared to hold funds for clients to enable them to pay routine bills and invoices, that was no longer appropriate.

Also, in Fuglers & Others v SRA [2014] EWHC 197 (Admin) QB the judge in that case identified three reasons why client accounts must not be used as banking facilities for clients:

- It is objectionable in itself - solicitors are not qualified to act as bankers and are not regulated as bankers. Operating a banking facility would in effect be trading on the trust and reputation which he acquired through his status as a solicitor in circumstances where such trust would not be justified;

- it carries an obvious risk of money laundering;

- and in the context of insolvency, or the risk of insolvency, the solicitor is giving the client a commercial service that would otherwise be unavailable to it; favouring one creditor over another carries the risk of disaffection and opprobrium; and the risk to a solicitor of personal liability where repayments are required in a liquidation.

The Respondent was an experienced solicitor. Had he been acting with integrity, he would have appreciated the importance of, and complied with, his professional obligations. Accordingly, it was submitted that the Respondent had breached Principle 2 of the Principles.

96.2.2 *Breach of Principle 6 of the Principles*

Public confidence in the Respondent, in solicitors and in the provision of legal services is likely to be undermined by solicitors who act in breach of their professional obligations, particularly where their regulator had recently drawn their attention to those obligations and the risks of failing to comply with them. Accordingly, it was said that the Respondent breached of Principle 6 of the Principles.

Breach of SARs

96.2.3 *Rule 14.5*

Rule 14.5 of the Accounts Rules provides that a solicitor must not provide banking facilities through a client account. Payments into, and transfers or withdrawals from, a client account must be in respect of instructions relating to an underlying transaction (and the funds arising therefrom) or to a service forming part of your normal regulated activities.

In respect of the matters described above, substantial sums were paid into and withdrawn from the Firm's client account in respect of instructions which did not relate to the underlying transactions. Accordingly, it was said that the Respondent breached Rule 14.5 of the Accounts Rules.

96.2.4 *Rule 20.1*

Rule 20.1 of the Accounts Rules provides that client money may only be withdrawn from a client account when one or more of the conditions specified in that rule are satisfied:

> "(a) properly required for a payment to or on behalf of the client (or other person on whose behalf the money is being held);
>
> (b) properly required for a payment in the execution of a particular trust, including the purchase of an investment (other than money) in accordance with the trustee's powers;
>
> (c) properly required for payment of a disbursement on behalf of the client or trust;
>
> (d) properly required in full or partial reimbursement of money spent by you on behalf of the client or trust;
>
> (e) transferred to another client account;
>
> (f) withdrawn on the client's instructions, provided the instructions are for the client's convenience and are given in writing, or are given by other means and confirmed by you to the client in writing;
>
> (g) transferred to an account other than a client account (such as an account outside England and Wales), or retained in cash, by a trustee in the proper performance of his or her duties;
>
> (h) a refund to you of an advance no longer required to fund a payment on behalf of a client or trust (see rule 14.2(b));
>
> (i) money which has been paid into the account in breach of the rules (for example, money paid into the wrong separate designated client account)
>
> (j) money not covered by (a) to (i) above, where you comply with the conditions set out in rule 20.2; or
>
> (k) money not covered by (a) to (i) above, withdrawn from the account on the written authorisation of the SRA. The SRA may impose a condition that you pay the money to a charity which gives an indemnity against any legitimate claim subsequently made for the sum received."

In respect of the matters above, substantial sums were withdrawn from the Firm's client account in circumstances where none of the conditions specified in Rule 20.1 were satisfied. Accordingly, it was said that the Respondent breached Rule 20.1 of the Accounts Rules.

The Respondent's Case

96.3 The Respondent had not engaged in the proceedings and did not serve an Answer to the allegations. The Respondent's position with respect to this allegation was not known.

The Tribunal's Findings

96.4 The Tribunal found that the Respondent had between approximately January 2016 and June 2017 caused or allowed the Firm's client account to be used as a banking facility by means of payments to third parties.

96.5 On the evidence considered by the Tribunal it concluded, on the balance of probabilities, that the Respondent had in contravention of the SRA Warning Notice (which members of the profession would have been aware since December 2014) and the SARs the Respondent had passed substantial sums through the Firm's client account to third parties in respect of instructions which did not relate to the underlying transactions.

96.6 The Tribunal proceeded to consider whether on the basis of its factual findings the Respondent had breached any, or all, of Principles set out by the Applicant in this allegation and breached the SARs.

96.7 The Tribunal considered that the Respondent had lacked integrity for the reasons set out above by the Applicant.

96.8 The Respondent was an experienced solicitor. Had he been acting with integrity, he would have appreciated the importance of, and complied with, his professional obligations. The Respondent had therefore breached Principle 2 of the Principles.

96.9 The Tribunal also considered that public confidence in the Respondent, in solicitors and in the provision of legal services was likely to be undermined by solicitors who act in breach of their professional obligations, particularly where their regulator had recently drawn their attention to those obligations and the risks of failing to comply with them. Accordingly, the Tribunal found that the Respondent had also breached of Principle 6 of the Principles.

96.10 The Tribunal found that by providing banking facilities through the Firm's client account and by making payments into, and transfers or withdrawals from, a client account other than in respect of instructions relating to an underlying transaction or to a service forming part of the Respondent's normal regulated activities he had breached Rule 14.5.

96.11 Finally, by withdrawing client money from a client account when none of the conditions specified in Rule 20.1 SARs had been satisfied the Tribunal found that the Respondent was in breach of Rule 20.1 SARs.

96.12 The Tribunal found that the Respondent had breached Principles 2, and 6 of the Principles and he had breached Rules 14.5 and 20.1 of SARs.

96.13 Allegation 1.3 was found proved in full to the requisite standard of proof, namely on the balance of probabilities.

97. **Allegation 2: Dishonesty re Allegations 1.1 to 1.3**

The Applicant's Case

97.1 Allegations 1.1 to 1.3 were also advanced on the basis that the Respondent's conduct was dishonest and Ms Watts referred the Tribunal to the test for dishonesty stated by the Supreme Court in Ivey v Genting Casinos [2017] UKSC 67 upon which she relied.

97.2 The test set out in Ivey 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."

Dishonesty re Allegation 1.1

97.3 In each of the transactions and circumstances referred to above it was said that the Respondent failed properly to advise his clients or protect their interests. The Respondent was an experienced solicitor specialising in conveyancing transactions and must have been aware, and it could be inferred that he was aware, of the importance of advising his clients and protecting their interests in respect of the issues identified.

97.4 That the Respondent had not done so was either expressly brought to his attention at the time or, it was obvious from the surrounding circumstances. Ms Watts said that the Tribunal could infer that the Respondent had been aware that he had not done so and by way of example:

- the Respondent had failed to advise FM or MB that (as the Respondent was aware) SR had a leasehold interest in the property which his clients were acquiring and to which, on completion, they were or might be subject (6 L Lane);

- failed to advise his client that (as he knew) the intended vendor did not own the property, and sent £700,000 of his client's money to MN Solicitors, without qualification or explanation, in respect of that transaction which (to his knowledge) could not complete (9-11 F Street);

- failed to take any steps to register his client's interest in the property, despite that client and their representatives chasing for an explanation as to why it had not been

so registered and did not send any substantive response to their requests (14 O M Lane).

97.5 The Respondent must have known that it was improper to fail to advise his clients properly or protect their interests and that such failure would give rise to a high level of risk of loss. Despite that, across a number of transactions, the Respondent failed to give his clients proper advice and failed to protect their interests.

97.6 Ordinary, decent people would consider that behaviour dishonest. The Applicant submitted that there was no other explanation for the Respondent's repeated conduct in the circumstances described other than that he was dishonest.

Dishonesty re Allegation 1.2

97.7 Ms Watts said that as an experienced solicitor specialising in property transactions, the Tribunal could infer that the Respondent was aware of the importance of complying with undertakings which he had given.

97.8 The Respondent did not perform that undertaking, appeared to have taken no steps to attempt to perform it and did not notify the recipient of that undertaking that he had not performed that undertaking or might not be able to perform it, even after repeated correspondence from the recipient. Ordinary, decent people would consider that behaviour dishonest.

Dishonesty re Allegation 1.3

97.9 Substantial sums were accepted into and withdrawn from the Firm's client account in respect of instructions which did not relate to the underlying transactions.

97.10 The SRA Accounts Rules had contained a specific prohibition on solicitors using their client account as a banking facility (Rule 14.5) since 2011. The Respondent's professional obligations in that regard had been specifically highlighted by the Applicant to the profession shortly before the conduct alleged.

97.11 As an experienced solicitor of over 8 years' qualification, specialising in conveyancing transactions, he must also have known, or at least suspected, that it was improper for him to accept funds into, and withdraw sums from, the Firm's client account which did not relate to an underlying transaction.

97.12 Despite that, over a period of approximately 16 months, he continued to make payments to third parties which he knew (or must have known) did not relate to those transactions. Ordinary, decent people would consider this behaviour dishonest.

The Respondent's Case re Dishonesty

97.13 The Respondent did not serve an Answer to the allegations and his position with respect to the allegations of dishonesty. It was assumed by the Tribunal that dishonesty was denied by the Respondent. He requested via his new solicitors that he should be removed from the Roll without a hearing but not for any reason of dishonesty (email above at 4.3 dated 9 October 2020).

The Tribunal's Finding re Dishonesty

97.14 Having found the factual matrix in Allegations 1.1, 1.2 and 1.3 proved to the requisite standard, namely on the balance of probabilities, the Tribunal considered whether the Respondent had acted dishonestly in each of those allegations.

97.15 When considering the allegations of dishonesty, the Tribunal applied the test in Ivey. The test for dishonesty was set out at paragraph [74] of the judgment in that case, and accordingly the Tribunal adopted the following approach:

- First, the Tribunal 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;

- Second, once the actual state of the Respondent's knowledge or belief as to the facts had been established the Tribunal next considered whether his conduct would be thought to have been dishonest by the standards of ordinary decent people.

97.16 The Tribunal considered the Respondent's state of knowledge at the material times, although this exercise was undertaken in the absence of any input from the Respondent which may have assisted the Tribunal in determining any rationale or context with respect to the Respondent's state of knowledge.

97.17 With respect to Allegation 1.1 the Tribunal considered that the Respondent, a solicitor of 8 years' experience well versed in high value property transactions and head of the Firm's commercial property department, must have known that he had failed properly to advise his clients or protect their interests.

97.18 By way of example the Respondent had failed to advise FM or MB that SR had a leasehold interest in the property which his clients were acquiring and to which, on completion, they were or might be subject (6 L Lane); that he failed to advise his client that (as he knew) the intended vendor did not own the property, and sent £700,000 of his client's money to MN Solicitors, without qualification or explanation, in respect of that transaction which (to his knowledge) could not complete (9-11 F Street); that he failed to take any steps to register his client's interest in the property, despite that client and their representatives chasing for an explanation as to why it had not been so registered, and did not send any substantive response to their requests (14 O M Lane).

97.19 With respect to Allegation 1.2 the Tribunal considered that it was inconceivable that the Respondent, a solicitor of experience and seniority would have been unaware of the importance of complying with undertakings which he had given. The Respondent did not perform that undertaking and took no steps to attempt to perform it. The Respondent did not notify the recipient of the undertaking that he had not performed the undertaking or might not be able to perform with it, even after repeated correspondence from the recipient.

97.20 With respect to Allegation 1.3 the Tribunal considered that the Respondent, an experienced solicitor specialising in property transactions, would have been aware that since 2011 the SARs contained a specific prohibition on solicitors using their client account as a banking facility (Rule 14.5). Further, the Respondent's professional

obligations in that regard had been specifically highlighted by the SRA to the profession in a Warning Notice shortly before the conduct alleged.

97.21 Having established the Respondent's state of knowledge the Tribunal next considered whether his conduct would be thought to have been dishonest by the standards of ordinary decent people.

97.22 The Tribunal concluded that ordinary decent people would consider a solicitor to be dishonest if the solicitor knowingly failed to properly advise and protect his client's interests; knowingly failed to comply with an undertaking and knowingly ignored an SRA Warning Notice and SARs in order to use firm's client account as a banking facility.

97.23 The Tribunal noted that there were no character references or any other material put forward by the Respondent as evidence of his good character and/or lack of propensity to be dishonest which could be weighed in the balance before reaching a decision on dishonesty.

97.24 Therefore, in the light of its factual findings and its conclusions in relation to the Respondent's knowledge the Tribunal was satisfied on the balance of probabilities that the Respondent had been dishonest.

97.25 Dishonesty in relation to Allegations 1.1; 1.2 and 1.3. were proved on the balance of probabilities.

97.26 Having found the Respondent to have been dishonest with respect to Allegations 1.1, 1.2 and 1.3 the Tribunal did not then go on to consider whether his actions had been reckless: recklessness having been pleaded in the alternative with respect to Allegations 1.1, 1.2 and 1.3.

Previous Disciplinary Matters

98. None.

Mitigation

99. The Respondent had not engaged in the proceedings and had presented no mitigation.

Sanction

100. The Tribunal referred to its Guidance Note on Sanctions when considering sanction.

101. The Tribunal first 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".

102. The Tribunal was mindful of the three stages it should follow when approaching sanction, namely the seriousness of the misconduct, the purpose for which sanctions are imposed by the Tribunal, and the sanction which appropriately fulfils that purpose in light of the seriousness of the misconduct.

103. The Tribunal assessed the seriousness of the misconduct by considering the level of the Respondent's culpability and the harm caused, together with any aggravating or mitigating factors.

104. In assessing culpability, the Tribunal found that the motivation for the Respondent was a personal one to the Respondent although not readily discernible from the evidence. It was clear that that there was a close and complicit relationship with RW who featured in many of the transactions. It was noted that both the Respondent and RW had worked in the same firm in Liverpool and that there had been some cross-over in the years when they were at that firm together.

105. The Tribunal inferred that the benefit derived by the Respondent was continued business with RW and the revenue which this generated for the Respondent and the Firm.

106. The Respondent's actions were not spontaneous, on the contrary, the Respondent pursued a continuing course of conduct which was calculated, repeated and systematic in which he had clearly breached the trust his clients had placed in him to provide them with accurate advice and to responsibly represent and protect their interests not exposing them to risk in the way that he did. Failing to register SR's interest in the property at P House; failing to advise FM or MB when they sought to purchase P House that SR had a leasehold interest in the property to which, on completion, they were or might be subject and failing to ensure that the correct amount of SDLT was paid were all clear examples of the Respondent's lack of care for his clients and the risk that he exposed them to unnecessarily.

107. The Tribunal considered that the Respondent had had direct control and responsibility for the circumstances giving rise to the misconduct. The Respondent held a key role with the Firm and had been expected by his employers to carry out his responsibilities with care and professionalism. The Respondent, for reasons known to him, failed to do so.

108. The Respondent had been a solicitor since 2011 and he was of sufficient experience to understand the nature of his conduct and the consequences which flowed from them. For example a solicitor of any level of experience would know that failing to comply with an undertaking and not dealing with client money in the way set out by the SARs was wrong and contrary to standards expected of him by the profession and the public.

109. Whilst the Tribunal did not consider the Respondent had misled the Regulator he had clearly failed to co-operate in any meaningful way and had failed to engage with his Regulator as he should have done.

110. Overall, the Tribunal assessed the Respondent's culpability as high taking into account all the factors it had considered.

111. The Tribunal next considered the issue of harm. There was evidence of direct harm to his clients who, in very high value property transactions had been exposed to risk and potential financial penalties e.g. due to the incorrect level of SDLT being paid.

112. With respect to the 'S Clients' in which the Respondent had acted in relation to loans made by them to RW there had been alleged losses to the 'S Clients' in the sum of £9m where the Respondent had failed to register the relevant charges and incorrect postings to ledgers which did not relate to the 'S Clients'.

113. The consequential damage to the reputation of the profession by the Respondent's misconduct was significant as the public would trust a solicitor to advise their client correctly and to protect their interests. The Respondent's misconduct had not only damaged the profession in a general way but had done great damage to those of his colleagues engaged in property transactions and conveyancing in whom the public place great trust when purchasing and selling their single most important asset – their home.

114. The Respondent's conduct was a significant departure from the complete integrity, probity and trustworthiness expected of a solicitor.

115. The extent of the harm was reasonably and entirely foreseeable by the Respondent who had had a clear knowledge of his actions.

116. The Tribunal assessed the harm caused as very high.

117. The Tribunal then considered aggravating factors. The Tribunal, in its findings of fact, had found that the Respondent had acted dishonestly.

118. The Respondent's actions had been deliberate and calculated however there was no direct evidence that he had taken advantage of vulnerable people and no direct evidence of concealment on his part.

119. The extent of the harm was spread across multiple clients whose property transactions had been adversely affected: for example in the transaction concerning 9-11 F Street the Respondent failed to advise his client that (as he knew) the intended vendor did not own the property, and he sent £700,000 of his client's money to other solicitors without qualification or explanation, in respect of that transaction which (to his knowledge) could not complete. This had been outrageous failure on the Respondent's part.

120. The Tribunal considered there were very few mitigating factors but noted that the Respondent had no previous disciplinary findings recorded against him and that he had had a hitherto unblemished career.

121. However, there was no evidence that losses had been made good nor that he had voluntarily reported the matter to the Regulator as it had been the Firm and other solicitors who had brought his conduct to the Regulator's attention.

122. The Tribunal considered that there was no evidence of any genuine insight into his conduct; no open or frank admissions and little if any co-operation with his Regulator. The Tribunal also considered that there was no evidence that the Respondent's misconduct was the result of deception by a third party.

123. In all the circumstances and given the findings of dishonesty in the Respondent's case, the Tribunal considered the seriousness of the misconduct to be very high. In addition, the Tribunal had found the Respondent's conduct had lacked integrity and that he had failed to uphold public trust in the provision of legal services.

124. The Tribunal considered that to make No Order, or to order a Reprimand, a Fine or Suspension (either fixed term or indefinite) would not be sufficient to mark the seriousness of the conduct in this case for the reasons set out above.

125. In the Judgment of the Divisional Court in SRA v Sharma [2010] EWHC 2022 (Admin) it had been held that "save in exceptional circumstances, a finding of dishonesty will lead to the solicitor being struck off the roll….that is the normal and necessary penalty in cases of dishonesty... There will be a small residual category where striking off will be a disproportionate sentence in all the circumstances… In deciding whether or not a particular case falls into that category, relevant factors will include the nature, scope and extent of the dishonesty itself; whether it was momentary… or over a lengthy period of time …whether it was a benefit to the solicitor, and whether it had an adverse effect on others."

126. In SRA v James, MacGregor and Naylor it was said that exceptional circumstances must relate in some way to the dishonesty and that as a matter of principle nothing was to be excluded as being relevant to the evaluation, which could include personal mitigation.

127. In evaluating whether there were exceptional circumstances justifying a lesser sanction in this case the focus of the Tribunal was on the nature and extent of the dishonesty and degree of culpability and then to engage in a balancing exercise as part of that evaluation between those critical questions on the one hand and matters such as the Respondent's personal mitigation and health issues on the other.

128. In this case the Respondent had presented no personal mitigation to which the Tribunal could give any consideration. The Tribunal noted that the Respondent had an otherwise unblemished record but that was all that could be said.

129. The Tribunal considered that this had not been a fleeting or momentary lapse of judgment but had been a course of conduct, involving dishonesty, which had been repeated over many months.

130. The Tribunal therefore could find no exceptional circumstances within the meaning of Sharma and James in the Respondent's case.

131. The Respondent's misconduct could only be viewed as extremely serious and this fact, together with the need to protect the reputation of the legal profession, required that Strike Off from the Roll was the only appropriate sanction.

Costs

132. Ms Watts stated that as the Applicant had proved its case to the required standard it was entitled to its proper costs. The quantum of costs claimed by the Applicant was in the sum of £55,652.60 inclusive of VAT.

133. Ms Watts submitted that the claimed costs were not excessive but were reasonable and proportionate to the level of complexity which this case had presented to the FIO and the lawyers who then later prepared it for presentation before the Tribunal.

134. The case had been deemed a Category 2 case under Capsticks' internal designation of complexity. This meant that the case had not been straightforward and there had been a significant amount of evidence to be reviewed. The FIO had had to consider voluminous material and liaise with the Firm, other solicitors and the Land Registry in order to complete her report.

135. The case had therefore fallen into a band where Capsticks would claim a fixed fee of £34,500.00 plus VAT with investigative costs of £14,252.60.

136. The Tribunal commented that there appeared to be a duplication of effort with a number of Capsticks' fee earners accruing over 20 hours work relating to a non-compliance hearing and later Case Management Hearings at which the Respondent had not engaged. In the circumstances the level of hours claimed in this regard appeared excessive.

137. Ms Watts said that the case preparation and advocacy had been handled in-house by Capsticks which had held costs down. Due to last minute correspondence from the Respondent's latterly instructed solicitors Ms Watts had had to work over the weekend immediately prior to the hearing preparing a skeleton argument and chronology for the Tribunal's assistance.

138. Ms Watts observed, however, that the case had originally been set down for a 4 day hearing but in the event it had had taken 1 day only as it had not been contested and no live evidence called or cross-examination of witnesses required. It was therefore open to the Tribunal to take this into consideration when assessing the level of costs.

139. The Tribunal summarily assessed costs to consider whether they were reasonable and proportionate in all the circumstances of this case. The Tribunal had heard the case and it was appropriate for the Tribunal to determine the liability for costs and the quantum of any costs it ordered to be paid.

140. The Tribunal considered that the case had been well presented and properly brought by the Applicant however it considered that the Applicant's assessment of the preparation costs was too high in the circumstances of this case.

141. Whilst the case may have been document heavy and detailed it had not been intrinsically complicated. The Applicant would have surmised from the Respondent's lack of engagement that he would not be attending to contest the matter and that there would be no need to call live evidence or cross-examine any witnesses. This was a case which although listed for 4 days had concluded on the first day.

142. The Tribunal considered that it was appropriate for the Applicant to recover a proportion of its costs and assessed that, taking into account all the material circumstances, it was reasonable and proportionate for the Respondent to pay the costs of and incidental to this application and enquiry in the sum of £40,000.00.

143. The Tribunal noted that the Respondent had submitted no information regarding his means.

Statement of Full Order

144. The Tribunal Ordered that the Respondent, JONATHAN THOMAS GORMAN 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 £40,000.00.

Dated this 9th day of November 2020
On behalf of the Tribunal

J Evans
Chair