

SOLICITORS DISCIPLINARY TRIBUNAL

IN THE MATTER OF THE SOLICITORS ACT 1974

Case No. 11696-2017

BETWEEN:

SOLICITORS REGULATION AUTHORITY

Applicant

and

JONATHAN IPPAZIO DE VITA
CHRISTOPHER JOHN PLATT
EMILY SCOTT

First Respondent
Second Respondent
Third Respondent

Before:

Mr R. Hegarty (in the chair)
Mr W. Ellerton
Dr P. Iyer

Date of Hearing: 4-7 December 2018

Appearances

Yash Bheeroo, Counsel of 3 Verulam Buildings, Gray's Inn, London WC1R 5NT instructed by Natalie Ayling, solicitor of Capsticks Solicitors LLP, 1 St George's Road, London, SW19 4DR, for the Applicant.

The First and Second Respondents did not attend and were not represented.

The Third Respondent attended and was not represented.

JUDGMENT

Allegations

Rule 5 Statement dated 31 October 2017, referred to in this Judgment as “Statement A”

1. The Allegations made against the Second Respondent were that, whilst a Partner of and practising as a solicitor for Quality Solicitors De Vita Platt, 90 – 92 High Street, Barton-Upon-Humber, South Humberside DN18 5PU (“the Firm”):

In relation to a matrimonial matter for Client S:

- 1.1 Between around July 2013 and November 2013 he falsified documents purporting to contain Client S’ signature, for the purpose of drawing down funds from the Funding Loan, and in doing so breached Principles 2, 4, 5 and 6 of the SRA Principles 2011 (“the Principles”).
- 1.2 Between 8 August 2013 and 20 November 2013 he drew down funds and/or instructed the Third Respondent to draw down funds as set out in Schedule 1 totalling up to £6,500.00 from Client S’ legal funding loan without Client S’ knowledge or permission and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles.
- 1.3 Between 8 August 2013 and 23 October 2014 he raised and/or instructed the Third Respondent to raise some or all of the bills of costs set out in Schedule 2 which included bills of costs for work that he knew had not been carried out and in doing so he breached Principles 2, 4, 5, 6 and 10 of the Principles.
- 1.4 Between 8 August 2013 and 23 October 2014 he signed some or all of the bills of costs set out in Schedule 2 which included bills of costs for work that had not been carried out and in doing so, breached Principles 2, 4, 5, 6 and 10 of the Principles.
- 1.5 He caused or allowed a shortage of £9,562.84 to arise on the Firm’s Client Account in that transfers were made from the Client Account to the Firm’s Office Account in payment of bills of costs in circumstances where Client S had not been sent written confirmation of those costs and in doing so breached Principle 10 of the Principles and Rules 6, 17.2 and 20.3 of the SRA Solicitors Accounts Rules 2011 (“the SARs”).
- 1.6 He failed to use the sum of £9,562.84 paid into the Firm’s Client Account by Client S on 17 February 2014 for the intended purpose of redeeming Client S’ funding loan and in doing so breached Principles 2, 4, 5, 6 and 10.

In relation to matters for Client B:

- 1.7 Between 9 August 2013 and 18 November 2013 he raised some or all of the bills of costs set out in Schedules 3 and 4, which included bills of costs for work that he knew had not been carried out, and in doing so he breached Principles 2, 4, 5, 6 and 10 of the Principles.
- 1.8 Between 9 August 2013 and 18 November 2013 he signed some or all of the bills of costs set out in Schedules 3 and 4, which included bills of costs for work that had not been carried out and in doing so he breached Principles 2, 4, 5, 6 and 10 of the Principles.

- 1.9 He caused or allowed a shortage of at least £34,517.62 to arise on the Firm's Client Account in that transfers were made from the Client Account to the Firm's Office Account in payment of bills of costs in circumstances where Client B had not been sent written confirmation of those costs and/or some or all of those costs were not warranted, and in doing so breached Principles 10 of the Principles and Rules 6, 17.2 and 20.3 of the SARs.
- 1.10 He failed to supervise the Third Respondent adequately or at all between June 2010 and September 2012 when she was a paralegal at the Firm and/or between September 2012 and November 2014 when she was a Trainee Solicitor at the Firm and in doing so, breached Principle 8 of the Principles and failed to achieve Outcomes 7.6 and 7.8 of the SRA Code of Conduct ("the Code").
- 2.1 By reason of the conduct alleged at 1.1, 1.2, 1.3 and/ or 1.7 above, he acted dishonestly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.
- 2.2 By reason of the conduct alleged at 1.4, 1.5, 1.8 and/or 1.9 above, he acted dishonestly or, in the alternative, he acted recklessly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.
- 2.3 By reason of the conduct alleged at Allegation 1.10 above, he acted recklessly.
3. The Allegations made against the Third Respondent were that whilst employed as a Trainee Solicitor of the Firm:

In relation to a matrimonial matter for Client S:
 - 3.1 Between 20 August 2013 and 23 October 2014 she raised some or all of the bills of costs set out in Schedule 2, which included bills of costs for work that she knew had not been carried out and in doing so she breached Principles 2, 3, 4, 5, 6 and 10 of the Principles.
 - 3.2 Between 8 August 2013 and 20 November 2013 she drew down funds as set out in Schedule 1, totalling up to £6,500.00, from Client S' legal funding loan using documents which she knew to be forged with Client S' signature without Client S' knowledge or permission and in doing so she breached Principles 2, 3, 4, 5, 6 and 10 of the Principles.
 - 3.3 She failed to promptly report her actions at paragraphs 3.1 and 3.2 above, and/or those she alleged against the Second Respondent, to the SRA at any time before 25 January 2015, after she had left the Firm's employment and in doing so breached Principles 2, 3, 6 and 7 of the Principles and failed to achieve Outcome 10.4 of the Code.
4. By reason of the conduct alleged at 3.1 and/or 3.2 above, she acted dishonestly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

5. The Allegations made against the First Respondent on behalf of the SRA are that, whilst a Partner of and practising as a solicitor for the Firm:
- 5.1 Between July and October 2016 he certified ID1 (Certificate of Identity for Private Individual) Forms for Mr S, Mrs S and Ms R, in connection with a transfer of property without:
- 5.1.1 having met the individuals whose identity he sought to certify; and/or
- 5.1.2 having seen the original identity documents for the individuals he sought to certify;
- and in doing so, he breached Principles 2, 3, 6, 7 and 8 of the Principles and failed to achieve Outcomes 1.3, 7.3, 7.5 and 11.4 of the Code.
- 5.2 Between around August 2013 and November 2013 he signed some or all of the bills of costs set out in Schedules 2, 3 and 4, which included bills of costs for work that had not been carried out in relation to the matters for Client S and/or Client B and in doing so, breached Principles 2, 4, 5, 6 and 10.
- 5.3 He caused or allowed a shortage of at least £44,080.46 to arise on the Firm's Client Account in that he authorised transfers from the Client Account to the Firm's Office Account in payment of bills of costs in circumstances where Client S and Client B had not been sent written confirmation of the costs incurred and some or all of those costs were not warranted, and in doing so breached Principle 10 of the Principles and Rules 6, 17.2 and 20.3 of the SARs.
- 5.4 He failed to supervise the Third Respondent adequately or at all between June 2010 and September 2012 when she was a paralegal at the Firm and/or between September 2012 and November 2014 when she was a Trainee Solicitor at the Firm and in doing so, breached Principle 8 of the Principles and failed to achieve Outcomes 7.6 and 7.8 of the SRA Code of Conduct;
- 6.1 By reason of the conduct alleged at 5.1 above, he acted dishonestly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.
- 6.2 By reason of the conduct alleged at 5.2, 5.3 and/or 5.4 above, he acted recklessly.

Rule 7 Statement dated 4 December 2017, referred to in this Judgment as "Statement B"

The Allegations against the First Respondent were that whilst a Partner of and practising as a solicitor at the Firm:

- 1.1 Between July and October 2016, he completed and/or amended the date purported to be the date on which Mr and Mrs S signed ID1 (Certificate of Identity for Private Individual) Forms ("the ID1 Forms"), to show an incorrect date, without their knowledge or permission and with the intention to mislead the Land Registry as to the date on which the ID1 Forms were signed. In doing so, he breached Principles 2 and 6 of the Principles and failed to achieve Outcome 11.4 of the Code;

- 1.2 On or around 27 January 2017, he told a member of staff at the Land Registry that he had met Mr S, Mrs S and Mrs R at his office when this statement was not true and in doing so, he breached Principles 2 and 6 of the Principles;
- 1.3 By reason of the conduct alleged at 1.1 and 1.2 above, the First Respondent acted dishonestly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

The Allegations against the Second Respondent were that, whilst a Partner of and practising as a solicitor for the Firm, in relation to a matrimonial matter for Client L:

- 1.4 He instructed the Third Respondent to retrospectively falsify Client L's contact file including by fabricating and/or backdating correspondence and time reports, and in doing so he breached Principles 2, and 6 of the Principles;
- 1.5 He submitted documents which he knew had been retrospectively falsified to the Legal Ombudsman ("LeO") as a true record of the work carried out by the Firm on Client L's matter and in doing so he breached Principles 2, 4, 6 and 7 of the Principles;
- 1.6 By reason of the conduct alleged at 1.4 and 1.5 above, the Second Respondent acted dishonestly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

The Allegations against the Third Respondent were that, whilst employed as a Trainee Solicitor of the Firm, in relation to a matrimonial matter for Client L:

- 1.7 Between around 10 February 2014 and 2 July 2014, she, under the instruction of the Second Respondent, retrospectively falsified Client L's file which she knew was to be sent to the Legal Ombudsman including that she:
- 1.7.1 falsified and backdated letters including one purported to be sent to Client L on 6 July 2012;
- 1.7.2 prepared a copy of the 'Terms and Conditions' document purported to be signed by Client L on 9 July 2012 by inserting a photocopy of Client L's signature or otherwise falsifying her signature and/or
- 1.7.3 falsified and backdated electronic time recording reports;
- and in doing so breached Principles 2, 3, 4, 6 and 7 of the Principles.
- 1.8 By reason of the conduct alleged at 1.7 above, the Third Respondent acted dishonestly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.

Rule 7 Statement dated 17 September 2018, referred to in this judgment as "Statement C"

The Allegations against the Second Respondent were that, whilst a Partner of and practising as a solicitor the Firm:

- 1.1 he acted for Client N concerning the administration of the estate of Ms F (file of Client N (Estate of Ms F)) and he:
 - 1.1.1 caused or allowed four invoices totalling £23,240.16 to be prepared, which included fees that were not justified on the basis of the time recorded on the file, and in doing so breached Principles 2, 4, 5 and 6 of the Principles;
 - 1.1.2 caused or allowed 23 improper Client Account to Office Account transfers, totalling £20,029.28, to be made between 3 January 2017 and 25 September 2017, and in doing so breached Rule 20.1 of the SRA Accounts Rules 2011 (“SAR 2011”) and Principles 2, 4, 5, 6 and 10 of the Principles;
 - 1.1.3 misled Client N about whether the Firm had received pension monies from the NHS and about the amount of monies the Firm had already received, and in doing so breached Principles 2, 4 and 6 of the Principles;
 - 1.1.4 misled Client N about the date of expiry of a notice he had placed in the London Gazette so that the distribution of the estate could be delayed, and in doing so breached Principles 2, 4 and 6 of the Principles.
- 1.2 he acted for Client HH concerning the administration of the estate of Mr W (file of Client HH (Estate of Mr W)) and he:
 - 1.2.1 caused or allowed 21 invoices totalling £65,637.46 to be prepared, which included fees that were not justified on the basis of the time recorded on the file, and in doing so breached Principles 2, 4, 5 and 6 of the Principles;
 - 1.2.2 caused or allowed 82 improper Client Account to Office Account transfers, totalling £127,699.90, to be made between 22 January 2016 and 25 August 2016, and in doing so breached Rule 20.1 of SAR 2011 and Principles 2, 4, 5, 6 and 10 of the Principles;
 - 1.2.3 caused or allowed nine improper Office Account to Client Account transfers, totalling £58,801.02 to be made between 7 June 2016 and 23 August 2016, and in doing so breached Principles 2 and 6 of the Principles;
 - 1.2.4 caused or allowed the following funds, belonging to clients unrelated to the estate, to be credited to the Client Ledger, and in doing so breached Rule 1.2(c) of SAR 2011 and Principles 2, 6 and 10 of the Principles:
 - 1.2.4.1 £70,000 on 5 August 2016;
 - 1.2.4.2 £5,157.75 on 22 August 2016;
 - 1.2.5 caused or allowed a Client Account debit balance of -£18,898.82 on 27 July 2016 following distributions to the beneficiaries, and in doing so breached Rule 20.6 of SAR 2011 and Principle 10 of the Principles.
- 1.3 he acted for Client MH concerning the administration of the estate of Mr N (file of Client MH (Estate of Mr N)), and he:

1.3.1 caused or allowed eight invoices totalling £10,269.83 to be prepared, of which between around £8,600 and £9,000 was not justified on the basis of the time recorded on the file;

1.3.2 caused or allowed the estate to be charged for extra work in relation to documentation lost and/or errors made by the Firm;

and in doing so, he breached Principles 2, 4, 5 and 6 of the Principles.

1.4 he provided the SRA's Forensic Investigation Officer ("FIO") with misleading information and documentation including:

1.4.1 on or around 5 March 2015, as to the whereabouts of client files Client MH (Estate of Mr N) and Client C (Estate of Ms C), which had been requested by the FIO;

1.4.2 on or around 30 November 2017, that no client account shortage existed as at that date;

1.4.3 on or around 20 December 2017, by providing the FIO with a list of transactions purporting to be unrepresented receipts in respect of the 30 April 2017 account reconciliation (and purportedly accounting for the Client Account shortage at that date);

1.4.4 on or around 10 January 2018, that the file for Client H (Divorce), which had been requested by the FIO, could not be located;

and in doing so, he breached Principles 2, 6 and 7 of the Principles.

1.5 From around 14 January 2018 he failed to conduct an orderly wind down of the Firm including by failing to take steps to notify clients of the Firm's closure or deal with client papers and client money. In doing so he breached Principles 2, 4, 6 and 7 of the Principles.

1.6 In relation to the allegations set out at paragraphs 1.1.1–1.1.4, 1.2.1–1.2.4, 1.3.1–1.3.2 and 1.4.1–1.4.4, the Second Respondent acted dishonestly but dishonesty was not a necessary ingredient to prove those Allegations.

The Allegations against the First Respondent, on behalf of the SRA were that, whilst a Partner of and practising as a solicitor for the Firm:

1.7 On or around 5 March 2015 he provided the SRA's FIO with misleading information as to the whereabouts of client files Client MH (Estate of Mr N) and Client C (Estate of Ms C), which had been requested by the FIO, and in doing so he breached Principles 2, 6 and 7 of the Principles.

1.8 From around 14 January 2018 he failed to conduct an orderly wind down of the Firm including by failing to take steps to notify clients of the Firm's closure or deal with client papers and client money. In doing so he breached Principles 2, 4, 6 and 7 of the Principles.

- 1.9 By reason of the conduct alleged at 1.7, the First Respondent acted dishonestly but dishonesty was not a necessary ingredient to prove the Allegation.

Preliminary Matter

1. Application to hear matters in private and in the absence of the Third Respondent
- 1.1 Applicant's Submissions - Mr Bheeroo told the Tribunal that he intended to make an application to proceed in the absence of the First and Second Respondents, who had not attended and were not represented. In support of those applications the Applicant had prepared a 'Proceeding in Absence Bundle' in respect of each of the First and Second Respondents.
- 1.2 Mr Bheeroo told the Tribunal that the First and Second Respondents did not wish the correspondence relating to their respective health issues to be dealt with in public or disclosed to the other Respondents. Mr Bheeroo told the Tribunal that while it was not for the Applicant to make the application it was right to draw it to the Tribunal's attention.
- 1.3 The Applicant was neutral on those issues and it was a matter for the Tribunal. Mr Bheeroo submitted that the Third Respondent would not be prejudiced by any exclusion.
- 1.4 Mr Bheeroo told the Tribunal that while it would be possible to make the application without referring to the detail of the medical information in the bundles, he would need to take the Tribunal to the medical evidence to enable Tribunal to determine the application to proceed in absence. The Second Respondent had now linked his medical condition to his conduct. Mr Bheeroo submitted that if the Third Respondent was to be present for this part of the hearing then she ought to have sight of the Proceeding in Absence Bundles. These had been served on the Tribunal and at that stage the Tribunal had granted leave for them not to be served on the other Respondents.
- 1.5 Third Respondent's Submissions - The Third Respondent told the Tribunal that she did not object to part of the hearing taking place in private but she wished to be present as the First and Second Respondents had linked her to the Allegations that they faced. If they were relying on medical defences for their actions in these matters then she wanted to be present.

The Tribunal's Decision

- 1.6 SDPR Rule 12(4) stated:
- “Any party to an application and any person who claims to be affected by it may seek an order from the Tribunal that the hearing or part of it be conducted in private on the grounds of a) exceptional hardship b) exceptional prejudice to a party, a witness or any person affected by the application”.
- 1.7 The Tribunal noted the starting point was the requirement for open justice as affirmed in SRA v Spector [2016] EWHC 37 (Admin).

- 1.8 The Tribunal was satisfied that it was appropriate to hear the matter in private in terms of non-parties. There was clearly sensitive medical information contained in the Proceeding in Absence bundles relating to the First and Second Respondent.
 - 1.9 The Tribunal was not aware of any precedent for a Respondent being excluded from part of a hearing to which they were a party. The Tribunal would only consider such a step to be appropriate in the most exceptional of circumstances. The Tribunal had taken the rare step of permitting the Proceeding in Absence Bundles, served by the Applicant in the week preceding the hearing, to be served on the Tribunal but not on all other Respondents. In doing so the Tribunal had noted that the Third Respondent had not objected to that course of action.
 - 1.10 However the Third Respondent had objected to the suggestion that she be excluded from part of the hearing. The Tribunal was not satisfied that it was in the interests of justice to hear any part of the case, including the applications to proceed in absence, without the Third Respondent being present. The Tribunal saw no compelling reason why such a serious step should be taken. This was a case in which each of the Respondents had assigned responsibility to another Respondent for the circumstances giving rise to the Allegations. The First and Second Respondent had raised issues of ill-health which, by implication or assertion, they had linked to their roles at the Firm and the Third Respondent's conduct during her employment by them. The Tribunal considered that it would be contrary to the interests of justice to exclude the Third Respondent from any part of the hearing.
 - 1.11 Having decided that question, it would have been illogical to allow the Third Respondent to participate in the hearing but to deny her sight of the material being referred to. The Tribunal noted that the Third Respondent had already had sight of the psychiatric report from the First Respondent.
 - 1.12 The Tribunal directed that both Proceeding in Absence Bundles be disclosed to the Third Respondent and allowed her time to read those before proceeding to hear the applications.
 - 1.13 The Tribunal recognised the need to protect the privacy of the First and Second Respondents and to give effect to its direction that the Tribunal would sit in private for these applications. Accordingly it directed that the Third Respondent was prohibited from disclosing the material contained in the Proceeding in Absence Bundles or the contents of anything said in the private hearing to anyone.
2. Applications to proceed in absence
 - 2.1 Applicant's Submissions - Mr Bheeroo applied to proceed in the absence of the First and Second Respondents. He referred to GMC v Adeogba [2016] EWCA Civ 162. Adeogba drew a distinction between regulatory and criminal proceedings. He took the Tribunal through Adeogba and highlighted the principles identified in that case.
 - 2.2 Mr Bheeroo did not suggest there had been a failure to engage in the processes; both Respondents had responded to the Rule 5 and Rule 7 Statements.
 - 2.3 In respect of the First Respondent Mr Bheeroo made the following submissions;

- Mr Bheeroo did not suggest that the First Respondent was not unwell. However the medical evidence did not give details of his ability to participate in the process;
- The Applicant had told the First Respondent that he was entitled to seek an adjournment if he wished to, and of the requirement to provide medical evidence, as long as a month ago;
- This had been followed up and the First Respondent had said that he had issues with providing further evidence. The Applicant had offered to pay for further assessments;
- The First Respondent had stated that he did not want an adjournment.

2.4 In respect of the Second Respondent Mr Bheeroo made the following submissions:

- The Applicant accepted he was suffering from the conditions set out in the documentation;
- On 14 November 2018 the Applicant had asked the Second Respondent if he wished to submit more medical evidence and/or apply for an adjournment;
- He had responded to say that an adjournment would adversely affect him.

2.5 Mr Bheeroo submitted that the position was straightforward and both had agreed the hearing should go ahead in their absence. He therefore invited the Tribunal to proceed in their absence.

2.6 Third Respondent's Submissions - The Third Respondent told the Tribunal that she did not want the matter adjourned.

The Tribunal's Decision

2.7 It is not necessary to recite the medical information in detail for the purposes of this Judgment but the Tribunal had regard to all of it when considering the application.

2.8 The Tribunal considered the correspondence from the First and Second Respondents and the submissions of the Applicant and Third Respondent. The First and Second Respondents were aware of the date of the hearing as evidenced in the correspondence, in which dates had been referred to. SDPR Rule 16(2) was therefore engaged. The Tribunal had regard to the Solicitors Disciplinary Tribunal Policy/Practice Note on Adjournments (4 October 2002) and the criteria for exercising the discretion to proceed in absence as set out in R v Hayward, Jones and Purvis [2001] QB 862, CA by Rose LJ at paragraph 22 (5) which stated:

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

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

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

"...It would run entirely counter to the protection, promotion and maintenance of the health and safety of the public if a practitioner could effectively frustrate the process and challenge a refusal to adjourn when that practitioner had deliberately failed to engage with the process. The consequential cost and delay to other cases is real. Where there is good reason not to proceed, the case should be adjourned; where there is not, however, it is only right that it should proceed".

2.10 Leveson P went on to state at [23] that discretion must be exercised "having regard to all the circumstances of which the Panel is aware with fairness to the practitioner being a prime consideration but fairness to the GMC and the interests of the public also taken into account".

2.11 The First and Second Respondents had each made clear in correspondence that neither of them wanted an adjournment, indeed they both described the prospect of one in negative terms. There was therefore no suggestion they would attend a future hearing. There was no medical evidence that indicated they were unfit to participate in proceedings and there had been no application for special measures or reasonable adjustments.

2.12 The Third Respondent wished the matter to go ahead. The Allegations against each of the Respondents were very serious and there was a public interest in serious allegations being determined in a reasonable timeframe. In the absence of medical evidence showing unfitness to participate and in light of neither of the absent Respondents wishing for an adjournment, and in fact actively opposing one, it was in the interests of justice for the matter to proceed.

Factual Background

3. The First Respondent was born in 1980 and was admitted to the Roll of Solicitors on 16 July 2007. At the material time he was a Partner of the Firm and was the Firm's Compliance Officer for Legal Practice ("COLP") and Compliance Officer for Finance and Administration ("COFA").
4. The Second Respondent was born in 1985 and was admitted to the Roll of Solicitors on 3 November 2009. At the material time he was a Partner of the Firm.
5. The Third Respondent was born in 1987 and was admitted to the Roll of Solicitors on 17 November 2014. Between September 2012 and November 2014 she was employed as a Trainee Solicitor at the Firm. Prior to this, between June 2010 and September 2012, she had been a paralegal at the Firm. She had left the Firm on 12 November 2014.
6. The Allegations covered 11 topics as set out below.
7. Client S – Allegations 1.1-1.6, 3.1-3.2, 5.2 and 5.3 of Statement A
 - 7.1 The Firm acted for Client S in respect of her divorce. Client S took out a funding loan ("the Funding Loan") in order to pay her legal costs. A loan facility of £7,500 was arranged with Novita Loans Ltd (the "Costs Funder") and the funds could be drawn down by Client S as and when required, and would be paid directly to the Firm by the Costs Funder. The Firm drew down a total of £6,500 in August and November 2013, and raised bills totalling £6,925 during the same period. As at 20 November 2013, only £710 of the £6,500 received from the Costs Funder remained in the Firm's Client Account.
 - 7.2 In February 2014, Client S paid £9,562.84 into the Firm's Client Account in order to discharge the amount drawn down from the Funding Loan. The Firm transferred it into the Office Account, causing a shortage on the Client Account. The Funding Loan was not discharged until March 2015.
 - 7.3 In an email to the SRA of 25 January 2015, and her interview with the FIO on 20 March 2015, the Third Respondent had alleged that she was instructed by the Second Respondent to falsify documents to draw funds down from the Costs Funder without Client S' knowledge by using documents containing her falsified signature. A report by Costs Lawyer, Susan Corbin, dated 20 May 2015 (the "Costs Report") concluded that the Firm had overcharged Client S by 492%, as the billed profit costs were £13,155 and the recorded profit costs in the time report were £2,198.
8. Client B - Allegations 1.7-1.9, 5.2 and 5.3 of Statement A
 - 8.1 The Firm acted in the probate of Client B who died on 1 February 2014, and on other matters for Client B before his death. There were nine separate matter files for Client B. The FIO calculated the net estate as £43,068 and noted that the total balance on Client B's client ledger accounts at 31 January 2015 was £8,550.38 meaning that the minimum shortage on the client account at this date was £34,517.62.

8.2 The Third Respondent alleged in an email to the SRA dated 25 January 2016 that “the partners created several other files under [Client B]’s name, none of which the Firm had instructions to do so and none that were legitimate matters”.

9. Client L - Allegations 1.4-1.8 of Statement B

9.1 The Firm acted for Client L in a contact matter, a divorce matter and a sale of property matter. Client L made a complaint to the LeO that the Firm’s costs were excessive, the costs information provided to her was deficient and of poor service. As part of the investigation of the complaint, Mr Coley from the LeO office corresponded with the Firm and the Second Respondent in particular. Mr Coley requested from the Firm copies of documents pertaining to Client L’s files.

9.2 In her email of 25 January 2015, the Third Respondent stated that the Second Respondent “made staff members...fabricate invoices, time recordings and letters to make a complete file requested by the Legal Ombudsman that did not exist” and quoted Client L’s file as an example.

9.3 The Third Respondent informed the FIO during her interview on 20 March 2015 that “client matter files would be passed to her in order for her to fabricate the whole file or the time recordings under the instruction of [the Second Respondent]” and that she could give a “categorical guarantee” that the matter for [Client L] had been “fabricated”.

9.4 The Third Respondent had admitted in interview that she had backdated documents, fabricated letters to the client and the other side, including by scanning the client’s signature from an earlier signed document, and recreating time records “on the basis that the work had never been done”.

9.5 In her response to the SRA the Third Respondent had stated that “such actions were only done under the instruction of [the Second Respondent] and again I was not given an option. It was a case of do as you are told or lose your job and any chance of qualifying as a solicitor”.

9.6 The documents provided to the LeO by Client L in relation to her complaint contained a copy of a letter sent to her from the Firm dated 6 July 2012. This letter stated, “We advise that costs in your matter shall be in the region of £250 plus VAT and have agreed with you that the payment will be made prior to work commencing. You have instructed Chris Platt whose hourly rate is £180 + VAT.” A copy of the letter dated 6 July 2012 provided to the LeO by the Second Respondent on 10 March 2014 was formatted differently to the letter sent to the LeO by Client L. The following sentences were included in the version of the letter sent to the LeO by the Second Respondent, but not in the version sent to Client L by the Firm:

“We advise if this matter is not resolved within two letters and two attendances then we advise that costs in your matter shall be in the region of £500-£1,200+VAT+disbursements. We further advise that if the matter proceeds to full Court Proceedings, costs in the matter are likely to be significantly higher and we shall advise you the same at such time, if necessary”.

- 9.7 The LeO asked the Second Respondent about the discrepancy between the two letters. He responded by email, “The letter we have on the file is consistent with the one we have provided to you. We understand that there is a discrepancy and therefore we will have to accept this as a secretarial error on our part. We therefore wish to apologise to [Client L] if there has been any misunderstanding based on a secretarial error from this firm”
10. Client N – Allegations 1.1.1-1.1.4 of Statement C
- 10.1 The Client Ledger relating to Client N held entries for four invoices totalling £23,240.16 dated between 8 April 2015 and 25 August 2016. The Firm’s time record for this matter showed total time recorded as 42 minutes, valued at £126. The client care letter dated 7 November 2016 had indicated that costs would be in the region of £400 - £600.
- 10.2 Client N had confirmed in her witness statement that all of her dealings with the Firm following the client care letter were with the Second Respondent. The SRA’s records show that the named fee earner for the matter, Ms SW, left the Firm in December 2016 and the Second Respondent had confirmed to the FIO that he was the current fee earner.
- 10.3 The Second Respondent had told the SRA that “there may have been a number of invoices raised for the wrong files by the accounts team”. He had denied acting dishonestly and stated that he had failed to adequately supervise the accounts team.
- 10.4 The FIO had identified a shortage on the Client Account which could be attributed, in part, to the file of Client N. He found that 23 Client Account to Office Account transfers had been made in relation to the matter of Client N between 3 January 2017 and 25 September 2017 totalling £20,029.28.
- 10.5 There was no evidence that four invoices found on the file, totalling £23,240.16, were sent to the client or that written authority for those payments was given by, Client N. Client N had stated in her witness statement that, following the client care letter of 7 November 2016, she received no further information in respect of ongoing costs.
- 10.6 The FIO had identified a cash shortage of £52,061.37 as at 31 December 2016, £116,235.40 as at 30 April 2017 and £124,579.09 as at 1 December 2017.
- 10.7 Client N stated that Ms F (deceased) had an unclaimed pension fund which the Second Respondent was aware of. The FIO located correspondence on the file between the Firm and the NHS Pensions Scheme, including an email stating “as you are aware, arrears of pension amounting to £28,315.84 (gross) and a lump sum of £5,489.41 are due to the estate”.
- 10.8 A letter dated 24 March 2017 from the Second Respondent to the NHS requested that the cheques were made payable to the Firm instead of the Client. The Client Ledger showed receipt by the Firm of £5,489.41 on 6 April 2017 and £17,145.08 on 18 April 2017.

- 10.9 Client N had stated that the Second Respondent had led her to believe, on 13 September 2017, that the latter sum was £7,000, but that the Firm had not yet received the sum because the NHS were being slow to respond. The Second Respondent did not make Client N aware that the Firm had received the amount of £17,145.08.
- 10.10 In her witness statement Client N further stated that the Second Respondent had told her in December 2017 that an advert placed in the London Gazette would “run out” in January 2018, and that the estate would then be finalised. The FIO established that the notice referred to an expiry date of 22 August 2017.
11. Client HH – Allegations 1.2.1-1.2.5 of Statement C
- 11.1 The Client Ledger in relation to Client HH contained debit entries relating to the payment of 21 invoices totalling £65,637.46 dated between 8 April 2015 and 25 August 2016. The FIO identified 18 of these invoices within the client file. Ms Corbin provided a Costs Report dated 19 January 2018 in which she noted that the client care letter provided a cost estimate of £1,000 plus VAT, but the Firm billed costs of £52,686.22 (net of VAT) against the probate matter. Ms Corbin costed the value of the work carried out on the file at £2,572.85 and determined that the estate of Mr W had therefore been overcharged by 1,948%.
- 11.2 The client care letter stated that the Second Respondent was the fee earner. Client HH confirmed in an email to the SRA dated 22 January 2018 that the Second Respondent dealt with her matter throughout and that she only received a bill at the end of the matter, in the sum of £2,511.00. The Second Respondent denied that the bills sent to Client HH were unjustified. However the FIO found no evidence that the 21 invoices totalling £65,637.46 were sent to Client HH.
- 11.3 The FIO found that 82 Client Account to Office Account payments had been made, between 22 January 2016 and 25 August 2018, totalling £127,669.90. None of the 82 transfers corresponded with a bill that was delivered to the client. In addition, 78 of the 82 transfers did not correspond to the value of an invoice found on the file. The only invoice delivered to Client HH, for £2,511, had no corresponding transfer on the Client Ledger.
- 11.4 This had contributed to a minimum cash shortage of £52,061.37 as at 31 December 2016, £116,235.40 as at 30 April 2017 and £124,579.09 as at 1 December 2017. Only the First and Second Respondents were able to make electronic transfers and the Second Respondent had conduct of this matter.
- 11.5 The FIO stated in the FIR that he believed there was evidence on the file of Client HH of teeming and lading, which concealed a client account shortage as at 30 April 2017. The FIO identified the following:-
- nine Office Account to Client Account transfers made between 7 June 2016 and 23 August 2016, totalling £58,801.02 and marked on the client ledger as ‘refund’;
 - a receipt of £70,000 on 5 August 2016 being credited to the client ledger but belonging to an unrelated client;

- a receipt of £5,157.75 on 22 August 2016 being credited to the client ledger but belonging to an unrelated client.
- 11.6 The FIO found that the Client Account to Office Account transfers in this matter were partially offset by the Office Account to Client Account transfers and receipts of monies from unrelated clients being credited to the Client Ledger. The transfers allowed Office Account payments to be made within the agreed overdraft facility and set out the example of the Client HH file.
- 11.7 The estate of Mr W was distributed between 27 July 2016 and 23 August 2016. Following payments made to the beneficiaries of the estate, the client ledger showed a debit balance on the Client Account Ledger of -£18,898.92 until 5 August 2016 when a receipt of £70,000 was credited to that Ledger. However those funds related to a different client matter.
12. Client MH – Allegation 1.3 of Statement C
- 12.1 The FIO instructed Ms Corbin on 15 March 2018 to review the Client MH file. She prepared a Costs Report dated 18 April 2018 and concluded that the Firm had overcharged in the region of £8,600.00 to £9,000.00 plus VAT which represented an overcharge of between 536% and 737%.
- 12.2 The client care letter of 29 May 2014 recorded that costs would be in the region of £1,000 - £2,000 plus VAT and disbursements. Ms Corbin notes that this was the only formal costs information provided to the administrators of the estate. There was an attendance note of 24 February 2016 in which the Second Respondent had indicated to Client MH that costs had increased and that she had agreed to this, although it did not state how much of an uplift Client MH had agreed to.
- 12.3 Ms Corbin found that the Firm invoiced £10,269.83 for work regarding probate, whereas her costing was £1,226.50 for the net profit costs in period covered by the invoices, or £1,613.50 for the net profit costs of all probate work on file. Ms Corbin considered it would be reasonable for the charge for the work to be limited to a maximum of £2,000. According to her costing of the work carried out on the file, Ms Corbin considered there to be an overcharge in the region of between £8,600 (536%) and £9,000 (737%) excluding VAT and disbursements.
- 12.4 Ms Corbin further noted that attendance notes during 2015 indicated that the Firm had lost some documentation, which was blamed on the Third Respondent. This purported loss generated more work and the telephone attendance note of 24 February 2016 recorded that Client HH accepted that this cost had been charged to the estate. Ms Corbin’s opinion was that it was not reasonable to charge the estate for rectifying the problem.
- 12.5 The Second Respondent had accepted that the Firm acted for Client MH and the client care letter recorded that the Second Respondent would “carry out most of the work”. The Second Respondent had stated that bills of costs would have been sent to Client MH, and denied that the bills were unjustified.

13. ID1 Matters – Allegation 5.1 of Statement A and Allegations 1.1-1.2 of Statement B
- 13.1 On 15 March 2017, Mr A of Ramsden Solicitors (“Ramsdens”) sent a report to the SRA in which he alleged that his clients, Mr S and Mrs S, had been approached by an unregulated business called Indeed Law Limited (“Indeed Law”) in relation to the establishment of a family trust.
- 13.2 As part of the transaction, Mr S and Mrs S had been visited by CP, on 16 July 2017 and Ms R, the daughter of Mr and Mrs S, was visited by CP at her parents’ home on 22 July 2016. Mrs S and Ms R stated that they had not met the First Respondent in person, nor had CP carried out a Skype call when he visited them, or taken their passports away with him. Ms R stated that CP took a photograph of her passport using his mobile telephone.
- 13.3 On the ID1 forms the First Respondent was the ‘Certifier’ and he had signed them as such. Part 2a of the ID1 Forms contained text above the First Respondent’s signature stating that “...certify that (name of individual whose identity is being verified)...has produced to me the original(s) of the evidence of identity indicated in panel 3 below and which I have inspected. I confirm that the photograph attached in panel 4, and which I have signed, is a true likeness of the person who has provided his evidence”.
- 13.4 The First Respondent had accepted in the letter from his then-solicitors dated 15 June 2017 that his practice was to certify documents having seen the individual over Skype and photographs of the documents, taken by an employee of the Firm. He had accepted that this was inappropriate.
- 13.5 The ID1 forms were sent to the Land Registry and dealt with by Mr Davies. He had stated in his witness statement that “the copies of the ID1 forms for Mr S and Mrs S contain dates that appear to have been changed. The earlier date looks like 12 August 2016 but the date overwritten appears to be 12 October 2016”.
- 13.6 Mr Davies referred to a telephone call on 27 January 2017 from his colleague, Ms Evans to the First Respondent in which he confirmed to Ms Evans that he had completed Section B on the ID1 Forms. He denied changing the date on the ID1 Forms, and stated that he had signed the forms on 12 October 2016 and that it was “in his diary for that date”.
- 13.7 The note by Ms Evans, stated that she “asked [the First Respondent] if Mr and Mrs [S] and their daughter had come into his office to sign the forms”. He replied, “yes that’s what it says in my diary.” Ms Evans “asked again if he had met Mr and Mrs [S] and their daughter and they had all come to his office of sign the forms, he replied “that’s what it says in my diary.”
14. Failing to supervise the Third Respondent - Allegations 1.10 and 5.4 of Statement A
- 14.1 The Third Respondent stated in her interview with the FIO on 20 March 2015 that she did not feel supported as a trainee solicitor and confirmed that she was left to her own devices in respect of client matters.

- 14.2 In the interview of the First and Second Respondents on 5 May 2015 the Second Respondent admitted that he could have supervised the Third Respondent more and the First Respondent stated that he and the Second Respondent (who was present at the interview) accepted that the issues on Client B's matters could have been identified earlier if they had reviewed the client ledger accounts.
- 14.3 The First and Second Respondents had provided a joint response to the SRA in which they admitted that they failed to adequately supervise the Third Respondent, but not to the extent she alleged.
- 14.4 In her witness statement, Ms Sands, the former book-keeper stated that "nearly all of the work being carried out on client files" was by the Third Respondent and "she had barely any supervision".
15. Misleading the SRA – Allegations 1.1.4 and 1.7 of Statement C
- 15.1 The FIO served a Production Notice under s44B Solicitors Act 1974, on 27 February 2015. The Production Notice requested that the Firm produced, amongst other documents, the files of Client MH and Client C.
- 15.2 The FIO attended the Firm on 5 March 2015 and interviewed the First and Second Respondents together. The Respondents stated to him that they believed that the requested client matter files had been taken from the Firm's offices by the Third Respondent, a former trainee solicitor of the Firm, or her mother, also a former employee of the Firm. The First and Second Respondents therefore did not produce the requested files.
- 15.3 In an interview on 20 March 2015 the Third Respondent informed the FIO that she did not have the files in her possession and she had not destroyed them. She believed that the Client C file had been in the First Respondent's filing cabinet when she left the Firm. She said that she did not have a lot to do with the Client MH file as that was the Second Respondent's matter. During the Intervention into the Firm on 19 January 2018, both files and papers were removed from the Firm by the Intervention Agents.
- 15.4 During a discussion between the FIO and the Second Respondent on 1 December 2017, he told the FIO that no client account shortage existed at 1 December 2017 and provided documentation purporting to support this.
- 15.5 During a Standard Initial Interview Questionnaire with the Second Respondent on 30 November 2017 the Second Respondent was asked whether there were any debit balances on the Firm's Client Account and he responded "No". As referred to above, the FIO subsequently identified Client Account shortages on the files of Client N and Client H as at 1 December 2017.
- 15.6 The Second Respondent provided the FIO with a list of transactions which purported to comprise receipts of monies in relation to various files which had been posted to the Client Ledger, but where the funds had not yet cleared. The FIO carried out an analysis of the largest items on the list and found that they all related to funds already cleared at least five weeks before 30 April 2017. The Second Respondent was unable

to provide an explanation for this, stating that he was not aware of the Client Account shortfall until it was pointed out to him by the FIO.

- 15.7 On 10 January 2018, the FIO asked the Second Respondent to provide the client file of papers for the matter of Client H, but the Second Respondent stated that he could not find the file in the office. During the Intervention of 19 January 2018, the SRA's Intervention Agent, removed the file from the Firm's offices.
16. Failing to conduct an orderly wind down - Allegations 1.5 and 1.8 of Statement B
- 16.1 Following the referral of the matters set out in Statements A and B to the Tribunal, a further investigation took place into the Firm. The Applicant's case was that during this inspection, the Second Respondent provided the FIO with misleading information in respect of client files and the client account shortage. The First Respondent did not attend any of the meetings at the Firm.
- 16.2 The Applicant's case was further that the Second Respondent had informed the FIO that the Partners would be closing the Firm with immediate effect without taking any steps to protect client interests. The SRA determined to intervene into the Firm and into the practices of the First and Second Respondent on 17 January 2018 and this was effected on 19 January 2018.
17. Failing to report to SRA – Allegation 3.3 of Statement A
- 17.1 The Third Respondent, in her email to the SRA of 25 January 2015 described her actions and those of the First and Second Respondents and stated "I knew such practices were wrong and should have been reported immediately". The Third Respondent continued, "I did not feel that I could jeopardise my training and employment" and "I am aware I should have reported the above sooner" but "I was deeply concerned about the repercussions on my myself and my employment if I did report this in the middle of my training contract".
- 17.2 In her response to the SRA dated 29 March 2016, the Third Respondent had admitted that she knew she needed to report matters as soon as possible but that she did "also have other considerations such as my mother still working there and...friends I did not want to see out of the job".

Witnesses

18. Jonathan Wearing
- 18.1 Mr Wearing confirmed that his witness statement was true to best of his knowledge and belief. He had been the COLP to whom the Third Respondent had spoken to at the firm she joined after leaving the Firm in 2014. In cross-examination he confirmed that contrary to his witness statement, the Third Respondent had passed her probationary period and had only been dismissed due to risk management issues relating to possible proceedings before the Tribunal.

Findings of Fact and Law

19. The Applicant was required to prove the allegations beyond reasonable doubt. The Tribunal had due regard to the Respondents' rights to a fair trial and to respect for their private and family life under Articles 6 and 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
20. The Tribunal considered carefully all the documents, witness statements and oral evidence presented. In addition it had regard to the oral and written submissions of all parties, which are briefly summarised below.

General Approach

Dishonesty

21. The test for considering the question of dishonesty was that set out in Ivey v Genting Casinos (UK) Ltd t/a Crockfords [2017] UKSC 67 at [74] as follows:

“the test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan and by Lord Hoffmann in Barlow Clowes: When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledgeable belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the factfinder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

22. The Tribunal applied the test in Ivey and in doing so, when considering the issue of dishonesty adopted the following approach:
 - Firstly the Tribunal established the actual state of the Respondents' 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.
 - Secondly, once that was established, the Tribunal then considered whether that conduct was honest or dishonest by the standards of ordinary decent people.

Integrity

23. When the Tribunal was required to consider whether a Respondent had lacked integrity it applied the test for integrity set out in Wingate and Evans v SRA and SRA v Malins [2018] EWCA Civ 366. At [100] Jackson LJ had stated:

“Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor

conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse”.

24. Wingate and Evans and Malins had continued a line of authorities that included SRA v Chan [2015] EWHC 2659, Scott v SRA [2016] EWHC 1256 (Admin), Newell-Austin v SRA [2017] EWHC 411 (Admin) and Williams v SRA [2017] EWHC 1478 (Admin).

Recklessness

25. Where recklessness was alleged, the Tribunal applied the test set out in R v G [2003] UKHL 50 where Lord Bingham adopted the following definition:

“A person acts recklessly...with respect to (i) a circumstance when he is aware of a risk that it exists or will exist; (ii) a result when he is aware of a risk that it will occur and it is, in the circumstances known to him, unreasonable to take that risk.”

26. This was adopted in the context of regulatory proceedings in Brett v SRA [2014] EWHC 2974 (Admin).

Applicant’s Submissions - General

27. Mr Bheeroo invited the Tribunal to draw inferences pursuant to Iqbal v SRA [2012] EWHC 3251 (Admin) and Practice Direction 5 in respect of the First and Second Respondents who had not attended the Tribunal and not given evidence.

Statement A

28. **Allegation 1.1 - Between around July 2013 and November 2013 he falsified documents purporting to contain Client S’ signature, for the purpose of drawing down funds from the Funding Loan, and in doing so breached Principles 2, 4, 5 and 6 of the SRA Principles 2011 (“the Principles”).**

Applicant’s Submissions

- 28.1 Mr Bheeroo submitted that the Second Respondent had falsified or used falsified documents to make drawdowns. The evidence of Client S and the account given by the Third Respondent corroborated each other, in that permission should have been sought from Client S and it had not been. The Third Respondent had said there were blank copies of client’s signature and the Tribunal could be sure that in drawing down the monies the Second Respondent was using falsified documents.
- 28.2 Mr Bheeroo submitted that there was no real explanation from the Second Respondent as to why the Third Respondent would have engaged in such conduct. He had blamed her but Mr Bheeroo invited the Tribunal to ask itself what incentive would she have had to do so under her own volition. She was a trainee and it was not her responsibility to chase funds.

28.3 Mr Bheeroo submitted that it was obvious that using falsified documents and instructing a junior to do so for purposes of drawing down money to which the Firm was not entitled was clearly dishonest. The Second Respondent had deliberately kept a blank copy of the signature on file. These documents were used as the authority for drawing down. Mr Bheeroo confirmed that the Applicant did not have the actual drawdown forms – this was based on information from the Third Respondent. It was not his case that the signature was forged. The document was falsified because it purported to be an authority for that specific drawdown. The other breaches followed from the Second Respondent’s dishonesty. He had acted in breach of Principle 2 as he had failed to act in accordance with the higher standards the public would expect of solicitors. The public would not accept a solicitor using falsified documents for any purpose. It was clearly not in the best interests of the client to drawdown funds that she would be required to repay. It was not a proper standard of service to go behind her back to make drawdowns in those circumstances. This would fundamentally undermine the trust the public placed in solicitors.

Second Respondent’s Submissions

28.4 In his response to the Rule 5 statement dated 29 August 2017 the Second Respondent denied the allegation in its entirety. He denied that he signed any of the loan documentation whether in the client’s name or his own. He stated that he had not seen any of the documents requesting the drawdown of funds and he specifically denied the allegations made by the Third Respondent. The Second Respondent stated that the file was under the control of the Third Respondent at all times and that if any signatures had been falsified that it must have been by her.

The Tribunal’s Findings

28.5 This Allegation concerned the allegedly falsified documents. The documents themselves were not before the Tribunal and therefore the possibility could not be excluded that Client S’s signature was on them. The Tribunal considered Client S’s evidence. She had stated that permission was not sought or given for the drawdowns. However this Allegation related to falsification of documents rather than the giving of permission. The Tribunal could not be satisfied beyond reasonable doubt that Client S had not signed a document. In the absence of any of the loan documentation the Tribunal could not be satisfied beyond reasonable doubt that the documents were falsified.

28.6 The Tribunal found Allegation 1.1 not proved.

27. **Allegation 1.2 - Between 8 August 2013 and 20 November 2013 he drew down funds and/or instructed the Third Respondent to draw down funds as set out in Schedule 1 totalling up to £6,500.00 from Client S’ legal funding loan without Client S’ knowledge or permission and in doing so breached Principles 2, 4, 5, 6 and 10 of the Principles.**

Applicant’s Submissions

27.1 Mr Bheeroo clarified that it was not the Applicant’s case that the Third Respondent would have drawn down all those sums, only some of them. The responsibility was

that of the Second Respondent and not the Third Respondent who was a trainee. Mr Bheeroo therefore submitted that her explanation that she had been directed by the Second Respondent was credible.

- 27.2 He submitted that drawing down funds and so instructing the Third Respondent, without the client's knowledge or permission was dishonest. The Second Respondent had ensured that the cost funder was deceived into making the payments. He could then conceal from the client how much was being drawn down. The client could not therefore scrutinise the costs.

Second Respondent's Submissions

- 27.3 In his response to the Rule 5 Statement the Second Respondent denied this allegation in full. He reiterated his denial of falsifying documents and accused the Third Respondent of falsifying the drawdown documents. The Second Respondent stated that he believed that Client S had provided her instructions to draw down the funds and therefore did not accept that he had acted in breach of any of the principles and he denied acting dishonestly. He stated that the only evidence that he acted dishonestly came from the Third Respondent who he submitted had, by her own admission, acted dishonestly. The Second Respondent referred to the fact that the FIO had not alleged dishonesty following the investigation.

The Tribunal's Findings

- 27.4 This Allegation concerned the drawdowns themselves. There was no doubt that funds were drawn down. This was clear from the unchallenged evidence of Client S, who had not been required to attend the Tribunal for the purposes of cross-examination. It was also clear that these drawdowns had taken place without Client S's permission. In her witness statement of 28 July 2017 she stated:

“I did not sign any documents or give my permission for money to be drawn from the loan facility”.

She went on to state:

“As above, I was not asked permission for individual amounts of money to be taken from the loan, I did not sign any documents giving such permission, and I was not aware how much was being taken from the loan, when or what for.”

- 27.5 In her witness statement of 11 March 2015 she had stated that:

“In or around the end of August 2013 I was told verbally by Mr Platt that [Ms A] had left the firm and he would now have conduct of my matter and would be assisted by Ms Scott”. It was clear to the Tribunal from this that the Second Respondent was involved in Client S's case and was at the very least supervising the Third Respondent.”

- 27.6 The Tribunal found this evidence unequivocal. Even if Client S had given general permission to utilise the loan, it required her to give specific authority for each drawdown and for her to be informed of it.

- 27.7 There was a conflict of accounts between the Second Respondent and Client S. The Tribunal preferred Client S's evidence. She had given witness statements whereas the Second Respondent had not given evidence. The Tribunal was entitled to draw the appropriate inference from his failure to give an account of his actions and subject himself to cross-examination. The Tribunal drew that inference pursuant to Practice Direction 5 and Iqbal.
- 27.8 The evidence of Client S was also corroborated by the account of the Third Respondent. The Tribunal found the factual basis of Allegation 1.2 proved beyond reasonable doubt.

Dishonesty

- 27.9 The Tribunal considered the Second Respondent's state of knowledge at the material time.
- 27.10 The Second Respondent knew that he had to give Client S notice of the intended drawdown and knew that he had not given such notice. He knew that he was in receipt of the funds from the cost funder and knew that he had received them without Client S's permission or knowledge.
- 27.11 The Tribunal found beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people. The allegation of dishonesty was proved beyond reasonable doubt.

Principle 2

- 27.12 The Tribunal was satisfied beyond reasonable doubt that it clearly lacked integrity for a solicitor to make drawdowns without permission. This action increased the client's liability for repayment of the sums without her authority. The Tribunal noted that there were consecutive drawdowns over 15-day period. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principles 4, 5 and 10

- 27.13 It was clearly not in the client's best interests to increase her liabilities for a loan repayment without informing her and without her authority. It followed from that that this was inconsistent with a proper standard of service. On the basis that this was effectively client money as it incurred a liability to the client, it was inconsistent with protecting client money and assets. The Tribunal found the breach of Principles 4, 5 and 10 proved beyond reasonable doubt.

Principle 6

- 27.14 It followed as a matter of logic that the trust the public placed in the provision of legal services was undermined when client monies and assets were not safeguarded due to repeated drawdowns without the knowledge or permission of the client. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

- 27.15 Allegation 1.2 was proved in full beyond reasonable doubt including the element of dishonesty.
28. **Allegation 1.3 - Between 8 August 2013 and 23 October 2014 he raised and/or instructed the Third Respondent to raise some or all of the bills of costs set out in Schedule 2 which included bills of costs for work that he knew had not been carried out and in doing so he breached Principles 2, 4, 5, 6 and 10 of the Principles.**

Applicant's Submissions

- 28.1 Mr Bheeroo referred the Tribunal to the evidence of Ms Corbin. He submitted that 492% was an extraordinary amount and that it was so high that it must be deliberate and could not be an oversight. He referred the Tribunal to the evidence of Ms Sands, who had stated that the posting of the bills was only on the instruction of the First or Second Respondents. Mr Bheeroo described this Allegation as a clear cut case of dishonesty.

Second Respondent's Submissions

- 28.2 In his response to the Rule 5 Statement the Second Respondent denied this allegation in full. He stated that at the time the bills were raised he believed that the work was being carried out by the Third Respondent as she had told them this. The Second Respondent denied that he had agreed with the FIR that no substantial work had been conducted on the file, though he accepted that the work undertaken on the file did not warrant the level of bill raised. The Second Respondent stated that he would not have been aware of the overbilling at the relevant time.

The Tribunal's Findings

- 28.3 This Allegation related to the production of bills for work not carried out. The Tribunal considered the evidence of Ms Corbin and Ms Sands.
- 28.4 Ms Sands had stated the following:-
- “The bills of all fee earners were overseen by the First and Second Respondent. They would check all of the bills before they were posted. Nothing got past either of them and nobody in the Firm realised an invoice without them knowing how much was being billed. They always knew exactly what money was coming into the business. About nine times out of ten the second Respondent would tell the Third Respondent what to bill”.
- 28.5 Ms Corbin had costed the work that she estimated would be reasonable and concluded that the bills represented a 492% overcharge.
- 28.6 The Tribunal considered the defence advanced by the Second Respondent. His account was contradicted by the Third Respondent and the evidence of Ms Sands. Again, the Tribunal drew an inference from his failure to give his account in evidence.

The Tribunal found the factual basis of the Allegation proved beyond reasonable doubt.

Dishonesty

28.7 The Second Respondent knew that he had not done the work claimed for in the bills. This was not an overcharge of a small amount and could not be explained by simple error or mistaken belief. The Tribunal had rejected the Second Respondent's defence in this matter. The Second Respondent knew that the bills were being raised as he was the supervisor and he had instructed that they be raised. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

Principle 2

28.8 It clearly lacked integrity to draw up a bill for work that had not been done particularly in circumstances where the overcharge was for a very significant sum. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent had failed to act with integrity and had breached Principle 2.

Principles 4, 5, 6 and 10

28.9 It followed as a matter of logic from the Tribunal's findings in respect of this allegation that the Second Respondent had not acted in the best interests of his client, had failed to provide a proper standard of service and had failed to protect client money and assets. The trust the public placed in the provision of legal services was fundamentally undermined if bills that were inflated by nearly 500% were raised. The Tribunal found each of these Principles to be breached beyond reasonable doubt.

28.10 Allegation 1.3 was proved in full beyond reasonable doubt including the allegation of dishonesty.

29. **Allegation 1.4 - Between 8 August 2013 and 23 October 2014 he signed some or all of the bills of costs set out in Schedule 2 which included bills of costs for work that had not been carried out and in doing so, breached Principles 2, 4, 5, 6 and 10 of the Principles.**

Applicant's Submissions

29.1 Mr Bheeroo told the Tribunal that the Applicant had no copies of signed bills for Client S. The accepted practice of the Firm was that it would not go out unless signed by either the First or Second Respondent. He submitted this Allegation would be proved if the Tribunal had found Allegation 1.3 proved.

Second Respondent's Submissions

29.2 The Second Respondent, in his response to the Rule 5 Statement, accepted that it was possible that he had signed bills of costs for work which may not have been carried out but he did not accept that in doing so he had breached any of the Principles or that

he had acted dishonestly or recklessly. He stated that he reasonably believed that the work had been done as a result of assurances he had been given by the Third Respondent that the work had been undertaken. He stated that a “brief review of the file at the relevant time suggested to the Second Respondent that the file was progressing as it should have been and there was no reason to believe that the work had not been undertaken”.

- 29.3 The Second Respondent rejected the suggestion by the Third Respondent that he knew exactly what he was signing, explaining that he would have been aware that he was signing a bill of costs for a particular client and he was unaware that the work that he had been told had been done had in fact not been undertaken.

The Tribunal’s Findings

- 29.4 The Tribunal again noted that the Second Respondent was the supervisor and one of the partners. Ms Sands had confirmed that only the First or Second Respondent could sign bills and the Third Respondent had stated that it was the Second Respondent who signed them. It could not have been the Third Respondent who signed them as she was a trainee. He was the supervisor of the matter and the Tribunal rejected the Second Respondent’s suggestion that he had signed the bills without reading them properly. His explanation was at odds with the evidence quoted above in relation to Allegation 1.3 from Ms Sands. The Tribunal found the factual basis of Allegation 1.4 proved beyond reasonable doubt.

Dishonesty

- 29.5 The Tribunal noted that statement of Ms Sands in which she had stated:

“Every week, I would be instructed to transfer between £2,000 and £10,000 in total to the First and Second Respondent’s personal accounts. I remember the Second Respondent saying he could not live on less than £2,000 per week. When there were large payments to be made, for example the VAT bill or staff wages, there would be a lot of pressure to ‘find’ the money and it was a very stressful environment to work in”.

- 29.6 The Tribunal found that the scale of the overcharging was such that the Second Respondent could not have simply been careless or even reckless. He knew at the time of signing the bills that the work had not been done for the reasons set out in relation to Allegation 1.3.
- 29.7 The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt and was therefore not required to consider recklessness.

Principles 2, 4, 5, 6 and 10

- 29.8 The breaches of Principles 2, 4, 5, 6 and 10 were also proved in full beyond reasonable doubt the same reasons as set out in relation to Allegation 1.3 and as a matter of logic following the Tribunal’s findings in relation to this Allegation.

30. **Allegation 1.5 - He caused or allowed a shortage of £9,562.84 to arise on the Firm's Client Account in that transfers were made from the Client Account to the Firm's Office Account in payment of bills of costs in circumstances where Client S had not been sent written confirmation of those costs and in doing so breached Principle 10 of the Principles and Rules 6, 17.2 and 20.3 of the SRA Solicitors Accounts Rules 2011 ("the SARs").**

Applicant's Submissions

- 30.1 It was submitted that as one of the principals of the Firm, the Second Respondent had a responsibility to ensure compliance with the SARs by both himself and other employees of the Firm. By failing to ensure that money was withdrawn from the Client Account in accordance with Rule 20 and that the client was given written notification of the costs incurred prior to transferring funds from Client Account to Office Account, the Second Respondent was in breach of the SARs.
- 30.2 By causing or allowing a shortage of £9,562.84 to arise on the Firm's Client Account, the Second Respondent failed to protect client monies. Mr Bheeroo submitted that although the Second Respondent admitted breaching the SAR and denied breaching the Principles, it must naturally follow that Principle 10 had been breached.

Second Respondent's Submissions

- 30.3 In his response to the Rule 5 Statement the Second Respondent accepted that there had been a breach of the SARs but denied breaching any of the Principles. He accepted that as a principal of the Firm his liability for breaches of the Accounts Rules was absolute and this was the basis of that admission. He stated that he denied the Principle breaches because the breaches of the SAR were committed as a result of having been misled by the Third Respondent. The Second Respondent stated that he "reasonably believed that a written notice of the bills of costs had been sent to the clients." He stated that been notified of the relevant breaches he had taken "immediate steps to rectify the position".

The Tribunal's Findings

- 30.4 The Second Respondent had admitted breaching Rules 6, 17.2 and 20.3 of the SAR. The Tribunal found those breaches proved reasonable doubt on the evidence.

Principle 10

- 30.5 The Tribunal found that it followed as a matter of logic that where transfers had been made from the client account to the office account in breach of the SAR that the duty to protect client money and assets imposed by Principle 10 was inevitably breached. The Tribunal found the breach of Principle 10 proved beyond reasonable doubt.

Dishonesty

- 30.6 The Tribunal found that the Second Respondent knew that it was client monies that he was transferring and that he knew that the client had not been sent a bill of costs before the transfer was made. The Tribunal noted that the client only became aware of

the funds being taken as costs by the Firm when she met the FIO in February 2015. The Tribunal had in mind the evidence of Client S and Ms Sands referred to earlier in this judgement. The Second Respondent knew that the monies had been paid into client account with the express purpose of repaying the loan to the Respondent. He therefore knew that he was using it for a purpose other than that for which it was intended. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved in full beyond reasonable doubt and was not therefore required to deal with the allegation of recklessness.

30.7 Allegation 1.5 was proved in full beyond reasonable doubt including the allegation of dishonesty.

31. **Allegation 1.6 - He failed to use the sum of £9,562.84 paid into the Firm's Client Account by Client S on 17 February 2014 for the intended purpose of redeeming Client S' funding loan and in doing so breached Principles 2, 4, 5, 6 and 10.**

Applicant's Submissions

31.1 Mr Bheeroo referred the Tribunal to the witness statement of Client S together with the account given by the Third Respondent, which he submitted supported the Allegation. His submissions on the Principles were the same as those made in relation to Allegations 1.1-1.4. The actions of the Second Respondent in failing to use money paid by Client S for its intended use, without Client S' knowledge, amounted to a lack of integrity.

31.2 In acting in the manner alleged, the Second Respondent had failed to have sufficient regard to the risk to Client S' interests and money because she had already transferred to the Firm the money to pay off the loan and believed this had been done, but later found that the loan in her name was still outstanding. This misuse of client money did not amount to a proper standard of service and such behaviour was likely to cause damage to the trust the public placed in the Second Respondent as a solicitor, and in the provision of legal services.

Second Respondent's Submissions

31.3 In his response to the Rule 5 Statement the Second Respondent denied this allegation. He accepted that Client S had paid money into the Firm with the intention that it was used to repay the loan. However he stated that he was not aware of this intended purpose at the time. He therefore did not believe that he was acting in breach of the Principles when utilising the funds to repay the bill of costs. He stated that had he been aware of the communications between Client S and the Third Respondent he would have ensured immediate repayment of the monies. He stated that when he did discover that the monies had been paid for that purpose he made arrangements for the replacement of those monies which occurred on the 23 March 2015.

The Tribunal's Findings

31.4 The Tribunal noted the evidence of Client S and the purpose for which he had paid the money into the client account. The Third Respondent was unable to move the money

from client account to office account and again the Tribunal noted the evidence of Ms Sands concerning how monies were moved within the Firm. The Tribunal found the factual basis of allegation 1.6 proved beyond reasonable doubt.

Principle 2

31.5 As stated above in this judgment, the Second Respondent knew the purposes for which the money had been paid into the client account and he knew that he was making a transfer from client to office account rather than repaying the costs funder. The Tribunal noted that whilst the Second Respondent had stated he rectified the matter immediately, this was not in fact until over a year later when it was pointed out to him by the Forensic Investigator. In acting in this way the Second Respondent had lacked integrity and the Tribunal found the breach of Principle 2 proved in full beyond reasonable doubt.

Principles 4, 5, 6 and 10

31.6 It followed as a matter of logic that using client funds for a purpose other than that for which they were intended was not in the best interests of the client and did not reflect a proper standard of service. The Second Respondent had failed to behave in a way that maintained the trust placed in him and in the provision of legal services and had failed to protect client money and assets. The Tribunal found the breaches of these Principles proved beyond reasonable doubt.

31.7 The Tribunal found allegation 1.6 proved in full beyond reasonable doubt.

32. **Allegation 1.7 - Between 9 August 2013 and 18 November 2013 he raised some or all of the bills of costs set out in Schedules 3 and 4, which included bills of costs for work that he knew had not been carried out, and in doing so he breached Principles 2, 4, 5, 6 and 10 of the Principles.**

Allegation 1.8 - Between 9 August 2013 and 18 November 2013 he signed some or all of the bills of costs set out in Schedules 3 and 4, which included bills of costs for work that had not been carried out and in doing so he breached Principles 2, 4, 5, 6 and 10 of the Principles.

Applicant's Submissions

32.1 Mr Bheeroo submitted that the evidence showed that the Second Respondent raised and signed some or all of the bills. Those bills included charges for work he knew had not been carried out. This had resulted in a cash shortage, which was then replaced. Mr Bheeroo submitted that the evidence of Ms Sands was credible and supported the Applicant's case that it was the Second Respondent who was raising a number of matter ledgers and would dictate what bills were to be raised. She specifically recalled Client B's case and her evidence had not been challenged.

32.2 The Second Respondent had tried to blame the Third Respondent. Mr Bheeroo submitted that the Second Respondent stood to benefit financially and had been clearly dishonest. His submissions were in similar terms to those made in respect of Client S. Client B had been an elderly client. The Firm had raised bills and the money

in client account had dwindled. It was an “incredible chain of events” and at the centre of it was the Second Respondent as his name was on all the files. Honest people would not raise bills for work they had not carried out. In this case he had claimed approximately £34,000 against an estate of approximately £43,000. By creating false matter ledgers and drawing down funds to which the Firm was not entitled to was dishonest and breached all the relevant Principles.

Second Respondent’s Submissions

- 32.3 In his response to the Rule 5 Statement the Second Respondent denied these Allegations. He accepted that it was possible that he had signed bills of costs for work which may not have been carried out but denied that in doing so he had breached any of the Principles. The Second Respondent stated that he reasonably believed that the work had been done as a result of assurances given to him by the Third Respondent. In his response to a letter from the SRA dated 11 March 2016 the Second Respondent had stated that the Client B ledgers had been created either by the Third Respondent or her mother.

The Tribunal’s Findings – Allegation 1.7

- 32.4 The Tribunal considered the evidence of Ms Sands, which was particularly relevant as she specifically recollected the bills on Client B’s case. In a witness statement she had stated the following:-

“At one point, the Firm had open about 22 files in Client B’s name. The Second Respondent would create new matters and raise bills on them, and instruct me to transfer the money from client to office account. The number and frequency of the bills ‘rang alarm bells’ for me. I considered that the bills were not for legitimate work on the file however I did not know for sure because I did not see what work was carried out”.

- 32.5 This evidence, together with the Third Respondent’s explanation of these matters contradicted the Second Respondent’s case. The Tribunal found the evidence of Ms Sands and the Third Respondent’s submissions to be convincing. The Tribunal noted that a large number of matters had been opened in relation to Client B with no explanation being provided as to why this happened. There was no evidence before the Tribunal of anything approaching the amount of work that would have needed to have been undertaken in order to justify bills in excess of £34,000, particularly in relation to an estate worth approximately £43,000. The Second Respondent himself had accepted in interview that the bills did not appear to be legitimate. The Tribunal rejected the Second Respondent’s case that the bills had simply been presented to him by the Third Respondent. The Tribunal noted that the Third Respondent had nothing to gain from such actions whereas the Second Respondent, as a partner in the Firm, did. The Tribunal found the factual basis of Allegation 1.7 proved beyond reasonable doubt.

Dishonesty

- 32.6 The Second Respondent knew that the bills generated did not reflect the work done. The Tribunal had rejected the Second Respondent’s defence that he had been given

assurances by the Third Respondent. However even if the Third Respondent had told the Second Respondent that such work had been done it would have been obvious to him that this was untrue given the number of bills and their value. The Tribunal was satisfied beyond reasonable doubt that in fact the Second Respondent had raised the bills of costs knowing that they bore no relation to the work that was being carried out.

- 32.7 The Tribunal found beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people. The allegation of dishonesty was therefore proved beyond reasonable doubt.

Principle 2

- 32.8 It followed as a matter of logic from the findings above that raising bills of costs which included bills for work that had not been carried out lacked integrity. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principles 4, 5, 6 and 10

- 32.9 It was self-evidently not in the best interests of clients nor did it amount to a proper standard of service or the protection of client money and assets to raise bills for work that had not been carried out. The trust the public placed in the provision of legal services was clearly undermined by such action and the Tribunal found the breaches of Principles 4, 5, 6 and 10 proved beyond reasonable doubt.

- 32.10 Allegation 1.7 was proved in full beyond reasonable doubt including the allegation of dishonesty.

The Tribunal's Findings – Allegation 1.8

- 32.11 The Tribunal's analysis of the circumstances surrounding the raising of the bills is set out in detail above in relation to Allegation 1.7. In his response to a letter to the SRA dated 11 March 2016, the Second Respondent had referred to being out of the country towards the end of August 2013. There no evidence of this absence but in any event it would not have prevented him from signing at least some of the bills of costs.

- 32.12 The Tribunal had rejected the Second Respondent's case that he was deceived by the Third Respondent on the basis that the Third Respondent's account was corroborated by the evidence of Ms Sands. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent had signed some or all of the bills of costs referred to in respect of Allegation 1.7. The Tribunal found the factual basis of Allegation 1.8 proved beyond reasonable doubt.

Dishonesty

- 32.13 The Second Respondent's state of knowledge was that set out in relation to Allegation 1.7. It followed as a matter of logic that if he had dishonestly raised the bills, knowing that they did not reflect the work done on the files, that to sign those bills was also dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

Principles 2, 4, 5, 6 and 10

- 32.14 The Tribunal found these Principles to have been breached for the reasons set out above in relation to Allegation 1.7 and is a matter of logic based on the factual findings and the finding of dishonesty in relation to Allegation 1.8.
- 32.15 The Tribunal found Allegation 1.8 proved in full beyond reasonable doubt including the allegation of dishonesty.
33. **Allegation 1.9 - He caused or allowed a shortage of at least £34,517.62 to arise on the Firm's Client Account in that transfers were made from the Client Account to the Firm's Office Account in payment of bills of costs in circumstances where Client B had not been sent written confirmation of those costs and/or some or all of those costs were not warranted, and in doing so breached Principles 10 of the Principles and Rules 6, 17.2 and 20.3 of the SARs.**

Applicant's Submissions

- 33.1 The Second Respondent had admitted there was a shortfall. It was submitted that the Second Respondent had a responsibility to ensure compliance with the SARs by himself and by other employees of the Firm. By failing to ensure that money was withdrawn from the Client Account in accordance with Rule 20, and that the client was given written notification of the costs incurred prior to transferring funds from Client Account to Office Account, the Second Respondent was in breach of the SARs. By causing or allowing a shortage of at least £34,517.62 to arise on the Firm's Client Account, the Second Respondent had failed to protect client monies.

Second Respondent's Submissions

- 33.2 In his reply to the Rule 5 Statement the Second Respondent accepted that there had been a breach of the SAR but denied that there had been a breach of the Principles or that he had acted dishonestly.
- 33.3 The Second Respondent stated that he accepted the Accounts Rules breaches on the basis that he was a Principal in the Firm and that he was strictly liable for those breaches. He did not accept any of the allegations made by the Third Respondent in respect of his conduct of Client B's matter and stated that he had been misled by the Third Respondent such that he reasonably believed that written notice of the bills of costs had been sent to the client. He stated that upon being notified of the breaches the Second Respondent took immediate steps to rectify the position.

The Tribunal's Findings

- 33.4 The Second Respondent had admitted the breaches of Rules 6, 17.2 and 20.3 of the SAR. The Tribunal noted the entries on the client ledger and was satisfied that the Second Respondent's admissions were properly made to the extent that there had been clear breaches of the SAR as demonstrated by the evidence. The Tribunal found the factual basis of Allegation 1.9 proved beyond reasonable doubt.

Dishonesty

- 33.5 The second Respondent's admissions to the Accounts Rules breaches had been on the basis of strict liability in circumstances where he had been misled by the Third Respondent. The Tribunal had assessed the Second Respondent's conduct in respect of the Client B matters when considering Allegations 1.7 and 1.8. It followed from those findings that the Tribunal rejected the basis upon which the Second Respondent had made the admissions to breaches of the SAR. The Tribunal had found that the Second Respondent's state of knowledge was not that of someone who was the victim of deception. Instead the Tribunal had found beyond reasonable doubt that the Second Respondent had deliberately raised bills which he knew did not reflect the work carried out and had deliberately and knowingly signed those bills.
- 33.6 The Tribunal again had regard to the evidence of Ms Sands and noted that the Third Respondent did not have the authority to make transfers from Client Account to Office Account. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent had caused or allowed the transfers to take place in the knowledge that he was not entitled to do so and that he was causing a shortage on the client ledger. These were deliberate and calculated breaches and were not accidental. The Tribunal was satisfied beyond reasonable doubt that such conduct would be considered dishonest by the standards of ordinary decent people. The allegation of dishonesty was therefore proved beyond reasonable doubt.
- 33.7 Allegation 1.9 was therefore proved in full beyond reasonable doubt including the allegation of dishonesty.
34. **Allegation 1.10 - He failed to supervise the Third Respondent adequately or at all between June 2010 and September 2012 when she was a paralegal at the Firm and/or between September 2012 and November 2014 when she was a Trainee Solicitor at the Firm and in doing so, breached Principle 8 of the Principles and failed to achieve Outcomes 7.6 and 7.8 of the SRA Code of Conduct ("the Code").**

Applicant's Submissions

- 34.1 Mr Bheeroo's submissions in respect of this Allegation were also applicable to Allegation 5.4.
- 34.2 This Allegation was admitted by the First and Second Respondents. The First Respondent was the designated Training Partner but in practice both were responsible for supervision and the Third Respondent's position was that 90% of her work was under the supervision of the Second Respondent. There were no records of reviews being undertaken or discussion of cases. The Allegations against the Third Respondent related to her conduct in following the Second Respondent's instructions. Mr Bheeroo submitted that the role of the First and Second Respondents as partners was to ensure training and supervision was adequate especially as the Third Respondent was a trainee.

- 34.3 It was submitted that in failing to adequately supervise the Third Respondent who was a trainee solicitor, the First and Second Respondents had not run the business or carried out their roles in supervising the Third Respondent effectively and in accordance with proper governance and sound financial and risk management principles. This also amounted to a failure to achieve Outcomes 7.6 and 7.8 of the Code, in that they did not ensure that the Third Respondent was trained to a level of competence for her role, and did not have a suitable system in place for supervising the Third Respondent's work. It was further submitted that the First and Second Respondents had acted recklessly.

Second Respondent's Submissions

- 34.4 In his response to the Rule 5 statement the Second Respondent admitted this Allegation, though he denied recklessness. He stated that he had trusted the Third Respondent and it had appeared to everyone that she was capable of carrying out the work entrusted to her. The Second Respondent stated that the Third Respondent had been the cause of the issues in respect of Clients S and B as she had been the fee earner on both of those files. He stated that the Third Respondent had misled both himself and the First Respondent in the progress she was making in respect of those matters and she had "made it appear that the files were being conducted and progressed appropriately". He stated that her misconduct only became apparent after she left the Firm. The Second Respondent had set out the sequence of events that he stated had led him to discover the full extent of the Third Respondent's actions. He rejected her allegations against him.

- 34.5 He stated that:-

"whilst the Second Respondent accepts that there must have been a failure to supervise the Third Respondent, it is submitted on behalf of the First Respondent [presumably intended to mean the Second Respondent] that it is recognised that it is almost impossible to stop somebody who is intent on acting dishonestly. It appears to the Second Respondent that the Third Respondent was unable to properly progress her files and manage the workload. Rather than approach the First and Second Respondent, she appears to have falsified files to make it appear that work was being undertaken when in fact it had not. It also appears that clients have been misled by the Third Respondent, as accepted by her, as to the progress of their cases".

The Tribunal's Findings

- 34.6 The Tribunal noted that the Second Respondent had admitted this Allegation save for the allegation of recklessness. The Tribunal noted that the First Respondent was the training partner but that the Third Respondent had been directly supervised by the Second Respondent. It was not proper supervision to instruct the Third Respondent to engage in the conduct set out above in relation to Allegation 1.3. The Tribunal therefore found the Allegation proved beyond reasonable doubt but rejected the qualification and the basis of the Second Respondent's admission to it. However even if his version of events was accepted, this would still be a breach and the matter would still have been proved beyond reasonable doubt.

Recklessness

- 34.7 The Tribunal noted that Ms Sands had stated that the First and Second Respondents were often not present, leaving the Third Respondent on her own. That in itself created a serious risk that there would be a breach of the Second Respondent's obligations to properly supervise the Third Respondent. In choosing to absent himself and in giving the instructions to the Third Respondent that he did, the Tribunal found beyond reasonable doubt that the Second Respondent had acted wholly unreasonably. The Tribunal found the allegation of recklessness proved beyond reasonable doubt.
- 34.8 Allegation 1.10 was therefore proved in full beyond reasonable doubt including the allegation of recklessness.
35. **Allegation 2.1 - By reason of the conduct alleged at 1.1, 1.2, 1.3 and/ or 1.7 above, he acted dishonestly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.**
- Allegation 2.2 - By reason of the conduct alleged at 1.4, 1.5, 1.8 and/or 1.9 above, he acted dishonestly or, in the alternative, he acted recklessly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.**
- Allegation 2.3 - By reason of the conduct alleged at Allegation 1.10 above, he acted recklessly.**
- 35.1 The submissions and findings in relation to these Allegations of dishonesty/recklessness are dealt with above in relation to the applicable substantive Allegations.
36. **Allegation 3.1 - Between 20 August 2013 and 23 October 2014 she raised some or all of the bills of costs set out in Schedule 2, which included bills of costs for work that she knew had not been carried out and in doing so she breached Principles 2, 3, 4, 5, 6 and 10 of the Principles.**

Applicant's Submissions

- 36.1 Mr Bheeroo reminded the Tribunal that the Third Respondent had, during the course of her interview with the SRA, admitted to doing the acts alleged. However she stated that she did so because she was fearful of not complying with instructions given to her by the Second Respondent. Mr Bheeroo submitted that the Tribunal may well sympathise with that view, but it was not a defence – rather it may be mitigation. By her own admission she carried out these acts knowing that the work had not been carried out.
- 36.2 It was submitted that her actions had been dishonest. She had knowingly raised bills of costs for work that had not been carried out and understood that the client was in effect, being overcharged by the Firm and that monies would be transferred from the Client account to Office account, despite the fact that the costs had not been properly incurred on the file.

Third Respondent's Submissions

- 36.3 In her submissions the Third Respondent told the Tribunal that her position remained as it had done in her answers to the Rule 5 and 7 Statements. She told the Tribunal that she had acted under duress and under the instruction of the Second Respondent and not through choice. She had feared for the consequences for her employment if she had made a report. She told the Tribunal that this was her first job after university and it would have been obvious that it was her who had made the report. Her concern had been that she would not get a reference and would have therefore struggled to secure alternative employment.
- 36.4 In respect of Client S she told the Tribunal that there was a specific form that was used to draw the funds down from the cost funder. The Third Respondent had seen copies of the signature on these documents in the file. She had not raised all the bills of costs, as had been accepted, and she had not been the initial fee earner on the file. The Third Respondent had explained to the client that the funds transferred were to repay the loan. She told the Tribunal that she did not have the ability to facilitate payment transfers. The Third Respondent stated that save for when she was carrying out the Second Respondents requests, she had maintained her integrity and independence and had always worked in the client's best interests. She had spoken to Client S regularly and the Third Respondent had done her best to advise. She believed that she had maintained a proper standard of service despite having a very heavy caseload as well as responsibility for training other staff while she herself was still a trainee. The Third Respondent believed that she had been good at her job and upon securing her new role at another firm she had passed her probationary period. The Third Respondent submitted her behaviour would maintain public trust if the public took into account the full circumstances of the situation she had been in and the pressures on her. She reminded the Tribunal that it was her report that had exposed the wrongdoing despite the consequences that it brought on herself. She submitted her actions had been those of a decent honest person and it had never been her intention to mislead or harm any clients.
- 36.5 In her answer to the Rule 5 Statement the Third Respondent had stated that she had raised some of the bills of costs on occasions when the Second Respondent had stood over her and instructed her to raise an invoice on the matter relating to works that had not been undertaken, directing her as to the value of the invoice and the specific wording to be included. She denied that she was responsible for the drawdown of funds.

The Tribunal's Findings

- 36.6 The Third Respondent had not given evidence and the Tribunal was therefore entitled to draw a similar inference from her failure to do so as it had in respect of the Second Respondent. Where her submissions were contradicted by the First or Second Respondents, Mr Bheeroo had specifically invited the Tribunal to prefer her submissions to theirs.
- 36.7 The Tribunal considered what constituted raising a bill. The mere act of typing a bill was not the same as raising one. The Tribunal found that the Third Respondent had simply typed the relevant bills on the instruction of the Second Respondent. She had

referred to figures being plucked out of thin air rather than drawn from the case management system. The Tribunal was not satisfied beyond reasonable doubt that this constituted raising a bill of costs. In those unusual circumstances the Tribunal was not satisfied that the Third Respondent's admissions were supported by the evidence. The Tribunal therefore found Allegation 3.1 not proved.

37. **Allegation 3.2 - Between 8 August 2013 and 20 November 2013 she drew down funds as set out in Schedule 1, totalling up to £6,500.00, from Client S' legal funding loan using documents which she knew to be forged with Client S' signature without Client S' knowledge or permission and in doing so she breached Principles 2, 3, 4, 5, 6 and 10 of the Principles.**

Applicant's Submissions

- 37.1 Mr Bheeroo told the Tribunal that there was no evidence that the Third Respondent was involved in first drawdown and so the full figures and dates in the Allegation could not be correct, but she was involved in at least some of the drawdowns. The Third Respondent had accepted that she knew that what she was doing was wrong at the time. She knew work had not been carried out and knew the client had not given permission. Mr Bheeroo noted that the benefit she got was very different to the Second Respondent in that his was financial and hers was saving her job.
- 37.2 It was submitted that the conduct was not in the best interests of Client S because she was entitled to the relevant information and therefore she was not provided with a proper standard of service. Her money was not adequately protected in that it was drawn down from a loan facility that ultimately she was responsible for paying back, without her prior agreement or knowledge of the amount or the specific services she was paying for. The Third Respondent's conduct was likely to cause damage to the trust the public held in Third Respondent as a solicitor, and in the provision of legal services. Members of the public would expect that a client was informed that the Firm was seeking to draw funds down from the loan and that the client had authorised the funds to be drawn down as required.
- 37.3 It was submitted that the Third Respondent had been dishonest as she knew a client signature was required to draw down funds, used documents which she knew to contain a false signature to do so and knew that the client had not authorised the funds to be drawn down, and was unaware that the funds were being drawn down.

Third Respondent's Submissions

- 37.4 The Third Respondent's submissions to the Tribunal in relation to Allegation 3.1 were also applicable to Allegation 3.2.

The Tribunal's Findings

- 37.5 The fact of the drawdowns was clear from the sums set out in the schedule. In order for this allegation to be proved the Applicant was required to demonstrate to the requisite standard that not only had the Third Respondent drawn down the funds but that she had done so using documents which she knew to be forged. The Tribunal, when considering Allegation 1.1 of Statement A, had not been satisfied beyond

reasonable doubt that the Second Respondent had falsified the documents. The Tribunal had therefore not been satisfied that the documents were necessarily forged and it therefore followed that it could not be satisfied beyond reasonable doubt that the Third Respondent would have known that the documents had been forged with Client S's signature. The Tribunal therefore found Allegation 3.2 not proved.

38. **Allegation 3.3 - She failed to promptly report her actions at paragraphs 3.1 and 3.2 above, and/or those she alleged against the Second Respondent, to the SRA at any time before 25 January 2015, after she had left the Firm's employment and in doing so breached Principles 2, 3, 6 and 7 of the Principles and failed to achieve Outcome 10.4 of the Code.**

Applicant's Submissions

- 38.1 Mr Bheeroo reminded the Tribunal that the Allegation centred on whether the Third Respondent had reported promptly to the SRA as it was clearly accepted that she had made a report. Mr Bheeroo invited the Tribunal to examine the timeline of Allegations 3.1 and 3.2. The report was on 25 January 2015 and referred to a period from 20 August 2013 until 23 October 2014, which meant the report was 3-17 months later in the case of the conduct alleged in Allegation 3.1. In the case of Allegation 3.2 the relevant period was between August and November 2013 meaning the report was 14-17 months later. The Third Respondent accepted the factual premise of the Allegation but denied breaches of the Principles. In response to a query from the Tribunal as to the effect of reporting a matter to the COLP (as the Third Respondent had done shortly before leaving the Firm), Mr Bheeroo submitted that if a serious breach was reported and no action is taken by COLP it was her duty to then report to SRA. This was the case here and in any event, the report to the COLP was not prompt. The Third Respondent had accepted that she ought to have reported sooner and had said that she knew of the wrongdoing in the last 18-24 months of her employment. Mr Bheeroo submitted that this could not be described as prompt. The Third Respondent knew practises were wrong and should be reported immediately but was afraid of being dismissed. Mr Bheeroo submitted that there was an impact on clients of the matters not having been reported sooner.
- 38.2 The requirement of prompt reporting had not been met and so Outcome 10.4, and Principle 7 had been breached. The failure to act put client's interests at risk and that was a breach of Principle 6. The result was that the Firm's clients' interests had been subordinated to her own interests as the risk to clients had been ongoing. In the circumstances it was submitted that delaying her report was a failure of integrity.

Third Respondent's Submissions

- 38.3 In her submissions to the Tribunal, the Third Respondent stated that she had made a report to the First Respondent in November 2014 before being placed on gardening leave. She told the Tribunal that she had made the report at the earliest opportunity that she could see as feasible given the circumstances she had set out in her submissions in relation to Allegations 3.1 and 3.2. She told the Tribunal that in hindsight she should have made the report earlier and by making the report when she had done she had admitted to the actions which she knew were wrong. The Third Respondent told the Tribunal that she had proceeded in the way that she had believed

was most appropriate and pointed out that she was the only person to come forward. In response to questions from the Tribunal she stated that there was no office procedure for reporting internal complaints. In response to further questions from the Tribunal the Third Respondent stated that she was in fear of the Second Respondent's actions in that she had been worried that she would be dismissed but she did not fear him on a personal level. She described the First Respondent's attitude to his role as COLP as "very passive" and as having his "head in the sand".

- 38.4 In her Answer to the Rule 5 Statement the Third Respondent had stated that when she had left the Firm it had become apparent that the First Respondent had not taken any action in relation to her report to him. She raised it with her new managing partner at the end of 2014 and subsequently spoke to the SRA. The Third Respondent denied acting dishonestly, stating that during the final year of her training contract in particular she had been pressured and forced to act against her will under the threat of the loss of her employment and employability. She stated that she had "acted in a manner that any reasonable person in my position would do so".

The Tribunal's Findings

- 38.5 This Allegation had two elements to it; the Third Respondent's failure to promptly report her own actions as alleged in Allegation 3.1 and 3.2; and her failure to promptly report the actions of the Second Respondent.
- 38.6 The Tribunal had found Allegations 3.1 and 3.2 not proved and therefore this element of Allegation 3.3 was not engaged. The element of the Allegation relating to the Second Respondent's conduct did however, fall to be considered. It was a fact that she had not reported the matter to the SRA until January 2015, having made a report to the First Respondent in his capacity as COLP in November 2014. The central question was whether the report had been made promptly. The misconduct on the part of the Second Respondent that the Third Respondent was aware of stretched back more than a year, in some cases nearly two years. The misconduct in question was extremely serious and therefore called for reporting at the very earliest opportunity. The Tribunal noted and accepted the Third Respondent's submissions about the pressures that she was under. The situation in which she had found herself may well amount to mitigation but it was not a defence to an allegation of lack of integrity.
- 38.7 The Third Respondent had been under a duty to protect clients by reporting misconduct and she had failed to do so. The Tribunal was satisfied beyond reasonable doubt that the Third Respondent had failed to promptly report the actions of the Second Respondent and the factual basis of Allegation 3.3 together with the breaches of Principle 7 and Outcome 10.4 was proved beyond reasonable doubt.

Principle 2

- 38.8 The reason that the Third Respondent had given for not reporting the matter earlier was that she feared for the loss of her employment. The Tribunal did not dispute that this may indeed have been the case. However by proceeding in the manner that she had, she had exposed clients to continued risk arising from the Second Respondent's serious misconduct. In putting her own interests above those of the clients, the

Tribunal was satisfied beyond reasonable doubt that the Third Respondent had lacked integrity.

Principle 3

38.9 In light of the Tribunal's findings that the Third Respondent had put her own interests above those of the clients, it followed as a matter of logic that she had allowed her independence to be compromised. The Tribunal found the breach of Principle 3 proved beyond reasonable doubt.

Principle 6

38.10 The trust the public placed in the provision of legal services and the Third Respondent had on her prompt reporting of serious misconduct. Her failure to do so amounted to a breach of that obligation and the Tribunal was satisfied beyond reasonable doubt that she had therefore breached Principle 6.

38.11 Allegation 3.3 was therefore proved in full beyond reasonable doubt in respect of the Third Respondent's misconduct.

39. **Allegation 4 - By reason of the conduct alleged at 3.1 and/ or 3.2 above, she acted dishonestly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.**

39.1 In light of the Tribunal having found neither Allegations 3.1 nor 3.2 proved, it was not required to consider Allegation 4.

40. **Allegation 5.1 - Between July and October 2016 he certified ID1 (Certificate of Identity for Private Individual) Forms for Mr S, Mrs S and Ms R, in connection with a transfer of property without:**

5.1.1 having met the individuals whose identity he sought to certify; and/or

5.1.2 having seen the original identity documents for the individuals he sought to certify;

and in doing so, he breached Principles 2, 3, 6, 7 and 8 of the Principles and failed to achieve Outcomes 1.3, 7.3, 7.5 and 11.4 of the Code.

Applicant's Submissions

40.1 Mr Bheeroo's submissions relating to this matter were also applicable to Allegations 1.1 and 1.2 of Statement B.

40.2 He referred the Tribunal to the evidence of the witnesses that only two visits took place in July and none by the First Respondent. The certification was therefore untrue and misleading. The Tribunal was referred to the evidence of Mr Davies at the Land Registry who said it was clear that the date had been changed. Mr Bheeroo also referred to the Attendance Note made by Ms Evans dated 6 January 2017. The First Respondent had told her that the meeting was what was in his diary. Nobody had

ever seen a diary and his account was disproved by witnesses. He had acted dishonestly and in breach of the Principles.

- 40.3 Even if the Tribunal accepted the First Respondent's defence, he had still allowed his independence to be compromised by sending CP to meet these individuals. It should have been him who had done the checks. The Tribunal was invited to consider the ramifications of falsely certifying such documents.

First Respondent's Submissions

- 40.4 In his response to the Rule 5 Statement dated 29 August 2017, the First Respondent denied this Allegation. The First Respondent accepted that the allegation was "factually accurate" but denied breaching the Principles or the Outcomes. He set out the procedure that he had adopted when verifying ID1 documents. Where clients could not attend the office he would send CP to attend their home address. Whilst at the address the client would produce their original passports to CP who would photograph them on his mobile phone. At the same time he would make a Skype call to the First Respondent in order that the First Respondent could see the client and the passport together. The forms would then be signed by the client and the passport photograph provided which would be appended to the ID1 form. In respect of Mr S and Ms R, the First Respondent stated that he sent CP to attend their home address to view the original documentation and arranged for the ID1 form to be signed. The First Respondent stated that he believed CP had contacted him by Skype to confirm the passport was the original but it could not specifically recall if this had in fact occurred. The First Respondent stated that neither he nor the Firm were instructed to provide legal advice to Mr S or Ms R. The First Respondent accepted that his actions at the time may not have been appropriate that it did not believe that he had been acting inappropriately at the time.
- 40.5 The First Respondent denied acting dishonestly. It had been his belief that by arranging for CP to attend the home in the manner described that the documents had been produced to him as certified within the ID1 form.

The Tribunal's Findings

- 40.6 The First Respondent had admitted the factual elements of this allegation. He had accepted that he had not met the individuals or seen the original identity documents that he had certified. This was consistent with the witness statement of Mrs S dated 26 July 2012 and that of Ms R dated 28 July 2017, both of whom confirmed that they had not met the First Respondent. The Tribunal was therefore satisfied that the First Respondent's admission to the factual basis of the allegation was properly made and the Tribunal found this proved beyond reasonable doubt.

Dishonesty

- 40.7 The Tribunal considered the First Respondent's state of knowledge at the time that he certified the ID1 forms. He was aware that he had not met the individuals and he knew that the documents had not been produced to him. The wording of the declaration was as follows:-

“I [First Respondent’s name] of [the Firm] certify that [Mrs S/Mr S] has produced to me the original(s) of the evidence of identify indicated in panel 3 below and which I have inspected. I confirm that the photograph attached in panel 4, and which I have signed, is a true likeness of the person who has provided this evidence”.

- 40.8 By his own admission, the certification that the First Respondent had given was untrue. He had nevertheless made the certification and in doing so had signed a statement which was not true. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

Principle 2

- 40.9 The First Respondent was under a duty to be scrupulously accurate particularly when signing a declaration of certification. He had knowingly signed something that he knew not to be true and the Tribunal was satisfied beyond reasonable doubt that in doing so he had lacked integrity.

Principle 3

- 40.10 The First Respondent had clearly allowed his independence to be compromised as he had breached his duty to fill in the ID1 form truthfully and accurately. The Tribunal found the breach of Principle 3 proved beyond reasonable doubt.

Principle 6

- 40.11 It followed as a matter of logic from the Tribunal’s findings above that making a certification that was untrue undermined the trust the public placed in the First Respondent and in the profession. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

Principle 7

- 40.12 The First Respondent was under a legal obligation to fill in the ID1 form correctly and he had not done so. The Tribunal was satisfied beyond reasonable doubt that he had failed to comply with his legal obligations and found the breach of Principle 7 proved beyond reasonable doubt.

Outcome 1.3

- 40.13 This Outcome was in the section of the code relating to client care and stated that “when deciding whether to act, or terminate your instructions, you comply with the law and the code”. It was not clear to the Tribunal that Mr and Mrs S or Ms R were clients as opposed to individuals whose identity he was purporting to certify. The Tribunal was unable to establish how this outcome was applicable to the circumstances of this Allegation. The breach of Outcome 1.3 was therefore not proved.

Outcome 7.3

40.14 This Outcome required the First Respondent to identify, monitor and manage risks to compliance with all the Principles, Rules and Outcomes and other requirements of the handbook where applicable and to take steps to address any issues identified. It was clear that making an untrue certification was a breach of the principles, rules and outcomes and the Tribunal found the breach of Outcome 7.3 proved beyond reasonable doubt.

Outcome 7.5

40.15 This outcome required the First Respondent to comply with legislation applicable to his business and this included the requirement to be truthful and accurate formal documents. The Tribunal found the breach of Outcome 7.5 proved beyond reasonable doubt.

Outcome 11.4

40.16 This required the First Respondent to properly administer oaths and affirmations of declarations when authorised to do so. It was clearly not proper to make a certification which was not true. The Tribunal found the breach of Outcome 11.4 proved beyond reasonable doubt.

40.17 The Tribunal found Allegation 5.1 proved in full beyond reasonable doubt including the allegation of dishonesty with the exception of the breach of Outcome 1.3, which was not proved.

41. **Allegation 5.2 - Between around August 2013 and November 2013 he signed some or all of the bills of costs set out in Schedules 2, 3 and 4, which included bills of costs for work that had not been carried out in relation to the matters for Client S and/or Client B and in doing so, breached Principles 2, 4, 5, 6 and 10.**

41.1 Mr Bheeroo reminded the Tribunal that the First and Second Respondents had both accepted in interview that they had signed some of these bills. The First Respondent had stated that he had been misled by the Third Respondent. Mr Bheeroo submitted that even if that was correct, this would be a mitigation point in that he relied upon someone else for information. The First Respondent was the Training Partner responsible for the Third Respondent. He ought to have been reviewing and checking the bills. By signing the bills he had failed to act with integrity and had undermined trust in the profession. It was also submitted that he had acted recklessly.

First Respondent's Submissions

41.2 In his response to the Rule 5 Statement the First Respondent accepted that it was possible that he had signed bills of costs for work which may not have been carried out but he denied that in doing so he had breached any of the Principles or that he had been reckless. He stated that when signing any bills of costs he reasonably believed that the work had been done based on the assurances provided to him by the Third Respondent. He stated that he had built up trust and confidence in her over a period of five years and he would not have expected her to present bills for work that had not

been carried out. He drew attention to his interview in which he had explained that “if the bill of costs looked right then he would sign it”. The First Respondent’s case was that he was unaware that the bills contained time for work which had not been carried out and he therefore denied acting without integrity or failing to act in the best interests of his clients. He stated he was not aware that any risk existed in respect of the conduct of the Third Respondent.

The Tribunal’s Findings

41.3 The First Respondent, during the course of his interview, had accepted signing bills and in his response to the Rule 5 Statement he had accepted that it was possible that he had done so. The Tribunal found the factual basis of this allegation proved beyond reasonable doubt.

Recklessness

41.4 The First Respondent had accepted that he had not properly checked the bill to ensure that it was accurate before he signed it. Even on his own case, he had relied on the assurances of a junior member of staff rather than satisfying himself that the bills were accurate. His criteria for signing it had appeared to be whether the bill “looked right”. The First Respondent would have known that by not properly checking a bill before it was signed that there was a risk that it may not be accurate and that it may include costs for work that had not been carried out. The First Respondent had nevertheless proceeded on more than one occasion to sign the bills regardless of the risk. The Tribunal was satisfied beyond reasonable doubt that the First Respondent had acted recklessly in doing so.

Principle 2

41.5 The First Respondent was required to have scrupulous attention to detail, particularly when it came to signing bills. He was the training partner responsible for the Third Respondent and either he had not checked the bills all the files or he was uninterested in whether the bills were accurate or not. The Tribunal was satisfied beyond reasonable doubt that this clearly displayed a lack of integrity.

Principles 4, 5, 6 and 10

41.6 It followed as a matter of logic from the Tribunal’s findings above that it was not in the best interests of each client, nor did it amount to a proper standard of service for one of the Principals in the Firm to sign the bills of costs which included claims for work that had not been carried out. This type of reckless conduct was clearly inconsistent with protecting client money and assets. The trust the public placed in the First Respondent and the provision of legal services depended on the First Respondent checking bills before signing them, something he had failed to do. The Tribunal found the breaches of Principles 4, 5, 6 and 10 proved beyond reasonable doubt.

41.7 The Tribunal found Allegation 5.2 proved in full beyond reasonable doubt including the allegation of recklessness.

42. **Allegation 5.3 - He caused or allowed a shortage of at least £44,080.46 to arise on the Firm's Client Account in that he authorised transfers from the Client Account to the Firm's Office Account in payment of bills of costs in circumstances where Client S and Client B had not been sent written confirmation of the costs incurred and some or all of those costs were not warranted, and in doing so breached Principle 10 of the Principles and Rules 6, 17.2 and 20.3 of the SARs.**

Applicant's Submissions

- 42.1 It was submitted that as one of the Principals of the Firm, the First Respondent had a responsibility to ensure compliance with the SARs by himself and other employees of the Firm. By failing to ensure that money was withdrawn from the Client Account in accordance with Rule 20 and that the clients were given written notification of the costs incurred prior to transferring funds from Client Account to Office Account, the First Respondent was in breach of the SARs. By causing or allowing a shortage of at least £44,080.46 to arise on the Firm's Client Account, the First Respondent failed to protect client monies. Whilst a shortage operated on the Firm's Client Account, the Firm has insufficient funds in Client Account to meet all liabilities to clients which could potentially become due.
- 42.2 Mr Bheeroo reminded the Tribunal that the First Respondent had admitted breach of the SARs and submitted that breaches of Principle 10 must follow.

First Respondent's Submissions

- 42.3 In his response to the Rule 5 Statement the First Respondent accepted that there had been a breach of the SAR but denied that there had been a breach of the Principles. His case was that he was not the fee earner of the relevant files and his understanding had been that the Third Respondent had sent written notification of costs to the relevant clients. This admission was based on strict liability on the basis that he was Principal in the Firm. He stated that been notified of the relevant breaches he had taken immediate steps to rectify the position.

The Tribunal's Findings

- 42.4 The First Respondent had admitted the factual basis of this allegation including the breaches of the SAR. The Tribunal, having considered the ledgers, was satisfied that these admissions were properly made and found the factual basis of Allegation 5.3 together with the breaches of Rules 6, 17.2 and 20.3 proved beyond reasonable doubt.

Principle 10

- 42.5 It was clearly inconsistent with the requirement to protect client money and assets for a Principal in the Firm to cause or allow shortage in excess of £44,000 to arise in the client account. The Tribunal found the breach of principle 10 proved beyond reasonable doubt.

Recklessness

- 42.6 The First Respondent had sought to blame the Third Respondent for his failures in the same way that the Second Respondent had attempted to. As noted above, the Applicant had invited the Tribunal to prefer the Third Respondent's case to that of the First or Second Respondent. The Tribunal had already found that the Third Respondent's case was corroborated by the evidence of Ms Sands and it rejected the First Respondent's case that he had misled the Third Respondent. However, even if his position on this was correct, he was a Principal in the Firm and was in a position of considerable seniority to the Third Respondent who was a trainee. The cause of the shortage had been the First Respondent's failure to check the bills and ledgers properly. This created an obvious risk that a shortage on the client account could arise and this would have been clear to the First Respondent. The First Respondent had nevertheless proceeded to authorise the transfers in the knowledge of this risk and in doing so the Tribunal was satisfied beyond reasonable doubt acted recklessly.
- 42.7 Allegation 5.3 was proved in full beyond reasonable doubt including the allegation of recklessness.
43. **Allegation 5.4 - He failed to supervise the Third Respondent adequately or at all between June 2010 and September 2012 when she was a paralegal at the Firm and/or between September 2012 and November 2014 when she was a Trainee Solicitor at the Firm and in doing so, breached Principle 8 of the Principles and failed to achieve Outcomes 7.6 and 7.8 of the SRA Code of Conduct.**

Applicant's Submissions

- 43.1 Mr Bheeroo's submissions in respect of this Allegation are set out above under Allegation 1.10.

First Respondent's Submissions

- 43.2 The First Respondent's submissions in relation to this Allegation were in almost identical terms to the Second Respondent's submissions in relation to Allegation 1.10 of Statement A. The First Respondent accepted that there must have been a failure to supervise the Third Respondent but he submitted that he and the Second Respondent had been deceived by her.

The Tribunal's Findings

- 43.3 The Tribunal noted that the First Respondent had admitted this Allegation with the same caveat that the Second Respondent had done in relation to Allegation 1.10. The Tribunal had rejected that caveat in respect of the Second Respondent and did so in respect of the First Respondent for the same reasons as set out in its findings in relation to Allegation 1.10 of Statement A. The Tribunal was satisfied beyond reasonable doubt that the First Respondent, who was the training partner, had failed to adequately supervise the Third Respondent. He had failed to ensure that the day-to-day supervision of the Third Respondent was being conducted appropriately by the

Second Respondent. The Tribunal found the factual basis of this Allegation proved beyond reasonable doubt together with the failure to achieve Outcomes 7.6 and 7.8.

Principle 8

- 43.4 A failure to supervise a paralegal and/or trainee solicitor was clearly inconsistent with a requirement for the First Respondent to run his business and carry out his role in the business effectively and in accordance with proper governance and sound financial and risk management principles. The Tribunal found the breach of Principle 8 proved beyond reasonable doubt.

Recklessness

- 43.5 The Tribunal found the allegation of recklessness proved beyond reasonable doubt in respect of the First Respondent the same reasons as it had done in respect of the Second Respondent. There was clearly a risk that in failing to supervise adequately, breaches would occur as indeed they did.

- 43.6 The Tribunal found Allegation 5.4 proved in full beyond reasonable doubt including the allegation of recklessness.

44. **Allegation 6.1 - By reason of the conduct alleged at 5.1 above, he acted dishonestly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.**

- 44.1 The submissions and findings in relation to this Allegation of dishonesty are dealt with above in relation to Allegation 5.1.

45. **Allegation 6.2 - By reason of the conduct alleged at 5.2, 5.3 and/or 5.4 above, he acted recklessly.**

- 45.1 The submissions and findings in relation to this Allegation of recklessness are dealt with above in relation to Allegations 5.2, 5.3 and 5.4 (which in turn is also dealt with in Allegation 1.10).

Statement B

46. **Allegation 1.1 - Between July and October 2016, he completed and/or amended the date purported to be the date on which Mr and Mrs S signed ID1 (Certificate of Identity for Private Individual) Forms ("the ID1 Forms"), to show an incorrect date, without their knowledge or permission and with the intention to mislead the Land Registry as to the date on which the ID1 Forms were signed. In doing so, he breached Principles 2 and 6 of the Principles and failed to achieve Outcome 11.4 of the Code;**

Allegation 1.2 - On or around 27 January 2017, he told a member of staff at the Land Registry that he had met Mr S, Mrs S and Mrs R at his office when this statement was not true and in doing so, he breached Principles 2 and 6 of the Principles;

Applicant's Submissions

- 46.1 Mr Bheeroo's submissions in respect of these Allegations are set out above under Allegation 5.1 of Statement A.

First Respondent's Submissions – Allegation 1.1

- 46.2 The First Respondent had not provided submissions in relation to Statement B. The Tribunal took note of the submissions he had made in relation to Allegation 5.1 of Statement A, which also dealt with the ID1 form completion. In a letter sent by his then-solicitors dated 15 June 2017 to the SRA the following had been stated on his behalf:-

“It is alleged that Mr De Vita has altered dates on a certified ID1 form as the time period to register the transfers had expired. He denies this allegation. In completing this ID1 form he would have sent the completed version to Indeed Law Ltd to enable them to register the same. The date on the document would have been completed by Mr De Vita on the day he signed the same. If it has been amended since that date, the alteration has been undertaken subsequently by someone other than him”.

The Tribunal's Findings - Allegation 1.1

- 46.3 The Tribunal noted that the date on the form appeared to have been amended. However there was no evidence as to who had amended the form, when or why. There had not been a meeting with Mr or Mrs S or Ms R on either date, and the form had been sent on to Indeed Law by the First Respondent.
- 46.4 In the circumstances the Tribunal could not be satisfied beyond reasonable doubt who completed and/or amended the date on the form. The Tribunal therefore found Allegation 1.1 not proved.

First Respondent's Submissions – Allegation 1.2

- 46.5 In the letter sent to the SRA dated 15 June 2017 by the First Respondent's then solicitors it was stated that the First Respondent had no specific recollection of the telephone call with Mr Davies in respect of Mr and Mrs S. However he did recall that on previous occasions when the Land Registry had contacted him about an ID1 form he had asked a secretary to check the relevant forms and to provide whatever information required.

The Tribunal's Findings – Allegation 1.2

- 46.6 The Tribunal considered the unchallenged witness statement of Mr Davies from the Land Registry. This exhibited an attendance note by Ms Evans dated 27 January 2017 who had recorded the following:-

“Mr De Vita called this morning approx. 10.30. I asked him if he could confirm he had verified the forms ID for Mr and Mrs [S] and their daughter [Ms R]. He said he had completed section B on all ID forms for them”.

The note continued:

“I asked him if Mrs and Mrs [S] and their daughter had come into his office had come into his office to sign the forms. He replied ‘yes that’s what it says in my diary’. I asked again if he had met Mr and Mrs [S] and their daughter and they had all come to his office to sign the forms, he replied ‘that’s what it says in my diary’”.

- 46.7 Ms Evans had asked the First Respondent a clear question on two occasions. On both occasions he gave an answer that was untrue in that he confirmed, purportedly based on his diary entry, that he had met all three individuals. The Tribunal had not seen any evidence of a diary and it noted that in his response to Allegation 5.1 in Statement A, the First Respondent had confirmed that it was CP who met Mr and Mrs S and Ms R at their home address, rather than those individuals having attended his office. The Tribunal was satisfied beyond reasonable doubt that the First Respondent’s answers to Ms Evans were not true and found the factual basis of Allegation 1.2 proved beyond reasonable doubt.

Dishonesty

- 46.8 The Tribunal considered the First Respondent’s state of knowledge at the time that he held the telephone conversation with Ms Evans. The First Respondent knew that he had not met any of the three individuals let alone all of them. The only meeting that had taken place was at Mr and Mrs S’s home and the First Respondent knew this to because he had sent CP to their home for that purpose. The First Respondent therefore knew that his answer to Ms Evans questions was untrue. The First Respondent was further aware of the purpose of her questions which was to verify the certification which the First Respondent had falsely made on these forms. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people and the Tribunal found the allegation of dishonesty proved in full beyond reasonable doubt.

Principle 2

- 46.9 It followed as a matter of logic from the Tribunal’s findings above that making a false statement in response to clear and direct questions from the Land Registry, which was seeking to verify certification which was in itself false, was a very clear example of a lack of integrity. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principle 6

- 46.10 The trust the public placed in the First Respondent and the provision of legal services was severely undermined in circumstances where he had made false statements in response to request for clarification, in this case by the Land Registry. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.
- 46.11 Allegation 1.2 was proved in full beyond reasonable doubt including the allegation of dishonesty.

47. **Allegation 1.3 - By reason of the conduct alleged at 1.1 and 1.2 above, the First Respondent acted dishonestly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.**

47.1 The submissions and findings in relation to this Allegation of recklessness are dealt with above in relation to Allegations 1.1 and 1.2 (which in turn is also dealt with in Allegation 5.1 of Statement A).

48. **Allegation 1.4 - He instructed the Third Respondent to retrospectively falsify Client L's contact file including by fabricating and/or backdating correspondence and time reports, and in doing so he breached Principles 2, and 6 of the Principles;**

Allegation 1.5 - He submitted documents which he knew had been retrospectively falsified to the Legal Ombudsman ("LeO") as a true record of the work carried out by the Firm on Client L's matter and in doing so he breached Principles 2, 4, 6 and 7 of the Principles.

Applicant's Submissions

48.1 Mr Bheeroo told the Tribunal that the evidence that the letters had been fabricated came from the Third Respondent's report. He submitted that she had no reason to put herself in the firing line as she has done and that her account could therefore be accepted. The Second Respondent, on the other hand, had a reason to fabricate documents and submit them to the LeO, that being that he would hope to defeat the complaint by misleading the LeO. Mr Bheeroo submitted that it was dishonest to instruct a trainee solicitor, or anyone else, to fabricate a file for the purposes of misleading an Ombudsman and then relying on it by submitting it to that Ombudsman. There was a benefit as to the Second Respondent and the Firm as it attempted to concealed matters from LeO. The only reason it was not successful was that the client had kept the letter she had actually received in the post. Mr Bheeroo submitted that the LeO is a fundamental protection for clients and solicitors must not mislead it to gain an advantage for their firm.

Second Respondent's Submissions

48.2 The Second Respondent did not provide a response to the Allegations made against him in Statement B. The Tribunal treated those Allegations as denied.

The Tribunal's Findings – Allegation 1.4

48.3 The Tribunal considered the file of Client L in relation to her complaint to the LeO. The Tribunal noted the inconsistency between the two letters that were provided to the Ombudsman, one by the Firm and one by the client. The Third Respondent's case was that she had falsified these documents on the instruction of the Second Respondent. She had given a detailed account of the circumstances in which she had done this. The Third Respondent had no incentive to be untruthful about this as by bringing the matter to light she had acted in a way that was adverse to her own interests.

48.4 The Tribunal was satisfied that the factual basis of Allegation 1.4 was proved beyond reasonable doubt.

Dishonesty

48.5 The Tribunal considered the Second Respondent's state of knowledge at the material time. The Second Respondent knew that the documents were to be sent to the LeO as part of its investigation into Client L's complaint. The Second Respondent would also have known that by instructing the Third Respondent to retrospectively falsify the file by fabricating and backdating correspondence this could, and was indeed intended to, mislead the LeO. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people and the allegation of dishonesty was therefore proved beyond reasonable doubt.

Principles 2 and 6

48.6 It followed as a matter of logic that instructing a junior member of staff to engage in fabricating and falsifying documents clearly lacked integrity and seriously diminished the trust the public placed in the Second Respondent and the provision of legal services. The Tribunal found the breaches of Principles 2 and 6 proved beyond reasonable doubt.

48.7 Allegation 1.4 was proved in full beyond reasonable doubt including the allegation of dishonesty.

The Tribunal's Findings – Allegation 1.5

48.9 This Allegation was the result of the Second Respondent's conduct set out in Allegation 1.4. It was not in doubt that the documents had been submitted to the LeO and on the Tribunal's findings in respect of Allegation 1.4, those documents had been falsified at the instruction of the Second Respondent. It followed as a matter of inescapable logic that the Second Respondent had submitted documents which he knew had been retrospectively falsified. The Tribunal found the factual basis of this Allegation proved beyond reasonable doubt.

Dishonesty

48.10 The Second Respondent's state of knowledge had been analysed by the Tribunal when considering Allegation 1.4. It had found that he had knowingly and dishonestly instructed the Third Respondent to falsify and fabricate correspondence so that it could be sent to the LeO. It therefore followed that the sending of those documents was in itself dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

Principles 2 and 6

48.11 The Tribunal found the breaches of these Principles proved beyond reasonable doubt for the same reasons as it had in respect of Allegation 1.4. The intention of the misconduct in each of these Allegations was to mislead the legal ombudsman and this clearly lacked integrity and undermined public trust in the profession.

Principle 4

48.12 The LeO was investigating a complaint by Client L. The intention of the Second Respondent in submitting falsified documents was to dishonestly defeat that complaint, something which could not be in the best interests of Client L. The Tribunal found the breach of Principle 4 proved beyond reasonable doubt.

Principle 7

48.13 The LeO forms part of the regulatory structure and the Second Respondent was under regulatory obligations to deal with the ombudsmen in an open timely and co-operative manner. The submission of falsified documents was a flagrant breach of those obligations and the Tribunal found the breach of Principle 7 proved beyond reasonable doubt. The Tribunal found Allegation 1.5 proved in full beyond reasonable doubt including the allegation of dishonesty.

49. **Allegation 1.6 - By reason of the conduct alleged at 1.4 and 1.5 above, the Second Respondent acted dishonestly. Whilst dishonesty was alleged, proof of dishonesty was not an essential ingredient for proof of any of the Allegations.**

49.1 The submissions and findings in relation to this Allegation of dishonesty are dealt with above in relation to Allegations 1.4 and 1.5.

50. **Allegation 1.7 - Between around 10 February 2014 and 2 July 2014, she, under the instruction of the Second Respondent, retrospectively falsified Client L's file which she knew was to be sent to the Legal Ombudsman including that she:**

1.7.1 falsified and backdated letters including one purported to be sent to Client L on 6 July 2012;

1.7.2 prepared a copy of the 'Terms and Conditions' document purported to be signed by Client L on 9 July 2012 by inserting a photocopy of Client L's signature or otherwise falsifying her signature and/ or

1.7.3 falsified and backdated electronic time recording reports;

and in doing so breached Principles 2, 3, 4, 6 and 7 of the Principles.

Applicant's Submissions

50.1 Mr Bheeroo reminded the Tribunal of the Third Respondent's interview and her Answer in which she had admitted the factual premise of the Allegation. She had stated that she was acting under instruction of the Second Respondent and was fearful of repercussions. Mr Bheeroo submitted that this was regrettable but it was mitigation and not a defence. It did not stop her actions being dishonest.

Third Respondent's Submissions

50.2 In the Third Respondent's answer to the Rule 7 Statement dated 3 January 2018 she stated that she had nothing further to add to what was in her transcript of the

interview. She denied that she had acted dishonestly. She stated that during her final year in particular she was pressured and forced to act against her will under the threat of the loss of her position and the fact that she was told that she would not be employable elsewhere. She stated that she had acted in a manner “that any reasonable person in my position would do”. She stated that she had not benefited from the position and had in fact suffered negative consequences.

The Tribunal’s Findings

50.3 The Tribunal had found that the Second Respondent had instructed the Third Respondent to falsify Client L’s file which was to be sent to the LeO. The Third Respondent had admitted carried out that instruction and the Tribunal therefore found the factual basis of Allegation 1.7 proved beyond reasonable doubt.

Dishonesty

50.4 The Tribunal considered the Third Respondent’s state of knowledge at the material time. She had accepted that she knew that she was falsifying documents and that she knew that they were to be sent to the legal ombudsman. The Third Respondent had advanced the defence of duress both in her interview with the SRA and her answer to the Rule 7 Statement. The defence of duress in regulatory proceedings was relatively unusual. In criminal proceedings, for the defence of duress to succeed, there would need to be an immediate threat to personal safety of the defendant in circumstances where that defendant had no options other than to comply with the instruction. In response to questions from the Tribunal the Third Respondent had confirmed that she did not feel personally threatened by the Second Respondent and it was the threat to her career that had caused to act in the way that she had.

50.5 The Tribunal also noted that the Third Respondent had a means of extricating herself from the situation, albeit one which may not have been appealing, and she had chosen not to avail herself of those options. This could have included making a report to the SRA or to the First Respondent as COLP much earlier. The fabrication of the documents took place over a period in excess of four months and her report to the SRA about these matters did not follow for a further six months, despite the fact that she was nearing the end of her training contract.

50.6 The difficult circumstances in which the Third Respondent undoubtedly found herself were not the order of severity or of immediacy that could justify her falsification of a client’s file over a period of months. The Tribunal was satisfied beyond reasonable doubt that notwithstanding the unpleasant working environment in which she was operating, her actions would nevertheless be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

Principle 2

50.7 The fabrication of documents, even at the instruction of a senior member of staff, prepared for the purposes of sending to the LeO clearly lacked integrity. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principle 3

50.8 The Third Respondent had, again, put her own interests above her duties to the LeO and to Client L. The Tribunal found Principle 3 proved beyond reasonable doubt.

Principle 4

50.9 The Tribunal found the breach of Principle 4 proved beyond reasonable doubt on the same rationale as it had found it proved in respect of Allegation 1.5 in respect of the Second Respondent.

Principle 6

50.10 The trust the public placed in the profession was undermined in circumstances where a trainee solicitor, even when acting on the instruction of a supervisor, fabricated documents in order that the ombudsman could be misled. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

Principle 7

50.11 The Tribunal found the breach of Principle 7 proved beyond reasonable doubt on the same basis as it had found it proved in respect of Allegation 1.5.

50.12 Allegation 1.7 was proved in full beyond reasonable doubt including the allegation of dishonesty.

Statement C

51. **Allegation 1.1 - the Second Respondent, acted for Client N concerning the administration of the estate of Ms F (file of Client N (Estate of Ms F)) and he:**

1.1.1 caused or allowed four invoices totalling £23,240.16 to be prepared, which included fees that were not justified on the basis of the time recorded on the file, and in doing so breached Principles 2, 4, 5 and 6 of the Principles;

1.1.2 caused or allowed 23 improper Client Account to Office Account transfers, totalling £20,029.28, to be made between 3 January 2017 and 25 September 2017, and in doing so breached Rule 20.1 of the SRA Accounts Rules 2011 ("SAR 2011") and Principles 2, 4, 5, 6 and 10 of the Principles;

1.1.3 misled Client N about whether the Firm had received pension monies from the NHS and about the amount of monies the Firm had already received, and in doing so breached Principles 2, 4 and 6 of the Principles;

1.1.4 misled Client N about the date of expiry of a notice he had placed in the London Gazette so that the distribution of the estate could be delayed, and in doing so breached Principles 2, 4 and 6 of the Principles.

Applicant's Submissions

- 51.1 Mr Bheeroo submitted that the invoices were simply created to enable the Second Respondent to transfer funds and there was nothing to justify those invoices. The Second Respondent was the fee earner and Mr Bheeroo reminded the Tribunal of the evidence of Ms Sands who had stated that the Second Respondent alone had responsibility for raising an invoice on this file. He was therefore responsible for ensuring that bills were accurate and only raised for work actually done. There was a requirement for clear and transparent information about costs and work done and the payments were not warranted. Mr Bheeroo submitted that the Second Respondent had been dishonest and had breached the relevant Principles.
- 51.2 In relation to the transfers, Mr Bheeroo submitted that the only inference was that the Second Respondent had caused or instructed the amounts to be transferred. He and the First Respondent were the only two people on the bank mandates. The bills had not been delivered and the fees were not due and so these were improper transfers. The Second Respondent had admitted a breach of Rule 20.1 but not unequivocally.
- 51.3 Mr Bheeroo submitted that the Second Respondent had been misleading about the NHS pension and the expiry date of the notice. The Tribunal was referred to the evidence of Client N. Mr Bheeroo submitted that this was a clear-cut case of dishonesty involving deliberate lies being told to the client in the full knowledge that the Firm held the NHS pension money and that it was much more than he was telling the client. He also knew when the notice had expired in the Gazette. He was buying time by saying the notice had not expired because he knew he was doing wrong.

Second Respondent's Submissions – Allegation 1.1.1

- 51.4 In his response to the Rule 7 statement the Second Respondent denied this allegation. His case was that the file was under various fee earners. He acknowledged that supervision was an issue. He stated that he had found himself in a position where the majority of the files were opened in his name on the instructions of the First Respondent following the first investigation by the SRA. His case was that he was very much a junior partner in the Firm and had to follow the instructions of the First Respondent. The Second Respondent's case was that he had no control over many of the internal processes. The Second Respondent did not accept raising all the invoices and did not accept that his actions therefore amounted to a failure to act with integrity or that his conduct was not in the best interests of Client N.

The Tribunal's Findings – Allegation 1.1.1

- 51.5 The Tribunal considered the witness statement of Client N dated 19 January 2018. She stated that after receiving a client care letter in November 2016 she had dealt only with the Second Respondent from then on. The Tribunal also noted that a letter to the NHS pension scheme dated 24 March 2017 contained the Second Respondent's email address and reference. The notice in the London Gazette also contained the Second Respondent's email address under the heading of 'executor/administrator'. The Tribunal therefore rejected the Second Respondent's implication that he was one of a number of fee earners working on the matter and found beyond reasonable doubt that he was in fact the fee earner.

- 51.6 The Tribunal noted that the Firm's time record for the matter was 42 minutes, equating to £126. The invoices contained no detail of work carried out, simply stating "work undertaken the probate matter". The first invoice dated 8 November 2016 claimed for profit costs in the sum of £400. Less than two months later the Firm had billed for profit costs in the sum of £9271.90. There was no explanation provided as to how this sum had been arrived at and no evidence of any significant work, let alone nearly £10,000 worth of work, having been undertaken in the seven-week period.
- 51.7 Exactly one month later on 1 February 2017 the Firm had billed for a further £3500, again without explanation. One month after that on 3 March 2017 a further £6194 had been claimed, again without explanation. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent had caused or allowed these four invoices to be prepared and was also satisfied beyond reasonable doubt that they included fees that were completely unjustified on the basis of the time recorded on the file.
- 51.8 The Second Respondent had sought to blame the First Respondent but did not explain how that afforded him a defence to the Allegation. Even if the First Respondent was responsible, that did not mean that the Second Respondent was not. The Applicant had not alleged that the First Respondent was responsible. The Second Respondent had not given evidence and as indicated above, the Tribunal drew the appropriate inferences from his failure to do so.
- 51.9 The Tribunal found the factual basis of Allegation 1.1.1 proved beyond reasonable doubt.

Dishonesty

- 51.10 The Second Respondent was the fee earner on this matter and therefore knew how much work he was, or was not, undertaking. He therefore knew that the invoices that he had caused or allowed to be prepared bore no relation to the true value of the work undertaken or of the money owed by Client N. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people and the allegation of dishonesty was therefore proved.

Principle 2

- 51.11 It clearly lacked integrity for a solicitor to cause or allow invoices to be prepared which contained figures that had no justification whatsoever. The Tribunal found the breach of Principle 2 beyond reasonable doubt.

Principles 4 and 5

- 51.12 The Tribunal was satisfied beyond reasonable doubt that causing or allowing such invoices to be prepared was completely against the best interests of Client N and clearly did not reflect a proper standard of service. The Tribunal found the breaches of these Principles proved reasonable doubt.

Principle 6

51.13 The breach of this Principle was proved beyond reasonable doubt as it was the inescapable conclusion from the Tribunal's other findings in relation to this allegation.

51.14 Allegation 1.1.1 was proved in full beyond reasonable doubt including the allegation of dishonesty.

Second Respondent's Submissions – Allegation 1.1.2

51.15 In his response to the Rule 7 Statement the Second Respondent accepted that there had been a breach of the SARs but denied breaching the principles or that he had acted dishonestly. The Second Respondent's admission was on the basis of strict liability as he was a principal in the Firm. The Second Respondent referred the Tribunal to the submissions he had made in respect of Allegation 1.1.1.

The Tribunal's Findings – Allegation 1.1.2

51.16 The Second Respondent had admitted a breach of Rule 20.1 of the SAR. The Tribunal was satisfied that this admission was properly made in that the Second Respondent had caused or allowed 23 improper transfers from Client to Office Account. The Second Respondent's admission was on a strict liability basis. The Tribunal rejected the qualification. The Second Respondent had raised the same defence as he had in relation to Allegation 1.1.1 and this was rejected for the same reasons. The Tribunal found the factual basis of this Allegation and the breach of Rule 20.1 proved beyond reasonable doubt.

Dishonesty

51.17 The Tribunal had assessed the Second Respondent's state of knowledge when considering Allegation 1.1.1. This also applied to Allegation 1.1.2 in that the Second Respondent knew that he was not entitled to the funds that he was transferring from Client to Office Account. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people. The allegation of dishonesty was proved beyond reasonable doubt.

Principle 2, 4, 5 and 6

51.18 The breaches of these Principles were proved beyond reasonable doubt for the same reasons as they had been proved in respect of Allegation 1.11.

Principle 10

51.19 It was obvious that improperly transferring more than £20,000 of client monies from Client to Office Account was wholly inconsistent with protecting client money and assets. The breach of Principle 10 was proved beyond reasonable doubt.

51.20 Allegation 1.1.2 was proved in full beyond reasonable doubt including the allegation of dishonesty.

Second Respondent's Submissions – Allegation 1.1.3

51.21 In his response to the Rule 7 Statement the Second Respondent denied misleading Client N and denied acting dishonestly. It was the Second Respondent's case that client N "repeatedly requested further investigation into the NHS pension monies with the NHS".

The Tribunal's Findings

51.22 As the Tribunal had found above, the Second Respondent had conduct of this matter. The Firm had been notified in response to its letter dated 27 February 2017 that the sums of £28,315.84 (gross) and £5,489.41 were due from the NHS pension scheme to the estate and ultimately to Client N. It was clear from the Firm's letter to the NHS pension scheme dated 24 March 2017 that they had sent cheques made payable to Client N. The Firm had returned those cheques and instead asked for them to be reissued payable to the Firm. This was the letter that the Tribunal had referred to above, containing the Second Respondent's reference and email address.

52.23 The Tribunal noted the client ledger which showed that the Firm had received payments of £5,489.41 and £17,145.08 on 18 April 2017. Client N had told the FI Officer that she was aware of the receipt of £5,489.41 but not of the £17,145.08. She had stated that the Second Respondent had told her that they were in negotiations about the remainder. In September 2017 she stated that she had been told that she would receive £7,000 but that the Firm had not receive that sum. This was clearly untrue as not only had the Firm received the monies from the NHS pension scheme, but the second sum was more than £10,000 larger than Client N had been told.

52.24 The Second Respondent's explanation did not address the facts of the allegation. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent had misled Client N about whether the Firm had received the pension monies and as to the amounts. The Tribunal found the factual basis of Allegation 1.1.3 proved beyond reasonable doubt.

Dishonesty

52.25 The Tribunal considered the Second Respondent's state of knowledge at the time that he provided the misleading information to Client N. As the fee earner responsible for this matter he knew that the Firm had received in excess of £22,000. This was clear from the fact that he had requested the NHS to reissue the cheques so that they were payable to the Firm. The Second Respondent therefore knew that the information he was providing to Client N was untrue both in terms of the receipt of the monies and the amount. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people and the allegation of dishonesty was therefore proved.

Principle 2

52.26 The Tribunal was satisfied beyond reasonable doubt that it lacked integrity for a solicitor to mislead a client as to whether or not it was holding funds that were owed

to her and the amount of those funds. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principle 4

52.27 The Tribunal was satisfied beyond reasonable doubt that it was evidently not in the best interests of a client to be misled about monies that were due to her.

Principle 6

52.28 The trust the public placed in the Second Respondent and the provision of legal services was fundamentally undermined in the circumstances detailed in this allegation.

52.29 Allegation 1.1.3 was proved in full beyond reasonable doubt including the allegation of dishonesty.

Second Respondent's Submissions – Allegation 1.1.4

52.30. In his response to the Rule 7 Statement the Second Respondent denied this allegation and denied acting dishonestly. It was the Second Respondent's case that Client N "requested a further file to be opened by the Firm to enter into negotiations with her ex-partner over his interest in her property. The client requested this action and as such this was the sole delay".

The Tribunal's Findings – Allegation 1.1.4

52.31 In her witness statement, Client N had stated as follows:-

"Christopher Platt told me shortly before Christmas, at a meeting at the Firm, that I needed to wait for an advert in the Gazette to run out in January, and then the estate would be finalised".

52.32 This evidence had not been challenged and the Tribunal accepted it as credible. The Tribunal examined the advert that had been placed in the London Gazette and noted that the claims date expired on 22 August 2017. Therefore at the time that the Second Respondent made the statement to Client N to the effect that the expiry date was in January 2018 the advert had in fact already expired some months earlier. The Second Respondent had not properly addressed the Allegation in his response to the Rule 7 Statement. The Tribunal was satisfied beyond reasonable doubt that his representation to Client N about the expiry date of the notice was misleading and had therefore found the factual basis of Allegation 1.1.4 proved beyond reasonable doubt.

Dishonesty

52.33 The Tribunal considered the Second Respondent state of knowledge at the time that he told Client N of the expiry date. It was the Second Respondent who had placed the notice in the Gazette and therefore knew of its expiry date. By telling Client N that it had not expired this enabled the Second Respondent and the Firm to retain the monies. The Second Respondent therefore knew that what he was telling Client N was

untrue and the Tribunal was satisfied beyond reasonable doubt that this would be considered overwhelmingly dishonest by the standards of ordinary decent people. The allegation of dishonesty was therefore proved.

Principles 2, 4 and 6

52.34 This allegation was very similar to Allegation 1.1.3 in that both allegations involved knowingly misleading client N. The Tribunal found the breaches of Principles 2, 4 & 6 proved beyond reasonable doubt for the same reasons that it had done so in respect of Allegation 1.1.3.

52.35 Allegation 1.1.4 was therefore proved in full beyond reasonable doubt including the allegation of dishonesty.

53. **Allegation 1.2 - he acted for Client HH concerning the administration of the estate of Mr W (file of Client HH (Estate of Mr W)) and he:**

1.2.1 caused or allowed 21 invoices totalling £65,637.46 to be prepared, which included fees that were not justified on the basis of the time recorded on the file, and in doing so breached Principles 2, 4, 5 and 6 of the Principles;

1.2.2 caused or allowed 82 improper Client Account to Office Account transfers, totalling £127,699.90, to be made between 22 January 2016 and 25 August 2016, and in doing so breached Rule 20.1 of SAR 2011 and Principles 2, 4, 5, 6 and 10 of the Principles;

1.2.3 caused or allowed nine improper Office Account to Client Account transfers, totalling £58,801.02 to be made between 7 June 2016 and 23 August 2016, and in doing so breached Principles 2 and 6 of the Principles;

1.2.4 caused or allowed the following funds, belonging to clients unrelated to the estate, to be credited to the Client Ledger, and in doing so breached Rule 1.2(c) of SAR 2011 and Principles 2, 6 and 10 of the Principles:

1.2.4.1 £70,000 on 5 August 2016;

1.2.4.2 £5,157.75 on 22 August 2016;

Applicant's Submissions

53.1 Mr Bheeroo submitted that the Second Respondent was required to ensure that all bills were accurate on basis of work carried out and that client monies were only transferred in proper circumstances. There had been a huge amount of money charged for work not done. He submitted that no honest person would raise invoices for work not carried out and proceed to transfer the sums across. The Second Respondent had been the fee-earner and it was therefore well within his knowledge that he had not done £65,000 worth of work – an overcharge of approximately 2000%.

- 53.2 Mr Bheeroo submitted that the allocation of one client's payments to another client's account to appear to balance the books (teeming and lading) was improper. In this case there had been multiple improper transfers and crediting monies to conceal a failure to adhere to SAR.
- 53.3 Mr Bheeroo referred the Tribunal to the evidence of Ms Sands who had stated that the Firm was in difficulty making salary payments and was having to find funds at the last minute. Mr Bheeroo submitted that this had been achieved by an improper transfer based on a false invoice.
- 53.4 The Second Respondent had told the SRA that the bills were justified due to work done on the files but accepted that some may have been on the wrong files, something that was the fault of the accounts department. Mr Bheeroo submitted that this did not address the other invoices on file which were not sent to the client.

Second Respondent's Submissions – Allegation 1.2.1

- 53.5 In his response to the Rule 7 Statement the Second Respondent accepted that there had been a breach of the SARs but denied any breaches of the Principles. His case was that he did not accept raising all the invoices and therefore did not accept that his actions amounted to a failure to act with integrity or in the best interests of the client. In this document the Second Respondent had referred to Client N when in fact this allegation related to Client HH. The Tribunal took this to be a typographical error. The Respondent also denied acting dishonestly.

The Tribunal's Findings - Allegation 1.2.1

- 53.6 The Tribunal noted that the client care letter in this matter dated 8 April 2015 identified the Second Respondent as the fee earner. The Tribunal therefore rejected any suggestion by the Second Respondent that he was not involved in this matter. The Tribunal also considered the invoices, 18 of which had been exhibited. The vast majority of them contained no detail to justify the significant costs that had been incurred. The invoices had been sent out at very regular intervals. By way of example, two invoices were issued on 27 January 2016, one in the sum of £4,010.16 and the other for £2,400. Two days later a further invoice was issued for £1,995.60 and three days after that another invoice for £5,125.26. Invoices were then issued on 18 February 2016 (£6,325.08), 26 February 2016 (£5,161.95), 1 March 2016 (£6,652.50), 9 March 2016 (£4,008.00), 14 March 2016 (£5,256.00), 1 April 2016 (£1,320.00), 5 April 2016 (£550.00) and 6 April 2016 (£1,824.00). A further two invoices were issued in May 2016 totalling in excess of £9,000 with further invoices in July and August 2016.
- 53.7 The Tribunal considered the report of Ms Corbin in which she concluded that the Firm should not have charged more than £1,000 plus VAT and that it had in fact overcharged in the region of £50,000 plus VAT. The Tribunal was therefore satisfied beyond reasonable doubt that the Second Respondent had caused or allowed the 21 invoices to be prepared and that they had included fees were not justified on the basis of the time recorded on the file. The Tribunal found the factual basis of Allegation 1.2.1 proved beyond reasonable doubt.

Dishonesty

53.8 As the Tribunal had found above, the Second Respondent was the fee earner in this matter and therefore knew how much work had or had not been done on the file. The Second Respondent had therefore caused or allowed these invoices to be raised knowing that they did not reflect the true value of the work done on the file. The Tribunal noted that the invoices were, at times, being issued on an almost daily basis for sums that were way in excess of any work that had been done on the file. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people and therefore found the allegation of dishonesty proved.

Principles 2, 4, 5 and 6

53.9 The misconduct in relation to Allegation 1.2.1 was very similar to that set out in Allegation 1.1.1. The Tribunal found the breaches of Principles 2, 4, 5 and 6 proved beyond reasonable doubt for the same reasons as it had in relation to Allegation 1.1.1.

53.10 Allegation 1.2.1 was proved in full beyond reasonable doubt including the allegation of dishonesty.

Second Respondent's Submissions – Allegation 1.2.2

53.11 In his response to the Rule 7 Statement the Second Respondent denied that there had been a breach of the Principles but accepted a breach of the SARs. He accepted this on a strict liability basis. He repeated his submissions made in respect of Allegation 1.1.1 to the effect that he had been following the instructions of the First Respondent and had no control of many of the internal processes.

The Tribunal's Findings - Allegation 1.2.2

53.12 The Second Respondent had admitted the breach of the SAR and the Tribunal found the factual basis of Allegation 1.2.2 and the breach of Rule 20.1 of the SAR proved beyond reasonable doubt. However it rejected the qualification contained in the admission by the Second Respondent for the same reason that it had done so when considering Allegation 1.1.1.

Dishonesty

53.13 The Tribunal had found that the Second Respondent had knowingly caused or allowed the invoices to be improperly prepared when considering Allegation 1.2.1. The Second Respondent knew that when he was moving the monies, which involved huge sums, he was not entitled to do so and the transfer had no justification. This took place over a period of eight months and the Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people. The allegation of dishonesty was therefore proved.

Principles 2, 4, 5, 6 and 10

53.14 The misconduct in relation to Allegation 1.2.2 was very similar to that set out in Allegation 1.1.2. The Tribunal found the breaches of Principles 2, 4, 5, 6 and 10 proved beyond reasonable doubt for the same reasons as it had in relation to Allegation 1.1.2.

Second Respondent's Submissions – Allegation 1.2.3

53.15 In his response to the Rule 7 Statement the Second Respondent denied that there had been a breach of the Principles or that he had acted dishonestly but submitted that there had been a breach of the SAR on a strict liability basis. He repeated his submissions made in respect of Allegation 1.2.2.

The Tribunal's Findings - Allegation 1.2.3

53.16 The Tribunal noted the Second Respondent's admission to a breach of the Accounts Rules, although this was not pleaded in respect of Allegation 1.2.3. Nevertheless the Tribunal noted the evidence of the FI Officer and the entries contained in the ledgers exhibited by him. As the Tribunal had found above, the Second Respondent was the fee earner in this matter and it was therefore satisfied that he had caused or allowed the improper transfers to occur. The Tribunal found the factual basis of Allegation 1.2.3 proved beyond reasonable doubt.

Dishonesty

53.17 The Second Respondent's knowledge of and involvement in this client's matter is analysed above in relation to Allegations 1.2.1 and 1.2.2. The improper transfers were part of a pattern of conduct in which monies were moved without authority and without justification. The funds that were transferred into the client account belonged to other clients. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent had been teeming and lading and that this would be considered dishonest by the standards of ordinary decent people. The Tribunal found the allegation of dishonesty proved beyond reasonable doubt.

Principle 2

53.18 The process of teeming and lading clearly lacked integrity as it used other clients' funds to conceal a shortage on the client account. The Tribunal found the breach of Principle 2 proved beyond reasonable doubt

Principle 6

53.19 It followed as a matter of logic that the Second Respondent's conduct undermined the trust the public placed in him and in the provision of legal services. The Tribunal found Principle 6 breached beyond reasonable doubt.

53.20 Allegation 1.2.3 was proved in full beyond reasonable doubt including the allegation of dishonesty.

Second Respondent's Submissions – Allegation 1.2.4

53.21 The Second Respondent's submissions in respect of this Allegation were in identical terms to those made in respect of Allegation 1.2.3.

The Tribunal's Findings - Allegation 1.2.4

53.22 This allegation contained two examples of transfers which formed part of the teeming and lading which the Tribunal had found proved in respect of Allegation 1.2.3. The Second Respondent had admitted a breach of the Accounts Rules and the Tribunal found the factual basis of this Allegation and the breach of Rule 1.2(c) to be proved beyond reasonable doubt on the basis of the admission and the evidence.

Dishonesty

53.23 The Tribunal was satisfied beyond reasonable doubt that the Second Respondent's conduct would be considered dishonest by the standards of ordinary decent people for the same reasons as it had in respect of Allegation 1.2.3.

Principle 2, 6 and 10

53.24 The Tribunal found the breaches of Principles 2 and 6 proved beyond reasonable doubt for the same reasons as set out in respect of Allegation 1.2.3

53.25 It was clearly inconsistent with a duty to protect client money and assets for their funds to be credited to an unrelated client ledger. The Tribunal found the breach of Principle 10 proved beyond reasonable doubt.

53.26 The Tribunal found allegation 1.2.4 proved in full beyond reasonable doubt including the allegation of dishonesty.

54. **Allegation 1.2.5 - caused or allowed a Client Account debit balance of - £18,898.82 on 27 July 2016 following distributions to the beneficiaries, and in doing so breached Rule 20.6 of SAR 2011 and Principle 10 of the Principles.**

Applicant's Submissions

54.1 Mr Bheeroo submitted that as the Second Respondent had admitted the breach of Rule 20.6 of the SAR, the breach of Principle 10 must follow.

54.2 The Second Respondent's submissions in respect of this allegation were identical to those made in respect of Allegations 1.2.3 and 1.2.4.

The Tribunal's Findings

54.3 The Second Respondent had admitted a breach of the Accounts Rules to occur and the Tribunal found the factual basis of this allegation together with the breach of Rule 20.6 proved beyond reasonable doubt based on his admission and on the evidence. The breach of the Accounts Rules had resulted in a debit balance of nearly

£20,000 from the client account and it therefore followed as a matter of logic that he had also breached Principle 10 by failing to protect client money and assets.

- 54.4 The Tribunal found Allegation 1.2.5 proved in full beyond reasonable doubt.
55. **Allegation 1.3 - he acted for Client MH concerning the administration of the estate of Mr N (file of Client MH (Estate of Mr N)), and he:**
- 1.3.1 caused or allowed eight invoices totalling £10,269.83 to be prepared, of which between around £8,600 and £9,000 was not justified on the basis of the time recorded on the file;**
- 1.3.2 caused or allowed the estate to be charged for extra work in relation to documentation lost and/or errors made by the Firm;**
- and in doing so, he breached Principles 2, 4, 5 and 6 of the Principles.**

Applicant's Submissions

- 55.1 Mr Bheeroo submitted that the Second Respondent had allowed the estate to be charged for lost documentation and errors made by the firm. He took the Tribunal to the evidence of Ms Corbin who had established an overcharge of 448%. Mr Bheeroo submitted that it was clear that it was the Second Respondent who had caused these invoices to be prepared. He submitted that the Second Respondent's actions had been dishonest – as he must have been aware of the content of the work that had been done on the file and would reasonably have known or suspected that there was not £10,000 worth of work done on the file.

Second Respondent's Submissions

- 55.2 The Second Respondent had denied this Allegation in his response to the Rule 7 Statement. He had accepted that there had been a breach of the SAR (which was not in fact specifically pleaded) but denied that there had been a breach of the Principles or that he had acted dishonestly. He repeated the submissions he had made concerning his role in the Firm and that of the First Respondent. He denied raising all of the invoices and therefore denied a lack of integrity or that he had failed to act in the best interests of the client. He further denied causing or allowing the state to be charged extra work in relation to documentation lost and/or errors made by the Firm and submitted that he was “unaware of the specifics”.

The Tribunal's Findings

- 55.3 The Tribunal noted that the client care letter addressed to client MH dated 29 May 2014 was sent by the Second Respondent and identified him as the fee earner with conduct of the matter. It referred to the fact that the Second Respondent would carry out “most of the work in your file” and that he was assisted by the Third Respondent in his absence. This client care letter gave a cost estimate of up to £2,000 plus VAT plus disbursements. The invoices exceeded £10,000 and there was no explanation as to how these figures had been arrived at as the detail contained on the invoices was minimal. In addition the Tribunal had regard to the report from

Ms Corbin who concluded that the estate of been overcharged by approximately 448%. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent had caused or allowed these invoices to be prepared and was equally satisfied that they were not justified on the basis of the time recorded on the file.

55.4 The Tribunal also read the attendance note dated 24 February 2016. The relevant paragraph read as follows:-

“Explained the reduction again and spoke about the work of Emily Scott. The client expressed her concern for the matter and the impact that it would have on us as a Firm. The client offered to help in any way”.

55.5 There had been an earlier Attendance Note dated 6 July 2015 in which the client had been told that the file was “not complete due to a problem with a member of staff”.

55.6 It was clear to the Tribunal from his attendance notes that the Second Respondent had caused or allowed the state to be charged the costs of locating missing documentation. The Tribunal found the factual basis of Allegation 1.3 proved beyond reasonable doubt.

Dishonesty

55.7 The Tribunal had already found in respect of Allegations 1.1.1 and 1.1.2 that causing or allowing invoices to be prepared which were not justified on the basis of time recorded on the file would be considered dishonest by the standards of ordinary decent people. In addition the Tribunal was also satisfied that it would be considered dishonest by these standards to charge for work which the Second Respondent knew they were not entitled to as an error on the part of the Firm should not, as a matter of principle, be visited on the client by way of additional costs. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent’s conduct in respect of these matters would be considered dishonest by the standards of ordinary decent people in the allegation of dishonesty was therefore proved.

Principles 2, 4, 5 and 6

55.8 The Tribunal had already found that raising invoices that were not justified amounted to a breach of each of these Principles for the reasons set out in respect of Allegations 1.1.1 and 1.2.1. The fact that Client MH had agreed to the reduction due to the missing documentation demonstrated no more than the extent of that client’s goodwill towards the Firm. It did not change the fact that it was not in her best interests and did not amount to a proper standard of service and asking her to agree to a reduction amounted to a lack of integrity. The Tribunal found the breaches of Principles 2, 4, 5 and 6 proved beyond reasonable doubt.

55.9 Allegation 1.3 was proved in full beyond reasonable doubt including the allegation of dishonesty.

56. **Allegation 1.4.1 -he provided the SRA’s Forensic Investigation Officer (“FIO”) with misleading information and documentation including on or around 5 March 2015, as to the whereabouts of client files Client MH (Estate of Mr N)**

and Client C (Estate of Ms C), which had been requested by the FIO, and in doing so, he breached Principles 2, 6 and 7 of the Principles.

Allegation 1.7 - On or around 5 March 2015 he provided the SRA's FIO with misleading information as to the whereabouts of client files Client MH (Estate of Mr N) and Client C (Estate of Ms C), which had been requested by the FIO, and in doing so he breached Principles 2, 6 and 7 of the Principles.

Allegations 1.4.1 and 1.7 were framed in almost identical terms – the former relating to the Second Respondent and the latter relating to the First Respondent. The submissions are therefore dealt with together in relation to these matters.

Applicant's Submissions

- 56.1 Mr Bheeroo took the Tribunal to the s44B notice and reminded it that the files that had been requested were not delivered up. In the interview the First and Second Respondents had blamed the Third Respondent and her mother, saying one or both of them had removed the files from the building. They had told the FIO that they had carried out a search and could not find them. The Third Respondent had denied taking the files – something that was accepted. There was an intervention in January 2018 parts of that the files relating to Clients C and MH were recovered. Mr Bheeroo submitted that what the First and Second Respondents had told the FIO was not true. He described the layout of the office and submitted that it was essentially just three rooms that needed to be searched. The intervention agent appeared to have lifted the original files and not reconstituted files as had been suggested.
- 56.2 The First and Second Respondents denied being dishonest. Mr Bheeroo submitted that they had either lied about conducting a search or had deliberately not disclosed the result of the search. They had then tried to “pass the buck” to the Third Respondent and/or her mother.
- 56.3 In doing so they had dishonestly misled the SRA.

Second Respondent's Submissions – Allegation 1.4.1

- 56.4 The Second Respondent denied that he had provided the FI Officer with misleading information as to the whereabouts of the files for Clients MH, or C. It was the Second Respondent's case that all documentation relied upon by the Applicant were reconstituted files.

First Respondent's Submissions – Allegation 1.7

- 56.5 In his letter to the Tribunal dated 10 October 2018 the First Respondent also denied the allegation. He stated that “on searching for the files noted, they simply could not be found”. He also suggested that the files referred to could be ones that were reconstructed from the case management system. He stated that in the alternative, despite his best efforts, he simply could not find them. He stated “this was neither dishonest, nor an attempt to mislead. Further, I was not reckless as alleged. I carried out a genuine, physical search and could not find the files”.

The Tribunal's Findings

56.6 The Tribunal noted the explanations provided by the First and Second Respondents. In the interview they had suggested that the files may have been archived or incorrectly filed. The Tribunal rejected the suggestion that the Third Respondent or her mother had removed the files. However the Tribunal could not be sure beyond reasonable doubt that the First and Second Respondents had not searched and simply been unable to find the files due to them being wrongly filed. In the circumstances the Tribunal could not be satisfied beyond reasonable doubt that the information provided to the FI officer was misleading and accordingly Allegation 1.4.1 (in respect of the Second Respondent) and Allegation 1.7 (in respect of the First Respondent) was not proved.

57. **Allegation 1.4.2 - On or around 30 November 2017, that no client account shortage existed as at that date;**

Allegation 1.4.3 - On or around 20 December 2017, by providing the FIO with a list of transactions purporting to be unrepresented receipts in respect of the 30 April 2017 account reconciliation (and purportedly accounting for the Client Account shortage at that date);

Applicant's Submissions

57.1 Mr Bheeroo submitted that the Second Respondent's representations about the client shortfall were untrue as there was in fact a significant shortfall. He took the Tribunal to the relevant sections of the FIR. The Second Respondent had misled the FIO on these points and Mr Bheeroo made similar submissions in relation to dishonesty and the alleged breaches of Principles as he had in relation to Allegation 1.4.1.

Second Respondent's Submissions – Allegation 1.4.2

57.2 In his response to the Rule 5 Statement the Second Respondent denied that there had been a breach the Principles but accepted that there had been a breach of the SAR, though this was not pleaded in respect of this allegation. The Second Respondent denied acting dishonestly or without integrity and repeated that he was junior to the First Respondent. He stated that the information provided by the Second Respondent had come from the case management system directly and the Second Respondent did not, at the time, "have a full understanding of what an unrepresented item was or the implication of such until later into the investigation and information from the FIO". It was the Second Respondent's case that he was the only principal of the Firm out of the two of them that actually engaged in and he submitted that he had complied to the best of his ability despite "extenuating circumstances".

The Tribunal's Findings – Allegation 1.4.2

57.3 The Tribunal had found that the Second Respondent had been the fee earner and it also noted that he was a partner in the Firm. The Tribunal rejected his defence to the effect that the First Respondent held a position of dominance over him. There was no evidence of this and it to be a pattern of seeking to blame others, having previously blamed the Third Respondent for a number of matters. In his role as a partner and as

the fee earner he would have been aware of the client account shortage and as such the Tribunal was satisfied that the information that he had provided to the FI Officer was misleading. The Tribunal found the factual basis of this allegation proved beyond reasonable doubt.

Dishonesty

57.4 The Second Respondent knew that he was under a duty to provide the FI Officer with completely accurate information given that he was being asked questions in the context of a regulatory investigation. He also knew of the existence of the Client Account shortage and therefore knew that the answer he was giving to the FI Officer is untrue. The Tribunal was satisfied beyond reasonable doubt that this would be considered dishonest by the standards of ordinary decent people on the allegation of dishonesty was therefore proved.

Principle 2

57.5 The First Respondent was under a duty to be scrupulously accurate in his dealings with FI Officer and he had manifestly failed to do so. The Tribunal was satisfied beyond reasonable doubt that this represented a lack of integrity on the part of the Second Respondent and found the breach of Principle 2 proved beyond reasonable doubt.

Principle 6

57.6 It followed as a matter of logic that giving misleading information to a regulator seriously undermined the trust the public placed in the provision of legal services and the breach of Principle 6 proved beyond reasonable doubt.

Principle 7

57.7 It was a statement of the obvious that giving misleading information to regulator was inconsistent with a solicitor's regulatory obligations. The Tribunal found the allegation of breach of Principle 7 proved beyond reasonable doubt.

57.8 The Tribunal found Allegation 1.4.2 proved in full beyond reasonable doubt including the allegation of dishonesty.

Second Respondent's Submissions – Allegation 1.4.3

57.9 In his response to the Rule 7 Statement the Second Respondent denied providing misleading information to the FI Officer. It was his case that all information that was requested was provided if readily available. He stated that the un-represented receipts were provided "and some, with hindsight, were correct were erroneous". The Second Respondent denied acting dishonestly or acting without integrity and repeated that he had complied to the best of his ability.

The Tribunal's Findings – Allegation 1.4.3

57.10 The Tribunal found that the misconduct alleged in Allegation 1.4.3 was a continuation and reinforcement of the misleading information provided as found in Allegation 1.4.2. The Tribunal found this Allegation proved in full beyond reasonable doubt including the allegation of dishonesty, and the breaches of Principles 2, 6 and 7, for the same reasons as it had in respect of Allegation 1.4.2.

58. **Allegation 1.4.4 - on or around 10 January 2018, that the file for Client H (Divorce), which had been requested by the FIO, could not be located, and in doing so, he breached Principles 2, 6 and 7 of the Principles.**

Applicant's Submissions

58.1 Mr Bheeroo told the Tribunal that this was another allegation of misleading the SRA regarding the location of a file. In his response the Second Respondent had referred to being on medication but had provided no medical evidence or. He did not say how it affected his ability to locate the file. He had stated that he had undertaken a search. He could have found it and indeed the SRA did find it. Mr Bheeroo submitted that either he did not search or he chose not to hand it over. Mr Bheeroo again submitted that the Second Respondent had acted dishonestly and breached the Principles.

Second Respondent's Submissions

58.2 In response to the Rule 7 Statement the Second Respondent denied providing misleading information to the FI officer and repeated that he had complied to the best of his ability.

The Tribunal's Findings

58.3 The Tribunal found the fact that the file of Client H had not been handed over and further found the fact that it clearly could be located as it was located nine days later by the intervention agents. The Tribunal drew a distinction between the circumstances in respect of this matter and those in respect of Allegation 1.4.1, where the file did not come to light for approximately three years after the First and Second Respondents had told the FI Officer that the files could not be found. In this case the file was found very shortly afterwards. The Tribunal considered the Second Respondent's defence and could not exclude the possibility that he had looked very carelessly and inadequately. However it was not satisfied beyond reasonable doubt that he knew the file could be located at that time.

58.4 The Tribunal found the factual basis of Allegation 1.4.4 proved beyond reasonable doubt.

Dishonesty

58.5 As stated above, the Tribunal had not been satisfied to the requisite standard that the Second Respondent knew that the file could be located at the time that he told the FI Officer that it could not. Whilst the Second Respondent's statement was therefore misleading in the sense that it was not correct the Tribunal could not be satisfied that

his conduct in making that representation would be considered dishonest by the standards of ordinary decent people. The allegation of dishonesty was therefore not proved.

Principle 2

58.6 The Tribunal was however satisfied that in light of the Second Respondent's responsibility to take particular care in responding to a request from the regulator, he had lacked integrity in failing to take adequate steps to locate a file which was clearly in the office. The fact that he had not looked properly and had therefore, albeit perhaps inadvertently, misled the FI officer was a serious matter and the Tribunal found the breach of Principle 2 proved beyond reasonable doubt.

Principle 6

58.7 The Tribunal was satisfied beyond reasonable doubt that the public would expect a solicitor to be able to locate files and to therefore be able to provide accurate information and documentation to the FI Officer in the course of a regulatory investigation. The Second Respondent's failure to do so undermined the trust the public placed in the profession and the Tribunal found the breach of Principle 6 proved beyond reasonable doubt.

Principle 7

58.8 It followed as a matter of logic that the Second Respondent had failed to comply with his legal and regulatory obligations and the Tribunal found the breach of this Principle proved beyond reasonable doubt.

58.9 The Tribunal found Allegation 1.4.4 proved in full beyond reasonable doubt save for the allegation of dishonesty which was not proved.

59. **Allegation 1.5 - From around 14 January 2018 he failed to conduct an orderly wind down of the Firm including by failing to take steps to notify clients of the Firm's closure or deal with client papers and client money. In doing so he breached Principles 2, 4, 6 and 7 of the Principles.**

Allegation 1.8 - From around 14 January 2018 he failed to conduct an orderly wind down of the Firm including by failing to take steps to notify clients of the Firm's closure or deal with client papers and client money. In doing so he breached Principles 2, 4, 6 and 7 of the Principles.

Applicant's Submissions

59.1 Mr Bheeroo took the Tribunal to the FIR in which it was recorded that the First Respondent had stated he would not co-operate with SRA and the Second Respondent had said he would not comment on matters any further. He also took the Tribunal to the letters that the First and Second Respondents had exchanged with each other in which they announced their departure from the Firm and blamed the situation on the Third Respondent. There had been no notice of closure and clients were not notified. The result was an intervention by the SRA. Mr Bheeroo referred the Tribunal to the

witness statement of Client N who stated that nobody told her that the firm was closing. The Second Respondent had admitted this Allegation as had the First Respondent.

Second Respondent's Submissions - Allegation 1.5

- 59.2 The Second Respondent had admitted this Allegation. The Tribunal noted his explanation in his response to the Rule 7 Statement and the account provided by the FI officers. The Tribunal was satisfied that this admission was properly made. The Tribunal found the factual basis of Allegation 1.5 and the breach of Principle 7 proved beyond reasonable doubt.
- 59.3 The failure to wind down the Firm in an orderly manner was irresponsible and demonstrated a clear lack of integrity. The Tribunal noted the Second Respondent's submissions concerning his health but also noted that many practitioners in ill-health managed to wind their practice down in a responsible and orderly manner. The Second Respondent had also provided very limited evidence to the Tribunal about his health. The Tribunal did not accept that the circumstances were "extenuating" and noted that even at the point of closure the Second Respondent was still blaming the Third Respondent. The Tribunal was satisfied beyond reasonable doubt that the Second Respondent had lacked integrity.

Principle 4

- 59.4 The best interests of clients were clearly not served in circumstances where the Principals failed to wind the Firm down in an orderly fashion to the extent that the SRA had to arrange to collect the keys in order to intervene into the practice. The Tribunal found the breach of Principle 4 proved beyond reasonable doubt.

Principle 6

- 59.5 It followed as a matter of logic that the trust the public placed in the profession was undermined in the circumstances set out in this allegation. The Tribunal found the breach of Principle 6 proved beyond reasonable doubt.
- 59.6 Allegation 1.5 was proved in full beyond reasonable doubt.

First Respondent's Submissions - Allegation 1.8

- 59.7 This allegation was in the same terms as Allegation 1.5 related to the First Respondent. The circumstances were almost identical. The First Respondent had admitted this allegation and again the Tribunal found this admission to be properly made and found the factual basis of Allegation 1.8 together with the breach of Principle 7 proved beyond reasonable doubt.
- 59.8 The Tribunal found the breaches of Principles 2, 4 and 6 proved beyond reasonable doubt for the same reasons as set out in relation to Allegation 1.5.
- 59.9 Allegation 1.8 was therefore proved in full beyond reasonable doubt.

60. **Allegation 1.6 - In relation to the allegations set out at paragraphs 1.1.1–1.1.4, 1.2.1–1.2.4, 1.3.1-1.3.2 and 1.4.1–1.4.4, the Second Respondent acted dishonestly but dishonesty was not a necessary ingredient to prove those Allegations.**

60.1 The submissions and findings in relation to this Allegation of dishonesty are set out in relation to Allegations 1.1.1 – 1.1.4, 1.2.1 – 1.2.4, 1.3.1 - 1.3.2 and 1.4.1 – 1.4.4 of Statement C above.

61. **Allegation 1.7 - On or around 5 March 2015 he provided the SRA’s FIO with misleading information as to the whereabouts of client files Client MH (Estate of Mr N) and Client C (Estate of Ms C), which had been requested by the FIO, and in doing so he breached Principles 2, 6 and 7 of the Principles.**

Applicant’s Submissions

61.1 These are set out above in relation to Allegations 1.4.1 of Statement C.

62. **Allegation 1.8 - From around 14 January 2018 he failed to conduct an orderly wind down of the Firm including by failing to take steps to notify clients of the Firm’s closure or deal with client papers and client money. In doing so he breached Principles 2, 4, 6 and 7 of the Principles.**

62.1 The submissions in relation to Allegation 1.8 are dealt with under Allegation 1.5 above.

63. **Allegation 1.9 - By reason of the conduct alleged at 1.7, the First Respondent acted dishonestly but dishonesty was not a necessary ingredient to prove the Allegation.**

63.1 The Tribunal was not required to consider this Allegation having found Allegation 1.7 not proved.

Previous Disciplinary Matters

64. None of the Respondents had any previous findings at the Tribunal.

Mitigation

Third Respondent

65. The Third Respondent made the following submissions in mitigation:-

- Since 2014 she had not worked in the profession in any capacity and no intention to work in it again;
- She was now Self-employed, having lost jobs in 2016 and 2017 due to these proceedings;
- Her income was low and was below the tax threshold;

- She had come forward and made the report to the SRA voluntarily; she was the only member of staff at the Firm who had done so;
- She had co-operated with the investigation;
- All her misconduct had been under the instruction of the Second Respondent and while she was a trainee;
- The First and Second Respondents, unlike her, had been able to continue practising after she left the Firm and made the report to the SRA;
- The Third Respondent accepted that clients had been affected, but submitted that they had then protected when she made her report;
- The Third Respondent was on medication during final year of her training contract;
- This case had had a big impact on her life for over four years.

Sanction

66. The Tribunal had regard to the Guidance Note on Sanctions (December 2016). The Tribunal assessed the seriousness of the misconduct by considering each Respondents culpability, the level of harm caused together with any aggravating or mitigating factors.

First Respondent

67. In assessing culpability the Tribunal identified the following factors:-

- The First Respondent's motivation had been to increase his income from the Firm by misappropriating client funds;
- His misconduct was a planned series of actions, albeit perhaps to a lesser degree than the Second Respondent;
- The First Respondent had acted in breach of a number of positions of trust. He had abused the trust of clients and the Third Respondent;
- He had direct control of the circumstances in which the misconduct had taken place. He had been a signatory on the bank account and he was the COLP and so had a particular responsibility to ensure compliance. He was also the designated training partner for the Third Respondent;
- He had deliberately misled the SRA.

68. The Tribunal concluded that the First Respondent had a high level of culpability.

69. In assessing the harm caused, the Tribunal identified the following factors:-

- There must have been harm to clients with the potential for serious loss given the shortages on the client accounts and the inflated bills;
- Although the Applicant had not put forward details of loss, the potential for loss was in itself a serious matter;
- There was also significant harm to the reputation of the profession in the eyes of the public. This was inevitable where there had been an abuse of position involving the taking of money from clients.

70. The Tribunal identified the following aggravating factors:-

- The First Respondent had been found to have acted dishonestly. Coulson J in Solicitors Regulation Authority v Sharma [2010] EWHC 2022 Admin observed:

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

- The misconduct had been deliberate, calculated, repeated and had continued over several years;
- The First Respondent had taken advantage of vulnerable people – much of the work was probate and beneficiaries and executors depended entirely on being able to trust the solicitors;
- The First Respondent had tried to conceal his wrong doing because he knew he was in material breach of his obligations.

71. The only mitigating factor was that the First Respondent had no previous findings before the Tribunal.

72. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the First Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.

73. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal had regard to the Respondent’s personal circumstances including references to his medical condition. The Tribunal noted that there was no evidence that the health difficulties experienced by the First Respondent were a contributory factor to the misconduct. There was nothing about the First Respondent’s conduct that could lead to a conclusion that the circumstances were exceptional. The Tribunal found there to be nothing that would justify an indefinite suspension. The only appropriate and proportionate sanction was that the First Respondent be struck off the Roll.

Second Respondent

74. In assessing culpability the Tribunal identified the following factors:-
- The Second Respondent's motivation was self-enrichment;
 - The misconduct was clearly planned with some care and thought;
 - He, like the First Respondent, had breached his position of trust to clients and the Third Respondent;
 - He had personally instigated a great deal of the misconduct committed by both himself and the Third Respondent;
 - The Second Respondent had misled the SRA and the LeO.
75. The Tribunal found a very high level of culpability attached to the Second Respondent.
76. In assessing harm, the Tribunal found the same factors applied as in the case of the First Respondent; this was a sustained course of dishonest conduct which had a significant impact on the reputation of the profession and on clients.
77. The Tribunal identified the following aggravating factors:-
- The Second Respondent had acted dishonestly;
 - The misconduct had been deliberate calculated, repeated and continued over period of years;
 - The Second Respondent had taken advantage of vulnerable individuals by virtue of the nature of the work being undertaken as was the case with the First Respondent. In addition the Third Respondent had been vulnerable due to her junior position and the Second Respondent had been aggressive towards her;
 - The Second Respondent had tried to conceal his wrongdoing, in most instances blaming someone else;
 - The Second Respondent would have known that his conduct was a material breach of his obligations.
78. The only mitigating factor was the fact that he had no previous findings before the Tribunal.
79. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Second Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.

80. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal noted the Second Respondent's submissions concerning his medical situation but, as with the First Respondent, did not find that they came close to demonstrating that his sustained course of dishonest conduct was exceptional.
81. The Tribunal found there to be nothing that would justify an indefinite suspension. The only appropriate and proportionate sanction was that the Second Respondent be struck off the Roll.

Third Respondent

82. In assessing the Third Respondent's culpability the Tribunal identified the following factors:-
- The Third Respondent's motivation was to retain her employment. She stood to make no additional gain above and beyond that. The Tribunal noted that this was in the context of pressure from the Second Respondent;
 - The circumstances were not planned on her part but she carried out instructions and there was an element of planning required to do so;
 - There had been a breach of trust to clients and to the LeO;
 - The Third Respondent had limited responsibility for the circumstances giving rise to the misconduct. She had been attempting to conceal the misconduct of the Second Respondent;
 - The Tribunal noted that she had a low level of experience, being a paralegal and Trainee Solicitor at the material times;
 - The Tribunal noted that she had blown the whistle on the misconduct within the Firm and had been open with the SRA. However she had not been so with the LeO.
83. The misconduct was still very serious, however the Tribunal did find that the Third Respondent's culpability was substantially lower than that of the First and Second Respondents.
84. In assessing the harm caused, the Tribunal identified the following factors:-
- The LeO was misled;
 - There could have been substantial harm to clients by her failure to promptly report the Second Respondent to the SRA;
 - The reputation of the profession was inevitably harmed by the fabrication of documents being sent to the LeO.

85. The Tribunal identified the following aggravating factors:-
- The Third Respondent had acted dishonestly;
 - The misconduct was deliberate calculated and repeated although at a time when she was being pressured and bullied by the Second Respondent;
 - The dishonesty continued over a period of four months and the failure to report was over a period of 18-24 months;
 - The Third Respondent had not concealed her own wrongdoing but had concealed that of the Second Respondent;
 - The Third Respondent had known she was in material breach of her obligations and eventually she had reported matters;
 - Clients remained at risk during non-reporting period.
86. The Tribunal found the following factors mitigated the misconduct:-
- The Third Respondent had no previous findings before the Tribunal;
 - She had been deceived, pressured, bullied and manipulated by the Second Respondent;
 - She had voluntarily notified the SRA, albeit late, and in doing so had exposed her own misconduct;
 - The Tribunal found that she did have genuine insight, although noted that she had denied the Allegations save for the factual basis of them;
 - The Third Respondent had made admissions to the factual basis at an early stage.
87. The misconduct was so serious that a Reprimand, Fine or Restriction Order would not be a sufficient sanction to protect the public or the reputation of the profession from future harm by the Third Respondent. The misconduct was at the highest level and the only appropriate sanction was a Strike Off. The protection of the public and of the reputation of the profession demanded nothing less.
88. The Tribunal considered whether there were any exceptional circumstances that would make such an order unjust in this case. The Tribunal had considerable sympathy with the Third Respondent in that her misconduct would very likely not have occurred but for the actions of the Second Respondent. The Third Respondent had been very junior in the Firm and had undoubtedly found herself in a difficult position.
89. However the fact remained that she had allowed herself to be persuaded to carry out instructions given to her by the Second Respondent which she must have known were in breach of her professional obligations and had allowed serious misconduct to go

unreported for nearly two years, during which time clients remained at significant risk of loss due to the actions of the Second Respondent in particular. She had also knowingly assisted in the deception of the LeO.

90. The Tribunal had regard to the Respondent's personal circumstances both at the material time and at the time of the hearing. The Tribunal had regard to the authority of Solicitors Regulation Authority v James, Naylor and MacGregor [2018] EWHC 3058 (Admin). The fact that the Third Respondent was under pressure and working in a horrendous environment could not excuse dishonesty.
91. The Tribunal found there to be nothing that would justify an indefinite suspension. The only appropriate and proportionate sanction was that the Third Respondent be Struck Off the Roll.

Costs

92. Mr Bheeroo invited the Tribunal to summarily assess costs and presented an amended schedule in the sum of £145,533.96. This included the cost of the investigations as well as the proceedings including the hearing. He also proposed appointments that included an equal split of the first investigation costs and a split of the proceedings costs of 39.6% in respect of each of the First and Second Respondents and 20.8% in respect of the Third Respondent.
93. The Third Respondent did not take issue with the level of costs but submitted that she had already paid in many ways for these proceedings and invited the Tribunal to reflect that in the apportionment. She had lost her career as a result whereas the first and Second Respondents had been able to continue practising for some three years.

The Tribunal's Decision

94. The Tribunal agreed to summarily assess the costs. The vast majority of the allegations had been proved particularly in respect of the First and Second Respondents. Although number of matters had not been proved in respect of the Third Respondent, the Tribunal had still found that she had committed serious professional misconduct. It was clear from the facts of the case as reflected in the Tribunal's findings that the Third Respondent's misconduct occurred solely in the context of the First and Second Respondent's misconduct. The Third Respondent had been a trainee solicitor at the material time whereas the other Respondents had been partners in the Firm with all the responsibility that such a role entailed.
94. The Applicant had proposed apportionments in the schedule but this was a matter for the Tribunal. The Tribunal reviewed the cost schedule and was satisfied that the level of costs claimed were proportionate given the complexity of the investigation, the large amount of material that had to be examined and the fact that the majority of the allegations had been denied by the Respondents.
95. The Tribunal determined that the appropriate proportion of costs that the Third Respondent should pay was 1% of the total costs. This amounted to £2,077.00. The Tribunal determined that the First and Second Respondents should pay the balance of the costs on a joint and several basis.

96. None of the Respondents had provided a statement of means and there was no basis therefore to reduce or defer the costs order on that basis. The Tribunal recognised that the Third Respondent had made submissions as to her means but this was not a substitute for compliance with the directions which were put in place so as to enable the Applicant to investigate any matters arising. The Tribunal therefore made costs order in the usual terms.

Statement of Full Order

97. The Tribunal Ordered that the First Respondent, JONATHAN IPPAZIO DE VITA, 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 £143,456.96 on a joint and several basis with the Second Respondent Christopher John Platt.
98. The Tribunal Ordered that the Second Respondent, CHRISTOPHER JOHN PLATT, 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 £143,456.96 on a joint and several basis with the First Respondent Jonathan Ipazzio De Vita.
99. The Tribunal Ordered that the Third Respondent, EMILY SCOTT solicitor, be STRUCK OFF the Roll of Solicitors and it further Ordered that she do pay the costs of and incidental to this application and enquiry fixed in the sum of £2,077.00.

Dated this 24th day of January 2019
On behalf of the Tribunal



R. Hegarty
Chairman

Judgment filed
with the Law Society
on 24 JAN 2019